BARGAINING ON ASYLUM AND MIGRATION:
THE CASE OF EU AND TURKEY

by

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STATEMENT OF AUTHORSHIP

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ABSTRACT

This study aims at examining and analyzing the mechanisms and dynamics of the negotiation process between the EU and Turkey on irregular migration and asylum. Main analysis is made by focusing on the negotiation processes of two major demands of the EU from Turkey on irregular migration and asylum: (a) lifting the geographical limitation from the 1951 Geneva Convention, and (b) signing a readmission agreement with the EU. Although the negotiation processes of these issues are held separately from the EU-Turkey accession negotiations, the EU membership prospect of Turkey is tightly connected to the outcomes of these negotiations. The study examines whether these negotiation processes are held in the framework of the global governance in a highly securitized framework. The methodological focus is qualitative. Mainly two data collection and data analyzing methods are used: (a) the field research consisted of meetings and semi-structured interviews, and (b) the secondary analysis of the existing statistics and documents. From an analysis of the preferences of the involved actors, it is found out that, the main issues, in which preferences of the involved actors mostly converge, are the significance of burden-sharing and a solid membership prospect for realization of both issues on the table. Additionally, despite of the state's ongoing security discourse against migration, most of the actors involved have mainly prioritized the economic concerns, against the security related ones.

Keywords: readmission agreements, geographical limitation, irregular migration, visa facilitation agreements, securitization, burden-sharing, EU accession negotiations

ÖZET

Bu çalışma, düzensiz göç ve iltica konularını temel alarak, AB-Türkiye katılım müzakerelerinin mekanizma ve dinamiklerini incelemeyi ve analiz etmeyi amaçlamaktadır. Analiz, AB'nin Türkiye'den göç ve iltica ile ilgili talep ettiği şu iki ana konuya dayanarak yapılmıştır: (a) Türkiye'nin 1951 Cenevre Sözleşmesi'ne konulan coğrafi sınırlama hükmünü kaldırması; (b) Türkiye'nin komşu transit ülkeler ve AB ile geri kabul anlaşmaları imzalaması. Bu konuların müzakere süreçleri, resmi AB-Türkiye katılım müzakerelerinden bağımsız olarak gerçekleşmektedir, ancak, Türkiye'nin AB'ye üyelik beklentileri, bu müzakere süreçlerinin çıktılarına sıkı bir şekilde bağlıdır. Çalışma, bu müzakere süreçlerinin küresel yönetişim çerçevesinde bütün ilgili aktörlerin tercihleri dikkate alınarak mı, yoksa iki tarafın da kendi politik, ekonomik ve sosyal güvenliklerini en üst düzeye çıkaracakları şeklide bir güvenlik çerçevesinde mi yürütüldüğünü incelemektedir. Çalışmanın metodolojik odağı niteldir ve kullanılan iki ana veri toplama ve veri analiz yöntemi vardır. İlki, yarı-yapılandırılmış görüşmelerden oluşan saha araştırması, ikincisi ise mevcut istatistikler ve belgelerin ikincil analizidir. İlgili aktörlerin tercihleri üzerine bir analiz yapıldığında, beklenen farklılıkların dışında, tercihlerinin birleştiği noktalar, masadaki iki konunun da çözümlenmesi için külfet paylaşımının ve sağlam bir üyelik beklentisinin önemidir. Ayrıca, göçe karşı süregelen devlet güvenlik söylemine rağmen, ilgili aktörlerin çoğunun, güvenlik ile ilgili kaygılara karşı, ekonomik kaygılara öncelik tanıdığı görülmüştür.

Anahtar Sözcükler: geri kabul anlaşması, coğrafi sınırlama, düzensiz göç, güvenlik, külfet paylaşımı, AB katılım müzakereleri

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CHAPTER I: INTRODUCTION

1.1 Background and Aim of the Study

As important elements of the negotiations between Turkey and European Union, debates about international migration continuously increase their significance in the relations among these two parties. As a phenomenon mainly started in the 1990s, migration, irregular migration[1] and asylum, became indispensable parts of the negotiations. There are various issues on the table; however, the increasing flows of irregular transit migrants' through Turkey to the EU and the European concerns on whether Turkey is capable of controlling its own borders to prevent such flows, are beginning to prevail as the most significant ones among them (Jandl, 2007; Zielonka, 2002; Salt, 2000). Also, Turkish nationals themselves, who are already an issue of concern in many European states' national politics, continue to be a topic of critical debate among the European officials, mainly about their unstoppable growth and integration (Erzan and Kirişci, 2009; Kaya and Kentel, 2005; Kirişci, 2007; Kirişci 2003; Krieger and Maitre, 2006). As it is also seen from these examples, international migration, and its related issues are in a significant ground in the EU-Turkish membership negotiations and becoming one of the main issues to support or hinder the Turkish membership prospect.

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[1] In the literature, irregular migration is defined as the migration that occurs outside the legislation and rules established by States to manage the orderly flow of migrants into, through, and out of their territories. Irregular migration phenomenon is frequently confused with the illegal migration. Although the most common ways of irregular migration are illegal entries and overstaying the visa permits, not all irregular migration movements can be defined as illegal. One of the most prominent irregular migration flows is the movement of the asylum seekers and their movement cannot be labeled as "illegal".

Considering the increasing importance of the migration related issues in the EU-Turkey relations and by taking December 1999, when Turkey is declared as a candidate country by the Helsinki European Council decision, as a starting point[2] this thesis aims to examine and analyze the mechanisms and dynamics of EU-Turkey negotiations on membership, based on the questions of irregular migration and asylum in the theoretical framework of global governance. Analysis is made by focusing on the negotiation processes on two major demands of the EU from Turkey concerning the issues of lifting the geographical limitation from the 1951 Geneva Convention, and signing readmission agreements between Turkey and neighbouring countries and between Turkey and the EU. Here, it should be made clear that, the negotiation processes on the readmission agreement and lifting the geographical limitation are not held in the framework of the EU-Turkey membership negotiations. The official membership negotiations of the 24th Chapter on Justice, Freedom and Security did not start yet. The negotiations on the readmission agreement and lifting the geographical limitation are held separately. However, these issues are strongly stressed in the Chapter 24 of the Annual Progress Reports and as the analysis will also show, it would not be inaccurate to claim that the EU membership prospect of Turkey is tightly connected to these issues.

Although their policy making is still highly in the hands of the states, because of their international nature, immigration and especially asylum are issues where the international organizations and civil society are highly involved in cooperation with the policy makers. Considering this phenomenon, the primary aim of this study will be to determine the role, effectiveness and contribution of the global governance

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[2] Considering the issues of migration and asylum gained significant prevalence in the EU agenda after the late 1990s and the Union began to have a real authority on Turkey's migration policy only after then.

actors to the EU-Turkey negotiation process concerning asylum and irregular migration, where the EU is a significant actor of global governance itself. It will examine whether the processes are held in the framework of the global governance where the preferences of related actors are considered or the EU and Turkey negotiates in a highly securitized framework, where both entities negotiate to maximize their own political, economic and social securities.

As the study adopts the global governance theoretical framework, the variety of actors to be included in the analysis is very large. Consequently, it is not possible to emphasize the preferences, expectations and reservations of all of the involved actors in a profound way. In this study, the emphasis on the civil society has become narrower than expected as I had to limit the scope of the study to the negotiation processes among the actors, by evaluating the costs and the offered compensations. Inevitably, many issues of civil society's concern, such as the treatment of the irregular migrants, the conditions in the removal centres, the unclearness of the asylum procedures and gender aspect of the issue remained beyond the scope of this study, and they are only briefly mentioned.

As stressed above, this thesis is about the processes of an incomplete negotiation. Considering the EU is an important actor as a regional organization in the framework of global governance, the EU negotiations also take place with the involvement of many global governance actors and the length of the negotiation process even increase with the involvement of these multiple actors and gain further significance. Surprisingly, the academic literature on the EU negotiations, often, tends to focus on the outcomes of them, rather than the processes themselves (Cede, 2005:1). Conversely with this trend, this study's main focus will be the case of EU-

Turkey negotiation process in the issues of asylum and migration where the length, complexity of the process and the actors involved, represent a unique phenomenon.

The study also provides a framework for the negotiation process between Turkey and EU concerning migration and it helps to determine its dynamics systematically. Considering that signing a readmission agreement between two entities and lifting the geographical limitation by Turkey are given as conditionalities for EU membership, the negotiation processes of these conditionalities are examined concerning the both sides expectations, aspiration and reservation prices and their presented preferable alternatives to the negotiation processes.

Moreover, from the case of Turkey, a transit country geographically located in a place prone to irregular migration, the analysis in this thesis is also promising to provide an idea of the changing migration policies of the EU, against a candidate country like Turkey in the highly securitized post 9/11 environment. As an ideologically liberal entity, respectful to human rights, the EU faces a dilemma in the issues of migration and asylum between the ideals it is aiming to present, and its security. Thus, it is argued by both academia and policy-makers that the migration policies EU demands the candidate countries to implement are not liberalizing, conversely they are policies aiming to prevent migration in some cases even for the cost of being against the human rights (Kirişci, 2003:79; Tokuzlu, 2007: 3). In the negotiation process between Turkey and EU about readmission and asylum, these arguments are also examined.

1.2 Methodology

The methodological focus of this study is mainly qualitative. In accordance with its aims and the theoretical framework, mainly two data collection and data analyzing methods are used: a) field research, b) secondary analysis of the existing statistics and documents.

The field research is consisted of semi-structured interviews with the representatives of the state institutions, international organizations and non-governmental organizations. During the study; there have been visits to four cities in Turkey; Ankara, Edirne, Istanbul and Van mainly to collect data and to meet with the various government officers, experts, scholars and civil society activists. Edirne and Van were chosen accordingly with their irregular migration-prone characteristics in the transit migration processes, resulting from their geographical location. Apart from these two, Ankara and Istanbul are chosen as the largest cities of Turkey, where most of the immigrants, both regular and irregular are residing, and the main offices of the immigration-related organizations are located.

Concerning the government and state departments, I have conducted interviews with a total number of sixteen officials, including the officials from the Bureau of Immigration and Asylum in the Ministry of Interior, the Ministry of Foreign Affairs, the Turkish General Secretariat for EU Affairs, the Governorship of Edirne, the General Directorate of Security in Istanbul, Edirne and Van and Istanbul Kumkapı Removal Centre.

I have also conducted interviews with a total number of eleven representatives of the international and non-governmental organizations including the representatives of the International Organization for Migration, and the United

Nations High Commissioner for Refugees, the Association for Solidarity with Asylum-Seekers and Migrants (Ankara), Human Rights Association (IHD), International Strategic Research Organisation (Ankara), Migrant Solidarity Network (Istanbul) and The Association of Human Rights and Solidarity for Oppressed People (Mazlum-Der). Various experts, scholars and researchers on irregular migration from various universities such as the Bilkent University in Ankara, Galatasaray University, and Koç University in Istanbul were also consulted.

As the sample of this field research is consisted of very diverse institutions and organizations, the questions were different for all segments. Considering the difficulty of building trust as a result of their securitized perspective and their respect to state secrecy, the questions that are asked to the state officials and practitioners were more cautious against their concerns and more general. Moreover, although they converge in some specific topics, international organizations and Turkish civil society are usually very specialized in certain issues and it is hard to attract their attention to the topics outside of their scope of interest. So that, the questions that are directed to the civil society organizations has been more specifically chosen accordingly with their scope of interest. A sample of the questions that are asked is following:

- What is your overall attitude against the readmission agreement?
- Do you expect an increase in the migration burden of Turkey as a result of the readmission agreement/lifting the geographical limitation?
  - If yes, in which fields?

- o If yes, do you think Turkey, or specifically your department, is ready to meet with the burden the readmission agreement/lifting the geographical limitation will introduce?

- o Do you believe visa facilitations are an adequate incentive for compensating the burden of readmission or do you think only full membership is adequate for meeting with such a burden?

- Are you in collaboration with the EU and other international or non-governmental organizations? If yes, in which fields and to what extent?

- What are the most prevailing possible human rights violations related with the operationalization of the readmission agreement? Which human rights violations does maintaining the geographical limitation to the Geneva Convention involve?

Although in this study it would be appropriate to provide the names and positions of the interviewed actors, considering the sensitivity of the issue, during the interviews, most of the interviewees, have demanded anonymity. Especially the officials from various rankings have asked for me to refrain from stating their names, offices and positions in this study and to only use the interviews to provide a general idea about their offices' standings. Thus, although the lack of exact information about the identities of the interviewees can be taken as a methodological shortcoming of this study, anonymity was a necessity for actualizing a large portion of the interviews that were essential for the analysis.

The second data collection and data analyzing methods, to be used, is the secondary analysis of the existing statistics and documents. The existing statistics and documents that are analyzed are consisted of the ones that are provided and

published by the above mentioned actors which are chosen for the field research as well as the statistics and documents that are published by other actors involved, including the related state institutions, international organizations and non-governmental organizations. The official documents that are published and data that are provided by the Ministry of Foreign Affairs, the Ministry of Interior and the European Commission have been analyzed extensively. Turkish state documents, compiled from different departments were very helpful in terms of providing the numerical data on migration and asylum in Turkey. Also, the fundamental documents that are shaped the course of EU-Turkey negotiation process, such as the National Program for the Adoption of Acquis, Accession Partnership Strategies accepted by the Turkish government, and the annual progress reports on Turkey prepared by the European Commission, will be analyzed to provide an understanding of the change in the priorities and the attitudes of the both sides.

Moreover, the documents and statistics that are made available by the related international organizations, and NGOs have added a different, a human rights centred perspective to the analysis. Most prevalently, the reports prepared by the two main international organizations concerning migration and asylum, the International Organization for Migration (IOM) and the United Nations High Commissioner for refugees (UNHCR), and presenting the Turkish civil society, primarily, the comprehensive report of the International Strategic Research Organization (Uluslararası Stratejik Araştırmalar Kurumu – USAK) will be included in the analysis.

1.3 Content of the Thesis

This thesis consists of five chapters including an introduction and a conclusion chapter. The theoretical framework that is used for the analysis during this thesis is introduced in the introduction chapter, under the section 1.4. This section is primarily written to provide an understanding of the economy, security and human rights aspects of international migration in the classical liberal-realist nexus. It also explains the global governance theoretical framework and the European Union's role as an actor of global governance in the international migration discussions.

Afterwards, considering a firm background on the role of migration and its related issues in Turkey and the EU membership negotiations is necessary for a further analysis of its existing dynamics, the background of the issue is not given in the introduction chapter; instead, it is elaborated in a detailed way in the second chapter. The second chapter is generally of background nature, providing necessary information for a full understanding of the third and fourth chapters. It first gives a short time line of Turkey-EU membership negotiation process and then further elaborates its aspects related with migration. As it is emphasized in above, in this thesis, the main issues of analysis are the irregular migration and asylum, however, a very brief history of regular migration to EU is also added, because of its connection to the EU membership negotiations. The chapter ends with a discussion on how to link between the membership negotiations with the irregular migration and asylum issues.

The chapters of main importance for the research questions that are formulated above are the chapters 3 and 4. In both chapters, the interviews that are made with the officials in various rankings and with the representatives of the

Turkish civil society as well as the international organizations will be integrated to the discussions. As it is mentioned in the methodology chapter above, the identities of the interviewees are kept anonymous considering the sensitivity of the issue. In this framework, chapter 3 analyses the EU-Turkey negotiation process on lifting the geographical limitation from the Geneva Convention of 1951. Chapter 4 concerns the irregular transit migration and the EU-Turkey negotiation process of a readmission agreement. Unlike the 1990s, in the contemporary EU-Turkey negotiations, lifting the geographical limitation is not debated in a very high tone. As it will be seen in the discussion in the third and fourth chapters, the readmission, and the irregular migration prevail in the migration-related negotiations over the issue of asylum. Furthermore, the right for seeking asylum and the protection of asylum seekers are increasingly integrated to the discussions over readmission. With this reasoning, in this thesis, it is thought it would be more appropriate to have a discussion of the asylum issue and the negotiations over lifting the geographical limitation before going through to the readmission chapter. Thus, an analysis of the negotiation process on lifting the geographical limitation from the Geneva Convention of 1951 is made in the third chapter. The first section of this chapter is promising to provide a good framework for the asylum legislation, policies and practices of Turkey. In the second and third sections of the third chapter, a discussion over the clash between the human rights concerns of the various international organizations and non-governmental organizations and the security concerns of the Turkish state officials will be made, by benefiting from the semi-structured interviews that are made with various authorities and from various written materials. As it was the case in the second chapter, third chapter too will end by analyzing the effect of the geographical limitation on EU-Turkish membership negotiations.

The fourth chapter is the second analytical chapter where the main themes are elaborated and analyzed. In the first section of this chapter, a brief introduction of the practice of readmission and the EU readmission agreements is given and then in the second section, Turkey's standing against the irregular migration, its laws, policies and practices, and the transit country phenomenon are further elaborated. After a brief analysis of Turkey's existing readmission protocols with Greece and Syria in the third section, in the fourth section, the negotiation process of a readmission agreement between Turkey and the EU is analyzed in a global governance framework. In this section, particular emphasis is put on the bargaining materials that are on the table; Turkey's membership prospect, and EU's visa facilitations offer. Moreover, when the considerations of the international organizations and the civil society over a readmission agreement is analyzed, it is seen that, the main emphasis is on the right for asylum and whether this right will be protected in the framework of a readmission agreement. Thus, this chapter further elaborates the asylum issue, and the standing of the global governance actors for the protection of the asylum seekers. This chapter too will end by analyzing the effect of the negotiation process of a readmission agreement and the transit country phenomenon, on EU-Turkish membership negotiations.

The conclusion chapter is written accordingly with the theoretical framework that is adopted. First of all, in an actor-based, global governance perspective, the thesis will be concluded with an emphasis on the role, involvement and the satisfaction rate of the global governance actors. Then, as a response to the normative power that the EU has, and justified with being a liberal-democratic supra-national entity respectful to the human rights, an analysis will be made on whether the European migratory regime proposes a more liberal one, framed around the human

rights concerns, as presented in the European identity building process, or a more securitized one from the case of Turkey. Secondly, the ongoing two questions of the migration policy negotiations with the EU; (a) the burden sharing versus burden shifting, (b)what are the reservation and aspiration prices of the parties, will be attempted to be answered. And finally, there will be an evaluation of the thesis and the possible areas for the further research will be presented.

1.4 Theoretical and Analytical Framework

To frame EU asylum and migration policy under a theoretical framework; at first sight it can be said that, it is shaped around both realism and liberalism and despite of their conflicting nature, embracing components from both. While the emphasis on the internal security of the Union, which refers to the tightening up of the external borders and a "fight" against the irregular migration, is framed around realism; the human-rights aspect of the issue and the Union's normative image on the issues such as the freedom of movement and refugee protection is framed around liberalism. To be more precise; while the EU-level policy making on asylum and immigration in the framework of the Amsterdam Treaty is promising to include liberal elements within the Union's policy-making in these fields, especially when the enlargement or the neighbourhood policies of the Union is considered, it is inevitable to see a security dominated realist agenda, leaving the liberal values such as freedom of movement or refugee protection aside (Lavenex, 2001a: 25). Taking these discussions as a starting point, this section of the study will deliberate around the liberal and realist frameworks to provide an understanding of the global governance theory and the economy, security and human rights aspects of the European asylum and irregular migration policies.

1.4.1 Theory of Global Governance and Migration in the European Union

Global governance has become one of the indispensible parts of the liberal international relations theory, as a very frequently used concept in the social sciences since the end of the Cold War. As it is presented by Moravcsik, the central feature of the liberal international relations theory is that the "societal ideas, interests and institutions influence state behaviour by shaping state preferences, that is, the fundamental social purpose underlying the strategic calculations of governments" (Moravcsik, 1997: 513). The global governance theory is tightly affiliated with the liberal international relations theory, though by undermining the state's role to be equivalent of the other actors of global governance in some specific cases. This study adopts the classical definition of the global governance as the political interaction and participation of transnational actors, such as states, international organizations and non-governmental organizations, with an aim to solve international or interregional problems in the lack of a unique power enforcer (Koser, 2010: 301). In the context of globalization, and as a response to the increasing interdependence between the actors, this term of global governance is used with an aim to interpret the newly emerging decentralized and informal forms of governance in a time when the state centred governments were declining.

Interestingly, despite of being one of the most globalized issues on the international agenda, there is a lack of a binding global governance mechanism to govern international migration. The need for such mechanism is becoming more apparent as even the strongest states can no longer effectively control or manage international migration with their traditional national migration policies. Moreover, the human rights dimension of the international migration also necessitates the issue to be governed in a global governance framework. Although there are international

regulations under the mandate of the United Nations for the management of the refugee movements, migrant smuggling and human trafficking, there aren't any international regulations to govern regular or irregular international migration (Koser, 2010: 301-302).

