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M.A. Thesis In International Relations

July – 2009

**TURKISH STRUGGLE WITH ILLEGAL
MIGRATION UNDER THE EU
MEMBERSHIP PERSPECTIVE**

Thesis submitted to the

Institute of Social Sciences

in partial fulfillment of the requirements

for the degree of

Master of Arts

in

International Relations

by

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July 2009

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To my family and to fiancé

APPROVAL PAGE

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Thesis Date : July 2009

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ABSTRACT

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July 2009

TURKISH STRUGGLE WITH ILLEGAL MIGRATION UNDER THE EU MEMBERSHIP PERSPECTIVE

Ever-globalizing world in both Cold War and Post-Cold War world has witnessed migration of great amounts and different characteristics. Thus, international migration has assumed increasing importance as a global issue. When we look at the case of Turkey in that context, we notice that it was a source to meet the need of labor force of Europe between the years 1960-1980 and since then it has become a target and transit country for irregular and illegal migrations. Owing to its location at the crossroads of Asia, Europe and Africa, Turkey has served as a source, transit and target country for the emigrants. Most of the illegal and irregular emigrants entering Turkey consist of Asian and Africans emigrants. These irregular migration activities mainly cover transit emigrants, illegal laborers, asylum seekers and refugees. Especially after Turkey's candidacy for European Union membership, such illegal migration has been an important agenda issue, as far as Turkey-European Union relations are concerned. The European Union's demands from countries like Turkey on the migration issue can be grouped into two categories. First, improvisation of political and social conditions for asylum seekers and refugees, and second, realization of controls and fight against illegal migration.

In consideration of the above- summarized facts, this thesis will focus on the issue of mostly illegal migration to and from Turkey, in the specified context of Turkey's relations with the EU countries. Accordingly, it will begin, in its first chapter, with some definitional discussion on migration. Due rightly to its importance, then, the following chapter will dwell on a common migration policy, by the ongoing efforts of the EU countries, in the context of their struggle against the negative outcomes of illegal migration. In the last chapter, which precedes an evaluative conclusion, the place of Turkey in the above context will be dealt in due detail, an appropriate stress being on Turkey's migration policies and relevant changes/developments in the context of the ongoing process of Turkey's quest for the ongoing process of Turkey's quest for EU membership.

Key words:

International Migrations, Illegal Migration, Transit Migration, Refugee, Asylum Seeker, Migration Policy.

KISA ÖZET

Elvan GEVREK

Temmuz 2009

TÜRKİYE'NİN AVRUPA BİRLİĞİ SÜRECİNDE YASADIŞI GÖÇLE MÜCADELESİ

Göç konusu dünyada, gelişen olaylarla birlikte şekillenmekte ve çeşitlilik arz etmektedir. Soğuk Savaşın bitmesiyle küreselleşen dünya, büyük çapta ve farklı karakterlerde göç hareketlerinin oluşmasına sahne olmuştur. Türkiye'nin göç tarihine bakıldığında, 1960-1980 yıllarının başına kadar Avrupa'nın işgücü ihtiyacı için kaynak teşkil ettiği, 1980'den günümüze kadar geçen sürede ise düzensiz ve yasadışı göç için hedef ve transit ülke konumuna geldiği görülmektedir. Asya, Avrupa ve Afrika kıtası arasında kalan Türkiye coğrafi konumunun etkisiyle göçmenler tarafından hem kaynak, hem transit, hem de hedef ülke olarak kullanılmaktadır. Bölgeler veya ülkeler arasındaki gelir dağılımındaki farklılık nedeniyle, gelir seviyesi düşük ülkelere refah seviyesi daha yüksek ülkelere yönelik hem yasal hem de yasadışı yollardan insan hareketleri meydana gelmektedir. Ülkenin ekonomik ve sosyal durumunun iyi olmaması göçü iterken, bunun tersi durumdaki ülkeler ise göçü çekici kılmaktadır.

Türkiye'ye düzensiz ve yasadışı yollardan girmeye çalışan göçmenlerin büyük çoğunluğunu Asya ve Afrika'dan gelen göçmenler oluşturmaktadır. Bu düzensiz göç akımları daha çok transit göçmenleri, kaçak işçileri, sığınmacı ve mültecileri kapsamaktadır.

Özellikle Türkiye'nin Avrupa Birliği'ne aday ülke haline gelmesi ile birlikte, Türkiye ve Avrupa Birliği ilişkilerinde yasa dışı göç önemli bir gündem maddesi haline gelmiştir. Avrupa Birliği'nin, Türkiye gibi aday ülkelere göç konusundaki talepleri iki grupta özetlenebilir. Bunlardan birincisi, mülteciler ve sığınmacılar konusunda, siyasal ve sosyal koşulların iyileştirilmesi, ikincisi ise yasadışı göçe karşı etkin bir mücadele ve kontrollerin gerçekleştirilmesidir.

Bu tezin birinci bölümünde, göçle ilgili teorik tartışmalara yer verilmiştir. Burada öne çıkan iki yaklaşım vardır. Bunlar: Neoclassical Political Economy ve Neo-Institutionalism. İkinci bölümde ise Avrupa Birliği'nin oluşturmaya çalıştığı ortak göç politikasına değinilmektedir. Bununla birlikte güvenlik endişesi yaklaşımıyla Avrupa Birliği'nin yasadışı göçü önleyici tedbirleri de anlatılmaktadır. Son bölümde ise, Türkiye'nin göç tarihine ve Türkiye'ye gelen göç akımlarına yönelik oluşturduğu politikalar anlatılmaktadır. Özellikle

Türkiye'nin Avrupa Birliđi sürecinin başlamasıyla birlikte deđişen ve gelişen göç politikalarına da değinilmiştir.

Anahtar Kelimeler; Uluslararası Göç, Yasadışı Göç, Transit göç, Mülteci, Sığınmacı, Göç Politikası

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LIST OF ABBREVIATIONS

ECSC	European Coal and Steel Community
EU	European Union
EC	European Council
EEC	European Economic Community
SEA	Single European Act
SIS	Schengen Information System
UN	United Nation
UNHC	United Nations High Commission
JCC	Joint Cooperation Certificate
IOM	International Organization for Migration

ACKNOWLEDGEMENTS

First of all, my special thanks go to M.Lütfullah Karaman who has greatly contributed to my academic studies. He also enlightened me during my whole university life. I want also extend my gratitude to my lecturers during my undergraduate studies, Ömer Çaha, Berdal Aral and Gökhan Bacık, who opened my mind to a broad understanding of political science and international relations. Finally, I deeply appreciate the motivation and inspiration provided by Ertuğrul Gündoğan and Özlem Demirtaş Bagdonas.

I would like to express my love to my mother and my father, who have always encouraged and brusted in me. And a very special thanks of mine is for a beloved person, my fiancé, who is waiting patiently and emotionally supporting me. Finally, I would like to thank my best friends, Tülin Tuna, Kübra Dilek Azman, Sinem Teymur Erdem, F.Eban Arıkan, Havva Dönmez, Arzu Yılmaz, for their never ending support me and by their not leaving me alone during my thesis work.

INTRODUCTION

This thesis examines the immigration policy of Turkey during the post-cold war era. It aims at contributing to the theoretical debates on the developing countries' immigration policies and related changes which have been often ignored in the migration studies. By evaluating the legislative and executive actions of Turkey against migration as a whole, it seeks the question of why Turkey has tended to change its migration policy to a more restrictive one. It focuses on the reflections of the changes in patterns of international migration and the European Union (EU) policies on controlling migration in Turkey.

The debates on the issue of migration have been gaining more currency in both academic and public discourse in the last two decades. Scholars are interested in both case based and comparative studies in order to address several specific issues relating to the migration. Parallel to that, attempts to theorize the migration policy are apparently increasing in the migration literature. Furthermore, the discussion on the determinants of policy change in the migration policy has turned out to be very critical as a result of rapid increase in the volume of the migration questions as well as changes in the patterns. Unfortunately, generally discussion on migration policies in general and on policy changes in particular have been examined by referring solely to a limited set of states. Theory building attempts largely

center on the responses of those states to the cases of immigration. Although such attempts underestimate the developing countries by handling them just as sending and receiving countries, empirical studies, however, point that they deserve much more serious attention. This is because; these countries have been experiencing significant changes in the nature of migration flows. First, intra-regional migration has been raised dramatically compared to south-to-north migration. In the second place, illegal and transit migration, refugee flows, waves of asylum seekers and temporary employees are on the rise compared with legal labor migration and legal immigration, which used to be characterizing the postwar period.

In this context, the case of Turkey illustrates an example of transit and immigrant country rather than an emigration one. This case helps us explore the developing countries' migration policies and policy changes. Turkey has exemplified above mentioned changes in the scope of international migration. It has been exposed to the intra-regional migration as well as the illegal and transit migration, refugee flows and labor migration. Also, Turkey has tended to change its migration policy since the end of the Cold War. Turkish state is likely to views the immigration issue as a security threat to its national integrity and territoriality. This situation raises two important questions: First, why has the Turkish state tended to enforce a more restrictive immigration policy. Second, how has it imply these policies?

In this thesis, I attempt to briefly examine the current literature on the migration policy. After reviewing the main theoretical debates on migration policy, the policy change and controlling immigration will be addressed in its first chapter. I would like to criticize the current literature due to their ignorance of the developing countries policies. Accordingly, Turkey's immigration policy will be analyzed as the focal point of the thesis, within a separate chapter. In that context, I will attempt to clarify what I refer with the concept of "immigrant" in this study. I will utilize the concept of immigrant to refer refugees, asylum seekers, temporary asylums, transit migrants, illegal migration and economic migrants in Turkish case. Then, procedural context and policy implementations will be examined to seek to question of how Turkish state addresses the issue of immigration control. This discussion will particularly concentrated on the policy changes after the 1990s. Second, I will focus on the why side of the case? My two hypotheses will be as follows: First, Turkey's more restrictive policies stem from rapid increase in the number of immigrants and emergence of various irregular immigration patterns in the post-cold war era. Second, Turkey's pre-accession process to the EU has been causing to follow more restrictive policies.

CHAPTER I

THEORETICAL DISCUSSION OF MIGRATION

1.1. MIGRATION POLICY

Migration policy mainly concerns with two themes. The first theme addresses the questions about the regulation of immigration through various control mechanisms set by the state. Nowadays, the integration of immigrants in the host society has been signified as the second theme. The burgeoning of the literature about migration policy urges scholars to develop consistent theories about the overall migration process. First, I would like to briefly discuss two main schools related with the migration policies and then mention about the alternative theory of Christina Boswell, developed and discussed in her remarkable article in the international migration review, titled as "Theorizing Migration Policy: Is There a Third Way ". To be more specific, arguments about immigration control issue will be addressed as an additional part. Also, I will raise questions about the problem of the current literature which inclines to ignore the migration policies of developing countries.

As Boswell argues in her above-noted study themes of immigration control and integration policies have been driven by two approaches as to

theorize migration policy: *neoclassical political economy* and *neo-institutionalism*.¹

Political economy approach assumes that migration stems from a combination of “push” factors that incite people from poor countries to look for a job in richer countries and “pull” factors that makes host countries willing to use foreign workers to meet the needs of their economies. Immigration is perceived as in the simple supply-demand relation.²

It offers a set of generalizable propositions that are empirically testable and have predictive potential. By remaining within the context of political economy approach, some scholars improve more advanced models than the push-pull model. For instance, Garry Freeman model assumes that migration is essentially determined by the content and relative power weighing on organized interests in a given society.³

He claims that “where the costs or benefits of migration are concentrated on a particular group or groups, they are likely to organize more effectively and thus have a greater influence on policy”.⁴

As the second school, neo-institutionalism deal with the structures and institutions shaping the practical politics in the host countries. In this view, the persistence of immigration in industrial democracies comes mainly from political liberalism and the emergence of a right based regime structure

1 Boswell, Christina (2007), “Theorizing Migration Policy: Is There a Third Way?”, *The International Migration Review*, 41, Spring: 75.

2 Giugni, Marco and Passy, Florence (2006), “Introduction: Four Dialogues on Migration Policy”, Giugni, Marco and Passy, Florence (eds.), *Dialogues on Migration Policy*, Boulder: Rowman and Littlefield Publishers, p.8.

