

**THE ROLE OF GEOGRAPHICAL LIMITATION  
WITH RESPECT TO ASYLUM AND REFUGEE  
POLICIES WITHIN THE CONTEXT OF TURKEY'S  
EU HARMONIZATION PROCESS**

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Approval of the Graduate School of Social Sciences

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## **ABSTRACT**

### **THE ROLE OF GEOGRAPHICAL LIMITATION WITH RESPECT TO ASYLUM AND REFUGEE POLICIES WITHIN THE CONTEXT OF TURKEY'S EU HARMONIZATION PROCESS**

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Turkey has been among a limited number of states that signed the 1951 Convention Relating to the Status of Refugees and adopted the geographical limitation; furthermore, among a very few number of states that still maintains this limitation.

The aim of this thesis is to analyze the significance of geographical limitation and what has brought the changes to Turkish asylum policies in respect of this reservation. Turkey is expected to abolish the geographical limitation during the European Union harmonization process. In this thesis furthermore, the role of the European Union within this process will be put forward.

Keywords: Geographical Limitation, Turkey, EU, 1951 Convention, Asylum Policy, Refugee Policy, Harmonization, Reservation, Asylum Seeker, Refugee

## ÖZ

### ‘COĞRAFI ÇEKİNCE’NİN TÜRKİYE’NİN AVRUPA BİRLİĞİ UYUMLULAŞTIRMA SÜRECİNDE SIĞINMACI VE MÜLTECİ POLİTİKALARI AÇISINDAN ROLÜ

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Türkiye, Mültecilerin Statüsüne Yönelik 1951 Sözleşmesi’ne taraf olan, bu Sözleşme’de sunulan bir seçenek olan ‘coğrafi çekince’yi kabul eden ve günümüzde hala bu hakkını saklı tutan dünyadaki az sayıdaki ülkeden birisidir.

Bu tezin amacı, coğrafi çekincenin önemini, ve bu bağlamda Türkiye Cumhuriyeti’nin mülteci ve sığınmacı politikalarına nasıl bir etkisi olduğunu analiz etmektir. Türkiye’nin, Avrupa Birliği’ne tam üyelik müzakereleri sürecinde yasal düzenlemenin uyumlulaştırılması kapsamında coğrafi çekinceyi kaldırması beklenmektedir. Bu bağlamda, Avrupa Birliği’nin bu süreç içerisindeki rolü de bu tez içerisinde analiz edilmektedir.

Anahtar Kelimeler: Coğrafi Çekince, Coğrafi Kısıtlama, Türkiye, AB, 1951 Sözleşmesi, Sığınmacı Politikası, Mülteci Politikası, Uyumlulaştırma, Harmonizasyon, Çekince, Kısıtlama, Sığınmacı, Mülteci

TO MY FAMILY AND MY FRIENDS,  
WHO WERE ALWAYS THERE FOR ME

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## LIST OF ABBREVIATIONS

<b>UNHCR</b>	: United Nations High Commissioner for Refugees
<b>HCR</b>	: High Commissioner for Refugees
<b>EU</b>	: European Union
<b>UN</b>	: United Nations
<b>IGCR</b>	: Inter-governmental Committee on Refugees
<b>UNNRA</b>	: United Nations Relief and Rehabilitation Agency
<b>IRO</b>	: International Refugee Organization
<b>OAU</b>	: Organization of African Unity
<b>ECSC</b>	: European Coal and Steel Community
<b>CFSP</b>	: Common Foreign and Security Policy
<b>JHA</b>	: Justice and Home Affairs
<b>CEEC</b>	: Central and Eastern Countries
<b>EEC</b>	: European Economic Community
<b>NATO</b>	: North Atlantic Treaty Organization
<b>NAP</b>	: National Action Plan
<b>MOI</b>	: Ministry of Interior
<b>IOM</b>	: International Organization for Migration
<b>NGO</b>	: Non Governmental Organization
<b>OLAF</b>	: European Anti-Fraud Office
<b>PKK</b>	: Workers' Party of Kurdistan

## INTRODUCTION

In respect to Turkey's asylum and refugee policies, the geographical limitation has been the most significant element regarding existing regulations and implementations. A refugee can be a person fleeing from persecution, war or natural disasters. According to the 1951 Convention Relating to the Status of Refugees, a refugee is a person who has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.<sup>1</sup> An asylum seeker is a person who has applied for refugee status and is awaiting the final decision. According to the international conventions, to seek asylum is a human right.

Although the geographical limitation is a limited issue, it has been defined in the 1951 Convention Relating to the Status of Refugees as an option for state parties. It refers to an option for state parties to accept asylum seekers only related to the events that occurred in Europe before 1 January 1951; specifically referred to in Article 1 B of the Convention.

Geographical limitation is in fact rarely used by states in international relations and to make a policy around it is unorthodox. Although it is not generally preferred by states to opt, the 1951 Convention Relating to the Status of Refugees has contained an option referring to a limitation on geographic terms. The states desiring to use this option can place a reservation by a declaration. Turkey has been among a limited number of states that signed the Convention and adopted the geographical limitation; furthermore, among a very few number of states that still maintains this limitation. There are only three more states left excluding Turkey: Monaco, Congo and Madagascar. Malta has recently ceased to maintain the geographical limitation during the preaccession process of European membership.

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<sup>1</sup> Article 1 of 1951 Convention Relating to the Status of Refugees

The aim of this thesis is to analyze the significance of geographical limitation and what are the challenges of this reservation on Turkey's asylum and refugee policies. Turkey has opted the geographical limitation due to her security concerns. One of the main questions of this thesis is to analyze this security context of the decision and whether it has been the only reason that Turkey continued to maintain this reservation. A further question discussed is whether geographical limitation is of crucial importance with respect to Turkey's asylum policy and practices. In addition, the reasons of intense discussion *nowadays* to abolish the geographical limitation and the role of the European Union within this process constitute an important question of this thesis.

In order to give a comprehensive view, the emergence and the developments of the international refugee regime will be discussed in the first chapter of this thesis. In this respect, this chapter mainly focuses on 1951 Convention but also looks at the other regional developments, globalization and security issues on refugee, in order to give a general contemporary idea. The new developments are also discussed in this chapter, but these developments do not harbour the geographical limitation. Also, the 1951 Convention is still being internationally accepted as the most influential legal document and the foundation of the international refugee regime.

The developments in Turkey's asylum policy from the establishment of the Republic until 1999 are the main subject of the second chapter. In order to explain the situation in Republic of Turkey regarding asylum seekers, and also the policy characteristics of Turkey regarding refugees, a historical perspective starting from its predecessor, the Ottoman Empire will be discussed initially. Later, the state practices and laws of the Turkish Republic will be analyzed, with particular focus on the reasons of fundamental laws regarding the refugees.

In the third chapter, the responses of European states to refugees will be discussed. Since the European Union is perceived as the foremost actor influencing Turkey's

policies on refugees, the development of asylum policies in the European Union states will be presented.

EU has created a new policy in this field. The process had started with Tampere conclusions in 1999 and finalised in 2004. The establishment of minimum standards is the common policy in this field. Since this is a new development, the general overlook and analyses to the policies of European states before the common policy will be a priority given in the third chapter. As a consequence, the development and contemporary importance of the Common Asylum Policy of European Union will be discussed.

