

**T.C. MARMARA ÜNVERSTES**  
**AVRUPA BİRLİKLERİ ENSTİTÜSÜ**  
**AB SİYASET VE ULUSLARARASI İLİŞKİLER ANABİLİM DALI**

**THE EUROPEAN UNION'S ASYLUM AND IMMIGRATION  
POLICY AND TURKEY**

**Yüksek Lisans Tezi**

**TOLGA KARAKAYALI**

**istanbul-2010**

**T.C. MARMARA ÜNVERSTES**  
**AVRUPA B RL ENST TÜSÜ**  
**AB S YASET VE ULUSLARARASI L KLER ANAB L M DALI**

**THE EUROPEAN UNION'S ASYLUM AND IMMIGRATION  
POLICY AND TURKEY**

**Yüksek Lisans Tezi**

**TOLGA KARAKAYALI**

**TEZ DANI MANI: Yrd. Doç. Dr. N. Asl, irin**

**stanbul-2010**



T.C.  
MARMARA ÜNİVERSİTESİ  
AVRUPA BİRLİĞİ ENSTİTÜSÜ

ONAY SAYFASI

Enstitümüz AB Siyaseti ve Uluslararası İlişkiler Anabilim Dalı, Yüksek Lisans öğrencisi Tolga KARAKAYI'NIN "EUROPEAN UNION'S ASYLUM IMMIGRATION POLICY AND KÖÇMENLERİN TEZ ÇALIŞMASI" adıyla hazırladığı tez çalışması, tarihinde yapılan tez savunma sınavında başarılı olarak değerlendirilmiştir. Tez çalışması jüri üyeleri tarafından oybirliğiyle onaylanmıştır.

Onaylayan:

Yrd.Doç. Dr. Nedime A. İRİN

Danışman

Yrd.Doç. Dr. Rana ZC

Jüri Üyesi

Yrd.Doç. Dr. Catherina MACMILLAN

Jüri Üyesi

Onay Tarihi

Prof. Dr. Muzaffer DARTAN

Müdür H

06/08/2010 tarih 2010/XI/...

# TABLE OF CONTENT

	<b>Page no</b>
TEZ ÖZET	iv
THESIS ABSTRACT	v
ABBREVIATIONS	vi
INTRODUCTION	1
I.IMMIGRATION AND ASYLUM CONCEPTUAL FRAMEWORK	5
I.1. IMMIGRATION	5
I.2. HUMAN RIGHTS AND RIGHT TO ASYLUM	7
I.3. IMMIGRANTS, ASYLUM SEEKERS AND REFUGEES	8
I.4. EVOLUTION OF THE CONCEPTS IN THE INTERNATIONAL SPHERE	11
I.5. CONDITIONS OF BEING A REFUGEE	20
I.5.1. Condition of Being Outside of the Country of Nationality	20
I.5.2. A Well-Founded Fear of Persecution	21
I.5.3. Race, Religion, Nationality, Membership of a Particular Social Group or Political Opinion	22
II.THE EUROPEAN UNION'S IMMIGRATION AND ASYLUM POLICY	24
II.1. EARLY REGULATIONS	24
II.2. THE SCHENGEN ACQUIS AND THE REGULATIONS BEFORE MAASTRICHT	26
II.2.1. The Schengen Acquis	26
II.2.2. Dublin Convention	30
II.2.3. London Resolutions	33
1. Resolution of 30 November 1992 on manifestly unfounded applications for asylum	33
2. Resolution of 30 November 1992 on a harmonized approach to questions concerning host third countries	34
3. Conclusions of 30 November 1992 on countries in which there is generally no serious risk of persecution	35

II.3. MAASTRICHT TREATY AND THE 1990'S	37
II.3.1. Treaty on European Union	37
II.3.2. Council Resolution of 20 June 1995 on Minimum Guarantees for Asylum Procedures	38
II.3.3. Joint Position on the Harmonized Application of the Definition of the Term "Refugee" in Article 1 of the Geneva Convention of 28 July 1951 Relating to the Status of Refugees	40
II.4. AMSTERDAM TREATY	42
II.5. TAMPERE SUMMIT	45
II.6. THE DEVELOPMENTS IN THE 21 <sup>st</sup> CENTURY	47
II.6.1. The Situation After the September 11 Terrorist Attacks	47
II.6.2. Dublin Convention II	48
II.6.3. The Council Directive on Standards	51
II.6.4. Treaty Establishing a Constitution For Europe	54
II.6.5. Other Developments	56
II.6.6 The Treaty of Lisbon	61
II.7. EUROPEANIZATION	63
II.7.1. The Concept of Europeanization	64
II.7.2. Europeanization for Candidate States	68
II.7.3. Europeanization of Immigration and Asylum Policies for the Candidate Countries	69
III. TURKEY'S IMMIGRATION AND ASYLUM POLICY	72
III.1. IMMIGRATION AND ASYLUM IN TURKISH LEGAL SYSTEM	72
III.1.1. The Settlement Law	72
III.1.2. Law Relating to Residence and Travel of Foreigners in Turkey and the Passport Law	75
III.1.3. Directive on Refugee Guesthouses	76
III.1.4. 1994 Regulation on Asylum Seekers	78
III.1.5. Implementation Directive (Circular No: 57)	80
III.2. LEGAL DOCUMENTS OF EU ACCESSION PROCESS	80
III.2.1. 1998 Progress Report	80
III.2.2. 1999 and 2000 Progress Reports	81
III.2.3. 2001 Accession for Partnership Report, the National Programme and Progress Report	83
1. Accession for Partnership Report and the National Programme	83
2. 2001 Progress Report	84
III.2.4. 2002 Progress Report	84
III.2.5. 2003 Accession for Partnership Report, the National Programme and Progress Report	85

1. Accession for Partnership Report and the National Programme	85
2. 2003 Progress Report	87
III.2.6. 2004 Progress Report	88
III.2.7. 2005 National Programme and Progress Report	90
1. Turkish National Action Programme for the Adoption of EU <i>Acquis</i> in the Field of Asylum and Migration	90
2. 2005 Progress Report	91
III.2.8. 2006 Accession Partnership Report and Progress Report	92
1. Accession Partnership Report	92
2. 2006 Progress Report	92
III.2.9. 2007 Progress Report	93
III.2.10. 2008 Accession for Partnership Report, the National Programme and Progress Report	93
1. Accession for Partnership Report and the National Programme	93
2. 2008 Progress Report	94
III.2.11. 2009 Progress Report	95
III.3. TURKEY'S POSITION	96
CONCLUSION	101
BIBLIOGRAPHY	105

## Tez Özeti

Tolga Karakayal, "The European Union's Asylum and Immigration Policy and Turkey"

İnsanların binlerce yıllık tarihinde göç, onun hayatta kalması için önemli bir eylemi olarak var olmuştur. İnsanlar hayatta kalabilmek için göç ederler. Zaman içerisinde değişen siyasi koşullar, göçlerin de siyasi bir şekilde tanımlanması ve sınırlanması, neden olmuştur. Göç artık siyasi bir konu olarak ülkelerin ve uluslararası aktörlerin söz sahibi oldukları bir konu. Göç ve sığınma konularında bu aktörlerin girişimleri ile 20. yüzyıldan itibaren önemli düzenlemeler yapılmaya başlandı. Avrupa da günümüzde önemli derece göç çeken bir bölge olduğu için Avrupa ülkeleri göç ve sığınma hakkı konularında oldukça hassaslar. Avrupa Birliği sınırları içine gelecek yabancılar için özel düzenlemeler ile ortak bir göç ve sığınma politikası oluşturmaya çalışıyor. Birden fazla ülkenin ortak bir düzenleme ile sınır kontrolü, sığınmacı kabulü ve güvenlik gibi konularda ortak hareket etmeleri oldukça zor. Ne var ki Avrupa Birliği bu ortak politikayı aynı zamanda Komünal Politikası ve Adaylık Süreci ile üye olmayan ülkelere de uygulamaktadırlar. Bu anlamda Avrupa Birliği için göç ve sığınma politikaları geniş bir ortak çalışma ile mümkün kılınmaktadır. Türkiye de Avrupa Birliği üyesi haline aday bir ülke olarak kendi düzenlemelerini Avrupa Birliği ile uyumlulaştırmaya çalışmaktadır. Türkiye'de göç ve sığınma konuları ayrı düzenlenmediği için yasal olarak bu konularda yeterli bir yapı olmadığı, söylenebilir. Bu anlamda Türkiye'nin Avrupa Birliği'nin oluşturduğu politikayı büyük ölçüde uygulaması en kolay Avrupalılaşma adımı olacaktır. Ne var ki Türkiye'nin mevcut güvenlik kaygıları, ekonomik gücü göz önüne alındığında Türkiye'nin Avrupalılaşma yolunda Avrupa Birliği'nden ciddi bir şekilde destek görmesi ve ortaklaşma her iki tarafın da sorumluluğu ile yürütüleceğine dair güvence alması gerekmektedir.

## **Thesis Abstract**

Tolga Karakayal,, öThe European Unionø Asylum and Immigration Policy and Turkeyö

In the thousand of years of human history migration existed as an important element for humans to survive . In time, the change in the political conditions led migration to be identified and restricted with a political understanding. Migration is a topic which states and international actors define as a political matter. With the initiative of these actors there had been some important regulations made about immigration and asylum since the 20<sup>th</sup> Century. As Europe being one of the most important areas to attract immigrant, European countries are highly sensitive about the immigration and asylum issues. European Union is trying to create a common immigration and asylum policy with special regulations for those who will enter the EU territory. It is very difficult for many countries to act in cooperation in fields of borders control, accepting asylum seekers and security with a common regulation. However, the European Union imposes this common policy over other countries via Neighborhood Policy and Candidacy Process. In this manner for the European Union, immigration and asylum policies are possible by a wide cooperation. Turkey, being a European Union candidate state, is trying to harmonize its policies with the European Union. Since immigration and asylum issues are not managed with special regulations, we might say there is no sufficient legal structure relating these issues. In this manner it will be an easier Europeanization step if Turkey applies the policy created by the European Union in a large scale. However, considering Turkey's existing security concerns and economic power, Turkey needs to be sponsored by the European Union in its way to Europeanization and reassured that the cooperation will be handled with a symbiotic responsibility.



## **ABBREVIATIONS**

CEAS:	Common European Asylum System
ECRE:	European Council on Refugees and Exiles
EMN:	European Migration Network
EU:	European Union
EUBAM:	European Union Border Assistance Mission
EURODAC:	European Dactyloscopy
IOM:	International Organization for Migration
IRO:	International Refugee Organization
OAU:	Organization of African Unity
SIS:	Schengen Information System
TREVI:	Terrorism, Radicalism, Extremism and Violence International
UN:	United Nations
UNHCR:	United Nations High Commissioner for Refugees
UNRRA:	United Nations Relief and Rehabilitation Administration
UNSD:	United Nations Statistics Division

## **INTRODUCTION**

Migration is a global phenomenon. It is seen in all geographies, among all societies and throughout all ages. Throughout history, people migrated from one place to another for various reasons: either for economical reasons (famine, floods, merchandising, etc.), political reasons (wars, conquests, deportations, etc.) and other reasons (diseases, ecological changes, earthquakes, etc.). Thus, it can be argued that people have many motivations to migrate. However, when we talk about immigration it is much more of a complex issue. Immigration is related to borders, border controls, political sovereignty over people's movements. Immigration occurs when people migrate from one country to another. This migration is not always voluntary. Sometimes, people feel the need to immigrate or cannot return to their homelands due to reasons imposed on them. Millions of people are forced to leave their home countries because of persecutions and fear of persecution which is caused by wars, armed conflicts, regime changes and etc. Those people seek asylum for a better life in other countries.

Asylum, therefore, is a policy area which is regulated with special care and policy tools. First of all, it is related to human rights, the right to live in an atmosphere that is appropriate for human dignity. Secondly it is related to international political atmosphere, in which states take responsibility to care for citizens of other states. This kind of political interest might cause diplomatic tensions if it is not handled with delicacy. On the other hand it is also related to national sovereignty since it involves entering to a state's territory and availing to the will and power of another state. Thus, asylum policies are regulated both by international documents and by national legal documents. It is a very complex and delicate issue, which, in the end, is related to human life and dignity. International documents are either initiated by international organizations or signed between states to determine conditions of returning and accepting refugees.

The European Union, which sets a model and standards for many countries on their

way to democratic development, is also an important model for the development of asylum and immigration policies. The Union is trying to create a common asylum and immigration policy area for the whole member states to adopt and apply for the sake of security. However, the issue is related to border control and territorial sovereignty and therefore, member states are unwilling to share their area of sovereignty and powers with the other entities. Thus, it might be assumed that the Union is engaged in a difficult task.

In this perspective, Turkey, being a candidate country for the EU membership, is seen as an important ally for the Union. Turkey's borders with the Middle Eastern countries and the Union constitute important problems for the Union. There are expectations from Turkey for cooperation in the field of asylum and immigration. It is really important for Turkey to adopt and apply the *Acquis*. Since Turkey does not have special regulations for the asylum seekers in its legal documents and laws, adopting and applying the *Acquis* is highly critical and necessary for Turkey. However, there are also certain risks Turkey faces while taking steps mentioned in the progress reports. For example, Turkey's geographical limitations for accepting refugees in accordance with the 1951 Convention is highly criticized by the Union but Turkey's concerns are also important stakes at that point.

The aim of this study is to get a clear vision on the European Union's political agenda for a common asylum and immigration policy and the Europeanization of Turkey in that field. The issue of asylum and immigration is closely linked to territorial security and border controls and the neighboring countries or the member states whose borders coincide with the Union's external borders are in a position of deeper responsibility and higher risk of immigration flows. Since Turkey is a candidate country and is expected to have borders with the non-EU states of the Middle East, Turkey will also have higher responsibility and greater risk of dealing with the immigration flows, when she joins the Union.

The study explains the evolution of the asylum and immigration policies in the international sphere and in the European Union and aims to examine the developments in the field of asylum and immigration in Turkey. The differences of policies and political

approaches between the European Union and Turkey are the main issues of concern for this thesis. There is a clear difference among the development of policies and the conceptualization of the refugee and asylum. This difference occurs due to the importance and stress given to this area of politics. The study expects to draw a clear picture of Turkish case of Europeanization in this field and explain how Turkey might Europeanize its asylum and immigration policies. The thesis aims to find out the differences among the policies of the European Union and Turkey and the obstacles in the way to Europeanize Turkish policies and conceptualization of asylum and immigration. It would be helpful for us to understand the development of these policies and the global atmosphere. This will also bring about the path of development of these policies in a sense that the evolution of concepts reflects the evolution of the understanding and political aims. Therefore, the evolution of concepts in the European Union policy making and the general trends in these policy areas will reflect the Union's general understanding and aim. In the same way, developments in the Turkish policies will reflect Turkey's aims. However, the differences of these policies will also be beneficial for understanding the difference of understanding and policy aims between the parties.

In the thesis, the terms immigration, refugee status and asylum will be conceptualized at the beginning. The thesis goes deeper and tries to provide an overlook to the development of these concepts in the international political arena. The conceptual development of the terms will be beneficial for understanding the development of the political will and the context. International documents, agreements, charters, protocols, etc. will be used to better view the change in the definition and the international political atmosphere. Each document will provide us means to understand how further steps are taken in defining the rights of the refugees, responsibilities of the states and the international political atmosphere.

In the second chapter the legal framework in the European Union will be explained. This will provide us the means to understand the development of the political will towards a common policy and the consensus on the definition of the terms. Moreover, the chapter will also present an argument on the levels and ways of Europeanization in the field of asylum and

immigration and for the candidate countries. The concept of Europeanization will be examined. Brief explanations to the concept will be provided and some basic arguments for explaining Europeanization will be laid down. This explanations will be beneficiary in the sense that the influence of the Union's policy making will be presented.

In the same way, the third chapter elaborates the Turkish legal system on asylum and immigration policies. Since there are no specific regulations for immigrants and refugees, related legal texts i.e. laws, regulations, circulars, etc. will be explained in detail in order to be clear about the Turkish position on the issue. This chapter will continue with the progress reports published by the European Union and Turkey's responses to them. This is useful for us to observe Turkey's development and the Europeanization of Turkey's asylum and immigration policy. Moreover, the Europeanization of asylum and immigration policies in Turkey will be examined and Turkey's hesitancy in Europeanization of the asylum and immigration policies will be examined and the possibility of such Europeanization will be questioned. In the conclusion a brief summary will be provided with a special focus on Turkey's position. The conclusion part will be briefly discussing the earlier questions about Turkey's hesitancy and Europeanization of asylum and immigration policies.

The thesis is a descriptive study, in a sense that document and secondary data analysis are employed as methods of analysis. In the thesis legal documents are used since they are the manifested versions of the political will. Through these documents one is able to understand the capabilities, true nature, intentions of the political will. In order to have an idea on the political will of the European Union and Turkey, legal document analysis is used as a method for the study. The documents used are reports, international agreements and treaties, laws and legal organization publications. These documents are the primary sources of the asylum and immigration policy for each actor in concern. Second method employed in the thesis is the secondary source analysis, in which articles, books, reports, surveys, working papers, etc. written on the issue are used in order to better understand and speculate about the political will and the issue itself.

# CHAPTER I

## IMMIGRATION AND ASYLUM: CONCEPTUAL FRAMEWORK

Immigration and asylum policies are important modern policies, which states create and adopt in order to deal with the human movements. These policies give a certain framework to the states for dealing with the massive human movements. However, before applying these policies, states need to define the concepts. In this chapter a brief explanation to the concepts immigration and asylum will be given and a historical background of the conceptualization will be drawn.

### I. IMMIGRATION

The word immigration comes from the word migration. Migration means to move from one place to another<sup>1</sup>. The term is mostly defined in terms of movement of animals, however since the thesis is dealing with human migration, the definition used here focuses on human migration. With a focus on humans, migration is defined as the movement of persons from one country or locality to another<sup>2</sup>. However, this definition does not conceptualize the term sufficiently.

Migration is linked to movement and space. The change of localities the key factor. This locality change can be cross borders or within a country. Migration can be defined by the orientation of the movement; if one leaves his/her country, then it is called *emigration* from somewhere and if one moves to a country then it is called *immigration* to somewhere<sup>3</sup>. People who immigrate are then called immigrants.

Types and reasons for immigration are different from each other. People might have

---

<sup>1</sup> Cambridge Advanced Learner's Dictionary, Migration, available at:

[http://dictionary.cambridge.org/dictionary/british/migrate\\_1](http://dictionary.cambridge.org/dictionary/british/migrate_1) [accessed at 20 April 2010]

<sup>2</sup> Webster Online Dictionary, Migration, available at: <http://www.webster-dictionary.org/definition/migration> [accessed at 20 April 2010]

<sup>3</sup> Ibid, emigration and immigration.

different reasons, different intentions to immigrate. In other words there are different types of immigrants. Rogers defines 5 categories of immigrants;

[...] 1. Legally admitted immigrants who are expected to settle in the host country.  
[...] 2. Legally admitted temporary migrants encompasses seasonal migrants, non-seasonal contract workers who must return home before their contracts are renewed, temporary migrants whose contracts are renewed in the host countries (such as the 'guest-workers' in western Europe)... 3. Intracompany transfers, student migrants and similar categories... 4. Illegal (clandestine, undocumented) migrants... 5. Asylum seekers are persons who have requested refugee status in foreign countries...6. Refugees.<sup>4</sup>

Immigration can be categorized according to the immigrants' period of residence: *permanent immigration*, which includes people with intention to settle in the new lands. i.e: Irish immigrants in America in the 18<sup>th</sup> and 19<sup>th</sup> Centuries; *semi-permanent immigration* which is medium- to long-term immigration, although there is a plan to return this plan is related to a certain contract, as in the case of workers; *de-facto permanent immigration*, which includes people who had intention to return to their home country after a certain period of time, but somehow postponed their return several times and decided to stay and *non-immigration*, in which the person resides for a fixed period of time in the host country. Foreign students can be examples of this type<sup>5</sup>.

Reasons of immigration might differ. Economic, ecological, political, social reasons can be listed as the important ones. In other words, people might immigrate for various reasons, but the important aspect is that people tend to migrate and migration is the point of human dynamism; without dynamism societies, social groups die. Thus, immigration provides a kind of dynamism that is necessary for the human societies to develop<sup>6</sup>. Also this dynamism can be by force; deportations, relocations are also types of immigration. The necessity this

---

<sup>4</sup> Rosemarie Roger, 'The Politics of Migration in the Contemporary World', *International Migration: Special Issue: Migration and Health in the 1990s*, 1992, cited in Andreas Demuth, 'Some Conceptual Thoughts On Migration', B. Agozino (Ed.), in **Theoretical and Methodological Issues in Migration Research**, Aldershot: Ashgate Publishing, 2000, p: 26, available at [http://refugeelawreader.en.mediacentre8.hu/index.php?option=com\\_docman&task=cat\\_view&gid=37&limitstart=90](http://refugeelawreader.en.mediacentre8.hu/index.php?option=com_docman&task=cat_view&gid=37&limitstart=90) [accessed 20 January 2010]

<sup>5</sup> Demuth, 2000, p: 17

<sup>6</sup> İber Ortaylı, 'Genel Göç Olgusu', **Uluslar arası Göç Sempozyumu Bildiriler** (19-22), İstanbul: Zeytinburnu Belediye Başkanlığı, 08 December 2005

time, is imposed on people through fear, difficulties, political reasons and/or violence<sup>7</sup>.

Reasons of immigration can be seen as push factors. If political, economic and social conditions of the country of origin lead persons to consider immigration then these conditions become the push factors. However, the political, economic and social conditions are the pull factors; these factors usually tend to differ from country to country and can be seen as reasons to choose a country over another<sup>8</sup>.

## II. HUMAN RIGHTS AND THE RIGHT TO ASYLUM

While dealing with the issues of immigration and asylum one shall firstly clarify the concepts. These concepts are usually used interchangeably even though they have completely different meanings. However all those concepts rely on fundamental concepts of Human Rights. Therefore in order to understand the concepts of immigration and asylum one should elaborate the concept of right and Human Rights.

No matter what the differences are among the concepts of immigrant, asylum seeker and refugee; all are related to Human rights and survival. Reasons for immigration might differ but they rely on the need to survive at most. "Universal Declaration of Human Rights" lists many rights varying from the right to life to the right to freedom of thought, religion, etc. These rights, which are protected and respected by the signatory states, refer to basic rights that all human beings are entitled to. Right to asylum is listed as one of those fundamental rights and it is mentioned in the Article 14 as; "Everyone has the right to seek and to enjoy in other countries asylum from persecution"<sup>9</sup>. However, this right has been restricted with the second paragraph of the Article; "This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and

---

<sup>7</sup> Cengiz Çandar, "Dünyada Göç Olgusu", **Uluslar arası Göç Sempozyumu Bildiriler** (29-32), İstanbul: Zeytinburnu Belediye Başkanlığı, 08 December 2005

<sup>8</sup> Helen Hughes, **Immigrants, Refugees and Asylum Seekers: A Global View**, New South Wales: The Center of Independent Studies Limited, 2002, p: 7-12

<sup>9</sup> United Nations, "Universal Declaration of Human Rights", 10 December 1948, available at: <http://www.un.org/en/documents/udhr/> [accessed 28 December 2009]



principles of the United Nations<sup>10</sup>. That means the Declaration, while recognizing the right to asylum as one of the fundamental rights of every human beings, also restricts the definition. With the second paragraph, basically the Declaration omits different reasons of asylum, other than the political reason; i.e. economic or environmental reasons.

However, the Declaration itself, being a political and legal document, sets the political reasons by listing the fundamental rights of every human beings. Therefore, one can assume that these rights, if violated by a state, constitute the main of reason for the right to asylum.

Human rights are the rights that every individual is attached to by birth. This idea is reflected with the emphasizes to inalienability in the Preamble and with the Article 1 of the Declaration: "All human beings are born free and equal in dignity and rights"<sup>11</sup>. Furthermore human rights, "are not created by the states, but are the rights which revive the states through their own existence and are above the state existence"<sup>12</sup>.

### III. IMMIGRANTS, ASYLUM SEEKERS AND REFUGEES

The terms of asylum and migration have different meanings. Unfortunately there is no clear definition of the second term, migration, on which social scientists agree. Migration is actually a very common phenomenon which has shaped our entire social, cultural and economic environment throughout history. Migration is as old as the human history. One might easily assume that migration means movement of a person or persons from some place to another; across or within the borders of a country.

"[I]nternational migrants are those who cross international borders in order to settle in another country, even temporarily"<sup>13</sup>. According to 1997 resolutions of the UN Statistical

---

<sup>10</sup> Ibid

<sup>11</sup> [Ibid](#)

<sup>12</sup> Durmu Tezcan, **nsan Haklar, El Kitab,** Ankara: Seçkin Yay,nc,l,k, 2006, p:

32

<sup>13</sup> International Organization for Migration, "Identifying International Migrants", <http://www.iom.int/jahia/Jahia/about-migration/developing-migration-policy/identify-intl-migrants/cache/offonce:jessionid=B9A1914C6574AC1999AFBC2239718145.worker01> [accessed 28

Division (UNSD), an international migrant is, "any person who changes his or her country of usual residence"<sup>14</sup>. One other easily mixed term is immigrant. Helen Hughes defines migrants as "persons who move from their country or region of origin to another country or region" and immigrants as; "persons, who temporarily or permanently moved to a host country after meeting its immigration rules and regulations"<sup>15</sup>. Therefore one might say that migration is a general phenomenon, while immigration is linked to international migration.

The terms of asylum seeker and refugee are related to international migration. Pazarc, defines asylum as the act of a person who leaves his/her resident country because of different pressures or discriminatory legal persecutions and seek asylum from another country by entering to that country's land, consulate buildings or diplomatic representative offices, warships or state aircrafts. Asylum can be individual asylum derived from pressures and persecutions as well as mass migration derived from some sort of pressures or war and civil wars<sup>16</sup>.

The word 'asylum' comes from *sylos* or *sylon* in Greek, which means 'violated' or 'seized'. A serves as 'dis' or 'un' in Greek and changes the meaning of the word. *Asylon* therefore means inviolable or unseizable<sup>17</sup>. Asylum seeker is defined as "migrants who seek refuge or other humanitarian settlement in the host country"<sup>18</sup>. So the term asylum seeker does not define the status of being accepted but the status of being in need for asylum.

However, the right to asylum is not guaranteed. Regulations and documents relating to the issue of asylum tends to overemphasize the role of the states and therefore the right to asylum is to be understood as the right derived from the states. Both 'Convention Relating to the Status of Refugees' of 1951 and 'Protocol Relating to the Status of Refugees' of 1967

---

December 2009]

<sup>14</sup> United Nations Statistics Division, "Recommendations on Statistics of Immigration", 1998, [http://unstats.un.org/unsd/publication/SeriesM/SeriesM\\_58rev1E.pdf](http://unstats.un.org/unsd/publication/SeriesM/SeriesM_58rev1E.pdf) [accessed 28 December 2009]

<sup>15</sup> Hughes, 2002, p:

48

<sup>16</sup> Hüseyin Pazarc., **Uluslararası Hukuk Dersleri**, Ankara: Turan Kitabevi, 4. bask., 1996, p: 180-

185

<sup>17</sup> Meriam-Webster Online Dictionary, Asylum, <http://www.merriam-webster.com/dictionary/asylum> ; Your dictionary, Asylum, <http://www.yourdictionary.com/asylum> [accessed 28 December 2009]

<sup>18</sup> Hughes, 2002, p:  
47

recognizes the right to geographically limit the acceptance of the asylum seekers and thus the right to asylum. That is why it is possible to assume öthe right to asylumö is granted by the state<sup>19</sup>.

Refugees can be defined briefly as ö[p]ersons who have fled their home country because of well founded fear of persecution and who can not return to their home countries for fear of placing their rights in jeopardy ...ö<sup>20</sup>. Kiri çï has a broader definition of the term. According to Kiri çï, a refugee is a person, who becomes distrustful to his/her home country because he/she feels uncomfortable and under pressure due to his/her race, religion, social ideas or political orientation and applies for protection from another country as an outcome of his belief that his/her home country cannot behave neutral to him/her and whose application has been approved<sup>21</sup>. Penrose refers to Zolberg, Aguayo and Suhrke in terms of classifying refugees. In this classification, there are three types of refugees; the refugees as activists, engaging in political activity the state wishes to terminate; the refugees as targets, who invoke the displeasure of the state just because they belong to a particular social or cultural group; and the refugees as victims, whose lives become impossible because of the states of conflicts and social and political breakdowns<sup>22</sup> .

Refugees are different from the other types of immigrants on the basis that; a) they leave their home countries involuntarily, b) they are in necessity of international protection and help and c) they have the belief and will to return their home countries when problems in their home countries are resolved<sup>23</sup>. Although this definition draws attention to öthe will to returnö one should keep in mind that for a refugee it is nearly impossible to return to the county of origin due to possibility of persecution.

---

<sup>19</sup> Pazarc., 1996, p:

206

<sup>20</sup> Huges, 2002, p:

48

<sup>21</sup> Kemal Kiri çï, öDünyada ve Türkiye'de S, ,nma Olgusuö, **Ho görü Y,l,nda Mülteciler: Sivil Toplum**

**Örgütlerinden Beklenenler Sempozyumu**, stanbul: Helsinki Yurtta lar Derne i, Mart 1996, p: 8

<sup>22</sup> Jan Penrose, öThe UN Convention Relating To The Status of Refugee: The Case For and Against Reformö, Andrzej Bolesta (Ed.), in **Forced Migration and The Contemporary World: Challenges To The International System**(17-34), Bialystok: Wydawnictwo i Drukarnia PPHU, 2003, p: 23

<sup>23</sup> Kemal Kiriçi, "The Legal Status Of Asylum Seekers in Turkey: Problems and Prospects", **International Journal Of Refugee Law**, Oxford: Oxford University Press, Volume 3, No: 3, 1991

As can be seen, there is a crucial difference between a refugee and an asylum seeker. Asylum seeker is a person whose application has not been approved yet. Therefore one can assume that the asylum seeker is the person who has not gained the refugee status yet. However, both terms refer to the same reason for leaving the home country, which is a well founded fear. In order to be considered as a refugee or an asylum seeker; persons who leave their home countries and seek for international protection should have left their home countries and lost their hopes to return on the grounds of well founded fear.

#### IV. EVOLUTION OF THE CONCEPTS IN THE INTERNATIONAL SPHERE

Refugees have become one of the important issues in many international documents (agreements, treaties, resolutions, etc.) and the conceptualization of the refugees evolved through time as a result of experiences and changing conditions. The first international documents to address the refugee problems were the agreements signed under the League of Nations. In the League of Nations, issues related to refugees were seen as 'only to be dealt between the two parties in negotiations'<sup>24</sup>. 'The Covenant of League of Nations does not include any specific provision for international aid and protection for refugees'<sup>25</sup>. However, the League of Nations made special adjustments to help the Armenian and Russian refugees in 1921 and Germans in 1936. The Nansen Bureau for Russian and Armenian refugees (1921) and the High Commission for Refugees from Germany (1936) were the first important international agencies for refugees<sup>26</sup>. In fact during the League of Nations period (1921-1946) many institutions were created to assist and protect the refugees: the Nansen International Office for Refugees (1931-1938), the Office of the High Commissioner for Refugees coming from Germany (1933-1938), the Office of the High Commissioner of the League of Nations for Refugees (1939-1946) and the Intergovernmental Committee on Refugees (1938-1947)<sup>27</sup>.