3 Boswell, (2007), p. 75.

rather than structure of the economy and interests of groups as political economy approaches. Because of norms and rules set by political liberalism caring regimes, countries fail to effectively control immigration. The extension of civil, political and social rights to every member of the society (including migrants) has made use of the foreign labor force as a “shock absorber” difficult and has increased the impact of both family reunification and asylum-seeking as a source of international migration in recent years.⁵

Political economy and neo-institutionalism schools have been subject to various critiques. As Boswell argues, political economy approach seems theoretically robust and active, but at the price of the oversimplification. She also alleges that “neo-institutional theories offer more sophisticated accounts, but fall short on a number of methodological and explanatory counts.”⁶ Both of them underestimate the role of the state in migration process. Arguments about the fascinating role of the globalization and post-state era help to develop a migration theory without taking state into account. As indicated in various immigration studies, migration theory needs to call state back into the theorizing attempts. Boswell addresses states this necessity by offering an alternative theory which would make emphasis on the functional imperatives of the state in the area of migration, which shape

4 Ibid, p. 77.

5 Giugni and Passy, (2006), p.9.

6 Boswell, (2007), p.75.

its responses to societal interests and institutional structures⁷. The alternative theory locates the key explanatory variables of migration policy in the relationship between the state and groups or institutions resisting its restrictionist bent.⁸ The alternative theory tends to conceptualize state as an actor in its own right, capable of defining and pursuing its own goals.⁹ Also, it takes into consideration that the state is frequently constrained into the pursuit of its objectives by societal interests, its own administrative departments and the judiciary or the international system.¹⁰

Literature on migration policy has still some theoretical concerns on which scholars often cannot reach a consensus of opinion. Some of these concerns are enumerated by Marco Giugni and Florence Passy summarize in *Dialogues on Migration Policy* as; the role of the national state in a globalizing world; determinants of policy change whether in economy or in politics and whether domestic or international factors and the role of collective interests.¹¹

7 Ibid, pp. 75–100.

8 Ibid, p.77.

9 Boswell, (2007), p.76.

10 Ibid, p.79.

11 Giugni and Passy, (2006), p.2.

1.2. POLICY CHANGE IN MIGRATION POLICIES AND CONTROLLING IMMIGRATION

The argument on the contributing causes of policy change in the migration policy becomes much crucial due to the sharp increase in the dose of the migration problems in addition to the structural changes. "Some analysts have stressed the impact of economic factors for explaining the changes in migration policy."¹² In contrast to the first perspective, other analysts point to the role of political factors in defining and bringing out the changes in migration policy. Still others argue that the nature and form of policy-making largely depend on the national or ethnic origins of migrants. Moreover, several authors stress the impact of national institutions on the political responses to immigration flows and settlements.

Although policy changes stem from various overlapping factors, it is observable that its direction is rather to restrictive control policies. Thus, immigration control occupies the main seat theme of migration literature. In *Controlling Immigration*, Wayne Cornelious and Takeyuki Tsuda specifically deal with the immigration control policies and their outcomes to develop a global perspective. Of two central hypotheses they tested in eleven advanced industrial countries are gap hypothesis and converge hypothesis.

¹² <http://www.odi.org.uk/events/2008/04/migration/index.html>, (03.05.09)

The gap hypothesis assumes that the gap between state policy objectives and outcomes in industrial countries seems to be growing wider.¹³ Most policy gaps are caused by unintended consequences of policy and inadequate implementation or enforcement of policies. Cornelious and Tsuda argue that the policy gaps can be associated to the flawed policies, macro structural explanations, domestic and international political constraints and ambiguous policy intentions. In their view, "National political culture can also contribute to policy gaps by politically and sometimes legally constraining the state's ability to pursue harsh immigration control measures like mass roundups and deportations".¹⁴ Although there is no global enforcement mechanism that can guarantee the rights conferred upon migrant workers by international conventions, international policy pressures in different weights can also contribute to the gaps between national immigration control policies and outcomes.

In addition to the immigration control, converge hypothesis focus on more general patterns and also deals with the integration. *In controlling immigration*, converge hypothesis is diagnosed as "converge is occurring across advanced industrial countries in their immigration control and

13 Cornelious, Wayne and Tsuda, Takeyuki (2004), "Controlling Immigration: The Limits to Government Intervention," in Wayne Cornelious, Takeyuki Tsuda, Philip Martin and James Hollifield (eds.), *Controlling Immigration: A Global Perspective*, California: Stanford University Press, p.4.

14 Ibid, p.13.

immigrant integration policies."¹⁵ Policy convergence is explained by the parallel path development, policy emulation, regional integration, global events, geopolitics and public opinion.¹⁶ The parallel path development which particularly implies that immigration "policies can converge simply because countries face similar domestic pressures and constraints that cause them independently develop similar policy responses seems reasonable to discuss immigration policies in the developing countries."¹⁷ Regional integration, on the other hand, as has been observing in the cases of the European Union and its neighbors relation can pave the way for exploring immigration policy changes in the developing countries.

Although the articles in the *Controlling Immigration* largely focus on the objectives, motives, outcomes of the receiving states, they do not give ear to one of the most significant discourses which facilitates to imply all controlling methods and policies. This one is the securitization of the migration in the ideational level. By securitizing, the migration has been reflected as the challenge to the state function. It has two-fold according to Boswell. First, "irregular migration has been linked to all sorts of security problems in political debates and the mass media: criminality, trafficking in people, organized crime and terrorism. Second, migration is perceived to

15 Ibid, p. 15

16 Ibid, pp.17–19.

17 Ibid, p.17.

raise more diffuse concerns about the capacity of states to control their borders and to regulate the residence and employment of non-nationals.”¹⁸

1.3. MAIN GOALS AND ARGUMENTS

The main theoretical puzzle, engaged generally in migration policy literature, and specifically in arguments about the immigration control, is that both of them largely center on the developed and/or liberal states’ policies and concerns. Although the literature seeks to theorize migration policy, it frequently argues the different aspects of migration in a certain set of states namely liberal; democratic; liberal- democratic; and industrialized ones. A primary focus remains on the concerns of these states and their responses to the cases of immigration. This is the problem of ignoring *receiving* states of the global South by addressing them neither in critiques of migration theories nor in alternative theories. In this context, insistence of the foci on theoretical perspective in the favor of receiving states of North leads two problems as Laurie Brand argues in the *Citizens Abroad: Emigration and the State in the Middle East and North Africa*. First, “receiving states of the global South are understudied and second, little work has in fact focused on the emigration and state/country of origin.”¹⁹ The theoretical focus of this study

18 Boswell, (2007), p.89.

19 Brand, Laurie A. (2006), *Citizens Abroad: Emigration and the State in the Middle East and North Africa*, NewYork: Cambridge University Press, p.2.

will be the former one, migration policies of the receiving states of the Global South.

Although the theoretical attempts leave developing countries in the cold rating them just as sending and receiving countries; empirical studies, per contra, allege that they merit much more detailed reference. Significant changes in the nature of the migration flows have been experienced in the last two decades. First, intra-regional migration has been on the rise compared to south-to-north migration. Cases in point are flows of people within cultural regions in Africa, from the Horn of Africa to the Middle East, from the Mediterranean Basin to Western Europe, from South Asia to Gulf Region and etc. In the second place, illegal and transit migration, refugee flows, waves of asylum seekers and temporary contract labor migration are on the rise compared to legal labor migration and legal immigration, which once featured the post-war period.²⁰ For instance, Hassan Boubakri argues that "a series of major shifts in international migration in the Maghreb have helped to push this region to the fore and prompted the Maghreb states to begin gradually introducing regulatory and administrative procedures for managing and monitoring both inflows and outflows of migrants."²¹

20 Brewer, K. T. and Yukseker, D. (2005-2006), *A Survey on African Migrants and Asylum Seekers in Istanbul*, project prepared for Migration Research Program at Koc University Turkey, p.9.

21 Boubakri, H. (2004, September and October), "Transit Migration between Tunisia, Libya and Sub-Saharan Africa: Study Based on Greater Tunis" paper presented to the Regional Conference on Migrants in Transit Countries: Sharing Responsibility for

New migration patterns generate new overlapping milieu such as transit migration, transit migrants and transit countries. According to the Milada Anna Vachudova defines "transit migration is defined as 'migration to a country with the intention of seeking the possibility there to immigrate to another country as the country of final destination."²² Transit migration constitutes a phenomenon which may cut across various categories of migrants, ranging from legal, illegal or irregular migrants to readmitted migrants, asylum seekers and refugees.²³ Transit migrants spend an indefinite time in transit countries until they gain entry into their destination country. According to the Phillippe Fargues and Ali Bensaad attract notice to that "countries that border major regions of destination of international migrants are turning into places of transit for migrants originally bound for their neighbor."²⁴ Such flows are often intertwined with asylum seeking and sometimes are organized by criminal rings such as human smuggling and trafficking.²⁵ Their views especially underline four regions where "transit migration has gained tremendous momentum in four regions. First is at the

Management and Protection, Istanbul: Turkey.

22 Vachudova, Milada Anna, (2000), "Eastern Europe as Gatekeeper: The Immigration and Asylum Policies of an Enlarging European Union", in Peter Andreas and Timothy Snyder (eds.), *The Wall Around the West State Borders and Immigration Controls*, Rowman & Littlefield Publishers, p.10.

23 Cassarino, Jean and Fargues, Phillippe (2006), "Policy Responses in MENA Countries of Transit for Migrants: An Analytical Framework for Policy Making" in Ninna N. Sorensen (eds.), *Meditarranean Transit Migration*, DIIS: Danish Institute, p.102.

24 Fargues, P., and Bensaad, A. (2007, March). "Senders Turned into Receivers: Transit Migration in the Middle East and North Africa" paper presented to the 8th Mediterranean Research Meeting, Florence and Montecatini Terme, p.2.

external borders of the EU, in Eastern Europe and Russia on one side, and in all South Mediterranean countries from Mauritania to Turkey on the other side. Second, at the border of the Gulf, Yemen has emerged as another key country of transit migration. The third and fourth regions are Central America, at the border of the United States and the South East Asia at the border of Australia."²⁶

In this context, political economy, neo-institutionalism and aforementioned alternative theory of Boswell could provide partial explanation for the current policies of the developing countries.²⁷ Also, gap hypothesis dealing with the policies and outcomes of the migration control policies in the industrialized countries could remain inadequate to grasp whole picture. Emphasis on the developing countries continue to stay as a the respond to the theoretical question of what accounts for variations in migration policy across nations and over time. By keeping nation-state as central to my analysis, I believe that following questions about immigration policies of the developing countries might be addressed. How does state define its choices and constraints? Which collective actors are influential on

25 Brewer and Yukseker, (2005–2006), p.9.

26 Fargues and Bensaad, (2007), p.2.

27 Flawed policies: Governments have continued to rely on policy instruments with inherent flaws that fail to deter unauthorized immigrants and asylum seekers but produce serious unintended consequences. Macro structural explanations: demand for foreign workers. Domestic and international political constraints: in liberal democracies immigration policy-making is frequently captured by special interests groups such as employer groups, ethnic and immigrant advocacy groups, even labor unions and bureaucracy. Ambiguous policy intentions: officially declared immigration

this field? How do the developing countries construct reductionist immigration policies? Under what circumstances the developing countries tend to follow reductionist immigration policies? Is there a general trend toward more restrictive and exclusionary policies or rather a trend toward more liberal and inclusive policies? Do we observe policy convergence and an Europeanization of immigration control outside the European borders? Do international system and supranational authorities by setting international norms and rules push governments to in the direction of more liberal policies as assumed in the literature?

I hypothesize that high level of economic inequalities within and between countries in neighboring regions, ongoing civil wars, continuation of sensitivities about "others" in state and nation building processes, inadequate resources of states to deal with immigration flows can be discussed as additional factors to explain migration policies. Furthermore, more outside the policies of the major countries of destination such as the European countries which aim to hold migrants outside of their state borders cause accumulation of those 'volunteers' in the developing countries. This systemic factor should be examined through comparative studies.

policy is often quite different from actual intentions.

CHAPTER II

EU'S IMMIGRATION POLICY AND EU-TURKEY RELATIONS

2.1. THE EU'S IMMIGRATION POLICY

In this chapter, before specially focusing on Turkey's current condition regarding illegal immigration, Turkey's relationship with the EU will be scrutinized and Turkey's policies of struggle against the illegal immigration and their enactment with regard to the EU accordance policies are to be mentioned. I will discuss Turkey's illegal immigration issue within the context of its relations with EU is to follow.

As mentioned in the previous chapter, the European Union looks at illegal immigration phenomenon through security perspective. Moreover, even at the accepted the Hague program, struggle against the illegal immigration is seen as a matter of international security problem.²⁸ In this respect, it is important to assess the European Union–Turkey relationships in terms of global security line.

As a step of Europe's collapsing economy and thus a re-establishment of its social and political structure after the Second World War, European Coal and Steel Community (ECSC), the origin of today's EU, was established

²⁸ The Hague Program: Ten priorities for the next five years, Communication from

in Belgium by six members i.e. West Germany, Luxemburg, France, Italy and Holland in 1951. During the post-war period most of the European countries attempted to take many immigrant workings in order to flourish their collapsed economy. In a sense, formation of the EU, which grew rapidly and was integrated by the initiation of these six countries, took place simultaneously with these dense immigration waves that poured to Europe. One of the most important outlets in the history of the EU, which consists of 27 members today, from 1951 to 2009, is no doubt the millions of workers that migrated from European colonies and the countries at the vicinity of Europe. It is estimated that 60–70 million workers have migrated to Europe within the last 50 years.²⁹

For the last 50 years, it has been known that each the EU member state has unique peculiar experiences in immigration more than the experiences that we can generalize about the entire the EU member states. The related migration history and politics of every state hold different positions. When looked at this point of view, it is not possible to say that there is a formation of general, detailed and comprising immigration politics in the EU. Despite the fact that significant attempts have been made recently, no concrete results have been obtained yet.

the EU Commission to the European Parliament, Brussels, COM (23 May 2005).
29 İçduygu, Ahmet (2006), *Türkiye-Avrupa Birliği İlişkileri Bağlamında Uluslararası Göç Tartışmaları*, İstanbul: TÜSİAD, p.48.