At this stage, the European Union, and its Justice and Home Affairs dimension, emerges as a unique phenomenon, introducing the primary supranational regulations for the governance of regular and irregular migration. The ability of the EU to get involved in the governance of an area like international migration which the states have maintained their sovereignty for a long time is rooted in the European Union's affect in the contemporary international order as an increasingly influential actor in the global governance. This influence is mainly a result of the Union's long-term achievements as both a successful model of regional cooperation and as a unique formation both resulting from its internal dynamics and from the external variables. Considering the former, the EU managed to retain its weight by embracing the national diversities and integrating them at the European regional level, in the framework of multilateral governance. For the latter, the EU gains its external influence from being an international reference, or an "ideal type" in the economic, social and political spheres, beginning with a strong emphasis to democratization. Especially in the post-cold war system, the EU is increasingly perceived as the leading actor of the newly emerging multilateral order and a reference point for the contemporary political entities. Its contribution as a powerful supra-national democracy is diffused to many areas of global governance (Telo, 2009: 2-26).

Conversely with all criticisms on "fortress Europe" that the European Union has faced resulting from its increasing protectionism and securitization of some areas

including migration, the EU has strengthened its influence in the global governance by mainly underpinning many global arrangements and regional groupings. Although most of them are still on the economic grounds, the EU increasingly plays a leading role for communicating in the international arena on issues concerning the justice and home affairs, including international migration. Moreover, both as a supra-national entity, with a normative power of being consisted of the democratic states of Europe that support transparency, the EU also fills the vacancy for an influential global actor, that is active in the soft politics while powerful states, such as the United States, China and Russia, are reluctant to do so and international organizations, such as United Nations, are inevitably bound by their agendas.

The EU supports the international organizations in a broad scope that; it is in cooperation and coordination with almost all of them. It accepts the authority of them in conflict management in many grounds, especially concerning the economic conflicts; it supports the decision making powers of IMF and WTO to a large extent. Considering the extreme cases, the Union is even bound for political confrontation and would abide by the chapter VII of the UN Charter as a whole entity. Moreover, the European Union also benefits from some other pan-European organizations, such as the Council of Europe and the OSCE, to strengthen the Union in various structural matters. As a unique supra-national actor, the EU supports the binding role of the global institutions in the international system and as a result, it favours a better dialogue with the international organizations and the international civil society (Telo, 2009).

As stressed above, the EU is a law-abiding actor of the global governance, very actively participating in the global institutions to a certain level. It needs to be

stressed that this "*certain level*" covers mainly the economic aspects of the Union, many areas of the soft politics such as its development policy or the environmental policy and increasingly international migration (Telo, 2009: 35). Especially after the Lisbon Treaty which brought in a single legal personality to the Union, in these areas, the Union became one of the most credible actors of the multilateral arena as being a multilateral regime itself (Dony, 2009: 133). However, the European Union still faces integration problems in the securitized areas of the hard politics and is bound by the decisions of its strongest member states. In this level of integration, when it is ambiguous to decide whether the Union behaves as a supra-national organization or behaves on behalf of its strongest member, it fails to act consistently as a legitimate actor of multilateral governance, in the areas above the "*certain level.*"

Nonetheless, to emerge as a regional or a global leader, the European Union embraced the identity of a strong regional actor in the multilateral and multilevel global governance. Rather than a concept of power based on coercion, the EU has aimed to gain its power from its institutionalized networks for cooperation in the framework of the global governance. In this context, resulting from its nature, the EU's Area of Freedom, Security and Justice becomes especially relevant when it became evident that the EU would fail to build this area in the lack of cooperation with third countries and other networks of cooperation. In this area, the issues at stake are mainly in a cross-border nature, such as the irregular migration, terrorism and organized crime. In this framework, the EU's approach to migration is shaped accordingly, where the Union with its 'global approach to migration' aimed to link migration and development and implement with the cooperation of third actors,

though this approach is hindered by the securitization trend (De Bruycker and Weyembergh, 2009: 201).

As far as Turkey is concerned, mostly resulting from the lack of trust towards the international community, Turkish officials, especially the ones in the military and bureaucracy, for long hesitated to cooperate with the international organizations and civil society, in the framework of global governance. However, this tendency began to change especially after Turkey has established closer ties with the EU, when contacts took place in official level, between civil society counterparts and within the international organizations (Kirişci, 2007). Although Turkey was a party to the United Nations High Commissioner for Refugees (UNHCR), the organization began its activities efficiently and began to actively cooperate with the Turkish officials only after Turkey's membership a prospect to the Union has begun. Also, Turkey became a party to the International Organization for Migration (IOM) in 2004 and actively cooperating with the organization considering the related issue areas.

1.4.2 Three Main Frameworks for Migration and Asylum: Economy, Security and Human Rights

As it is also stated above, the policies that are managing international migration flows are shaped around both liberalism and realism, despite of their conflicting nature, embracing components from both. It is apparent that the international migration policies of the EU are shaped by the economy, in the framework of economic liberalism, as well as the politics, in the framework of realism. Moreover, although its policy implications are less visible, the normative objective of the overall international migration system of the union is shaped around a liberal-human rights perspective.

The policies of economic liberalism have dominated the European Union policy making on international migration especially during the Cold War, beginning in the 1960s. During the Cold War, in the Western Europe, policies on the *freedom of movement* were shaped around a liberal ideology, conversely with the Communist Bloc, where mobility was strictly controlled. Migration was mostly approached with economic concerns, even as a phenomenon parallel to international trade regime. As it is the case with Turkey, various bilateral agreements were signed for "guest worker" programs to enhance economic growth (Rudolph, 2003:607). This framework has dominated the European states' migration policies, especially of Germany and France, in the post-Second World War years. Labour migration is seen as a prescription for economic difficulties faced after the war. During this period, the immigrants were mostly men, coming as the 'guest workers' perceived as temporary labourers, and they were mostly invisible in the society living in the suburbs. However, mostly after the immigrants are unified with their families, they began to live in diverse places and demanded social opportunities which increased societal concerns about the immigrants, though not necessarily security-related ones. Although a considerable scholarly literature argue that immigration began to be a security concern in the EU level at this time, when the immigrants grew high in numbers and became visible in the society with their families, this is a kind of social securitization and it is not comparable to the state perception against the immigrants in the post 9/11 period, that is shaped around hard security concerns.

Despite of this increasing trend of securitization, still many economists predict that, the relaxation of the restrictions to the immigration of workers would bring considerable economic gains. For instance, for a 3% increase in the number of the immigrant workers in developed countries; they predict around 150 billion

dollars of global gains (Schneider, 2005:12). Moreover, as the population of the EU is showing a downward trend, expected to continue for the coming decades, the economic migration is also seen as a cure to the expected labour shortage in certain sectors (Icduygu, 2007b:142-143; Rudolph, 2003:603-604). More precisely, a United Nations report, published in March 2000, suggests that migration would be an important factor to solve the problems occurred as a result of the demographic aging in Europe (UN Secretariat, 2000). Though the European Commission agreed that blocking the immigration as a whole is not an accurate policy to face this reality and promotes a "well-managed" labour migration to the Union, in policy and practice, they have maintained their standing against migration, in a securitized framework (Bendel, 2007:45). This is most visibly seen in the Tampere program where the restrictive approach against migration is also adopted for the economic migrants and no chapter is devoted to the economic migration at all (Schneider, 2005: 29).

Conversely with the economic liberalism, where states' and individuals' economic needs and expectations are the determinants of international migration, the realist analysis suggests that the states' political interests, including its security, are the determinants of international migration policies (DeLaet, 2000: 6). Especially in the post 9/11 period, with the domination of the international security agenda against the civilian agendas increasingly in Europe after the Madrid (11 March 2004) and London (7 July 2005) bombings and the 2005 riots in France, that are associated with the immigrants, immigration, has changed characteristic from being a civilian management issue, to become a politicized hard security concern as terrorism and severe acts of violence (Kirişci, 2007:1; Rudolph, 2003:603). Unfortunately, in such securitized environment, the European states could not be succeeded to separate the asylum, as a civilian humanitarian issue, from the irregular migration as a whole.

Mostly as a result of the hardening of the policies against migration and asylum in some major member countries, such as Germany, France, Britain and Spain, for facing the domestic voters' pressure, these issues have begun to be seen from a security perspective, rather than a humanitarian one in the European level too (Buonfino, 2004:24; Diez and Squire, 2008:577; Kirişci, 2003:79). Moreover, this securitization of civilian agendas dramatically decreased the states' commitment to and collaboration with the international community and increased their focus to the territorial dimension of their being.

The European Union policies concerning migration are shaped accordingly. The Union failed to respond this new security agenda with its old civilian way of responding to the global events with the actors of the global governance and it began to behave more like a protectionist state rather than an actor of the global governance. Immigration, which was previously a component of societal integration policies of the Union, became a part of security agenda and the Union began to pursue a preventive policy rather than an integrative one. The EU asylum law has also faced the challenge of finding a balance between abiding to the international refugee law and international human rights law and implementing a restrictive policy towards the foreigners, resulting from the anti-immigration attitudes of the securitized post 9/11 world (Gondek, 2005:188). As it is the case in a realist framework, it became hard to distinguish between irregular immigrants, asylum seekers and refugees in the EU policy-making and all are framed under the border protection, with an increasing emphasis to the sovereignty. Moreover, again under the realist framework, the EU applied some strategies to "prevent the abuse of the asylum institution" including a very restrictive interpretation of the refugee status, visa restrictions, carrier sanctions and the denial of application to the people from the

safe third countries[3] or who have transited trough a *safe third country* (Neumayer, 2005:48; Rudolph, 2003:614). The policy of signing readmission agreements with the transit countries shaped in accordance to this policy, in a realist framework, to be able to return[4] the irregular immigrants, who may also be refugees, to these *safe third countries*. The non-refoulement principle could be harshly violated with a chain of readmission to the "safe countries" (Vachudova, 2000). Moreover, the "asylum-sharing" phenomenon under the Dublin II regulation and certain elements of the Eurodac system to prevent asylum seekers make applications in more than one member state; have furthered the criticisms about the human rights violations in EU asylum system (Gondek, 2005:190-209).

As seen above, within these entire economization and securitization framework, actually the major framework the migration and especially asylum should have been assessed, the liberal- human rights framework that the Western Europe has been representing itself pertaining since the end of the Second World War, were undermined. The restrictive European asylum regime, denying asylum to many people with security concerns, controversial "safe-third country" phenomenon and the applicability of the readmission agreements to the asylum seekers are all involve some elements against the international human rights norms.

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[3] For more information about the safe third country rule see: Kjaerum, 2002: 518.
[4] In the framework of this study, the "return" is defined as the process of going back to one's country of origin, transit or another third country by voluntary means or by enforcement (Coleman, 2009:9).

Table 1: Three Main Frameworks of Immigration and their Policy Implications in the Western Europe

	Realist - Securitized Framework	Liberal - Economic Framework	Liberal - Human Rights Framework
Dominant Era	- Post 9/11 period	- During the Cold War	- Normative Objective of the EU
Policy Implications	- Policies of externalization - To attribute a buffer state role to the neighbours - restrictive interpretation of the refugee status, visa restrictions, "safe third country" readmission agreements, "asylum-sharing"	- Various bilateral agreements for "guest worker" programs - "Freedom of movement" as a distinctive feature of the Western European Democracies from the Communist Eastern Europe.	- Policies of Prevention - Seeking for a solution in the countries of origin - Began to be undermined in the post 9/11 period
Public and Political Support	- Managed to gain public and political support as a result of the public appeal of the securitization trend.	- Managed to gain political support for economic benefits	- As the outcomes are usually long- term, these policies failed to gain public and political support

Although a balance between these two extremes, liberal and realist frameworks would be the most desirable way in liberal democracies; the EU has failed to maintain this balance in the policy making for migration and asylum (Lavenex, 2001a: 26). Although the policy objectives of the EU, shaped around the Union's normative liberal dimension, are comprehensive of the both, in practice, these objectives cannot be met and the power dimension governs the policy making (Sterkx, 2008:135). Mainly, two types of policies have dominated the migration management approaches of the EU, first reflecting the practices and the second, the normative objectives. Firstly, in a realist and securitized framework, after the introduction of the Schengen area, the EU has introduced some tools to *externalize* the migration control to the third countries, mostly to the neighbouring sending and transit countries. The main motive behind this *externalization* strategy was to cooperate with the sending and the transit countries for steaming up the border controls, combating irregular migration, smuggling and trafficking (Boswell, 2003:622). The policies of *externalization* are especially presented in the accession processes of the candidate states, such as Turkey, as membership conditionality. While incorporating the Schengen Acquis into their national legislation, these countries adopt stricter border, migration and asylum policies (Grabbe, 2000). Apart from the deployment of traditional tools of migration management to the third countries, the *externalization* policies also included some instruments for making the return of asylum seekers and irregular migrants to the sending or transit countries possible. The readmission agreements and the safe third country rule have also appeared as tools of these *externalization* policies, designed to attribute a "buffer state" role to the neighbouring countries (Collinson, 1996:83). Unfortunately, these externalization policies managed to gain public support as a result of the popular

appeal of the *securitization* framework; and the perception of migration as a security trend related to organized crime and terrorism and prevailed in the European democracies (Buonfino, 2004:31).

The *second* approach can be named as *preventive,* as it is shaped around the elimination of factors in the countries of origin that cause the immigration and aims to address the root causes of migration and asylum movements. The policy proposals of this approach are twofold. *Firstly,* shaped by a more humanitarian and developmental perspective, it offers to improve living conditions in the countries of origin, by using the aid policies such as development assistance, trade and foreign direct investment. *Secondly,* it proposes the 'reception in the region' idea, supporting the refugee protection in the countries of region or origin, so, preventing their passage to Europe (Bendel, 2007:43). Since the 1990s, many policies, which are shaped by this approach, are developed, and mainly related to the conflict prevention and post-conflict reconstruction, to avoid the refugee flows (Boswell, 2003:625). Although supported by many experts, officials, international and non-governmental organizations around a liberal human rights perspective and promoted by the EU Commission, as the outcomes of these *preventive* policies are long-term, they could not gain the support of national governments, who are the most powerful stakeholders, with political concerns and could not evolve into actual policies. This failure in implementation of the normatively strong policies, as it is in the *preventive* ones, leads to the questioning of the European commitment to disseminate its own normative values concerning migration to the neighbouring countries or only supporting their application to its own citizens and applying a *securitized* framework to its external environment (Sterkx, 2008:135).

If the negotiation on these issues with Turkey is examined; it is not very hard to see that the pattern of *externalization* dominates the relations. The EU persists on strengthening of the country's human rights record concerning asylum and socio-economical rights of the asylum seekers, even further lifting of the geographical limitation. Although EU's intention on such persistence is questionable and debated comprehensively in many grounds, such attitude is shaped around a liberal, human-rights centred framework. However, at the same time; the EU-Turkey negotiation process for a readmission agreement presents many realist elements, putting the main emphasis on the border protection, reducing the differences between illegal immigrants and asylum seekers and transferring the responsibility to the neighbouring countries in an *externalization* framework.

1.4.3 Negotiating with the European Union: An Asymmetrical Relationship

Mostly recognized as being the product of a successful negotiation process itself (Cede, 2005:1), the European Union has become a unique supra-national entity, altering the classical Westphalian negotiation framework, where sovereign actors negotiating in a voluntary basis, and replacing it by a type of negotiation where a substantial part of sovereignty is transferred to the EU institutions and its multiple actors. The characteristics of the EU negotiation processes are often perceived as being positioned between the national and international negotiation, where there are less assured outcomes than the former and more than the latter. The characteristic that draws the EU negotiation processes with third countries closer to the national ones, rather than accepting them as mere international negotiations, is mainly existence of the European Commission and Parliament with their centralized position. But also, it must be accepted that the EU is still very far away from the

coherence in a national negotiation process (Meerts, 2005:218). Moreover, national negotiation processes within the Union, in the framework of the intergovernmental conference, are still the reminders of the intergovernmental characteristic of the Union (Beach, 2005:71). In addition to this, the impact of the intervening variables is increasing in parallel with the complexity, multilateralism and the institutionalization of the international negotiations (Beach, 2005:91).

In this context, although as a *sui generis* supranational organization EU presents many unique characteristics concerning negotiation; it shares a very important conclusion that the overall international negotiation literature reaches: the processes matter. Moreover, the processes gain further emphasis and complexity in the case of EU, where the negotiations lasts longer, even longer in non-crises environments such as migration, in a continuous way, and the involving actors are not only states but they are nation-states, official entities of the EU and many unofficial non-state entities such as the private sector enterprises, non-profit representative organizations and lobbies (Elgström, 2005; Meerts and Cede, 2005). Additionally, this complexity of actors alters the EU negotiations depending on the issue area, and its priority in the domestic and the international context (Reiter, 2005:149-151).

There are *two* main steps for reaching an outcome of in international negotiations that the EU is a party of. *Firstly*, within the European Union, there has to be an agreement among the member states on the issue of concern and on the EU's negotiation mandate. And only *then after*, the EU can reach an agreement with its international partners. As a result of the long negotiation process and the diversity of actors, the negotiations within the European Union usually have the tendency to end

in the framework of the "conservative bias," only fulfilling the "lowest common denominator" of the states' interests. Especially in the areas where unanimity voting is used, there is a very high possibility that the EU will adopt the preferences of its most conservative member (Elgström and Strömvik, 2005:119). This tendency is very visible in the negotiation process of the European immigration and asylum policies where the agreed standards concerning the issue are in a minimum level and the end result have been the acceptance of the policies which the member state with the most restrictive policy was willing to accept.

Actually, if the refugee and immigrant rights discussed within a human rights perspective, it can be argued that individual nation-state standards were much higher than the ones within the EU framework (Gondek, 2005:197). Mainly resulting from the complexity of the internal dynamics of the Union which create problems of synchronization and coordination; as an international negotiator too, the EU is assumed to be a slow and difficult one, where the negotiators tend to be inflexible and uncompromising, even foot-dragging in many occasions. Considering the Union's institutional structure concerning the international negotiations, at first sight, it can be assumed that the complexity of the institutions and the lack of a clear leadership cripples the Union's international negotiation capacity and efficiency. Although a clear, established leadership of the Commission does exist in the areas where EU has an exclusive competence, like the trade related issues, the areas where both the member states and the Commission exert authority, the situation gets complex (Elgström and Strömvik, 2005:117-120).

The nation-state negotiations with the European Union usually show an asymmetrical characteristic where the states are involved in with an interest, or to be

more precise a demand, for a kind of relation, such as membership, association or a trade agreement. It is expected from such a power asymmetry to result in a stronger party to put pressure to the weaker one, aiming to get concessions (Elgström and Strömvik, 2005:121).

As explained under previous section, as a regional entity promoting peace, democracy and stability in the region, the European Union expands its sphere of influence mainly by using the enlargement conditionality for the countries with membership prospect, neighbourhood policy with its neighbours and association agreements and partnerships with the others as policy tools. Until now, with the tool of accession conditionality, the EU has managed to considerably contribute to the policy areas such as democratic consolidation, respect for human rights and minority protection in the Eastern Europe (Lavenex, 2008:938; Schimmelfenning, 2008:918). However, considering the limits of the EU's enlargement capacity as a regional entity, the Union introduces many other tools of negotiation with the third countries, but it is clearly evident that with the loss of prospect of membership the efficiency of the EU policies decreases significantly as it will be clearly seen in the case of Turkey.

More recently, a *third* step is added to this negotiation framework especially after the Maastricht Treaty has entered into force in 1993 and the Community has deepened further, the domestic politics of the member states began to be a significant variable in the EU negotiation processes and the public opinion is joined as a strong actor to this complex negotiation table (Ulgen, 2006:8). Although the effect of the domestic factors to the international affairs, and vice versa is a deliberatively analyzed fact in international relations (Putnam, 1988:434), the EU-level policy

making has escaped public interest until the issues beyond the economic sphere become supranational. Still, various detailed issues in the EU policy making escapes the public observation, however, the more perspicuous issues like the enlargement gains very much public attention. Especially in 2004 and 2007 enlargements, it was apparent that the EU member countries have acted with less flexibility, due to public pressure. Moreover, considering that in some member states, such as France, a national plebiscite is a constitutional requirement for deciding upon the member states' standing against the enlargement, unlike the other actors of global governance, the public opinion holds the power to decide upon enlargement. In the case of Turkey this issue becomes much more prevalent as a Muslim majority country; the increasing xenophobia against the Muslims in the European Union member states endangers its membership prospect (Ulgen, 2006:9).