<sup>24</sup> Taner Kılıç, 'Bir İnsan Hakkı Olarak İticek, Türkiye'de Geçici Sığınmacıların ve Çocukların Psikososyal Durumlarının Tespiti ve Yaşam Koşullarının iyileştirilmesi için Çözüm Önerileri', Ankara: Mazlumder, February 2005, p: 11

<sup>25</sup> Louise W. Holborn, 'The League Of Nations and the Refugee Problem', **The ANNALS of the American Academy of Political and Social Science**, Volume 203, No 1. 1939, p: 124

<sup>26</sup> Giorgio Agamben, 'We Refugees', **Symposium**, Leuk: Vol. 49, 1995, available on: the European Graduate Red Cross, Vol. 843, 30. Aug. 2001, p: 729

School, <http://www.egs.edu/faculty/giorgio-agamben/articles/we-refugees/> [accessed 03 January 2010]

<sup>27</sup> Gilbert Jaeger, "On the History of the International Protection of the Refugees," **International Review of the**

---

**Red Cross**, Vol. 843, 30. Aug. 2001, p: 729

However the definition of refugees was strictly related to nationality and/or ethnic identities. 'Arrangement Relating to the Issue of Identity Certificates to Russian and Armenian Refugees' ( 12 May 1926) stated in the Article 3 paragraph 2;

2. The Conference adopts the following definitions of the term "refugees":  
"Russian: Any person of Russian origin who does not enjoy or who no longer enjoys the protection of the Government of the Union of Socialist Soviet Republics and who has not acquired another nationality.  
"Armenian: Any person of Armenian origin formerly a subject of the Ottoman Empire who does not enjoy or who no longer enjoys the protection of the Government of the Turkish Republic and who has not acquired another nationality.

<sup>28</sup>

The Nansen International Office for Refugees was authorized by the League of Nations and officially became active on April 1, 1931. It mostly dealt with the Armenians, Assyrians and Assyria-Chaldeans, as the previous agency (the High Commission for Refugees) only included Russian refugees<sup>29</sup>. The further broadening of the refugee status to the Assyrians, Assyria-Chaldeans and Turks with the 'Arrangement Concerning the Extension to Other Categories of Certain Measures Taken in Favour of Russian and Armenian Refugees' (30 June 1928), also stressed the nationality clause while defining the refugee term<sup>30</sup>.

In addition 'The Convention Concerning the Status of Refugees Coming from Germany' (10. Feb. 1938) clearly states that the definition of the refugees is related to German nationality. The Article 1 states as;

1. For the purposes of the present Convention, the term "refugees coming from Germany" shall be deemed to apply to:  
(a) Persons possessing or having possessed German nationality and not possessing any other nationality who are proved not to enjoy, in law or in fact, the protection of the German Government.

---

<sup>28</sup> League of Nations. 'Arrangement Relating to the Issue of Identity Certificates to Russian and Armenian Refugees', 12 May 1926, available at: <http://www.unhcr.org/refworld/docid/3dd8b5802.html> [accessed 12 January 2010]

<sup>29</sup> The Nobel Foundation, Nansen International Office for Refugees, [http://nobelprize.org/nobel\\_prizes/peace/laureates/1938/nansen-history.html](http://nobelprize.org/nobel_prizes/peace/laureates/1938/nansen-history.html) [accessed 11 January 2010]

<sup>30</sup> League of Nations, 'Arrangement Concerning the Extension to Other Categories of Certain Measures Taken in Favour of Russian and Armenian Refugees', 30 June 1928, available at: <http://www.unhcr.org/refworld/docid/42cb8d0a4.html> [accessed 12 January 2010]



(b) Stateless persons not covered by previous Conventions or Agreements who have left Germany territory after being established therein and who are proved not to enjoy, in law or in fact, the protection of the Germany Government.  
2. Persons who leave Germany for reasons of purely personal convenience are not include in his definition.<sup>31</sup>

As it is seen the term refugee was used for the stateless people. Definitions were related to nationalities and ethnic belongings. People were not granted the refugee status individually, but as a group. Moreover the early arrangements were designed to protect and aid the refugees since they were stateless meaning they could no longer enjoy the protection of their states of birth. The aim of these arrangements was to aid and protect the refugees. They had a very narrow understanding of refugee identity however as they were the first arrangements, they were very helpful while new arrangements were embodied after the Second World War.

After the Second World War, measures to help the refugees and the victims of the war were taken. One of the earliest organizations was United Nations Relief and Rehabilitation Administration (UNRRA) which was founded in 1943. As stated in the Article 2 in the Agreement for UNRRA; the aims of the organization were were planning, coordinating, arranging administration of measures for the relief of the victims of war in areas controlled by the United Nations; formulating and recommending measures for individual or joint actions by the member governments for the coordination and purchasing, the use of ships and other activities; studying, formulating and recommending measures due to its experience in planning and performing stabilization of relief and rehabilitation, for individual or joint action by the member governments<sup>32</sup>.

The agreement does not use the term 'refugees' but 'victims' instead. There is no new definition since the earlier agreements and the organizations made the definitions. The organization was built upon the definitions of the earlier ones. However, one can assume that this agreement and organization has a wider understanding. The organization helped the

---

<sup>31</sup> League of Nations, 'Convention concerning the Status of Refugees Coming From Germany', 10 February

1938, available at: <http://www.unhcr.org/refworld/docid/3dd8d12a4.html> [accessed 12 January 2010]

<sup>32</sup> United Nations, 'Agreement for UNRRA', 9 November 1943, available at:

<http://www.ibiblio.org/pha/policy/1943/431109a.html> [accessed 16 January 2010]

victims of the Second World War, mostly operated in Displaced Persons camps in Europe and Asia<sup>33</sup>.

Other than UNRRA, one of the most important institutions that was designed to help the refugees was the International Refugee Organization (IRO). It was created in 1946 to deal with the massive refugee problem which occurred after the Second World War. According to 'Constitution of the International Refugee Organization', refugees were defined as displaced persons who have certain reasons for not to return their homelands. The main aim of the organization was to help the refugees either to return to their homelands or to find new places to stay. Also the organization would make sure that the re-established and/or re-settled peoples' rights and legitimate interests are protected<sup>34</sup>. However both organizations declared that Germans and Japanese people were not subject to the regulations<sup>35</sup> which shows that the stress on the ethnic definition was still valid.

IRO ceased to exist when the United Nations High Commissioner of Refugees (UNHCR) was established. In the Cold War era, there was a need for a more complex and active organization. In 1950 it was decided that UNHCR would be founded.

The United Nations High Commissioner for Refugees (UNHCR) was established to be active starting from the January 1<sup>st</sup> of 1951. The decision was taken on 3<sup>rd</sup> December 1949 with the Resolution 319 (IV)<sup>36</sup>. Functions and structure of UNHCR were clearly stated in the 'Statute of the Office of the United Nations High Commissioner for Refugees' accepted on 14 December 1950. This document defines not only the functions and structure of the organization but also the organization itself. In the Article 2 of Chapter 1, it is stated that [t]he work of the High Commissioner shall be of an entirely non-political character; it shall

---

<sup>33</sup> Mark Wyman, **DP's: Europe's Displaced Persons 1945-1951**. New York: Cornell University Press, 1998; Malcolm J. Proudfoot, 'The Anglo-American Displaced Persons Program for Germany and Austria', **American Journal of Economics and Sociology** (33-54), Vol. 6, No. 1, October 1946.

<sup>34</sup> United Nations, 'Constitution of the International Refugee Organization', 15 December 1946, available at: <http://www.unhcr.org/refworld/docid/3ae6b37810.html> [accessed 16 January 2010]

<sup>35</sup> United Nations, 'Agreement for UNRRA'; United Nations, 'Constitution of the International Refugee Organization'

<sup>36</sup> United Nations, 'United Nations General Assembly Resolution No 319 (IV)', 3 December 1949, available

at:

<http://www.un.org/documents/ga/res/4/ares4.htm> [accessed 20 January 2010]

be humanitarian and social and shall relate, as a rule, to groups and categories of refugees<sup>37</sup>. This statement also defines the character of the organization. The term refugee is also redefined with reference to the earlier definitions of Arrangements of 12 May 1926 and of 30 June 1928, the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 and the Constitution of the International Refugee Organization. According to this document, a refugee is defined in the Article 6 as "any person who is outside of his/her country of origin and does not enjoy the protection of his/her country of origin due to well-founded fear of being persecuted for reasons of race, religion, nationality or political opinion and unwilling to return his/her country because of such reasons"<sup>38</sup>.

The functions of the organization are stated in the Articles 8, 9, 10, 11 and 12 and structure and finance of the organization are mentioned in the Chapter 3. According to this, there is a High Commissioner, who is to be elected by the General Assembly of the Secretary General for a three years term and he/she shall appoint a Deputy High Commissioner of a nationality other than his/her own for the same term<sup>39</sup>.

The Status, however, has been changed due to the international political and social developments. The definition of refugee was soon broadened with the 1951 Convention, 1969 'Convention Governing the Specific Refugee Problems in Africa' of the Organization for African Unity, 1984 Cartagena Declaration of Refugees and some other regional arrangements.

After the establishment of the UNHCR, 'Convention Relating to the Status of Refugees' was accepted in 1951. The Convention defines the organization's duties, body as well as the rights of the refugees. The refugee is defined in the Article 1 section A as follows;

A. For the purposes of the present Convention, the term "refugee" shall apply to any

---

<sup>37</sup> United Nations General Assembly, "Statute of the Office of the United Nations High Commissioner for Refugees", 14 December 1950, available at: <http://www.unhcr.org/refworld/docid/3ae6b3628.html> [accessed 24 January 2010]

<sup>38</sup> Ibid

<sup>39</sup> United Nations General Assembly, "Statute of the Office of the United Nations High Commissioner for

Refugeesö

person who:

(1) Has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization;

Decisions of non-eligibility taken by the International Refugee Organization during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfill the conditions of paragraph 2 of this section;

(2) As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

In the case of a person who has more than one nationality, the term "the country of his nationality" shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.<sup>40</sup>

In the section B, "events occurring before 1951" clause is explained. According to this explanation, the clause refers to events occurred before 1951 in Europe or in Europe and elsewhere. This is an optional situation in which, any contracting state has to declare which definition it accepts before signing the Convention<sup>41</sup>.

As can be seen, the concept of "refugee" is limited in terms of geography and time. However this document does not define the refugees with a certain reference to ethnicity or nationality. This is a positive change in terms of extension of the refugee term. Also this document is the first in a series of human rights treaties which transcribed the ideals of the Universal Declaration into legally binding obligations since the Article 14 of the Universal Declaration of Human Rights, which sets a link between the 1951 Convention.<sup>42</sup> But still limitations exist. Apart from the geographical and time limitations, there are also limitations on the reasons to become refugee.

<sup>40</sup> United Nations High Commissioner for Refugees, "Convention Relating to the Status of Refugees", 28 July 1951, available at: <http://www.unhcr.org/protect/PROTECTION/3b66c2aa10.pdf> [accessed 16 January 2010]

<sup>41</sup> United Nations High Commissioner for Refugees, "Convention Relating to the Status of Refugees",

<sup>42</sup> Garry G. Troeller, "Refugees in contemporary international relations: reconciling state and individual sovereignty", **NEW ISSUES IN REFUGEE RESEARCH Working Paper**, No. 85: UNHCR. Evaluation and Policy Analysis Unit, 2003, available at: <http://www.unhcr.org/cgi-bin/texis/vtx/search?page=search&docid=3e71f1b64&query=refugees%20in%20contemporary%20international%20relations> [accessed 17 January 2010]

In the Convention, wars and ecological reasons, which cause displacement of people, are not listed as the reasons of being a refugee. So the refugee term is linked with the misbehavior of the states and the failed states. Moreover, since the document recognizes the opportunity to choose the definition of refugee with a reference to time and geography, it leads right of asylum to be an area in which states have the power to grant the right.

This negative aspect of the Convention was later partially corrected with the 'Protocol Relating to the Status of Refugees' of 1967. The Protocol Relating to the Status of Refugees entered into force on October 4, 1967. In the Article 1, paragraph 2 of the Protocol, the definition made by the 1951 Convention is revised as;

2. For the purpose of the present Protocol, the term "refugee" shall, except as regards the application of paragraph 3 of this article, mean any person within the definition of article I of the Convention as if the words "As a result of events occurring before 1 January 1951 and..." and the words "...as a result of such events", in article 1 A (2) were omitted.<sup>43</sup>

With this phrase, time limitation on the refugee definition was lifted however, the geographical limitation was kept. The Protocol did not bring further geographical revisions and made it clear that the present protocol to be applied without any geographic limitation, but the existing declarations made by the party states to the 1951 Convention, in accordance with the Article 1 of the same convention were to be kept<sup>44</sup>. This means that if the existing parties to the 1951 Convention declared any reservations on geographical clauses, then they have the right to keep their reservations, however any new party to the Convention will not have such a right. Also this protocol acknowledges that each state which had declared reservation in accordance with paragraph 1 of the Article 7, may at any time withdraw such reservation<sup>45</sup>.

---

<sup>43</sup> United Nations High Commissioner for Refugees, 'Protocol Relating to the Status of Refugees', 4 October 1967, available at: <http://www.unhcr.org/protect/PROTECTION/3b66c2aa10.pdf> [accessed 16 January 2010]

<sup>44</sup> Ibid

<sup>45</sup> Ibid



1951 Convention and 1967 Protocol were clearly a step forward in defining the term and the rights of the refugees. However, both documents could not broaden the term and kept the geographical limitations, which led the states to choose to have and help the refugees from all over the world or from certain places. In addition, the documents limited the reasons to become a refugee to have a well founded fear of persecution. This led the documents and the UNHCR to be unsatisfactory to help the refugees from the Third World countries who left their country of origin due to civil wars, ecological problems, natural disasters, famine, etc.

As these terms were insufficient, there arose some other documents and definitions. The new definitions and documents were mostly regional but they were helpful for the evolution of the refugee term. As mentioned earlier, some of them are 1969 'Convention Governing the Specific Refugee Problems in Africa' of the Organization for African Unity (or the OAU Convention) and 1984 Cartagena Declaration on Refugees. The first one was designed to cope with the refugee problems in Africa. This convention broadens the term refugee to persons who leave his/her place of habitual residence due to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his/[her] country of origin or nationality<sup>46</sup>.

1984 Cartagena Declaration Of Refugees, on the other hand, focuses on the Central and South America. Due to civil wars, military operations and rising violence in many parts of the Central America in the 1970s and 1980s, many people became vulnerable and were forced to leave their habitual places. Upon this situation a conference was held in Columbia on 19-22 December 1984. At the end of the conference, Cartagena Declaration on Refugees was adopted. This declaration also broadens the refugee definition due to political and social developments in the region. The declaration makes reference to the OAU Convention and the reports of the Inter-American Commission on Human Rights and states that;

... the definition or concept of a refugee to be recommended for use in the region is one which, in addition to containing the elements of the 1951 Convention and the

---

<sup>46</sup> Organization of African Unity, 'Convention Governing the Specific Aspects of Refugee Problems in Africa' ("OAU Convention"), 10 September 1969, available at: <http://www.unhcr.org/refworld/docid/3ae6b36018.html> [accessed 24 January 2010]

1967 Protocol, includes among refugees persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.<sup>47</sup>

Another regional document to help to improve the refugee definition was 'Arab Convention on Regulating Status of Refugees in the Arab Countries' signed on 27 March 1994. The Convention broadened the refugee definition by introducing sustained aggression, occupation, foreign domination, natural disasters and/or grave events resulting major disruption of public order as reasons to leave the country of origin<sup>48</sup>.

The regional documents and regulations considered refugee in broader terms due to realistic perceptions of political and social situation of the regions. Those kind of conventions and declarations can be considered to be more humanitarian in the sense that they introduce other reasons for becoming a refugee and ask for a closer cooperation among the parties to help the displaced people of various reasons.

The right to asylum, on the other hand, has not drawn much attention. It is considered as a right that states are allowed to recognize if they wish to and can regulate according to their domestic law or agreements made with other states<sup>49</sup>. However, there are also documents that relate right of asylum with fundamental rights. Article 14 of the Universal Declaration of Human Rights, for example, states that "[e]veryone has the right to seek and to enjoy in other countries asylum from persecution"<sup>50</sup>. But this document is not legally binding. Also the 'International Covenant on Civil and Political Rights', issued by the United Nations with the same ideals in the Universal Declaration of Human Rights, does not include the right of asylum<sup>51</sup>. European Convention on Human Rights, or formally known as 'Convention for

---

<sup>47</sup> Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, 22 November 1984, available at: <http://www.unhcr.org/refworld/docid/3ae6b36ec.html> [accessed 24 January 2010]

<sup>48</sup> League Of Arab States, "Arab Convention on Regulating Status of Refugees in the Arab Countries", 27

March 1994, available at: [http://rsq.oxfordjournals.org/cgi/pdf\\_extract/27/2/87](http://rsq.oxfordjournals.org/cgi/pdf_extract/27/2/87) [accessed 24 January 2010]

<sup>49</sup> Bülent Peker and Mithat Sancar, **Mülteciler ve İtica Hakkı**, Ankara: İnsan Hakları, Derneği ve İktisadi

Letmesi Yayınları, 2005, p: 8

<sup>50</sup> United Nations, "Universal Declaration of Human Rights", 10 December 1948

<sup>51</sup> United Nations, "International Covenant on Civil and Political Rights", 16 December 1966, available at: <http://www.hrweb.org/legal/cpr.html> [accessed 20 January 2010]

the Protection of Human Rights and Fundamental Freedoms' ignores the right of asylum as well<sup>52</sup>. The nature of the term, therefore can be said to be a state right, rather than a civil right. It is granted by the states, it is left to the state authority and it is considered as a humanitarian act by the non-binding documents.

## **V. CONDITIONS OF BEING A REFUGEE**

1951 Convention and 1967 Protocol, define the refugee in commonly accepted terms. Both documents, while defining the term also set the conditions necessary to fulfill in order to be accepted as a refugee. To be outside of the country of nationality and unable or unwilling to benefit from protection granted by the state of origin; a well-founded fear of persecution arising from race, religion, nationality, membership of a particular social group or political opinion are the main conditions. In other words, for a person to be accepted as a refugee he/she should be away from his/her country of nationality or habitual residence due to certain fear, his/her basic rights and freedom are in great danger of being violated in case he/she returns to his/her country of nationality, his/her rights can or will not be protected by the state and his/her racial, religious, nationality status or identity, membership of a particular social group or political opinion should be the reason for the violation. But one needs to address these conditions separately one by one in order to have a certain understanding.

### **A. Condition of Being Outside of the Country of Nationality**

In the formal definition of the refugee, he/she is expected to be outside of the territories of his/her country of origin. However, a person who is away from his/her country of origin does not automatically become a refugee. On the other hand, a person who has a well founded fear of persecution because of his race, religion, nationality, membership of a particular social group or political opinion is not necessarily a refugee either. Conditions mentioned here should be taken as a whole.

---

<sup>52</sup> Council of Europe, 'Convention for the Protection of Human Rights and Fundamental Freedoms', 4 November 1950, available at: <http://www.hri.org/docs/ECHR50.html> [accessed 23 January 2010]

Being outside of the country of origin is not solely being away from the country of origin. It also means that the person is no longer protected by his/her country of nationality. Generally every person is protected by his/her state and therefore he/she does not need international protection. However, refugees do not enjoy protection from their states and for that reason they seek international protection or protection from the host country. But that does not mean that those people are stateless. A stateless person is defined as "a person who is not considered as a national by any State under the operation of its law" in the "Convention Relating To the Status of Stateless Persons"<sup>53</sup>. Refugees are not necessarily stateless, in most of the cases they still have their nationality and citizenship status. However, refugees might be also forced to be stateless or states they are attached to might suspend their citizenship and therefore they become stateless. In such case they are still considered as aliens.

In the 1951 Convention, in the definition of refugees, the phrase "outside the country of his nationality" is changed to "outside the country of his formal habitual residence" for the stateless people<sup>54</sup>.

Nevertheless this condition can also be seen as a way to integrate the refugee issue to the principle of territoriality. This interpretation results in incapability to act directly for those who are displaced within the territories of the state and those who are forced to migrate because of civil wars or foreign occupations; cases very common during the Rwanda and Bosnian wars<sup>55</sup>.

### **B. A Well-Founded Fear of Persecution**

In the formal definition of the term people are expected to have a certain, solid fear of persecution. Refugees are expected to prove their fear, because "[the 1951 Convention] requires ... demonstration of 'fear' understood as a forward-looking expectation of risk"<sup>56</sup>.

<sup>53</sup> United Nations High Commissioner for Refugees, "Convention Relating To the Status of Stateless Persons", 28 September 1954, available at: <http://www2.ohchr.org/english/law/stateless.htm> [accessed 24 January 2010]

<sup>54</sup> United Nations High Commissioner for Refugees, "Convention Relating to the Status of Refugees"

<sup>55</sup> Peker and Sancar. 2005, p: 16

<sup>56</sup> University of Michigan Law School, "International Refugee Law: The Michigan Guidelines on Well-

Therefore well-founded fear of persecution means not only the existence of the fear but also the observed or observable consequences of it. However to prove fear is nearly impossible. So the aim is not to judge upon the existence of fear but the existence of persecution. Then fear transforms into expectation of risk<sup>57</sup>. If the expectation of risk is found valid then the fear of persecution is well-founded. But for the expectation of risk to be found valid there, it is not necessary to have a story of persecution. In most of the cases, the risk of being persecuted is enough to leave the country. Hence the 1951 Convention does not mention the actual experience of persecution but the fear to experience it.

Acts of persecution, on the other hand, are also not clearly identified in the 1951 Convention. However, there is nearly a common understanding that relates persecution with continuing or systematic threats to or violations of fundamental human rights<sup>58</sup>. Violations and persecution might be results of actions of state or other actors, groups. In cases where persecution risk arise from the actions of independent groups, states might be failing or unwilling to act upon those actions. In order for persecution risk to occur, a failure to act on state's behalf is enough. Because in those kind of circumstances, it is obvious that people do not enjoy protection from the state.

### **C. Race, Religion, Nationality, Membership of a Particular Social Group or Political Opinion**

Risk and fear of persecution should arise from a particular aspect of that person. Reasons of persecution are clearly defined in the 1951 Convention and other international documents relating to the status and definition of refugees. According to these definitions reasons are listed as race, religion, nationality, membership of a particular social group or political opinion. Some other documents might add different reasons, but these are the mostly accepted ones and they are also the ones that the 1951 Convention recognizes. Continuous and systematic discriminatory behaviors resulting in severe actions are considered as

---

Founded Fearö, **Third Colloquium on Challenges in International Refugee Law** (68-120) , Ann Arbour: Michigan, 28 March 2004, p: 69

<sup>57</sup> Ibid

<sup>58</sup> Peker and Sancar. 2005, p: 19-

persecutory acts.

People who are discriminated because of their race, religion, nationality, membership of a particular social group or political opinion do not need to face direct physical or mental threat. Interference of personal development, for example not allowing people of a certain belief to have university education, is also considered as an act of persecution.

Persecution acts or continuous pressures are directed to groups, rather than individuals. Thus, discriminatory acts are considered as threats to certain groups. In such cases of discrimination the asylum seeker does not need to prove an individual discrimination act, but it is sufficient to prove belonging to a certain race, nationality, religion, social or political group that is being discriminated <sup>59</sup>.

To summarize the chapter, in order to define the immigration and asylum policies one should first define the concepts of immigration and asylum. Migration is a historical phenomenon that is bounded with the human history. People migrated for centuries. However, migration gain a new meaning with the formation of states and state borders.

Asylum on the other hand is a modern phenomenon. It was first mentioned after the First World War but became internationally important after the Second World War. It is only after the Second World War, some what of an international consensus on the legal definition emerged. Although there are other international agreements and treaties, which tend to define the concept of asylum, they were written on the basis of the definition that is written in the 1951 Convention. The important part, which are the reasons for asylum, remained almost the same, although some amendments were made. Reasons for asylum in the 1951 Convention are; condition of being outside of the country of nationality and having a well-founded fear of persecution based on race, religion, nationality, membership of a particular social group or political opinion.

---

<sup>59</sup> Ibid, p:  
25

## **CHAPTER II**

### **THE EUROPEAN UNION'S IMMIGRATION AND ASYLUM POLICY**

Immigration and asylum policies are not given policies in the European Union. These policies evolved through time and are not perfect. European Union is affected by the political interests of the member states and thus to build a common and humanitarian immigration and asylum policy is a very difficult task. It is highly controversial whether the Union could achieve that or not however, it has taken many steps to develop a common immigration and asylum policy. This chapter examines the historical background and development of the European Union's immigration and asylum policy.

#### **I. EARLY REGULATIONS**

After the Second World War, Europe was in a situation of chaos; millions of people were killed, millions of others were displaced, economies were in a situation of crisis. Economic crisis could be regulated through production. However, since a great proportion of the population was killed in the Second World War, countries needed a large number of workers for industrial production. That is why in the post-war era period, many developing European countries welcomed immigrants as guest workers. In this era, there was a huge immigration wave from the underdeveloped world to the western countries. However, later developments in the economic field such as oil crisis, economic stagnation and privatization, led to more strict visa and travel applications.

After the end of the Cold War, newly liberalized countries of the Eastern Block became the main providers of immigrants. Settlers of the ex-communist countries rushed to western European countries. Also the disintegration conflict in the ex-Yugoslavia led series of refugee flows. Refugee flows were dominant among the immigration movements. These developments became the reasons for the European countries to strengthen their immigration



and asylum policies<sup>60</sup>.

One of the earliest attempts for international cooperation on immigration and border control in Europe was the TREVI group, which was formed in 1976 with participation of France, Germany, Italy, Belgium, the Netherlands, Luxembourg, Denmark, Ireland and Great Britain (later Greece, Spain and Portugal). TREVI stands for 'Terrorism, Radicalism, Extremism and Violence International' and is mainly shaped with the idea to secure the homeland from foreign threats within the lines of humanitarian understanding<sup>61</sup>. Meanwhile, the European Community members were engaged in developing a closer cooperation in trade affairs. On the one hand, members were trying to loosen the controls on borders for free movement of services, goods, capital and people and on the other hand they needed to strengthen the cooperation for a stronger border control.

The legal basis of the free trade area of the Community was shaped with the Single European Act of 1986. The Single European Act took the external border of the Community as the main borders and the internal borders were considered as weaker borders, as intended in the White Paper on Completing the Internal Market<sup>62</sup>. With this document, the heavy border control shifted to external borders. Although this document was basically on economic and trade cooperation, the idea of weaker internal borders was to be developed for a common asylum and immigration policy. The idea of the Common Market without internal border control inspired several thoughts on a common asylum policy<sup>63</sup>. Also in the Final Act of the Single European Act, these thoughts were clearly revealed;

---

<sup>60</sup> Carl Levy, 'Asylum Seekers and the European Union in the 1990s', **Lehrverbund European Social Structure and Cultural Globalization**, available on; <http://www.zmk.uni-freiburg.de/EuropeanSocialStructure/SeminarvorlesungSS99/CarlLevy/Textversion/textversion.htm> [accessed 18 February 2010]

<sup>61</sup> Carl Levy, 'European Asylum and Refugee Policy After the Treaty of Amsterdam: the birth of a new regime?', Alice Bloch & Carl Levy (Ed.), in **Refugees, Citizenship and Social Policy in Europe**, (12-51), London: Macmillan Press Ltd, 1999, p: 23 ; Tony Bunyan, 'Trevi, Europol and the European State', [www.statewatch.org/news/handbook-trevi.pdf](http://www.statewatch.org/news/handbook-trevi.pdf) [accessed 18 February 2010]

<sup>62</sup> European Community: Commission of the European Communities, 'White Paper On Completing the Internal Market', 28-29 June 1985, available at: [http://europa.eu/documents/comm/white\\_papers/pdf/com1985\\_0310\\_f\\_en.pdf](http://europa.eu/documents/comm/white_papers/pdf/com1985_0310_f_en.pdf) [accessed 18 February 2010]

<sup>63</sup> Gregor Noll, **Negotiating Asylum: The EU Acquis, Extraterritorial Protection and the Common Market of Deflection**, The Hague: Kluwer Law International, 2000, p: 122

In order to promote the free movement of persons, the Member States shall cooperate, without prejudice to the powers of the Community, in particular as regards the entry, movement and residence of nationals of third countries. They shall also cooperate in the combating of terrorism, crime, the traffic in drugs and illicit trading in works of art and antiques.<sup>64</sup>

The intention for a common border control policy was later documented by series of treaties and agreements. Before the Maastricht Treaty, the cooperation had an international nature and only after the Maastricht Treaty it became a Union policy. „... [T]he pre-Maastricht period was characterized by the desire to achieve a common internal market. No direct actions were taken in the field of asylum until very late in this period under the pressure of increasing asylum applications and public debate“<sup>65</sup>.

## **II. THE SCHENGEN ACQUIS AND REGULATIONS BEFORE MAASTRICHT**

### **A. The Schengen Acquis**

During the 1980's, the European Community's main issue was to successfully establish the common market and in order to do that the European Community had to lift the internal border controls. As a result, on June 14<sup>th</sup> of 1985, Germany, France, Belgium, the Netherlands and Luxembourg signed the Schengen Agreement. Denmark, Ireland and Great Britain were not parties to this agreement and the other Community members joined the Agreement later. However, Denmark later joined the Schengen area when Norway and Iceland, although not being a member of the Union, signed the agreement in 1999. The Agreement had many objectives regarding judicial cooperation, visa regulations, drugs and arms trafficking, asylum policies, etc. Five years later, 'The Convention Implementing The Schengen Agreement' was signed on 19 June 1990.

With the Schengen *Acquis*, the European Community built a cooperation area for the

---

<sup>64</sup> European Community, „Final Act and Declarations of the Single European Act“, 17 February 1986, available at: <http://www.eurotreaties.com/seafinalact.pdf> [accessed 18 February 2010]

<sup>65</sup> UNHCR, UNHCR Tool Boxes on EU Asylum Matters: Tool Box 1: The Fundamentals - Part 2: Creating an

Area of Freedom, Security and Justice: From Intergovernmental Co-operation to a Common Asylum and Migration Policy, available at: <http://www.unhcr.org/41b6c90a4.html> [accessed 20 February 2010]

control of external borders. Regulations for border control are taken as a Community matter and further cooperation for securing the Community is aimed with the Schengen *Acquis*. Among the regulated matters, there are visa applications, border controls, asylum regulations, transportation regulations, etc. However, while being engaged with external border controls, the Community members came to an understanding that securing the Community could not be achieved, only through border control, but further measures should be taken.

Article 2 of the Schengen Convention lifts the internal border controls and Article 3 regulates crossing external borders<sup>66</sup>. Second Chapter (Crossing External Borders), regulates checks and controls for the aliens crossing the external borders of the Community. It also states that aliens can acquire visa for only three months.

Visa regulations in the Schengen *Acquis* are mentioned in the Third Chapter. They are designed to be harmonized and a single visa is created. With this single visa regulation, an alien traveling through the internal borders would not be obliged to take national visas from each member state but would use the single visa when he/she trans passes the external borders. Visas exceeding three months, or long term visas as mentioned in the *Acquis*, are decided to be national visas issued by the party states<sup>67</sup>.

On the other hand, the Schengen *Acquis* informs that the contracting parties are not just willing to harmonize their visa regulations with a single visa but they are also trying to make cooperation for border control and fight against illegal immigration. The measures listed in the Sixth Chapter, with the Article 26, deals with the carriers and that is why shares the responsibility with them. In the Second section of Article 26, the *Acquis* foresees punishment for those who help the illegal immigrants cross borders.

---

<sup>66</sup> Article 2 is in the First Chapter (Crossin Internal Borders) and states that ð1. Internal borders may be crossed at any point without any checks on persons being carried out.ö and Article 3 is in the Second Chapter (Crossin External Borders) and states that ð1. External borders may in principle only be crossed at border crossing points and during the fixed opening hours.ö European Community, ðConvention Implementing the Schengen Agreement, The Schengen Acquisö, 19 June 1990, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2000:239:0001:0473:EN:PDF> [accessed 22 February 2010]

<sup>67</sup> Ibid

In case of right of asylum, the Schengen *Acquis* reassures the positions and rights of parties. The contracting states held responsible for dealing with the asylum seekers. Article 29, underlines this responsibility by clearly defining it. However, every Contracting Party shall retain the right to refuse entry or to expel asylum seekers to a third State on the basis of its national provisions and in accordance with its international commitments<sup>68</sup>.