In the fourth chapter, a study on geographical limitation within the context of EU - Turkey harmonization process will be presented. In order to explain the case better, a theoretical framework consisting of the two major government approaches to refugee issues will be presented. The first one is the most popular among government policies and oversees through a nation state perspective in respect to security concerns and threat to national sovereignty. This approach is derived from the statism of realist perception in international relations and according to it; the key actor is the sovereign states. The first priority of state is to guarantee the security of its citizens. According to this approach, human rights are not universal like the basic rights of mankind, but they are applied between the state and its citizens, differ from state to state, and in times of crisis, it subordinates to security concerns to preserve the national order. Refugees are in the context of state sovereignty and no different than any other voluntary migrant with the absence of universal human rights. In this sense, refugees are either seen as a tool for foreign policy of other states to gain power over other countries, or seen as a threat to internal security or 'national security' as being a risk to the social, economic and political stability.

The second perception can be expressed as a liberal approach, a humanitarian point of view concerning the rights, needs and necessities of refugees. This approach is based on the Kant's perspective of idealism, which rejects the idea of realism that

the natural state of international relations is conflict and war. Instead, it perceives the individual as the main actor in the international system. The individual is sovereign and the state guarantees its rights and to fulfil the universal values. Thus, the international system is the existence of universal values, growing interdependence and the increasing institutionalisation of common laws and regimes through the cooperation in international relations. Liberal perception sees refugees who are individuals violated in terms of basic human rights and in need of protection. The protection of human rights is for the good of all mankind and a condition for peace; and it is the responsibility of international community to prevent the human rights violations and the production of refugees. In order to achieve this, the nation states must cooperate to prevent the main reasons of flight including economic cooperation and perhaps as far as humanitarian intervention. According to liberal approach, the basic rights of individuals are by far superior to the political considerations of national interests of states.

Within this theoretical framework, the asylum policies of the European states in general and in particular will be analyzed. Later, the asylum policies of Turkey will be discussed through these two perspectives. Furthermore, the analysis of National Action Plan of 2005 will be analyzed to explain the future consequences of abolishing the geographical limitation in Turkey. Following the fourth chapter, the projections on the future of Turkish asylum policy will be presented in the conclusion part.

In this thesis work, the significance of geographical limitation regarding the Turkish asylum and refugee policies has been discussed in a descriptive, analytical and - to some extent - prescriptive way. This thesis aims to contribute to the limited knowledge in Turkey's asylum and refugee policies, considering the limited academic work presented in this field. There are few Turkish academicians presently working on Turkish asylum and refugee policies. Furthermore, the role of geographical limitation on Turkish asylum policies has almost not been studied

before. In this regard, only Prof. Kemal Kirişçi presented a few articles on geographical limitation and Turkey.

The thesis focuses on analyses of the main legal documents introduced in Turkey that characterises the Turkish asylum and refugee policies; focusing on reasons of introduction and the impacts on policies. Furthermore, the National Action Plan of 2005 analyzed here has only been discussed previously. This thesis further presents the criticisms of European Union and international organizations such as UNHCR and Amnesty International towards the National Action Plan. In addition, all copies of original documents of the main laws mentioned have been presented in the appendix; including the versions published on the Official Gazette, the parliamentary records of discussions including official reasons of introduction of laws, and the copies of cabinet decisions. Only the cabinet decision on 1994 Asylum Regulation could not be presented, since it has not been made accessible to academic researchers. As a consequence, this thesis presents a comprehensive knowledge on the significance and role of geographical limitation on Turkish asylum and refugee policies.

# CHAPTER I

## DEVELOPMENT OF THE INTERNATIONAL REFUGEE REGIME

### 1.0. Introduction

The aim of this chapter is to analyse the establishment of the refugee regime. After referring to early stages briefly, there will be a main focus on the 1951 Convention Relating to the Status of Refugees, hereafter will be referred as 1951 Convention, and also there will be some analysis and references to global and regional developments. However, due to the lack of the geographical limitation in other arrangements, the main focus on this chapter will still be on the 1951 Convention.

### 1.1. Early Stages of the Refugee Regime

Although the concept of refugee dates back to at least 3,500 years ago<sup>2</sup>, it was not until the 20<sup>th</sup> century that the refugee issues have been dealt seriously. In this context, the refugee regime first started with the Treaty of Westphalia in 1648. The Treaty had put an end to the thirty years of war related to religion. On one side it put an end to the war between Spain and the Catholic Church, and on the other side the war between France and Germany. It has a great significance in international relations as the treaty which signifies the formation of nation states by giving sovereignty to rulers in their own territories, and such that no nation state can interfere with the internal affairs of any other that is stated in the Treaty. What has greater importance for this thesis work however is that there is reference in the Treaty of Westphalia to certain people who were forced to leave their homes during the thirty years wars who are to be accepted in the sovereign

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<sup>2</sup> Odman, T., "Mülteci Hukuku", Ankara: İnsan Hakları Merkezi, 1995, p. 5

territories of a ruler to live in peace and to be granted the same rights as any other subjects of that sovereign ruler.

... Further, that all the Palatinate House, with all and each one of them, who are, or have in any manner adher'd to it; and above all, the Ministers who have serv'd in this Assembly, or have formerly serv'd this House; as also all those who are banish'd out of the Palatinate, shall enjoy the general Amnesty here above promis'd, with the same Rights as those who are comprehended therein, or of whom a more particular and ampler mention has been made in the Article of Grievance. ...<sup>3</sup>

Since then, the refugee regime has evolved with the modern state system, along with the change in international politics, ideologies, economics and balance of power. It constitutes a long history starting with the political and religious persecutions of Huguenots, the French Protestants and the first refugees recognized in the modern state system who had to leave their country in 1685. Later on, the aristocrats of the French Revolution followed.<sup>4</sup>

However, in the beginning of the 20<sup>th</sup> century, neither an implementation nor an institution was present in respect of an international refugee regime. A comprehensive refugee regime emerged with the League of Nations after the World War I.<sup>5</sup> The refugee policies of the organization represented the first truly international refugee regime. In treaties and arrangements concluded under the auspices of the League of Nations, a group or category approach was adopted. The League of Nations High Commissioner for Refugees (HCR) was established in 1921. It had been formed as a temporary agency to tackle the problems of Russian refugees after the Russian Revolution of 1917. HCR mainly took support from non-governmental organizations for personnel and supplies and received only administrative support from the League of Nations. Since the refugee issue had

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<sup>3</sup> Part XXII of the Treaty of Westphalia, translated by British Foreign Office; an electronic publication of the MULTILATERALS PROJECT, The Fletcher School, Tufts University, [www.fletcher.tufts.edu/multi/texts/historical/westphalia.txt](http://www.fletcher.tufts.edu/multi/texts/historical/westphalia.txt)

<sup>4</sup> Barnett, L., "Global Governance and the Evolution of the International Refugee Regime", *New Issues in Refugee Research*, UNHCR Working Paper No: 54, February 2002, p. 1

<sup>5</sup> *ibid.*

been seen as temporary however, the universal approach was not yet present. A general definition of refugee was not defined; instead, HCR used an approach based on categories, identifying refugees according to their connection to a group and origin. According to this, if a person was outside the country of his origin and without the protection of the government he/she can fulfil the requirements to be a refugee. In 1933, the Convention Relating to the International Status of Refugees adopted to standardize the position of these groups. A definition of refugee status has been presented in this Convention, based on the lack of protection and not having an effective nationality. Although still category oriented, the definition clearly stated what is needed to belong to such a group. During the interwar period, many Jews fled from Germany because of persecution; however, most of the nations did not want to accept them, mainly because of the economic turmoil with the aftermath of the Great Depression of 1931.<sup>6</sup>