CHAPTER II: TURKEY AND THE EUROPEAN UNION –

MIGRATION AND MEMBERSHIP: AN OVERVIEW

2.1 European Union, Turkey and Membership Negotiations: 1959-2011

The EU-Turkey membership negotiation process has a substantially long history, beginning in July 1959, when Turkey made its first membership application to the European Economic Community (EEC). Following this application, the parties have signed an Association Agreement (the Ankara Agreement) in September 1963, which entered into force in December 1964. Ankara Agreement and its Additional Protocol of November 1970 have established a road map for Turkey's accession, and they are still important documents, constituting the legal basis of the association among parties and frequently referred in the contemporary negotiations.

After a period of democratic instabilities and military influence in politics, in 1987, Turkey has applied for full membership and the country's eligibility for membership was approved by the Commission, though, it was not assessed due to the internal deepening efforts of the Union. Although not assessed, this official application has substantially increased the EU's interest on the issues related with Turkey. This interest was not limited to the economic sphere; conversely, the social and political subjects on Turkey's agenda, including international migration, began to attract EU's attention. However, this official application cannot be perceived as the sole reason that mounted the international migration to be a major topic in the negotiations among parties in the 1990s. Starting with the 1990s, the main events that

led the issues specifically related to immigration to become more prominent in the membership negotiations between Turkey and the European Union can be elaborated under three headings. *First of all,* at the time when Turkey's inclusion to the European system became an issue, the primary concern was the possible mass emigration of Turkish citizens and the integration of the already existing Turkish immigrants in the Western Europe. Turkish immigrants who have migrated to the Western Europe in 1960s and 70s, under the *guest worker* programs as temporary workers, did not return after their work contracts have ended, chose to permanently stay and unified with their families. With the addition of second and third generation of immigrants and with the increasing refugee movements from Turkey, their population has reached to almost 2.5 million by the end of the 1990s. Their case will not be detailed further, considering it is beyond the aim and scope of this study; however they are worth mentioning, as the problems related to their integration and, in the case of membership, a possible future mass movement from Turkey, form the basis of some major issues in the negotiations.

Secondly, with the end of the Cold War in 1991 and as a result of the increasing instabilities in the Middle East such as the Gulf War, Turkey has increasingly become a country of asylum, immigration and transit. Turkey is an important destination or a stopping point in the majority of the cases, for the asylum-seekers who mainly come from the country's periphery surrounded with political irregularities, problems and turmoil. A great majority of these asylum-seekers are from Iran and Iraq and, Turkey can only be a temporary stopping point for nearly all of the asylum applicants to the country resulting from the geographical limitation clause, Turkey maintains on the UN Geneva Convention of 1951. As a more recent

phenomenon, Turkey is increasingly becoming a transit country[5] for irregular immigrants on their route to Europe. The transit irregular migrants, who are usually from the countries in Asia and the Middle East such as Afghanistan, Iraq and Iran, can be characterized as irregular migrants who have the intention to use Turkey as transit country to reach their destination in the continental Europe. Resulting from the increasing international attention that is directed to the events on its periphery, Turkey's policies on migration management and asylum began to appear as significant subjects in the country's relations with the European Union. Especially, the geographical limitation that Turkey is applying to the non-European asylum seekers which is denying the refugee status[6] to the asylum seekers from the countries outside of Europe and the country's inability to stop transit flows through its territory, are prevailed as the major issues of concern. While the former also contained human rights concerns, both issues are also seen as factors that are increasing the Europe's migration burden.

Finally, the issues related to immigration became supra-nationalized and began to be a responsibility of the European Union Commission only after the Amsterdam Treaty has entered into force in May 1999, which brought the migration management and border control under the "first" or the "Community" pillar of the EU setup (Kirişci, 2007:8; Sterkx, 2008:118). This development was followed by the Helsinki Summit, held on 10-11 December 1999, when Turkey was recognized as a

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[5] A transit country is defined as a country that is used by a passage by the migrants, who come in with the intention of going to another third country and the migrants who come to a country with the intention of going to another third country are named as the transit migrants.

[6] In the 1994 Regulation, "refugee" is defined by Turkish law as "an alien who as a result of events occurring in Europe and owing to well-founded fear of persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it".

candidate country. These two events opened a new phase in the membership negotiations in general and in the topics related to the international migration in specific (Kirişci, 2007:1; Ulgen, 2006:6).

Turkey's candidacy took place in an environment when the EU was deepening to become a more supra-national entity, not just in the economic sphere but also in justice and home affairs. In the beginning of the 1990s, after the Maastricht Treaty of 1991 entered into force in 1993, justice and home affairs constituted the *third pillar*[7] of the EU setup. Although the *third pillar* was essentially intergovernmental, the introduction of many immigration related issues to the supra-national level was a very significant development (Kirişci, 2008a: 3). As it is also noted in the introduction chapter, following the Maastricht Treaty, the 1997 Amsterdam treaty that entered into force in May 1999 brought the issues concerning migration and border control under the *first pillar* or the *community pillar* and they began to be governed by the Commission in a supranational manner (Sterkx, 2008:118). Even after then, the states mostly continued to implement their unilateral immigration regimes against the non-European countries, although some supranational legislation existed. However, especially after the increasing xenophobia against the immigrants after the (11 March 2004) and London (7 July 2005) bombings and the 2005 riots in France, and the thought of immigration is becoming a security concern, led the EU member countries to seek for a more

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[7] On November 1993, with the Treaty of Maastricht, the EU's legal structure was established to be constituted of three main pillars. Accordingly with this structure, while first pillar included the most supra-nationally governed issue areas, such as economic, social and environmental policies, the second included lesser supra-nationality with the Common Foreign and Security Policy and the third pillar was mostly intergovernmental and covered the Justice and Home Affairs. This structure was abandoned on 1 December 2009 with the Treaty of Lisbon which consolidated the EU's legal personality.

supranational regulation on migration and borders, namely for a common asylum and migration policy (Icduygu, 2010; Kirişci, 2007).

Although Turkish migration management policies were an issue on the table since the beginning of the relations with the European Union; both the country's candidate status and the EU's new supra-national policy-making power have changed the character of the EU's standing in the negotiations, from being advisory, to setting the membership conditionality. As stated above, the geographical limitation clause that Turkey is maintaining on the UN Geneva Convention of 1951 has been an issue of concern since the beginning of the 1990s. After Turkey has gained a candidate status, this issue has become more seriously undertaken and found a place in most of the negotiations related to international migration in humanitarian grounds. However, before the EU has gained competence to supra-nationally act in the migration-related issues in the framework of the Amsterdam Treaty in 1999, the Union has lacked any instruments to hold the other party responsible for the transit migrants who are the nationals of a third party. As a novel development that occurred after the Amsterdam Treaty, to deal with the transit migration phenomenon, the Commission had gained competence to negotiate readmission[8] agreements, which target the expulsion of irregular migrants in an orderly manner by setting the rules and regulations for readmission between the contracting parties (Coleman, 2009:1). Unsurprisingly, as a transit country, Turkey has become one of the major countries in which negotiating a readmission agreement has become not just a priority but also conditionality for the country's membership to the European Union.

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[8] Readmission is defined by Coleman as following: "Act by a state accepting the re-entry of an individual (own nationals, third country nationals or stateless persons) who has been found illegally entering to, being present in or residing in another state" (Coleman, 2009:9)

With this background, the EU-Turkish accession negotiations started in October 2005, under 35 chapters, six years after the country is declared as a candidate country in 1999, with the Helsinki European Council decision. The issues of migration and asylum are introduced to be negotiated in the twenty-fourth chapter, under the justice, freedom and security (previously "justice and home affairs") heading, together with the policy implications of Schengen visa regime. Unsurprisingly, negotiations in this chapter majorly reflect the Union's security concerns, mostly considering Turkey being a transit country of immigration from many unstable parts of the world including the Middle East and put pressure on Turkey for policy transformation that is not threatening to the Union's stability and security. The EU-Turkey membership negotiation process has a substantially long history, beginning in July 1959, when Turkey made its first membership application to the European Economic Community (EEC). Following this application, the parties have signed an Association Agreement (the Ankara Agreement) in September 1963, which entered into force in December 1964. Ankara Agreement and its Additional Protocol of November 1970 has established a road map for Turkey's accession, and they are is still important documents, constituting the legal basis of the association among parties and frequently referred in the contemporary negotiations. Although the two phenomenon are not directly related, the history of mass movements of immigration from Turkey to the Europe has begun during the same period, after Turkey has signed a bilateral worker migration agreement with Western Germany in 1961. Although this initial flow was followed by other forms of large scale flows, such as the family reunification, the issues related to immigration did not become a considerable element of the negotiations until the 1990s, when both the EU has

deepened and become a supra-national organization and the scale of immigration has became disruptive.

As this brief introduction to the negotiation process among the parties also reflect, although Turkey is a major actor in the European international migration system both as a country of emigration and as a country of immigration and transit, when the official talks of the parties are examined, it is seen that, its role as a country of immigration and transit is much more prominent in this process. The country, in the framework of its pre-accession requirements and the membership conditionality, is working to reform its institutional, administrative and legislative capacities regarding asylum and migration, following the guidelines of the EU Accession Partnership document of 2000 (Ulgen, 2006:6). However, the uncertainty over the prospect of membership and the Turkish officials' inherent fear of becoming a "buffer-zone" to the EU's "unwanted" have discouraging effects to this reform process.

2.2 Turkey, Europe and International Migration: 1961-2011

In the related literature, international migration patterns of Turkey are examined under two categories as *regular* (documented) and *irregular* (undocumented) migration. In addition to these migration flows, the movements of the *asylum seekers* are also important components of the Turkish migration system. However, there are various publications that use a two-fold categorization, *regular* and *irregular* migrants, dealing with the asylum movements under the latter. This categorization is particularly accurate in the case of Turkey where the categories of asylum seekers and the irregular migrants overlap significantly. This overlap is *firstly* due to the

sameness of the countries of origin for both categories, Iran and Iraq. An *secondly*, both movements of the asylum seekers and irregular migrants occur as a result of the illegal border crossings and the rejected asylum seekers who do not go back to their countries of origin are defined as irregular migrants (Icduygu, 2005:7). Deriving from this interconnectedness and accepting the many intersections among these phenomenon; this thesis also will use a two-fold categorization as; *regular migration* and *irregular migration* and discuss the *asylum movements*, under the second category. I believe such categorization will add explanatory value to the study, and think that many intersections among the irregular migrants and the asylum seekers necessitate such choice. Sticking into this categorization, this section is devoted to explain these flows and their historical development with a scholarly review.

2.2.1 Regular Migration Patterns: Turkey as a Country of Emigration and Immigration

Despite of being perceived as a country of emigration for long, resulting from its reputation based on the labour migration agreements with the Western European countries in the 1960s; since the establishment of the republic in 1923, Turkey is actually both a country of emigration and immigration, being the ground for many international migration and asylum flows (Icduygu 2003; Icduygu, 2006; Icduygu, 2008).

Since its establishment, the Turkish Republic has been aspirant to welcome immigrants from the Muslim ethnic groups from its neighbouring countries. Especially in the initial period of the republic, the state has officially institutionalized the emigration of the non-Muslims out of the country, and the immigration of the Turkish descendant Muslim people into Turkey. In accordance with the *Settlement*

Law of 1934 which specifically limited immigration and asylum to the people of "Turkish descent or culture", in particular, people from the ethnic groups that are considered as being close to the Turkish ethnicity are accepted to the country (Kirişci, 2007:17).

These initial flows are followed by large scale emigration flows from the country, which have begun after the bilateral Turkish-West German agreement, which is signed in October 31st, 1961 and provided permission for Turkish workers to be employed with temporary work contracts Other large scale flows, especially the ones in the framework of "family reunification" followed this initial flow, and Turkish workers and their families continued to migrate to the Western Europe (Icduygu, 2010:3-4)[9]. In 1974, the Western European countries stopped accepting labour migration however, most of the temporary workers that are expected to return after their work contracts end, chose to stay permanently and family reunification followed their permanent settlement in the 1970s. Also, emigration to Europe continued in different forms such as refugee movements and clandestine labour migration in 1980s and 1990s. Although there was a large number of return migrations to Turkey especially after the oil crisis on 1974, currently, the number of Turkish emigrants living in Europe is still considerably high and still growing due to three main reasons. *First of all,* the temporariness of the "guest worker" phenomenon was not applicable in the Turkish case, where workers stayed much longer than planned, permanently settled in most of the cases and unified with their families (Rudolph, 2003:611). *Secondly*, as noted above, there were large asylum flows to

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[9] In the framework of the bilateral labour emigration agreements, between 1961 and 1974, a total of 800,000 Turkish workers went to Western Europe in which 649,000 to Germany, 56,000 to France, 37,000 to Austria and 25,000 to the Netherlands.

Europe from Turkey. And *finally*, there occurred a second, and third, generation in Europe by Europe born children of the Turkish workers (Icduygu, 2010: 7)[10].

After a period, shaped by massive emigration flows; especially in the last 20 years, the extensive immigration flows towards Turkey, is transforming it to a "country of immigration" (Icduygu, 2003; Icduygu, 2006:13; Kirişci, 2008b:4). There is a significant increase in the regular immigration flows to Turkey, consisting of the businessmen, professionals and students,[11] as well as the European retirees who are settling in the Aegean and Mediterranean coasts of Turkey (Icduygu, 2007a; Unutulmaz, 2007). Moreover, the number of naturalization cases to the Turkish citizenship and the variety of nationalities that are held by the people who get into the naturalization process[12] is also numerically significant. The new phenomenon in these recent naturalizations is the increase in the number of people who do not have any Turkish or Muslim backgrounds which indicates a paradigm shift from the immigration flows in first years of the republic that are dealt with in the framework of the *Settlement Law*.

2.2.2 The Transit Country Phenomenon and Irregular Migration in Turkey

As it is seen in the official documents and also noted by the various scholars studying on the issue, the irregular migration can be discussed under three categories: (a) *circular or shuttle migration* or *irregular labour migration*, consisting of people who come to Turkey for seeking employment or residence, however, without having the

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[10] By the end of the 2000s, while Turkey's own population was around 70,000,000, there were around 2,500,000 Turkish citizens in various countries of Europe, mostly in Germany (Icduygu, 2010:3).

[11] According to the figures obtained from the Directorate of General Security, currently, there are around 170,000-180,000 foreigners inhabit in the country with their residence permits. While 12 per cent of these people hold a work permit and 14 per cent are students, the remaining 74 per cent are mostly the dependants of these people or the foreigner dependants of Turkish citizens.

[12] The figures provided by the Ministry of Interior shows that, in the period between 1997 and 2009, there were 355,865 people who have been naturalized to Turkish citizenship while 82,881 of these were parent-based naturalizations, remaining 272,984 came to Turkey with various types of migration.

valid documents to do so; (b) *transit migration,* consisting of immigrants who aim to use Turkey as a transit country on their way to the destination country; (c) the *asylum-seeker* and *refugee* movements (Icduygu, 2008:2; Icduygu, 2005:8).

Historically, irregular migration flows to Turkey began in the late 1970s, with the *first* category, the shuttle, or circular, migration. This kind of migration, which refers to the mobility of these migrants by making multiple trips to the country for economic reasons, has increased even more until the 1990s, with the collapse of communism, and with the increasing flexibility in travelling to Turkey[13] (Icduygu, 2005:7; Yükseker, 2007:61). Though the intensity of the shuttle trading is considerable decreased during the 1990s, it is seen that the nationals of the above stated countries began to work in informal sectors under unregistered employment[14]. Although their entrance is typically legal, they usually become irregular as a result of overstaying their visas, or contributing to the workforce without work permits. They are mostly consisted of nationals from Turkey's neighbouring countries, which Turkey executes a quite free visa regime[15] (Kirişci, 2003). The irregular immigrants from this category do not raise a high concern for the European Union arising from the fact that, a very few of them attempt transit to Europe via Turkey, most of them aim to stay and illegally work within Turkey (Kirişci, 2007:23). As a result, their situation does not constitute an agenda in the migration-related negotiations between Turkey and Europe and beyond the scope of this study.

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[13] In the years between 1995 and 2009, the migrants that participate in the unregistered work force are consisted of the nationals from Moldavia, Ukraine, Russia, Georgia, Armenia and Romania.

[14] According to the data, provided by the Bureau for Foreigners, Borders, and Asylum at the Directorate of General Security of the Ministry of Interior, between these years, 55,000 Moldovan, 25,000 Georgian, 24,000 Romanian, 20,000 Ukrainian, and 20,000 Russian immigrants were caught for residing or working in the Turkey, without the proper documentation, or overstaying their visa.

[15] The nationals of Armenia, Azerbaijan, Belarus, Georgia, Moldavia, Russia, Tajikistan, Turkmenistan and Ukraine can enter the country with a sticker type visa, which is easily obtained in the airport and the nationals of Iran, Kazakhstan and Kyrgyzstan can enter the country visa-free.

As a more recent phenomenon; significantly starting in the beginning of the 1990s, Turkey has increasingly become a transit country for irregular immigrants on their route to Europe. These transit immigrants are mostly the nationals of the countries in Asia and the Middle East including Afghanistan, Iraq, Iran and Syria and Pakistan. Also a considerable number of transit migrants come from the countries such as Bangladesh, Ghana, Nigeria, Algeria, Sri Lanka, India, Palestine and Azerbaijan. These immigrants show direct opposite characteristics with the labour or circular migrants. They usually enter, and leave, Turkey irregularly from its sea or land borders, mostly consisted of a mountainous terrain, with the help of human smugglers or traffickers. Especially, the Eastern borders with Iraq, Iran and Syria are particularly prone to the irregular border crossings resulting from their geographical features and political instabilities in the area. Unlike the immigrants from the Eastern Europe and former Soviet Union countries, they usually intend to transit trough Turkey, to reach the European Union.

While Turkey's eastern land border is prone irregular immigration, the long Aegean Sea border also has difficult geographical characteristics to control resulting from the various islands that dot the sea. However, Turkey's Aegean and Mediterranean Sea borders are rarely chosen as paths for irregular immigrants to enter Turkey. On the other hand, the irregular immigrants usually prefer these sea routes on their journey to the European Union countries, especially to Greece. The land borders in the eastern parts of Turkey are usually protected by the Turkish land forces, with the exception of some small areas protected by the gendarmerie forces and Turkish sea coasts are patrolled by the coastal guards. Though these entities detain the irregular immigrants, the law enforcement authority over the irregular immigrants is given to the Turkish police.

Table 2: Irregular Migration in Turkey Apprehended Cases, Top 15, 2000-2010

Country of Origin	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	Total
Iraq	17280	18846	20926	3757	6393	3591	6412	9384	4818	1128	1327	93862
Pakistan	5027	4829	4813	6258	9396	11001	3508	6970	9186	2774	1842	65604
Afghanistan	8746	9701	4246	2178	3442	2363	3665	6614	10839	3917	2725	58436
Moldova	8312	11454	9611	7728	5728	3462	1575	1095	600	318	405	50288
Palestine		13	934	648	264	1295	1525	8313	6941	5393	3055	28381
Georgia	3300	2693	3115	1826	2294	2348	1989	2439	2702	1769	835	25310
Somalia	58	136	591	1806	2756	3118	3468	3921	3348	2284	1120	22606
Iran	6825	3514	2508	1620	1265	1141	972	1107	1288	817	1075	22132
Romania	4500	4883	2674	2785	1785	1274	1013	803	495	338	264	20814
Russian Federation	4554	3893	2139	2130	1266	1152	730	817	1232	799	1231	19943
Ukraine	4527	3451	2874	1947	1341	1335	1004	798	737	803	670	19487
Azerbaijan	2262	2426	2349	1608	1591	1410	937	1227	1681	1234	987	17712
Bangladesh	3228	1497	1810	1722	3271	1524	2313	981	802	108	153	17409
Mauritania	6	11	27	277	1462	4805	3984	3830	1169	109	16	15696
Burma (Myanmar)				73	37	33	5	1502	4831	4087	2228	12796
Total (Top 15)	68625	67347	58617	36363	42291	39852	33100	49801	50669	25878	17933	490476
Others	25889	25018	24208	19856	18937	17576	18883	14489	15068	8467	4738	193129
Total	94514	92365	82825	56219	61228	57428	51983	64290	65737	34345	22671	683605

Source: Data is obtained from the Bureau of Foreigners, Borders, and Asylum at the Directorate of General Security of the Ministry of Interior.