Also the contracting parties, agreed upon the responsibility of one state. An asylum application, according to the Article 30, was to be dealt by a single state, to which the application was addressed. Therefore, one can assume that while the border control duty and visas are harmonized, asylum policy has not been harmonized and centralized yet. The Community, with this article, has refused to undertake the right of asylum as a Community matter, but instead it has remained as a state issue. Moreover, although the Schengen *Acquis* is designed to lift the internal border controls so that a free zone is created among the contracting parties, it is forbidden for an asylum seeker to travel through the borders of the member states. An asylum seeker cannot travel through other states freely once he/she enters the territory of a party states as a tourist. In this sense, he/she is differentiated from the other third party states' citizens. These situations are defined in the Articles 33 and 34.

Title 3 covers police and security matters. It includes issues like police cooperation, mutual assistance in crime matters, application of *ne bis in dem* principle, extradition, transfer of enforcement of criminal judgments, narcotic drug and firearms and ammunition. Title 4 is about the system established in order to regulate cooperation in the Schengen zone; an area covering the territories of the contracting parties. The system is called the Schengen Information System (SIS). The system is described in the Article 92 as;

1. The Contracting Parties shall set up and maintain a joint information system, hereinafter referred to as Schengen Information System consisting of a national section in each of the Contracting Parties and a technical support function. The Schengen Information System shall enable the authorities designated by the Contracting Parties, by means of an automated search procedure, to have access to alerts on persons and property for the purposes of border checks and other police and customs checks carried out within the country in accordance with national law and, in the case of the specific category of alerts referred to in Article 96, for the purposes

---

<sup>68</sup> Ibid

of issuing visas, residence permits and the administration of legislation on aliens in the context of the application of the provisions of this Convention relating to the movement of persons.<sup>69</sup>

This article is linked to Article 96 and in the second part of the article, immigrants who are considered as threats to public security or to national security. The mentioned threat can be caused by;

- (a) an alien who has been convicted of an offence carrying a penalty involving deprivation of liberty of at least one year;
- (b) an alien in respect of whom there are serious grounds for believing that he has committed serious criminal offenses, including those referred to in Article 71, or in respect of whom there is clear evidence of an intention to commit such offenses in the territory of a Contracting Party.<sup>70</sup>

This system (SIS) has been criticized by many organizations because it clearly sets the security question as the main issue and lacks the humanitarian intention. At the end of 2001 there were 10,541,271 records held on the SIS. A large number of the people listed in the SIS files so far have been asylum seekers<sup>71</sup>.

While the contracting parties were trying to harmonize their border controls and visa regulations, the issues of security and national sovereignty were not left behind. The Schengen *Acquis* is a reflection of this dilemma. On the one hand, the contracting parties lifted checks and controls over the internal borders and engaged in cooperation in many areas. However, the asylum issue was left to the national sovereignty. Security of the territories and citizens of the contracting parties became too important and control over external border control and cooperation against organized crime emerged as the main areas of cooperation.

---

<sup>69</sup> Ibid

<sup>70</sup> Ibid

<sup>71</sup> Deidre Horgan, 'Building Fortress Europe: Increased integration of EU asylum and immigration policy', September 2002, <http://flag.blackened.net/revolt/ireland/nice/analysis/fortress.html> [accessed 25 February 2010]

## **B. Dublin Convention**

On 15<sup>th</sup> of June, 1990, the Community members gathered in Dublin to sign the Dublin Convention or 'Convention Determining The State Responsible For Examining Applications For Asylum Lodged In One Of The Member States Of The European Communities'. The Dublin Convention entered into force in 1997 and to prevent any conflict, asylum regulations in the Schengen *Acquis* were abolished.

The objective of the Dublin Convention is to determine which Community member is responsible for examining an application for asylum. With this convention, it is designed to add a more humanitarian perspective to the Schengen *Acquis*. It is designed to make sure whether a non-member state could be held responsible or not. If not, then a Community member would examine the asylum-seeker application so that, no asylum seeker would left outside the Community. Also this convention is prepared to prevent multiple applications<sup>72</sup>.

The Dublin Convention, unlike the Schengen *Acquis*, was ratified by all Community (and later Union) members and it entered into force in 1997. Moreover, this convention reveals a more detailed and well examined asylum policy. For example, in the Article 4, family reunions are stated.

According to the Article 4, if a member of the asylum seeker's family holds a refugee status and is legally resident in a member state, then that state is responsible for examining the application, on the applicant's will. This article clearly states that family reunion is an important issue to be taken into account, while dealing with an asylum application. However, the family members mentioned are listed in the article as the applicant's '... unmarried child who is a minor of under eighteen years, or his or her father or mother where the applicant for asylum is himself or herself an unmarried child who is a minor of under eighteen years'<sup>73</sup>.

<sup>72</sup> The EuropaWorld, 'Dublin Convention: State Responsible For Examining Applications For Asylum Lodged In One Of The Member States Of The European Communities', available at: [http://www.europaworld.org/DEVPOLAWAR/Eng/Refugees/Refugees\\_DocC\\_eng.htm](http://www.europaworld.org/DEVPOLAWAR/Eng/Refugees/Refugees_DocC_eng.htm) [accessed 26 February 2010]

<sup>73</sup> European Community, 'Convention Determining The State Responsible For Examining Applications For Asylum Lodged In One Of The Member States Of The European Communities', 15 June 1990, available at:

Article 5 mentions the responsibility of the member state, which has already granted the applicant with a residence permit, to examine the application. The same responsibility is also true for the member state which issued a visa for the applicant, as it is stated in the second paragraph of the Article 5, but there are some conditions for such a case. For example if the visa is issued with a written permission of another member state, then that state would be held responsible for the application or if the applicant owns a transit visa and applies for asylum to a country, then that state is responsible. In case the applicant has several visas from several member states, the member state which has issued the longest term visa, or ,in case the terms are equal, the member state which has issued the visa that has the latest expiration date, would be responsible. These conditions are also listed in the Article 5.

The fourth paragraph of the Article 5, on the other hand deals with the applicants, whose resident permits and/or visas have been expired. It is stated;

4. Where the applicant for asylum is in possession only of one or more residence permits which have expired less than two years previously or one or more visas which have expired less than six months previously and enabled him or her actually to enter the territory of a Member State, the provisions of paragraphs 1, 2 and 3 of this Article shall apply for such time as the alien has not left the territory of the Member States.

Where the applicant for asylum is in possession of one or more residence permits which have expired more than two years previously or one or more visas which have expired more than six months previously and enabled him or her to enter the territory of a Member State and where an alien has not left Community territory, the Member State in which the application is lodged shall be responsible.<sup>74</sup>

Article 6 also mentions which member state is responsible for examining the asylum application. In case which the applicant crosses the borders of a member state through a non-member state, then the member state, the applicant first entered would be responsible for examining the application for asylum.

Article 7 states that after the alien crosses borders of a country without visa because

---

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:41997A0819%2801%29:EN:NOT>  
[accessed 26 February 2010]

<sup>74</sup> Ibid

he/she does not need visa, and applies for asylum in another state, which he/she does not need to have a visa also, the member state, which is responsible for preventing the alien from crossing the borders, is responsible for examining the application.

The last article for determining the responsible country to examine the asylum application is the Article 8, which states that in case where no Member State responsible for examining the application for asylum can be designated on the basis of the other criteria listed in this Convention, the first Member State with which the application for asylum is lodged shall be responsible for examining it<sup>75</sup>.

These articles are mentioned as the ones listing the criteria to determine responsibility for dealing with an asylum request according to the second paragraph of Article 3 of the Convention.

The Dublin Convention was severely criticized by the UNHCR on humanitarian basis. The UNHCR published two papers on the convention; the first one in 1998, and the second one in 2001. Both reports are about the systems lacking understanding of legal rights and personal welfare of asylum seekers. It is mentioned that a fair and transparent application procedures need to be developed in the convention and the notion of safe country is also found questionable since the concept of safety is not clearly defined. Also the definition of family in the family reunion cases are found insufficient and the Community is asked to broaden the definition by including the dependants who are living in the same household<sup>76</sup>. Many of the criticisms are repeated in the 2001 paper. For example, a more broader definition of family is again requested. Moreover, the UNHCR informs the Union about its disagreement with the Dublin Convention's linking the cases of possessing a visa and entering to a territory to the responsibility of a member state<sup>77</sup>.

---

<sup>75</sup> Ibid

<sup>76</sup> United Nations High Commissioner for Refugees, "Implementation Of The Dublin Convention: Some UNHCR Observations", 1 May 1998, available at: <http://www.unhcr.org/43662e1b2.html> [accessed 26 February 2010]

<sup>77</sup> United Nations High Commissioner for Refugees, "Revisiting The Dublin Convention: Some Reflections by UNHCR in Response to Commission Staff Working Paper", 19 January 2001, available at: <http://www.unhcr.org/43662b3e2.html> [accessed 26 February 2010]



The criticisms were taken into consideration and the European Union soon after went to a renovation for the Dublin Convention. In 2003, The Dublin Regulation was adopted and it replaced the Dublin Convention. And lately in 2008, the Commission proposed some amendments to the Regulation to regulate the system in a better way.

### **C. London Resolutions**

The London Resolutions of 30 November 1992 were the last documents the European Community has issued before the Maastricht Treaty came into force. The resolutions are actually a set of three resolutions; Resolution of 30 November 1992 on manifestly unfounded applications for asylum, Resolution of 30 November 1992 on a harmonized approach to questions concerning host third countries and Conclusions of 30 November 1992 on countries in which there is generally no serious risk of persecution .

#### **1. Resolution of 30 November 1992 on manifestly unfounded applications for asylum**

The resolution was issued in order to maintain a common standard procedure for the Community members for applications which are manifestly unfounded. Those applications would be immediately refused so that other applications would be examined in a more detailed way in a shorter time. Although this resolution would not affect national provisions, the Community members agreed to adopt the principles of this resolution by 1 January 1995<sup>78</sup>.

The 6<sup>th</sup> and the 9<sup>th</sup> articles of the resolution lists the cases in which the application will be considered as manifestly unfounded. Article 6 is about cases in which there is "no substance to claim to fear persecution". In such cases either the applicant does not invoke fear of persecution or the application lacks substance or the application is manifestly lacking any

---

<sup>78</sup> European Union: Council of the European Union, "Council Resolution of 30 November 1992 on Manifestly Unfounded Applications for Asylum ("London Resolution")", 30 November 1992, available at: <http://www.unhcr.org/refworld/docid/3f86bbcc4.html> [accessed 28 February 2010]

credibility<sup>79</sup>.

Therefore with this resolution, economic reasons for immigration are, in accordance with the earlier international documents on asylum, left outside the right of asylum and a clear definition for reasons to seek asylum are once again listed. Apart from that, the credibility of the applicant and his/her story is the main concern as a reflection of well-founded fear implication in earlier international documents.

Article 9 is about "deliberate deception or abuse of asylum procedures". It lists the misbehaviors that might cause the application to be rejected immediately on the grounds of being manifestly unfounded. These listed actions are having a false identity or forged documents, making false representations about his/her claim, deliberately failing to inform about his/her previous asylum applications with false identity, destroying or damaging passport or other necessary documents to establish a false identity or to make examination of his/her case more difficult, submitting an application although having been rejected previously by another state after examination, failing to comply with obligations imposed by the national rules on asylum procedures and submitting an application late in order to forestall an impending expulsion measure<sup>80</sup>. It is clearly stated in the resolution that any action of deception in the asylum procedure would not be tolerated. With this resolution, the member states have become the decision makers and tried to build a common procedure on defining the persecution, fear, reasons for asylum and safe countries.

## **2. Resolution of 30 November 1992 on a harmonized approach to questions concerning host third countries**

This resolution also aims to reduce the burden of asylum applications and to share the burden with the other party states which have signed the 1951 Convention. It gives a detailed meaning to the concept of host third country. While the first article states the procedure for application of the concept of host third country, the definition of the host third country is

---

<sup>79</sup> Ibid

<sup>80</sup> Ibid

made in the second article by setting requirements and criteria for establishing whether a country is a host third country. Those criteria are listed as follows;

2. (a) In those third countries, the life or freedom of the asylum applicant must not be threatened, within the meaning of Article 33 of the Geneva Convention.
- (b) The asylum applicant must not be exposed to torture or inhuman or degrading treatment in the third country.
- (c) It must either be the case that the asylum applicant has already been granted protection in the third country or has had an opportunity, at the border or within the territory of the third country, to make contact with that country's authorities in order to seek their protection, before approaching the Member State in which he is applying for asylum, or that there is clear evidence of his admissibility to a third country.
- (d) The asylum applicant must be afforded effective protection in the host third country against refoulement, within the meaning of the Geneva Convention.<sup>81</sup>

If there are countries fulfilling these conditions, the member states might send the asylum applicant to one of those third countries. That is how the member states seek to share the burden for asylum applications.

The third article however, refers to the Dublin Convention to prevent the member states to undergo their obligations in responding asylum seekers and accepting asylum applications through the second article of this resolution. However this article is also problematic in a sense that it creates a system of transferring the applicants to a non-member state.

### **3. Conclusions of 30 November 1992 on countries in which there is generally no serious risk of persecution**

The aim of these Conclusions is to determine the countries which do not hold a position to have risks of persecution and preventing any application coming from those countries so that other applicants will not be kept waiting for long terms. To determine the

---

<sup>81</sup> European Union: Council of the European Union, "Council Resolution of 30 November 1992 on a Harmonized Approach to Questions Concerning Host Third Countries" ("London Resolution"), 30 November 1992, available at: <http://www.unhcr.org/refworld/docid/3f86c3094.html> [accessed 28 February 2010]

safe countries, the member states lays down some criteria in the document; which are called as elements of assessment and they are previous numbers of refugees and recognition rates, observance of human rights, democratic institutions and stability<sup>82</sup>.

This conclusion aims to create a common definition of safe country. Nevertheless, it is also decided that to achieve this aim a full cooperation with the UNHCR and information should be based upon as wide a range of sources ... as possible, including advice and reports from diplomatic missions, international and non-governmental organizations and press reports<sup>83</sup>. However, the conclusion was widely criticized for underestimating the individual rights as opposed to states' sovereignty and capabilities<sup>84</sup>.

The resolutions in general do reflect the Community's intention to protect itself from the refugee waves. One should note that these resolutions date back to the early 1990's, the time that the Communist regimes in Europe were abolished. Therefore, it is easy to assume that the Community saw this downfall as an unexpected threat and tried to protect its territories through eliminating refugees from those countries. In the Resolution of 30 November 1992 on manifestly unfounded applications for asylum, economic reasons are eliminated from the reasons for asylum and since the ex-communist countries were introduced with the liberal understanding, they would be considered as safe countries. Many Eastern European countries are listed as safe countries by the member states so a buffer zone is created<sup>85</sup>. However, it would be difficult for the newly democratized Eastern European countries to create appropriate systems and procedures for the refugees. Moreover, European Council on Refugees and Exiles (ECRE) raised opposition to Community's asylum policy and the use of concepts like safe third country, country of first asylum and host third country. The reasons for that opposition were listed as follows: the asylum policy lacks

---

<sup>82</sup> European Union, "Conclusions on Countries in Which There is Generally No Serious Risk of Persecution ("London Resolution")", 30 November 1992, available at: <http://www.unhcr.org/refworld/docid/3f86c6ee4.html> [accessed 28 February 2010]

<sup>83</sup> Ibid

<sup>84</sup> Ingrid Boccardi, **Europe and Refugees: towards an EU asylum policy**, The Hague: Kluwer Law

International P. O., 2002, p: 85

<sup>85</sup> Andy Storey, "The Asylum Policies of the European Union: a Developing Problem" Development Review

1993 & 1994 in Trócaire Development Review, available at: <http://www.trocaire.org/resources/tdr->

[article/asylum-policies-european-union-developing-problem](#) [accessed 28 February 2010]

transparency and judicial control, it targets the country of origin with visa requirements, narrows the definition of refugee, fails to protect the de-facto refugees, uses procedures to determine the refugee status in which do not ensure the refugee rights and protection and prevents the asylum seekers to enter to the territory of the member states by defining the non-member states beyond the borders as safe third countries and so expelling the asylum seekers back to those countries<sup>86</sup>.

### **III. MAASTRICHT TREATY AND THE 1990'S**

#### **A. Treaty On European Union**

The Treaty on European Union, commonly known as the Maastricht Treaty was signed on 7 February 1992. With this treaty, European Communities were gathered together and were named as the European Union. A three pillar system for the Union was also created with this treaty. The first pillar is the European Community, the second is Common Foreign and Security Policy and the third pillar is Justice and Home Affairs. Migration, asylum, free movement of persons, border control and security, police cooperation, etc. were included in the third pillar.

The Article K of the Maastricht Treaty regulates cooperation in the fields of justice and home affairs and K.1 regulates issues like asylum policy, immigration policy regarding third countries, judicial cooperation in civil and criminal matters, customs operations and police cooperation. These policy areas are in the area of jurisdiction of the Union. According to Article K.3, the Council was entitled with the powers to;

- (a) adopt joint positions and promote, using the appropriate form and procedures, any cooperation contributing to the pursuit of the objectives of the Union;
- (b) adopt joint action in so far as the objectives of the Union can be attained better by joint action than by the Member States acting individually on account of the scale or effects of the action envisaged; it may decide that measures implementing joint action are to be adopted by a qualified majority;
- (c) without prejudice to Article 220 of the Treaty establishing the European

---

<sup>86</sup> European Council on Refugees and Exiles, "Safe Third Countries: myths and realities", London: February 1995, available at: [www.unhcr.org/refworld/pdfid/403b5cbf4.pdf](http://www.unhcr.org/refworld/pdfid/403b5cbf4.pdf) [accessed 28 February 2010]

Community, draw up conventions which it shall recommend to the Member States for adoption in accordance with their respective constitutional requirements.<sup>87</sup>

Article L states that powers of the Court Of Justice of the European Communities would apply to K.3 (2).(c) of the Maastricht Treaty, leaving asylum policy aside and limiting the Court of Justice's power to interpret and apply conventions regarding the Article K.3, paragraph 2, subparagraph c.

### **B. Council Resolution of 20 June 1995 on Minimum Guarantees for Asylum Procedures**

It is usually mentioned that after the introduction of the Maastricht Treaty, the European Union witnessed a peak in the number of asylum applications<sup>88</sup>. Therefore, further regulations were needed. The Council announced this resolution as a regard to Article K.1 in the Maastricht Treaty, to guarantee protection of refugees in need. The resolution covers issues like universal principles concerning fair and effective asylum procedure, guarantees concerning the examination of asylum applications, rights of asylum-seekers during asylum procedures, additional safeguards for unaccompanied minors and women, etc.

The resolution involves reference to the principle of 'non-refoulement' of Article 33 of the 1951 Geneva Convention and states that "In order to ensure effectively the principle of non-refoulement, no expulsion measure will be carried out as long as no decision has been taken on the asylum application"<sup>89</sup>. Moreover, the resolution states that there should not be a link between the recognition of refugee status and any particular formal evidence. So, the condition for a well-founded fear and the interpretation of the term by the EU became moderate. Earlier in the London Resolutions, it was more difficult for the refugees to demonstrate their fear of persecution and the risk to return to their homelands. However, the

---

<sup>87</sup> European Union, "Treaty On European Union", 7 February 1992, available at: <http://eur-lex.europa.eu/en/treaties/dat/11992M/htm/11992M.html#0001000001> [accessed 2 March 2010]

<sup>88</sup> **BBC News**, "Illegal Immigrants: UK Overview", 27 June 2000, available at:

<http://news.bbc.co.uk/2/hi/europe/797491.stm> [accessed 2 March 2010]

<sup>89</sup> European Union: Council of the European Union, "Council Resolution of 20 June 1995 on Minimum Guarantees for Asylum Procedures", 20 June 1995, available at: <http://www.unhcr.org/refworld/docid/3f86b1224.html> [accessed 2 March 2010]

Articles 18, 21 and 22 mention the London Resolutions as the main documents in dealing with the manifestly unfounded applications. Although there are such articles in the document, it should be noted that this resolution addresses London Resolutions only for the cases of manifestly unfounded applications but not for deciding upon the cases whether they are unfounded or not.

The European Union also took a step forward and as a respond to the criticisms of the earlier documents about their failure to address the rights of the asylum seekers, the EU stated the rights of asylum seekers during asylum procedures. Article 11 requires data protection. According to this, each documented data about the refugees should be kept under protection. Article 13 and 15 mention the right of the refugee to receive information about his/her case in the language he/she understands. Article 16 refers to appeal for reconsideration.

For unaccompanied minors and women, the document requires specialists. It is stated in the Article 26;

Provision must be made for unaccompanied minors seeking asylum to be represented by a specifically appointed adult or institution if they do not have capacity under national law. During the interview, unaccompanied minors may be accompanied by that adult or representatives of that institution. These persons are to protect the child's interests.<sup>90</sup>

and in the Article 28;

Member States must endeavor to involve skilled female employees and female interpreters in the asylum procedure where necessary, particularly where female asylum-seekers find it difficult to present the grounds for their application in a comprehensive manner owing to the experiences they have undergone or to their cultural origin.<sup>91</sup>

As it is shown with these articles, the European Union tried to respond the criticisms on the case of rights of the refugees and while creating a common asylum procedure, it also

---

<sup>90</sup> Ibid

<sup>91</sup> Ibid



brought a more humanitarian approach to the question.

On the other hand, European Union also sought ways for expulsion, return and readmission of aliens. The Council of the EU issued two documents on the topic: "Council Recommendation of 24 July 1995 on the Guiding Principles To Be Followed in Drawing Up Protocols on the Implementation of Readmission Agreements"<sup>92</sup> and "Council Recommendation of 22 December 1995 on Concerted Action and Cooperation in Carrying out Expulsion Measures"<sup>93</sup>. Both documents set principles in dealing with such cases and recommend cooperation with the third countries. Later the Council went further to create a common definition of the term refugee by publishing 'Harmonized Application of the Definition of the Term "Refugee" in Article 1 of the Geneva Convention of 28 July 1951 Relating to the Status of Refugees' on 4 March 1996.

### **C. Joint Position on the Harmonized Application of the Definition of the Term "Refugee" in Article 1 of the Geneva Convention of 28 July 1951 Relating to the Status of Refugees**

On 4 March 1996, the Council of Ministers issued this joint position to harmonize the definition of refugee. While doing that the document needed to re-define the concept of persecution, grounds of persecution, types of persecution which are connected to the term refugee.

With this document, the European Union took a step further and granted protection for those who did not gain the status of refugee but who are in need of international protection. Article 1 repeats the criteria to be recognized as refugee in the 1951 Convention. Article 2

---

<sup>92</sup> The full text of the document is available at <http://www.unhcr.org/refworld/docid/427783ef4.html> [accessed 3

March 2010]; European Union: Council of the European Union, "Council Recommendation of 24 July 1995 on the Guiding Principles To Be Followed in Drawing Up Protocols on the Implementation of Readmission Agreements", 24 July 1995

<sup>93</sup> The full text of the document is available at: <http://www.unhcr.org/refworld/docid/3ae6b39120.html> [accessed 3 March 2010]; European Union: Council of the European Union, "Council Recommendation of 22 December 1995 on Concerted Action and Cooperation in Carrying out Expulsion Measures", 22 December 1995,

mandates that each application should be handled individually. Article 3 clarifies the 'well-founded reason' term. In accordance with the 'Council Resolution on Minimum Guarantees for Asylum Procedures' this term is understood as a clear and reasonable fear, which is linked to applicant's credibility. It is stated as; "it should be understood that once the credibility of the asylum-seeker's statements has been sufficiently established, it will not be necessary to seek detailed confirmation of the facts put forward and the asylum-seeker should, unless there are good reasons to the contrary, be given the benefit of the doubt"<sup>94</sup>.

Starting from Article 4, *persecution* is discussed. Persecution was not defined in the 1951 Convention, and in this document the Council did not try to define it by itself. This document discusses and conceptualizes certain elements of the term. In Article 5, origins of persecution are laid out. According to this document same acts of state or third parties can cause persecution. Legal, administrative and/or police measures, if resulting from a discriminatory objective or unfair and discriminatory prosecutions are viewed as State originated persecutions. The article also admits that persecution may occur from a non-State actor. In such cases, "persecution by third parties will be considered to fall within the scope of the Geneva Convention where it is based on one of the grounds in Article 1 A, is individual in nature and is encouraged or permitted by the authorities"<sup>95</sup>.

Article 6 outcasts civil war and other internal or generalized armed conflicts from origins of persecution, stating that civil war and other internal or generalized armed conflict by itself is not a sufficient reason for granting refugee status. However, persecution is accepted if it occurs from "legal authorities or third parties encouraged or tolerated by them, or from de-facto authorities in control of part of the territory within which the State cannot afford its nationals protection"<sup>96</sup>.

Article 7 lists belonging to a certain race, religion, nationality, political opinions,

---

<sup>94</sup> European Union, "Joint Position Defined by the Council on the basis of Article K.3 of the Treaty on European Union on the Harmonized Application of the Definition of the Term "Refugee" in Article 1 of the Geneva Convention of 28 July 1951 Relating to the Status of Refugees (Annex 1)", 4 March 1996, available at: <http://www.unhcr.org/refworld/docid/3ae6b37f44.html> [accessed 3 March 2010]

<sup>95</sup> Ibid

<sup>96</sup> Ibid

social group as reasons for becoming a refugee. The concepts listed are understood in broader terms; race is broadened enough to include being a member of a different ethnic group, religion is broadened to include any belief or non-belief, nationality includes membership of a culturally or linguistically different group or of a group relating to the population of another state.

Relocated people or conscious objectors, on the other hand, are not granted with the refugee status. Relocated people, as long as they stay within the territories of their home country, are viewed to be safe and do not hold risk to be persecuted in their new environment. Conscious objection, although clearly fulfills the conditions listed in the political opinion definition, is not considered to be a political opinion and persecution resulting from person's being a conscious objector is believed to end if he accepts to serve in the army if serving in the army does not include persecution.

The Joined Position, is clearly a progressive document while it tries to clarify refugee term and to create a common definition. However, as many Council resolutions, the Joined Position is not a binding document and the member states are not held responsible for interpretations and implementation mentioned in this document.

#### **IV. AMSTERDAM TREATY**

On 2 October 1997, member states signed 'Treaty of Amsterdam amending the Treaty of the European Union, the Treaties establishing the European Communities and certain related acts' or commonly known as the Amsterdam Treaty, which is considered as the first comprehensive reform of the Maastricht Treaty<sup>97</sup>. It is designed to have a greater emphasis on citizenship and the rights of individuals. Hence many issues included under the third pillar in the Maastricht Treaty are shifted to Community level with the Amsterdam Treaty. Some of these issues are visa regulations, asylum and free movement of persons. This is important in

---

<sup>97</sup> Nazilla Ghanea, 'Europeanization of Citizenship and Asylum Policy', in Susan & Felicity Rowlings Sanaei (Ed), in **New Regionalism and Asylum Seekers: Challenges Ahead** (111-136), Biggleswade: Berghahn Books, 2007, p: 115.

the sense that the European Union, with doing so, shifted these issues from security areas to human rights areas. The third pillar holds issues related to security and justice, however Amsterdam Treaty relocated asylum policy, free movement of persons and visa regulations under the first pillar, in other words de-securitized them.

The shifting of asylum policy from the third pillar to the first pillar also made it possible for the Union to have greater say on the issue and decreased the intergovernmentalist tendency. Later on, with 'Protocol integrating the Schengen *Acquis* into the framework of the European Union', Schengen Agreement and Convention were incorporated into European Union system with the statement "Proposals and initiatives to build upon the Schengen *Acquis* shall be subject to the relevant provisions of the Treaties"<sup>98</sup>.

As Apap et. al note "[t]he Protocol integrating the Schengen *acquis* into the EU hence communitarised the section dealing with the Schengen borders *acquis* by inserting it within the first pillar or so-called "Community method/governance"<sup>99</sup>. However provisions dealing with police and judicial cooperation in criminal matters were kept under the third pillar, which is a more intergovernmentalist area and the EU was harshly criticized because of this separation for not being transparent<sup>100</sup>.

Title IV in the Amsterdam Treaty, namely 'Visas, Asylum, Immigration and Other Policies Related to Free Movement Of Persons', recognizes a 5 year period to adopt measures for crossing external and internal borders (Article 62) and for asylum policies (Article 63)<sup>101</sup>.

Also with the Declaration relating to the Protocol on asylum for nationals of Member

---

<sup>98</sup> European Union, "Protocol integrating the Schengen *acquis* into the framework of the European Union", 4 March 1996, available at: <http://eur-lex.europa.eu/en/treaties/dat/11997D/htm/11997D.html#0093010004> [accessed 6 March 2010]

<sup>99</sup> Joanna Apap, Sergio Carrera and Kemal Kiriçi, "Turkey in the European Area of Freedom, Security and Justice", **Centre for European Policy Studies EU-Turkey Working Papers**, No: 3, August 2004, p:3

<sup>100</sup> Ibid, p:

4

<sup>101</sup> European Union, "Treaty of Amsterdam amending the Treaty of the European Union, the Treaties establishing the European Communities and certain related acts", "Consolidated Version Of The Treaty

Establishing The European Community, 2 October 1997, is available at: <http://eur-lex.europa.eu/en/treaties/dat/11997D/htm/11997D.html#0173010078> [accessed 6 March 2010]

States of the European Union and Declaration relating to subparagraph (d) of the Sole Article of the Protocol on asylum for nationals of Member States of the European Union<sup>102</sup>, the European Union accepted that citizens of its member states can also be subjected to abuse or persecutions.

As Joanne van Selm notes “[i]n 1998 the Austrian Presidency made proposals that essentially questioned the continued relevance of the 1951 Convention. Those proposals were not pursued, largely because the language used to question the Convention went too far for many states”<sup>103</sup>. Moreover to better and easily implement the provision of Amsterdam Treaty in the area of freedom, security and justice, the European Union published the Vienna Action Plan, or formally named as “Action Plan of the Council and the Commission on How Best to Implement the Provisions of the Treaty of Amsterdam on an Area of Freedom, Security and Justice”. With the Vienna Action Plan, the Union declared the importance of the Amsterdam Treaty and its progressive principles but also mentioned the weakness of the measures adopted, especially in the case of asylum policies. As the Action Plan notes “instruments adopted so far often suffer from two weaknesses: they are frequently based on soft law, such as resolutions or recommendations that have no legally binding effect. And they do not have adequate monitoring arrangements”<sup>104</sup>.

The Plan calls for a wider area of freedom and deeper cooperation for security and justice. It strictly bounds freedom with security by stating “the full benefits of any area of freedom will never be enjoyed unless they are exercised in an area where people can feel safe and secure”<sup>105</sup>. And the plan calls for more cooperation in the areas of security, border control, fight against organized crime. While it defines the need for more freedom, by bounding freedom to security issue, the plan clearly handles the security issue as the principle area to be dealt with.

---

<sup>102</sup> Both declarations are annexes of the Amsterdam Treaty.

<sup>103</sup> Joanne van Selm, “The EU As A Global Player In The Refugee Protection Regime”, **AMID Working Paper**

**Series 35**, Washington DC: Migration Policy Institute, 2004, p: 7

<sup>104</sup> European Union, “Action Plan of the Council and the Commission on How Best to Implement the Provisions of the Treaty of Amsterdam on an Area of Freedom, Security and Justice (“Vienna Action Plan”)”, 3

December 1998, available at: <http://www.unhcr.org/refworld/docid/3f5341ce2.html> [accessed 5 March 2010]

<sup>105</sup> Ibid

On asylum policy, the measures are divided into three groups: measures to be taken immediately, in two years and in five years. Immediate measures are designed for displaced persons. Among the measures to be taken in two years are implementation of Eurodac, adaptation of minimum standards on asylum procedures, limiting secondary movements of asylum seekers between the member states, adaptation of minimum standards on reception of asylum seekers -especially children-, undertaking studies for a common asylum policy. Among the measures to be taken in five years are: adaptation of minimum standards to the qualification of nationals of third countries as refugees and protection to persons in need of international protection (Article 63(2)(a) second part)<sup>106</sup>.