The group or category approach was also employed in 1936 arrangements for those fleeing Germany, which were later presented in the Article 1 of the 1938 Convention concerning the Status of Refugees coming from Germany<sup>7</sup>, to cover:

- ... (a) Persons possessing or having possessed German nationality and not possessing any other nationality who are proved not to enjoy, in law or fact, the protection of the German government.
- (b) Stateless persons not covered by previous conventions or agreements who have left German territory after being established therein and who are proved not to enjoy, in law or in fact, the protection of the German government. ...<sup>8</sup>

In 1938, an Inter-governmental Committee on Refugees (IGCR) gathered in Evian, by the call of USA President Roosevelt. Its primary objective was to tackle the involuntary emigration from Germany. One of the Committee's activities was concerning the people who had not yet emigrated and those who had already left

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<sup>6</sup> Barnett, L., *op. cit.*, p.5

<sup>7</sup> Goodwin-Gill, G.S., "The Refugee in International Law", Oxford University Press, New York, 1996, p.4

<sup>8</sup> 1938 Convention concerning the Status of Refugees coming from Germany in Goodwin-Gill, G.S., *ibid.*, p.4

but not settled somewhere else because of their political opinions, religious beliefs, or racial origin.<sup>9</sup> However, this meeting failed, as Germany refused to let Jews leave with their assets and resettlement countries refused to accept any financial burden.<sup>10</sup>

The Bermuda Conference in December 1943 expanded the definition to include:

... all persons, wherever they may be, who, as a result of events in Europe, have had to leave, or may have to leave, their country of residence because of the danger to their lives or liberties on account of their race, religion or political beliefs ...<sup>11</sup>,

which was a definition to be finalized in the 1951 Convention Relating to the Status of Refugees. The Conference was held by the initiatives of United States and United Kingdom and the decisions taken were carried out under the financial support of the two countries. The US was focusing on the refugee issue as a part of her leadership role in Europe as in the world, and the UK was trying to continue her previous leadership role in Europe by cooperating with the US.<sup>12</sup> The importance of the conference was not only limited with the definition or the powers who led the initiative, but also the scope of the people considered. With the decisions taken at Bermuda Conference, the context of the refugees are no longer limited with those who flee from Germany and Austria, but a wider range including everyone that had been affected by the events in Europe.

When the Second World War ended, 30 million people ended up being uprooted. Many people were displaced and soldiers did not want to return to the territories of their own countries because of the border changes including the 12 million people of German origin expelled from USSR<sup>13</sup>. These people were the victims of Nazi and Fascist regimes, people of Jewish origin, foreigners or stateless people who had

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<sup>9</sup> Goodwin-Gill, G.S., *op. cit.*, 1996, p.5

<sup>10</sup> Joly, Danièle; Nettleton, Clive; "Refugees in Europe", Nottingham: Russell Press Ltd., 1990, p.7

<sup>11</sup> Sjöberg, "The Powers and the Persecuted", p.16 Ch.4, in Goodwin-Gill, G.S., *ibid.*, p.5

<sup>12</sup> Akdeniz, A., "Turkish Approach Towards the Refugee Problem: The Case of Bosnians", Ankara: MSc. Thesis, International Relations, METU, November 1999, p. 21

<sup>13</sup> Barnett, L., *op. cit.*, p.5

been victims of Nazi persecution, and also the people considered as refugees before the outbreak of the Second World War for the reasons of race, religion, nationality or political opinion. Since the League of Nations dissolved upon the end of WW II, the Allied States created the United Nations Relief and Reconstruction Agency in 1944 to deal with the population flows and later on, International Refugee Organization was established by the end of UNRRA's mandate in 1948. Both of the organizations were created as temporary to deal with the status of WW II refugees.

UNRRA's goal was to organize relief and set up mass repatriation and resettlement. When UNRRA was established, it adopted the terminology created by England and the US using 'displaced persons' rather than 'refugee'; to imply that refugees could return to their home. The IRO defined those who are protected as refugees as the people victims of Nazi, fascist or similar regimes; victims of persecution for reasons of race, religion, nationality, political opinion; and refugees of long standing. This definition included Eastern European political dissidents. However, UNRRA and IRO were hindered by Cold War tensions and Soviet hostility. USSR claimed that UNRRA prevented displaced persons from returning home. In fact, the Western powers promoted resettlement in host countries after 1945. Until this time, they had assisted forced repatriation to the Soviet Bloc. Western European countries were relatively willing to receive displaced persons and refugees during this period, as many nations suffered from depleted labour after the war. Western countries also made an effort to support refugees from the Eastern Bloc, adopting a Cold War ideology that would dominate refugee assistance for the next forty years. The USSR claimed IRO was only protecting traitors and serving US policy. The IRO thus remained dominated by Western Europe and US. Both UNRRA and the IRO were blocked by the USSR and were unable to operate in Soviet controlled Germany.

## **1.2. The 1951 Convention Relating to the Status of Refugees**

After the World War II, the United Nations High Commissioner for Refugees continued to deal with the refugee issues. Taking over from IRO on January 1, 1951, the United Nations High Commissioner for Refugees soon became a permanent body in the refugee regime. It works under the United Nations General Assembly and it is completely supported by member states' contributions. Its main purpose is to provide international protection to refugees and seek a permanent solution to the refugee problems in cooperation with NGO's, national governments and other international organizations. It promotes measures to improve the refugee situation and assists government efforts to encourage voluntary repatriation or entry and integration into a new country. As it had been to former organizations, USSR was opposed to creating a new organization. Instead, they concentrated their efforts to push for policies on repatriation rather than resettlement.

In July 1951, the United Nations 1951 Convention Relating to the Status of Refugees was signed. In this Convention, the status of refugees is defined very specifically and a series of rights and obligations has been set out. This Convention ensures refugees the right to seek asylum; on the other hand, the right to give such asylum has been left to national governments. It is the first time in this Convention that a universal refugee definition has been stated; in Article 1 as:

... Any person who owing to a 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, is unable, or owing to such fear, is unwilling to return to it.

...

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<sup>14</sup> 1951 Convention Relating to the Status of Refugees, p.16-17

The Convention harbours limitations to this definition. There are geographical and time limitations as the events that occurred before January 1951, and the option given to signatory states to receive refugees related with the events that happened in every part of the world or only in Europe. Another important factor of the Convention is the difference in refugee definition compared to former definitions as to further emphasize the reference to the territories of the signatory states, as “outside the country of his former habitual residence”. This means that if a Turk wishes to seek asylum, he or she cannot request this from a competent authority, such as UNHCR, within the territories of his or her own country, Turkey. He or she has to leave the territories of the country of origin and seek asylum elsewhere. Another important feature is the statement of the non-refoulement principle. According to this, a refugee has the right to remain in the country of asylum as well as right to return to the country of origin. The Convention also defines minimum standards of treatment for refugees and presents the eligibility criteria for a refugee status and the determination procedures of such status. The geographic limitation stated in the Convention still maintains its significance in Turkey. The reason is that, Turkey is one of the few countries left to maintain this limitation today, along with 3 other countries: Monaco, Congo and Madagascar.

Although the final version of the Convention harboured the limitation as follows:

... Article 1 A

... (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.

B. (1) For the purposes of this Convention, the words “events occurring before 1 January 1951” in article 1, section A, shall be understood to mean either

(a) “events occurring in Europe before 1 January 1951”; or  
(b) “events occurring in Europe or elsewhere before 1 January 1951”,  
and each Contracting State shall make a declaration at the time of signature, ratification or accession, specifying which of these meanings it applies for the purpose of its obligations under this Convention.