A review of the scholarly literature on the irregular migration shows that it is very difficult to give an estimation of the number of irregular migrants in Turkey. Deriving from the very nature of the irregular and "undocumented" migration, there are only some indicative estimates available. For instance, an indicative estimation can be made by an evaluation of the figures of apprehended irregular migrants by the Turkish security authorities.[16] Obviously, these figures are just *indicative* of the exact *realized* figures, but they are helpful to draw a picture concerning the extent of the irregular flows to Turkey. These apprehension figures indicate a significant increase in the number of irregular immigrants in Turkey between mid-1990s to the early 2000s. According to these figures, while there were around 11,000 apprehended irregular migrants in 1995, in 1996, this number rose to 19,000 and 47,000 in 1999. Peaking to over 94,000 in the year 2000; this figure began to decline in 2001, and in 2005, it was dropped below 50,000, but rose again to 66,000 in 2008 (Icduygu, 2008:3). These figures indicate an average annual number of 55,000 apprehensions of irregular migrants for the period of 1995-2009, while the total number of apprehensions is around 797,000. While there is a large variety in the nationalities of irregular migrants, the top five countries of origin are Iraq, Pakistan, Afghanistan, Moldova and Palestine (See Table 2).
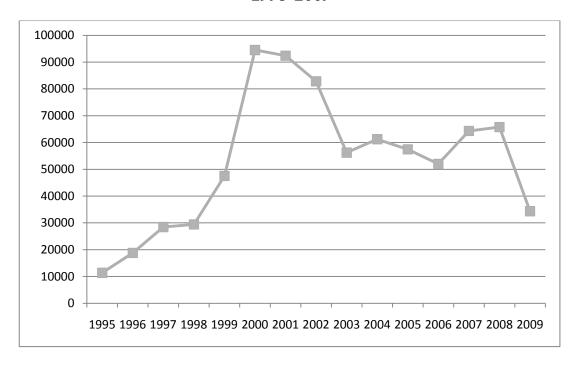
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[16] Since the mid 1990s, this data is compiled by the Bureau for Foreigners, Borders, and Asylum at the Directorate of General Security of the Ministry of Interior.

Figure 1: Irregular Migration in Turkey Apprehended Cases, 1995-2009

Although a combination of these numbers with the anecdotal evidence indicates a declining trend of irregular migration (See Figure 1), it is difficult to distinguish whether the a policy change in Turkey concerning the issue made a deterrent effect and the numbers are really declining or the immigrants are better prepared and do not get caught, to explain this downward trend (Icduygu, 2005:6).

Unfortunately, the available data on apprehension statistics that are presented above do not allow us to make a clear numerical distinction among the three irregular migrant categories (transit migrants, shuttle or circular migrants and rejected asylum seekers) that are explained under this section. However; as it is argued by various state officials and scholars it can be assumed that, unlike the irregular migrants from the Post-communist countries who come for economic reasons, the irregular migrants who come from the Eastern and Southern neighbours of Turkey are more likely to use Turkey as a transit country in their way to their destination countries in the Western Europe. Moreover, this claim is also supported by a data source, complied

by the General Command of Gendarmerie and the Coast Guard Command under the Turkish General Staff on irregular border crossings.[17] According to this data, among the 125,000 irregular migrants apprehended during the irregular border crossings in the period between September 2006 and August 2010, more than 20 per cent were Palestinians, 15 per cent were Afghanis, 12 per cent were Pakistanis, another 12 percent were Iraqis, 11 percent were from Myanmar, and an 8 percent were from Somalia. Again, according to this data, around 35% of these people were caught near in the land or sea borders with Greece, while they were leaving Turkey for Greece. These percentages refer to a four year figure of around 41,000 irregular transit migrants, and around 10,250 transit migrants annually.

Supported by this data, it would not be wrong to assume that, the irregular migrants who come from the countries that are in the East and South of Turkey, are more likely to be defined as *potential transit migrants* than the irregular migrants from other countries (See Table 3). Among the top ten source countries in which the irregular migrants are originated from (Iraq, Pakistan, Afghanistan, Moldavia, Iran, Palestine, Georgia, Romania, Bangladesh and Somalia), seven of them (Iraq, Pakistan, Afghanistan, Iran, Palestine, Bangladesh and Somalia) can be considered among the countries of origin of the irregular transit migrants (Icduygu, 2008:3). The data provided by the Bureau for Foreigners, Borders, and Asylum at the Directorate of General Security of the Ministry of Interior, shows that, between 1995 and 2009, from these top ten source countries 796,494 irregular migrants were detained. Among these detained irregular migrants, 129,454 were from Iraq, 69,660 were from Pakistan, 59,281 were from Afghanistan, 55,022 were from Moldavia and 28,432 were from Iran (See Table 3).

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[17] See the webpage of Turkish General Staff, *www.tsk.tr.*

Table 3: Potential Transit* Irregular Migrants, Top Ten, 2000-2010

Country of Origin	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	Total
Iraq	17280	18846	20926	3757	6393	3591	6412	9384	4818	1128	1327	93862
Pakistan	5027	4829	4813	6258	9396	11001	3508	6970	9186	2774	1842	65604
Afghanistan	8746	9701	4246	2178	3442	2363	3665	6614	10839	3917	2725	58436
Palestine		13	934	648	264	1295	1525	8313	6941	5393	3055	28381
Somali	58	136	591	1806	2756	3118	3468	3921	3348	2284	1120	22606
Iran	6825	3514	2508	1620	1265	1141	972	1107	1288	817	1075	22132
Bangladesh	3228	1497	1810	1722	3271	1524	2313	981	802	108	153	17409
Mauritania	6	11	27	277	1462	4805	3984	3830	1169	109	16	15696
Burma (Myanmar)				73	37	33	5	1502	4831	4087	2228	12796
Syria	1399	782	462	623	1097	983	1238	1383	907	713	912	10499
Total (Ten)	42569	39329	36317	18962	29383	29854	27090	44005	44129	21330	14453	347421
Others	10270	8126	6991	5774	5462	6732	10274	4700	4653	1506	794	65282
Total	52839	47455	43308	24736	34845	36586	37364	48705	48782	22836	15247	412703

*The potential transit irregular migrants come from the following countries: Afghanistan, Algeria, Angola, Bahrain, Bangladesh, Belize, Bengali, Benin, Bhutan, Biafra, United Arabian Emirates, Bissau Gina, Burma (Myanmar), Burkina Faso, Botswana, Burundi, Cape Verde, Cambodia, Cameron, Central African Republic, Chad, China, Djibouti, Eritrea, Ethiopia, Gambia, Ghana, Gina, Hong-Kong, Iraq, Iran, Indonesia, Ivory Coast, India, Morocco, Palestine, South Africa, Qatar, Jordan, Kenya, Kashmir, Kuwait, Laos, Lesotho, Liberia, Libya, Lebanon, Madagascar, Malawi, Maldives, Malaysia, Mali, Mauritius, Egypt, Mauritania, Mozambique, Nepal, Niger, Nigeria, Oman, Pakistan, Papua New Guinea, Republic of Congo, Rwanda, Senegal, Seychelles Islands, Sierra Leone, Somalia, Sri Lanka, Sudan, Suriname, Syria, Saudi Arabia, Swaziland, Tanzania, Thailand, Togo, Tunisia, Uganda, Vietnam, West Sahara, Yemen, Zaire, Zambia, Zimbabwe.

Source: Data is obtained from the Bureau of Foreigners, Borders, and Asylum at the Directorate of General Security of the Ministry of Interior.

As noted above, as the irregular migrants who come from the Eastern and Southern neighbours of Turkey are more likely to use Turkey as a transit country in their way to their destination countries in the Western Europe, this data also supports the EU's claims on the gravity of transit irregular migration trough Turkey and shows the importance of cooperation in the issue.

As stressed in various documents, including the Accession Partnerships of 2001 and 2003 and in the EU Progress reports, the European Union demands a more enhanced border management from Turkey for the full implementation of the Schengen Convention (Tokuzlu, 2007:2). On this account, the EU also demands from Turkey to change its present border control system and transfer the border control authority to a civilian unit (Kirişci, 2007:20). Turkey gave a green light for such demand in its 2003 NPAA, agreeing to fulfil necessary legislative, administrative and structural needs for establishing such civilian-professional authority though in the following Action Plans, for instance in the 2006 Action Plan, the country frequently represented its concerns on how a civilian institution would manage to protect Turkey's eastern borders getting further difficult with the terrorist activities and the political instabilities in the region.

2.2.3 The Treatment of Asylum Seekers in Turkey and the Implementation of the Geographical Limitation

Although the management of the transit migration is an important item in the negotiations with the European Union, the conditions of the *third* category of irregular immigrants, the asylum seekers, get almost as much attention, resulting from the humanitarian outcomes of the issue. After the end of the Second World War, Turkey, as one of the original signatories of the 1951 Geneva Convention

Relating to the Status of Refugees, became a country of asylum though, in the 1967 Protocol of the Convention, the country chose to maintain the geographical limitation of the 1951 Convention, which limits refugee status only to the asylum seekers from Europe. By doing this, Turkey has formalized that it wouldn't grant a refugee status to the non-European asylum seekers and the country embraced a *two-tiered* asylum policy, first covering the asylum seekers from the European countries and the second is dealing with the people outside Europe (Kirişci, 2003:83; Kirişci, 2007:11).

In the framework of the *first tier* of its asylum policy, during the Cold War, Turkey has received a considerable number of asylum seekers from the Communist Bloc countries in Europe, and granted them an official refugee status. These refugees are welcomed very favourably by Turkey in consistence with the country's stance during the Cold War and as an anti-communist policy. Moreover, their numbers were considerably small and the Western European countries were very willing to accept them for resettlement. As a result, they did not constitute any socio-economic or political problems and resettled easily by some international organizations, such as the UNHCR (Kirişci, 1996:296). With the end of the Cold War, there have been small numbers of asylum applications by the nationals of the Republics of the Former Soviet Union. Although these countries, such as Azerbaijan and Uzbekistan, were considered as European in the framework of the 1951 Geneva Convention and Turkey was responsible to grant them refugee protection in such framework, the country has abstained to do so, because of the various political reasons[18]. However, they were allowed to benefit from the privileges that were provided for the people of Turkish descent in the framework of the *Settlement Law* of 1934 and eventually granted citizenship (Kirişci, 1996: 296).

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[18] For instance Russia was frequently accusing Turkey for sheltering Chechen rebels and there have been various conflicts with Uzbekistan, as the opposition leaders sought refuge in Turkey.

During the Yugoslav Wars, between 1992 and 1995, Turkey has granted asylum to a number around 20,000 Bosnians. Although they were too, eligible for gaining a refugee status in Turkey, in the framework of 1951 Geneva Convention, they were only granted temporary protection. After 1995, major number of these Bosnians, returned home by voluntary repatriation plan of the UNHCR. Also around 17,000 Albanians from Kosovo, who sought asylum in Turkey between 1998 and 1999, have returned home after the end of the conflict. As seen from these cases, the issue of asylum during the Cold War and afterwards during the Yugoslav Wars did not create a big socio-economic burden to Turkey. Most of them have returned home, even before gaining a refugee status, residing in the country under the temporary asylum category. After the end of the Yugoslav Wars, except from a small number of around 300 Chechen refugees from Russia, the number of asylum seekers to be regulated under the first tier, has been negligible. Though the data before the 1970 is unavailable, it is estimated that between 1970 to 1996, around 13,500 asylum seekers came to Turkey and in close cooperation with the UNHCR and a major number of these refugees are resettled out of the country (Kirişci, 2007:11; Kirişci,2008:8).

The need for a *second tier* in the Turkish asylum policy, which covers the "non-Convention refugees", has mainly emerged as a result of the increase in the asylum seekers from the Middle Eastern countries. Especially after the Iranian Revolution of 1979, and with the increasing instability, political irregularities and turmoil in the region during the 1980s Turkey has become the major destination for the asylum seekers from the Middle East (Kirişci, 2003:85; Biehl, 2008:3). Following events such as the Iran-Iraq War, Iraqi occupation of Kuwait, Gulf War and overall politics of the Saddam regime increased the asylum pressure on Turkey and recent instabilities in Iraq resulting from the 2nd Gulf War made the situation

even harder. And currently, although Iran and Iraq are still the primary source countries for asylum, there is an increasing trend in number of African and Asian asylum-seekers, who are also framed around this *second tier*.

This de facto situation is incompatible with the geographical limitation clause that Turkey maintains on UN Convention; considering almost all of the asylum seekers in Turkey are non-European persons, in which a large number is from Iran and Iraq. Turkey provides these non-European asylum seekers, a kind of temporary protection during their applications are processed and if they are granted a refugee status, they are resettled in a third country, however, this geographical limitation complicates the condition of these non-European asylum seekers and causes reaction against Turkey from the international community.

According to the figures compiled by the UNHCR Ankara Office, in the period between 1995 and 2009, there have been around 72,000 asylum applications to Turkey in which the greatest number of applications were made by the citizens of Iran and Iraq.[19] In this period, the top countries, in which the largest number of asylum applications were made, were Iran with almost 34,000 applications (around 47 per cent of the total number), Iraq, with more than 28,000 applications (around 39 per cent of the total number), Afghanistan with almost 5,000 applications (around 7 per cent of the total number), Sudan and Uzbekistan with a number around 340 applications and Palestine with around 250 applications (See Table 4).

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[19] See the UNHCR Ankara Office webpage: http://www.unhcr.org.tr.

Table 4: Asylum Applications in Turkey, Top 10 Nationalities, 2000-2010

Nationalities	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010 (Until July 6th, 2010)	Total
Iran	3576	4271	2489	2258	1881	1605	2234	1734	2028	1787	1036	**24899**
Iraq	1246	976	892	181	1041	769	554	2349	7470	2827	925	**19230**
Afghanistan	116	365	25	17	14	150	172	510	1599	1392	414	**4774**
Somalia	9	10	4	2	25	187	366	904	396	288	191	**2382**
Sudan	2	2	1	9	10	19	19	77	100	72	20	**331**
Uzbekistan	5	24	33	24	20	31	19	44	36	38	25	**299**
Palestine		2	7	1	4	16	35	22	68	47	35	**237**
Eritrea	1	2		7	8	14	7	31	42	32	16	**160**
Syria	1	3	6	3	4	15	17	11	22	40	10	**132**
China		5	12	8	5	44	12	10	11	12		**119**
Total (Top 10)	4956	5660	3469	2510	3012	2850	3435	5692	11772	6535	2672	52563
Others	29	36	53	57	34	76	106	165	141	200	133	1030
Total	**4985**	**5696**	**3522**	**2567**	**3046**	**2926**	**3541**	**5857**	**11913**	**6735**	**2805**	**53593**

From these 72,000 applications, around 36,500 were granted refugee status and resettled in other countries, which refers to an acceptance rate of almost 51 per cent. The data that is made available by the UNHCR on the acceptance rates of the non-European asylum seekers also show that, between 1997 and 2007 there is an average of 60% acceptance for the non-European asylum seekers (See Table 5). It is seen that, since the 1997, the acceptance figures show an increasing trend, reaching 85% in 2007, while the number of persons applying for asylum have also reached its highest point in 2007 (See Table 5).

Table 5: Acceptance Rates of the Non-European Asylum Seekers, 1997-2007

Year	Iranians	Iraqis	Others	General Acceptance Rate	Total Accepted	
					Cases	Persons
1997	52%	25%	24%	35%	578	-
1998	56%	30%	30%	40%	891	2230
1999	59%	18%	31%	43%	841	1903
2000	57%	27%	28%	49%	1186	2726
2001	70%	34%	56%	61%	1287	2867
2002	72%	38%	35%	63%	1344	2885
2003	79%	N/A	45%	76%	1600	3300
2004	75%	N/A	31%	69%	934	1748
2005	67%	N/A	36%	59%	736	1368
2006	90%	N/A	39%	79%	1051	1878
2007	88%	100%	72%	85%	3588	7121

Source: Data is obtained from the UNHCR Turkey website: http://www.unhcr.org.tr/?page=12

These numbers support the claim that, this de facto situation is indeed incompatible with the geographical limitation clause that Turkey maintains on 1951 UN Convention relating to the Status of Refugees and its 1967 Protocol. It is seen that, the period between 1995 and 2009, only 214 asylum seekers from a European country have applied for a refugee status in Turkey, which refers to 0.3 per cent of

the total number of asylum seekers in the country.[20] As the figures indicate, almost all of the asylum seekers in Turkey are non-European persons, in which a large number is from Iran and Iraq.

Table 6: The Number of Refugees Resettled out of Turkey by the UNHCR – The Countries of Resettlement, 2000 - 2007

	2000	2001	2002	2003	2004	2005	2006	2007
Australia	318	154	297	339	313	131	101	145
Austria	1			4				
Belgium				6		3		
Canada	666	636	679	556	453	189	459	364
Denmark	5	25	267	3	5		1	
Finland	162	97	266	71	143	148	119	92
France		4	2					
Germany	19	38	75	78	28		4	1
Ireland				2				1
Italy		3						
Israel								1
Netherlands	10	3	11	5	3		14	4
Norway	62	608	315	263	48	1		1
New Zealand	4	5	12	1	7			
Poland						1		
Sweden	122	200	302	109	252	7	2	18
Switzerland	7	1		1	3			
United Kingdom	6	14	30	9	1	20	2	
USA	952	959	662	1488	1036	762	907	2,040
Total	**2334**	**2747**	**2918**	**2935**	**2292**	**1262**	**1609**	**2667**

Source: Data is obtained from the UNHCR Turkey website: http://www.unhcr.org.tr/?page=12

Nonetheless, in practice Turkey only implements this limitation partially and provides these non-European asylum seekers, a kind of temporary protection during their applications are processed. They are granted the rights arising from the Geneva Convention to the asylum seekers and benefit from the non refoulement principle

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[20] According to the data that is compiled by the author from the Bureau of Foreigners, Borders, and Asylum at the Directorate of General Security of the Ministry of Interior and the UNHCR Ankara Office.

(Kaya, 2008:4; Icduygu, 2005:8; Tokuzlu, 2007:15). However; if they are granted a refugee status, they are resettled in a third country, such as the United States, Canada and Australia (See Table 6).

2.3 How to Link Membership with Irregular Migration and Asylum

As explained in the previous sections, the cooperation of Turkey appears to be integral to the EU's intentions to establish a common immigration policy and implement it successfully, mainly resulting from the country's geographical location, in a transit area from the countries of immigration of the Middle East to the EU. Combined with the fact that Turkey has very long border line with a very difficult terrain to establish control, this geographical location becomes even more suitable to constitute a transit country for the irregular migrants on their way to reach the EU (Icduygu, 2005:6). Moreover, the country's eastern parts are also unstable regions where many terrorist organizations are based, which even further the security based European reservations concerning the transit migration from Turkey. As a result, the issue of irregular migration has been a remarkable issue of concern in the membership negotiations as well as many official documents in the membership process. For instance, *Communication from the Commission to the Council and the European Parliament, Recommendation of the European Commission on Turkey's progress towards accession* document (dated October 6, 2004) explicitly stresses that there would be closer cooperation among parties both before and after accession, concerning the management of migration, asylum and the trafficking of human beings[21].

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[21] See the official document: *ec.europa.eu/enlargement/.../turkey/key_documents_en.htm (viewed on January 9, 2011).*

The prevalence of the membership prospect for an improvement or a reform in the Turkish migration and asylum policies parallel to EU's demands is also apparent in the scholarly literature concerning the issue. There is a significant slowdown in the negotiation process, especially for Turkey to lift the geographical limitation from the 1951 Geneva Convention and its signing a readmission agreement with the EU, resulting from the Turkey's uncertainty over its EU membership and growing mistrust against the Union both in the public opinion and by the Turkish officials (Kirişci, 2007:16).

When the recent slowdown of the reform process and the rapid reformation in the Turkish legislation in the 1990s to meet the Copenhagen political criteria are compared, it is seen how the EU's loss of credibility affects the negotiations. Both public and state officials' trust in EU about the conditionality of the Copenhagen criteria for starting the accession negotiations and the EU's efficient sanctions and rewards put pressure on the government for accelerating the reform process to the negotiations. However, the current situation is completely different. Although Justice and Development Party (Adalet ve Kalkınma Partisi – AKP) government officials frequently state their commitment to the EU membership and the reforms it anticipates, both public opinion and state officials grew very sceptical of Turkish membership to the EU (Kirişci, 2007:6).