## V. TAMPERE SUMMIT

On 15-16 October 1999, the European Council held a meeting in Tampere to discuss issues of freedom, security and justice, namely justice and home affairs policies. The Council produced a list of over sixty points for action. The main themes covered were a common asylum and immigration policy, a genuine European area of justice, a union wide fight against crime and stronger external action<sup>107</sup>.

As Selm notes; elsewhere the Vienna Conclusions gave the strong state perspective on the future of asylum in the EU, the 1999 Tampere summit meeting was intended to give the softer face, and more public vision for asylum<sup>108</sup>. Thus it can be noted that humanitarian perspective to asylum policy was developing at the time. Moreover, in the Presidency Conclusions afterwards, freedom is defined in a broader sense to include the well being of the non-citizens of the EU, who are not within the territories of the member states<sup>109</sup>. For this

---

<sup>106</sup> Ibid

<sup>107</sup> European Union: European Council, Fact Sheet 3.1 Tampere: Kick-start for EU's policy for justice and home affairs, Brussels: Information and Communication unit of the Directorate-General Justice and Home Affairs of the European Commission, August 2002, available at: [ec.europa.eu/councils/bx20040617/tampere\\_09\\_2002\\_en.pdf](http://ec.europa.eu/councils/bx20040617/tampere_09_2002_en.pdf) [accessed 7 March 2010]

<sup>108</sup> Selm, 2004, p: 7

<sup>109</sup> European Union: Council of the European Union, Presidency Conclusions, Tampere European Council, 15-16 October 1999, 16 October 1999, available at: <http://www.unhcr.org/refworld/docid/3ef2d2264.html> [accessed 7 March 2010]



reason, it is decided to form a special title for a common asylum and migration policy. Under this policy the issue is divided into four goals; partnership with countries of origin, a Common European Asylum System (CEAS), fair treatment of third country nationals and management of migration flows. In the Common European Asylum System section, the Presidency Conclusion calls for a 'common standards for a fair and efficient asylum procedure, common minimum conditions of reception of asylum seekers, and the approximation of rules on the recognition and content of the refugee status'<sup>110</sup>.

The document also urges the Council to finalize the system of identification of asylum seekers (Eurodac -Article 4) and ensure temporary protection of displaced persons (Article 3). Rights of the third country nationals are mentioned in a wide sense in the document. Discrimination against aliens is obliged to be prevented through integration policies (Article 18), the legal status of third country nationals is requested to be equalized to that of member states' nationals (Article 22). A better system of management of migration flow is also requested in the paper.

As mentioned above, this document calls for a system of identification of asylum seekers, which is known as Eurodac. 'EURODAC is a European fingerprint database designed solely to identify asylum seekers'<sup>111</sup>. The database system is consisted of fingerprints taken from each asylum seeker over the age of 14 and data is shared between the member states<sup>112</sup>.

The common policy was designed in the 1990 Dublin Convention and ministers agreed to set up the EURODAC system in 1991. In December 2000 the EURODAC Regulation came out and in 2003 the 'Dublin II' Regulation, which replaced the Dublin Convention, enlisted the details of Union wide cooperation for determining the member state

---

<sup>110</sup> Ibid

<sup>111</sup> European Union: European Commission, 'EURODAC: The Fingerprint Database To Assist The Asylum Procedure Directorate-General', 2004 available at: [http://ec.europa.eu/justice\\_home/key\\_issues/eurodac/eurodac\\_20\\_09\\_04\\_en.pdf](http://ec.europa.eu/justice_home/key_issues/eurodac/eurodac_20_09_04_en.pdf) [accessed 7 March 2010]

<sup>112</sup> Europa: Summaries of EU Legislation, Eurodac System, [http://europa.eu/legislation\\_summaries/justice\\_freedom\\_security/free\\_movement\\_of\\_persons\\_asylum\\_migration/133081\\_en.htm](http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_migration/133081_en.htm) [accessed 7 March 2010]

responsible for examining an asylum application<sup>113</sup>.

## VI. THE DEVELOPMENTS IN THE 21<sup>st</sup> CENTURY

### A. The Situation After the September 11 Terrorist Attacks

After the September 11 attacks to various American headquarters, once again security became the main concern in international relations and politics. Many aspects of politics were affected by the attacks and a great sense of discrimination and disapproval towards aliens grew.

As Gibney points out a "movement towards a new security perspective on forced migration really picked up pace in the wake of actual terrorist activity"<sup>114</sup>. Terrorist activities around the globe at that time (9/11 attacks, the London bombings, the Madrid train bombing, etc.) evoked a different security meaning, which is closely linked to western life style. Security was the key factor needed for freedom, justice, etc.<sup>115</sup> and since the refugee system involves bringing foreigners to the home country, it was considered to be insecure. As Zard notes, "UN Security Council Resolution 1373 (adopted on 28 September 2001), the foundation of the international community's response to the terrorism threat in the aftermath of 11 September, twice makes explicit reference to the need to safeguard the system of international refugee protection from abuse by terrorists"<sup>116</sup>.

The rise of disapproval of aliens and security concern led to questions about asylum policies and asylum seekers. Selm notes as, "[t]he European Commission has noted that people wishing to commit terrorist acts are highly unlikely to apply for asylum in Europe as

---

<sup>113</sup> EU: European Commission, "EURODAC: The Fingerprint Database To Assist The Asylum Procedure Directorate-General"

<sup>114</sup> Matthew J. Gibney, "Security and the Ethics of Asylum After 11 September", **Forced Migration Review 13**, June 2002, p: 41

<sup>115</sup> Ibid

<sup>116</sup> Monette Zard, "Exclusion, terrorism and the Refugee Convention", **Forced Migration Review 13**, June 2002, p: 32

their means of being there: it would be a tortuous route to take, putting them under a lot of scrutiny<sup>117</sup>. The European Union can be said to be more involved with illegal entries. However, it should also be noted that [w]estern states put refugees through an elaborate set of procedures to prove that their security would really be under threat if they were returned<sup>118</sup>. Once that was set, member states had problems with integration of refugees into their societies. Many polls indicated that people of the western countries tended to relate terrorism with the asylum policies, besides there were great integration problems among the refugees and the society and the Western countries issued programs to cope with that problem; for example in the United Kingdom, a White Paper titled 'Secure borders, safe havens, integration with diversity in modern Britain' was issued<sup>119</sup>. At the European level, asylum policies were reformed.

## **B. Dublin II Convention**

The Council was supposed to make regulations for determining the Member State responsible for examining an application for asylum lodged in one of the Member States by a third country national and the Dublin II Convention or formally, 'Council Regulation No. 343/2003 Establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Asylum Application Lodged in One of the Member States by a Third-Country National' was signed for that reason on 18 February 2003.

Dublin II Convention is a more detailed and renewed version of the Dublin Convention of 1990. It lists the principles to be followed in the asylum policies. General principles are listed in Chapter 2 (Article 3 and 4) and criteria to decide on the responsible state are listed in the Chapter 3. Chapter 2 does not include many reforms to Dublin Convention, however since Chapter 3 sets the hierarchy of criteria, it is a very reformative chapter. Such detailed hierarchy was not included in the Dublin Convention of 1990. For

---

<sup>117</sup> Joanne van Selm, Presentation by Joanne van Selm (Senior Policy Analyst, MPI) at the Roundtable 'The Protection of Refugees in the Light of the New Security Agenda', Montreal: University of Montreal, 20 March 2002, p: 2

<sup>118</sup> Gibney, 2002, p: 43

<sup>119</sup> Selm, 2002, p: 3

example the Article 6 mentions the asylum application procedures of unaccompanied minors while Articles 7 and 8 are about family reunions and family members. Both unaccompanied minor and family terms are defined in the Chapter 1 in a more detailed and broader way than it was in the earlier related EU documents. Family is not defined strictly with relation to legal marriage, but the definition leaves room for customary marriages and for the spouse of the asylum seeker<sup>120</sup>. In other words, the definition includes the de-facto formations. In the light of this definition, Article 7 and 8 defines the conditions for family reunions. Reunions are designed to take place if the asylum seeker desires so. That means family reunions are not taken as granted and asylum seekers are left with options. Article 9, on the other hand, deals with the appointment of responsible state based on possession of a valid visa. These are the technical details.

Chapter 3 sets a hierarchy among the criteria for determining the member state responsible for the asylum procedure, whereas Chapter 4 sets clauses on humanitarian basis. The Chapter is named as Humanitarian Clause. Within this clause in some particular cases it is foreseen to bring the dependent relatives together on humanitarian grounds with the applicant's consent. For cases in which the applicant is an unaccompanied minor or in need of assistance who has a relative in the territory of a member state, it is said to be preferable that the applicant is united with the relative in question. Chapter 5, which is dealing with taking charge and taking back, forms a more detailed procedure as opposed to the Dublin Convention of 1990. The chapter calls for better cooperation between member states and organizations to transfer and gather information needed for taking charge. The chapter lists many technical details and requests member states to follow a certain procedure in order to achieve a better union-wide asylum policy. The need for a better understood procedure led the European Commission to publish 'Commission Regulation (EC) No. 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a

---

<sup>120</sup> European Union: Council of the European Union, Council Regulation No. 343/2003 Establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Asylum Application Lodged in One of the Member States by a Third-Country Nationalö ("Dublin II"), 16 March 2003, available at: <http://www.unhcr.org/refworld/docid/3e5cf1c24.html> [accessed 8 March 2010]

third-country national' in which further details the procedures and mentions the establishment of a 'Dublinet'<sup>121</sup> which is a more developed version of Eurodac. It is defined as 'a secure electronic network of transmission channels between the national authorities dealing with asylum applications'<sup>122</sup>. Since, securing the external borders against illegal immigration was highly important for the member states, any kind of systems and technologies would be immediately welcomed<sup>123</sup>.

Furthermore, the Commission issued a communication for a better cooperated and managed asylum policy on 3 June 2003. It is entitled as 'Communication from the Commission to the Council and the European Parliament, Towards More Accessible, Equitable and Managed Asylum Systems'. It was noted in the Communication that the Commission felt that it was 'necessary to develop a new approach ... to be pursued within a framework of genuine burden- and responsibility sharing. The overall aim of such a new approach to asylum systems is, to better manage asylum-related flows in their European territorial dimension and in regions of origin, resulting in more accessible, equitable and managed asylum systems.'<sup>124</sup>. The Communication calls for a cooperative approach in burden sharing within the Union and with the third countries and countries of origin. The Communication is considered as 'an important contribution to the present debate on how asylum processes can be better managed with a view to improving access to protection for those in need, reducing the impetus to secondary movements of asylum-seekers and refugees and limiting abuse of asylum systems'<sup>125</sup>.

---

<sup>121</sup> European Union: European Commission, 'Commission Regulation (EC) No. 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national', 2 September 2003, available at: <http://www.unhcr.org/refworld/docid/47fdface3.html> [accessed 12 March 2010]

<sup>122</sup> Europa, '16-09-03 Transmission of asylum applications between member states plus Norway and Iceland - Dublinet now operational' [http://ec.europa.eu/justice\\_home/news/intro/news\\_160903\\_1\\_en.htm](http://ec.europa.eu/justice_home/news/intro/news_160903_1_en.htm) [accessed 12 March 2010]

<sup>123</sup> David Willey, 'EU Force to Tackle Illegal Immigration', **BBC News**, 30 May 2002, available at: <http://news.bbc.co.uk/2/hi/europe/2017650.stm> [accessed 12 March 2010]

<sup>124</sup> European Union: European Commission, 'Communication from the Commission to the Council and the European Parliament, Towards More Accessible, Equitable and Managed Asylum Systems, COM(2003) 315 final', 3 June 2003, available at: <http://www.unhcr.org/refworld/docid/3f533ea44.html> [accessed 12 March 2010]

<sup>125</sup> United Nations High Commissioner for Refugees, 'UNHCR Summary Observations on the

European

Commission Communication "Towards More Accessible, Equitable and Managed Asylum Systems" (COM

However, Dublin II Regulation was not welcomed by the UNHCR. The UNHCR criticized the document for being not clear about the refugee definition. The document was not fully successful in developing a common policy. However it was also noted that Dublin II Convention was notable for being detailed in policy techniques and humanitarian clauses<sup>126</sup>.

### C. The Council Directive On Standards

On 29 April 2004, the Council of the European Union, published 'Directive On Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted'. This directive defines refugee as;

a third country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it, and to whom Article 12 does not apply<sup>127</sup>

---

(2003) 315 final)ö, 4 June 2003, available at: <http://www.unhcr.org/refworld/docid/437c526e4.html> [accessed 12 March 2010]

<sup>126</sup> United Nations High Commissioner for Refugees, öThe Dublin II Regulation. A UNHCR Discussion Paperö, April 2006, available at: <http://www.unhcr.org/refworld/docid/4445fe344.html> [accessed 12 March 2010]; United Nations High Commissioner for Refugees, öUNHCR comments on the European Commission's Proposal for a recast of the Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third country national or a stateless person ("Dublin II") (COM(2008) 820, 3 December 2008) and the European Commission's Proposal for a recast of the Regulation of the European Parliament and of the Council concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of [the Dublin II Regulation] (COM(2008) 825, 3 December 2008)ö, 18 March 2009, available at: <http://www.unhcr.org/refworld/docid/49c0ca922.html> [accessed 12 March 2010]

<sup>127</sup> European Union: Council of the European Union, öCouncil Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Grantedö, 19 May 2004, available at: <http://www.unhcr.org/refworld/docid/4157e75e4.html> [accessed 12 March 2010]

and person eligible for subsidiary protection is defined as;

a third country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm as defined in Article 15, and to whom Article 17(1) and (2) do not apply, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country<sup>128</sup>

Chapter 2 is named as 'Assessment of Applications for International Protection' and is about the application evaluation procedure. Article 4 states that certain documents, facts need to be delivered by the applicants. This includes documents relating the applicant's age, background, including that of relevant relatives, identity, nationality(ies), country(ies) and place(s) of previous residence, previous asylum applications, travel routes, identity and travel documents and the reasons for applying for international protection. The Article 4 is designed to clarify the well-founded fear. The applicant is held responsible to bring those facts, documents so that it would be easier for the member states to address the applicant's situation. In paragraph 4 of the Article, it is revealed that if an applicant had been subjected to persecution or serious harm or to direct threats of such persecution or such harm, is a serious indication of the applicant's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.<sup>129</sup> However, this is not a mandatory statement. In other words, the applicant is not held mandated to prove that he/she has been subjected to persecution.

Article 6 lists the actors of serious harm and persecution and according to this article, the actors are; states, parties or organizations controlling the state or a part of territory of states and non-state actors, in case governing parties are unwilling to stop them. On the other hand, Article 7 lists the actors of international protection, They are states and parties or organizations controlling the state or a part of territory of states.

Article 8 mentions the international protection. The article states that after the

---

<sup>128</sup> Ibid

<sup>129</sup> Ibid



examination of the case, states might rule that there is no well-founded fear, hence no need for international protection. If the risk of being persecuted or seriously harmed is not present in a part of the country of origin, then it might be assumed that the applicant can live in that part of the state. The article is criticized by the UNHCR, for not being consistent with the 1951 Convention<sup>130</sup>.

The Chapter 3 mentions and defines the qualifications needed to be defined as a refugee. It begins with the Article 9, which defines and lists persecutions acts. Acts of persecution are defined as; physical or mental violence, discriminatory legal, administrative or police acts, discriminatory prosecution or punishment, denial of judiciary redress, prosecution or punishment for refusal to perform military service for certain cases and acts of gender-specific or child-specific nature.

Reasons for persecution are listed in Article 10 and this article actually conceptualizes the reasons. These are race, religion, nationality, group and political opinion, which are the reasons listed in several international documents as well as in the 1951 Convention. The cessation (Article 11) of the refugee status is linked to reasons of the general political and social developments within the country of origin, the extend of risk of persecution, acquiring of a new nationality, re-establishing himself or herself to the country of origin, re-acquiring his/her nationality. Reasons for exclusion (Article 12) of the refugee status are as follows: committing a serious crime (crimes against humanity, crimes against peace, war crimes, etc.), committing a political crime outside the country of origin, being guilty of acts contrary to the principles of UN and being under the obligation of protection and help by the organizations of the UN other than UNHCR.

The Council Directive also sets definitions, principles for subsidiary protection, refugee status, content of international protection, etc. These definitions and list of conditions

---

<sup>130</sup> United Nations High Commissioner for Refugees, "UNHCR Annotated Comments on the EC Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted (OJ L 304/12 of 30.9.2004)", 28 January 2005, available at: <http://www.unhcr.org/refworld/docid/4200d8354.html> [accessed 13 March 2010]

were viewed as a positive step to create a common asylum policy, however strict definitions were also seen as obstacles for a humanitarian duties by the UNHCR<sup>131</sup>.

#### **D. Treaty Establishing A Constitution For Europe**

On July 2003, 'Draft Treaty establishing a Constitution for Europe' was presented. And the 'Treaty Establishing a Constitution for Europe' was signed on 29 September 2004<sup>132</sup>. The treaty would become a major success towards the political unification and cooperation, however it was rejected in referenda in France<sup>133</sup> and in the Netherlands<sup>134</sup> in 2005.

The Treaty consists of 4 parts and asylum policies are mentioned in the second chapter, 'The Chapter of Fundamental Rights of The Union', under the Title II, Freedoms. In 'The Chapter of Fundamental Rights of The Union', the European Union listed certain rights that each EU citizen will enjoy. One can assume that it is with this part that the European Union reveals its desire to achieve a political body, since only states grant or recognizes the rights of their citizens.

It was stated in the Article II-78 (Right of Asylum) as; "The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Constitution"<sup>135</sup>.

Article II-79 mentions protection in the event of removal, expulsion and extradition. According to this article, collective expulsions are prohibited and no one shall be expelled, removed or extradited to a state where he/she might face death penalty, torture or other

---

<sup>131</sup> Ibid

<sup>132</sup> Europa, "Work of the IGC 2003/2004", [http://europa.eu/scadplus/cig2004/index\\_en.htm](http://europa.eu/scadplus/cig2004/index_en.htm) [accessed 13 March 2010]

<sup>133</sup> **BBC News**, "French say firm 'No' to EU treaty", 30 May 2005, available at: <http://news.bbc.co.uk/2/hi/europe/4592243.stm> [accessed 13 March 2010]

<sup>134</sup> **BBC News**, "Dutch Say 'No' to EU Constitution", 2 June 2005, available at: <http://news.bbc.co.uk/2/hi/4601439.stm> [accessed 13 March 2010]

<sup>135</sup> European Union, "Treaty Establishing a Constitution for Europe", 16 December 2004, available at: <http://www.unhcr.org/refworld/docid/41d162834.html> [accessed 13 March 2010]

inhuman treatment or punishment.

Also in the Third Part (Policies and Functioning of the Union), Article III-266 is about the asylum policy of the Union. Article III-266 of the Constitution Treaty presents the concept of a common European asylum system and designs a uniform status and common procedures for the granting and withdrawing of asylum and subsidiary protection status, a common system of temporary protection for displaced persons, criteria and mechanisms to determine the responsible member state, standards concerning the conditions for the reception of applicants and cooperation with the third countries<sup>136</sup> .

Article III-267 reveals the wish for a common immigration policy. It is in this Article where the will for common measures on laws for securing the borders is revealed. The areas to establish framework are;

- (a)the mutual recognition and enforcement between Member States of judgments and decisions in extra judicial cases;
- (b)the cross-border service of judicial and extra judicial documents;
- (c)the compatibility of the rules applicable in the Member States concerning conflict of laws and of jurisdiction;
- (d)cooperation in the taking of evidence;
- (e)effective access to justice;
- (f)the elimination of obstacles to the proper functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the Member States;
- (g)the development of alternative methods of dispute settlement;
- (h)support for the training of the judiciary and judicial staff.<sup>137</sup>

Coupled with the Section 4, Judicial Cooperation for Criminal Matters, it is clearly understood that the European Union, while trying to harmonize its asylum and immigration policy, was trying to build a secure border line to protect the Union territory from illegal immigration and organized crime acts.

---

<sup>136</sup> Ibid

<sup>137</sup> Ibid

## E. Other Developments

After the Tampere European Council meeting in 1999, the Union could not achieve the original aims. In past five years since Tampere Summit, the Union tried to build a harmonized policy on asylum, immigration and border control. However, security of the European Union became urgent, especially after the terrorist attacks in the United States on 11 September 2001 and in Madrid on 11 March 2004. The Hague Program was accepted by the Council on 3 March 2005. The program was to foresee and design policies and cooperation for the upcoming five years. This program precisely is about freedom and security<sup>138</sup>.

In the field of asylum, the Program calls for a common asylum procedure and a uniform status for who are granted with asylum or subsidiary protection within the Common European Asylum System. It is recommended that a common asylum fund to be established in order to share the economic costs of asylum within the Union and also cooperation with the third countries, countries of origin and countries of transportation are also seen as options to be developed in five years<sup>139</sup>.

In the light of the Hague Program, the European Union realized the importance of border control for combating organized crimes, terrorism and human trafficking. The Council published 'EU Plan on Best Practices, Standards and Procedures for Combating and Preventing Trafficking in Human Beings' in 9 December 2005, with a view to the development of common standards, best practices and mechanisms to prevent and combat trafficking in human beings<sup>140</sup>. It was designed to fight against and prevent human trafficking and help the victims and it revealed what has been done and what would be done step by step.

---

<sup>138</sup> European Union, 'The Hague Programme: Strengthening Freedom, Security and Justice in the European Union', 13 December 2004, available at: <http://www.unhcr.org/refworld/docid/41e6a854c.html> [accessed 13 March 2010]

<sup>139</sup> Ibid

<sup>140</sup> European Union, 'EU Plan on Best Practices, Standards and Procedures for Combating and Preventing Trafficking in Human Beings (2005/C 311/01)', 9 December 2005, available at: <http://www.unhcr.org/refworld/docid/43f328254.html> [accessed 14 March 2010]

Later, the Council developed a common strategy against terrorism. 'The European Union Counter-Terrorism Strategy' was published in 30 November 2005. The strategic commitment is about 'to combat terrorism globally while respecting human rights, and make Europe safer, allowing its citizens to live in an area of freedom, security and justice'<sup>141</sup>. The plan calls for 'coordination of policies and sharing information about the border control between the member states and with the EU bodies and taking actions in the fields of protection of external borders, securing transportation, establishing and strengthening of border control and visa systems such as European Borders Agency, Visa Information System, second generation Schengen Information System'<sup>142</sup>.

Further, the Council published a directive on the issue of refugee status on 2 January 2006. 'Council Directive 2005/85/EC of 1 December 2005 on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status' is about the refugee status and listed the minimum framework of standards which are crucial for a harmonized policy on procedures. 'The approximation of rules on the procedures for granting and withdrawing refugee status should help to limit the secondary movements of applicants for asylum between Member States, where such movement would be caused by differences in legal frameworks'<sup>143</sup>.

The directive starts with the definitions and the refugee definition is made in reference to 1951 Geneva Convention. It is noted that the 'refugee' means a third country national or a stateless person who fulfills the requirements of Article 1 of the Geneva Convention as set out in Directive 2004/83/EC'<sup>144</sup>.

The Directive was to be applied to all asylum applications made in the territories or at

<sup>141</sup> European Union: Council of the European Union, 'The European Union Counter-Terrorism Strategy', 30

November 2005, available at: <http://www.unhcr.org/refworld/docid/47fdfb28d.html> [accessed 14 March 2010]

<sup>142</sup> Ibid

<sup>143</sup> European Union: Council of the European Union, 'Council Directive 2005/85/EC of 1 December 2005 on

<sup>144</sup> Ibid

Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Statusö, 2  
January 2006, available at: <http://www.unhcr.org/refworld/docid/4394203c4.html> [accessed 14 March 2010]

the borders of member states and the member states would be responsible for all acts defined in the Directive. The document consists of four chapters: Chapter 1 outlines general provisions, Chapter 2 lists basic principles and guarantees in detail, Chapter 3 presents provisions on procedures and Chapter 4 covers procedures of withdrawal of the refugee status. This document sets many procedural techniques in examining the application. The document goes further and recognizes the rights of the applicants during the procedures. For example, it is mentioned in Article 7 that the applicants might remain in the territories of the member state during the examination of his/her application. While assuming rights to the applicants, this directive also assumes obligation to cooperate with the member states and the officials to applicants<sup>145</sup>.

The Directive was welcomed due to its important role in developing minimum standards on asylum procedures, which might be helpful especially for the new member states which have less developed asylum systems, however, it was also criticized for falling well short of the standards conducive to a full and fair examination of an asylum claim by the ECRE<sup>146</sup>. Criticisms were especially heavy on the technical details. For example according to Article 15, applicants might benefit legal assistance if they are willing to pay for the judicial services they enjoy; but this clause is found unsatisfactory by the ECRE on the grounds that if the applicants were to get free legal assistance on the procedures, many complications during the procedures would be minimized<sup>147</sup>.

In Section 2, Article 26 lists the cases in which applications are considered to be inadmissible however, the article contains concepts such as "first country of origin" and "safe third country" which are also criticized by the ECRE. First country of origin is defined in Article 26 as the country which grants sufficient protection or refugee status to the applicant, which he/she can still avail himself/herself. Although ECRE welcomes the Union's recognition of the right to avail oneself from a granted protection and refugee status, it also

---

<sup>145</sup> Ibid

<sup>146</sup> European Council on Refugees and Exiles, "ECRE Information Note on the Council Directive 2005/85/EC of

1 December 2005 on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status", October 2006, available at: <http://www.unhcr.org/refworld/docid/464317ab2.html> [accessed

<sup>147</sup> Ibid



14 March 2010]

criticizes the document for not being clear enough to define the sufficient protection<sup>148</sup>. Article 27 defines "safe third country" as the country in which the applicant would not be harmed due to his/her belonging to a race, religion, social group, political opinion, etc., the principle of non-refoulement is respected and removal, in violation of right to freedom from torture or any other inhuman and degrading treatment is prohibited. The concept is again criticized by the ECRE on the grounds that refugee rights are minimized only to the principle of non-refoulement and for the techniques used to determine whether a third country in question is safe or not. According to the ECRE, the applicant could be also capable of questioning the safety of the third country<sup>149</sup>.

On 23 May 2007, a European Return Fund for the Period 2008-2013 was formed with the publication of 'Decision No. 575/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the European Return Fund for the period 2008 to 2013 as part of the General Programme 'Solidarity and Management of Migration Flows''. The program calls for a funding to assist the member states who are in charge for the procedures to combat illegal immigration and human trafficking<sup>150</sup>. Other than this decision, the European Union signed numerous agreements on the readmission of persons residing without authorization with numerous countries<sup>151</sup>.

On 14 May 2008, the Council adopted a decision, 'Council Decision of 14 May 2008 establishing a European Migration Network', by which the European Migration Network (EMN) is established. The European Migration Network is composed of national contact points designated by the member states and the Commission and its tasks are to collect, exchange and analyze data and information, contribute the development of criteria to improve

---

<sup>148</sup> Ibid

<sup>149</sup> Ibid

<sup>150</sup> European Union, "Decision No. 575/2007/EC of the European Parliament and of the Council of 23 May

2007 establishing the European Return Fund for the period 2008 to 2013 as part of the General Programme 'Solidarity and Management of Migration Flows', 23 May 2007, available at: <http://www.unhcr.org/refworld/docid/47dfb18d.html> [accessed 14 March 2010]

<sup>151</sup> Party states involve Russian Federation (25 May 2006), Ukraine (18 June 2007), Republic of Serbia, Republic of Montenegro, Former Yugoslav Republic of Macedonia, Bosnia and Herzegovina (18 September 2007) and Republic of Moldova (10 December 2007). The list and the agreements can be reached at the UNHCR website.

the consistency of data and migratory statistics, produce and publish reports on migration and asylum situations, create and maintain an Internet-based information exchange system, raise awareness by providing information and coordinate information and cooperate with the other Union bodies<sup>152</sup>. As can be seen this was a further step in cooperation and was a sign that asylum and immigration policies became more Union-based.

On 24 September 2008, with the persistent French initiative, the Council published the 'European Pact on Immigration and Asylum'. The pact is designed to provide principles and guidelines for a future common EU immigration and asylum policy and border controls<sup>153</sup>. The pact calls for actions to combat irregular immigration through sending the illegal immigrants to their countries of origin and better border controls. The management of immigration is explained within the document. On asylum, the Pact calls for construction of a Europe of asylum which includes establishment of a European support office in 2009, a single European procedure comprising common guarantees and for adopting a uniform status for refugees and subsidiary protection, strengthening cooperation with the Office and the UNHCR, providing training for the personnel in the border controls on international protection<sup>154</sup>.

The Pact was criticized in many aspects such as of being intergovernmentalist and nationalistic, but very little European, of creating a critical tension between respect for human rights and security and of underestimating the roles of civil society, NGOs and the social partners<sup>155</sup>.

---

<sup>152</sup> European Union: Council of the European Union, 'Council Decision of 14 May 2008 establishing a European Migration Network', 14 May 2008, available at: <http://www.unhcr.org/refworld/docid/4a54bc0f26.html> [accessed 14 March 2010]

<sup>153</sup> Sergio Carrera & Elspeth Guild, 'The French Presidency's European Pact on Immigration and Asylum: Intergovernmentalism vs Europeanisation? Security vs Rights?', **Centre For European Policy Studies: Policy Brief**, No: 170, September 2008, available at: <http://www.ceps.eu/node/1372> [accessed 14 March 2010]

<sup>154</sup> European Union: Council of the European Union, 'European Pact on Immigration and Asylum', 24 September 2008, available at: <http://www.unhcr.org/refworld/docid/48fc40b62.html> [accessed 14 March 2010]

<sup>155</sup> Carrera & Guild, 2008, p: 9-10.

## F. The Treaty of Lisbon

After the refusal of the 'Treaty Establishing A Constitution For Europe' in the French and Dutch referenda in 2005, the European Union started working on a document to cope with the deepening process. This aim is clearly stated in the Treaty itself; the objective of the Treaty is 'to complete the process started by the Treaty of Amsterdam and by the Treaty of Nice with a view to enhancing the efficiency and democratic legitimacy of the Union and to improving the coherence of its action'<sup>156</sup>. The Treaty of Lisbon was signed on 13 December 2007.

Treaty of Lisbon brings many new applications to the EU framework: the European Central Bank becomes an official body (Article 9 and section 4a), qualified majority voting is introduced to the Council (Article 9C), composition of the European Parliament is changed and its powers are increased (Article 9A), the European Council, composed of the heads of state or government of the member states, becomes an official body (Article 9B), the High Office of Representative of the Union for Foreign Affairs and Security Policy is created (Article 9E), etc. As one can see the Treaty of Lisbon is an important step forward for the Union-wide cooperation and deepening. The Union became a powerful body in many policy areas, thus the Treaty of Lisbon can be said to be more supranationalist than intergovernmentalist.

The areas of freedom, security and justice are mentioned within the area of shared competence in the Treaty (Article 2C). Therefore, asylum and immigration policies are also matters of shared competence. Asylum and immigration policies are briefly but clearly defined in the Treaty. In the Article 2, it is stated that;

The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.<sup>157</sup>

---

<sup>156</sup> European Union, 'Treaty Of Lisbon', 13 December 2007, available at: [http://europa.eu/lisbon\\_treaty/full\\_text/index\\_en.htm](http://europa.eu/lisbon_treaty/full_text/index_en.htm) [accessed 14 March 2010]

<sup>157</sup> Ibid

The Union took responsibility to pursue an area of freedom, security and justice through border control. External borders are thought to define an area of security. In Article 61, under Chapter I (General Provisions) this aim and definitions are more clear. It is noted here, that the Union will build an area of freedom, security and justice without violating fundamental rights and the different legal systems and traditions of its members. In the second paragraph, it is stated that the Union ensures that "the absence of internal border controls for persons and shall frame a common policy on asylum, immigration and external border control, based on solidarity between Member States, which is fair towards third-country nationals"<sup>158</sup>. In this paragraph stateless persons are also told to be treated as third-country nationals.