Until 1990s during which migration and asylum policies were made to be concordant within the EU, international migration process which Europe also passed through is as such. While approximately 20 million immigrants³⁰ came to the continent by the encouragements of European countries conceived them as temporary immigrant workers at the period of 1950–1974, with the economical crisis after 1974, rope ceased receiving immigrant workers, and the immigrations after this year continued in the form of the union of families and marriage immigrations. In the 1990s Europe especially prior to and post collapse of communist regime came face to face with dense asylum activities. More than four million refugees³¹ move to Europe in the 1990s. During the same period, 600.000–800.000 people are estimated to immigrate to Europe every year.³² The immigration policies of the European states became more evident in the years towards the late 1990s and early 2000 against the immigration.

Attacks of September 11, 2001 and that of Madrid Metro in Europe have been a turning point in International immigrations.³³ As a matter of fact, international immigration after the period of 1990s was considered as the basic factor of gradually increasing unemployment on the one hand and

30 Ibid., p.49

31 OECD (Organisation for Economic Co-operation and Development). (2003), *Trend in International Migration*, Paris: OECD Publication, p.238

32 IOM (International Organization For Migration),(2005), *World Migration*, Geneva: IOM Publication, p.77

33 Baykal, Mehmet (2005). *Uluslararası Göçün Soğuk Savaş Sonrasında Aldığı Şekil*

international security problem on the other. These events are said to contribute to the negative evaluation of international population movement and their increasing tendency in the EU as well as to the increase of hatred against the foreigners.

It is obvious that general topic related to international immigration contains two paradoxes. First of them can be accounted for the aging of European population and low birth rate with labor market's rapidly increasing need of laborer (sure enough it is obvious that it can only be provided by immigration), and on the other hand for standings against immigration and foreign labor power. Secondly, assertion for the need of qualified supply of labor came forward and the EU economies' absorption of thousands of unskilled labor force that came by immigration mainly.

After signing Single European Act dated 1987, an official ground where topics like immigration and terrorism were mentioned for the first time together with the European Community politics, and cooperation in Justice and Home Affairs took place as a result of the process aforesaid. Besides, since the welfare and economic condition would develop more as an outcome of the goals set by SEA, this circumstance would make Europe as a

Ve Bunun Türkiye ve Avrupa Güvenliğine Etkileri, Unpublished M. Sc. Thesis, Genel Kurmay Başkanlığı HAK SAREN Uluslararası İlişkiler Anabilim Dalı, p.94.

centre of attraction. Developments that took place after SEA cleaned the way for the immigration activities towards to Europe.³⁴

In respect to SEA, as a result of free commodities, services, capital and travel of the people, the security phenomenon became more troubled. Gradually this problematic state edged towards the terrorists, escaped bank robbers, international crimes, illegal drug trade and immigration trades. Collective punishments for joint crimes were put on the agenda time to time; however, this arrangement had not found ground for discussion.³⁵ In a way, the removal of border controls for economic purposes and free liberty of action made the activities of crime organizations easy in the Community.³⁶ The topic of the 'free movement of persons', because of the security problems that it brought, requires the increase of the border controls, bringing forward new arrangements regarding this issue and determining new policies about asylum and immigration policies which are directly related to the topic and common action.³⁷ In the process of its formation, we can see how the EU produces insecurity. Free travel principle policy of the EU citizens was formed to contribute to the redefinition of the identity of Europe

34 Kaya, Ahmet (2005), *Avrupa Birliđi'nin Yasadıđı Gle Mdele Politikası Ve Trkiye zerindeki Etkileri* (The struggle policy of EU against illegal immigration and its impacts on Turkey), (Master Theses, Ankara niversitesi, 2005), p.32

35 Lodge, Juliet (1993), *The European Community and the Challenge of the Future*, Juliet Lodge (eds.), Pinter Publishers, London, pp.315-339

36 Kktađ, Akif (2000), "Avrupa Birliđi ye Devletlerin Yeni Polis teđkilatı, Avrupa Polis Ofisi", *Polis Dergisi*, 22, Winter: 61.

37 Ertan, Beđe (2002), *Terrizm, Avrupa Birliđi Ve İnsan Hakları*, Ankara: Seđkin Yayınları, pp.77-78.

and integrity of European Union. However, putting this principle into effect opened the gate for immigration problems which constituted an unsecured field in the European Union. During this period, the Union encouraged the immigration and took limiting precautions as well. Accordingly, Schengen Agreement and European Agreement for Struggling against Illegal Immigrants dated 1990 put some cautions and aims at forming cooperation modules in this respect.³⁸

Discussion of international immigration and asylum in the institutional integrity of the EU started with their presence in Maastricht Agreement, the EU's Founding Treaties on Justice and Home Affairs was signed in 1991 and enacted in 1993. The aim here is the EU's condition of being a place of security in accordance with the free travel of the people in principle. On the other hand, in the Amsterdam Treaty, signed in 1997 and put into effect in 1997, the strengthening of coordination in asylum and immigration fields was required. Hence, policies like visas, asylum, immigration and free movement of persons took part in the Community policies as the first essential pillar of Maastricht Agreement and thus they occupied a crucial place within the frame of rules and regulations in scope of the Community legal devices. Therefore, the decisions after the year 2004 are required to be taken by the

38 Boer, Monica Den (1996), *Policymaking In The European Union*, London: Oxford University Pres, pp.390–397.

qualified majority and in this way Commission, Parliament and the Court of Justice were given authority.³⁹

Many member states are under immigration pressure. This is why the EU has attempted to form some immigration policies recently. The Community tries to overcome ease this pressure by establishing a balance between the economical and humanity values in accordance with regulations and international agreements. The aim is developing common policies on illegal immigration; to put common policies on immigration together⁴⁰ in a concordant way, prevent illegal immigration, establish advanced mechanism and precautions to struggle with the illegal immigration.

Antonio Vitorino, European commissar for justice and home affairs, stated that 500.000 illegal immigrants have entered the EU lands, and it is necessary to have legal immigration facilities while struggling against the illegal immigration.⁴¹ The struggle against the illegal immigration should be rather for criminal dimension of human traffic and trade of immigration. In this respect, illegal immigration is a phenomenon, not a crime. Its characteristics that form a crime is defined both in international (related UN agreement organizing illegal immigrant traffic and human trade by Protocols)

39 Kaya, Ahmet (2005), *Avrupa Birliği'nin Yasadışı Göçle Mücadele Politikası Ve Türkiye Üzerindeki Etkileri*, p.56

40 Alkan, M. Nail (2002), *Avrupa'da Sınırlar*, Ankara Üniversitesi Avrupa Toplulukları Araştırma ve Uygulama Merkezi, Ankara, s.68.

41 Kirişçi, Kemal (2002), *Justice and Home Affairs Issues in Turkish-EU Relations*, İstanbul:

and national law (Turkish Penal Law). Thus, it is necessary to approach illegal immigration as a phenomenon in frames of human rights and social development to take required steps to solve the problem.

Solution of illegal immigration problem can be possible with middle and long-term methods. It is understood that short-term limiting cautions are far from bringing solution. Long-term solution lies in the policies for *resource* countries. The most important of these solutions is to maintain political stability and increasing welfare in these countries and regions.⁴² This circumstance requires the short-term and long-term solutions to be conducted in balance.

Turkey as mainly a transit but sometimes a *resource* country needs to be taken into a serious consideration by EU, especially while it is a candidate for the Union. The next part will scrutinize this compulsory affiliation between Turkey and EU in terms of immigration problems.

2.2. TURKEY-EU RELATIONS IN THE CONTEXT OF IMMIGRATION

Turkey-EU relationships which has a history of 50 years emerged with the facility of cooperation regulations between Turkey and EEC (European Economic Community) in 1960s. These relationships of Turkey–EEC gained a

TESEV Publication, p.46.

42 Laçiner, Sedat, Özcan, Mehmet and Bal, İhsan (2004), *Türkiyeli Avrupa, Türkiye'nin Üyeliğinin AB'ye Olası Etkileri*, İstanbul: Hayat Yayınları pp.199-200.

new dimension with determining Turkey as a candidate member in Helsinki Summit Result Announcement of European Council dated 11 December 1999. After Turkey's candidacy as a member state, the Accession Partnership was prepared for Turkey: Turkey issued many laws and Constitutional changes for acquirement of the EU and thus EC accordance by establishing its National Program.⁴³

As an outcome of these general and concrete developments we mentioned, a decision to start full membership negotiation with Turkey by 3 October 2005 was taken at the EU Council Summit in Brussels on 17 December 2004. Full Membership Negotiation frame Certificate that determines the general joint negotiation principles between Turkey and the EU was acknowledged by taking the Commission's decisions into consideration at the European Council of Ministers meeting held in Luxemburg between the dates 2-3 October 2005. After the acknowledgement of these certificates, Turkey's EU membership negotiations officially started with an Intergovernmental Conference held at the same time in Luxemburg. İsmail Cem who was Foreign Minister, summarized the Turkey and the EU relations under circumstance.

43 Özdal, Barış and Genç, Mehmet (2005), *Avrupa Güvenlik ve savunma politikası'nın Türkiye AB ilişkilerine Etkileri*, İstanbul: Alfa Aktüel, p.70.

“Turkey’s relationship with the EU is based on mutual benefits. Thus it is a healthy relationship. Here Turkey is not the only taking and gaining side. Europe’s benefit by opening the way for Turkey’s membership is at least as big as the number of Turkish people. By saying this, Former Minister of Foreign Affairs Ismail Cem emphasized on the fact that the relationship between the EU and Turkey take places mutual interaction basis rather than a single sided effect.”⁴⁴

Turkish immigration to Europe started by a mutual agreement on 30 October 1961 between Germany and Turkey for economical reasons, and continued in a way to include all West European countries. When current statistical information is analyzed, it is seen that there are about 3.7 million Turkish citizens in the EU countries out of all 4 million Turkish immigrants abroad, and when considered that there are 20 million immigrants in the EU states, Turkish people in Europe form one of the largest immigrant groups.

However, immigration is not the only factor that affects Turkey–EU relations. Since Turkey became a state receiving immigration and being a location for the transition of other immigrants since the beginning of the 1980s, Turkey’s position in European oriented international immigration regime changed as immigrant receiver, immigrant giver and state of

44 Cem, İsmail (2004), *Türkiye Avrupa Avrasya*, İstanbul: İstanbul Bilgi Üniversitesi, pp.74–75.

immigrant transition place.⁴⁵ For this reason, in regard to border security and struggle against illegal immigration as well as its own security and negotiations, Turkey has to take various responsibilities and develop some strategies.

Immigration issue is considered as a factor, by the EU in general, that hardens the Negotiation Process for Turkey which is both a source and a transition state. By the official start of Turkey's negotiations with the EU in October 2005, the EU Justice and Home Affairs commission underlines the fact that Turkey has to do some changes regarding the immigration regulations. Among the demands of the EU about this issue are required preparations to join the Schengen Information System (SIS) and Europol, to make visa rules and application in accordance with the EU standards, to fight against illegal immigration to Turkey and most important of all i.e. Turkey's removal of its condition set for 1951 the Geneva Convention about geographic worry. Turkey has no responsibility towards the people emigrating from the eastern countries in scope of the Geneva Convention.

Another point that the EU states worry about the immigration issue as far as Turkey's membership is concerned, is illegal immigration through Turkey to Europe. Border inspections between EU and Turkey emerged for the first time in June 2008 when they got together regarding immigration.

45 İçduygu, Ahmet (2007), "Türkiye-Avrupa Birliği İlişkileri Bağlamında Uluslararası

Especially after the Helsinki Summit of the EU in 1999, with regard to asylum and immigration policies that it applies to Turkey, after the removal of the geographic worry, the most significant issue is to strengthen border inspection. That the EU countries mainly develop cautions to increase the border control and security in the solution of the problem paves the way for the victimization of people escaping from pressure, poverty and tyranny in the hands of organized crime networks.⁴⁶ To approach the matter only in security orbit, only changes ground in getting rid of the matter. Therefore, applying effective security cautions form only a part of struggle against the illegal immigration. To take socially oriented approaches (political fields such as social development and human rights) along with the approach of security perspective fastens the process of success in the ground of strife.

As it is the transition point for the resource countries in Asia as well as for the commence of its relationship with the EU that opens paves the way for the initiation of the EU membership procedures, Turkey had to do many legal arrangements on issues like immigration and asylum for the acceptance of the EU acquirements.⁴⁷ Besides, while making deterrent arrangements in

Göç Tartışmaları”, TÜSİAD Basın Bülteni, p. 24.

46 Laçiner, Özcan ve Bal, (2004), pp.199–200.

47 Kirişçi, Kemal (2002), *Justice and Home Affairs Issues in Turkish-EU Relations*, p.53

struggle against illegal migration, some centers must be established for the provision of the return of those who are caught in illegal immigration.⁴⁸

2.3. REFUGEE POLICIES IN THE EU AND TURKEY

Before beginning to discuss the issue of refuge in European Union and Turkey, we had better clarify what should be understood from these concepts. Though the concepts of 'asylum seeker, refugee and immigrant' are seemed similar, these concepts are different from each another in deed. However, today we see the use of the concept asylum seeker as an adaptation of the concept refugee to the current use. A person who seeks shelter in a third country leaving his homeland is called "asylum seeker." Nevertheless, the concept of "refugee" is used to refer people who are given shelter after the evaluation of their refuge application by state authorities with the implementation of national and international laws.⁴⁹ According to Geneva Convention, 1950, refugee is defined as the person who rightly feels the fear of being oppressed for his race, religion, nationality, belonging to a

48 BMMYK, AB Komisyonu ve Türkiye İçişleri Bakanlığı (şubat 2005), *İltica ve Göç Mevzuatı*, İltica ve Göç Konulu Avrupa Birliği Eleştirme Projesi Yayını, Ankara, p.41.