(2) Any Contracting State which has adopted alternative (a) may at any time extend its obligations by adopting alternative (b) by means of a notification addressed to the Secretary-General of the United Nations.

...<sup>15</sup>,

there were some different opinions about on the geographical limitation. The Convention can be applicable to any part of the world; meaning not only to Europe but any continent. The French Delegation of the Ad-Hoc Committee responsible for the negotiations of the Convention proposed to limit the events in Europe, which is retained by the Drafting Committee; but the United Nations General Assembly crossed out the reference ‘Europe’, thus making the 1951 Convention as globally applicable.<sup>16</sup> This limitation has been initially offered as an Amendment by French Delegation on 13 July 1951 to the Draft Convention as follows:

... Article 1A-paragraph 2.

After the words "As a result of events occurring", insert the words "in Europe". ...<sup>17</sup>,

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<sup>15</sup> 1951 Convention Relating to the Status of Refugees, p.16-17

<sup>16</sup> Robinson, N., “Convention Relating to the Status of Refugees. Its History and Interpretation”, Institute of Jewish Affairs, World Jewish Congress, 1953; Reprinted by UNHCR, 1997, p. 46

<sup>17</sup>E-Refugee web site, International Law Documents, Travaux Préparatoires of the 1951 Convention; [http://www.e-refugee.ca/erefugee\\_internatlawdocs/travprep/82.htm](http://www.e-refugee.ca/erefugee_internatlawdocs/travprep/82.htm)

However, following on 16 July, the Holy See made a suggestion as a compromise regarding the French Amendment as:

... Insert the following after the words "before 1 January 1951" in section A(2):

"In Europe, or in Europe and other continents, as specified in a statement to be made by each High Contracting Party at the time of signature, accession or ratification." ...<sup>18</sup>

to create a middle way and in the end the last version has been put in the Convention as the final version stated before.

According to the UNHCR sources, the reason that the time and geographical limitation had been introduced was the reluctance of European states to commit themselves to responsibility of accepting an unknown amount of refugees in an unknown future. As it is stated in the UNHCR international website;

... One heated debate was sparked over the refusal of some delegates to commit themselves to open-ended legal obligations. In elaborating one of the Convention's core definitions, "who could be considered a refugee"; some countries favoured a general description covering all future refugees. Others wanted to limit the definition to then existing categories of refugees.

In the end, inevitably, there was a compromise. A general definition emerged, based on a "well-founded fear of persecution" and limited to those who had become refugees "as a result of events occurring before 1 January 1951.

This temporal limitation and the option to impose a geographical limitation by interpreting the word "events" to mean either "events occurring in Europe" or "events occurring in Europe or elsewhere", was incorporated because the drafters felt "it would be difficult for governments to sign a blank check and to undertake obligations towards future refugees, the origin and number of which would be unknown." ...<sup>19</sup>

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<sup>18</sup> E-Refugee web site, International Law Documents, Travaux Préparatoires of the 1951 Convention; [http://www.e-refugee.ca/erefugee\\_internatlawdocs/travprep/86.htm](http://www.e-refugee.ca/erefugee_internatlawdocs/travprep/86.htm)

<sup>19</sup> "The 1951 Refugee Convention: Developing Protection", UNHCR international website, <http://www.unhcr.ch/1951convention/dev-protect.html>

It is crucial to explain why these amendments were made to have a ‘geographical limitation’ be included; despite the efforts of the General Assembly to make the Convention applicable globally. As it would be explained in the fourth chapter of this thesis, the European States were devastated by the World War II and lost a significant number of their population; therefore they were in need of additional manpower to reconstruct their countries as well as their industries. The refugees were seen as manpower to help the reconstruction and because of this, European states were eager to receive refugees, as well as people from their colonial lands. Therefore, the phrasing of “... as a result of events occurring in Europe ...” allowed them to accept the displaced people left after WW II and former people considered as refugees, such as Jews and Austrians, within the context of previous international documents. But the same phrasing was also serving them by making people eligible as refugees from their colonial lands outside Europe by claiming the same events affected individuals from colonial territories. However, they were against the idea of taking responsibility of accepting unknown amount of refugees in an unknown future from the other parts of the world. Therefore, they have proposed to limit the events by temporally and geographically. Why the proposition was given by the French Delegation or why the Holy See was the one to suggest a middle way can only be answered by speculation in this thesis. The possible reason of the former was because France was one of the European countries possessing the most colonial lands; together with United Kingdom. Therefore, it is not surprising that the proposal came from the French. However, there was no opposition from other European delegations, which is also crucial. After it has been rejected by the General Assembly to make the Convention globally applicable, the suggestion of a middle way came from the Holy See possibly because the Holy See was trying to gain back his influence in the world politics that he lost gradually over the previous centuries. Therefore, as playing the mediator, Holy See might have seen the role as a way to increase his influence. But, as it mentioned above, these possibilities presented in this thesis are mere speculations.

There were amendments to the Convention with the 1967 Protocol Related to the Status of Refugees, prepared by UNHCR. With this document, the time limitation has been lifted. The geographical limitation has also been lifted; however, those state parties that have already made declarations related to the geographical limitation at the time of their signature until 1967 may have maintained their limitations. With the introduction of 1967 Protocol, this apparent discrimination that made in Europe towards refugees that was due to the condition of time and region has been ceased<sup>20</sup>. However, the growing industrial progress during the 1950' and 1960s demanded an greater amount of manpower than the amount supplied by refugees in the aftermath of WW II. In this sense, the 1967 Protocol has served another purpose other than to increase the scope of Convention; apart from being more humanitarian: It served as a tool to increase the presence of refugees, thus to increase employment for growing demand in increasing industrial sector in European countries.

### **1.3. Further Developments following the 1951 Convention**

However, two years later of the Protocol, the Organization of African Unity (OAU) and the Organization of American States (OAS) began to shape their own policies to respond the changes in the international system and to enhance the UN's refugee definition. The OAU adopted an expanded definition in 1969, seeing refugees furthermore as:

... every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality. ...<sup>21</sup>

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<sup>20</sup> Blay, S. K. N.; Tsamenyi, B. M., "Reservations and Declarations Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees", *International Journal of Refugee Law*, Vol. 2, 1990, p. 533

<sup>21</sup> The OAU Convention in A. Eduardo Arboleda, "Refugee Definition in Africa and Latin America: The Lessons of Pragmatism" in Chimni, B.S., ed.; "International Refugee Law", Sage Publications, India Pvt Ltd., New Delhi, 2000, p.63

Starting from 1957, the achievements of independence of former colonies of western European states in Africa caused many people to become refugees. This caused refugee movements in masses. This was because of the adoption of the nation-state model by most of those newly formed countries, which caused discriminations related to ethnical differences. The OAU Convention has been made in respect to the socioeconomic structure and political situation of the African states and in order to meet the demands that arise from the refugee movements in African continent. Therefore, a more realistic and better applicable document for that time being, and in a context much wider than the 1951 Convention has been accepted.<sup>22</sup> However, all of these documents have taken the 1951 Convention as a foundation. It was for the first time the term refugee extended for individuals who are forced to leave their countries due to aggression by another state. The OAU Convention marked the beginning of a refugee protection system, which directly addressed the causes of mass refugee influxes, by emphasizing conditions in the country of origin.<sup>23</sup>

In 1984, the OAS extended furthermore the refugee definition including the people fleeing war, violence and serious public disorder and signed the Cartagena Declaration declaring refugees to be:

... 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 the public order.<sup>24</sup>  
...