The Second Chapter is about "Policies on Border Checks, Asylum and Immigration". Article 62 mentions the policies on border checks and visa regulations. It states the necessity for absence of control on the internal borders, however integrated management systems and cooperation for external borders and common visa regulations. Article 63 states the necessity for a common policy on asylum, subsidiary protection and temporary protection. Especially in the second paragraph, a common asylum policy is mentioned in detail. According to this paragraph, the Union should adopt uniform standards and status and common policies; as oppose to earlier recommendations for minimum standards and the European Parliament and the Council should act together in accordance with the legislative procedure. The common asylum policy should include;

- (a) a uniform status of asylum for nationals of third countries, valid throughout the Union;
- (b) a uniform status of subsidiary protection for nationals of third countries who, without obtaining European asylum, are in need of international protection;
- (c) a common system of temporary protection for displaced persons in the event of a massive inflow;
- (d) common procedures for the granting and withdrawing of uniform asylum or subsidiary protection status;
- (e) criteria and mechanisms for determining which Member State is responsible for considering an application for asylum or subsidiary protection;

---

<sup>158</sup> Ibid

- (f) standards concerning the conditions for the reception of applicants for asylum or subsidiary protection;
- (g) partnership and cooperation with third countries for the purpose of managing inflows of people applying for asylum or subsidiary or temporary protection.<sup>159</sup>

Article 63a mentions the issue of immigration and suggests the development of a common immigration policy, on which the Parliament and the Council work together. The common policy shall include measures on entering the territory of the Union, long-term visas, residence permits, the rights of third-country nationals residing legally, illegal immigration, human trafficking (especially women and children). It is also stated that the Union might sign agreements with third countries for the readmission of illegal immigrants or of those who no longer meet the conditions of residence permit to their countries of origin.

As it is seen, the Treaty of Lisbon, sets a great step further in cooperation for a common asylum policy. More attention is paid to the border control, however the will to create uniform standards and a common policy is vocalized.

## **VII. EUROPEANIZATION**

The evolution of European asylum and immigration policies do not necessarily imply that these policies were to be accepted and applied by the member states and more importantly by the candidate states. Member states are expected to adopt and apply those policies since the policies are made with the participation of the members to the policy making procedure. For the candidate states there is a different pattern. They are expected to adopt and apply those policies since they are willing to be a member of the Union, they are expected to harmonize their policies with the Union's policies. But the question is how and to what extent is it possible? In order to answer this question, one should examine the concept of Europeanization first.

---

<sup>159</sup> Ibid

## A. The Concept of Europeanization

The process of accession to the European Union requires Europeanization. In the case of Turkey, accession to the European Union requires certain policies, policy making procedures, rules and regulations. However, the accession procedure does not constitute a single recipe. Europeanization might involve adoption as well as harmonization, vertical effect as well as horizontal effect, etc. Europeanization, therefore, might differ in each case of policy change and for each country. But before proceeding with Turkey's accession and asylum policies and what kind of Europeanization would be employed, it is better to define the concept of Europeanization.

As Kevin Featherstone notes 'Europeanization has gained widespread currency among scholars as a newly fashionable term to denote a variety of changes within European policies and international relations'<sup>160</sup>. He lists many explanations of Europeanization described by a reasonable amount of scholars and categorizes the definitions in four groups: as an historical process, a matter of cultural diffusion, a process of institutional adaptation, adaptation of policy and policy processes<sup>161</sup>. In this study, explanations related to institutional adaptation and adaptation of policy and policy processes are used. Among the listed explanations, there are explanations related to strengthening of a subnational governance, power shift and participation in international policy making, regional cooperation and a common policy formation<sup>162</sup>. However there is a slight touch to accession process, while defining Europeanization. Social sciences do not take accession as the only defining aspect for Europeanization. For example, Heather Grabbe argues that Europeanization is not a theory of EU enlargement<sup>163</sup>. Europeanization is a policy change, therefore simply being a member does not guarantee the qualification for Europeanization. A country, apart from being a member or a candidate, should act in the policy making and policy making procedure, and engage in influential reactions with the EU policy making bodies to be considered as Europeanized.

---

<sup>160</sup> Kevin Featherstone, 'In the Name of Europe', Kevin Featherstone & Claudia M. Radaelli (Ed.), in **The Politic of Europeanization** (3-27), Oxford: Oxford University Press, 2003, p: 3

<sup>161</sup> Ibid, p: 5

<sup>162</sup> Ibid, p: 8-9

<sup>163</sup> Heather Grabbe, 'Europeanization Goes East: Power and Uncertainty in the EU Accession Process', **ECPR Joint Section Of Workshops**, Turin: 22-27 March 2002, p: 7



Contrary to that argument, Europeanization might be defined also with a link to European integration in which European integration is perceived as a source of change and Europeanization as a product of change<sup>164</sup>. Featherstone quotes Ladrech's definition of Europeanization as 'a process reorienting the direction and shape of politics to the degree that EC political and economic dynamics become part of the organizational logic of national policies and policy making'<sup>165</sup>. Many academic works, which deal with the term Europeanization, employ institutional and policy analysis with a focus on domestic political structures. In these studies, Europeanization is understood by many of the scholars as change in the domestic policies and political structures through the impact of European Union. Therefore, it can be assumed that 'Europeanization' refers to *what* is changed and *how* Europeanization takes place is a question of process of institutional change<sup>166</sup>.

On the other hand, the impact of Europeanization is also important. There are two ways of influence: (1) top-down effect, in which European Union becomes the center and domestic policies are affected by the policy making styles and policies of the Union and (2) bottom-up effect, in which national policies become European policies and are widely accepted by the other member states. However, as Europeanization is defined heavily with an emphasis on domestic change; one can assume that many scholars address top-down effect when they mention Europeanization. Yet, as Maarten Vink notes, approaching Europeanization exclusively from a top-down rather than bottom-up perspective might cause failure to notice European integration in a broader sense. 'After all, even when EU policies can admittedly strongly affect domestic policies, these policies do not come out of the blue, but are the result of among others of political action by domestic actors who shift domestic issues to the European level'<sup>167</sup>. Nevertheless in most of the cases, especially in cases of accession, Europeanization occurs via top-down.

<sup>164</sup> Klaus H. Goetz & Simon Hix, 'European Integration and National Political Systems', Klaus H. Goetz & Simon Hix (Ed.), in **Europeanized Politics: European Integration and National Political Systems**, (1-27), London: Frank Cass Publishers, 2001, p: 22

<sup>165</sup> Robert Ladrech, 'Europeanization of domestic politics and institutions: the case of France', **Journal of Common Market Studies**, V: 32 (69-88), cited in Featherstone, p: 12

<sup>166</sup> Johan P. Olsen, 'The Many Faces of Europeanization', **Arena Working Papers**, WP 01/2, available at: [http://www.arena.uio.no/publications/wp02\\_2.htm](http://www.arena.uio.no/publications/wp02_2.htm) [accessed 02 April 2010]

<sup>167</sup> Maarten P. Vink, 'Negative and Positive Integration in European Immigration Policies',



The top-down effect is actually governance by hierarchy in which, the supranational institutions have a considerable amount of power delegated to them<sup>168</sup>. This, actually stresses the supranational power and nature of the European Union. But there is also governance by negotiations which seems to be a more horizontal way of harmonizing policies. It focuses on the process of EU policy emergence and institutions of the Union and the member states and the governing bodies are all engaged in the policy-making procedure<sup>169</sup>. However governance by negotiations is only possible for the member states, since candidate states are expected to adopt each policy without derogations or reservations.

There is also a differentiation in terms of integration; positive and negative. Negative integration is the loss of boundary control<sup>170</sup>. It is very similar to the liberal understanding of policy making and is a kind of market-making policy<sup>171</sup>. It is also related to removing national barriers in order to create a common policy<sup>172</sup>. On the other hand, positive integration is an attempt to regain some power for the political vis-à-vis society and the market through re-regulation at the European level<sup>173</sup>. In other words, while negative integration restricts political regulatory exercises, positive integration works on the contrary and operates to re-regulate; it is designed to limit damaging effects of market processes: through pollution control, social policy, regional policy, veterinary policy to accompany the Common Agricultural Policy, and so on,<sup>174</sup>. Therefore it is a kind of market correcting policy.

The path to complete integration can be explained with the term 'Goodness of Fit'. In

<sup>168</sup> Simon J. Bulmer & Claudio M. Radaelli, 'The Europeanisation of National Policy?', **Queen's Paper on Europeanisation**, No: 1, 2004, available at: [http://www.qub.ac.uk/schools/SchoolofPoliticsInternationalStudiesandPhilosophy/FileStore/EuropeanisationFiles/Filetoupload,38405,en.pdf+The+Europeanisation+of+National+Policy%3F&hl=en&pid=bl&srcid=ADGEEShoDeXpY1CdCeJMFqcgguTtpjtSLn0jQ1ylZmi3gZJbwIex4pcy9NHm4Sv16ctQvvXIGrfHT3bC1x1mZlg7d9aNndcbZoVuLUVDOk5Md7voYvvCyCw-s\\_S2A\\_2TOBE8ErM1LVbTl&sig=AHIEtbTv7uDh9h-7XBSyokNz7Rbz2WYZ6Q](http://www.qub.ac.uk/schools/SchoolofPoliticsInternationalStudiesandPhilosophy/FileStore/EuropeanisationFiles/Filetoupload,38405,en.pdf+The+Europeanisation+of+National+Policy%3F&hl=en&pid=bl&srcid=ADGEEShoDeXpY1CdCeJMFqcgguTtpjtSLn0jQ1ylZmi3gZJbwIex4pcy9NHm4Sv16ctQvvXIGrfHT3bC1x1mZlg7d9aNndcbZoVuLUVDOk5Md7voYvvCyCw-s_S2A_2TOBE8ErM1LVbTl&sig=AHIEtbTv7uDh9h-7XBSyokNz7Rbz2WYZ6Q) [accessed 02 April 2010]

<sup>169</sup> Ibid, p: 5-6

<sup>170</sup> Fritz W. Schwarpf, 'Negative and Positive Integration in the Political Economy of European Welfare States', Garry Marks, Fritz W. Schwarpf, Phillipe C. Scmitter & Wolfgang Streeck (Ed.), in **Governance in the European Union**, (15-39), London: Sage Publications, 1998, p: 16

<sup>171</sup> Ibid, p: 15-39

<sup>172</sup> Bulmer & Radaelli. 2004, p: 6

<sup>173</sup> Vink. 2001, p: 3

<sup>174</sup> Bulmer & Radaelli. 2004, p: 6

this terminology, 'fit' is 'good' to the extent that substantive equality ... in member states satisfies the expectations or requirements of European policy or law<sup>175</sup>. Goodness of fit occurs when a member state tries to harmonize its policies to that of European Union's and adopts the EU policy with little difference. The degree of 'fit' is closely related to adaptational pressures which determine the extent to which domestic institutions would have to change in order to comply with the European rules and the policies<sup>176</sup>. 'European policies, norms, and collective understandings attached to them exert adaptational pressures on domestic-level processes, because they do not resonate well with domestic norms and collective understandings'<sup>177</sup>.

Therefore, in case of misfit, or in other words in case of conflict between the EU policies and the national policies, one can assume to observe adaptational pressures on the national policy-making mechanisms. The volume of those pressures tend to correlate with the measure of misfit; if there is a strong misfit then the pressure will be higher. Usually candidate states face high levels of pressures. It is very rare to find occasions in which a candidate country's policies are in great harmony with the EU policies and norms before the negotiations.

The negotiation process is not an example for governance by negotiations; it is a process where the candidate country is expected to set an agenda for the adaptation of the *Acquis*. The *Acquis* is non-negotiable; only the time-table is negotiable. Therefore, the accession process, negotiations are clear examples for governance by hierarchy and usually candidate states are in a position to face great pressures. According to Grabbe, candidate states do not really have option for adoption of and harmonization to EU policies, laws and

---

<sup>175</sup> James Caporaso & Joseph Jupille, 'The Europeanization of Gender Equality and Domestic Structural Change', Thomas Risse, Maria G. Cowles, James Caporaso (Ed), in **Transforming Europe: Europeanization and domestic change**, (21-44), New York: Cornell University Press, 2001, p: 23

<sup>176</sup> Thomas Risse, Maria G. Cowles & James Caporaso, 'Europeanization and Domestic Change: Introduction', Thomas Risse, Maria G. Cowles, James Caporaso (Ed), in **Transforming Europe: Europeanization and domestic change**, (1-21), New York: Cornell University Press, 2001, p: 7

<sup>177</sup> Tanja A. Börzel & Thomas Risse, 'Conceptualizing the Domestic Impact of Europe', Kevin Featherstone & Claudia M. Radaelli (Ed.), in **The Politics of Europeanization** (57-80), Oxford: Oxford University Press, 2003, p:58-59

norms; they need to adopt the new legal regulations urgently and without negotiating<sup>178</sup>.

## **B. Europeanization for Candidate States**

According to Grabbe, Europeanization mechanisms can be divided into five categories: modeling, through which legislation provisions are formed; founding and financial aids, benchmarking and monitoring, advice and twinning and gate-keeping, which is defined as holding access to negotiations<sup>179</sup>. These mechanisms can all be applied to explain Europeanization patterns of candidate states, although some of them are also possible mechanisms for member states. Candidate states are given a full legislation document (*Acquis*) and are expected to adopt it (modeling), they are funded in their progresses and attempts to be Europeanized (financial aids), they are given progress reports (monitoring and somewhat advice) and their negotiation process is handled by the EU (gate-keeping). Through these mechanisms, European Union impacts domestic policies. Sedelmeier argues, "[t]his impact is largely the result of the functional pressures arising from the need to organize relations with the EU, formulate negotiating positions, and to implement EU policies, rather than any deliberate attempt by the EU to change executive structures"<sup>180</sup>. However, European Union also has a coercive power. Although European Union can not directly dictate its policies, it can use soft policy means (monitoring, reporting, etc.) and it definitely can force candidate states to adopt its policies and norms via the possibility of refusal to membership. Therefore, pressures, I assume, might come from the EU officials as well.

In summary, Europeanization has many paths and mechanisms. It can be top-down or bottom-up; but at the end, Europeanization is a Union-based change in the political structure, policies and norms. In case of accession it is a top-down change; domestic policies, norms and structures change to fit into European policies, norms and structures. Candidate states are expected to harmonize their policies with the *Acquis*, in order to be a member of the Union. In

---

<sup>178</sup> Grabbe, 2002, p: 4-5

<sup>179</sup> Ibid, p: 9

<sup>180</sup> Ulrich Sedelmeier, "Europeanization in New Member and Candidate States", Living Reviews in European Governance, available at: <http://europeangovernance.livingreviews.org/Articles/lreg-2006-3/> [accessed 02 April 2010]

the accession process, the candidate countries do not really have a negotiation power. *Acquis* is not negotiable. Therefore, there is a hierarchy in the accession period. Harmonization process might cause many adaptational pressures from within the candidate state since the will for Europeanization. According to Grabbe, the scope of Europeanization effects in the candidate countries is based on how precise and certain EU demands are and on the degree of political will and institutional capacity for implementing a European policy in the candidate country<sup>181</sup>.

In the light of this, it can be assumed that Europeanization, in case of accession, is the change of domestic policies, norms, political structures, etc. via top-down effect, in which the European Union is the influencing partner. Europeanization occurs while harmonizing the domestic policies to the European Union's policies and usually harmonization procedure follows an understanding that can be explained in the "Goodness of fit" theory. The theory states that in the lack of policy arena, adopting the *Acquis* is easier, since there will be high adaptational pressures. In most of the cases, candidate states, do not have sufficient legislation for many policy areas, for example environment or asylum. That is why simply adopting EU legislation is easier for the countries. That leads to goodness of fit, since the legislation fits the *Acquis* perfectly.

### **C. Europeanization of Immigration and Asylum Policies for the Candidate Countries**

The remaining question is where do the immigration and asylum policies fall in case of Europeanization? Immigration and asylum policies are definitely examples of market-correcting and positive integration. Free movement of persons and lifting the controls for inner borders might be considered as negative integration since they abolish boundaries and state control. However, asylum and immigration policies work to correct that policy, through regulations, new political structures, soft policy instruments, etc.

---

<sup>181</sup> Grabbe, 2002, p:

Asylum and immigration policies are not fully supranational policies, but they are not fully national policies either. It has a "multilevel nature and a dynamic division of task, powers and responsibilities between EU institutions and the member states"<sup>182</sup>. In other words, both supranational and national, or domestic, politics go in parallel with each other and many kinds of legislations such as refugee laws, international documents, international agreements, etc., work together in the area. It is not only a two way policy (both supranational and national), it also has two goals; namely "liberalization of migration in the inside through freedom of movement on the one hand, and safeguarding of control over immigration from outside the Union"<sup>183</sup>.

Harmonization of asylum and immigration policies of the candidate countries with the European Union means burden-sharing for the Union; the EU countries extended the scope of burden sharing to the new member and candidate countries through conclusion of readmission agreements and the concept of safe third countries<sup>184</sup>. Therefore, one can assume that through harmonization of policies the EU tries to transfer the responsibility of dealing with the asylum and immigration to the new member and candidate states. It is a full transfer of policy. Through this transfer the EU not only exported its technologies, norms and policies on immigration and asylum, but also border controls, visa regulations, transportation, etc<sup>185</sup>.

To summarize, it can be argued that the European Union perceived immigration and asylum policies as a policy area of nation states and related them to border security for a long time. This relation disabled the Union to perceive immigration and asylum as issues of humanitarian needs. For years European Union tried to define the policy area with an intention to sustain border security and not to disturb national sovereignty. After all this is a

---

<sup>182</sup> Sandra Lavenex & Emek M. Uçarer, "The Emergent EU Migration Regime and Its External Impact", Sandra Lavenex & Emek M. Uçarer (Ed.), in **Migration and the Externalities of the European Union**, (1-15), Maryland: Lexington Books, 2003, p: 5

<sup>183</sup> Ibid, p: 5

<sup>184</sup> Elena Jileva, "Larger Than the European Union: The emerging EU Migration Regime and Enlargement", Sandra Lavenex & Emek M. Uçarer (Ed.), in **Migration and the Externalities of the European Union**, (75-90), Maryland: Lexington Books, 2003, p: 83-84

<sup>185</sup> Heather Grabbe, "Stabilizing the East While Keeping Out the Easterners: Internal and External Security Loics in Conflict", Sandra Lavenex & Emek M. Uçarer (Ed.), in **Migration and the Externalities of the European Union**, (1-104), Maryland: Lexington Books, 2003, p: 91

very delicate issue for the member states. Member states wish to protect their power on borders and welcoming aliens. The European Union spends great amounts of money from the EU budget for managing immigration and asylum issues.<sup>186</sup> Mostly the European Union has a more strict criteria and set of rules for accepting refugees. However, through time the Union managed to build a closer common definition for the terms of immigration and asylum and established means for common criteria and procedures for granting refugee and asylum seeker status.

The understanding of a common immigration and asylum policy evolved through time with the deepening of the Union. Step by step, the Union gained a greater say in the asylum procedures and even gained a status to set criteria and ideals for the procedure. The European Union, while integrating into a closer Union, managed to define common and supranational policy areas and the immigration and asylum policy is getting more and more supranational, common, and humanitarian.

There are also different categories of Europeanization. Each category is useful in defining one aspect of Europeanization. However, while explaining the Europeanization in accession period or for candidate states, it is better to use "top-down Europeanization" category. Top-down Europeanization puts Europe to the center and expects the candidate (or member) states to be influenced by the center in policy making. One other category is goodness of fit, which usually is the case in which adaptational pressures to fit the European Union framework. Adaptational pressures might occur when there is a certain misfit, or when adapting the policy is highly crucial. Immigration and asylum policies, on the other hand, can be explained with the Europeanization theory by using categories of positive and negative integration. Immigration and asylum policies are created to regulate the side-effects created by the free movement of persons ideal. That is why, these policies are examples of positive integration, since positive integration occurs for policies created in order to regulate and manage the negative side-effects of other policy areas.

---

<sup>186</sup> **BBC News**, "How the money is spent by country- 114 bn", available at: <http://news.bbc.co.uk/2/hi/8036096.stm#start> [accessed 14 March 2010]



## **CHAPTER III**

### **TURKEY'S IMMIGRATION AND ASYLUM POLICY**

#### **I. IMMIGRATION AND ASYLUM IN THE TURKISH LEGAL SYSTEM**

In Turkey there are no regulations specifically relating to immigrants and asylum seekers. The most relevant documents in the Turkish legal system are the 1951 Convention and 1967 Protocol. Article 90 of the Constitution states that "International agreements duly put into effect bear the force of law"<sup>187</sup>. These documents, therefore, are the main regulations in the Turkish legislation. However these regulations are not fully adopted. Turkey has a reservation clause to these documents. Article 40 of the 1951 Convention, allows the party states to add geographical reservations to the Convention<sup>188</sup>. Turkey accepted the Convention with the Act no 369, but with a geographical limitation, which provides accepting refugees only from European territories<sup>189</sup>.

However in certain areas, legal system touches upon issues of immigration and asylum, especially the rights of asylum seekers and refugees; there are minor regulations other than the 1951 Convention and the 1967 Protocol. These legal documents are presented in this Chapter.

#### **A. The Settlement Law**

The Settlement Law of 2510, issued on 14 July 1934, is the first official document to be analyzed in the sense that it is the first and the most relevant and comprehensive document on the issue. Although there had been earlier regulations on immigrants, such as the

---

<sup>187</sup> T.C. Anayasas, En Son De i ikliklerle 1982 Anayasas,, stanbul: Kare Yay,nlar,, 2005, p: 94

<sup>188</sup> United Nations High Commissioner for Refugees, "Convention Relating to the Status of Refugees",

<sup>189</sup> CARIM: Consortium for Applied Research on International Migration, "Status of Ratification of the SEM and SSA countries", European University Institute, Robert Schuman Centre for Advanced Studies, available at: [www.carim.org/public/legaltexts/LE3UNI937\\_807\\_EN.pdf](http://www.carim.org/public/legaltexts/LE3UNI937_807_EN.pdf) [accessed 20 March 2010]

Settlement Law 885 of 1926, this one had a broader agenda<sup>190</sup>.

Since the Turkish Republic was newly founded and a Turkish nation was being created, the Settlement Law of 1934 was more focused on the re-settlement of refugees, immigrants and the creation of a unique and a unified Turkish culture<sup>191</sup>. The definition of immigrants in the Law of 1934 is focused on the Turkishness. It is stated as;

Sedentary or nomadic persons of Turkish stock abroad who wish to come individually and settle in Turkey, and secondary or nomadic persons or tribes of Turkish stock and sedentary persons attached to Turkish culture who wish to come collectively and settle in Turkey, shall be accepted, respectively, upon the order of the Ministry of Internal Affairs on condition that the opinion of the Ministry of Health and Social Assistance on condition that the opinion of the Ministry of Internal Affairs is obtained in accordance with the provisions of hereof. They shall be called immigrants.<sup>192</sup>

According to the same article refugees are; ö[t]hose persons who take shelter in Turkey in order to reside temporarily on account of compelling reasons without the intention to settle permanently<sup>193</sup>.

However, since international agreements are evaluated in higher status in the hierarchy of laws<sup>194</sup>, with the approval of the 1951 Convention, this definition seized to exist. The new Settlement Law, published in 2006, does not include a definition for refugees<sup>195</sup>. öThe refugee definition which has conflict with international law has been omitted. The law

---

<sup>190</sup> Erol Ülker, öAssimilation, Security and Geographical Nationalization in Interwar Turkey: The Settlement Law of 1934ö, **European Journal Of Turkish Studies**, no: 7 Demographic Engineering Part I, 2008, available at: <http://ejts.revues.org/index2123.html> [accessed 18 April 2010], p: 4

<sup>191</sup> Ibid, p: 3 -5.

<sup>192</sup> Turkish Republic, öThe Turkish Law of Settlement no: 2510ö, June 1934, available at: [http://www.ifc.org/ifcext/btc.nsf/AttachmentsByTitle/Tur+-+AnX+3.2/\\$FILE/RAP+-+Annex+3.2+-+Turkish+Law+of+Settlement.pdf](http://www.ifc.org/ifcext/btc.nsf/AttachmentsByTitle/Tur+-+AnX+3.2/$FILE/RAP+-+Annex+3.2+-+Turkish+Law+of+Settlement.pdf) [accessed 18 April 2010], p: 2 or in turkish; <http://www.mevzuat.adalet.gov.tr/html/554.html> [accessed 18 April 2010]

<sup>193</sup> Ibid

<sup>194</sup> The principle is reflected in the Article 90 of Turkish Constitution. It is stated in the Constitution as; öIn the case of a conflict between international agreements in the area of fundamental rights and freedoms duly put into effect and domestic laws due to the differences in provisions on the same matter, the provisions of international agreements shall prevail.ö; Turkish Republic, The 1982 Constitution, Article 90

<sup>195</sup> Turkish Republic: Ministry Of Justice, öThe Turkish Law of Settlement no: 5543ö, June 2006, available in Turkish at: <http://www.mevzuat.adalet.gov.tr/html/27159.html> [accessed 18 April 2010]

focused on emigrants from abroad and issues related to expropriation<sup>196</sup>.

This law also lists people who cannot be defined as immigrants. The 1934 version states that, "those who are not attached to Turkish culture, anarchists, spies, itinerant gypsies and persons deported shall not be accepted as immigrants into Turkey"<sup>197</sup>. However, the list is also reformed in the 2006 version and it was stated that aliens, who are not from a Turkish descent or attached to Turkish culture and deported people, as a precaution for security, can not be refugees<sup>198</sup>. In a sense the security problem remains but the building of a national identity loses its initial point. The immigration policy in that sense is shaped with the security of the identity, nation, culture; i.e. Turkishness.

The 3<sup>rd</sup> paragraph of the Article 3 states that if refugees decide to settle in Turkey and notify their wish in writing to the highest civil governor of the place where they are located, they shall be treated as immigrants by the Ministry of Health and Social Assistance, provided that these refugees are not barred by article 4<sup>199</sup>. Other refugees would be subjected to the provisions of the law of citizenship by the Ministry of Internal Affairs. Since the reformed version omits refugee definition, this regulation is also omitted. Instead Article 8, that regulates temporary settlement, migrant documents and citizenship, is in force. According to the paragraph 4 of this article, people who are accepted as migrants, can become citizens with a decision from the Cabinet. Also minors are attached to their parents or if they do not have parents, to their relatives. Unaccompanied minors are accepted as refugees without any reservation to their age. In accordance with the "Turkish Citizenship Law", every child born in Turkey gains Turkish citizenship immediately and children found in Turkey are considered to be born in Turkey<sup>200</sup>. However, as mentioned above, according to Article 4, people who are not attached to Turkish culture or come from a Turkish descent are not considered as

---

<sup>196</sup> Canan Kaya, "Procedural Rights Under Turkish Law in the Light of EU Asylum Law", available at: [http://www.adalet.gov.tr/english/e-journal/PROCEDURAL\\_%20RIGHTS%20.pdf](http://www.adalet.gov.tr/english/e-journal/PROCEDURAL_%20RIGHTS%20.pdf) [accessed 18 April 2010], p: 34

<sup>197</sup> Turkish Republic, "The Turkish Law of Settlement no: 2510"

<sup>198</sup> Turkish Republic, "The Turkish Law of Settlement no: 5543"

<sup>199</sup> Turkish Republic, "The Turkish Law of Settlement no: 2510"

<sup>200</sup> Turkish Republic, "Turkish Citizenship Law, no: 4036, 11 February 1964, available in Turkish: [http://www.ir.metu.edu.tr/iom/pdf/tr\\_leg13.doc](http://www.ir.metu.edu.tr/iom/pdf/tr_leg13.doc) [accessed 18 April 2010]

migrants. Therefore, this article can not be applied to nationals other than the Turkic origins and those who lived within the Turkish culture.

According to the 'Circular Relating Expeditiously Completion of Settlement and Population Procedures (İskan ve Nüfus İşlerinin Sür'atle İkmali Hakkında Tamim) of 15035/6599', foreign Kurds, Arabs, Albanians; other Muslims who speak other languages than Turkish and all foreign Christians and Jews cannot be given nationality declaration documents. And they cannot be given immigrant paper. They will be all treated as foreigners<sup>201</sup>. Also the same circular states that Muslim Georgian, Lezgi, Chechen, Circassian, Abkhazian and other Muslims who are deemed to be connected to Turkish culture will be assigned nationality declaration documents with the order of the center<sup>202</sup> and Pomaks, Bosnians, Tatars and Karapapaks were supposed to be treated in the same way with the individuals of Turkish culture<sup>203</sup>. In the reformed version of the Settlement Law, Article 7, however, states that upon the condition of being of a Turkish descent and attached to the Turkish culture, it will be in the responsibility of the Cabinet to decide with regard to the proposition made by the Ministry of Foreign Affairs.

### **B. Law Relating to Residence and Travel of Foreigners in Turkey and the Passport Law**

'Law Relating to Residence and Travel of Foreigners in Turkey' of no: 5683 was issued in July 1950. Although this law does not include special treatments for refugees, there is an article related to people who seek political asylum; the Article 17. Even that article does not carry an important aspect. It is stated that aliens, who seek asylum from Turkey for political reasons shall be settled to places where the Ministry of Internal Affairs appoint<sup>204</sup>. The Law, other than this Article, does not include special focus on the refugees.

---

<sup>201</sup> Turkish Republic, İskan ve Nüfus İşlerinin Sür'atle İkmali Hakkında Tamim, no: 15035/6599, 7 August 1934, cited in Ülker, 2008, p: 6

<sup>202</sup> Ibid, p: 6

<sup>203</sup> Ülker, 2008, p:

6

<sup>204</sup> Turkish Republic, "Law Relating to Residence and Travel of Foreigners in Turkey no: 5683ö, 15 July 1950, available in Turkish at: [http://www.ir.metu.edu.tr/iom/pdf/tr\\_leg2.pdf](http://www.ir.metu.edu.tr/iom/pdf/tr_leg2.pdf) [accessed 18 March 2010]

'Passport Law' of no: 5682 was issued in July 1950, too. This law regulates the procedures of entering the country borders and expulsion of aliens. Refugees are mentioned in the Article 4, where issues about aliens who do not have passport or other documents are regulated. It is stated that immigrants who came with permission of the government, if holding documents given by the Turkish Consulates abroad or officials or delegations sent by the government for that purpose, would not be requested to have passports and acceptance of the refugees was decided to be issued by the Ministry of Internal Affairs<sup>205</sup>. However with the acceptance of the 1951 Convention, this regulation was abolished. It is stated in the Article 31 that;

1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

2. The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.<sup>206</sup>

Article 8 lists people who are not welcomed to country and the list does not include any reference to race, ethnicity or religion. The list is composed of people who are thought to constitute danger for the well-being of the citizens.

### **C. Directive on Refugee Guesthouses**

On 29 April 1983, the 'Directive on Refugee Guesthouses' was published by the Ministry of Internal Affairs. The aim of the directive was noted as to regulate the sheltering, food, and accommodation and other expenses of the aliens who declared his/her wish to stay in Turkey or to be sent to third countries on the grounds of asylum, during their application process<sup>207</sup>. The directive regulates many aspects of the guesthouses. Even the management,

<sup>205</sup> Turkish Republic, 'Passport Law, no: 5682', 5 July 1950, available in Turkish at: [http://www.ir.metu.edu.tr/iom/pdf/tr\\_leg8.pdf](http://www.ir.metu.edu.tr/iom/pdf/tr_leg8.pdf) [accessed 18 March 2010].

<sup>206</sup> United Nations High Commissioner for Refugees, 'Convention Relating to the Status of Refugees'

<sup>207</sup> Turkish Republic: Ministry of Internal Affairs, 'Directive on Refugee Guesthouses', Article 1, 29 April 1983, available in Turkish at: <http://www.mevzuat.adalet.gov.tr/html/21589.html> [accessed 18 April 2010]

security and food courts of the guesthouses are regulated with this directive.

According to this directive, accepting refugees and asylum seekers to the guesthouses is tied to the approval of the Ministry (Article 15) and the duration to stay in the guesthouses is temporary and limited (Article 16)<sup>208</sup>.