49 Kirişçi, Kemal, (2008) "Osmanlı ve Cumhuriyet Türkiye'sinde Göç ve Sığınma" (Immigration and Refuge in the Ottoman and Republican Turkey), *Düşünce ve*

particular social group, political thoughts because of the events that happened in Europe before 1951, and in fear of this, which has to flee his country and asks for shelter from another country.⁵⁰ Two points are remarkable in this definition: refugee's being outside his own country and his rightly feeling of fear. According to the definition of Fuat Özdoğdu, who is United Nations High Commissioner of the Istanbul represe, generally people become refugee in three ways:

i) Individual Refugee: When people leave their homeland and seek shelter in another country, they are called individual refugees. After they are subjected to status determination interviews in United Nations High Commission (UNHC) or in the country where they seek refuge, either they are given refugee status or they are rejected.

ii) Prima Facie Refugee: This term comes up at times when there are concerted population movements. UNHC or relevant countries can't interview with everyone individually and accept everyone as prima facie refugees because the reasons why they left their countries are presumably known. For example, the state of war might be one reason of this. The people coming to Turkey from central and southern Iraq after the Iraqi war are the examples of this.

iii) Refugee sur-plus: A person might leave his own country and go to another not because of reasons like oppression, war, but because of reasons like being a student and tourist. Upon the change of the conditions in his homeland, he can seek refuge and stay there as a refugee.⁵¹

Before discussing the approach of Turkey to the issue of refuge, it is better to make it clear that Turkey does not regard itself as an immigrant receiving country and because of this, Turkey has never been in attempts to

Gündem, 44, Summer: 12.

50 Geneva Convention, http://en.wikipedia.org/wiki/Geneva_Conventions, (03.4.09)

51 Özdoğdu, Fuat, (2008), "Refuge Movements in the world, the position of Turkey and the problems faced by refugees", *Düşünce ve Gündem*, 44, Summer: 23.

form immigration policy.⁵² The first legal regulation regarding refuge in Turkey was enforced with the settlement law no 2510 in 1934. In the issues like who are given the refugee status, who are naturalized, Settlement law mostly used 'the allegiance to Turkic race and culture' as the basic criteria.⁵³ The law which was prepared with a nationalist discourse, as it is expressed by Kemal Kirişçi, it gives us some clues about the new identity based on a homogeneous nation which was aimed at being built by the young Turkish Republic after multiethnic Ottoman society.⁵⁴ Moreover, this law forms the background of Turkey's persistence in deportation, settling refugees in a third country and cultural and ideological background of the geographical restrictions annotated in Geneva Convention.⁵⁵

Turkey is one of the countries who formed and signed Geneva Convention which determines the status of refugees in 1951 in the aftermath of World War II. Turkey, who signed the agreement using the right of time limitation and geographical reservation, stated that it would provide protection for the refugees coming from Europe as a result of the events happened before January, 1951. Turkey agreed to abolish time limitation while signing the supplementary protocol regarding refugees in 1967;

52 İçduygu, Ahmet and Keyman, Fuat (2000), "Globalization, Security, and Migration: The Case of Turkey Global Governance", 6, July-September, p.385.

53 Didem Daniş, Aslı (2004), "New Immigration Movements and Turkey", *Birikim*, 184-185, August-September: 216-224.

54 Kirişçi, Kemal (2000), "Disaggregating Turkish Citizenship and Immigration Practices", *Middle Eastern Studies*, 36, Winter: 1-22.

however, it did not abolish geographical reservation.⁵⁶ In accordance with this reservation, those coming from outside Europe are not accepted as refugees by Turkey, they are provided with temporary protection and they are sent to other countries. In other words, Turkey does not fully claim responsibility for the refugees coming from outside Europe because of social, political and geographical reasons. This agreement is of great importance since it was the first one to determine the rights of refugees and immigrants.

Until 1990s, Turkey treated the coming refugees based on Settlement law, Geneva Convention and general established practices. During this period, the number of those who took refuge in Turkey coming from Soviets and neighboring countries exceeded 20 thousands and they were accommodated in third countries as refugees.⁵⁷ This practice continued until the late 1980s but as of this date, Turkey began to receive immigration from Middle Eastern and African countries as well. Nevertheless, the events happening in the neighboring countries and the fact that majority of the refugees were coming from outside Europe revealed that there was deficiency in this field. Furthermore, upon seeing 468 Kurdish people knocking on the door of Turkey in one night, it was seen that there had been

55 Kirişçi, Kemal (2003), "The Question of Asylum and Illegal Migration in European Union-Turkish Relation", *Turkish Studies*, 4: 79–78.

56 Johansson, Bo and Zeybekoğlu, Emrehan (eds.) (2003), *Asylum in Turkey: Today and Future Prospects, in Migration and Labour in Europe: Views from Turkey and Sweden*, İstanbul: Şefik, p.77

57 Kirişçi, (2008), p.15.

no legal regulation related to this field in the country.⁵⁸ As a consequence of great refugee movements, setting forth the need of internal security Turkey adopted a more restrictive attitude towards receiving refugees.

In 1996, Turkey entered a new reformation process regarding refuge. As a result of the cooperation between United Nations and Police Department, several regulations related to asylum seekers began to be made. During this period, three important events occurred as pointed out by Kemal Kirşçi: The first one is asylum seekers were given the right of appeals against deportation. Secondly, Turkish authorities started to cooperate with non-governmental organizations. Thirdly, collaboration between Turkey and United Nations were improved for the training of bureaucrats.⁵⁹ By 2000s, Turkey crossed a long distance in terms of refuge.

In 2002 and 2003 when Turkey started adjustment process to European Union legislation, some positive improvements intended for asylum seekers emerged. However, no progress about refuge has been made since 2005. European Union's attitude towards Turkey and the events happening in neighboring countries have had great impact on this.⁶⁰

The decision to initiate Adjustment Process to European Union legislation in the field of refuge was made in Turkey's National Programme,

58 Kılıç, Taner (2008), "Mültecilik Mevzuatından Kaynaklanan Sorunlar ve Çözüm Önerileri" (Problems sourcing from refuge legislation and solution offers), *Düşünce ve Gündem*, 44, Summer: 26–29.

59 Kirşçi, (2008), p. 15.

60 Ibid, p.15.

2003.⁶¹ With this 'refuge and action plan' Turkey displayed what it would do to adjust to European Union legislation until gaining full membership. In this program, the issues like the continuation of the attempts to advance quartering and social support mechanisms for refugees especially and to develop administrative and technical capacity in this field were suggested.⁶²

The draft includes a commitment which is about the legislation of necessary regulations in this field, the continuation of adjustment attempts to the EU legislation following the enforcement of Refuge Law. For the abolishment of geographical reservation in Turkey the National Program, 2003 was bound by two conditions in the scope of the EU full membership negotiations:

1. During the joining process, making required legal changes in a way that it does not encourage any refugee movement from east to Turkey.
2. Showing enough sensitivity in the subject of sharing burden among EU countries⁶³

Considering the economic conditions of the neighboring countries of Turkey, the statement in 'National Action Plan on Asylum and Migration' regarding the abolishment of geographical reservation annotated in 1951 Geneva Convention shows apparently the need to support Turkey in the economic and technical sense.

61 Avrupa Birliđi Genel Sekreterliđi, (2003), *Avrupa Birliđi Mktesebatının stlenmesine İliřkin Trkiye Ulusal Programı*, Ankara, p. 112.

62 BMMYK, AB Komisyonu ve Trkiye İiřleri Bakanlıđı (řubat 2005), *İltica ve G Mevzuatı*, p.41.

63 *Avrupa Birliđi Mktesebatının stlenmesine İliřkin Trkiye Ulusal Programı*, (2003), p. 112

By the commencement of full membership negotiations of Turkey to the EU in December, 2004, as in many other subjects, Turkey needed to make some more legal changes in the issue of refuge too and adjust to the EU legislation. In this framework, the uppermost things Turkey is prescribed to do regarding the issue of refuge are the abolishment of geographical reservation summarized above, the evaluation of asylum applications of those coming from outside Europe too, strengthening the attempts to fight against illegal immigration.⁶⁴ In return for Turkey's logical reasons, the EU has to relieve Turkey and guarantee this issue.

In the scope of Turkey's the Adjustment Program to the acquisition of the EU (2007-2013) which was announced to the public on April 17,2007,⁶⁵ fundamental regulations directed at the goals of the National Action Plan were calendared. The Adjustment Program suggests to change the Foreigner law dealt with under the titles of 'justice, liberty and security' and refuge law between the years of 2009 (01.10.2009) and 2013, and the change of the regulations of refuge and asylum law no. 94/6169 is also put forward in the adjustment program. The aims of afore mentioned law and regulations are stated as follows in the 2007–2013 programs: The purpose of the refuge law is: Adjustment to the EU legislation within the scope of full membership, adapting Turkish legislation to the EU acquisitions in terms of the issues of

64 Laçiner, Özcan ve Bal, (2005), pp.117–128.

65 Türkiye İlerleme Raporu, (2007),

<http://www.ikv.org.tr/pdfs/2007TRILERLEMERAPORU-TR.pdf>, p.11.

refuge, immigration and foreigners and with respect to this, forming the necessary administrative and physical infrastructure.⁶⁶

The purpose of the regulation regarding the change of refuge and asylum and also directed at the refugees who are outside the scope of Geneva Convention, was to protect them in case of being sent back to their homelands or in case of their deportation, so the regulation must be prepared in accordance with the conditions of especially Europe Human Rights Agreement and with the related acquisition of the EU and with the conditions of international agreement. In parallel with the completion of the negotiations of Turkey's joining European Union and following the completion of the projects and conditions identified in National Action Plan, it envisages the submission of a proposal regarding the abolishment of geographical reservation to Turkish Grand National Assembly in 2012 probably. However, the abolishment of reservation expected from Turkey depends, in a sense, on the EU's behaving in a way to eliminate the worries of Turkey about this issue.

In 1990s, Europe did not regard the issue of refuge as a problem that would concern the EU; however, only European Parliament and European Council were dealing with the issue. Stress was laid mostly on human rights then but today it has moved on to the protection of communities and

66 Türkiye'nin AB Müktesebatına Uyum Programı (2007–2013) (Turkey's Adjustment Program to EU acquisition), <http://www.abgs.gov.tr/index.php?p=6&l=1>,

security. Especially after September 11 events, there started an inclination from positive immigration policies to negative immigration policies.⁶⁷ Taking the demographical and financial structure of European Union into consideration, it is not possible to ignore immigration policy. Legal immigration mechanisms, especially legal immigration means related to laborers need to be simplified.⁶⁸ We can summarize the primary demand of the EU from Turkey concerning the issue of asylum seekers and refugees as the fulfillment of adjustment to the EU acquisitions and respecting the rights and liberty of refugees. The demand of the EU from Turkey is being able to keep the refugees and asylum seekers coming to Europe within the borders of Turkey till sending them to a third country. Therefore, the authorities who witnessed the formation of *Europe castle* are worried about Turkey's turning into a tampon region.⁶⁹ In other words, Turkey's becoming the first refugee country worries Turkish authorities in terms of its economic, social and political consequences.⁷⁰ Considering the fact that Turkey has the position of being both a target and a transitional country for asylum seekers and

(03.04.2009).

67 Çiçekli, Bülent (2004), Uluslararası Terörizm ve Uluslar arası Göç: 11 Eylül Sonrası Terör Tehdidi ve Göç Kontrol Politikalarının Terörizmle Mücadelede kullanımı, (eds.) Kamer Kasım and Zerrin A. Bakan, Uluslararası Güvenlik Sorunları, (International Terrorism and International Immigration: The threat of terrorism after September 11 and Utilizing Immigration Control Policies in the struggle against Terrorism), Ankara, TASAM, pp.189-217

68 Apap, Joanna (2004), "Recent Developments as regards European Migration Policy in view of Enlarged Europe", Joanna Apap (eds.), *Justice and Home Affairs*, Edward Elgar Publishing, p.182.

69 Johansson and Zeybekoğlu, (2003), pp.57-58.

70 Akdağ, G.Arıkan, (2007), "AB Kapısında Türkiye ve Göç Politikası" (Turkey at the

refugees, it is seen that this worry is not in vain. In this respect, in addition to the current refugee funds, the EU should assist Turkey in the issue of burden share.⁷¹

2.4. EU LEGISLATION IN THE AREA OF IMMIGRATION

Nation states and international communities give importance to immigration phenomenon, either legal or illegal, or with respect to this, they make some legal and administrative regulations today. Within this framework, remarkable progress concerning legal and illegal immigration emerges in the EU. Accordingly, I will analyze here the illegal immigration policy of the EU through the perception of security, and within the scope of juridical and institutional structure.

The countries forming the union have determined their policies based on the legal procedure defined by their own domestic law so far. Due to this fact, it was impossible to talk about a shared policy of immigration by the union. European Union, which has been moving from the target of an economic community to a political unity,⁷² has been in attempts to become integrated in terms of domestic political issues like security policy, terrorism, organized crime, visa, immigration and refuge following the events happened

Door of the EU and its Immigration Policy)'. *Stratejik Öngörü*, 4, İstanbul: TASAM, p.167.

⁷¹ Ibid, p.167.