Again, taking the 1951 Geneva Convention as a basis, OAS prepared Cartagena Declaration in order to meet the needs in politically instable and socio-economically problematic South American territories that created mass movements of refugees.<sup>25</sup> Since the 1951 Convention does not contain provisions regarding mass influxes,

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<sup>22</sup> Odman, T., *op. cit.*, p. 49 and p.51

<sup>23</sup> The OAU Convention in A. Eduardo Arboleda, *op. cit.*, p.63

<sup>24</sup> *ibid.*, p.64

<sup>25</sup> Odman, T., *op. cit.*, p. 52

Cartagena Declaration provides coverage in this sense. The importance of the Cartagena Declaration is that, it was the first document in the Latin America to establish guidelines for states with mass inflows of refugees. Furthermore, it was the first international declaration recognizing that the victims of generalized violence, internal conflicts and massive human rights violations deserved refugee status.<sup>26</sup>

On the other hand, from the beginning of the 1970s UNHCR started to deal with the people outside of the refugee definition by extending it in practice, without making any changes to the definition in the Convention. UN General Assembly has also given permission to UNHCR to extend its protection to the people outside the official definition of refugee stated in the Geneva Convention by referring the term ‘displaced persons.’ In the beginning of 1970s, UNHCR started to give assistance to internally displaced persons. The internally displaced persons, IDP’s, would normally be considered refugees, but they have not crossed any borders. UNHCR began to recognize the need for long term care in refugee camps and permanent refugee settlement in countries away from the wars causing refugee movement.

By this time, the economic crisis hit the world in the mid 1970s causing increase in unemployment and decreases in the economic growth.<sup>27</sup> European countries began to apply restrictions to refugee access in order to hinder the labour influx into their internal markets. At this time, the majority of the refugees came from the developing world and those people were often seen as disguised immigrants claiming refugee status to facilitate access to receiving nations. The European Community began to harmonize the immigration standards by abolishing internal borders but restricting the entry of the migrants from outside the EC. This has affected the refugee policy negatively.

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<sup>26</sup> The OAU Convention in A. Eduardo Arboleda, *op. cit.*

<sup>27</sup> Künçek, Ö., “Uluslararası İlişkilerde Mülteci Sorunu ve Batı Avrupa Devletlerinin Uygulamaları”, Ankara: PhD. Thesis, Ankara University, p. 104

The policies adopted by the Western governments in 1970s showed that the refugee regime is dependant on economic and ideological considerations. With the political plans during the Cold War, the Western States welcomed the refugee flows. However, when it came to economic concerns, they refused to give assistance to any outside their borders, like the EC. The US mainly influenced the UN to shape refugee policy by being the main donor. One of the reasons that UNHCR began to extend its assistance into Africa was to block Soviet power in that area. In addition, until the mid 1980s, almost 90 percent of the refugees accepted to the US was from the Eastern Bloc.<sup>28</sup> Overall, the Cold War had a great influence on the norms and policies of the refugee regime. After the Cold War, the regime had to adapt itself towards contemporary concerns and today, it tries to cope with gender and race issues.

The global trends regarding refugee applications points out an increase on refugee applications during 1980s and 1990s. This increase is originated from several reasons. The ethnic conflicts and wars in Africa from the 1970 have caused mass flows from this continent. The socioeconomic instabilities and territorial disputes among the South American countries during the 1980s produced mass influxes towards other continents. Furthermore, the 1979 Iranian Revolution led many Iranians flee towards neighbouring countries, as well as to European states and United States. The general disputes in Balkans, led conflicts in Yugoslavia, Bosnia and Kosovo, where huge numbers of refugees from this region fled to neighbouring countries, Europe and Turkey.

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<sup>28</sup> Salomon, K., "Refugees in the Cold War: Towards a New International Refugee Regime in the Early Postwar Era", Lund: Lund University Press, 1991, p. 246

**Table 1.**

**ESTIMATED NUMBER OF REFUGEES AND TOTAL PERSONS OF CONCERN TO UNHCR WORLDWIDE<sup>1</sup>**  
(all figures as at 31 December of each given year)

<b>Year</b>	<b>Refugees</b>	<b>Total Population of Concern</b>
		-
1980	8,446,000	-
1981	9,706,000	-
1982	10,310,000	-
1983	10,610,000	-
1984	10,717,000	-
1985	11,851,000	-
1986	12,620,000	-
1987	13,114,000	-
1988	14,331,000	-
1989	14,716,000	-
1990	17,378,000	-
1991	16,837,000	-
1992	17,818,000	-
1993	16,306,000	-
1994	15,754,000	-
1995	14,896,000	-
1996	13,357,000	19,795,000
1997	12,015,000	19,895,000
1998	11,481,000	20,628,000
1999	11,687,000	21,871,000
2000	12,130,000	19,922,000
2001	12,117,000	20,779,000
2002	10,594,000	17,009,000
2003	9,680,000	19,197,000
2004	9,237,000	

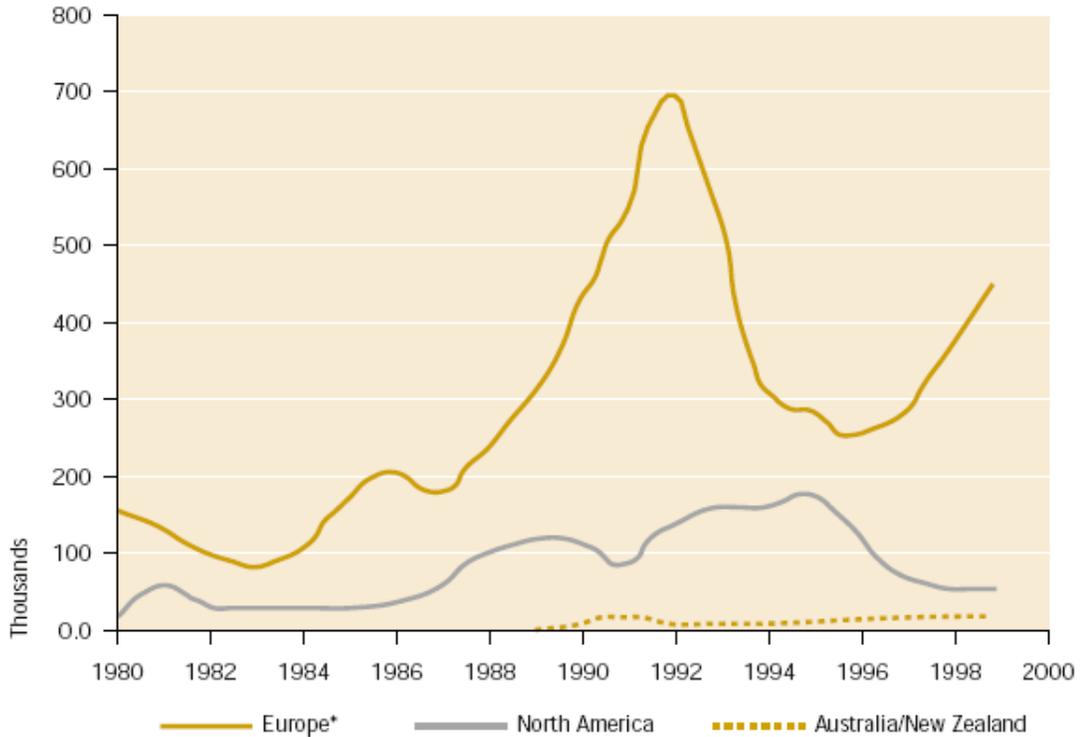
<sup>1</sup> Includes revised year-end figures.