However, the directive is not successful in maintaining decent standards for the refugees. The treatment and the conditions in the guesthouses have been issues of great criticisms. For example Isabelle Caillol mentions the problems of the Turkish guesthouses in the European Parliament in 2009<sup>209</sup>. One comes across with similar criticisms in a report published by the Helsinki Citizens' Assembly in November 2007. The report entitled "Unwelcome Guests: The Detention of Refugees in Turkey's Foreigners' Guesthouses", clearly indicates the hygienic conditions, bedding and sleeping accommodation, nutrition, segregation and conditions of medical services with personal interviews, monitoring procedures and legal framework analysis. The report goes further and investigates the conditions and treatment of the applicants through the application procedure and the findings are heavily negative. The report illustrates the ill-treatments by the police and the need for training of the responsible officials both in the police forces and in the guesthouse managements<sup>210</sup>. The ill conditions and treatments in the guesthouses were also topics of many protests, especially in Istanbul<sup>211</sup>.

---

<sup>208</sup> Ibid

<sup>209</sup> Isabelle Caillol, "Detention of Migrants in Turkey", **Hearing at the European Parliament**, Strasbourg: 14 January 2009, available at: [http://www.migreurop.org/IMG/doc/Strasbourg\\_14-01-09\\_Isa.doc](http://www.migreurop.org/IMG/doc/Strasbourg_14-01-09_Isa.doc) [accessed 18 April 2010]

<sup>210</sup> **Helsinki Citizens' Assembly**, "Unwelcome Guests: The Detention of Refugees in Turkey's Foreigners' Guesthouses", Istanbul: November 2007.

<sup>211</sup> Some articles about the protests and marchings on the conditions in Kumkap, Refugee Guesthouse retrieved from [bianet.org](http://bianet.org) are:

Emine Özcan, "Eylemden Sonra Kumkap, 'daki Mültecileri Dövdüler", **bianet.org**, 14 December 2009, available at: <http://bianet.org/bianet/insan-haklari/117620-eylemden-sonra-kumkapidaki-gocmenleri-dovduler>

Emine Özcan, "Milletvekilleri Kumkap, Misafirhanesini Meclise Taahhütü", **bianet.org**, 14 December 2009, available at: <http://bianet.org/bianet/insan-haklari/117623-milletvekilleri-kumkapi-misafirhanesini-meclise-tasiyor>

**bianet.org**, "Kumkap, Yabancılar Misafirhanesi'ne İfade-i Ziyaret", 10 Mart 2010, available at: <http://bianet.org/bianet/insan-haklari/120573-kumkapi-yabancilar-misafirhanesine-iyade-i-ziyaret> all accessed 18 March 2010.

#### D. 1994 Regulation on Asylum Seekers

Since there were no laws governing the asylum applications and status of refugees in Turkish legislation it is not difficult to assume that Turkey faced difficulties with the immigration flows that occurred in the late 1980's and early 1990s. Bulgarian Turks, Iraqi Kurds and Bosnians fled to Turkey and Turkey's earlier regulations on asylum seekers became insufficient<sup>212</sup>. So Turkey adopted 'Regulation No. 1994/6169 on the Procedures and Principles related to Possible Population Movements and Aliens Arriving in Turkey either as Individuals or in Groups Wishing to Seek Asylum either from Turkey or Requesting Residence Permission in order to Seek Asylum From Another Country' in 1994. The aim of this regulation was defined as;

*... to determine the principles and procedures and to designate the bodies competent in respect of, aliens who individually seek refuge or seek residence in our country in order to seek refuge in other countries or as a group arrive at our borders for the purposes of refuge or asylum, or possible population movements, under the 1951 Geneva Convention relating to the Status of Refugees and the Protocol of 31 January 1967 relating to the Status of Refugees*<sup>213</sup>.

Definitions of refugee and asylum seeker, stated in the Article 3, were taken from the 1951 Convention and 1967 Protocol. Asylum seeker definition and refugee definitions differ in a way that the asylum seeker is defined with respect to the events occurred in Europe; therefore it can be argued that Turkey was keeping its geographical limitation on the documents. However Kiri ç(1996) argues that these definitions were improvements and there was a light that Turkey might be willing to lift its narrow regulations and limitations<sup>214</sup>.

---

<sup>212</sup> Kemal Kiri ç, 'Is Turkey Lifting the 'Geographical Limitation'?'- The November 1994 Regulation on Asylum in Turkey, **International Journal of Refugee Law**, Oxford: Oxford University Press, Vol.8, No: 3, 1996, p: 299

<sup>213</sup> Turkish Republic, 'Regulation No. 1994/6169 on the Procedures and Principles related to Possible Population Movements and Aliens Arriving in Turkey either as Individuals or in Groups Wishing to Seek Asylum either from Turkey or Requesting Residence Permission in order to Seek Asylum From Another Country (last amended 2006)' 19 January 1994, available at: <http://www.unhcr.org/refworld/docid/49746cc62.html> [accessed 19 March 2010]

<sup>214</sup> Kiri ç, 1996, p:





The Regulation consists of five parts. Part one is on the general provisions, part two clarifies 'procedures and principles related to individual aliens either seeking asylum from Turkey or requesting residence permissions in order to seek asylum from a third country', part three is about 'precautions to be taken against possible population movements and aliens arriving in Turkey in groups wishing to seek asylum', part four mentions 'action and precautions to be taken in the event of the acceptance of refugees and asylum seekers who come to our borders or enter Turkish territory in groups' and part five is about 'common provisions to be applied to aliens arriving in Turkey as individuals or in groups wishing to seek asylum either from Turkey or requesting residence permissions from Turkey in order to seek asylum from a third country'<sup>215</sup>.

Regulation allows cooperation with international or non-governmental organizations like the UNHCR or the International Organization for Migration (IOM). Regulation detail the procedures of application and examination of the applications.

However, the regulation was not a final act. There had been two amendments to the Regulation. For example, according to the Article 4 of this regulation, applications should be made within five days<sup>216</sup>. The time limit in the Regulation was very short, however later with an amendment, this limit was extended to 10 days<sup>217</sup>. The last amendment, made in 2006 lifted the time limit and said the application should be done 'without delay'<sup>218</sup>. There is a continuing improvement for the applicants, the application procedure is continuously getting easier to access.

---

<sup>215</sup> Turkish Republic, 'Regulation No. 1994/6169 on the Procedures and Principles related to Possible Population Movements and Aliens Arriving in Turkey either as Individuals or in Groups Wishing to Seek Asylum either from Turkey or Requesting Residence Permission in order to Seek Asylum From Another Country (last amended 2006)'

<sup>216</sup> Ibid

<sup>217</sup> Turkish Republic, 'Amendments Made on the Regulation on the Procedures and the Principles Related to Population Movements and Aliens Arriving in Turkey Either as Individuals or in Groups Wishing to Seek Asylum Either from Turkey or Requesting Residence Permission in Order to Seek Asylum From Another Country', 13 January 1999, available at: <http://www.unhcr.org/refworld/docid/3deb8c764.html> [accessed 19 March 2010]

<sup>218</sup> Turkish Republic, 'Council of Ministers Decision No. 2006/9938: Regulation to Amend the Regulation on the Procedures and the Principles Related to Population Movements and Aliens Arriving in Turkey either as Individuals or in Groups Wishing to Seek Asylum either from Turkey or Requesting Residence Permission in order to seek Asylum from Another Country', [16 January 2006, available at: <http://www.unhcr.org/refworld/docid/497473ff2.html> [accessed 19 March 2010]

## **E. Implementation Directive (Circular No 57)**

The document was released on 22 June 2006 by the Ministry of Internal Affairs to determine the procedure for the applications for asylum in Turkey<sup>219</sup>. The Directive, states the development of Refugee and Asylum policies, Turkey's ongoing negotiations with the European Union before lists the articles. One other aim revealed within that section was to harmonize the asylum system and procedures to the EU *Acquis Communautaire*, by doing so to strengthen the legal basis of the ongoing procedures and to create a basis for a future administrative structure, foreseen in the Asylum and Migration Action Plan<sup>220</sup>. The Directive further details the procedures and technicalities of the asylum process namely application, examination, authentication, interviews, staff, aids and assistance to applicants, work permits and education opportunities for the applicants, etc.

This is a very detailed document, which basically aims to inform the staff about how to pursue the process and treat the applicants. The Directive also reflects Turkey's vision of European Union. The long and detailed explanation in the beginning reveals the true nature of the regulations, which is the will towards accession with the European Union. The explanation in the beginning details the *Acquis Communautaire* about the asylum and immigration policy and stresses the need for harmonizing the Turkish legal system with the *Acquis Communautaire*.

## **II. LEGAL DOCUMENTS OF EU ACCESSION PROCESS**

### **A. 1998 Progress Report**

In the December 1997, Luxembourg European Council, it was decided to create a strategy to prepare Turkey for accession<sup>221</sup>. In 1998 Cardiff European Council, it was noted

---

<sup>219</sup> Turkish Republic: Ministry of Internal Affairs, "Implementation Directive (Circular no 57)", 22 June 2006, available in Turkish at: [http://www.ir.metu.edu.tr/iom/pdf/tr\\_leg1.doc](http://www.ir.metu.edu.tr/iom/pdf/tr_leg1.doc) [accessed 19 March 2010].

<sup>220</sup> Ibid

<sup>221</sup> European Union: Council of European Union, "Presidency Conclusions, Luxembourg European Council, 12-

that the report prepared for Turkey, will be based on Article 28 of the Association Agreement and the conclusions of the Luxembourg European Council<sup>222</sup>. The Report indicates very few reference to the right of asylum and asylum policies of Turkey.

It is stated in the report that Turkey does not recognize the right of asylum to those who do not come from European countries<sup>223</sup>. In "Justice and Home Affairs" section, immigration and border control and right of asylum are considered. Turkey's position as a transit country for refugees coming from Asia and particularly from Iraq is mentioned and Turkey's refusal to conclude any readmission agreements, pleading constitutional grounds, etc. is seen as a serious problem<sup>224</sup>. Furthermore, it is stated that Turkey's inefficient asylum policy is a consequence of Turkey's geographical reservation on 1951 Convention. In addition to that procedure for examination of asylum requests and the treatment of asylum seekers are requested to be improved<sup>225</sup>.

## **B. 1999 and 2000 Progress Reports**

The 1999 Report was the last report on Turkey, before its acceptance as a candidate country. This report welcomes Turkey's latest reforms on asylum policies; such as extension of application for asylum from 5 days to 10 days<sup>226</sup>. The case of fight against illegal immigration and border control; the accelerated number of illegal immigrants is considered as a troubling situation, and although it is noted that Turkey is not the the final destination of

---

13 December 1997, 13 December 1997, available at:

[http://www.consilium.europa.eu/ueDocs/cms\\_Data/docs/pressData/en/ec/032a0008.htm](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/032a0008.htm) [accessed 23 March 2010]

<sup>222</sup> European Union: Council of European Union, "Presidency Conclusions, Cardiff European Council 15-16

June 1998, 16 June 1998, available at:

[http://www.consilium.europa.eu/ueDocs/cms\\_Data/docs/pressData/en/ec/54315.pdf](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/54315.pdf) [accessed 23 March 2010]

<sup>223</sup> European Union: European Commission, "Regular Report From the Commission on Turkey's Progress Towards Accession", 4 November 1998, available at:

[http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/1998/turkey\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/1998/turkey_en.pdf) [accessed 23 March 2010]

<sup>224</sup> Ibid

<sup>225</sup> Ibid

<sup>226</sup> European Union: European Commission, "1999 Regular Report From the Commission on Turkey's Progress Towards Accession", 13 October 1999, available at:

[http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/1999/turkey\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/1999/turkey_en.pdf) [accessed 23 March 2010]

these journeys, Turkey's cooperation with the Union is appreciated<sup>227</sup>. In the case of resettlement of 17,746 Kosovars Turkey's cooperation with the UNHCR is again appreciated, however Turkey's reservation on the 1951 Convention is again criticized and the need for a special office to deal with the asylum cases is mentioned<sup>228</sup>.

In the Helsinki European Council of 10-11 December 1999, Turkey was recognized as a candidate country, which is destined to join the Union on the basis of the same criteria as applied to the other candidate States<sup>229</sup>. It was noted in the same article (Article no 11), that an enhanced political dialogue will be needed. Apart from that, an accession partnership was decided to be drawn up and Turkey was requested to bring a national program for the adoption of the *Acquis*.

Commission's report on Turkey in 2000 included many positive remarks. Although there are continuing criticisms about the readmission agreements, Turkey's efforts in the area are considered as positive steps. Issues of border control, asylum procedures and policies and treatment of refugees are taken more seriously and in a broader sense. Turkey's border control is briefly discussed and the lack of single authority is criticized and the efforts to prevent illegal immigration to the Western countries is advised to be stepped up<sup>230</sup>. Turkey's procedures for granting refugee status is found satisfactory and its cooperation with the UNHCR is mentioned. Also Turkey's project to train the personnel who is dealing with the asylum seekers with the UNHCR is highly appreciated but Turkish reservation on the 1951 Convention is again requested to be lifted<sup>231</sup>. Moreover, living conditions of the refugees is criticized. It is noted that refugees are welcomed by the local people due to traditional hospitality however, an improvement in the conditions and treatment of refugees is urgent<sup>232</sup>.

---

<sup>227</sup> Ibid

<sup>228</sup> Ibid

<sup>229</sup> European Union: Council of European Union, "Presidency Conclusions, 10-11 December 1999", 11

December 1999, available at:

[http://www.consilium.europa.eu/ueDocs/cms\\_Data/docs/pressData/en/ec/ACFA4C.htm](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/ACFA4C.htm) [accessed 24 March 2010]

<sup>230</sup> European Union: European Commission, "2000 Regular Report From the Commission on Turkey's Progress Towards Accession", 8 November 2000, available at:

[http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/2000/tu\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/2000/tu_en.pdf) [accessed 24 March 2010]

<sup>231</sup> Ibid

<sup>232</sup> Ibid

## **C. 2001 Accession for Partnership Report, the National Programme and Progress Report**

### **1. Accession for Partnership Report and the National Programme**

On 8 March 2001, European Union published 'Council Decision of 8 March 2001 on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with the Republic of Turkey'. The document, in the light of 2000 report by the Commission, sets out in a single framework the priority areas for further work identified in the Commission's regular report on the progress made by Turkey towards membership of the European Union, the financial means available to help Turkey implement these priorities and the conditions<sup>233</sup>. In the medium term objectives, the document requests Turkey to lift the geographical reservation to the 1951 Convention and develop accommodation facilities and social support for refugees<sup>234</sup>.

Turkey responded the Accession Partnership document with the National Programme for the Adoption of the *Acquis* in 2001. The Programme includes a timetable for adoption of the objectives and priorities listed in the Accession Partnership document and the financial means for that goal. The programme mentions that initial goals in asylum and immigration policy are building of better accommodation facilities and social support for refugees, preparation for full implementation of Schengen *Acquis* and improvement for border control, adoption of EU *Acquis* in immigration policies to fight against illegal immigration<sup>235</sup>. In the case of lifting the geographical reservation to 1951 Convention, it is stated that such policy could only be achieved with adoption of asylum policies which will prevent direct migration

---

<sup>233</sup> European Union: Council of European Union, 'Council Decision of 8 March 2001 on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with the Republic of Turkey', 8 March 2001, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:085:0013:0023:EN:PDF> [accessed 24 March 2010]

<sup>234</sup> Ibid

<sup>235</sup> Turkish Republic, 'Turkey's National Programme for Adoption of European Union *Acquis* 2001', 24 March 2001, p: 386

flows to Turkey and with the Union's capability and willingness for burden sharing<sup>236</sup>. The Programme also mentions the need for training the personnel to be responsible for the asylum applications, asylum seekers, etc. and foresees a timetable starting from 2001 and ending in a medium term<sup>237</sup>.

## **2. 2001 Progress Report**

In the 2001 Report on Turkey's progress towards EU accession, the will expressed by Turkey in the National Programme for the Adoption of the *Acquis* to lift its geographical reservation to the 1951 Convention is considered as a positive development in the area of asylum, however conditions which Turkey saw prerequisite for that are thought to raise further questions and discussion<sup>238</sup>. It is also noted that there is a need for a nation-wide screening mechanism to identify asylum seekers among detained illegal immigrants, reception facilities and an independent asylum appeal board and the practice of providing accommodation to refugees through private local population housing is considered as a better option than placement in crowded refugee centers<sup>239</sup>.

## **D. 2002 Progress Report**

On 9 October 2002, the Commission released its new progress report on Turkey. The report mentions that there have been some positive steps in the fields of asylum, migration and border control but, still criticizes Turkey for not being fully ready for adoption and implementation of Schengen *Acquis* and for not lifting geographical limitation on the 1951 Convention<sup>240</sup>. An emphasis is made on the growing number of illegal immigrants and since Turkey is a transit country readmission agreements are again advised to be signed, although a

---

<sup>236</sup> Ibid, p:

388

<sup>237</sup> Ibid, p:

390

<sup>238</sup> European Union: European Commission, "2001 Regular Report From the Commission on Turkey's Progress Towards Accession", 13 December 2001, available at: [http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/2001/tu\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/2001/tu_en.pdf) [accessed 24 March 2010]

<sup>239</sup> Ibid

<sup>240</sup> European Union: European Commission, "2002 Regular Report From the Commission on Turkey's Progress Towards Accession", 9 October 2002, available at:

[http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/2002/tu\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/2002/tu_en.pdf) [accessed 24 March 2010]



bilateral agreement between Turkey and Greece, designed for cooperation between the two countries against illegal immigration is mentioned to be difficult to practice for Turkey<sup>241</sup>. On the other hand, Turkey was highly appreciated for participating in an information sharing system about border controls and illegal immigrants who were caught, increasing the number of staff working on the border controls, establishment of control checkpoints, signing (but yet not ratified) of international agreements to combat human trafficking, etc.<sup>242</sup>

In the field of asylum, improvements made for better treatment of asylum seekers are mentioned. A circular issued by the Ministry of Interior on the health care of the asylum seekers is mentioned as well as distribution of green cards to the asylum seekers for free health care<sup>243</sup>. Time limits imposed on asylum seekers for filling in an application and identification requirements are listed as the continuing problems. The Report also calls for creation of a professional body, with a necessary institutional and technical capacity, to deal with the determination of refugee status and improvements in the work permits and employment rights of refugees<sup>244</sup>.

## **E. 2003 Accession for Partnership Report, National Programme and Progress Report**

### **1. Accession Partnership Report and National Programme**

On 14 April 2003, a revised version of the Accession Partnership Report was accepted. The 'Council decision of 19 May 2003 on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with Turkey', mentions asylum as one of the objectives to be achieved in the medium term. According to this report, Turkey should start with the alignment of the *Acquis* in the field of asylum including lifting the geographical reservation to the 1951 Geneva Convention; strengthen the system for hearing and determining applications for asylum; develop accommodation facilities and social support

---

<sup>241</sup> Ibid

<sup>242</sup> Ibid

<sup>243</sup> Ibid

<sup>244</sup> Ibid

for asylum seekers and refugees<sup>245</sup>.

As the Accession Partnership Report was renewed, a new National Programme was to be made. The Programme was released in 23 June 2003. The Programme mentions priorities such as combating illegal immigration, border controls, harmonization of visa regulations under the Justice and Home Affairs title. The Programme sets 2005 as the final year for implementation and adoption of the EU *Acquis* in the field of asylum policies; for example adoption and implementation of the 1990 Dublin Convention and the relating decisions are said to be completed till 2005<sup>246</sup>. Also for the issue of lifting the geographical reservation on the 1951 Convention, it is repeated that it was only possible with adoption of asylum policies which will prevent direct migration flows to Turkey and with the Union's capability and willingness for burden sharing<sup>247</sup>. Finances for improvements; training of the personnel, building accommodation centers and guesthouses, etc, are designed to be gathered from EU funds and State funds<sup>248</sup>.

Other improvements for harmonization of visa regulations, adoption of Schengen *Acquis*, improvements in border control, etc. are also designed to be completed till 2005 and funded simultaneously by the State and EU<sup>249</sup>.

Furthermore, Turkey published 'Turkey's National Action Programme of 2003 for the Adoption of EU *Acquis* in the Field of Asylum and Migration'. The Programme makes a comparison between the current and the future asylum policies of Turkey and the European Union, details the development of Turkish asylum policy and explains the priorities of the action plan. The Programme is a comprehensive and detailed plan which sets building of accommodation centers, reservation offices, guesthouses, etc, asylum procedures, policy

---

<sup>245</sup> European Union. Council of European Union, 'Council decision of 19 May 2003 on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with Turkey', 19 May 2003, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:145:0040:0056:EN:PDF> [accessed 25 March 2010]

<sup>246</sup> Turkish Republic, 'Turkey's National Programme for Adoption of European Union *Acquis* 2003', 23 June 2003, p: 143-144

<sup>247</sup> Ibid, p: 143

<sup>248</sup> Ibid, p: 147

<sup>249</sup> Ibid, p: 147-149

makings, etc. as priorities<sup>250</sup>.

## 2. 2003 Progress Report

Regular Report on Turkey's Progress Towards Accession for the year 2003 was published on 30 December 2003. The Report, once again, praises Turkey's improvements in the asylum policies. Turkey is especially praised for its "considerable progress in increasing its efficiency in the fight against illegal migration through improved cooperation among authorities as well as with Member States and third countries" and adoption of the Border Management Strategy is also appreciated<sup>251</sup>. However a full implementation of the 1951 Convention and the EU *Acquis* and establishment of a nation-wide screening mechanism for asylum-seekers are still listed as important priorities, which Turkey needs to complete<sup>252</sup>.

The Report mentions developments and improvements achieved since the last report such as increase and upgrade of infrastructure for border controls and a new law regarding work permits for foreigners<sup>253</sup>. This law establishes a centralized system of work permits for foreign nationals and authorizes foreigners to work as domestic workers<sup>254</sup>.

The Report also mentions the cases of precautions taken for refugees from Iraq. The Report says that the amount of illegal immigrants traveling Europe via Turkey has decreased. It is noted in the Report that before the war in Iraq Turkey made extensive preparations for possible mass flow of refugees. A crisis management center was established under the Prime Ministry and shelters were built for the refugees. Although there had been some cases in which some individuals crossed the Iraqi-Turkish border, the expected mass flows did not

---

<sup>250</sup> Turkish Republic, "Turkish National Action Programme of 2003 for the Adoption of EU Acquis in the Field of Asylum and Migration", October 2003.

<sup>251</sup> European Union: European Commission, "2003 Regular Report From the Commission on Turkey's Progress Towards Accession", 30 December 2003, available at: [http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/2003/tr\\_tk\\_final\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/2003/tr_tk_final_en.pdf) [accessed 25 March 2010]

<sup>252</sup> Ibid

<sup>253</sup> Ibid

<sup>254</sup> Turkish Republic, "Law no 4817 Relating Work Permit of Aliens", 27 February 2003, available in Turkish at: <http://www.mevzuat.gov.tr/Metin.Aspx?MevzuatKod=1.5.4817&MevzuatIliski=0&sourceXmlSearch=> [accessed 25 March 2010]

take place<sup>255</sup>.

Also, with regard to social support provided to refugees and asylum-seekers, the Report notes the improvements made in health care and education service provided to children of refugees and asylum seekers<sup>256</sup>.

## **F. 2004 Progress Report**

The European Union's Regular Report for Turkey was published on 6 October 2004. Report welcomes Turkey's cooperative policy on borders control and decision for establishing a 'Projects Directorate for Integrated Border Management' within the Ministry of Interior<sup>257</sup>.

In the Report, it is also mentioned that Turkey finally agreed to negotiate with the European Union about readmission agreements. It is stated that negotiations are expected to start in autumn 2004. Readmission agreements signed with Kyrgyzstan, Romania and Greece and negotiations for readmission agreements with Bulgaria, Libya, Uzbekistan and Ukraine are also mentioned in the Report<sup>258</sup>.

In the Report, it is mentioned that Turkey works in cooperation with the UNHCR while dealing with the asylum applications and training police and personnel, however it is also noted that there had been some reports that sometimes it is not permitted for the aliens who are apprehended away from the border to apply for asylum<sup>259</sup>. Turkey's social services and assistance for asylum seekers are once again appraised. It is noted in the Report that the Turkish authorities continued to provide direct aid; cash, food, clothing, health services and

---

<sup>255</sup> European Union: European Commission, 2003 Regular Report From the Commission on Turkey's Progress Towards Accession

<sup>256</sup> Ibid

<sup>257</sup> European Union: European Commission, 2004 Regular Report From the Commission on Turkey's Progress Towards Accession, 10 December 2010, available at:[http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/2004/rr\\_tr\\_2004\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/2004/rr_tr_2004_en.pdf) [accessed 25 March 2010]

<sup>258</sup> Ibid

<sup>259</sup> Ibid

heating material and children of asylum seekers can attend Turkish primary schools<sup>260</sup>. On the other hand, Turkey's geographical reservation on the 1951 Convention was again considered as a matter of criticism<sup>261</sup>.

This report was important in the sense that it was foreseen in the Presidency Conclusions of 2002 Copenhagen European Council that '[i]f the European Council in December 2004, on the basis of a report and a recommendation from the Commission, decides that Turkey fulfills the Copenhagen political criteria, the European Union will open accession negotiations with Turkey without delay'<sup>262</sup>. Therefore the Commission published the 'Recommendation of the European Commission on Turkey's Progress Towards Accession' on 6 October 2004. The document mentions borders control and asylum procedures in the third section, 'Assessing Issues Arising from Turkey's Membership Perspective'. It is stated in here that with the accession process a significant investment and closer cooperation would be necessary for external border security and combating illegal immigration<sup>263</sup>.

The Commission also published a Staff Working Paper, named 'Issues Arising From Turkey's Membership Perspective' on 6 October 2004. This paper addresses possible issues that might needed to be dealt when Turkey becomes a member state. It is revealed in the Paper that for border control and combat against illegal immigration a more enhanced cooperation will be needed<sup>264</sup>. It is also stated that when Turkey become a member, Turkey's current situation as a country of origin for applicants for asylum will be dissolved. Moreover, Turkey will no longer be a transit country for the refugees who seek asylum from the European Union, but since European Union's external borders will be Turkish borders in the East, Turkey will be responsible for examining the asylum applications. Therefore, Turkey's

---

<sup>260</sup> Ibid

<sup>261</sup> Ibid

<sup>262</sup> European Union: Council of the European Union, 'Presidency Conclusions', 29 January 2003, available at:

<http://register.consilium.europa.eu/pdf/en/02/st15/st15917.en02.pdf> [accessed 25 March 2010]

<sup>263</sup> European Union: European Commission, 'Recommendation of the European Commission on Turkey's Progress Towards Accession', 6 October 2004, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52004DC0656:EN:HTML> [accessed 25 March 2010]

<sup>264</sup> European Union: European Commission, 'Commission Staff Working Paper: Issues Arising From Turkey's Membership Perspective', 6 October 2004, available at: [http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/2004/issues\\_paper\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/2004/issues_paper_en.pdf) [accessed 25 March 2010]

infrastructure for these procedures needs to be improved<sup>265</sup>.

## **G. 2005 Progress Report and National Programme**

### **1. Turkish National Action Programme for the Adoption of EU *Acquis* in the Field of Asylum and Migration**

After the European Union's decision to start negotiations, Turkey was engaged in a heavy monitoring and research. Many policy fields were examined and reports for harmonization were prepared. One of the chapters to be dealt in negotiation process was the area of 'Freedom, Security and Justice', and an important part of it was the field of asylum and migration policies. The Programme was published in March 2005, even before the screening procedure began.

Apart from the introduction section, the Programme consists of three parts. The first part sets the current Turkish and the current and future EU legislation on asylum and migration. This part does not set goals or agendas, but rather points out the procedure and policy traditions of two actors. The second part details the evolution of asylum and migration policies in Turkey. Finally, third part explains the action plan.

It is mentioned that a specialization unit will be established to guarantee that the asylum procedures will be enforced in harmony with the EU *Acquis*<sup>266</sup>. The Programme also characterizes the staff to be appointed to work in asylum and migration cases; the ideal candidates would be people who are able to use information technologies, respect different cultures and values, communicate and work in teams, make analysis having analytical thinking skills, take responsibility and reach an outcome, and capable in oral and written expression<sup>267</sup>.

---

<sup>265</sup> Ibid

<sup>266</sup> Turkish Republic, "Turkish National Action Programme for the Adoption of EU *Acquis* in the Field of Asylum and Migration", 25 March 2005, available at: <http://www.ir.metu.edu.tr/iom/pdf/tr3.pdf> [accessed 25 March 2010]

<sup>267</sup> Ibid

This is a complex and comprehensive plan which involves technical details, legislation procedures, asylum policy principles, integration programs, health care and social and economic conditions and rights of the asylum seekers, etc. The Programme indicates that Turkey gave importance to criticisms about its asylum policy and treatment to aliens and decided to form a path to regulate and manage the system better. For example in section 4.4.3., it is explained that the state, in accordance with the EU Council directive on reception conditions, decided to establish a reception system and guesthouses in seven different cities in Anatolia, with the capacity of 750 people and training academies for the working personnel and return centers to host aliens who will return after the procedures are completed<sup>268</sup>.

The Programme not only makes amendments to the existing system in accordance with the criticisms but also takes European security into account. For example, on victims of human trafficking, it is stated that the system is in harmony with the EU *Acquis* and legal procedures must be handled in accordance with the Twinning Project<sup>269</sup>.

The most important part of the Programme is the last part, which is about the lifting of geographical limits. Turkey draws attention to its concerns about the burden sharing role of the EU, economic conditions, infrastructures needed and migration flows. Turkey expects financial aid, acceptance of refugees from Turkey in the transaction period and equal burden sharing. Turkey mentions the possibility of lifting the geographical reservations on the 1951 Convention and 1967 Protocol by 2012 if it is assured about its concerns<sup>270</sup>.

## **2. 2005 Progress Report**

The Commission's report for 2005 welcomes Turkey's Action Plan of March 2005 but calls Turkey to implement that plan with a clarification on issues like the establishment of the asylum and migration authority, family reunification, long-term residence, residence of

---

<sup>268</sup> Ibid

<sup>269</sup> Ibid

<sup>270</sup> Ibid

students, subsidiary protection, mass influx and accelerated procedure<sup>271</sup>. The lifting of the geographical limitation to the 1951 Convention is mentioned as a key issue, but Turkey's provisions on the issue, which has been mentioned in the Action Plan of March 2005, are not mentioned in this document<sup>272</sup>. Many of the criticisms of 2004 Report are repeated in the sense that no real improvement was achieved in those fields. However many of the praises are also repeated, especially for issues like social care for refugees<sup>273</sup>.

## **H. 2006 Accession Partnership Report and Progress Report**

### **1. Accession Partnership Report**

On 17 January 2006, the Council published a new Accession Partnership Report for Turkey. In the Report, Turkey is asked to continue its efforts to implement the National Plan of March 2005, to combat illegal migration and to conclude admission agreement with the EU<sup>274</sup>. Turkey is also asked to lift the geographical limitation on the 1951 Convention, strengthen the system for hearing and determining applications for asylum and develop social support and integration measures for refugees<sup>275</sup>.

### **2. 2006 Progress Report**

The Commission's report on Turkey's progress for 2006 welcomes Turkey's efforts and achievements in many areas. The lifting of 10 days limit for lodging an application, introduction of possibility to empower selected Governorates to decide on asylum application are highly praised<sup>276</sup>. However the Report states that there is still need for an effective

---

<sup>271</sup> European Union: European Commission, "Turkey, 2005 Progress Report", 9 November 2005, available at: [http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/2005/package/sec\\_1426\\_final\\_progress\\_report\\_tr\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/2005/package/sec_1426_final_progress_report_tr_en.pdf) [accessed 25 March 2010]

<sup>272</sup> Ibid

<sup>273</sup> Ibid

<sup>274</sup> European Union: Council of European Union, "Council decision of 17 January 2006 on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with Turkey", 23 January 2006, available at: <http://register.consilium.europa.eu/pdf/en/05/st15/st15671.en05.pdf> [accessed 25 March 2010]

<sup>275</sup> Ibid

<sup>276</sup> European Union: European Commission, "Turkey, 2006 Progress Report", 8 November 2006, available at:



implementation of the Action Plan on Migration and Asylum and clarification of the future possible institutional structures and it is also noted that capacity of the reception centers for asylum seekers needed increasing and facilities needs upgrading<sup>277</sup>. It is also noted that the full implementations of the 1951 Geneva Convention and its 1967 Protocol are being prepared and there is an intention to lift the geographic limitation by 2012<sup>278</sup>.