As a claim supported by a majority in the civil society, a considerable portion of the state officials and the academia, in the cases of signing the readmission agreement and lifting the geographical limitation, the uncertainties in the EU-Turkey membership negotiations lead Turkey to face a major dilemma. On the one hand, they cannot be certain whether there will be any progress in the EU membership

process if Turkey chooses to cooperate with the EU in these issues. Considering the controversial nature of the Turkish membership, as explained in the previous sections, a situation where cooperation in these issues is not accompanied by membership would leave Turkey by itself to face all the problems occurred as a result of this cooperation and would dramatically undermine the country's security (Kirişci, 2003:81; USAK, 2010:35). However, on the other hand, they recognize that the cooperation of Turkey in these issues are conditionalities in the EU membership process and without it, the EU membership would be unthinkable. This dilemma occupies the immigration agenda of the Turkish-EU relations.

CHAPTER III: THE NEGOTIATION PROCESS ON LIFTING THE GEOGRAPHICAL LIMITATION

3.1 The Question of Asylum in Turkey and the Pressure for Reform

As it is elaborated in the second chapter of this thesis, mainly resulting from its location in a transit zone between Asia, Europe and Africa; since the 1980s, Turkey has become an important destination, or a stepping stone in most of the cases, for asylum seekers, escaping from the political turmoil in the country's peripheries. The figures provided in the second chapter support the claim that, this de facto situation is incompatible with the geographical limitation clause that Turkey maintains on 1951 UN Convention relating to the Status of Refugees and its 1967 Protocol.

Unsurprisingly, since the beginning of the non-European asylum flows to the country in the late 1970s, Turkey has been facing harsh criticisms from the international organizations, non-governmental organizations and especially from the European Union to reform its asylum system in a human rights perspective, and specifically to lift the geographical limitation from the Geneva Convention. Although the country refused to remove this geographical limitation with the concerns of in lack of such limitation, Turkey would become a "buffer zone" between Europe and the Middle Eastern countries that counter political instabilities, Turkey has responded to these criticisms with various administrative, legislative and institutional reforms to regulate the asylum flows to the country.

3.1.1 Turkey's Asylum Law, Policies and Practices before the 1994 Regulation on Asylum.

Before the introduction of the 1994 Regulation on Asylum, Turkey did not have any legislative provisions for asylum management concerning the non-European Asylum seekers. The existing refugee policy to govern the status of the non-European Asylum seekers was based on some general provisions of various legislations related with immigration[22] and the authority of status determination was transferred to the UNCHR in a large portion. In this period, UNHCR would determine upon the refugee status and would resettle the refugees out of Turkey by the way Turkey would allow these asylum seekers to reside in the country while their applications are evaluated by the UNHCR (Kirişci, 2007:11). Although, this asylum management policy began to be challenged during the 1980s, when the increasing numbers of Iranians, escaping from the revolution began to arrive, Turkish state chose to maintain the system as it is for pure political and pragmatic reasons. With the fear of offending the newly established Iranian government and regime, the Turkish officials firstly discouraged the Iranians from seeking asylum in Turkey and overlooked to their entrance into the country, and transferred the ones who are insisting on asylum, to the UNHCR's authority (Kirişci, 1996:298). In the late 1980s, the UNHCR continued to assess the applications of the Iranians, as well as the various other countries' nationals such as Iraq, Afghanistan, Somalia and many Palestinians.

As it is continuously stressed in the previous discussions, the Turkish state has transferred its authority to the UNHCR with the strict understanding that, if they gain a refugee status, the non-European asylum seekers would be resettled in a third

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[22] These were the provisions of Settlement Law (No. 2510), Citizenship Law (No. 5682), Passport Law (No. 5683) and the Law on Sojourn and Movement of Aliens (No. 5687).

country, if not, they would have to leave Turkey. However, as an expected outcome of a clash between an international organization and a state, Turkish officials began to criticize the UNHCR for implementing the asylum policies in a too liberal manner and accused it for resettling the refugees without declaring their status to the Turkish police. Especially after the 1988 Halabja Poison gas attack, when Kurdish asylum seekers from the Northern Iraq began to seek refuge in Turkey in large numbers and the mass refugee crisis after the Gulf War, this clash between two actors is further intensified. With a perspective focused on country's security, Turkish officials feared of an increase in the activities of Islamic terrorist groups and the activities of PKK with the increasing numbers of Iranians and Iraqis within Turkey. Especially after the establishment of a safe haven in northern Iraq, above the 26th parallel, many Turkish officials were concerned about the PKK activities in the area. As a result, Turkish authorities claimed that area to be free from Iraqi governmental persecution thus stopped accepting asylum seekers from that zone and even deported them (Kirişci, 1996:299). In July 1994, the increasing disagreements among the UNHCR and the Turkish state on status determination led to introduction of new status determination measures, under the authority of the Turkish state. This reclaiming authority on status determination further expanded and formalized with the introduction of the Regulation on Asylum in November 1994 (Kirişci, 2003:86).

3.1.2 The November 1994 Regulation on Asylum in Turkey

In November 1994, Turkish government introduced the country's first legislation on asylum, officially named as *The Regulation on the Procedures and the Principles Related to Mass Influx and the Foreigners Arriving in Turkey either as Individuals or in Groups Wishing to Seek Asylum either from Turkey or Requesting Residence*

Permits with the Intention of Seeking Asylum from a Third Country. This regulation has formalized the practice of giving "temporary asylum" to non-European asylum seekers, and returned the authority for status determination from the UNHCR, back to the Turkish state. Shaped with the Turkish authorities' considerations on the growing instabilities in its neighbouring states and concerns over the country's own security, the Regulation is prepared by the officials from the Ministry of Interior, without any consultation to UNHCR or any other organization related with the issue, to reclaim the authority and control of the asylum management (Kirişci, 1996:301). Although legal details of the Regulation are beyond the scope of this study, the Regulation, as the country's firs asylum legislation is a milestone and it is worth to be further elaborated with its implications on Turkish asylum management system and policies.

To begin with, for status determination, the regulation continued to use the definition of a refugee, as it is stated in the 1951 Geneva Convention, by maintaining the 'events occur in Europe' phrase. On the other hand, the non-European persons who are qualified to be defined as a refugee according to this definition are stated as asylum seekers. According to the regulation, the foreigners who have the intention to apply for an asylum seeker or a refugee status needed to approach to the local authorities and complete their asylum application within *five* days after their entrance to Turkey. Reclaiming its authority from the UNCHR, the Ministry of Interior is charged with the duty of final decision making for status determination.

As it is stated above, although the November 1994 Regulation on Asylum is prepared in a much securitized environment, it also caused various positive developments concerning the good management of the asylum issue. The most

important feature of the regulation was considered as providing legislation for regularizing the status of non-European asylum seekers and guaranteed their *non-refoulement* which was a guarantee lacking in the previous practice. Furthermore, the existence of a set of clearly defined rights and obligations to all parties involved was promising to make the whole asylum system more transparent. Although the international organizations and NGOs were excluded from the preparation phase of the legislation; as the data on asylum applications and status determination has become more disseminated, especially the UNHCR increasingly began to be more involved to the implementation phase of the legislation (Kirişci, 1996:303).

3.1.3 Improvements in Turkey's Asylum Legislation After the 1994 Regulation

The introduction of the November 1994 Regulation on Asylum raised various questions both in the academia and among the policy makers concerning whether the legislation on asylum would lead to further policies on the issue, such as lifting the geographical limitation (Kirişci, 1996:294). However, as it is seen over time, the 1994 regulation was only a legislation, which is introduced to change the previous practice and reclaiming the task of status determination to the Turkish state, and contained various controversial elements. At first glance, the main problem of the legislation is cited as the five day deadline for completing and asylum application with the Turkish authorities. This period is considered to be very short, considering the quality of the assistance provided to the asylum seekers. Furthermore, as a practice containing the danger of violating the non-refoulement principle, the regulation foresees the deportation of the persons whose application for asylum has been rejected or who has exceeded the five day limit to fill an application. Moreover, as a direct outcome of the geographical limitation clause that Turkey maintains on

Geneva Convention of 1951, the Regulation foresees the deportation of asylum seekers, whose cases have been accepted, if they are not resettled within a 'reasonable period of time.' Although UNHCR is responsible for finding a country for resettlement and successively performed this duty in various cases, the increasing protectionist measures that are taken by the countries of resettlement complicated this task and caused some deportation cases that violate the non-refoulement principle. These points verify the claim that; conversely with the expectations of the international arena; this change of practices, supported by the legislation, has been made not to further liberalize the Turkish asylum system, but to enhance the country's security by introducing a considerably less liberal and less "threatening" practice. In the upcoming years, this regulation has been criticized harshly in ways of violating the principle of *non-refoulement*, and denying the basic human rights of the asylum seekers, and revised to a considerable extent.

During the late 1990s, there have been significant improvements in Turkey's asylum legislation, mainly resulting from the cooperation between non-governmental organizations, the UNHCR and the government. In 1999, especially to curtail the criticisms on violating the *non-refoulement* principle and the pressure from the civil society, the Turkish government amended the 1994 Asylum Regulation and increased the five-day limitation for applying for a refugee status to ten days (Kirişci, 2003:87). The beginning of Turkey-EU negotiation process on membership in 1999 Helsinki Summit, further improved this law and in 2006, the day limit for applying on a refugee status has been lifted.

The approach of Turkish authorities on asylum have been further liberalized and gained a human rights perspective after the country became a candidate for EU

membership in the 1999 Helsinki Summit. In the Accession partnership documents of 2001 and 2003, together with some legislative reforms, the EU has clearly indicated that; for adopting a liberal asylum policy based on a human rights perspective, Turkey's lifting the geographical limitation was essential. The country responded to this sound claim positively, though demanded time to complete the necessary legislation and infra-structure. In the 2003 National Program for the Adoption of the Acquis (NPAA), it is emphasized that, the geographical limitation would only be lifted in the Turkey's accession process, when the country would get necessary assistance from the EU. The NPAA clearly stresses upon Turkey's sensitivity on burden sharing with the EU in these issues and it would only remove the limitation if the country gets the adequate assistance (Council of Ministers, 2003).

Most of Turkey's harmonization efforts with the European Union on irregular migration that are elaborated in the previous section are also relatable to the area of asylum. However, specifically concerning the *practices for asylum, including lifting the geographical limitation,* although Turkey has not shown any conclusive sign for lifting the geographical limitation to the 1951 Geneva Convention, the country is experiencing significant developments on transforming its asylum management system. To begin with, although extended to ten days in 1999, the time limitation for applying a refugee status specified in the 1994 Asylum Regulation has recently began to be legally reconsidered by the officials and was not applied in practice. With the *Implementation Directive* dated 22nd June 2006 and introduced by the Ministry of Interior; this time limitation for the application for a refugee status is lifted. Moreover, this directive has established some asylum mechanisms parallel to the EU Acquis, such as the accelerated asylum procedures. In addition to these, in

2005 and 2006, two directives[23]-[24] were introduced to provide some formal and informal educational opportunities for the immigrants or asylum seekers and their children. *Law on the Social Insurance and General Health Insurance* was introduced in May 2006 and enabled the foreigners with a residence permit or recognized asylum seekers to receive health services under the General Health Insurance Body, without any further requirements. Finally, with a new *directive* issued by the Social Assistance and Solidarity Foundation, the vulnerable foreign citizens are granted some other forms of assistance, including food, coal and clothing, in addition to the health insurance.

Also, as an improvement in the asylum legislation; the *Settlement Law* of 1934 was amended in September 2006. The new *Settlement Law* did not represent a very significant change in the state's perception against migration; however, it included separate terms for the refugees, without limiting their status to their ethnic or religious descent, allowing people that are not ethnically close to Turkey, to stay in the country. This led to a more liberal perception against the issue of asylum, introducing a new status determination system for the refugees in Turkey with the cooperation of the UNHCR. Although the asylum regulations of the country still needs improvement, the problems of concerning refoulement and denial of asylum procedures decreased significantly with this regulation (Kirişci, 2007:18).

3.2 Pressure on Human Rights vs. Turkey's Security Concerns

Turkey is party to the many important United Nations and Council of Europe conventions on refugees, including the 1951 UN Convention Relating to the Status of

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[23] Directive on the Instructive and Complementary Classes and Courses to be Opened According to the Primary Education and Education Law, dated 1 December, 2005
[24] Ministry of National Education Informal Education Institutions Directive dated 14 February, 2006

Refugees and its 1967 Additional Protocol, the Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families and the European Social Charter. Moreover, Article 90 of the Turkish Constitution declares that, these international agreements have the legislative power as they are equal to national laws, even prevalent of, if the issue of concern is related to human rights. This implies that these laws are directly effective in the cases of immigrants who would like to apply for international jurisdiction (Kaya, 2008:9). Moreover, Turkish civil society on the issue of asylum is very actively involved in the field and work in collaboration with the various state institutions and international organizations. The non-governmental organizations such as Amnesty International, Association for Solidarity with Asylum-Seekers and Migrants (ASAM, Ankara), Human Rights Foundation of Turkey, Human Rights Association (IHD), Migrant Solidarity Network (Istanbul), The Association of Human Rights and Solidarity for Oppressed People (Mazlum-Der) and Helsinki Citizens' Assembly (HCA) all work for securing humane treatment to the asylum seekers.

Although, as it will be elaborated below, the state and government officials are sceptical about lifting the geographical limitation, all of the civil society and international organizations that are listed above, approach to the issue from a human rights perspective, demanding the lift in such framework. This issue of lifting the geographical limitation is one of the hot topics where the clash between the securitized perspective of the Turkish government and human rights perspective of the international organizations and Turkish civil society is specifically visible.

The Amnesty International Turkey has issued one of the latest declarations concerning the issue[25] stating that Turkey is the only country that is implementing this differentiation among the European and non-European asylum seekers. The report highlights the absurdity of this limitation by stating that, since the country has become a party to the Geneva Convention, Turkey has accepted only 43 asylum seekers as refugees, while the country has evaluated an average of 4600[26] asylum applications every year. In a human rights framework, the organization approaches the issue from a refugee protection perspective, and argues no matter how extensive reforms are made, as long as the geographical limitation is kept, the refugee protection would not meet the international human rights standards. As the main Turkish non-governmental organizations that are actively involved in refugee protection, The Human Rights Association (IHD), The Association of Human Rights and Solidarity for Oppressed People (Mazlum-Der) and Helsinki Citizens Assembly have all published separate and joint declarations on their reservations over the geographical limitation clause, especially on their concerns over the violation of the human rights as a result of the very long asylum procedures and even the violation of the principle of non-refoulement.[27]

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[25] For more information see: http://www.amnesty.org.tr/ai/node/1725.

[26] This annual average number is the average of the number of asylum applications between 1995 and 2009.

[27] For more information see:
http://www.hyd.org.tr/?pid=510&Keyword=1951,
http://www.mazlumder.org/haber_detay.asp?haberID=790,
http://www.mazlumder.org/haber_detay.asp?haberID=5197,
http://www.ihd.org.tr/index.php?option=com_content&view=article&id=245:mtecdramlari-sona-ermel&catid=67:genel-merkez-aciklamalari&Itemid=213.

3.3 An Overlook to the Turkish Policy Makers and Practitioners: Where Do They Stand?

In parallel to the standings of the international organizations and the NGOs, the EU represents the issue of asylum as being both normatively important as an international responsibility and politically important in the framework of burden sharing, and demands lifting the geographical limitation from the 1951 Geneva Convention. Though Turkey fulfils the non-refoulement principle and increasingly grants better life standards to the asylum seekers, as long as this geographical limitation is kept, non-European asylum seekers cannot be legally defined as refugees thus benefit from the internationally accepted refugee rights. Moreover, as one of the representatives of the EU's securitized asylum policies, the *safe third country*[28] rule is still not applicable to Turkey, deriving from the fact that the country still keeps the geographical limitation.

In the Turkish side, although a willingness to lift the geographical limitation is presented in the 2003 National Program for the Adoption of Acquis (NPAA); in the 2008 NPAA an opposite tendency is shown where a harmonization of the Turkish legislation on asylum and immigration with the EU legislation are issued but also it is stressed that, the existing restrictions on the refugee status will be kept (NPAA, 2003:655; NPAA; 2008:259). Nevertheless, military and security circles have always been hesitant about lifting the geographical limitation resulting from the fear of a mass influx from the neighbouring countries (Kirişci, 2003:88). Unlike the diverse standings among the policy makers and the practitioners against the possible readmission agreement, their standings against lifting the geographical limitation

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converge to a large extent. Mainly resulting from the lack of a concrete incentive, as it is the visa facilitations in the case in the possible readmission agreement, both the practitioners and the policy makers are against lifting the geographical limitation, before the country becomes a full member of the Union. Although the asylum trend is declining and the UNHCR and various civil society organizations claim that the number of refugees within the country would not increase as a result of this change, the policy makers and practitioners are very cautious, considering the political climate of the region.

The information that is gained from the interviews with the Foreigners Departments of the Directorate of Security in Edirne, Istanbul, Izmir and Van, and with the Kumkapı Removal Centre in Istanbul indicate a standing against lifting the geographical limitation by the law enforcement forces. As the main practitioners in the field, their standing is the outcome of the difficulties they are expecting to face, due to the increasing number of asylum seekers from the Middle East, in case of lifting the geographical limitation. They stress upon the insufficiency of the existing infrastructure and the personnel, as well as the need for efficient burden sharing mechanisms.

Moreover, unlike the irregular migrants, who are kept in the removal centres and returned to their countries of origin after their procedures are complete; after getting a refugee status, the asylum seekers are expected to integrate within the society and the workforce. Especially the officials who work in the Foreigners Department in Van, which is a city bordering Iran and inhabiting more than 2000 asylum seekers, have stressed upon the socio-economic difficulties related with their

integration and employment, stating that Turkey is not socio-economically ready to accept larger numbers of asylum seekers[29].

Conversely with the their standing for the readmission agreement, the officials of the Foreign Ministry are also against lifting the geographical limitation, supporting the view that asylum pressure would be much more heavier than the readmission. In the interview that is made with the head of the Migration Department in the Foreign Ministry,[30] it has been stated that, Turkey would not lift the geographical limitation unless its systems are ready to accept the burden it will cause. In parallel with the views of the practitioners, he claimed that, such a change will be possible only very near towards the accession of Turkey to the European Union. However, it is specifically stated that, the legislative and practical reforms concerning asylum will continue and a good law on asylum will be established without removing the geographical limitation.

3.4 Geographical Limitation and its Meaning for Membership Negotiations

As it is the case in many policy areas, Turkey's asylum reform too is directly connected with its EU membership process. After Turkey is recognized as a candidate country in Helsinki Summit of 1999, the European Union began to show an increasing interest to the status of asylum seekers and refugees within the country, in the framework of human rights (Kirişci, 2007:7). Since then, Turkey has made various substantial reforms in its asylum legislation and policies, connected with its EU membership process. However, the main issue of concern remains on the table

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[29] The meetings are held in 24.10.2010 with the Foreigners Department in Van, in 25.10.2010 with the Foreigners Department in Istanbul and the Kumkapı Removal Center; and 28.12.2010 with the Foreigners' Department in Edirne.

[30] Interview was held with the Migration Department, Foreign Ministry, in 27th December 2010.

and Turkey still keeps the geographical limitation to 1951 Geneva Convention and its 1967 Protocol. Although in principle, the country agrees that the geographical limitation indeed constitutes a big obstacle in the EU membership negotiations, it still hesitates to lift it, unless it is guaranteed that Turkey's economic, social and cultural conditions would not be harmed.

When the annual progress reports are more elaborately examined, it is seen that, lifting the geographical limitation issue is included all of them, as an issue of utmost significance and as a membership conditionality. In the 1999 progress report, the first one after the country is recognized as a candidate state, lifting the geographical limitation is presented as a necessary item for establishing effective asylum machinery thus introduced as membership conditionality. This pressure is continued until eventually in April 2001, Turkey has confirmed its willingness to lift the geographical limitation; however, the country did not show any significant effort considering the issue. Beginning with 2002, although lifting the geographical limitation was always an important issue on the table, it began to lose its significance as Turkey's efforts on reforming its asylum legislation and administrative capacity are appreciated and the issue of irregular migration began to prevail over the asylum. In 2006 NPAA, Turkish state once more declared its intentions to lift the geographical limitation by 2012, however, its inability to perform any reforms that will eventually lead to lifting, is expressed in the following progress reports.