Source: UNHCR, the RefWorld 2005 CD

The graph presented below is a clear indicator of the growing increase between 1980 and 2000 regarding asylum applications around the world. The drastic increase of applications in Europe caused pressure on asylum systems of European countries, and the growing unrest among the societies led European governments to adopt restrictive policies. Politicians also used refugees as a political material to address the economic instabilities, which contributed the growing unrest in Europe.

**Asylum applications submitted in Europe, North America, Australia and New Zealand, 1980-2000**

**Figure 7.1**



\* For details of countries included, see Annex 10.  
Source: Governments.

**Figure 1.**

Source: The graph is taken from the UNHCR book, “The State of the World’s Refugees, Fifty Years of Humanitarian Action”, 2000, page 157

Today, the contemporary picture presents large numbers of people in need of international protection that have been forced to flee their countries because of situations of conflict. In view of political initiatives undertaken by the international community to resolve such situations, some of the asylum countries have increasingly prefer to provide temporary protection rather than making formal determinations of refugee status under the 1951 Convention relating to the Status of Refugees. In addition, there are an estimated 30 million designated by the United

Nations<sup>29</sup> as “internally displaced people,” individuals forced from their homes within the boundaries of their own countries. In this respect, the latest figures below shows current situation throughout the globe.

**Table 2.**

<b>PERSONS OF CONCERN TO UNHCR - BY REGION</b>		
<b>Region</b>	<b>1st Jan 2004*</b>	<b>1st Jan 2005</b>
Asia	6,112,500	6,899,600
Africa	4,285,100	4,861,400
Europe	4,242,800	4,429,900
Northern America	978,100	853,300
Latin America & Caribbean	1,316,400	2,070,800
Oceania	74,400	82,400
<b>TOTAL</b>	<b>17,009,300</b>	<b>19,197,400</b>

\* Revised year-end figures.

Source: UNHCR, the RefWorld 2005 CD

The main significance of the 1951 Geneva Convention Relating to the Status of Refugees is the expression of the committee of states that refugee issues are not seen as a temporary issue anymore. Instead, it is an issue requiring a cooperative effort by all states concerned and the refugees should be granted with fundamental rights and freedoms. Until that time, there existed a number of agreements by small number of participants dealing with different groups of refugees. However, this Convention stated rights and freedoms for refugees accepted internationally. It is important that the Convention is the first to have such a considerable number of participants in its drafting stage. There were 26 states and two observers<sup>30</sup>, which shows that this Convention is more acceptable to governments than the previous agreements. Furthermore, the previous agreements accepted participations only from Europe; however, this Convention had participants attending all over the world. This also means that this Convention can be applied to refugees from every part of the world. Another significance is that the Convention is the first agreement

<sup>29</sup> UNHCR international website, [www.unhcr.ch](http://www.unhcr.ch)

<sup>30</sup> *ibid.*

ever covering every aspect of life and it guarantees for refugees at least the same treatment provided to any other foreigners in the host country. These aspects include the acquisition of property as independent persons, the obligation of the state to issue documents certifying the rights of refugees such as diplomas and proof family status. It is also significant that the Convention also equalizes the treatment towards refugees with the own nationals of the host country. The Convention permits expulsion of refugees only if there is reasonable ground of them to be a danger to national security of the host country or have been convicted by a serious crime.

Although the 1951 Convention is first in many aspects, some of its provisions have some restrictive measures, such as the definition of the refugee. For example, in the drafting debates of the Convention, it was pointed out that the Article 1 concerning the definition of the refugee was not drafted properly. Alongside with the definition, the article includes the exclusion clauses and the geographical scope of the application as well as the time limitation. The definition has been extended by different groups like Organization of African Unity and the Organization of American States later on, to cope with the contemporary issues at those times. However, the restrictive nature of these provisions was mainly sourced because of the desire of the framers to reach unanimity in the conference and have it be acceptable to many governments. Nevertheless, it undermined the aim of the Convention. Furthermore, most of the provisions of the Convention were weakened by the reservations of the signatory countries.

There are two groups of people considered as refugees in the Convention. The first group is the people who have already been considered as refugees with previous international agreements or under the Constitution of the IRO. The second groups includes of people referred to the status of refugee for the first time. It consists of two subgroups: having a nationality or not possessing any. Both of these groups meet the conditions of being outside of the territories of their nation states or their habitual residences and they must be outside because of the events taken place

before January 1, 1951. Persons meeting these conditions are considered a refugee if they have a well-founded fear of being persecuted for five reasons stated in the Convention: Race, religion, nationality, membership of a particular social group or a political opinion. If they are unable or unwilling to benefit from the protection of their country of nationality or do not want to or are unable to return to their habitual residence, they will be considered as refugees. Furthermore, the dual or multiple nationality bearing persons will be provided with the same rights. Also, these rights will be applied to people who belong to the second group but rejected of their former application by IRO.

There is a statement in the Convention, being referred to time and geography stated as:

... For the purposes of this Convention, the words “events occurring before 1 January 1951” in article 1, section A, shall be understood to mean either

- (a) “events occurring in Europe before 1 January 1951”; or
- (b) “events occurring in Europe or elsewhere before 1 January 1951”, and each Contracting State shall make a declaration at the time of signature, ratification or accession, specifying which of these meanings it applies for the purpose of its obligations under this Convention. ...<sup>31</sup>

Considering the second group, the statement in the Convention by the reference “events occurring before 1 January 1951”, does not specify any geographical location of the event. However, the Convention grants every state the right to select to apply the Convention to people belonging to this second group whether these “events” occurred only in Europe or in any part of the world, including Europe. The selection can be done by a declaration at the time of signature, ratification or accession of the Convention. If a state, which restricted its obligations by the European geography, wishes to extend its scope of application to every part of the world meaning to ‘lift the limitation’, it can do it at any time with a notification to the Secretary-General of the United Nations. This ‘limitation’ had been proposed in

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<sup>31</sup> 1951 Convention Relating to the Status of Refugees, p.16-17

the Social Committee by French delegation to include the words “events in Europe before 1 January 1951 or circumstances directly result from such events” during the drafting procedures. After the debates, only the words including “events occurring before January 1951” were put in the Convention. Regarding both time and geographical limitations, there is the problem for the countries having territories both in Europe and other parts of the world. USSR, France and Turkey are most significant examples, but for other European countries that have colonies throughout the world, it would also be a problem. The Convention deals with the place of the events that took place without any reference to the nationality or the place of residence of the applicant. For example, if a Somalian seeks refuge, he or she will be eligible within the Convention of being a refugee regardless of his or her residence only if the result is occurred by the event that had been taken place in Europe. However, if the event had taken place elsewhere, he or she would be granted a refugee status only if the host country accepted the option to receive refugees from every part of the world, as stated in the Convention as “elsewhere”. USSR had not ever signed the Convention, claimed that the UNHCR has been protecting US policies.