⁷² Çarıkçı, Emin, (2001), *Ekonomik Gelişmeler ve Türkiye- AB İlişkileri*, Ankara,

on the global scale. The subject how to fight against crime activities going beyond the borders like illegal immigration which is also defined as negative immigration has been put on the agenda by EU.⁷³

In 1970s for the first time, the union started collaboration and obtaining information regarding the issues like terrorism, drug and the trace of organized crimes.⁷⁴ The basic goal here was to find a common solution to potential problems. On the other hand, intended for the expansion of domestic market, European Single Act mentioned the free circulation of goods, service, capital and individuals for the first time. Nevertheless, the removal of borders for economic purpose and providing free circulation somehow simplified the movement area of organized crime groups as well.⁷⁵ In this sense, upon the implementation of Schengen Treaty on 30th. 06, 1993 which was signed on 14th June, 1985, cooperative process concerning the issues of police, customs and judicial in the EU came along with the principle of free circulation concurrently. Schengen Treaty, being the first regulation accepted after the removal of internal frontier control, is of great legal value in terms of struggle against crime. Displaying some precautions within the scope of struggle against illegal immigration, 1990 dated

Tutibay Yayınları, p. 309.

73 Gamble, Andrew and Payne, Anthony (1996), *Regionalism and World Order*, London: Macmillan Press, p.50.

74 Kaya, Ahmet (2005), *Avrupa Birliği'nin Yasadışı Göçle Mücadele Politikası Ve Türkiye Üzerindeki Etkileri* (The struggle policy of EU against illegal immigration and its impacts on Turkey), p.30.

75 Beşe, Ertan (2002) *Terörizm, Avrupa Birliği Ve İnsan Hakları* (*Terrorism, European Union and Human Rights*), Ankara: Seçkin, pp.77–78

Schengen Treaty dated 1990 aims at forming cooperative modules in this field.⁷⁶

Common rules related to especially visa requirement, border management and repatriation were introduced by Schengen Treaty at the level of European Union. Therefore, in accordance with the 96th article of Schengen Treaty, the data about the illegal aliens (those violating the rule of visa and residence permit or entering a country illicitly), and about the aliens who threaten public peace and security was recorded on Schengen Database.

From then on, the battle against illegal immigration and the prevention of illegal immigration have started to be among the subjects of top priority of the Union. Amsterdam Treaty also includes a decree: "council will take measures concerning immigration policy including illegal immigration, illegal residence."⁷⁷ Again at 1999 dated Tampere Summit, member states accepted to fight against illegal immigration with transitional countries. Tampere Summit reflected the things required to be done to wage war with illegal immigration within the framework of common immigration policy of the union. This decisiveness was expressed as follows: "those who are involved in human trade and those abusing immigrants economically

76 Wallace, Helen and Wallace, Willam (2000), *Policy Making in the European Union*, London: Oxford University Press: pp.390–397.

77 İKV (2000), "Amsterdam Antlaşması" (Amsterdam Treaty), İstanbul, Volume: 162.

need to be fought against⁷⁸ Additionally, candidate states were asked to consider immigrant smuggling a crime in their national law in accordance with the additional protocol of the European Union Treaty which was accepted in New York on the 15th November, 2000.⁷⁹ Thus, the conditions regarding immigrant smuggling and human trade that need to be adopted by nation states were embodied by protocols for the first time. With its declaration on 11th July, 2001, European Union Commission took one more step for human trade and illegal immigrant.

The Commission clearly defines in which condition illegal immigrant occurs by the 15th November 2001 dated declaration. According to this:

*If the subject of a third country enters member states illegally

*If the subject of a third country dwells in member states illegally

*If the subject of a third country enters member states legally but exceeds the time of settlement.⁸⁰

At the Laeken Summit on 14th-15th December, 2001, the preparation of an action plan for illegal immigrant was suggested. At the Sevilla Summit which was held on 21-22nd June, 2002, the formation of liberty, security and justice areas, the acceleration of the state of the fulfillment of the program

78 Tampere Summit, http://www.europarl.europa.eu/summits/tam_en.htm#union, (24.05.09).

79 "Justice, Freedom and Security: An Agenda for Europe"

http://www.europarl.europa.eu/comparl/libe/elsj/zoom_in/08_en.htm?textMode=on1

80 "Communication from the Commission to the European Parliament on a Common Policy on Illegal Immigration",

<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52001DC0672:EN:NOT> (24.05.09).

that was accepted at Tampere Summit to develop a common policy about immigration and refugee issues were demanded. One of the decisions made at Tampere Summit was related to illegal immigration and illegal immigrant traders. The Council adopted an exhaustive action plan regarding the struggle with illegal immigration in February, 2002 to be able to enforce these decisions. This plan identified 6 potential action fields regarding the struggle with illegal immigration and to prevent illegal immigration: Visa policy, information exchange and analysis, readmission and deportation policies, measures for internal frontiers, measures for border management, Europol and penalty.⁸¹ The measures that must be taken apropos of the struggle with illegal immigration and human trade are stated officially at the

81 **Visa policy;** this policy entails exchanging information concerning issuing visa between member states. The Commission embarked on a feasibility study for the formation of European Information system.

Information exchange, cooperation and infrastructure intended for Coordination: the establishment of a continuous technical support unit is suggested for the formation of a database aimed at the coordination between member states' law executive units and strengthening cooperation, to coordinate operational cooperation and to support issues like data collection and spreading analysis.

Border Management: Within the scope of the constitution of European Border Protection Unit, several steps have been taken to put a series of pilot projects into practice. Moreover, EU Cabinet Council adopted the plan concerning the management of cross borders of EU member states on 13th June, 2002. Following this, regarding the integrated management of EU cross borders, 7th May 2002 dated commission Declaration was adopted. Additionally, the commission adopted a declaration that reflects the community deportation policy aimed at illegal dwellers and also "the Green Book". These documents became influential later on the adoption of deportation action program.

Police Cooperation: Police cooperation Europol should be empowered for its struggle with illegal immigration.

Legal status of aliens and Penal code; the sanctions aimed at those simplifying illegal immigration need to be harmonized and increased in the presence of member states. This kind of crimes entail heavy sentence. Expropriation of the fruits of crime is regarded as the key factor.

Deportation and Readmission policies; just as the same way common standards and measures are formed, a deportation policy needs to be formed too. In terms of taking

Sevilla Summit too on 21st-22nd June 2002.⁸² Based on this document, many regulations ranging from illegal entry of immigrants, security hedges against human traders, forgery of documents to illegal working areas were prescribed.

Further, 4th June 2004 dated declaration of the Commission⁸³ makes a distinction between legal and illegal immigration, and states that illegal immigration is a structural phenomenon. The declaration takes over the provisions made against illegal immigration in exhaustive action plan. Furthermore, the issue that it is impossible to prevent illegal immigration unless a common approach to be developed gradually to make illegal immigration more regular was also on the agenda of the declaration. While making the necessary arrangements, the Commission recommends the member states to notify one another.⁸⁴ European Trade Union Confederation claims that struggle with illegal immigration is only possible by opening legal immigration means and by legitimizing illegal immigration. European Trade Union Confederation defends the idea that the EU must have a global

immigration movements under control, the Union gives distinctive importance to signing readmission agreement with transitional and source countries.

82 Terzioğlu, Mehmet, "Yasadışı Göç, İnsan Ticareti ve İltica"(Illegal immigration, Human trade and refuge) Yabancılar Hukuk Daire Başkanlığı (department of the legal status of aliens) <http://www.caginpolsi.com.tr/10/15-16.htm> (24.05.09).

83 "Developing a Common European Immigration Policy", http://ec.europa.eu/justice_home/doc_centre/immigration/doc_immigration_intro_en.htm, (28:05.09).

84 "Tampere European Council 15 and 16 October 1999 Presidency Conclusions", http://www.europarl.europa.eu/summits/tam_en.htm#union, (24.05.09).

immigration policy to make this real.⁸⁵ As can be understood from here, illegal immigration can't be prevented by taking security measures, because it will continue to exist while changing its direction.

In addition to this, the European Parliament admits that empowering the legal procedure constitutes one part of the challenge with this phenomenon; however, consolidating the common development policies can minimize its negative consequences.⁸⁶ Penal sanction regarding the struggle with illegal immigration and human trafficking imposed by the Union can be summarized as follows:

"Schengen Treaty entails third country citizens who are not admitted to the Union and are caught illegally to be deported by the transporter. On 28th June 2001, the Council avowed a declaration which charges member states' with enforcing financial sanction (3000—5000 Euro per person) on transporters, which also follows the conditions of the Schengen Treaty. Within this scope again, according to the decision of the Council on 29th April 2004; before the completion of the registration procedure during the entry to the Union, transporters are liable to deliver the information about the third country citizens in case of the fact that they are asked by the officials in

85 Jones, D. (2009) "Kaçak Göçmenler Türkiye'nin Başını Ağrıtıyor" (Illegal Migrants Make Problem to Turkey), <http://www.euractiv.com.tr/ab-ve-turkiye/analyze/kacak-gocmenler-turkiyenin-basini-agritiyor-006235> , (24 May 2009).

86 "European Parliament" http://www.europarl.europa.eu/compar/libe/elsj/zoom_in/08_en%20.htm?texMoe=0n, (28.05.09).

charge in cross borders. The Council adopted a declaration and framework which aim at preventing illegal entry, transitional passage and dwelling on 28th November 2002. Those who are charged with these kinds of crimes are banned from them and the equipments utilized are confiscated.

On 27th February 2004, the Commission carried out an evaluation for transforming illegal working to legal working based on the action plan prepared in 2003 related to illegal working.⁸⁷

Additionally, as of 1st January 2005, the Council accepted to evaluate the conditions concerning immigration within the framework of "co-decision procedure."⁸⁸ Thus, the Union is shaping itself and attempting to determine a common immigration policy in accordance with the conjuncture emerging.

87 Ibid.

88 Tezcan, Ercüment (2006), *Avrupa Birliği Kurumlar Hukuku (European Union Corporate Law)*, Ankara: USAK Publishing, p. 30.

CHAPTER III

ILLEGAL IMMIGRATION IN TURKEY

General arguments about the migration and European Union's approach to the struggle against illegal migrations and its expectations from Turkey were enumerated in the first and the second chapter of the study. In this chapter, Turkey's present illegal migration state, related policies, and Turkey's policy of fight against illegal migration in the EU concordance process and the applications will be discussed respectively.

Migration has been a phenomenon for Turkey along the history. However, the events in the world have changed the name and the way of migration. Thus, Turkey has been sometimes a place to receive and so a sometimes a place to give migration and a transit place for migration as well. Whereas Turkey was in a stage to regular migrations until 1980, it had irregular and illegal migration activities after this period. On the other hand, that Turkey has become a country to give migration to Europe regularly or irregularly, in asylum seeking or refugee forms caused European Union to watch Turkey. A great majority of illegal migrations to Europe through Turkey are held by the citizens of Middle East countries. In addition, there are also many illegal immigrants from Asian and African countries using

Turkey as a bridge to pass for Europe. Hence, as far as illegal migration is concerned, Turkey is a place that both receives and gives migrations.

It is difficult to have a real result for illegal or irregular immigration due to its nature.⁸⁹ The characteristics that fall into the category of illegal migration such as 'illegal entries', 'breach of visa', 'staying in the country despite the expired visa' make the detection of illegal migration harder. It is not easy to detect that there are illegal migrants entering to Turkey. However, through the information on asylum seeking migration and immigrants as refugees, the formation and structure of illegal migration can be understood. Therefore, in this section of the study, following a historical assessment of illegal migrations within the light of asylum seeking and refugee immigrants, Turkey's relevant policies and measures against this type of formations will be examined in due detail.

⁸⁹ İçduygu, Ahmet and Toktaş, Şule (2005), *Yurtdışından Gelenlerin Nicelik ve Niteliklerinin Tespitinde Sorunlar* (The problems in the detection of the number and quality of the people coming from Abroad), Ankara: Şenol, p.36.

3.1. HISTORICAL BACKGROUND OF ILLEGAL MIGRATION IN TURKEY

Before Turkey's formed migration policies in European Union process, it is important to discuss historical background of migrations that take place in this country. Turkey has always been a host for immigrants along the history. The global changes in world's conjuncture changed the features of this immigration. Turkey has been a country where different migration ways and lives intersect with each other. According to Ahmet İçduygu, there are four main components that determine illegal and irregular immigrations in Turkey;

"First of all, owing to political restlessness and conflicts in the neighboring countries, people desire to live in a safer place away from oppressions. Secondly, Turkey's geographical location between East-West and North East make Turkey appeal to those who want to go to the West and the North using Turkey as a transit land. Thirdly, Europe's strict rules on its borders forward people to countries around Europe. Finally, Turkey's relatively better economical condition comparing to its neighbors makes Turkey an attractive place for those immigrants who want to work."⁹⁰

⁹⁰ İçduygu, Ahmet (2004), *Illegal Migration in Turkey*, İstanbul, İstanbul Chamber of Commerce p.27.

When the change in Turkey's immigration policies and their applications are considered, various historical processes appear. Turkey-oriented illegal immigrations of last few decades happened mainly in the periods of 1979–1987, 1988–1993, 1994–2000 and 2001 and afterwards. Because of its geographical condition, Turkey has been a stage for illegal immigration, asylum and refugee movements along with the registered and regular immigration since the early 1980s. As mentioned above, the irregular and illegal immigration phenomenon has taken place intertwined with asylum seeking and refugee movements.