As it can be derived from the interviews that are elaborated above and the official documents concerning the issue, this evasive and foot dragging attitude of the Turkish officials against removing the geographical limitation, is the outcome of various concerns related with the country's economy, security and the geography that

it is located in. Moreover, Turkish officials make various efforts to establish a connection between lifting the geographical limitation and full membership. As it is affirmed by various officials, Turkey hesitates to lift the limitation in the absence of EU membership. However, considering lifting the limitation is membership conditionality; the EU also stresses that, Turkey's position against the lifting, affects the accession negotiations in a negative way. It appears that Turkey is in a deadlock concerning this issue and damaging its accession negotiations, resulting from the fear of the outcomes of lifting the geographical limitation. To have a further understanding of why Turkey risks to damage its relations with the EU for this issue, it would be appropriate here to discuss the expected outcomes of lifting the geographical limitation from the Geneva Convention of 1951.

First of all, as it is also emphasized by the various officials introduced in the discussion above, the unpreparedness of Turkey's social and cultural conditions are given as justifications for the refusal for lifting. This justification is found absurd by some circles, believing that Middle Eastern refugees, especially the ethnic groups such as the Turkmens and Azeris, are more likely to be integrated in the Turkish way of life, in comparison with the Europeans (Kaya, 2009:15). However; when the magnitude of the expected numbers of the Middle Eastern asylum seekers that are expected to be settled in Turkey after lifting the geographical limitation (see Table 4) and the conditions of the existing asylum seekers are taken into consideration these concerns sound fair. These discussions lead us to *second* reservation of the Turkish officials for lifting the geographical limitation, the security aspect. Although it is true that, during the Gulf War, the safe haven that is established in the Turkish border with Iraq caused some problems related with terror; when the magnitude of the irregular immigrant stock (See Table 2 and Table 4) in the country is evaluated,

making discussions of security over the asylum seekers is not convincing at all. The *final* reservations and the ones that stand out in the discussions over lifting the geographical limitation are the economic ones. Even the expected mass influx of refugees that the officials are uneasy about, does not occur, after they gain a refugee status, the settlement, employment and integration of the existing asylum seekers, is expected to create a great burden for the country. This situation again brings us to the significance of burden sharing. Although there is a high probability for Turkey to lift the geographical limitation before becoming a member of the EU, as membership conditionality, it is certain that, the officials will continue to drag their feet on the issue until the burden sharing mechanisms are complete. Here, what they have in mind is not only the financial burden-sharing, in the form of provision of EU funds for the necessary institutional, administrative and infrastructural reforms, such as the establishment of accommodation centres for refugees and the training of the related personnel, but also in the form of continuing to resettle a number of refugees in Europe, to moderate country's socio-cultural burden as well as the economic one.

CHAPTER IV: IRREGULAR MIGRATION AND READMISSION

4.1 Readmission and Visa Facilitation: EU Readmission Agreements with the Former Candidate and Third Countries

With the Treaty of Amsterdam came into force in May 1, 1999, the EU has accelerated the process for creating a common space on "freedom, security and justice," transferring the policy making authority in visa, asylum, migration and free movement of people from the third pillar to the first, from member countries to the Commission, thus, the European immigration policy was launched (Kirişci, 2003:80). As a result, the EU has gained competence to conclude readmission agreements, which target the expulsion of irregular migrants in an orderly manner by setting the rules and regulations for readmission between the contracting parties (Coleman, 2009:1). Five months later, the significance of readmission agreements as a policy tool for fighting irregular migration is stressed in the Tampere Summit of 15-16 October 1999, mainly under the heading of fair treatment of third country nationals' and the development of a European immigration policy with the cooperation of the countries of origin (Schneider, 2005:7; De Bruycker and Weyembergh, 2010:212). The summit has declared that the Treaty of Amsterdam grants authority to the European Council for signing a supranational agreement on immigration control. Two years later, in the Seville Summit, the issue of readmission was perceived as a consequence of the economic cooperation with third countries (De Bruycker and Weyembergh, 2010:213) and the expansion of EU readmission agreements and their becoming conditionality for membership, is originated around this period, when the Union was increasing its supranational

authority in freedom, security and justice areas. These agreements are presented as tools to curb irregular migration thus they became especially important in the relationships with the immigrant producing and transit countries that have borders with immigrant producing regions.

In the beginning of the 2000s, various EU institutions have continued to produce some policy and implementation documents concerning readmission. Beginning with the Commission's green paper on return policy[31], published in 2002, the EU institutions continued to publish directives to regulate issues related to irregular migration such as the expulsion of third country nationals[32], the transit[33] and the transportation[34] of the irregular migrants who will be removed by air and the standardization of the return[35] procedures. In parallel to these policy papers, The EU has signed readmission agreements with all of the Eastern European Countries, during their membership negotiations. Moreover, in September 2000, the Commission began to negotiate readmission agreements with third countries, primarily with Russia, Pakistan, Sri Lanka and Morocco. In 2002 Laeken Summit, the Union has proposed a certain criteria, to determine the countries to negotiate a readmission agreement. These criteria were mainly based on the countries' migration pressure and its geographical location and accordingly, the decision upon first countries to negotiate a readmission agreement are declared as Algeria, Albania,

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[31] COM (2002) 175 Final. *Green Paper on a Community Return Policy on Illegal Residents*, 10 April 2002.
[32] Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals, OJ L 149, 2.6.2001, 34.
[33] Council Directive 2003/110/EC of 25 November 2003 on assistance in cases of transit for the purposes of removal by air, OJ L 321, 612.2003, p26.
[34] Council Directive 2004/573/EC of 29 April 2004 on the organization of joint flights for removals from the territory of two or more Member States, of third country nationals who are subjects of individual removal orders, OJ L 261, 2.6.2001, 34.
[35] Proposal for a Directive of the European Parliament and of the council on common standards and procedures in Member States for returning illegally staying third-country nationals, COM (2005) 391 final, 1 November 2005.

China and Turkey. Since then, the Union has concluded readmission agreements with many of its Eastern European neighbours as well as migrant producing countries of the Asia including Albania, Bosnia and Herzegovina, Former Yugoslav Republic of Macedonia, Hong Kong, Macao, Moldova, Montenegro, Russia, Serbia, Sri Lanka and Ukraine. The readmission agreements with Algeria, China, Morocco, Pakistan and Turkey are still in the negotiation phase.

In literature, the readmission agreements are perceived as agreements where the parties agree upon readmitting their own nationals as well as the nationals of the third countries who have transited trough their territory; concisely, who are irregular immigrants on the others' territory. Essentially, the need for these agreements occurred for carrying out the removal procedures of the irregular migrants by eliminating the hard formalities and implementing them within a time limit. The EU readmission agreements are also based on these principles. Actually, the readmission agreements would not be any different from the customary international law if they were only including the readmission of the signatories' own nationals. What distinguishes these agreements from the customary international law and overstrain the signatories is that these agreements also propose the readmission of third country nationals who use the signatory as a transit country (Trauner and Kruse, 2008:29). Moreover, the category of people to be readmitted does not only include immigrants who enter an EU country by illegal border crossings, it also covers asylum seekers and displaced persons who are denied the refugee status and the third country nationals who overdue their visas.

The negotiation process and the conclusion of the readmission agreements, as it is the case in various other negotiations, should not be thought as isolated from the

broader international relations framework. Often, these agreements are concluded for a broader international incentive, in the negotiations between the EU and a third country, this incentive is usually the membership prospect or strengthening of diplomatic relations for another strategic cause. In such case, while most of the Central Eastern European Countries that have a concrete incentive, i.e. a real prospect of membership or a Stabilization and Association Agreement, and some Eastern European countries that wish to keep good relations with the Union such as Ukraine and Moldova, have been very collaborative during the readmission negotiations, while, the same cannot be argued for Mediterranean countries that lack such incentives such as Algeria (Cassarino, 2007:181-187).

Essentially, all the readmission agreements that the EU has signed are based on principle of reciprocity. However, the term reciprocity, as it is cited here, is considered as the reciprocity of obligations and it does not certainly mean that both parties would benefit from the agreement equally. It is apparent that in reality, parties are unequal concerning the migration burden they will face resulting from the readmission agreements. The main inequality arises from the fact that while the EU countries are rarely the country of origin or the country of transit for irregular migrants; the parties these agreements are signed with usually are. Moreover, there exists an inequality between the structural institutional and legal capacities of the parties, concerning the readmission of the irregular migrants. These inequalities lead to a substantial inequality of costs to the parties that, while the countries of origin and transit face increased costs, the destination countries decrease theirs and remove the irregular migrants easier.

Obviously, the EU Commission cannot offer membership prospect as a solid incentive for signing readmission agreements like it did in the cases of the Eastern European Countries like Poland. For the countries that are lacking this prospect, it offers various compensative measures to face the costs of the readmission. So far, these compensations most commonly included "special trade concessions, the accession to a regional trading bloc, preferential entry quotas for economic migrants, technical cooperation, increased development aid, and entry visa facilitations" (Cassarino, 2007:183). As they are directly related with immigration and border management, signing the visa facilitation agreements have prevailed as the major incentives and compensations for signing a readmission agreement.

More recently after the 2004 multi-annual programme on strengthening freedom, security, and justice, the Commission is granted the authority by the member states, to present a "package deal" where the costs of the readmission agreements would be compensated with visa facilitations as it has primarily did in the cases of Russia and Ukraine in 2004 (Trauner and Kruse, 2008:7). Followed by these developments, the official permission for launching negotiations by connecting the EC visa facilitation agreements with the readmission agreements was granted to the Commission in 2006. Thus the visa facilitation agreements began to be negotiated either in parallel to the readmission agreements or with the countries that have already signed a readmission agreement; such as Serbia, Montenegro, Macedonia, Albania, Bosnia and Herzegovina, Moldova, Ukraine and Russia (Trauner and Kruse, 2008:17).

The visa facilitation agreements mainly aim to reciprocally facilitate the issuance of short-term visas of ninety days. Also, visa exemptions are included as a

long term objective in these agreements although this objective is more vaguely mentioned in the agreements with Russia and Ukraine, in comparison with the clear statements of a visa-free travel regime that is written in the agreements with Western Balkans. The EC visa facilitation agreements do not cover the overall population of the signatories; rather, they include only some categories of citizens such as the members of official delegations, business people, drivers of international cargo and passenger transportation services, members of train in international trains, journalists, scientists and persons active in cultural and artistic activities, students, participants in international sports events, close relatives visiting their family and the relatives visiting for burial grounds(Trauner and Kruse, 2008:18). While the EC visa facilitation agreements with the Western Balkans are the most comprehensive ones in terms of categories, as it does even include the tourists, the agreement with Russia is the most restrictive one. The agreements are also beneficial for fixing the fee for processing visa applications for all the citizens of the signatories at €35.

As it will be more elaborative discussed in the following section, the EU also offers Turkey visa facilitation for signing the readmission agreement. Although the visa facilitation agreements have been proven to be beneficial in various contexts, this offer raises two main questions. First of all, the Turkish officials who are directly involved in the negotiation process are very uneasy about whether a visa facilitation agreement would compensate the costs related with readmission in a transit country like Turkey, with a heavy migration burden. And secondly, as Turkey is offered a visa facilitation agreement during its accession negotiations were being held, although the negotiation of the readmission agreement is not held in the framework of the accession negotiations, the question that rises become whether Turkey is in the first category where countries like Poland sign a readmission agreement during the membership negotiations with high prospects of membership or is it in the second

category where it would be satisfied with visa facilitations in exchange for signing a readmission agreement.

4.2 How Turkey Deals with Irregular Migration

4.2.1 Transit Country Phenomenon and the Significance of Turkey

As explained in the previous section, the EU readmission agreements cover both the countries' own nationals and nationals of the third countries who have transited trough their territory; concisely, who are irregular immigrants on the others' territory. Although the parties have not signed a readmission agreement yet, in the framework of the customary international law, Turkey shows a good example of cooperation in readmitting its own nationals. The real issue of concern emerges in the cases of the readmission of third country nationals who use Turkey as a transit country (Trauner and Kruse, 2008:29).

In this framework, as it is also noted in the second chapter of this study, the term *transit migration* is used, to describe the phenomenon where immigrants come to a country, not as their final destination, but as a stepping stone on their final destination. The main characteristic of the *transit country* is its temporariness; that the irregular migrants stay in, with the intention of leaving for another country (Icduygu, 2005:1). As argued by Icduygu in diverse articles (Icduygu, 2005; Icduygu, 2000:357), a large portion of contemporary international migration flows directed to Europe, is consisted of *transit immigrants* whose first destination is the countries in the peripheral zones of Europe (Eastern Europe, Western Asia and North Africa), having the intention to use these countries as a stepping stone on their way to Europe. The figures related to the transit migration are provided in a detailed

manner under section 2.2.2 of this study. This transit country phenomenon constitutes the basis of both the European Union's pressures on Turkey for signing a readmission agreement and the reservations of the Turkish officials to do so. Consequently, Turkey's characteristic as a transit country is an important feature to distinguish its case from the former Eastern neighbours, who are now the members of the EU, and the other neighbouring countries to the Union.

4.2.2 Turkey's Legal and Institutional Harmonization Efforts on Irregular Migration Law and Policies

Mainly beginning with the adoption of Accession Partnership for Turkey document, of 8th March 2001[36] and its revision in March 2003,[37] which sets out the objectives for policy-making in many areas including migration and asylum for Turkey's accession, Turkey has accelerated its efforts considerably, to harmonize its legislation with the EU Acquis. According to this document, there are four main areas that Turkey needs to harmonize its legislation and practices with the EU Acquis, in the field of irregular migration: *(a) visa legislation and practices (b) practices on preventing illegal immigration (admission, readmission and expulsion) (c) practices concerning border management (d) practices for asylum including lifting the geographical limitation* (Icduygu, 2007a:210; Tokuzlu, 2007:2).

Following the dissemination of the revised Accession Partnership, Turkey has published its National Programme for the Adoption of the Acquis in 2003, which have provided a road map for reform, on a wide range of policy areas. Following it,

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[36] Council Decision of 8 March 2001 on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with the Republic of Turkey 2001/235/EC, OJ L 85/13 24/03/2001.
[37] Council Decision of 19 May 2003 on the Principles, Priorities, Intermediate Objectives and Conditions in the Accession Partnership with the Republic of Turkey, 2003/398/EC OJ L145 12/06/2003.

on March 2005, the country has adopted an Action Plan for Asylum and Migration, which is a very detailed document, including the medium and long term goals of the country and showing the intentions to prepare new laws on migration and asylum by 2012. So far, despite of many issues of divergence, Turkey holds on to its commitment to the EU, and to its reform agenda as an accession candidate state. The country is continuing to take various steps to converge its immigration and asylum legislation, policies and practices with the EU standards. There are many remarkable examples of this trend, beginning with the adoption of some new laws, however, under this section, only the ones directly related to the topic of irregular migration, will be introduced, to provide a background for the further discussions, the *practices for asylum, including lifting the geographical limitation* was evaluated above, under Chapter II.

On *visa legislation and practices*, to harmonize its legislation and practices with the EU Acquis, Turkey has introduced visa requirements to the nationals of some countries who are subject to visa requirements in the EU or are on the EU negative visa list, including six Gulf countries (Bahrain, Qatar, Kuwait, Oman, Saudi Arabia and United Arab Emirates) and thirteen others (Indonesia, Republic of South Africa, Kenya, Bahamas, Maldives, Barbados, Seychelles, Jamaica, Belize, Fiji, Mauritius, Grenada and Saint Lucia). Despite of the cultural and historical proximity, the country even introduced visa requirements for the citizens of Azerbaijan in November 2003 and it is expected to do so for the citizens of many other countries, including Iran, Bosnia-Herzegovina, Kyrgyzstan, Macedonia, Morocco and Tunisia (Icduygu, 2007a:211).

On *practices on preventing illegal immigration* and *practices concerning border management,* to harmonize its legislation and practices with the EU Acquis, Turkey has introduced five main legislative reforms. *Firstly,* on 3rd August 2002, a new law was adopted by the parliament consisting of new articles that are added to the *Penal Code* and amendments to the *Law on Combating Benefits-Oriented Criminal Organizations* (Icduygu, 2005:14). This Law has introduced a definition of human trafficking and smuggling into Turkish legal system and anticipates heavy sentences for the convicts in accordance with the *Palermo Protocol against Trafficking in Persons.* On parallel to this legislation, *secondly,* Turkey became one of the initial signatories of the *UN Convention against Transnational Organized Crime* and its *Two Additional Protocols* that provide a framework for combating trafficking, smuggling and irregular migration. *Thirdly, o*n 27th February 2003, the *draft Law on Work Permits for Foreigners* is approved by the parliament and introduced new rules to regulate the access of migrant workers to the labour market of Turkey. Accordingly, the procedure for acquiring a work permit is simplified by regulating it from a central authority (Ministry of Labour and Social Security) and fines for illegal employment are introduced (Icduygu, 2007a:214). *Fourthly,* Article 5 of the *Citizenship Law* is amended on 4th June 2003, to regulate the naturalizations to Turkish citizenship by marriage. A continuity of over three years was introduced for obtaining citizenship by marriage for both male and female foreigners in a standardized manner. And *finally,* on 29th June 2005, *the New Penal Code*, was introduced. This *code* defines *migrant smuggling* (Article 79) and *human trafficking* (Article 80) and foresees heavy sentences to the convicts.

4.3 An Analysis of Turkey's existing Readmission Protocols: The cases of Greece and Syria

4.3.1 The Readmission Protocol between Greece and Turkey

As cited above in various parts of this paper, the land and sea borders between Greece and Turkey are often perceived among the EU's most intensive borders concerning the irregular border crossings (Frontex, 2007; 2008; 2009; 2010). As a justification of this claim, the numbers that a Frontex report shows that in a 7 months period between June to December 2010, there have been more than 38,000 irregular migrants who were detected in this border, which refers to a monthly figure of more than 5,400 irregular migrants.[38] Again, in the Frontex Annual Report of 2007, it is stated that, in 2007, 45 per cent of all the 164,000 apprehension cases, are consisted of the irregular migrants who were caught at the Greek borders; in which the largest proportions are in the Greece-Turkey and Greece-Albania borders. In the 2008 Frontex Annual Report, the percentage of the Greek border increased to 50 per cent, in a total number of 159,000 apprehensions. Although the 2009 report indicates a decrease in the total number of apprehensions at the EU borders with a figure of 106,000, the share of Greek borders increased to 75 per cent. Moreover, these reports claim that, the proportion of Turkish border in the total border apprehensions of Greece is around 35 to 40 per cent.

Despite of the improvements in the bilateral relations between Greece and Turkey in the recent years, unfortunately, this positive climate does not influence the implementation of the Protocol (Kirişci, 2008b:13). Both sides' do not hesitate to

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[38] See Michael Parzyszek, RABIT Operation, Situational Update, at http://www.frontex.europa.eu (viewed on 20 April, 2011).

accuse each other for the failure of the implementation of the agreement. During the interviews that are made in the Foreigners Departments of Edirne, Istanbul and Van with the various police officers, a variety of concerns related to the malfunctioning of the agreement are uttered.[39] These concerns are mainly twofold. *First* of all, there were arguments that were accusing Greece for not fulfilling the terms of its readmission agreement in practice and illegally expulsing the immigrants to Turkey by sea or land. *Secondly*, there were concerns over the financial burden of the agreement and the inability of Greece to fulfil its financial responsibilities. However, an official from the Migration Department of Foreign Ministry argued the direct contrary, by stating that the implementation of the readmission protocol with Greece was getting better.[40]

It is not possible to make such evaluation here; however, the numbers prove that, the realizations of the readmission cases are very rare. In the framework of this agreement, in the period between 2002 and 2010, Greece demanded the readmission of 65,300 irregular migrants by Turkey, claiming that, they have entered Greece transiting trough Turkey. Among them, Turkey has agreed to accept only 10,124 people, considering they might have entered to Greece from Turkey. But in the end, the Greek authorities have only sent back 2,425 migrants. From this figures, it is seen that, although there is an around 15 per cent acceptance rate of the Greek claims, only around 4 per cent of the readmission claims could be realized. More interestingly, during the same period, Turkey demanded from Greece to readmit a total number of 5,858 irregular migrants, in which only 19 were readmitted. This number refers to an acceptance rate of an even smaller number around 0.3 per cent.

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[39] The meetings are held in 24.10.2010 with the Foreigners Department in Van, in 25.10.2010 with the Foreigners Department in Istanbul and 28.12.2010 with the Foreigners' Department in Edirne.
[40] Meeting with the Head of the Migration Department, Foreign Ministry, in 27th December 2010.

This numbers show an obvious dysfunction in the protocol, in which both sides' blame each other for "burden-shifting" and parties lack trust against each other.