Although the OAU Convention and the Cartagena Declaration are made by regional concerns, they contribute to the general refugee definition, making it more meaningful. These documents are the products of the developments throughout the world after 1951 Convention; however, they all acknowledge the 1951 Convention as fundamental. Through these developments it can be concluded that the 1951 Convention Relating to the Status of Refugees has been the most important element of the international refugee regime. However, the real intentions to develop the 1951 Convention are arguable. As Bill Frelick states,

... The 1951 Convention Relating to the Status of Refugees was drafted when Europe was attempting to cope with millions of people displaced by World War II and facing the prospect of coping with millions more fleeing a Soviet - dominated Eastern Europe. The Convention explicitly limited its legal force to refugees affected by events occurring prior to 1951 in Europe - excluding the rest of the world's

refugees from the protection mandate. Although the geographic and temporal limits were subsequently dropped in the 1967 Protocol, the implicit Western and Eurocentric state bias remained untouched. ...<sup>32</sup>

#### **1.4. Conclusion**

Having analysed the regional and global developments, it can be concluded that the geographical limitation has only been an issue in 1951 Convention. The global trend points an increase in the asylum applications and this development created a pressure on the government policies towards refugees to be more restrictive. Although there have been several developments in global and European scale in respect to refugees and asylum seekers, these developments do not harbour anything related with the geographical limitation. The countries, including Turkey, based their implementations on the 1951 Convention Relating to the Status of Refugees. The 1951 Convention already maintains its effectiveness in both European and other countries around the globe. Other arrangements are treaties or declarations which address to the regional demands. In this respect, this chapter moves focuses on the 1951 Convention with respect to the main content or discourse. There are no other references present in the following arrangements on geographical limitation, and it specifically derived from the events occurred in Europe before 1951.

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<sup>32</sup> Frelick, B.; "The False Promise of Operation Provide Comfort: Protecting Refugees or Protecting State Power?", Middle East Report, No:176, Iraq in the Aftermath, May-June 1992, p. 3

## CHAPTER II

### TURKISH ASYLUM AND REFUGEE POLICY

#### 2.0. Introduction

Turkey has known mainly as a country of emigration, both in respect of labour migration and asylum seekers. Although Turkey is one of the drafters and first signatory countries of the 1951 Geneva Convention relating to the Status of Refugees, she has not had a clear-cut policy on asylum until the pre-accession talks with the European Union started. Turkey ratified the Geneva Convention in 30 March 1961<sup>33</sup> and stated a declaration on geographical and time limitation to it upon signature. Furthermore, Turkey ratified the 1967 Protocol Relating to the Status of Refugees in 31 July 1968<sup>34</sup> and lifted the time limitation but maintained the geographical limitation. In order to complement to the main argument of this thesis, one of the aims of this chapter is to discuss whether the security concerns mainly constituted the basis of Turkey's implementations on different events and towards various refugee groups.

#### 2.1. Historical Pattern of Asylum to the Territories of Turks

Through the history, Turkey has been a country of immigration as well as a country of emigration. Through 1960s and 70s, there had been a vast number of Turkish nationals migrated to Western European countries for employment opportunities. Later, through illegal migration, asylum and family reunification, Turkish nationals continued to emigrate to those countries. Recently, Turkey has also become a transit country to European Union countries for irregular migrants from Asian countries

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<sup>33</sup> Official Gazette, 5 September 1961, No: 10898

<sup>34</sup> Official Gazette, 5 August 1968, No: 12968 and 14 October 1968, No: 13026

Furthermore, after the end of Cold War, Turkey has also become a destination for irregular migrants from former Soviet Bloc countries.

This pattern of emigration and immigration however, started with the predecessor of the Turkish Republic, the Ottoman Empire. Although the founding fathers of the Turkish Republic clearly stated that the Republic has not have any ties with its predecessor, the Ottoman Empire, she had borrowed or kept continuing the perception and the implementation of the policies on refugee issues. Thus, it is important to mention the refugee movements in the Ottoman Empire period; not only because of the significance of the pattern, but to explain the diversity of the groups that came to Turkey through the centuries as refugees.

There was small and large number of Jews coming from Europe to Ottoman territories; as Ashkenazim Jews from Bavaria in 14<sup>th</sup> century and Sephardim Jews from Iberia in 1492; the latter fleeing from Spanish Inquisition. After the achievement of Spanish unity in 1469 large scale of oppression took place against the non-Catholic Christians, Jews and Muslims.<sup>35</sup> When Muslims and Sephardim Jews were expelled from Spain, they moved to Portugal and from there they were transferred to the Ottoman territories by Ottoman ships and were under financial support of the Ottoman Empire in 1492.<sup>36</sup> Most of the Jews brought to Asia Minor and the rest, alongside with the Muslims, migrated to the coasts of Africa with the help of the Algeria governor, Kılıç Ali Pasha.<sup>37</sup> Nearly a third of the 300,000 Jewish refugees that left Spain settled in the territories of the Ottoman Empire.<sup>38</sup> Ashkenazim Jews were fleeing from the religious persecutions that were widely common at the time period. Although most of them were from Bavaria, there were many from France, Hungary and Italy.<sup>39</sup> The Ottoman Empire was always known to

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<sup>35</sup> Kaynak, M., (ed), "The Iraqi asylum seekers and Turkey", Tanmak Publications, Ankara, 1992, p. 5

<sup>36</sup> Kirişçi, K., "Refugee movements and Turkey", International Migration, 1991, Vol. 29, No. 4, p. 4

<sup>37</sup> Kaynak, M., (ed), *ibid.*, p. 7

<sup>38</sup> Erkoca, Y., article in Cumhuriyet, 16 April 1991, in Kirişçi, K., *ibid.*, p. 1

<sup>39</sup> Uçarer, E. M., "The Global Refugee Regime: Continuity and Change", Boğaziçi Journal Review of Social, Economic and Administrative Studies, Vol.10, No:1-2, 1996, p. 5

be flexible towards the non-Muslim groups within its territories, although in this case the flexibility was for the economic benefit of the empire; since those refugees were an elite merchant group of people. Beside the Jews, King Charles of Sweden crossed the Ottoman borders with around 2,000 people after he was defeated by the Russians and sought asylum from the Ottoman Empire. Later on, Prince Adam Czartorski escaped with his soldiers to the Ottoman Empire during the Polish Revolution in 1830 and continued his struggle. He was followed by Vrangeli who was defeated by Bolsheviks and moved with 135,000 people to Istanbul and settled in Gallipoli, in 1920.

The term “göçmen” used in Turkish for immigrant and the term “mülteci” for refugee had generally been intertwined through the history. Some of the events which took place in the Ottoman Empire and in the early years of the Turkish Republic have been expressed as cases of immigration; although the reasons of those movements carried the characteristics of refugee. Ashkenazi's is an example to this. Another one is that, the nationalist turmoil in the lands of Habsburg Empire led many Hungarian, Polish and Piedmontese nationalists fled as refugees to the Ottoman Empire in 19<sup>th</sup> century, although they have been perceived as immigrants<sup>40</sup>.

Furthermore in 1864, an estimation of one million Muslim refugees<sup>41</sup> fled to the Ottoman Empire with the defeat of Circassians in North Caucasus by Russians. The gradual contraction of the empire and the emergence of the new states led many Christians and Muslims uprooted between late 19<sup>th</sup> and early 20<sup>th</sup> centuries. This led Muslim Albanians, Bosnians, Pomaks, Tatars and Turks from the Balkans to come to Anatolia, whereas Greeks from Western and Central Anatolia, Armenians from Eastern Anatolia were also displaced to other places. These people were faced usually a forced displacement. During the Balkan Wars, approximately 1,5 million people of Turkish Muslims who used to live in Balkans moved into Anatolia as the

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<sup>40</sup> Uçarer, E. M., *op. cit.*, 1996, p. 8

<sup>41</sup> Kirişçi, K., “Turkey: A transformation from emigration to immigration”, Migration Information Source, [www.migrationinformation.org/Profiles/display.cfm?ID=176](http://www.migrationinformation.org/Profiles/display.cfm?ID=176), November 2003, p. 5

Ottoman Empire territories in the Balkans altered. The withdrawal of the Ottoman Empire from its long established territories caused 1,6 million Balkan refugees of Turkish origin, 4 million Circassians, in addition Tatars from Crimea to flee to Turkey.<sup>42</sup> In all of these groups, both Turks and foreigners were present and foreigners were assimilated in the community through the refugee perception of the Ottoman Empire as immigrants. These examples mentioned above who should be considered as refugees and mass influxes due to the contraction of the borders from 19<sup>th</sup> century until the formation of the Turkish Republic, had been perceived as immigrants within the Ottoman Empire. This is because most of the population coming to Turkey were accepted as ethnic Turks or considered within the context of historical responsibilities.