The first asylum seeking immigrants, out of Europe, came to Turkey from Iran in 1979. Most of them asylum seekers used Turkey as transit to go to European countries. According to the Genève Treaty that Turkey accepted in 1951, Turkey did not give these people the status of refuge but granted a tourist visa for a while for their stay. After the Revolution of Iran, hundreds of thousands of Iranians sought asylum in Turkey with or without valid documents. Though the exact number of Iranians entering Turkey is not known, it is estimated that about 500.000 to 1.000.000 passed Turkey as transit and about 10.000 to 20.000 of them are still known to live in Turkey today.

The second immigrant wave to Turkey was taken place by the Iraqis through three massive immigrations between the years 1988-1991. The first asylum seeking wave of Iraqis eventuated in 1988 after the Iran-Iraq war. Approximately 50.000 Peshmerga took refuge in Turkey by escaping from Iraqi military. These immigrants were expected to be staying temporarily. Some of the Iraqis who came to Turkey in 1988 went back to a safe territory until the mid 1990s, about 2500 people transited to Syria and Iran whereas about 300 Iraqis went to Western countries as refugees.

The third immigrant wave from Iraq to Turkey took place during the Gulf War in 1990–1991. The Iraqi majority foreign nationalities whose number was more than 60,000 were settled to the camps at the borders of Iraq and Turkey. Later, they left the country after their necessary visa and passport procedures were completed by the government authorities and international institutions. The last immigration from Iraq took place in 1991 when about 50.000 Kurdish people sought asylum in Turkey escaping from Iraqi army. However, Turkey being unprepared for these mass immigrations, voluntarily cooperated with UN and civil society organizations to send the refugees in safe places. Though not exactly known, the number of the Iraqis coming through this wave and still living in Turkey is about 500 to 1000. It is seen that after such mass asylums, it is not easy to control the immigrants. It is known that especially the Iraqis originated asylums to Turkey paved the

way for irregular or illegal immigration from then afterwards. Seeing the life conditions and standards in Turkey after asylum applications, they continued to leave their country to live in Turkey or go to European countries.⁹¹

In addition to Iranians and Iraqis, another asylum or transit immigration movement happened in 1989 by Bulgarian Turkish citizen escaping from oppressive Bulgarian administration. Approximately 310.000 Bulgarian Turks are known to enter to Turkey.⁹² More than half of these immigrants went back to their country whereas the rest stayed Turkey for good. There were also mass immigrations to Turkey because of the war in Bosnia in 1992.⁹³ About 20-25 thousand Muslims sought refuge in Turkey in this period.⁹⁴ While Turkey followed a moderate and flexible policies for the immigrants from the countries it felt closer to itself, for the immigrants of the other countries it did not feel any such responsibility as required by the Geneva Treaty. There were about 20.000 Albanian immigrants came to Turkey during the Kosovo civil war in 1999.⁹⁵ While many of the refugees

91 İçduygu and Toktaş, (2005), p.54.

92 Head of Foreigners Passport Border Refugee Office, (2000), pp.40-41.

93 Kirişçi, Kemal (2003), "Turkey; A Transformation from Emigration to Immigration", İstanbul: Boğaziçi University European Working Centre, p.3

94 İçduygu, (2004), p. 23.

95 Turkey:World Refugee Survey 2003 Country Report,
http://www.refugees.org/data/refugee_reports/archives/2003/RRDec.pdf
(25.05.2009),

went back to their country, many others went to western countries using Turkey as a transit. The rest of them settled in Turkey.⁹⁶

The unexpected immigrations from the Middle East and concordantly the increased illegal and irregular immigrations led Turkey to pass some regulations on 30 November 1994.⁹⁷ These Regulations specify the essentials for the people seeking asylum in Turkey or the ones applying for a staying permit in Turkey to seek asylum in other countries as well as foreigners coming to Turkey in a mass asylum movements and suchlike population activities. Turkey determined new immigration policies as parallel to gradually increasing new immigrations. While the number of illegal immigrants increases, most of them continued to stay in Turkey despite their lack of staying permit.

Turkey used to experience controllable refugee movements until the 1990s. After this date, In addition to Middle East countries like Iran and Iraq, Turkey became a country for transit or a temporary place for illegal immigrations from the countries of Asia and Africa. International Organization for Migration (IOM) in its report named "Transit Migration in Turkey" emphasized that Turkey has become a country that receives

96 İçduygu and Toktaş, (2005), p.54.

97 Kılıç, Taner (2008), "Mültecilik Mevzuatından kaynaklanan sorunlar ve çözüm önerileri", *Düşünce Gündem*, 44, Summer: 26.

migration.⁹⁸ Furthermore, in this report, it is mentioned that most of the immigrants were consisted of men who left their country for economic reason without any proper legal documents through some human traffickers.⁹⁹ According to this report, the main purpose of the immigrants was to go to European countries by paying huge sums of money to human *smugglers*.

As Turkey became a passing country for transit immigrants, Turkish authorities produced more active policies. Especially the period after 2001 is considered to be a new term for dealing with illegal immigration. Turkey has made arrangements to apply these policies actively. As a result of strict policies, there has been an increase in the number of illegal immigrations, but there has been a change in the way of illegal immigration.¹⁰⁰ When the personal characteristics and traits of the illegal immigrants targeting Turkey is considered, they demonstrate varieties. As is earlier mentioned, in addition to illegal immigrants from Iraq and Iran for economic reasons, the immigrants from Asia and Africa also set foot in Turkey for a transit to Europe. The other illegal immigrants group is people coming to Turkey from the countries like Russia, Romania, Moldavia and Ukraine legally but continuing to stay in the country despite the expiry of their visas. Despite

98 International Organization for Migration (IOM) 1996, Turkey Transit Migration Report, p.22

99 Ibid.

100 İçduygu, (2004), pp.28-29.

their lack of work permit, they work in Turkey under very hard conditions on payment of a trifling sum. Another group is, people from countries like Iran and Iraq applied for asylum but their applications were rejected or not yet to be resulted.

Asylum seekers, Transit immigrant and illegal worker immigrants were hand in hand with each other in Turkey.¹⁰¹ Since the asylum seeking immigrants and illegal immigrants did not abide by the legal process, they are considered in the category of illegal immigrants category. Turkey's geographic worry added in Geneva Treaty in 1951 has great role. Thus, since the most of the immigrants in Turkey are from out of Europe, they are not considered as refugees. When we look at the historical background of immigrations, Turkey has become a preferred country for asylum seekers especially after 1990s.¹⁰² According to the statistical data, every year about 5.000 immigrants apply to Turkey for asylum especially from the countries of Middle East, Asia and Africa.¹⁰³ Among these, the ones whose applications were granted were being brought up to a third country by UNHC. On the other hand, those whose applications were not granted tried to go to West Europe after working illegally for a while in Turkey. In this section, Turkey's legal and illegal immigration phenomenon was described from historical perspective and the section below will give how Turkey applies its immigration policy.

101 İçduygu, Ahmet (2000), "The Politics of International Migratory Regimes: Transit Migration Flows in Turkey", *International Social Science Journal*, 52., pp. 165-357.

102 "Justice and Home Affairs Issues in EU-Turkish Relations" presentation made at the Center for European Policy Studies, 22 March 2002, Brussels. p.3.

3.2. THE CASE OF TURKEY'S IMMIGRATION POLICY

Within the theoretical framework I discussed above, the case of Turkey's immigration policy seems very illustrative for other countries' cases, too. It can help to explore the developing countries' migration policy and particularly their tendency towards more restrictive control policies. Turkish state has tended to change its migration policy since the end of the Cold War. Turkish state possibly sees the immigration issue as a security threat to its national integrity and territoriality. This situation raises two important questions: First, why has the Turkish state tended to enforce more restrictive immigration policies. Second, how has it applied these policies? To address these two questions, first of all I need to conceptualize the concept of "immigrant." Then, legislation and policies regarding immigration will be examined to seek to the question of how Turkish state addresses the issue. This discussion will particularly concentrate on the policy changes after the 1990s. Second, I will focus on the causes of this case. I have two hypotheses on the issue .the why this is the case? My two hypotheses are as following. First, Turkey's more restrictive policies stem from a rapid increase in the number of immigrants and emergence of various irregular immigration patterns during the post-cold war era. Second, Turkey's pre-accession process to the EU has been compelling to follow more restrictive policies.

103 BMMYK Ankra Office, <http://www.unhcr.org.tr/mep/index.aspx>, p.4., (03.04.09)

3.2.1 The Concept of Immigrant

In the immigration literature, there are fluidity and elusiveness among migrant status because of legal definitions and complexities in the immigration processes with respect to immigrants' intentions, settlement and legal documents. In many case, economic migrants and asylum movements are closely intertwined. Transit migrants and asylum seekers have become being overlapped categories. Also, among the cyclical workers there are many who continue to stay in destination country despite the expiration of their visa periods.

In Turkish case, migrants coming from non-European countries account for very sizeable component of overall arrivals have been kept out of the legal structure due to the any lack of regularization of undocumented migrants and Turkey's geographical limitation to the Geneva Convention. In this context, this study will not focus on the whether the immigrants have the purpose of settlement or not, as well as whether they enter country with legal or illegal documents. I believe that taking purpose of settlement and legality as reference point can hinder to explore broad picture in the immigration patterns.

In this part, in order to overcome exclusive character of the legal status and complexities of immigration processes, immigrants means foreign

nationals who stay and work in Turkey with and/or without having the necessary official permits for residence and work. Thus, I will utilize the concept of immigrant to refer refugees, asylum seekers, temporary asylums, transit migrants and economic migrants in Turkish case. Foreign students, tourists and businessmen can not be included in the definition.

3.2.2. Increase of Irregularity among Turkey's Immigrants

Turkey has a long history as a follower of the Ottoman Empire. It has been always welcomed immigrants who have Turkic identity. According to the Kirişci, "the period of government-supported major immigration into Turkey lasted until about the early 1970s, after which immigration began to be discouraged on the grounds that Turkey's population had grown enough and that land to distribute to immigrants had become scarce."¹⁰⁴ Turkey has not got used to consider itself as a country of immigration.

In the post-cold war era, it has gradually become to be characterized as the immigration country as well as sending and transit country. The flows refugees, asylum seekers, and transit migrants into Turkey have drastically increased since the early 1980.¹⁰⁵ According to Ahmet İçduygu and Fuat Keyman, "the Iranian Revolution, political turmoil in the Middle East, the end

104 Kirişci, K. (2003), "Turkey: A Transformation from Emigration to Immigration" *Migration Policy Institute*, p.2.,

<http://www.migrationinformation.org/Profiles/display.cfm?id=176>, (10.03.2009).

105 İçduygu and Keyman, "Globalization, Security and Migration", p.385.

of the Cold War, the Gulf War, and Turkey's geographical location as a transit zone between the West and the rest forces to turn Turkey into a defacto country for first asylum."¹⁰⁶ It experienced to being the destination country for mass influxes and individual migrations. Unlike the migrants of early Republican years, most of the post-1980 migrants were uninvited and unwelcome by Turkish state.

Mass influxes are used to be defined according to the origin country and ethnicity. Immigrants from Iran, Kurds and Turkmens from Iraq, Turks and Pomaks from Bulgaria, Bosnians from former Yugoslavia, Albanians from Kosova consisted of the main mass influxes toward Turkey. Volume of these influxes is very controversial issue and one of the main problems of immigration studies in Turkish case. Rather than the exact number of immigrants, there are two kinds of statistics which do not help us to grasp a precise idea about the volume of the immigration. The first frequently used statistic shows the "entries of persons from the Balkan and Middle Eastern neighboring states between 1980 and 2003" which is not able to differentiate anything about entry and exit. (See Table.1)

106 Ibid., p.388.

Table 1: Entry of Persons from the neighbouring Balkan and Middle Eastern neighbouring states, 1980-2003.

	1980	1990	1996	2000	2003
Middle East					
Iran	42,082	219,958	379,003	380,819	484,269
Iraq	14,046	13,372	14,137	20,776	29,94
Syria	26,384	113,959	92,033	122,417	154,108
Gulf States*	0	43,088	40,029	19,537	43,503
Pakistan	4,8	7,347	12,41	7,908	12,336
Sub-Total	87,312	397,724	537,612	551,457	724,156
Balkans					
Albania		1,924	20,971	29,748	32,682
Bosnia			12,115	28,631	35,119
Bulgaria	26,523		139,648	381,545	1,007,535
Greece	19,477	203,72	147,553	218,092	368,425
Macedonia			41,269	108,928	117,819
Romania		352,034	191,203	265,128	184,182
Serbia-Montenegro			44,6	128,383	186,423
Yugoslavia	13,817	296,843			
Sub-Total	59,817	854,521	597,359	1,160,455	1,932,185
General Total	294,258	2,504,490	2,269,942	3,423,824	5,312,682
Source: Apap, Carrera, Kirisci, (2004) " <i>Turkey in the European Area of freedom, Security & Justice</i> ", Centre for European Policy Studies, 83 Agust), p.33, Updated: 03.04.2008					
*Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, United Arab Emirates					

The second one indicates to the number of "irregular migrants arrested by Turkish security forces between 1995 and June 2004 by their nationalities"(See Table.2)

Table 2: Breakdown of irregular migrants arrested by Turkish security forces between 1995 and June 2004 by their nationalities.