In May 2010, a new agreement for the more efficient implementation of the 2001 Protocol was signed and accordingly, Turkey has agreed to accept 1,000 readmission cases annually. However, this agreement too, failed to produce the desired outcomes mainly resulting from the inherent malfunctioning of the original agreement and also, the historical legacy of mistrust among parties, concerning irregular migration. It is even stated by some authorities that, having no agreement at all is much better than having a malfunctioning agreement, because while the former is neutral, the latter provides a negative contribution to the overall combating efforts. As the main border between the European Union and the Turkey mostly consist of the Greek territory, and as a result Greece is expected to be the main requester for Turkey's readmission in the framework of the possible EU-Turkey readmission agreement, the problems that are shaped around mistrust are likely to continue if the possible readmission agreement with the EU is ever implemented.

4.3.2 The Readmission Agreement between Syria and Turkey

In comparison with the Greek-Turkish Readmission Protocol, this readmission agreement which is signed with Syria in the same year appears to be better functioning. In the framework of this agreement, between 2002 and 2010, Syria has readmitted 2,557 irregular migrants from Turkey and returned 69 irregular migrants to Turkey. Although authorities have some complains over the heavy bureaucratic procedures and workload during the readmission processes, compared with the Greek case, the authorities of both sides' are much less critical of the arrangement.

To a great extent, the irregular migration from Syria to Turkey consists of transit migrants as it is the case in the irregular migration from Turkey to the European Union countries. These irregular migrants, who have transited through Syria to Turkey, and most likely have the intention to transit through Turkey to the EU member states are usually the nationals of countries like Somalia, Bangladesh, Pakistan and some other East Asian countries. Although there are many technical problems on readmission related to the proofs of nationality and proofs of the conditions for the readmission concerning third country nationals, this relatively well-functioning agreement does curtail Turkey's irregular migration burden to a certain extent. The Syria-Turkey readmission agreement calls the attention for Turkey to the importance of signing readmission agreements with its eastern neighbours, to cope with the burden of a possible EU-Turkey readmission agreement.

4.4 The Readmission Negotiations between Turkey and the EU

As widely elaborated above, the EU's migration management framework is shaped around concerns over security and border control, especially towards the countries of origin in the Africa and countries of transit around the Mediterranean. As a policy, the EU aims to interact with the countries of origin and transit to eliminate the irregular migrants' arrival to the Union, or to be able to return them without any formal restrictions. Parallel to such policy, since the acceptance of its candidacy, the European Union tries to impose a more cautious and restrictive regime in Turkey against the irregular migration. Being aware that Turkey is a transit country on irregular migrants' journey to Western Europe, based on the finding that a considerable portion of the irregular migrants are caught trying to enter Greece from Edirne border at first step, the EU has introduced readmission agreements to be

signed between Turkey and source countries and with the Union itself as an effective solution to prevent irregular migration (Commission of the European Communities, 1999).

Along with the EU's demands, Turkey has signed many readmission agreements especially with countries of origin that the nationals from constitute a considerable portion of irregular transit migration to the EU. Since now, these agreements have been concluded with Syria (September 2001), Kyrgyzstan (May 2003), Romania (January 2004), Ukraine (June 2005) and Greece (November 2001) and there are ongoing negotiations with Belarus, Egypt, Hungary, Iran, Libya, Lebanon, Macedonia, Russian Federation, and Uzbekistan (Tokuzlu, 2007: 21). Although the European Commission itself has also demanded to negotiate a readmission agreement between Turkey and the EU in 2000, mainly resulting from Turkey's reluctance, despite of the EU's willingness, resulting from the fear of becoming a dumping ground for the EU's "unwanted" and the lack of incentives, the official exchanges concerning a readmission agreement began only in 2003.

Finally, in March 2004, Turkey has agreed to start the negotiations for a Community readmission agreement with the EU. Although the parties did not agree upon any precise date or timeline, this decision was taken to put an end to long discussions, shaped around Turkey's reservations and the EU's push (Coleman, 2009). After a period of negotiation between 2004 and 2010, the parties finally agreed upon a draft agreement in 2010, and in the first months of the 2011, with a consensus on the final adjustments to the agreement, it is expected that, the negotiations have come to an end. This claim is supported by an official statement, issued by the Justice and Home Affairs Council on February 25, 2011 which

indicates that "Home affairs ministers reached *political agreement* on an EU-Turkey readmission agreement"[41]. However, this statement has remained only as an indication of the Commission's will to start a dialogue with Turkey, on the issues concerned. What is not taken into consideration here was that, Turkey was mainly persuaded to negotiate a possible readmission agreement with the EU, was the examples of visa facilitation agreements that go hand-in-hand with the readmission agreements between the EU and the third countries (Trauner and Kruse, 2008). This has happened in the readmission agreements signed with Bosnia and Herzegovina, Macedonia, Moldova, Montenegro, Serbia and Ukraine[42].In the lack of a concrete incentive, like a clear road map for visa facilitations for Turkish citizens, the Turkish indicated that they would reject to sign the agreement.

4.4.1 Expectations of the Turkish State: Membership Prospect versus Visa Facilitations

It is apparent that a change in Turkish immigration and asylum policy is essential for fulfilling the EU demands and satisfying their concerns on justice, freedom and security area. Turkish policy makers and government appears to be willing to improve Turkish border controls and reform its visa system. Although the harmonization efforts that are explained above are undeniable, the Turkish officials are usually reluctant take further harmonization measures, taking into account their financial and political costs (Kirişci, 2007:3). The evasiveness of the Turkish officials for signing a readmission agreement with the European Union is also an outcome of this hesitancy on whether the benefits of the possible agreement would meet the costs related with it. These costs are not only financial or political. This

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[41]See: Press Release 3071st Council Meeting, Justice and Home Affairs, Brussels, 24 and 25 February 2011.
[42] Commission work-programme 2006, p.102, 128; SPEECH/05/754.

agreement would also require a wide range of structural and institutional reforms for implementation, which will turn out to be costly. Moreover, the unpopular image of the readmission agreements at the society adds undeniable political and societal costs to the agreement.

There are rising concerns both in governmental level, in civil society and in public opinion about the EU's commitment to its relationship with Turkey. These concerns are mainly twofold and tightly related. First of all, the membership carrot is in the centre of the debates for implementing a policy change concerning immigration. Resulting from this, any interruption in the membership negotiations, lead to a reluctance of the policy makers and government to cooperate. It is considered that, in the lack of membership, especially policy changes like adopting the Schengen visa regime and abolishing the non-visa or sticker visa arrangements with several countries, would curtail Turkey's ties, both economic and social, with its many neighbouring states without any incentives. Moreover, these policies loose the support of Turkish public opinion in the absence of membership prospect and their implementation is even further decelerate.

Secondly, Turkish side puts great emphasis on the burden sharing issue instead of EU shifting its migration burden to Turkey. Although this concern is interconnected with the membership prospect, if the policy changes the EU demanded is fulfilled, Turkey would need further assistance than an EU member state gets, considering its migrant capacity. Especially in the issues of this thesis' concern, Turkey's lifting the geographical limitation from the 1951 Geneva Convention and signing a readmission agreement with the EU, in which Turkey is expected to face a considerable social and economic burden, burden sharing is

particularly important. While some Turkish officials, policy makers, government agencies, civil society and public opinion see full membership as the only guarantee for efficient burden sharing and are reluctant to fulfil these demands in the lack of it, some argue that comprehensive EU assistance can make these changes possible.

Although these two main concerns are shared by many state and government officials, it is hard to speak of a consensus against the readmission agreements among the actors. The main divergence within the state is between the agencies affiliated with the Ministry of Interior, especially the Directorate of Security, the Foreign Ministry and the Ministry of the European Union. While the officials from the Directorate of Security, mainly the practitioners of the migration management policies, reflect a standing totally against the readmission agreement; the Foreign Ministry and the Ministry of the European Union accept it as membership conditionality and support the agreement in return for visa facilitations.

The interviews that are made with the various officials in the Foreigners Departments of Edirne, Istanbul, Izmir and Van, as well as in the Kumkapı Removal Centre (Istanbul)[43] reflect the Ministry of Interior's view against signing a readmission agreement with the European Union, before becoming a full member of the Union. In all of the interviews, the officials have put emphasis on the inadequacy of the infrastructure of Turkey related to readmission. Especially the concerns are raised on the number and capacity of the existing removal centres and the need for the establishment of the new ones. The officials in the Kumkapı Removal Centre have repeatedly stressed on the insufficiency of both the physical and operational conditions. Moreover, they foresee an increasing need for skilled personnel to meet

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[43] The meetings are held in 24.10.2010 with the Foreigners Department in Van, in 25.10.2010 with the Foreigners Department in Istanbul and the Kumkapi Removal Center; and 28.12.2010 with the Foreigners' Department in Edirne.

with the needs of the increasing numbers of irregular migrants, especially during the reception and return procedures. Although they appreciate the EU funding for the establishment of new removal centres, for instance in Ankara and in Erzurum, they do not see these developments as sufficient burden-sharing mechanisms, considering the load of the burden. In all of the interviews with the security officials, a great emphasis is put on the need for financial support to Turkey. Bethinking that, the real complication does not occur in the process of readmitting the immigrants' to Turkey from the EU, but during the process of returning immigrants to their country of origin, such as the problems related to identification documents, the Directorate of Security personnel utters the uneasiness over the costs related to the stay of these irregular migrants during their return is processed.

Apart from the discussions on the burden sharing, the practitioners who work under the General Directorate of Security do not believe a possible readmission agreement would be an effective tool to curb transit migration from Turkey to the EU member countries. Apart from the discouraging effect of the improperly functioning readmission protocol with Greece, the practitioners believe that the low socio-economic conditions of the irregular migrants would lead them to migrate anyway, and a readmission agreement is not a sufficient tool to dissuade them. With a perspective focused on improving the conditions in the home country, in the interviews with the officials in the Foreigners Departments in Van, Istanbul as well as the interview in the Kumkapı Removal Centre, they have stressed the importance of the EU-led developmental assistance to the countries of origin.

Conversely with these negative views and uneasiness against a possible readmission agreement of the agencies under the Ministry of Interior-General

Directorate of Security; the officials from the Foreign Ministry and the Ministry of the European Union have a very positive attitude for signing it. The officials of the Foreign Ministry and the Ministry of the European Union have made various statements to the press concerning their positive standing for visa facilitation in exchange for a readmission agreement. In an interview that is made with the head of the Migration Department in the Foreign Ministry,[44] a more responsibility-oriented approach is emphasized stating that, the transit migrants should not have been passed through Turkey in the first place and these circumstances imply an insufficiency of effective migration management policies within Turkey. Also, in the interview that is made with Mr. Egemen Bağış, the Minister for the European Union Affairs[45], although he has explicitly displayed a positive standing against the readmission agreement, he stated that he does not find it appropriate to sign the readmission agreement right now, because the Commission did not get the necessary authorization from the member states to negotiate visa facilitations with Turkey. He has particularly stressed upon the importance of this correlation between signing the possible readmission agreement and the beginning of the visa exemption negotiations, as a remedy to the Turkish tax payers who will eventually bear the social and economic burden of the readmission agreement. In the interview, it was very significant that, he did not mention of the visa facilitations for a privileged minority, but of visa exemption for all Turkish citizens, as a prerequisite for signing the readmission agreement.

By evaluating this overlook to the Turkish policy makers and practitioners concerning their approaches against the possible readmission agreement with the EU,

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[44] Meeting with the Head of the Migration Department, Foreign Ministry, in 27th December 2010.
[45] Meeting with Mr. Egemen Bağış, the Minister for the European Union Affairs, in 3rd December 2011.

we can reach two main conclusions. *First* of all; the negative views of the practitioners in the Directorate of Security against the readmission agreement is inherently due to the fears related with the increase in the irregular migration burden and the lack of confidence against the EU funds and assistance to meet with this burden. Actually, although they have stressed upon that the Commission have agreed upon meeting an important portion of the burden; the officials in the Foreign Ministry and the Ministry of the European Affairs too, have some second thoughts on whether these funds would be sufficient to meet the costs related with the readmission agreement. As a result, the *second* conclusion that can be derived is that, although visa facilitations or exemptions are not necessarily a burden sharing mechanism; the pressure of Turkey for these inducements to be given in exchange for signing the readmission agreement, inherently results from the need for introducing some means for indemnity to the Turkish state and citizens.

4.4.2 Readmission, International Organizations and Civil Society

Although there are various diverse approaches of Turkish civil society, the NGOs and the international organizations concerning a possible readmission agreement, it will be practical to put them under two main categorizations. *First of all* there are the ones related with Turkey's institutional, administrative and legislative capacities, and the question of whether the country would be able to keep up with the increasing responsibilities as an outcome of such agreements. Here, the issues like burden-sharing versus burden-shifting, the reliability of the membership prospect and the question of possible compensations arise. As it is elaborated above, this first concern is also very prominent in the discussions between the state officials and the EU. *Secondly,* all of the non-governmental and the international organizations that are

included in this study are very uneasy over the possible human rights violations that may occur as a result of the agreement. Together with the treatment of the irregular migrants themselves, such as the circumstances in the removal centres, there are also worries over the conditions of possible asylum seekers, and the non-refoulement principle. This section will be structured under these two main categories of concerns and will aim to draw a picture of the Turkish civil society and the international organizations over the subject of a possible readmission agreement.

Turkish civil society is showing an increasing interest in the issues related with irregular migration and asylum. The non-governmental organizations such as Amnesty International, Association for Solidarity with Asylum-Seekers and Migrants (Ankara), Human Rights Foundation of Turkey, Human Rights Association (IHD), International Strategic Research Organisation (Ankara), Migrant Solidarity Network (Istanbul), Turkish Bar Association, Kızılay, The Association of Human Rights and Solidarity for Oppressed People (Mazlum-Der), Helsinki Citizens' Assembly (HYD) and some informal networks are actively working on the issue, providing humanitarian or legal assistance and also supporting awareness programs. They are in close cooperation with both the international organizations such as the IOM, UNHCR, the EU, and the government agencies. Definitely the extent of civil society in Turkey is not adequate in comparison with the size of the problems associated with the irregular migration, but their efforts are undeniable (Kirişci, 2008b:14).

The International Strategic Research Organization of Turkey (USAK) has published one of the most comprehensive reports, concerning a possible readmission agreement between Turkey and EU, which is to a large extent representative of the Turkish civil society regarding their *first category* of concerns. Among the

conclusions that are derived from the report, two themes prevail. *First* of all, as it is also stressed by many government and state officials and documents, reciprocity is considered as one of the main elements for a readmission agreement. However, as it can be derived from the figures of the Greece-Turkey Readmission Protocol, it is possible to make some conclusions on this reciprocity phenomenon. It is almost certain that, as a transit country, Turkey is bound to receive a very large number of third country nationals, who have transited through Turkey to the European Union countries, while, the number of third country nationals who have transited through the European Union Countries to reach Turkey would be very insignificant. Also related to this reciprocity theme, the essentiality of equal burden sharing prevails in the discussions related to readmission (USAK, 2010: 35).

The fear of becoming a buffer zone for the EU's unwanted immigrants is stressed in the USAK report as well as by many scholars who were interviewed during this study. Especially the difficulties that are faced in determining the immigrants' nationalities and their routes to Europe increase this fear. In the lack of necessary arrangements, such as having readmission agreements with the source countries, it is inevitable for Turkey to become a "storage country" of the irregular migrants. As a result, the Turkish civil society proposes that, it would not be a rational choice for Turkey to sign a readmission agreement in exchange for visa facilitations, considering the economic, political and social costs of the agreement, which will occur mostly resulting from the rising number of readmission cases and the irregular immigrant stock in the country (USAK, 2010: 45-46).

Although in the state and in the EU level the readmission agreements are perceived only as tools for returning irregular migrants, and being neutral in terms of

human rights, the civil society that is active in the field believe that readmission agreements have substantial risk of violating the human rights of irregular migrants as well as potential asylum seekers. This *second* main concern is shaped around the risk of a violation of the terms of the Geneva Convention Relating to the Status of Refugees, by not giving the irregular migrants a chance, or time, to apply for a refugee status and causing refoulement. After the readmission agreements became a part of the EU migration management policy with the 1992 Edinburgh European Council and the following 1993 Action Plan, in 1994, a UNHCR Report on Readmission Agreements has stated that, although these readmission agreements have the potential to enhance the international refugee protection by implementing the asylum procedures in a more orderly manner, essentially, they are not made for this purpose. Conversely, they fail to determine the special situation of the asylum seekers and they have the danger to directly or indirectly violate the non-refoulement principle (UNHCR, 1994).

In a letter that is written by the representatives of Amnesty International Turkey to the European Union Council headquarters in November 2010, similar concerns on the violation of non-refoulement principle and the concerns over a chain of readmissions, which would finally lead to refoulement, are emphasized[46]. Moreover, as another matter of concern related to the human rights standards applicable in the readmission process, the Amnesty International argues that, in the operation of the existing readmission agreement with the Greece, the parties do not pay necessary attention for determining the irregular migrants' nationalities. As a

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[46] See the official document: "Uluslararası Af Örgütü'nün AB Konsey Başkanlığına Yazdığı Mektup" (The Letter of Amnesty International written to the EU Council Headquarters). http://www.amnesty.org.tr/ai/node/1564 (viewed on November 10, 2011).

result, this may cause false returns, or the violation of the asylum rights of the irregular immigrants who come from the countries of turmoil. The same apprehension is also voiced in an interview that is made with the representatives of the Solidarity with the Refugees Association[47] in which the weakness of the asylum management in Greece and its outcomes for Turkey were discussed. In the interview, the main concern was the asylum seekers who were asked to be readmitted by Greece to Turkey, although they have applied for asylum in Greece.

To keep up with these concerns, it is essential for the practitioners to ensure to provide the irregular migrants a chance to apply for asylum. Although the existing EU provisions in the field lay down a binding legal framework for the requesting EU member states to verify that the irregular immigrant was ensured the right to apply for asylum but chose not to do so, the non-governmental and the international organizations working on the issue have concerns over the applicability of such legal framework with concrete administrative mechanisms. As it is also brought up by the various officials and the civil society organizations' representatives, the practicability of the existing mechanisms are halted due to many regional diversities, and to the language barrier.

Together with the concerns related to asylum applications and the human rights, on the issue of readmission, there is a movement which is specifically against the approach of the EU negotiations with Turkey, which presents a visa facilitation agreement as a compensation for the outcomes of a possible readmission agreement. As a noteworthy example of this approach; the Migrant Solidarity Network, has a

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[47] For more information see: http://www.multeci.org.tr/ (viewed on November 11, 2011).

signature campaign named "No to Visa Bribery[48]" which emphasizes the injustice in this bargain that consists of visa facilitations for a privileged minority in exchange for signing readmission agreements and experiencing related human rights violations.

4.4.3 EU's Expectations from a Readmission Agreement

Although there is a lack of concrete data concerning the benefits of the European Union readmission agreements in the fight against irregular migration; from the Frontex and the Eurostat data available on the readmission cases, it can be derived that, although to have a readmission agreement among parties is quite advantageous for the readmission of one of the parties' own nationals, it does not make significant improvements for decreasing the number of the irregular migrants by the readmission of third country nationals. This fact raises the question why the European Union persists this much for the conclusion of such agreements, despite of the harsh criticisms, while, in the lack of readmission agreements, the readmission of own nationals' could be dealt with in the framework of the international law. Hence, apart from the member states' determinacy to decrease the number of irregular immigrants residing in their territory, this phenomenon of signing readmission agreements with source and transit countries can be explained with three reasons. *First of all,* the readmission agreements are perceived as instruments of deterrence against irregular migrants. Although there are not any major examples of the deterrent effect of these agreements, many EU Member States, which can only apply expulsions to a minority of the irregular migrants who are residing in their country, aim to use these acts of

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[48] For more information see: http://www.gocmendayanisma.org/vizerusvetinehayir/ (viewed on November 11, 2011).

expulsions as the deterrence instruments to the people who have intentions to irregularly migrate.

Secondly, as mentioned above, the readmission agreements are quite successful tools to return the own nationals of the countries who are party to the agreement. By using these agreements, even the most non-cooperative irregular migrants' nationalities can be determined by using the means of evidence designated by the agreement and could be sent back to their countries' under the regulated procedures. This second benefit of having a readmission agreement with the source country is particularly important when immigrants try to conceal their identities either to lengthen their duration of stay in the destination country or to apply for a refugee status by pretending to come from another country with political turmoil.

And *finally,* the expectation that a readmission agreement with the EU would provide incentive, especially to the transit countries to strengthen their migration control capacity is also a dominant reason for the pressures related to signing a readmission agreement. Especially in the cases of transit countries like Turkey, an increase in the number of third country irregular immigrants, as a result of readmissions from the European Union member states is an expected outcome of a possible readmission agreement. As this main expected outcome is directly related with the border controls in the form of not letting transit immigrants inside of the country in the first place, the improvement of efficient border control tools would be a reasonable policy for the transit countries to eliminate the increasing numbers of readmissions. This expected outcome would be both beneficial for the transit country party to the agreement and for the EU itself that, it would be curbing irregular migration without having to put effort in it.