## **I. 2007 Progress Report**

The Commission released its report on Turkey's progress for 2007 on 6 November 2007. This report states that minimum steps were taken in the fields of migration and asylum although there had been a slight decline in the number of illegal immigrants<sup>279</sup>. However the growth in the number of asylum seekers is noted<sup>280</sup>. Turkey's social care for the asylum seekers is once again praised however the report emphasizes that Turkey did not put enough efforts for improvement in the field of asylum; many necessary things remained untouched such as a new law on asylum, lifting the geographical limitation on the 1951 Geneva Convention and the creation of an asylum authority<sup>281</sup>.

## **J. 2008 Accession Partnership Report, National Programme and Progress Report**

### **1. Accession Partnership Report and the National Programme**

On 26 February 2008, the Council published the Decision on principles, priorities and conditions contained in the Accession Partnership with the Republic of Turkey and repealing Decision 2006. In the paper, Turkey is advised to continue its efforts for implementing the

---

[http://ec.europa.eu/enlargement/pdf/key\\_documents/2006/nov/tr\\_sec\\_1390\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2006/nov/tr_sec_1390_en.pdf) [accessed 25 March 2010]

<sup>277</sup> Ibid

<sup>278</sup> Ibid

<sup>279</sup> European Union: European Commission, "Turkey 2007 Progress Report", 6 November 2007, available at:

[http://ec.europa.eu/enlargement/pdf/key\\_documents/2007/nov/turkey\\_progress\\_reports\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2007/nov/turkey_progress_reports_en.pdf) [accessed 25 March 2010]

<sup>281</sup> Ibid

<sup>280</sup> Ibid

<sup>281</sup> Ibid

National Action Plan on Asylum and Migration and combating illegal migration, to conclude a readmission agreement with the European Union and to adopt a comprehensive asylum law in line with the *Acquis*<sup>282</sup>.

Turkey responded with a National Programme. The Programme lists harmonization of asylum policies with the *Acquis* as one of the priorities. Things to do are set on a calendar and according to this calendar, many of the actions are to be completed in a two years period; from 2009 to 2011. Priorities include adoption of the Amsterdam Treaty, founding new institutions for asylum, harmonization of visa regulations, a law on asylum and training of the personnel for the possible offices and institutions to be founded for asylum procedures<sup>283</sup>. Also a database for fingerprint data collection and protection is designed to be build in accordance with the Dublin II Convention<sup>284</sup>. The calendar is therefore, a long list of things to do containing infrastructure and legal basis for the asylum procedures, training of the personnel, borders controls, alignment with the *Acquis*, etc.

## 2. 2008 Progress Report

The Commission's report on Turkey's progress for 2008 was released on 5 November 2008. Report has many positive remarks on Turkey, however there are numerous criticisms either. For example Turkey's policy of not pursuing readmission agreement negotiations with the Union is criticized<sup>285</sup>, as well as Turkey's continuing reservation on the 1951 Convention<sup>286</sup>.

The Report emphasizes the growing number of asylum applications made in Turkey

---

<sup>282</sup> European Union: Council of European Union, "Council Decision of 18 February 2008 on principles, priorities and conditions contained in the Accession Partnership with the Republic of Turkey and repealing Decision 2006ö, 18 February 2008, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:051:0004:01:EN:HTML> [accessed 26 March 2010]

<sup>283</sup> Turkish Republic, "Turkey's National Programme for Adoption of European Union Acquis for 2008ö, 10 November 2008, p: 258-264

<sup>284</sup> Ibid, p:

271

<sup>285</sup> European Union: European Commission, "Turkey 2008 Progress Reportö, 5 November 2008, available

<sup>286</sup> Ibid

at: [http://ec.europa.eu/enlargement/pdf/press\\_corner/key-documents/reports\\_nov\\_2008/turkey\\_progress\\_report\\_en.pdf](http://ec.europa.eu/enlargement/pdf/press_corner/key-documents/reports_nov_2008/turkey_progress_report_en.pdf) [accessed 26 March 2010]

and states that the revision of the Asylum Law and the establishment of the new asylum unit are important steps Turkey should take<sup>287</sup>. However it is mostly a positive report on Turkey's stake; Turkey's efforts are appreciated. But it is also stated that the capacity to manage asylum and migration procedures needs to be improved and efforts to implement the National Action Plan needs to be fastened and also negotiations between the European Union and Turkey on readmission agreement needs to be re-launched<sup>288</sup>.

### **K. 2009 Progress Report**

The Commission released its report on Turkey's progress for 2009 on 14 November 2009. Many criticisms of Turkey's insufficient asylum procedure management are reflected in the Report. It is noted that asylum-seekers face limitations with accession to procedural rights in detention. Turkey is advised to work harder for issues like fair, equal and consistent access to asylum procedures, access to legal aid and to UNHCR staff, minimum waiting time for asylum procedures and access to judicial review of decisions. It is noted in the report that lack of access to asylum procedures has led to illegal deportations and/or refusal of entry<sup>289</sup>.

Setting up a Development and Implementation Office on Asylum and Migration Legislation and Administrative Capacity is mentioned among the positive changes in Turkey with regard to asylum policies, however it is also noted that no major developments were achieved<sup>290</sup>. It is reported that Turkey remains a very important transit country and the increase in the number of illegal immigrants and asylum seekers were pointed out<sup>291</sup>. It is also stated that migration inflows put pressure on the Turkish asylum and migration system, which, according to the Report, proves the need for reorganization of this system and conclusion of readmission agreements. Therefore Turkey's negotiations for readmission agreements with countries like Afghanistan, Pakistan, Iran and Libya are appreciated in the

---

<sup>287</sup> Ibid

<sup>288</sup> Ibid

<sup>289</sup> European Union: European Commission, "Turkey 2009 Progress Report", available at:

[http://ec.europa.eu/enlargement/pdf/key\\_documents/2009/tr\\_rapport\\_2009\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2009/tr_rapport_2009_en.pdf) [accessed 26 March 2010]

<sup>291</sup> Ibid

<sup>290</sup> Ibid

<sup>291</sup> Ibid

Report but Turkey is once again asked to lift its reservation on the 1951 Convention<sup>292</sup>.

### III. TURKEY'S POSITION

As discussed in the earlier chapter, Europeanization of candidate countries occurs with building of a certain hierarchy. In case of Turkey's accession, the situation does not change. Turkey's accession to the European Union brings certain responsibilities for Turkey. Turkey is in the process of negotiations and through these negotiations the European Union and Turkey are trying to Europeanize Turkey's policies and policy making. The European Union's policies and political structures are thought to influence Turkey, in a way that Turkey's policies will be in a satisfactory harmony with the *Acquis*. As noted above, in cases of policy areas where Turkey does not have a solid legal framework, it is expected that Turkey will be affected by the Union policies in a greater scope. Therefore, for the harmonization of the asylum and immigration policies, lack of legal framework in Turkey, might lead Turkey to adopt the *Acquis*. The adaptational pressures are higher than expected because the pressure arises from the risk of non-integration. Turkey would not risk EU membership. However, there are also certain problems which Turkey feels to be addressed.

The European Union expects Turkey to adopt the *Acquis* and regulate asylum and immigration policies as recommended by the Union. Progress Reports express that need and urgency for an asylum policy for Turkey. Because Turkey is known as a country of origin for many cases of illegal immigration and asylum and receive many immigrants<sup>293</sup>, the emphasis on the need for an immigration and asylum policy is correct. Turkey faces many difficulties in dealing with the asylum seekers and immigrants and can not sufficiently regulate and manage the situation. But it is not only Turkey who will benefit from a solid and functioning immigration and asylum policy, the European Union will also benefit from such policy and in case the policy is directly affected by the Union's advices, the European Union's benefit will be even greater than expected.

---

<sup>292</sup> Ibid

<sup>293</sup> Kemal Kiriçi, "Immigration and Asylum Issues in Turkish-EU Relations" Sandra Lavenex & Emek M. Uçarer (Ed.), in **Migration and the Externalities of the European Union**, (125-143) Maryland: Lexington Books, 2003, p: 126-127

On the other hand, a functioning immigration and asylum policy is also necessary for humanitarian reasons. Each year many people are killed while trying to immigrate to Europe by illegal ways. Over a hundred deaths are documented at the European borders<sup>294</sup>. Some of those deaths happen in the Aegean Sea in the way to the Greek Islands each year<sup>295</sup>. The number of deaths are tragically high and these cases actually constitute a humanitarian problem. Therefore, a functioning immigration policy is also a humanitarian need.

European Union's advices are listed in the progress reports. Turkey is expected to maintain better treatment and care for asylum seekers, better control over borders, build a system to identify immigrants, harmonization of visa regulations and a full implementation of the 1951 Convention, which means removal of reservations.

According to reports, Turkey can not regulate issues related to asylum and immigration sufficiently. The conditions of guesthouses are frequently and severely criticized. It is noted that refugees were welcomed by the local people due to traditional hospitality. However, the conditions and treatment of refugees need to be improved<sup>296</sup>. European Union also appreciates Turkey's cooperative efforts; cooperation with the EU, Greece, etc to fight against illegal immigration and signing of readmission agreements with different countries are highly praised and listed as Turkey's steps forward in harmonizing its policies with the *Acquis*. Turkey is also asked to form a non-military border control office to regulate documentation and applications of the immigrants.

One can assume that the European Union is trying to transfer the burden of examination of applications to Turkey. Military offices in the borders would deal with illegal

---

<sup>294</sup> Thomas Spijkerboer, "The Human Cost of Border Control", **European Journal of Migration and Law**, No: 9, 2007, p: 135-136

<sup>295</sup> Elif Demirci & Taylan Yıldırım, "Göçmen Faciası", **Radikal**, 11 December 2007 available at: <http://www.radikal.com.tr/Radikal.aspx?aType=RadikalHaberDetay&ArticleID=834137&Date=16.03.2010&CategoryID=97> [accessed 12 April 2010]

<sup>296</sup> Annual Progress Reports were mentioned in the Third Section. To see the reports you can visit <http://www.ec.europa.eu>



immigration in a very limited sense but non-military offices would not only deal with the illegal immigrants but also with the asylum seekers. It is clear that the European Union expects Turkey to deal with the application procedure in a European style. Turkey, in the reports, is frequently evaluated with its regulations relating and treatment and conditions of asylum seekers during the waiting period.

On the other hand, Turkey needs to be financially assisted for border controls. Turkey is perceived as the main route of illegal immigration and thus, it is in the focus of concern. The land and sea borders from Turkey to Greece are favorite routes for human trafficking gangs<sup>297</sup>. The European Union frequently asks Turkey to strengthen its border control however, Turkey's financial capabilities are limited. It is even argued that the financial assistance provided by the European Union must be more than paying for a few training programs<sup>298</sup>.

The European Union's persistence towards Turkey for lifting of geographical reservation on the 1951 Convention can also be linked to this will. The European Union expressed its will for Turkey to lift its geographical reservations in all progress reports. It was one of the things to do for Turkey. However Turkey cannot automatically lift geographical reservations. There are two important problems Turkey is worried about; (1) financial problems (Turkey can not from sustain support systems for asylum seekers and refugees), (2) security problems (Turkey is worried about the PKK militants , who might cross borders via asylum procedures)<sup>299</sup>. These concerns should be considered seriously and responded in a way that risk perception is minimized. In other words, Turkey needs to be assured that it will be financially assisted and its security will be viewed as the security of the whole Union. However, As Ar,kan notes ÷the EU's containment policy towards Turkey has lacked the clarity and certainty that would best encouraged and fasciliated Turkey's efforts to adjust its policies

---

<sup>297</sup> Rachel Clarke, ÷Destination: Europeö, **BBC News**, 19 March 2002, available at:

<http://news.bbc.co.uk/2/hi/europe/1881711.stm> [accessed 12 April 2010]

<sup>298</sup> Dorian Jones, ÷Turkey's Booming People Tradeö, **BBC News**, 5 June 2002, available at:

<http://news.bbc.co.uk/2/hi/europe/2024943.stm> [accessed 12 April 2010]

<sup>299</sup> Kemal Kiri çı, ÷The Question of Asylum and Illegal Immigration in European Union-Turkish

Relationsö,  
**Turkish Studies**, Volume: 4, 2003, p: 91-2

to make them compatible with EU membership<sup>300</sup>.

Lack of trust in the relations blocks Turkey from taking further steps. In case accession does not occur, Turkey will be left with a new political strategy and structure on asylum and immigration and a massive amount of asylum applications. This will grant a new role on Turkey, namely gate-keeping for the Union. The same role is appointed on the Ukraine through EUBAM<sup>301</sup>. And even if Turkey's membership is not rejected, Turkey still might face serious financial problems during the negotiation process. That is why Turkey should receive financial assistance from the European Union, even before the accession is completed.

Turkey needs to be assured that asylum applications will be dealt in accordance with a burden-sharing principle and it will not be left alone afterwards. As Kiri çı explains, "Turkey is coming under growing pressure to cooperate with the EU and control the flow of transit illegal migrants and introduce an asylum system that can allow recognized refugees to stay in Turkey"<sup>302</sup>.

Kiri çı notes another dilemma. The European Union asks Turkey to manage to control illegal immigration in a way that is highly questionable for democratic means; however it frequently criticizes its non-democratic situation and lack of respect for human rights, even in issues of immigration and asylum<sup>303</sup>. That means European Union is very concerned about its security. This concern, if not equipped with a membership vision for Turkey, might lead the Union to perceive Turkey as a gendarme office on the Eastern border. It is therefore crucial for both Turkey and the EU to have a clear vision of accession. Because if there is no such common vision, policy harmonization can not occur and both sides will not achieve any benefit from this relationship.

---

<sup>300</sup> Harun Arikan, **Turkey and the EU: An Aukward Candidate for EU Membership?**, Hampshire: Ashgate Publishing Limited, 2006, p: 3

<sup>301</sup> EUBAM is a border control and security system developed to maintain security of the European Union against illegal immigration, organized crimes and human trafficking. It is designed to strengthen border controls for and with Ukraine and Moldova. For more information please see: <http://www.eubam.org/>

<sup>302</sup> Kiri çı, 2003, p: 100

<sup>303</sup> Ibid, p: 101

Tom sum up, Turkey has little legal basis for immigration and asylum issues. These are dealt within the framework of other legal documents; i.e. Settlement Law, Passport Law, etc. In the absence of a unique policy for asylum and immigration, the 1951 Convention and the 1967 Protocol are the main legal documents in that area. Other than these international documents, Turkey does not have a legal basis for immigration and asylum policies. Thus, the European Union and the *Acquis* have great influence on Turkey. Since Turkey is in the process of accession, the European Union, monitors and reports Turkey's compatibility with the *Acquis*. Turkey is frequently criticized for its limitation on the 1951 Convention, which prevents Turkey to accept refugees from the non-European countries. As can be seen in the progress reports, Turkey's asylum policy develops however, it is still far from satisfying the European Union hence there are still problems with Turkey's policies. The European Union requests Turkey to harmonize its immigration and asylum policies with the *Acquis*. Turkey has been given instructions for that. These instructions are given for the purpose of Europeanization.

However, there is a great burden to be taken. The European Union, expects Turkey to adopt the *Acquis* and regulate border control and asylum policies in accordance with the European Union. The Union also expects Turkey to share the burden of examining and accepting asylum applications. However, Turkey has many doubts about adopting the European Union legal framework. Security problems and the financial capability of Turkey are serious problems which need to be responded.

## CONCLUSION

Asylum and immigration policies are very delicate issues which are both related to national sovereignty and security and to humanity, sacrecy of human life and dignity. Therefore, they are handled with great care. They became internationally critical after the First World War. The cases of millions of displaced people were highly publicized and took attention in the international public. This attention led the states to take serious steps. International steps taken in the beginning of the 20<sup>th</sup> Century developed the policy and concepts of asylum and immigration through agreements, protocols and charters. These legal documents are important sources while identifying the steps taken since the political will manifests itself through these documents.

States might feel reluctant while taking steps in issues which are linked to their territorial sovereignty. Asylum and immigration issues are directly linked to the issue of territorial sovereignty. Immigrants, by crossing the international borders, threaten the border security and the sovereignty of the states. In most of the cases immigrants use illegal ways to enter the territory of the state and these illegal ways are considered as threats. Moreover, with the increasing security problems and concerns, states tended to strengthen their border controls, visa regulations and asylum and immigration policies. Throughout the 20<sup>th</sup> Century, states' reservations led the international steps to be too slow. The political will manifests itself through legal documents and with these documents the aim, will and intentions of the political actors can be understood. The wording of the legal documents provide us the main tools for examining the political will. Sometimes the wording of the documents allow states to take measures which help them to securitize the issue of asylum and immigration.

Moreover, international actors with different interests might produce complex systems. It is difficult for many states to build a common definition, policy attitude or political basis on an issue that is directly related to territorial sovereignty and security. In the case of definition, apart from being insufficient in humanitarian terms, states are not successful in

creating a common definition and modernize the definition to be able to address the modern phenomena as reasons for immigration such as ecological problems.

On the other hand, international actors might consider their interests more than humanitarian causes. States might consider security and financial needs more important and this might prevent them to take further steps. This trend is visible in the documents published by the international actors. Therefore, it might be assumed that the documents reveal the capabilities and interests of the actors. It is difficult for each actor to share the same intention and interests. The difference of interests lead the international actors to gather in a middle way and legal documents reveal that point of political consensus at the end. Therefore, the point reached at the end is never fully sufficient or satisfactory.

The European Union handles the issue of asylum and immigration as a supranational body in a way that shares the responsibility to each member states and neighboring states. It is trying to develop a common policy on the issue that leads to standardization of asylum applications and treatments to the refugees. The Union delivers tasks to member states, candidate states and neighboring states. For standardization of the regulations the member states provided a list of documents. Through these documents both the concepts and the understanding of the policies developed.

The policy was not always a common policy. In the beginning the policy was designed to cure the side-effects of the free movement of people and it was considered as a set of rights and duties which the states' granted to people. However, the policy was deemed to be an international issue, since the people, whom the policy refers to, are not the citizens of the states in concern. Also, the mobility of those people called for an international cooperation. The policy developed by the European Union was therefore had a two level approach from the beginning. It was both supranational and national. Through time, the supranational bodies gained more power in the policy making and decision making. The European Union developed a massive amount and complex sets of rules and regulations about immigration and asylum and started to widen the scope of cooperation to candidate and neighboring states.

This wide cooperation led the burden of asylum and immigration to be shared by more states.

The development of cooperation and more complex policies in the areas of immigration and asylum also marks the change in the trend. At first these policies were designed for the purpose of security. Securing the territories and the population of the member states from immigrants, the outsiders was, then, believed to be easier if worked in cooperation. However, in time, the humanitarian understanding developed and policies became more human rights oriented. Asylum and immigration matters were de-securitized in time. As a part of the Europeanization process, the European Union started to export its policy makings and policies to other countries, mostly to candidate countries. This happened in a very hierarchical way, in which the Union is the center and the candidate states are the periphery. The policies and the policy makings of the center affects the periphery and in the end the spread of political understanding of the center is dictated through certain mechanisms successfully.

As a candidate country Turkey is provided with a list of documents that imply the Union's understanding and policy mechanisms. Turkey's insufficient regulations on the issue leads the European Union to impose its policies to Turkey. This kind of influence actually is not necessarily false. Europeanization might occur through imposing a policy matter to a state in which such policy area is not sufficiently regulated. Through this kind of Europeanization, states gain full applicable regulations, policies, etc. However, the issue of asylum and immigration is closely related to security.

Turkey has many gaps in the asylum and immigration policies. Thus, the European Union asks not only for improvement but also for development of such policies. However, the requested steps need to be accompanied with certain guarantees. The European Union requests Turkey to Europeanize its border controls, asylum policy, regulations related to refugees and etc. Turkey follows the pattern presented in the progress reports. There are important improvements and developments achieved by Turkey. For example, Turkey managed to sign readmission agreements with various countries and engaged in cooperation

with the European Union in technical systems provided for more efficient border control.

On the other hand, there are some steps the Union frequently expects Turkey to take, but Turkey feels reluctant to take further steps. The European Union creates buffer zones around its borders via cooperation with the neighboring states. Turkey might be performing such a role for the European Union and that is why Turkey feels reluctant. Turkey envisages a full membership goal and this goal is the key factor that encourages Turkey for taking further steps in adopting the *Acquis*. However, if this goal is dismissed by the Union, Turkey will be left in a position which it is trying to avoid: being outside the Union with regulations imposed on it.

Moreover, apart from this insecurity about being a member, Turkey has many other reasons to be reluctant. First of all, asylum procedures which the Union imposes on Turkey are related to border and territorial security of Turkey. Turkey is afraid of being easily accessed by the terrorists. Terrorists might enter Turkish territories with refugee identities. Another important reason is the financial incapacibilities of Turkey. Turkey, if accepts the asylum policies and procedures imposed by the European Union, is expected to receive a great number of asylum applications. These applications will ease the burden on the European Union, since they will lead the number of applications made to member states decrease. However, Turkey cannot afford to take of such great numbers of applicants. There is a big financial burden that Turkey needs to be assisted if such a role is planned.

These concerns prevent Turkey from taking further steps in adopting the *Acquis*. Turkey needs to be assured that each concern is understood and shared by the Union. The Europeanization of Turkey's asylum and immigration policy should be held as a cooperation, in a way that enables rebuilding trust between the parties.



## BIBLIOGRAPHY

Agamben, Giorgio. 'We Refugees', **Symposium**. Leuk: Vol. 49, 1995. available at: <http://www.egs.edu/faculty/giorgio-agamben/articles/we-refugees/> [accessed 03 January 2010]

Apap, Joanna, Sergio Carrera and Kemal Kiriçi. 'Turkey in the European Area of Freedom, Security and Justice', **Centre for European Policy Studies, EU-Turkey Working Papers**. No: 3, August 2004.

Arikan, Harun. **Turkey and the EU: An Awkward Candidate for EU Membership?**. Hampshire: Ashgate Publishing Limited, 2006.

**BBC News**. 'Dutch Say 'No' to EU Constitution', 2 June 2005. available at: <http://news.bbc.co.uk/2/hi/4601439.stm> [accessed 13 March 2010]

**BBC News**. 'French say firm 'No' to EU treaty', 30 May 2005. available at: <http://news.bbc.co.uk/2/hi/europe/4592243.stm> [accessed 13 March 2010]

**BBC News**. 'How the money is spent by country- 114 bn', available at: <http://news.bbc.co.uk/2/hi/8036096.stm#start> [accessed 14 March 2010]

**BBC News**. 'Illegal Immigrants: UK Overview', 27 June 2000. available at: <http://news.bbc.co.uk/2/hi/europe/797491.stm> [accessed 2 March 2010]

**bianet.org**. 'Kumkap, Yabancılar Misafirhanesi'ne İade-i Ziyaret', 10 Mart 2010. available at: <http://bianet.org/bianet/insan-haklari/120573-kumkapi-yabancilar-misafirhanesine-iade-8i-ziyaret> [accessed 18 March 2010].

Boccardi, Ingrid. **Europe and Refugees: towards an EU asylum policy**. The Hague: Kluwer Law International P. O., 2002.

Börzel, Tanja A. & Thomas Risse. 'Conceptualizing the Domestic Impact of Europe', Kevin Featherstone & Claudia M. Radaelli (Ed.). in **The Politics of Europeanization**. Oxford: Oxford University Press, 2003, pp: 57-80.

Bunyan, Tony. 'Trevi, Europol and the European State', [www.statewatch.org/news/handbook-trevi.pdf](http://www.statewatch.org/news/handbook-trevi.pdf) [accessed 18 February 2010]

Bulmer, Simon J. & Claudio M. Radaelli. 'The Europeanisation of National Policy?', **Queen's Paper on Europeanisation**. No: 1, 2004. available at: <http://www.qub.ac.uk/schools/SchoolofPoliticsInternationalStudiesandPhilosophy/FileStore/EuropeanisationFiles/Fileupload,38405,en.pdf> [accessed 02 April 2010]

Caillol, Isabelle. "Detention of Migrants in Turkey", **Hearing at the European Parliament**. Strasbourg: 14 January 2009. available at: [http://www.migreurop.org/IMG/doc/Strasbourg\\_14-01-09\\_Isa.doc](http://www.migreurop.org/IMG/doc/Strasbourg_14-01-09_Isa.doc) [accessed 18 April 2010]

Caporaso, James & Joseph Jupille. "The Europeanization of Gender Equality and Domestic Structural Change", Thomas Risse, Maria G. Cowless, James Caporaso (Ed.), in **Transforming Europe: Europeanization and domestic change**. New York: Cornell University Press, 2001, pp: 21-44.

Carrera, Sergio & Elspeth Guild. "The French Presidency's European Pact on Immigration and Asylum: Intergovernmentalism vs Europeanisation? Security vs Rights?", **Centre For European Policy Studies: Policy Brief**. No: 170, September 2008. available at: <http://www.ceps.eu/node/1372> [accessed 14 March 2010]

CARIM: Consortium for Applied Research on International Migration. "Status of Ratification of SEM and SSA countries", European University Institute, Robert Schuman Centre for Advanced Studies. Available at: [www.carim.org/public/legaltexts/LE3UN1937807EN.pdf](http://www.carim.org/public/legaltexts/LE3UN1937807EN.pdf) [accessed 20 March 2010]

Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama. 22 November 1984. available at: <http://www.unhcr.org/refworld/docid/3ae6b36ec.html> [accessed 24 January 2010]

Clarke, Rachel. "Destination: Europe", **BBC News**. 19 March 2002. available at: <http://news.bbc.co.uk/2/hi/europe/1881711.stm> [accessed 12 April 2010]

Council of Europe. "Convention for the Protection of Human Rights and Fundamental Freedoms". 4 November 1950. available at: <http://www.hri.org/docs/ECHR50.html> [accessed 23 January 2010]

Çandar, Cengiz. "Dünyada Göç Olgusu", **Uluslar aras, Göç Sempozyumu Bildiriler**. İstanbul: Zeytinburnu Belediye Başkanlığı, 08 December 2005, pp: 29-32.

Demirci, Elif & Taylan Yıldırım. "Göçmen Faciası", **Radikal**. 11 December 2007. available at: <http://www.radikal.com.tr/Radikal.aspx?aType=RadikalHaberDetay&ArticleID=834137&Date=16.03.2010&CategoryID=97> [accessed 12 April 2010]

Demuth, Andreas. "Some Conceptual Thoughts On Migration", B. Agozino (Ed.). in **Theoretical and Methodological Issues in Migration Research**. Aldershot: Ashgate Publishing, 2000, pp: 21-58. available at: [http://refugeelawreader.en.mediacentre8.hu/index.php?option=com\\_docman&task=cat\\_view&gid=37&limitstart=90](http://refugeelawreader.en.mediacentre8.hu/index.php?option=com_docman&task=cat_view&gid=37&limitstart=90) [accessed 20 January 2010]

Europa. 016-09-03 Transmission of asylum applications between member states plus Norway and Iceland - DublinNet now operational.

[http://ec.europa.eu/justice\\_home/news/intro/news\\_160903\\_1\\_en.htm](http://ec.europa.eu/justice_home/news/intro/news_160903_1_en.htm) [accessed 12 March 2010]

Europa: 0Work of the IGC 2003/20040. [http://europa.eu/scadplus/cig2004/index\\_en.htm](http://europa.eu/scadplus/cig2004/index_en.htm) [accessed 13 March 2010]

Europa: Summaries of EU Legislation: Eurodac System.

[http://europa.eu/legislation\\_summaries/justice\\_freedom\\_security/free\\_movement\\_of\\_persons\\_asylum\\_immigration/133081\\_en.htm](http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/133081_en.htm) [accessed 7 March 2010]

European Community. 0Convention Determining The State Responsible For Examining Applications For Asylum Lodged In One Of The Member States Of The European Communities0. 15 June 1990. available at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:41997A0819%2801%29:EN:NOT> [accessed 26 February 2010]

European Community. 0Convention Implementing the Schengen Agreement, The Schengen Acquis0. 19 June 1990. available at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2000:239:0001:0473:EN:PDF> [accessed 22 February 2010]

European Community. 0Final Act and Declarations of the Single European Act0. 17 February 1986. available at: <http://www.eurotreaties.com/seafinalact.pdf> [accessed 18 February 2010]

European Community: Commission of the European Communities. 0White Paper On Completing the Internal Market0. 28-29 June 1985. available at:

[http://europa.eu/documents/comm/white\\_papers/pdf/com1985\\_0310\\_f\\_en.pdf](http://europa.eu/documents/comm/white_papers/pdf/com1985_0310_f_en.pdf) [accessed 18 February 2010]

European Council on Refugees and Exiles. 0ECRE Information Note on the Council Directive 2005/85/EC of 1 December 2005 on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status0. October 2006. available at:

<http://www.unhcr.org/refworld/docid/464317ab2.html> [accessed 14 March 2010]

European Council on Refugees and Exiles. 0Safe Third Countries: myths and realities0.