Countries	The Number of People
Afghanistan	28,911
Albania	3,988
Bangladesh	13,418
Bulgaria	9,111
Central Asian Countries	6,473
Former Soviet Republics*	100,018
North Africa	9,397
Iran	22,199
Iraq	99,402
Others	107,986
Pakistan	28,442
Romania	19,067
Syria	5,018
Turkey	24,419
Total	477,849
Source: Apap, Carrera and Kirisci, (2005), p.34. Data obtained from the Foreign Department of MOI, Updated: 03/04/2008	

This statistics fails to indicate how many migrants arrested whether they are immigrating or emigrating to Turkey. Although the millions of asylum seekers, refugees, and transit migrants came to Turkey, few stayed in the country. Interestingly, the asylum movements continued later on as irregular transit migration. (See Table.3)

Table 3: Asylum Application in Turkey by Nationality (1997-2004)

Country of Origin/Year	1997	1998	1999	2000	2001	2002	2003	2004
Afghanistan			-	81	318	47	77	341
Algeria		-	-	5	3	12	4	Nd
Burundi		-	-	-	2	-	3	Nd
Cameroon		-	-	-	1	-	0	Nd
China		-	-	-	38	41	19	Nd
Congo		-	-	5	7	24	7	Nd
Egypt		-	-	1	6	3	3	Nd
Eritrea		-	-	-	3	11	20	Nd
Ethiopia		-	-	12	4	5	48	Nd
Ghana		-	-	-	-	2	1	Nd
Iran	1.392	1.979	3.843	31472	3.475	2.505	3.108	2.029
Iraq	2.939	4.672	2.472	1.641	998	974	342	964
Israel		-	-	-	1	-	0	Nd
Jordan		-	-	-	6	1	4	Nd
Kazakhstan		-	-	-	3	1	0	Nd
Kenya		-	-	-	27	-	2	Nd
Kyrgyzstan		-	-	-	-	1	1	Nd
Lebanon		-	-	1	1	1	4	Nd
Liberia		-	-	1	-	-	1	Nd
Libya		-	-	1	-	1	1	Nd
Mauritania		-	-	-	-	1	2	Nd
Morocco		-	-	-	-	1	9	Nd
Myanmar		-	-	1	-	-	1	Nd
Nigeria		-	-	3	6	5	3	Nd
Pakistan		-	-	1	5	9	0	Nd
Palestine		-	-	13	9	24	6	Nd
Rwanda		-	-	2	2	-	0	Nd
Sierra Leone		-	-	4	7	1	4	Nd
Somalia		-	-	11	22	23	183	308
Sri Lanka		-	-	1	21	30	6	Nd
Sudan		-	-	7	7	2	64	Nd
Syria		-	-	3	8	14	5	Nd
Tanzania		-	-	-	1	-	0	Nd
Tunisia		-	-	3	3	11	5	Nd
Turkmenistan		-	-	1	-	1	0	Nd
Uzbekistan		-	-	10	17	38	26	Nd
Yemen		-	-	1	-	2	2	Nd
Stateless		-	-	1	-	3	0	266
Total	4.331	6.651	6.315	May.67	5.001	3.794	3.966	3.642

Source: UNHCR, (2003), Ankara Office, p.1, Updated: 01/05/2008

Unfortunately, statistics seem very limited, problematic and confusing, thus they do not provide an insight about the volume of immigrants in Turkey. In addition to placing these statistics, most of the academic studies about immigrants in Turkey have been using similar approximate numbers I will use in the following discussion.

As a result of the Iranian Revolution and Iran-Iraq war, since the late 1970s, nearly 1 million Iranians have entered Turkey with the intention of moving on a third country. Most Iranians migrated to a third country, although nearly 100,000 remain.

One of major wave of immigration occurred, unexpectedly, when more than 300,000—310.000 Turks and Pomaks were expelled from Bulgaria in 1989 after refusing to assimilate into a Bulgarian Slav identity as part of a campaign launched by the Communist regime. According to Kirişci, "a third of these refugees returned soon after the regime change in Bulgaria in 1990 as the Cold War came to an end and communist regimes in Eastern Europe began to collapse. The rest acquired Turkish citizenship."¹⁰⁷ In the same article, Kirişci also the following point: "With Bulgarian membership in the EU expected by 2007, ever-growing numbers of these refugees are returning to reclaim

107 Kirişci, (2003), p. 4.

their Bulgarian citizenship."¹⁰⁸

It is a well-known fact that "In April 1991, some 450,000 Iraqi Kurds, fleeing their homes after the Gulf War, were denied entry into Turkey. Consequently, the international community established a 'safe haven' in the North of Iraq, an area of de facto Kurdish autonomy, whose defense has been assisted by the enforcement of the Northern No-Fly Zone."¹⁰⁹ A large proportion of Iraqis returned home, around 20,000 resettled in a third country, and a small number around 10,000 are still in Turkey.

Approximately 25,000—30,000 Bosnians sought refuge in Turkey from 1992 to 1995, the majority of whom considered it as a country of temporary asylum. Nearly 16,000—20,000 Albanian refugees from Kosova arrived in Turkey in 1999.¹¹⁰ Many Bosnians obtained refugee status in Western countries, and only a small proportion (nearly 3000) are still staying with relatives and friends in Turkey. Only around 1000 Albanian refugees from Kosova stayed in Turkey.¹¹¹

108 Ibid, p. 5.

109 Kirişci, Kemal and Karadaghi, Pary, (2003) "Refugees in Turkey and Northern Iraq", http://www.migrationpolicy.org/events/040303_sum.php?print=yes, p.5 (5 March 2009).

110 Icduygu and Keyman, (2000), p. 391.

111 Ibid., p. 392.

3.2.3 Immigration Control in the Post-Cold War

3.2.3.1. Procedural Context

"A number of different pieces of national legislation lay down the clauses and modalities regarding entry, exit, stay, residence of aliens and other provisions on legal migration in Turkey."¹¹²

Among these are the Turkish Citizenship Law No:403, Law No. 4817 on Work Permits for Aliens, the Labour Law No:4857, Law No.:2510 on Settlement, Law No. 5683 on Residence and Travel for Aliens in Turkey, the Passport Law No. 5682, and the 1994 Asylum Regulation No. 6169 and so on.¹¹³

Kirişci said that "Turkey's traditional immigration policy was strongly shaped by nation-building concerns, as well as efforts to sustain a homogenous national identity."¹¹⁴ Three identifiable categories of refugees in Turkey are as following:

a. Nationals: They are persons of Turkish origin. According to the Law of Settlement, only those people who are of Turkish ethnic descent and Turkish culture are entitled to migrate, settle and receive Turkish citizenship. In respect to immigrants, "the actual practice is very revealing in terms of how successive governments have interpreted who falls within the category of

112 "Justice, Freedom and Security"

http://www.abgs.gov.tr/tarama/tarama_files/24/SC24DET_LEGAL%20MIGRATION%20.pdf (12 April 2009)

113 Salih Efe, "Turkey and Asylum Issues: Aligning with the EU Acquis, " <http://www.migrationeducation.org/27.1.html?&rid=24&cHash=2be20749e2/>, (12 April, 2009)

114 Kirişci, (2003), p.7.

'Turkish descent and culture' and hence is allowed to migrate and become a citizen of Turkey."¹¹⁵ However, "apart from defining its beneficiaries, Law 2510 is critical to understanding the Turkish state's preferred identity and culture of its prospective citizens, and is also very revealing about the nature of those excluded."¹¹⁶

A large proportion of persons of Turkish origin have migrated to Turkey from Balkan countries and the Central Asia, either because they have been expelled to Turkey or because they felt coerced to move to and settle in Turkey as a result of political, religious and ethnic repression.¹¹⁷ Turkish immigration and refugee policies have been biased in favor of people of 'Turkish descent and culture'. Kirişci claims that "Its refugee policies have also followed a similar pattern, allowing asylum seekers of a similar background easy access to refugee status, as was the case with the more than 310,000 Bulgarian Turks and Pomaks in 1989, while denying a similar possibility to Kurdish asylum seekers who fled to Turkey in 1988 and 1991."¹¹⁸

b. Convention Refugees: They are persons whose statuses are determined by the 1951 Refugee Convention. Turkey signed the 1951

115 Kirisci, Kemal (2000), "Disaggregating Turkish Citizenship and Immigration Practices", *Middle Eastern Studies*, 36, (3, June): pp.5–6.

116 Ibid., p.9.

117 Icduygu and Keyman, (2000), pp. 393–394.

118 Kirişci, (2000), p.3.

Refugee Convention on the Status of Refugees and its Additional Protocol with "geographic limitation."¹¹⁹ It means that Turkey has obligations to persons uprooted by events in Europe. Turkey's role as a Western ally neighboring the Soviet Union during the Cold War, security reasons and concerns that a massive refugee influx might come from its eastern neighbors caused to imply "geographic limitation." It is very difficult to reach accurate statistics about the numbers of asylum seekers in this period. The Ministry of Interior has indicated that some 13,500 asylum seekers benefited from the protection of the 1951 Convention between 1970 and 1996.¹²⁰ In this context, "approximately 20,000 Bosnians were granted temporary asylum in Turkey during hostilities in the former Yugoslavia between 1992 and 1995."¹²¹ Kirişci said that "since the signing of the Dayton Peace Plan in 1995, many of these refugees have been steadily returning to Bosnia. In addition, in 1998 and 1999, approximately 18,000 Kosovars came to Turkey to seek protection from the strife in their ancestral homeland. The majority have returned. There are also more than 17,000 Ahiska Turks who have been granted residence permits."¹²² Because of geographic limitation, majority of asylum seekers who comes from Middle East, Africa and South

119 Kalin, Walter (2003), "Refugee protection in International law: supervising the 1951 Convention Relating to the Status of Refugee", Article 35 and beyond (10.1), *UNHCR Legal Publication*, (1 January): 618.

120 Kirisci, Kemal (2005), " A Friendlier Schengen Visa System as a Tool of 'Soft Power': The Experience of Turkey", *European Journal of Migration and Law*, 7, p.3

121 Kirişci, Kemal (2007), *Border Management and EU-Turkish Relations: Convergence or Deadlock*, (CARIM-RR-2007/03), Florence: European University Institute, p.11

Asia countries post-cold war era wouldn't be recognized as the refugee. There is ambiguous information about the number of the asylum seeker in Turkey. Some sources points out that up to 1994 there is almost no individual who was recognized as "an asylum seeker coming from countries defined as Europe by the Turkish government."¹²³ Also, in 2006, UNCHR reported that "in practice, few Europeans receive Convention refugee status, although most nevertheless enjoy effective protection in Turkey, with the exception of several hundred Russian national of Chechen ethnicity living in Istanbul."¹²⁴

c. Nonconvention refugees: Turkey's geographic limitation on the 1951 Geneva Convention provides Turkey not address the needs of asylum seekers from outside Europe. Upheavals "in the Middle East, Africa, and Southeast Asia led to a steady increase in the number of asylum seekers coming from outside Europe."¹²⁵ According to İçduygu and Keyman, "Turkish authorities often state that they have no obligation to recognize these refugees."¹²⁶ Immigrants from Middle East and a small number from various parts of the Asia and Africa fall under this category. According to Kirişçi, The most information is that "for a long time, the government allowed UNHCR

122 Ibid., p.7.

123 Efe, (2007), p.2.

124 UNCHR Country Operations Report of Turkey (2006), <http://www.unhcr.org/home/RSDCOI/433a5d7b2.pdf>, (10.04.2007).

considerable leeway to temporarily shelter these asylum seekers with the tacit understanding that they would be resettled out of Turkey if UNHCR recognized them as refugees, and that those whose claims were rejected would be deported.”¹²⁷ In other article, Kirişci, emphasized that “However, the growth in the number of illegal entries into Turkey and in the number of rejected asylum seekers stranded in Turkey strained this practice.”¹²⁸ “The situation was also aggravated by the 1988 and 1991 mass influxes of Kurdish refugees.”¹²⁹

To cope with the overload of the non-convention refugees, mainly the asylum-seeking cases, Turkish state prepared 1994 Asylum Regulation No. 6169 which was amended in 1999 and Jan 2006. Although Turkey has been part of the 1951 Geneva Convention, the 1994 Regulation was introduced as the only national regulation that covers asylum matters. Kirişci said that “the regulation aimed to bring status determination under the control of the Turkish government and also introduce regulations governing access to asylum procedures.”¹³⁰ The right of decision making was transferred from the

125 Kirişci, Kemal (October, 2004), “Reconciling refugee rights with efforts to combat irregular migration: the case of the European Union and Turkey”, *Global Migration Perspectives*, No. 11, http://www.gcim.org/ir_gmp.htm, (10 March 2009).