As it is the case with all of the negotiations between the European Union and the candidate countries, the accession negotiations between Turkey and the EU too, show an asymmetrical characteristic where the EU as the hegemonic actor, sets the agenda for the negotiations and the costs and benefits are asymmetrical accordingly (Elgström and Strömvik, 2005:121). Therefore, it is not unanticipated to see that there is such an asymmetry in the negotiations of a readmission agreement between Turkey and the European Union, where the European Union uses the membership conditionality and visa facilitations as incentives and provides the guidelines with the Annual Progress Reports.

Although the EU's expectations from a readmission agreement that are deliberated above, are also applicable to the Turkish case, the information that is derived from the progress reports show that, the Commission's expectations over a possible EU-Turkey readmission agreement are interrelated with the Turkey's status as a transit country. When the Annual Progress Reports of Turkey that are published between 1999 and 2011 are examined[49], a powerful stress on the issue of readmission

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[49] See: Commission of the European Communities. 2002. *2002 Regular Report on Turkey's Progress Towards Accession.* Brussels.
Commission of the European Communities. 2003. *2003 Regular Report on Turkey's Progress Towards Accession.*
Commission of the European Communities. 2004. *2004 Regular Report on Turkey's Progress Towards Accession.* Brussels.
European Commission, 2005. *Turkey 2005 Progress Report.* Brussels.
Commission of the European Communities. 2006. *Commission Staff Working Document: Turkey 2006 Progress Report.* Brussels.
Commission of the European Communities. 2007. *Commission Staff Working Document: Turkey 2007 Progress Report accompanying the Communication from the Commission to the European Parliament and the Council, enlargement Strategy and Main Challenges 2007-2008.* Brussels.
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does not escape observation. Although in the years 1999[50] and 2000[51], the emphasis put on the conclusion of readmission agreements is smaller, beginning with the 2001[52], not only the possible EU-Turkey readmission agreement, but also the other readmission agreements that Turkey has signed with the third countries occupy significant spaces in the reports, thus once more supporting the claim that, Turkey's status as a transit country is at least as alarming as its status as a source country.

The main conclusions that can be derived from these reports concerning the readmission, is that, the EU expects from Turkey, to be the first ring of a chain of readmissions, leading to the return of irregular migrants to their countries of origin by both signing a readmission agreement with Turkey, and expecting from Turkey to sign readmission agreements with its eastern neighbours, which are mainly the countries of origin. Although the acquired outcome may not meet the expectation, and parties may have to settle for the three expectations that are given above, this main expectation, not only leads the Turkish officials to an evasive attitude, considering its administrative, legislative and institutional costs; as widely elaborated in the previous section, it also gains reaction from the international and non-governmental organizations because of the possible human rights violations related with a chain of readmissions. Some dissenting groups within the Parliamentary Assembly of the European Union, such as the Socialist Group of Netherlands, also share this uneasiness concerning whether the asylum application opportunity is

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Commission of the European Communities, 2011. *Commission Staff Working Document: Turkey 2011 Progress Report accompanying the Communication from the Commission to the European Parliament and the Council, enlargement Strategy and Main Challenges 2011-2012.* Brussels.

[50] See: Commission of the European Communities. 1999. *1999 Regular Report from the Commission on Turkey's Progress Towards Accession.*

[51] See: Commission of the European Communities. 2000. *2000 Regular Report from the Commission on Turkey's Progress Towards Accession.*

[52] See: Commission of the European Communities. 2001. *2001 Regular Report on Turkey's Progress Towards Accession.* Brussels.

given during the readmission process and what would happen in the lack of concrete tools for determination of an irregular migrant's nationality[53].

4.5 Irregular Migration, Readmission and Implications for Membership

As it can be derived from the discussion during this study, the issue of burden sharing versus burden shifting appears as the main agenda on the negotiation process on migration-related issues, between the European Union and Turkey. Although Turkey's burden seems heavier, as a result of its location directly bordering the Middle Eastern countries that are facing political turmoil, this burden sharing discussion has been dominant in the EU's migration management agenda since the end of the Cold War, in the Union's negotiations with its Eastern neighbours. From the available evidence, it is seen that, the countries in the relative-East are always being subject to criticisms and pressures from the countries in the relative-west, in the issue of preventing the migration, especially the transit migration, flows over their country. The countries in the relative-east are usually requested, or in an accession conditionality framework they are required, to improve their control mechanisms and law enforcement capabilities, however, without the necessary assistance and resources, they fail to do so. In such a situation in which the irregular transit migration, targeting the Western European countries dominates the irregular migration flows, it is not unfair to advocate the essentiality of burden-sharing between the countries in the relative-east and the countries in the relative-west (Icduygu, 2005:15).

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[53] See the official document: "Readmission Agreements: A Mechanism for Returning Irregular Migrants" Parliamentary Assembly, Report of the Committee on Migration, Refugees and Population. http://www.amnesty.org.tr/ai/system/files/PAAP_Report.pdf (viewed on November 10, 2011).

When the negotiations among Turkey and the European Union, on irregular migration are evaluated in the larger context of membership, it is seen that, although Turkish state and officials are willing to improve the standards related to irregular migration management, the related efforts are tightly connected with the membership prospect and could easily be halted in the lack of it. In this context, despite of the Turkish expectations, the EU carrot for signing a readmission agreement has significantly changed from the membership prospect to flexible visa negotiations. However, as Mr. Ahmet Davutoğlu, the Turkish Minister of Foreign Affairs, stated, public opinion and state officials perceive this policy change as a reflection of the double standard the EU is enforcing on Turkey compared to other Eastern European states. Considering Turkey, as an EU member candidate state lacks the free visa privilege, while some potential candidate Western Balkan states have gained it, also support these perceptions of injustice. Moreover, some even argue that visa facilitations are already acquired rights of Turkey under the Ankara Agreement, and putting them on table as if they are new concessions, are unfair.

As noted above, the EU proposes a functioning readmission agreement between the parties as an indispensable component for obtaining visa facilitations, as well as the substantial reforms in Turkey's border control policies. Although the EU has successfully used the visa facilitations as a carrot in negotiations with many Eastern European countries for signing a readmission agreement, the negotiations with Turkey progress much slower resulting from various concerns. Many Turkish policy makers are reluctant to accept such conditionality even in exchange for visa facilitations, believing such facilitations will not compensate the social and economic costs for Turkey and resulting from the fear of becoming a country for the EU's "unwanted". Moreover, deep and increasing mistrust among parties, rooted in the

belief that Turkey will never become a full member, affect the perception of the Turkish officials and deepens their conviction that the EU wants to use Turkey as a "buffer zone" for blocking the irregular migrants. In brief, the Turkish officials are very uneasy about EU trying to strengthen its "fortress" by interfering with Turkish interests and security (Kirişci, 2007:16; Kirişci, 2008b:20).

The long duration of the negotiation process for the readmission agreement among parties is the product of this mistrust and scepticism which is mainly rooted in the uncertainty over the EU membership prospects of Turkey. The persistence on membership, and nothing less, for signing a readmission agreement is actually the outcome of the lack of an accurate cost-benefit analysis on the issue. The nature of irregular migration, which is shaped around uncertainties, has made a precise cost-benefit calculation of a readmission agreement impossible. Also, the ambiguity in the extent of burden-sharing and the financial concerns added to these uncertainties and further complicated Turkish officials' reservations on the issue. Only, full membership is seen as a precise manifestation of burden sharing (Kirişci, 2008b:21). Even the Commission's proposals for a visa facilitation agreement in return for signing a readmission agreement has not been welcomed, as the Turkish officials felt that Turkey is not treated as an accession candidate, but as it is just another third country, in the same category with the countries like Russia and Ukraine.

CHAPTER V: CONCLUDING REMARKS

After evaluating the standings of the global governance actors against the EU-Turkey bargain on migration and asylum, one can rightfully ask this question: "Who are satisfied?" A very simplistic answer to this question would be that none of the actors are fully satisfied. However, as the literature on international negotiations and the history of the international relations indicate; the full satisfaction of one of the parties is a very rare phenomenon. Here, it would be appropriate to deliberate the actor preferences and whether the EU-Turkey negotiation process has met, or is promising to meet, these preferences. Unfortunately, when all the actors involved in the negotiation process are considered, the EU Commission, Turkish state officials and practitioners, international organizations and non-government organizations, they do not even share a lowest common denominator, which is guaranteed to be met during the negotiations. While the economic aspects of the readmission and lifting the geographical limitation prevail in the state officials', practitioners' and some international and non-governmental organizations' discourses on the issues, the humanitarian aspects prevail in the general attitude of the international organizations and security, especially the border security prevails in the EU's discourse.

Although in the scope of this study, it was not possible to meet with the EU officials for interviews, from the official documents that are examined, especially from the information gained by examining the annual progress reports, it is seen that in time, the EU has changed its priorities for the recommended migration management policies. The first thing that stands out is that, unlike the 1990s, when the EU was stressing upon the importance of a humanitarian migration regime, with

the policy implementations like lifting the geographical limitation from the Geneva Convention of 1951; in the late 2000s, the EU increased its pressure to Turkey for the border protection and prevention of irregular transit migration, with the policy implementations like the readmission agreements. As Turkey, despite of the promise that is made for 2012, is still did not take any concrete steps for lifting the geographical limitation and the Turkish officials are dragging their foot as much as possible for signing a readmission agreement, it is not possible to argue that the EU is satisfied with the negotiations. However, the annual progress reports indicate that, the EU is content with the course of the reform process. Moreover, as long as the Turkish membership prospect continues, the EU will continue to have the upper hand in the negotiations, and will be able to keep these items on the table as membership conditionalities. This means that, as long as the asymmetrical characteristic of the membership negotiations continue, the circumstances are promising for the EU to be fully satisfied. However, in the cases where Turkey losses a concrete membership prospect and other incentives are introduced, for instance when the EU has introduced visa facilitations for Turkey, their advantage in the negotiations decrease substantially.

As the interviews that are made with the various state officials and the practitioners indicate, actually their main reservations and the ones that stand out in the discussions over lifting the geographical limitation and the possible readmission agreement are the financial ones, especially related with burden sharing. Especially, the negative views of the practitioners in the Directorate of Security against both issues are inherently due to the fears related with the increase in the irregular migration and asylum burden and the lack of confidence against the EU funds and assistance to meet with this burden. Actually, although they have stressed upon that

the Commission have agreed upon meeting an important portion of the burden; the officials in the Foreign Ministry and the Ministry of the European Affairs too, have some second thoughts on whether these funds would be sufficient to meet the costs related with the readmission agreement. This situation again brings us to the significance of burden sharing. Although there is a high probability for Turkey to lift the geographical limitation and sign the possible readmission agreement, before becoming a member of the EU as membership conditionality, it is certain that, the officials will continue to drag their feet on their implementation until the burden sharing mechanisms are complete. Here, what they have in mind is not only the financial burden-sharing, in the form of provision of EU funds for the necessary institutional, administrative and infrastructural reforms, such as the establishment of accommodation centres for refugees and the training of the related personnel, but also in the form of continuing to resettle a number of refugees in Europe, to moderate country's socio-cultural burden as well as the economic one.

The final, and the non-official, actors that are involved in the negotiations are the non-governmental and the international organizations. In a human rights based perspective, in both issues they put the main emphasis on the status of the asylum seekers and the significance of the non-refoulement principle. They are definitely against the readmission agreement, because of the risks on the violation of the non-refoulement principle related with it, and they support the urgency of lifting the geographical limitation. However, it is seen that, both the non-governmental and international organizations are pushed outside of the negotiations and their ideas are undermined. This situation is specifically in contradiction with the EU's identity as a global governance actor and its normative being as a liberal, transparent entity.

From the data collected and the information gained above, in the case of Turkey it is evident that the liberal-humanitarian approach of the European Union against immigration and asylum has begun to change in the post 9/11 period. Especially after the events in Madrid, London and France, with the prevalence of an anti-immigration attitude in the domestic politics, immigration began to be governed in a securitized perspective while the European states' commitment to their liberal ideologies and to the international community has declined substantially (Kirişci, 2007:22). Although the European migratory regime directs the third countries for more humanitarian migration management policies, even these policies are controversial and criticised for being the tools for the EU's *externalization* strategies.

During this study, various policies of externalization have been discussed, such as the safe third country rule and the asylum sharing policy under Dublin II regulation; and the readmission agreements are considered at length. In a very pessimistic perception, it is even possible to argue that, the pressure for lifting the geographical limitation is framed around the will to shift the asylum burden to Turkey. Although, the numbers provided by the UNHCR (see Table 6) show that, to a large portion, the resettlement burden is not undertaken by the EU member states but by Australia, Canada, Norway and the United States; as lifting the geographical limitation will make Turkey eligible for being a safe third country, there is room for suspicion on whether this pressure of removing the limitation is shaped around human rights, or is it a tool for externalization policies. Moreover, despite of the growing criticisms against the readmission agreements, considering the possible human rights violations related with readmission, the parties still did not introduced sufficient measures to eliminate these violations. Although the EU has introduced

some mechanisms to guarantee the right to asylum and respect to the non-refoulement principle, the implementation of these mechanisms are very problematic.

Even though the EU is heading through a more securitized migration management regime as a supra-national entity, this trend should not be understood as the independent EU member countries are also abandoning their liberal perception against immigration and their commitment to the human rights. As the EU is negotiating with Turkey as a whole, in this study, for practical reasons, the Union is also taken as a whole, by overlooking its internal dynamics. These internal dynamics can be a topic for another study. It is true that, there is a trend of securitization in the dominant EU member countries, such as France and the United Kingdom; however, there are also member states that are very respectful to and supportive of the United Nations international refugee system, such as Finland and Sweden. Unfortunately, as it is stressed in the theoretical framework section of this study, in the decision making phase, the EU reaches a decision in the lowest common denominator and usually abides by the preferences of its most conservative member. This is also the case in the migration management policy making process. As a result, we can only reach the conclusion that, although some EU member states still committed to adopt a liberal and human rights based attitude against migration, as long as we can only see the reflection of the preferences of its most conservative member, it will not be inaccurate to frame the EU for following a securitized perception.

Despite of all, it would be unfair to argue that, the EU guidance and pressure did not provide the means and incentive to Turkish policy makers for reforming the country's asylum and migration management system. Although compared to contemporary legislation, the asylum system of Turkey was more liberal before the

1994 Regulation, as it is elaborated under the second chapter; the 1994 Regulation included various risks for violating the human rights of the asylum seekers. Since 1999, Turkey has entered into a rapid process of reform in its asylum and migration legislation and policies and the country has reformed its migration legislation and policies substantially. This reform process was shaped around in a more human rights based perspective; however, it was also implemented in a very cautious manner to minimize their effects on the country's economy and security. As the geographical limitation is still kept, it cannot be argued that the system is fully liberalized however; many positive developments are led by the EU persistence, such as lifting the five day limitation for applying for asylum.

As it is stressed in most of the chapters, the continuation of this trend of harmonization of the Turkish asylum legislation with the EU Acquis and the implementation of a possible readmission agreement are strictly interconnected with the introduction of functioning burden sharing mechanisms. Various Turkish authorities who are interviewed during this study, have repeatedly stressed their concerns on whether the conclusion of the possible readmission agreement between Turkey and EU would introduce further "burden sharing" mechanisms, or simply shift the burden to Turkey. The issue of burden sharing has also prevailed in the official documents, such as the National Program for the Adoption of the Acquis. Although both with the EU assistance and with the resources of the Turkish state itself, there are already various investments for capacity building to meet the outcomes of a possible readmission agreement, these concerns continue, finding the existing capacity building efforts inadequate.

Although much emphasis is put on the social, cultural or political burden of the readmission agreement, as it can be derived from the interviews with the various officials, and also from the root of the problems that are experienced in the implementation of the Readmission Protocol with Greece, the real burden is financial and its effects are felt in the economic sphere. In the interviews, it is seen that, the main emphasis is put on the possible increase in the costs related to reception, accommodation and return of the irregular migrants and the need for established mechanisms for collaboration in these issues. In the governmental level, it is possible for the EU to provide necessary funds and assistance, and share the burden. However, there is another economic aspect of the possible readmission agreement, in which increasing irregular migrant stock in the country will possibly become a part of an already well-established informal economy. To avoid this second type of economic burden to grow, it is essential for Turkey to be granted necessary financial assistance for the operation of the agreement, and to sign bilateral readmission agreements with the countries of origin to realize the return of the irregular migrants. In this case, the Syria-Turkey readmission agreement calls the attention for Turkey to the importance of signing readmission agreements with its eastern neighbours, to cope with the burden of a possible EU-Turkey readmission agreement.

As it is deliberated in the third and fourth chapters of this study, both in the cases of signing the readmission agreement and lifting the geographical limitation, the majority of the civil society, a considerable portion of the state officials and the academia, argue that, the uncertainties in the EU-Turkey membership negotiations lead Turkey to face a major dilemma. While, they cannot be certain whether there will be any progress in the EU membership process if Turkey chooses to cooperate with the EU in these issues, they believe that cooperation without a solid

membership prospect would leave Turkey by itself to face all the problems occurred as a result of this cooperation. However, on the other hand, they recognize that the cooperation of Turkey in these issues is membership conditionality and in the lack of it, the EU membership would be unthinkable (Kirişci, 2003:81). Apparently, Turkey is in a deadlock, on whether to harmonize its migration management policies with the EU, and as a result damaging its accession negotiations, resulting from the fear of the outcomes; of lifting the geographical limitation and signing a readmission agreement by undertaking the costs related with them.

It is seen that from the previous readmission agreements that the EU has signed with the Eastern European countries, the Union usually uses the introduction of a flexible visa regime as the carrot for the readmission agreements. The situation is no different in its negotiations with Turkey. As it is affirmed by various officials, many circles in Turkey hesitate to sign the readmission agreement in the absence of EU membership, and will not accept the visa facilitation as an adequate indemnity. Moreover, as a country in the accession negotiations process, Turkish officials stress upon the injustice they are facing for being treated like a mere third country, not like a membership candidate. Considering the countries with a real membership prospect, like Poland, have signed readmission agreements right before the membership, the introduction of the visa facilitations make Turkish officials question the EU's commitment to Turkey's membership negotiation process.

To make an evaluation of this thesis, it can be argued that, the main strength of this thesis is that, it is a unique study to analyze the negotiation on readmission agreement and lifting the geographical limitation from the Geneva Convention of 1951 together, in the EU-Turkish membership negotiations framework. As it is seen

during the study, these two phenomenons are very strongly interconnected and they are very suitable to be evaluated together in a study, as they are both long standing items of the EU-Turkish membership negotiations on Justice and Home Affairs. Moreover, although the discussions related with the readmission are in the centre of the securitization and border protection debates, and the discussions related with lifting the geographical limitation are evaluated in a human rights based framework; it has been interesting to find out these issues converge to a large extent in the expected outcome and evaluated as the same by the officials and practitioners, which is the increase in the financial burden for the state.

This thesis is also important, as it is written in a phase when the membership negotiations with the EU on Justice and Home Affairs are blocked by these two issues on the table. While there are no short term incentives that are introduced by the EU for lifting the geographical limitation and the visa facilitations incentive that is introduced for signing the readmission agreement is not found adequate to meet the burden of the agreement, it does not look like these items will be removed from the negotiation table in short term. As a result, these kinds of studies that are evaluating the involved actors and their preferences and also introducing the present circumstances on the issue are valuable.

The main shortage of this thesis is it has been considering the EU as a whole entity, by overlooking its internal dynamics and the other actors within the EU, related with migration management. This was due to two reasons. *First of all,* time and material facilitations were not adequate for an extensive research to be made by making interviews with the actors within the EU member countries. And *secondly,* this kind of research would increase the scope of this study to a large amount.

Considering this is a master thesis that has to be in a specific length, such an extensive research would not be suitable.

For further research, there can be a study on the issue, that is taking the EU's internal dynamics into account can be conducted. It may be interesting to find out the convergence or divergence between the political expectations of the individual states and the policies of the EU, on the policies that are directed to the membership candidate states. For a more extensive research on the migration related negotiation process between the EU and the third countries and for examining the characteristics of the EU migration management policies, a comparative study between two membership candidate countries can be conducted. Furthermore, for examining the efficacy of the EU membership prospect, on the implementation of the EU norms and policies, a comparative study between a membership candidate country and a European Neighbourhood Policy country, can be made.

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