London: February 1995. available at: [www.unhcr.org/refworld/pdfid/403b5cbf4.pdf](http://www.unhcr.org/refworld/pdfid/403b5cbf4.pdf) [accessed 28 February 2010]

European Union. 0Action Plan of the Council and the Commission on How Best to Implement the Provisions of the Treaty of Amsterdam on an Area of Freedom, Security and Justice ("Vienna Action Plan")0. 3 December 1998. available at:

<http://www.unhcr.org/refworld/docid/3f5341ce2.html> [accessed 5 March 2010]

European Union. "Conclusions on Countries in Which There is Generally No Serious Risk of Persecution ("London Resolution")". 30 November 1992. available at: <http://www.unhcr.org/refworld/docid/3f86c6ee4.html> [accessed 28 February 2010]

European Union. "Decision No. 575/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the European Return Fund for the period 2008 to 2013 as part of the General Programme 'Solidarity and Management of Migration Flows'". 23 May 2007. available at: <http://www.unhcr.org/refworld/docid/47fdfb18d.html> [accessed 14 March 2010]

European Union. "EU Plan on Best Practices, Standards and Procedures for Combating and Preventing Trafficking in Human Beings (2005/C 311/01)". 9 December 2005. available at: <http://www.unhcr.org/refworld/docid/43f328254.html> [accessed 14 March 2010]

European Union. "Joint Position Defined by the Council on the basis of Article K.3 of the Treaty on European Union on the Harmonized Application of the Definition of the Term "Refugee" in Article 1 of the Geneva Convention of 28 July 1951 Relating to the Status of Refugees (Annex 1)". 4 March 1996. available at: <http://www.unhcr.org/refworld/docid/3ae6b37f44.html> [accessed 3 March 2010]

European Union. "Protocol integrating the Schengen acquis into the framework of the European Union". 4 March 1996. available at: <http://eur-lex.europa.eu/en/treaties/dat/11997D/htm/11997D.html#0093010004> [accessed 6 March 2010]

European Union. "The Hague Programme: Strengthening Freedom, Security and Justice in the European Union". 13 December 2004. available at: <http://www.unhcr.org/refworld/docid/41e6a854c.html> [accessed 13 March 2010]

European Union. "Treaty Establishing a Constitution for Europe". 16 December 2004. available at: <http://www.unhcr.org/refworld/docid/41d162834.html> [accessed 13 March 2010]

European Union. "Treaty of Amsterdam amending the Treaty of the European Union, the Treaties establishing the European Communities and certain related acts", "Consolidated Version Of The Treaty Establishing The European Community", 2 October 1997, is available at: <http://eur-lex.europa.eu/en/treaties/dat/11997D/htm/11997D.html#0173010078> [accessed 6 March 2010]

European Union. "Treaty On European Union". 7 February 1992. available at: <http://eur-lex.europa.eu/en/treaties/dat/11992M/htm/11992M.html#0001000001> [accessed 2 March 2010]

European Union. "Treaty Of Lisbon". 13 December 2007. available at: [http://europa.eu/lisbon\\_treaty/full\\_text/index\\_en.htm](http://europa.eu/lisbon_treaty/full_text/index_en.htm) [accessed 14 March 2010]

European Union: Council of European Union, "Council Decision of 8 March 2001 on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with the Republic of Turkey". 8 March 2001. available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:085:0013:0023:EN:PDF> [accessed on 24 March 2010]

European Union: Council of the European Union. "Council Decision of 14 May 2008 establishing a European Migration Network". 14 May 2008. available at: <http://www.unhcr.org/refworld/docid/4a54bc0f26.html> [accessed 14 March 2010]

European Union: Council of European Union. "Council Decision of 18 February 2008 on principles, priorities and conditions contained in the Accession Partnership with the Republic of Turkey and repealing Decision 2006". 18 February 2008. available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:051:0004:01:EN:HTML> [accessed 26 March 2010]

European Union: Council of European Union. "Council decision of 17 January 2006 on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with Turkey". 23 January 2006. available at: <http://register.consilium.europa.eu/pdf/en/05/st15/st15671.en05.pdf> [accessed 25 March 2010]

European Union: Council of European Union. "Council decision of 19 May 2003 on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with Turkey". 19 May 2003. available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:145:0040:0056:EN:PDF> [accessed 25 March 2010]

European Union: Council of the European Union. "Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted". 19 May 2004. available at: <http://www.unhcr.org/refworld/docid/4157e75e4.html> [accessed 12 March 2010]

European Union: Council of the European Union. "Council Directive 2005/85/EC of 1 December 2005 on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status". 2 January 2006. available at: <http://www.unhcr.org/refworld/docid/4394203c4.html> [accessed 14 March 2010]

European Union: Council of the European Union. "Council Regulation No. 343/2003 Establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Asylum Application Lodged in One of the Member States by a Third-Country National ("Dublin II)". 16 March 2003. available at: <http://www.unhcr.org/refworld/docid/3e5cf1c24.html> [accessed 8 March 2010]

European Union: Council of the European Union. "Council Resolution of 20 June 1995 on Minimum Guarantees for Asylum Procedures". 20 June 1995. available at: <http://www.unhcr.org/refworld/docid/3f86b1224.html> [accessed 2 March 2010]

European Union: Council of the European Union. "Council Resolution of 30 November 1992 on a Harmonized Approach to Questions Concerning Host Third Countries" ("London Resolution"). 30 November 1992. available at: <http://www.unhcr.org/refworld/docid/3f86c3094.html> [accessed 28 February 2010]

European Union: Council of the European Union. "Council Resolution of 30 November 1992 on Manifestly Unfounded Applications for Asylum ("London Resolution")". 30 November 1992. available at: <http://www.unhcr.org/refworld/docid/3f86bbcc4.html> [accessed 28 February 2010]

European Union: Council of the European Union. "European Pact on Immigration and Asylum". 24 September 2008. available at: <http://www.unhcr.org/refworld/docid/48fc40b62.html> [accessed on 14 March 2010]

European Union: Council of the European Union. "Fact Sheet 3.1 Tampere: Kick-start for EU's policy for justice and home affairs", Brussels: Information and Communication unit of the Directorate-General Justice and Home Affairs of the European Commission, August 2002, available at: [ec.europa.eu/councils/bx20040617/tampere\\_09\\_2002\\_en.pdf](http://ec.europa.eu/councils/bx20040617/tampere_09_2002_en.pdf) [accessed 7 March 2010]

European Union: Council of European Union. "Presidency Conclusions, 10-11 December 1999". 11 December 1999. available at: [http://www.consilium.europa.eu/ueDocs/cms\\_Data/docs/pressData/en/ec/ACFA4C.htm](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/ACFA4C.htm) [accessed 24 March 2010]

European Union: Council of the European Union. "Presidency Conclusions, 29 January 2003". available at: <http://register.consilium.europa.eu/pdf/en/02/st15/st15917.en02.pdf> [accessed 25 March 2010]

European Union: Council of European Union. "Presidency Conclusions, Cardiff European Council 15-16 June 1998". 16 June 1998. available at: [http://www.consilium.europa.eu/ueDocs/cms\\_Data/docs/pressData/en/ec/54315.pdf](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/54315.pdf) [accessed 23 March 2010]

European Union: Council of European Union. "Presidency Conclusions, Luxembourg European Council 12-13 December 1997". 13 December 1997. available at: [http://www.consilium.europa.eu/ueDocs/cms\\_Data/docs/pressData/en/ec/032a0008.htm](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/032a0008.htm) [accessed 23 March 2010]

European Union: Council of the European Union. "Presidency Conclusions, Tampere European Council, 15-16 October 1999". 16 October 1999. available at: <http://www.unhcr.org/refworld/docid/3ef2d2264.html> [accessed 7 March 2010]

European Union: Council of the European Union. "The European Union Counter-Terrorism Strategy". 30 November 2005. available at: <http://www.unhcr.org/refworld/docid/47fdfb28d.html> [accessed 14 March 2010]

European Union: European Commission. "1999 Regular Report From the Commission on Turkey's Progress Towards Accession". 13 October 1999. available at: [http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/1999/turkey\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/1999/turkey_en.pdf) [accessed 23 March 2010]

European Union: European Commission. "2000 Regular Report From the Commission on Turkey's Progress Towards Accession". 8 November 2000. available at: [http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/2000/tu\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/2000/tu_en.pdf) [accessed 24 March 2010]

European Union: European Commission. "2001 Regular Report From the Commission on Turkey's Progress Towards Accession". 13 December 2001. available at: [http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/2001/tu\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/2001/tu_en.pdf) [accessed 24 March 2010]

European Union: European Commission. "2002 Regular Report From the Commission on Turkey's Progress Towards Accession". 9 October 2002. available at: [http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/2002/tu\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/2002/tu_en.pdf) [accessed 24 March 2010]

European Union: European Commission. "2003 Regular Report From the Commission on Turkey's Progress Towards Accession". 30 December 2003. available at: [http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/2003/rr\\_tk\\_final\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/2003/rr_tk_final_en.pdf) [accessed 25 March 2010]

European Union: European Commission. "2004 Regular Report From the Commission on Turkey's Progress Towards Accession". 10 December 2004. available at: [http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/2004/rr\\_tr\\_2004\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/2004/rr_tr_2004_en.pdf) [accessed 25 March 2010]

European Union: European Commission. "Commission Regulation (EC) No. 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national". 2 September 2003. available at: <http://www.unhcr.org/refworld/docid/47fdfac3.html> [accessed 12 March 2010]

European Union: European Commission. "Commission Staff Working Paper: Issues Arising From Turkey's Membership Perspective". 6 October 2004. available at: [http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/2004/issues\\_paper\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/2004/issues_paper_en.pdf) [accessed 25 March 2010]

European Union: European Commission. "Communication from the Commission to the Council and the European Parliament, Towards More Accessible, Equitable and Managed Asylum Systems, COM(2003) 315 final". 3 June 2003. available at: <http://www.unhcr.org/refworld/docid/3f533ea4.html> [accessed 12 March 2010]

European Union: European Commission. "EURODAC: The Fingerprint Database To Assist The Asylum Procedure Directorate-General". 2004. available at: [http://ec.europa.eu/justice\\_home/key\\_issues/eurodac/eurodac\\_20\\_09\\_04\\_en.pdf](http://ec.europa.eu/justice_home/key_issues/eurodac/eurodac_20_09_04_en.pdf) [accessed 7 March 2010]

European Union: European Commission. "Recommendation of the European Commission on Turkey's Progress Towards Accession". 6 October 2004. available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52004DC0656:EN:HTML> [accessed 25 March 2010]

European Union: European Commission. "Regular Report From the Commission on Turkey's Progress Towards Accession". 4 November 1998. available at: [http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/1998/turkey\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/1998/turkey_en.pdf) [accessed 23 March 2010]

European Union: European Commission. "Turkey, 2005 Progress Report". 9 November 2005. available at: [http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/2005/package/sec\\_1426\\_final\\_progress\\_report\\_tr\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/2005/package/sec_1426_final_progress_report_tr_en.pdf) [accessed 25 March 2010]

European Union: European Commission. "Turkey, 2006 Progress Report". 8 November 2006. available at: [http://ec.europa.eu/enlargement/pdf/key\\_documents/2006/nov/tr\\_sec\\_1390\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2006/nov/tr_sec_1390_en.pdf) [accessed 25 March 2010]

European Union: European Commission. "Turkey 2007 Progress Report". 6 November 2007. available at: [http://ec.europa.eu/enlargement/pdf/key\\_documents/2007/nov/turkey\\_progress\\_reports\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2007/nov/turkey_progress_reports_en.pdf) [accessed 25 March 2010]

European Union: European Commission. "Turkey 2008 Progress Report". 5 November 2008. available at: [http://ec.europa.eu/enlargement/pdf/press\\_corner/key\\_documents/reports\\_nov\\_2008/turkey\\_progress\\_report\\_en.pdf](http://ec.europa.eu/enlargement/pdf/press_corner/key_documents/reports_nov_2008/turkey_progress_report_en.pdf) [accessed 26 March 2010]



European Union: European Commission. "Turkey 2009 Progress Report". 14 October 2009. available at:  
[http://ec.europa.eu/enlargement/pdf/key\\_documents/2009/tr\\_rapport\\_2009\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2009/tr_rapport_2009_en.pdf) [accessed 26 March 2010]

Featherstone, Kevin. "In the Name of 'Europe'", Kevin Featherstone & Claudia M. Radaelli (Ed.). in **The Politic of Europeanization**. Oxford: Oxford University Press, 2003, pp: 3-27.

Ghanea, Nazilla. "Europeanization of Citizenship and Asylum Policy", Susan Kneebone & Felicity Rowlings Sanaei (ed).in **New Regionalism and Asylum Seekers: Challenges Ahead**. Biggleswade: Berghahn Books, 2007, pp: 111-136.

Gibney, Matthew J. "Security and the Ethics of Asylum After 11 September", **Forced Migration Review 13**. June 2002, pp: 40-43.

Goetz, Klaus H. & Simon Hix. "European Integration and National Political Systems", Klaus H. Goetz & Simon Hix (Ed.). in **Europeanized Politics: European Integration and National Political Systems**. London: Frank Cass Publishers, 2001, pp: 1-27.

Grabbe, Heather. "Europeanization Goes East: Power and Uncertainty in the EU Accession Process", **ECPR Joint Section Of Workshops**. Turin: 22-27 March 2002.

Grabbe, Heather. "Stabilizing the East While Keeping Out the Easterners: Internal and External Security Loics in Conflict", Sandra Lavenex & Emek M. Uçarer (Ed.). in **Migration and the Externalities of the European Union**. Maryland: Lexington Books, 2003, pp: 1-104.

**Helsinki Citizens' Assembly**. "Unwelcome Guests: The Detention of Refugees in Turkey" "Foreigners" Guesthouses". [Brochure]. Istanbul: November 2007.

Hogran, Deidre. "Building Fortress Europe: Increased integration of EU asylum and immigration policy". September 2002.  
<http://flag.blackened.net/revolt/ireland/nice/analysis/fortress.html> [accessed 25 February 2010]

Holborn, Louise W. "The League Of Nations and the Refugee Problem". **The ANNALS of the American Academy of Political and Social Science**. Volume 203, No 1, 1939.

Hughes, Helen. **Immigrants, Refugees and Asylum Seekers: A Global View**. Nwe South Wales: The Center of Independent Studies Limited, 2002.

International Organisation of Migration. **Identifying International Migrants**. available at:  
<http://www.iom.int/jahia/Jahia/about-migration/developing-migration-policy/identify-intl-migrants/cache/offonce;jsessionid=B9A1914C6574AC1999AFBC2239718145.worker01> [accessed 28 December 2009]

Jaeger, Gilbert. "On the History of the International Protection of the Refugees". **International Review of the Red Cross**. Vol. 843, 30. Aug. 2001.

Jileva, Elena. "Larger Than the European Union: The emerging EU Migration Regime and Enlargement". Sandra Lavenex & Emek M. Uçarer (Ed.). in **Migration and the Externalities of the European Union**. Maryland: Lexington Books, 2003, pp: 75-90.

Jones, Dorian. "Turkey's Booming People Trade". **BBC News**. 5 June 2002. available at: <http://news.bbc.co.uk/2/hi/europe/2024943.stm> [accessed 12 April 2010]

Kılıç, Taner. "Bir İnsan Hakkı Olarak İtice". **Türkiye'de Geçici Sığınmacıların ve Çocuklarının Psikososyal Durumlarının Tespiti ve Yaşam Koşullarının iyileştirilmesi için Çözüm Önerileri**. Ankara: Mazlumder, February 2005.

Kiriçi, Kemal. "Dünyada ve Türkiye'de Sığınma Olgusu". **Hoşgöründe Mülteciler: Sivil Toplum Örgütlerinden Beklenenler Sempozyumu**. İstanbul: Helsinki Yurttaşları Derneği, Mart 1996.

Kiriçi, Kemal. "Immigration and Asylum Issues in Turkish-EU Relations". Sandra Lavenex & Emek M. Uçarer (Ed.). in **Migration and the Externalities of the European Union**. Maryland: Lexington Books, 2003, pp: 125-143.

Kiriçi, Kemal. "Is Turkey Lifting the 'Geographical Limitation'?- The November 1994 Regulation on Asylum in Turkey". **International Journal of Refugee Law**, Oxford: Oxford University Press, Vol.8, No: 3, 1996.

Kiriçi, Kemal. "The Legal Status Of Asylum Seekers in Turkey : Problems and Prospects". **International Journal Of Refugee Law**. Oxford: Oxford University Press, Volume 3, No: 3, 1991.

Kiriçi, Kemal. "The Question of Asylum and Illegal Immigration in European Union-Turkish Relations". **Turkish Studies**. Volume: 4, 2003.

Ladrech, Robert. "Europeanization of domestic politics and institutions: the case of France". **Journal of Common Market Studies**. V: 32 (69-88), cited in Featherstone, 2003.

Lavenex, Sandra & Emek M. Uçarer. "The Emergent EU Migration Regime and Its External Impact". Sandra Lavenex & Emek M. Uçarer (Ed.). in **Migration and the Externalities of the European Union**. Maryland, Lexington Books, 2003, pp: 1-15.

League Of Arab States. "Arab Convention on Regulating Status of Refugees in the Arab Countries". 27 March 1994. available at: [http://rsq.oxfordjournals.org/cgi/pdf\\_extract/27/2/87](http://rsq.oxfordjournals.org/cgi/pdf_extract/27/2/87) [accessed 24 January 2010]

League of Nations. "Arrangement Concerning the Extension to Other Categories of Certain Measures Taken in Favour of Russian and Armenian Refugees". 30 June 1928. available at: <http://www.unhcr.org/refworld/docid/42cb8d0a4.html> [accessed 12 January 2010]

League of Nations. "Arrangement Relating to the Issue of Identify Certificates to Russian and Armenian Refugees". 12 May 1926. available at: <http://www.unhcr.org/refworld/docid/3dd8b5802.html> [accessed 12 January 2010]

League of Nations. "Convention concerning the Status of Refugees Coming From Germany". 10 February 1938. available at: <http://www.unhcr.org/refworld/docid/3dd8d12a4.html> [accessed 12 January 2010]

Levy, Carl. "Asylum Seekers and the European Union in the 1990s", **Lehrverbund European Social Structure and Cultural Globalization**. available at <http://www.zmk.uni-freiburg.de/EuropeanSocialStructure/SeminarvorlesungSS99/CarlLevy/Textversion/textversion.htm> [accessed 18 February 2010]

Levy, Carl. "European Asylum and Refugee Policy After the Treaty of Amsterdam: the birth of a new regime?", Alice Bloch & Carl Levy (Ed.). **Refugees, Citizenship and Social Policy in Europe**. London: Macmillan Press Ltd, 1999, pp: 12-51.

Noll, Gregor. **Negotiating Asylum: The EU Acquis, Exterritorial Protection and the Common Market of Deflection**. The Hague: Kluwer Law International, 2000.

Organization of African Unity. "Convention Governing the Specific Aspects of Refugee Problems in Africa" ("OAU Convention"). 10 September 1969. available at: <http://www.unhcr.org/refworld/docid/3ae6b36018.html> [accessed 24 January 2010]

Ortaylı, İbrahim. "Genel Göç Olgusu", **Uluslararası, Göç Sempozyumu Bildiriler**. İstanbul: Zeytinburnu Belediye Başkanlığı, 08 December 2005, pp: 19-22.

Özcan, Emine. "Eylemden Sonra Kumkap, 'daki Mültecileri Dövdüler", **bianet.org**, 14 December 2009. available at: <http://bianet.org/bianet/insan-haklari/117620-eylemden-sonra-kumkapidaki-gocmenleri-dovduler> [accessed 18 March 2010].

Özcan, Emine. "Milletvekilleri Kumkap, Misafirhanesini Meclise Taşıyor", **bianet.org**, 14 December 2009. available at: <http://bianet.org/bianet/insan-haklari/117623-milletvekilleri-kumkapi-misafirhanesini-meclise-tasiyor> [accessed 18 March 2010].

Pazarcı, Hüseyin. **Uluslararası, Hukuk Dersleri**. Ankara: Turan Kitabevi, 4. baskı, 1996.

Peker, Bülent and Mithat Sancar. **Mülteciler ve İktisadi İstisna Hakkı**. Ankara: İnsan Hakları Derneği, 2005.

Penrose, Jan. 'The UN Convention Relating To The Status of Refugee: The Case For and Against Reform', Andrzej Bolesta (Ed.). in **Forced Migration and The Contemporary World: Challenges To The International System**. Bialystock: Wydawnictwo i Drukarnia PPHU, 2003, pp: 17-34.

Proudfoot, Malcolm J. 'The Anglo-American Displaced Persons Program for Germany and Austria'. **American Journal of Economics and Sociology**. Vol. 6, No. 1, October 1946, pp. 33-54.

Roger, Rosemarie . 'The Politics of Migration in the Contemporary World', **International Migration: Special Issue: Migration and Health in the 1990s**. 1992, pp. 33-55, cited in Demuth, Andreas. 2000.

Risse, Thomas, Maria G. Cowles & James Caporaso., 'Europeanization and Domestic Change: Introduction', Thomas Risse, Maria G. Cowles, James Caporaso (Ed). in **Transforming Europe: Europeanization and domestic change**. New York: Cornell University Press, 2001, pp: 1-21.

Schwarpf, Fritz W. 'Negative and Positive Integration in the Political Economy of European Welfare States', Garry Marks, Fritz W. Schwarpf, Phillippe C. Scmitter & Wolfgang Streeck (Ed.). in **Governance in the European Union**. London: Sage Publications, 1998, pp: 15-39.

Sedelmeier, Ulrich. 'Europeanization in New Member and Candidate States', Living Reviews in European Governance. available at: <http://europeangovernance.livingreviews.org/Articles/lreg-2006-3/> [accessed 02 April 2010]

Selm, Joanne van. 'The EU As A Global Player In The Refugee Protection Regime', **AMID Working Paper Series 35**, Washington DC: Migration Policy Institute, 2004.

Selm, Joanne van. Presentation by Joanne van Selm (Senior Policy Analyst, MPI) at the Roundtable 'The Protection of Refugees in the Light of the New Security Agenda'. Montreal: University of Montreal, 20 March 2002.

Spijkerboer, Thomas. 'The Human Cost of Border Control', **European Journal of Migration and Law**. No: 9, 2007.

Storey, Andy. 'The Asylum Policies of the European Union: a Developing Problem'. Development Review 1993 &1994 in Trócaire Development Review. available at: <http://www.trocaire.org/resources/tdr-article/asylum-policies-european-union-developing-problem>[accessed 28 February 2010]

**T.C. Anayasas, En Son De i ikliklerle 1982 Anayasas,**. stanbul: Kare Yay,nlar,, 2005.

Tezcan, Durmu . **nsan Haklar, El Kitab,**. Ankara: Seçkin Yay,nc,l,k, 2006.

Turkish Republic. "Amendments Made on the Regulation on the Procedures and the Principles Related to Population Movements and Aliens Arriving in Turkey Either as Individuals or in Groups Wishing to Seek Asylum Either from Turkey or Requesting Residence Permission in Order to Seek Asylum From Another Country". 13 January 1999. available at: <http://www.unhcr.org/refworld/docid/3deb8c764.html> [accessed 19 March 2010]

Turkish Republic. "İskan ve Nüfus İşlerinin Sür'atle İkmali Hakkında Tamim", no: 15035/6599, 7 August 1934, cited in Ülker, 2008.

Turkish Republic. "Council of Ministers Decision No. 2006/9938: Regulation to Amend the Regulation on the Procedures and the Principles Related to Population Movements and Aliens Arriving in Turkey either as Individuals or in Groups Wishing to Seek Asylum either from Turkey or Requesting Residence Permission in order to seek Asylum from Another Country No. 2006/9938". 16 January 2006. available at: <http://www.unhcr.org/refworld/docid/497473ff2.html> [accessed 19 March 2010]

Turkish Republic. "Law no 4817 Relating Work Permit of Aliens". 27 February 2003. available in Turkish at: <http://www.mevzuat.gov.tr/Metin.AspX?MevzuatKod=1.5.4817&MevzuatIliski=0&sourceXmlSearch=> [accessed 25 March 2010]

Turkish Republic. "Law Relating to Residence and Travel of Foreigners in Turkey no: 5683". 15 July 1950. available in Turkish at: [http://www.ir.metu.edu.tr/iom/pdf/tr\\_leg2.pdf](http://www.ir.metu.edu.tr/iom/pdf/tr_leg2.pdf) [accessed 18 March 2010]

Turkish Republic. "Passport Law, no: 5682". 5 July 1950. available in Turkish at: [http://www.ir.metu.edu.tr/iom/pdf/tr\\_leg8.pdf](http://www.ir.metu.edu.tr/iom/pdf/tr_leg8.pdf) [accessed 18 March 2010].

Turkish Republic. "Regulation No. 1994/6169 on the Procedures and Principles related to Possible Population Movements and Aliens Arriving in Turkey either as Individuals or in Groups Wishing to Seek Asylum either from Turkey or Requesting Residence Permission in order to Seek Asylum From Another Country (last amended 2006) No. 1994/6169". 19 January 1994. available at: <http://www.unhcr.org/refworld/docid/49746cc62.html> [accessed 19 March 2010]

Turkish Republic. "The Turkish Law of Settlement no: 2510". June 1934. available at: [http://www.ifc.org/ifcext/btc.nsf/AttachmentsByTitle/Tur+-+AnX+3.2/\\$FILE/RAP+-+Annex+3.2+-+Turkish+Law+of+Settlement.pdf](http://www.ifc.org/ifcext/btc.nsf/AttachmentsByTitle/Tur+-+AnX+3.2/$FILE/RAP+-+Annex+3.2+-+Turkish+Law+of+Settlement.pdf) [accessed 18 April 2010] or in turkish; <http://www.mevzuat.adalet.gov.tr/html/554.html> [accessed 18 April 2010]

Turkish Republic. "Turkey's National Programme for Adoption of European Union Acquis 2001". Ankara: 24 March 2001.

Turkish Republic. "Turkey's National Programme for Adoption of European Union Acquis 2003". Ankara: 23 June 2003.

Turkish Republic. "Turkey's National Programme for Adoption of European Union Acquis for 2008". Ankara: 10 November 2008.

Turkish Republic. "Turkish Citizenship Law no: 403". 11 February 1964. available in Turkish: [http://www.ir.metu.edu.tr/iom/pdf/tr\\_leg13.doc](http://www.ir.metu.edu.tr/iom/pdf/tr_leg13.doc) [accessed 18 April 2010]

Turkish Republic. "Turkish National Action Programme of 2003 for the Adoption of EU Acquis in the Field of Asylum and Migration". Ankara: October 2003.

Turkish Republic. "Turkish National Action Programme for the Adoption of EU Acquis in the Field of Asylum and Migration". Ankara: 25 March 2005. available at: <http://www.ir.metu.edu.tr/iom/pdf/tr3.pdf> [accessed 25 March 2010]

Turkish Republic: Ministry of Internal Affairs, "Directive on Refugee Guesthouses". Article 1, 29 April 1983. available in Turkish at: <http://www.mevzuat.adalet.gov.tr/html/21589.html> [accessed 18 April 2010]

Turkish Republic: Ministry of Internal Affairs. "Implementation Directive (Circular no 57)". 22 June 2006. available in Turkish at: [http://www.ir.metu.edu.tr/iom/pdf/tr\\_leg1.doc](http://www.ir.metu.edu.tr/iom/pdf/tr_leg1.doc) [accessed 19 March 2010].

Turkish Republic: Ministry Of Justice. "The Turkish Law of Settlement no: 5543". June 2006. available in Turkish at: <http://www.mevzuat.adalet.gov.tr/html/27159.html> [accessed 18 April 2010]

The EuropaWorld. "Dublin Convention: State Responsible For Examining Applications For Asylum Lodged In One Of The Member States Of The European Communities". available at: [http://www.europaworld.org/DEVPOLAWAR/Eng/Refugees/Refugees\\_DocC\\_eng.htm](http://www.europaworld.org/DEVPOLAWAR/Eng/Refugees/Refugees_DocC_eng.htm) [accessed 26 February 2010]

The Nobel Foundation. Nansen International Office for Refugees, [http://nobelprize.org/nobel\\_prizes/peace/laureates/1938/nansen-history.html](http://nobelprize.org/nobel_prizes/peace/laureates/1938/nansen-history.html) [accessed 11 January 2010]

Troeller, Garry G. "Refugees in contemporary international relations: reconciling state and individual sovereignty." **NEW ISSUES IN REFUGEE RESEARCH Working Paper**. No. 85, UNHCR. Evaluation and Policy Analysis Unit, 2003. available at: <http://www.unhcr.org/cgi-bin/texis/vtx/search?page=search&docid=3e71f1b64&query=refugees%20in%20contemporary%20international%20relations> [accessed 17 January 2010]

United Nations. "Agreement for UNRRA". 9 November 1943. available at: <http://www.ibiblio.org/pha/policy/1943/431109a.html> [accessed 16 January 2010]

United Nations. "Constitution of the International Refugee Organization". 15 December 1946. United Nations, Treaty Series, vol. 18, available at: <http://www.unhcr.org/refworld/docid/3ae6b37810.html> [accessed 16 January 2010]

United Nations. "International Covenant on Civil and Political Rights". 16 December 1966. available at: <http://www.hrweb.org/legal/cpr.html> [accessed 20 January 2010]

United Nations. "Universal Declaration of Human Rights". 10 December 1948. available at: <http://www.un.org/en/documents/udhr/> [accessed 28 December 2009]

United Nations. "United Nations General Assembly Resolution No 319 (IV)". 3 December 1949. available at: <http://www.un.org/documents/ga/res/4/ares4.htm> [accessed 20 January 2010]

United Nations General Assembly. "Statute of the Office of the United Nations High Commissioner for Refugees". 14 December 1950. available at: <http://www.unhcr.org/refworld/docid/3ae6b3628.html> [accessed 24 January 2010]

United Nations High Commissioner for Refugees. "Convention Relating to the Status of Refugees". 28 July 1951. available at: <http://www.unhcr.org/protect/PROTECTION/3b66c2aa10.pdf> [accessed 16 January 2010]

United Nations High Commissioner for Refugees. "Convention Relating To the Status of Stateless Persons". 28 September 1954. available at: <http://www2.ohchr.org/english/law/stateless.htm> [accessed 24 January 2010]

United Nations High Commissioner for Refugees. "Implementation Of The Dublin Convention: Some UNHCR Observations". 1 May 1998. available at: <http://www.unhcr.org/43662e1b2.html> [accessed 26 February 2010]

United Nations High Commissioner for Refugees. "Revisiting The Dublin Convention: Some Reflections by UNHCR in Response to Commission Staff Working Paper". 19 January 2001. available at: <http://www.unhcr.org/43662b3e2.html> [accessed 26 February 2010]

United Nations High Commissioner for Refugees. "Protocol Relating to the Status of Refugees". 4 October 1967. available at: <http://www.unhcr.org/protect/PROTECTION/3b66c2aa10.pdf> [accessed 16 January 2010]

United Nations High Commissioner for Refugees. "The Dublin II Regulation. A UNHCR Discussion Paper". April 2006. available at: <http://www.unhcr.org/refworld/docid/4445fe344.html> [accessed 12 March 2010]

United Nations High Commissioner for Refugees. "UNHCR Annotated Comments on the EC Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted (OJ L 304/12 of 30.9.2004)". 28 January 2005. available at: <http://www.unhcr.org/refworld/docid/4200d8354.html> [accessed 13 March 2010]

United Nations High Commissioner for Refugees. "UNHCR comments on the European Commission's Proposal for a recast of the Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third country national or a stateless person ("Dublin II") (COM(2008) 820, 3 December 2008) and the European Commission's Proposal for a recast of the Regulation of the European Parliament and of the Council concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of [the Dublin II Regulation] (COM(2008) 825, 3 December 2008)". 18 March 2009. available at: <http://www.unhcr.org/refworld/docid/49c0ca922.html> [accessed 12 March 2010]

United Nations High Commissioner for Refugees. "UNHCR Summary Observations on the European Commission Communication "Towards More Accessible, Equitable and Managed Asylum Systems" (COM (2003) 315 final)". 4 June 2003. available at: <http://www.unhcr.org/refworld/docid/437c526e4.html> [accessed 12 March 2010]

United Nations High Commissioner for Refugees. "UNHCR Tool Boxes on EU Asylum Matters: Tool Box 1: The Fundamentals - Part 2: Creating an Area of Freedom, Security and Justice: From Intergovernmental Co-operation to a Common Asylum and Migration Policy". available at: <http://www.unhcr.org/41b6c90a4.html> [accessed 20 February 2010]

United Nations Statistics Division. "Recommendations on Statistics of Immigration". 1998. available at: [http://unstats.un.org/unsd/publication/SeriesM/SeriesM\\_58rev1E.pdf](http://unstats.un.org/unsd/publication/SeriesM/SeriesM_58rev1E.pdf) [accessed 28 December 2009]

University of Michigan Law School. "International Refugee Law: The Michigan Guidelines on Well-Founded Fear". **Third Colloquium on Challenges in International Refugee Law**. Ann Arbor: Michigan, 28 March 2004, pp: 68-120.

Ülker, Erol. "Assimilation, Security and Geographical Nationalization in Interwar Turkey: The Settlement Law of 1934". **European Journal Of Turkish Studies**. no: 7 Demographic Engineering Part I. 2008. available at: <http://ejts.revues.org/index2123.html> [accessed 18 April 2010]

Vink, Marteen P. "Negative and Positive Integration in European Immigration Policies". **European Integration Online Papers**. V: 6, No: 13, 2001. available at: <http://eiop.or.at/eiop/pdf/2002-013.pdf> [accessed 01 April 2010]



Willey, David. "EU Force to Tackle Illegal Immigration", **BBC News**, 30 May 2002. available at: <http://news.bbc.co.uk/2/hi/europe/2017650.stm> [accessed 12 March 2010]

Wyman, Mark. **DP's: Europe's Displaced Persons 1945-1951**. New York: Cornell University Press, 1998.

Zard, Monette. "Exclusion, terrorism and the Refugee Convention". **Forced Migration Review 13**, Oxford, June 2002, pp: 32-34.

### INTERNET SOURCES

Cambridge Advanced Learner's Dictionary. <http://dictionary.cambridge.org>

EUBAM. <http://www.eubam.org/>

European Union. <http://europa.eu/>

Meriam-Webster Online Dictionary. <http://www.merriam-webster.com>

United Nations High Commission of Refugees. <http://www.unhcr.org>

Webster Online Dictionary. <http://www.webster-dictionary.org>

Your dictionary. <http://www.yourdictionary.com>