126 Icduygu and Keyman, (2000), p. 9.

127 Kirişci, Kemal (2004), “Turkey: Challenges of Harmonizing Immigration Policies with the EU” draft paper prepared for the Dialogues session on Emerging Countries of Immigration at the HMI World Congress Human Movements and Immigration, Barcelona, 1-5 September, p.2

128 Kirişci, (2004), p.4.

129 Icduygu and Keyman, (2000), pp. 9-10.

130 Kirişci, Kemal (2002), “Immigration and Asylum Issues in EU-Turkish Relations:

Ministry of Interiors to “appropriate” Governorships. It also abolished the Ministry of Interior’s obligation to accept the opinion of the Ministry of Foreign Affairs and of other related Ministries during decision-making on refugee applications.¹³¹ State’s increasingly concern about the security of country which was threatened by the mass influx from the Iraq reflected in the article 8 of the 1994 Regulation. The article includes to precautions to be taken in the event of the beginning of a population movement. It is clearly stated that because of Turkey’s territorial interests, population movements has to be stopped at the border, and that asylum seekers has to be prevented from crossing over into Turkey.¹³² Necessary and effective measures shall be taken by the relevant bodies on this matter.¹³³ Also, security concerns formatted the article 9, too. It says that

Refugees and asylum seekers shall be disarmed by military authorities. Subsequently, at a suitable border point, belligerent foreign army members and civilians shall be separated. For belligerent foreign army members, law number 4104 on Belligerent Foreign Army Members Who Take Refuge in Turkey shall apply.¹³⁴

Assessing EU’s Impact on Turkish Policy and Practice”, in S. Lavenex and E. Uçarer (eds.), *Migration and the Externalities of European Integration*, New York: Lexington Books, p.129.

131 Efe, (2007), p. 3.

132 Kaya, İbrahim (2009), “The Iraqi Refugee Crisis and Turkey: a Legal Outlook”, CARIM AS (2009/20), Robert Schuman Centre for Advanced Studies, San Domenico di Fiesole (FI): European University Institute, p.3.

133 Kaya, İbrahim (2008), “Legal Aspects of Irregular Migration in Turkey”, CARIM Analytic and Synthetic Notes 2008/73, Irregular Migration Series Legal Module, European University Institute, p.4.

134 Report on “Translated Turkish Codes of Asylum and Migration (1934–2003) prepared by Cooperation Project on the Social Integration of Immigrants, Migration and the Movement of Persons, European University Institute: 2005), p.58.

By 1999 amendment, 1994 Regulation was altered by extending application duration from five days to 10 days for "individual aliens who are either seeking asylum from Turkey or requesting residence permission in order to seek asylum from a third country."¹³⁵ But it is noteworthy that regulation kept the reservation concerns about the security. It was written "in case it is deemed necessary in terms of national security, the application period can be shortened upon consultation with the Ministry of Foreign Affairs." Also refugee status still have been granting to aliens from Europe.¹³⁶ Turkey has hesitations about the possible result of the extending refuge status. It is possible case that full refugee status in international law opens the prospects of acquiring citizenship through naturalization worries Turkey.¹³⁷

3.2.3.2. Policy Implementations

Legal instruments and their various utilizations by the state imply significant consequences for immigrants. State affects negatively migrants'

135 Kirişci, Kemal (1996), "Is Turkey Lifting the Geographical Limitation?- The November 1994 Regulation on Asylum in Turkey", *International Journal of Refugee Law*, vol.8, no.3, p.1

136 Tarhanli, Turgut (2006), "Refugees and Human Rights: An International Law Perspective", Joshua D. Freilich and Rob T. Guerette (eds.), *Migration, Culture Conflict, Crime and Terrorizm*, Englend, Ashgate: p. 172.

137 Kirisci, (2000), p.3.

socio-economic conditions by changing its policies, regarding residence and working permits.¹³⁸

It is very controversial that the asylum concept that exists only in Regulation 1994 and 1999 amendment still lacks both constitutional and statutory protection. Policy changes took several criticism with regards to "violating the rights of asylum seekers and refugees by denying them access to asylum procedures."¹³⁹ Turkey sometimes violates the principle of non-refoulement.¹⁴⁰ It has been a widespread practice in Turkey to capture illegal immigrants in their territory and then return them back to the other country by land or sea. Salih Efe claims that "While protective mechanisms for human rights and refugee demands exist on paper, people caught in the territorial waters of one country and then released into the territorial waters of another do not benefit from any of these procedures."¹⁴¹ The state authorities can demonstrate different kinds of manifestations of its restrictive policies. According to the A.Didem Daniş, "Suspension of granting residence permit on a more institutional level may go together with a growing understanding on the individual level, as seen in the tolerance of the police toward some

138 Daniş, Didem (2005-2006), "Integration in Limbos': Iraqi, Afghan, Maghrebi and Iranian Migrants in Istanbul", prepared for *Migration Research Program* at Koc University, Turkey, p.27.

139 Kirişci, (2002), p.131

140 Efe, (2007), p. 2.

141 Efe, (2007), p. 4.

immigrant groups such as Turkmen in daily face to face interactions."¹⁴² There can be many undocumented migrants who are not touched by authorities. On the other hand, the police authorities sometimes become a criminalizing agent, as in its treatment concerning Kurds and Eastern bloc citizens, particularly to the women who work as entertainment workers.

In the post-cold war, Turkey has faced a vacuum in terms of migrant and refugee reception policies due to the limited financial and institutional capacities. Turkey fails to provide immigrants adequate protection and state assistance.¹⁴³ Most of the time, liabilities such as education, social assistance, and employment are not provided to the asylum seekers by the government in practice. The social networks of the immigrants have played important role to migrant`s survival and integration.

After the Helsinki Summit in December 1999 granted Turkey candidate status, immigration control policies began to be regulated according the European Union *acquis*. Turkey`s pre-accession to the EU led to more restrictive policies which I have earlier noted.

142 Daniş, (2005–2006), p. 28.

143 Kirişçi, (2000), p. 4.

CONCLUSION

General debates about migration, Turkey and the EU's approach to migration and the policies to be formed on migration are stated in afore chapters successively. No matter whether the international migration happens legally or illegally, it has become a challenging issue for national and supranational ruling mechanisms in the current century. To put in other words, the migration phenomenon in the 21. century is the most important point for the national and international establishments. Thus, migration has become a central issue for European Union member states as well as the candidate states for membership.

Global developments, political, social and economical instabilities with different states of welfare in the world are among the fundamental reasons of migration phenomenon. Thus, people migrate to have better life standards as well as for obligatory reasons. What makes migration phenomenon illegal is the method immigrants use to enter other countries. Whereas, entry

taking place within the rules is a 'legal migration', the activities for entering the lands of other countries not abiding by the rules set by countries, with other words, entering in illegal ways, paves the way for 'illegal migration'.

For a better comprehension of illegal migration phenomenon, it is necessary to perceive the areas it covers and the conditions it originates from. However, when we look at terminology we see a complexity of meanings. For instance, in international grounds, irregular migration, hidden migration and migration without documents are used apart from the concept of illegal migration. The complexity of meanings should be overcome. Another important point is to determine under which conditions migration phenomenon is considered as illegal. The variety of the conditions that make the migration illegal causes difficulty in determining whether it is illegal or not. To provide an example, a person entering to a country by a valid visa but still remaining in the country after the expiry of the visa is also considered as illegal immigrant. In the same way, the person entering the country not through legal entries but other border ways is also an illegal immigrant. In addition, people who have worries and fears of being at risk of their life with valid reasons have the right to seek asylum from another country within the frame of Geneva Treaty.

Some countries limit the number of countries in granting refugee status so that they do not accept refugees from all the countries for security

reasons. Therefore, Turkey, according to the Genève Treaty signed in 1951, does not consider people coming from non-European countries as refugees. The majority of the refugees applying to Turkey comprises of Asians and Africans though it does not bear any legal obligations. Turkish authorities have some worries in this respect. These are the continuation of restlessness in the neighboring countries, being a country for refugees on the ground that Europe does not let them in and geographical worries because of its financial conditions. Besides, the refugees, whose applications are granted, are placed in a secure third country by UN. However, those applicants, whose applications are not granted, try to transit to Western European countries after working for a period illegally. Despite the fact that Turkey considers immigrant from Africa and Asia as refugees, when we look at the migration history of Turkey, we see that, those massive people who seek asylum because of bad conditions of their countries, have always been embraced and provided required help. European Union, on the other hand, struggles to form a common policy in this regard. The European Union, which transits from being an economic community to a political union, pays attention to both legal and illegal migration phenomenon and there are developments worth seeing in the Union. The process of forming security policies of the Union started with the free applications implemented for economical bases and free travel of the people. The continent of Europe has become a center

of appealing place to refugees especially after the significant financial and social developments of the 1980s.

By the free movement of persons and the removal of inner borders, the Union had a security issue. However, the Union which removed inner borders has taken security measures to protect the outer borders. Accordingly, the Union is trying to establish common grounds by Trevi, Schengen and Europol formations for probable problems. Because the basic migration policy of the EU is formed by security issues, some restrictions are brought to fields like border control, application back and visa in illegal migration policies. These restricting measures have also opened the way for criticisms accusing these measures of forming 'European Castle'. However, this approach, affects the asylum and legal migration negatively. After September 11 and Madrid events that harden the formation of this approach, the border controls are applied strictly and the measures to prevent illegal migrations are taken. This approach caused difficulty of acceptance in national and international platforms. The EU which had a liberal migration policy and was a very attractive place for the immigrant until these events has been shaping its migration policy in respect to security. For this, it also goes for legal and administrative formations. Some people criticize the EU for its transition from flexible migration policies to strict ones.

While the EU's negative migration policies have been strengthened after September 11, some protecting precautions considered within the human rights concepts have been taken. Concordantly, EU's illegal migration perception is mainly related to the arrangements of restrictions. The legal and illegal migration that beat the path for the formation of security policies of the Union is also important for Turkey. The place of Turkey has become more significant by developing events and emerging security issues in the world. Especially by commencement of the EU concordance process, this significance increased greatly. On the other hand, by this process, Turkey had to reconsider its illegal migration policies. Thus, EU, in this respect requires and expects member candidate states to fulfill the Schengen Acquis. Turkey also makes legal and administrative arrangements in this frame. Joint Accession Partnership, National Programs, Progress Report and projects pay attention to illegal migration issues, too. The EU requires Turkey to strengthen border controls and make return treaties as prevention of illegal migration.

Turkey's geographical condition, its place at the transportation routes of Asia, Europe Africa continents, the civil war and instabilities in the neighboring countries and its physical structure render Turkey to a different position from western countries in the sense of illegal migration experiences. For the immigrants struggling to transit to Europe, Turkey is a transit country

owing to its geographical condition, a target country for those who want to come to work for a period and a source country in that some of its citizens want to go to Europe for better life. Turkey itself is also a country facing migration problems in the sense that 300,000 illegal immigrants caught in Turkey between the years 2000–2003. The number of illicit immigrants from 1990 to 2000 gradually increased. By the new policies after the year 2000, there has been a decrease in the number of them. Especially 56000 illegal immigrants caught in 2003 show that the illegal immigrants in Turkey have been changing their directions. Approximately two hundred thousand to three hundred thousand illegal emigrants enter Turkey every year. Some of them work in Turkey illegally before they go to other countries. The fact that some of them work in Turkey for a period and some use it for transit shows that Turkey has more than a single role in Turkey's illegal migration activities.

Illegal migration phenomenon is not only the problem of Turkey but also that of many EU countries. It is not a problem that can be overcome only by border and visa inspections. It is also related to the countries' preference in illegal labor market to labor market in the EU members. Therefore, fight against illegal migration flow, illegal border pass and visa violations are phenomenon that must be taken into consideration within all countries beyond Turkey.

Illegal migration is now a supra-national problem. Thus, countries can not get rid of this problem by themselves. Therefore, this problem should not only be taken into account on country levels but also considered in cooperation with national and international civil society establishments as common attitude and common approach to illegal migration problem which to be shaped by a formed cooperation. Besides, increased and effective security measures to fight against illegal migration do not go beyond changing the route of the illegal immigrants. It leads to the continuation of the illegal migration and thus no effective solution can be found to the problem. This shows that the increase of international securities forms only one aspect of the illegal migration phenomenon. Fight against illegal migration can be a success, only if long-term social solutions are sorted into consideration in addition to short-term solutions like security measures. The fact that financial and political instability is likely to continue in the source countries which are the reasons of illegal migration and indications of unfair income distributions in the world show that illegal migration will continue increasingly. For this reason, the EU which enjoys high welfare standards should issue policies to progress developing countries. EU countries which once exploited greedily the sources of these developing countries are now face to face with the descendants of their old *slaves* who are ready to benefit from the contemporary fruits of their lands as *revenge* one way or another.

As mentioned in the National Action Plan, the countries forming the EU are in effort of hardening the asylum seeking and refugee applications. In addition, there are still no common asylum and refugee policies within the Union and the debates about a third secure country are still going on. As a matter of fact, the probability of massive people influx to Turkey in case of conflicts and clashes in Middle East and Caucasian, as seen in the past, and their struggle to force Turkey's borders must be kept in mind. Therefore, short and long term solutions must be produced.

Turkey need to determine an effective strategy to prevent illegal migration. In addition to legal and administrative arrangements, there should be cooperation between the countries where immigrants come from and the target and transit countries to prevent the illegal migrations. During this cooperation process, international organizations, laborer and employing organizations and other civil society establishments must not be forgotten. Countries should develop solutions by taking cognizance of all human rights into considerations. The distinction between legal and illegal migration must be paid attention. The differences between the asylum seekers and those using the country as transit and the ones living in the country must be noticed. The rights of the refugees and asylum seekers must be protected and the projects to employ them must be improved. Some collaboration must be made with national and international civil society organizations to

find practical solutions to illegal and irregular migration problems. Last but not the least, the countries facing illegal migration flows also have to fight against the unwanted results of these migrations. International migration has become an inevitable part of a life in the globalizing world. However, every country has its share to produce policies to enjoy life with fewer problems originating from the migration phenomenon.

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