## **2.2. The Refugees in the Republican Era and Policy Responses of the Turkish State**

Turkish Republic also has a long history as being a country of asylum and immigration. Between 1923 and 1997, more than 1,6 million people immigrated to Turkey<sup>43</sup>. Most of those people were again from Balkan states. One of the large population movements occurred in the mid 1920s with a forced exchange of population between Turkey and Greece including Greeks numbering over one million from Turkey and half million Muslims and Turks from Greece.

Furthermore, the Turkish government started an immigration programme for Muslims and Turks from Balkans to settle in Turkey. The reason behind this was that the newly formed Republic needed manpower and skilled people to increase the population. In 1920s, the population of the Turkish Republic was around 13 million. The long sequence of wars started with the Ottoman - Russian War,

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<sup>42</sup> Kirişçi, K., "Refugees of Turkish origin: 'Coerced immigrants' to Turkey since 1945", *International Migration*, 1996, Vol. 34, No. 3, p. 9

<sup>43</sup> Republic of Turkey, Prime Ministry State Institute of Statistics, <http://www.die.gov.tr/ENGLISH/index.html>

followed by the two Balkan Wars, a World War and the Independence War. Furthermore, the internal conflicts such as forced migration leading to deaths of Armenians, Muslims and Greeks.

During 1930s many Jewish and German intellectuals came to Turkey to seek temporary asylum. This and also Turkey as a neutral country during the Second World War led thousands of Jews from Europe to use Turkey as a transit country to Palestine. During the Second World War, many people from Nazi invaded Balkan lands sought refuge in Turkey. These people included many Muslim and ethnic Turks from Bulgaria, as well as Greeks from the Aegean and Italians from the Dodecanese Islands. Although most of these people returned to their countries after the war, some of the Bulgarians stayed in Turkey because of the change of the regime in their own country. Also, during the civil war in Greece, some of the Greeks continued to seek refuge temporarily for an additional time in Turkey.

The end of World War II followed by the creation of the bipolar power structure and the establishment of the United Nations led to a big transformation in the international refugee regime as well as Turkey's own refugee policies.<sup>44</sup> Throughout the Cold War, Turkey was confronted with thousands of asylum seekers from Communist countries of Eastern Europe, since Turkey was an ally of the Western States and a member of NATO. By the strive of UNHCR, most of those people recognized as refugees and resettled to third countries such as Canada, Australia, New Zealand and United States. However, in the last decade of the Cold War this pattern has changed with many Iranians coming to seek asylum after the Revolution in Iran in 1979.

In between 1988 and 1989, when the Halepçe massacre occurred, and in 1991, when Kurd riots occurred, Turkey experienced mass influxes of Kurdish refugees from Iraq. Also in 1989, Turks and Bulgarian speaking Muslims came to Turkey as a mass influx. Later Muslims from Bosnia and Kosovo between 1992 and 1995 and

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<sup>44</sup> Özmenek, E., *op. cit.*, p. 45

from many other groups such as Ahıska Turks came to Turkey as mass influx until 1999. Between the period of 1988 - 1999, Turkey hosted 1 million refugees and asylum seekers<sup>45</sup> including Albanians, Pomaks (Bulgarian speaking Muslims), Bosnians, Kosovars and Turks. In the recent years, Turkey has been under focus for being a transit country for irregular migrants from Afghanistan, Bangladesh, Pakistan as well as Iraq and Iran to European Union.

It is obvious that Turkey has maintained two-way asylum policy through and after the Cold War period. The first part of this policy was maintained towards Europe. As mentioned before, Turkey hosted a large number of people fleeing from Soviet Bloc and let them stay in Turkey temporarily until they had been resettled to a capitalist originated country, such as United States, Canada or Australia. However, during their stay, those people have been given right to enjoy all rights provided by the 1951 Convention relating to the Status of Refugees. Although it is difficult to estimate the total number of those people, between 1970 and 1996, there had been around 13,500 asylum seekers who benefited from the protection of 1951 Geneva Convention according to the statistics of Ministry of Interior. Only a small number of those people were allowed to stay in Turkey, usually because of a marriage with a Turkish national.

Other than those fleeing from the Soviet regime, Turkey hosted around 20,000 Bosnians because of the civil war in former Yugoslavia during 1992 to 1995. In this case, Turkey granted them temporary asylum and settled some of them in refugee camps near the Bulgarian border and sent most of them to stay with their relatives living in various cities of Turkey; mainly in Istanbul and Bursa. After 1995, many of them returned to Bosnia with the diplomatic solutions provided in their homeland. In another case, in 1998 and 1999, almost 18,000 Kosovars came to seek

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<sup>45</sup> Kirişçi, K., "Reconciling refugee protection with efforts to combat irregular migration: The case of Turkey and European Union", *Global Migration Perspectives*, No 11, October 2004, Global Commission on International Migration, p. 17

refuge, but eventually most of them have returned. Another case was the 17,000 Ahıska Turks, who were given residence permits.<sup>46</sup>

**Table 3. The Number of Asylum Applications (Cases) Submitted in Turkey and the Number of Persons Concerned between 1985 and 2004**

Year	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994
<b>Total Persons</b>	86	1639	4640	4815	2410	3636	12240	7375	5985	4457
<b>Total Case</b>	83	1485	4078	4013	2094	2119	5733	4275	2649	2077
Year	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
<b>Total Persons</b>	3977	4435	7330	7330	7226	7019	5928	4331	4280	3934
<b>Total Case</b>	1892	2014	3871	3871	3662	3935	3207	2373	2457	2218

Source: Compiled from the data from UNHCR Branch Office Ankara

The above table shows a general overview to the asylum applications submitted to UNHCR Turkey and it is important to present the migration pressure upon Turkey. There is a drastic increase in asylum applications during the second half of the 1980s and continued through the first half of the 1990s. This had led the adoption of an asylum regulation in 1994. It is important to present the asylum pressure, which is a part of the general migration pressure upon Turkey, and her concerns regarding security.

The second part of Turkey's asylum policy was maintained towards the people coming from outside of European geography. This policy developed with the event of Iranian revolution in 1979 and the continuing instability in Middle East, Southeast Asia and furthermore Africa. Until 1994, Turkey left the assignment to UNHCR dealing with asylum seekers and UNHCR temporarily sheltered and resettled them out of Turkey and the rejected cases were deported. However, the

<sup>46</sup> Kirişçi, K., *op. cit.*, 2003, p. 5

steady flow of asylum seekers to Turkey from these geographical areas continued. In addition, migrants illegally entered Turkey's porous and burdensome borders and the rejected cases that were stranded in Turkey became too much in numbers. Furthermore, almost half a million Kurdish refugees from the 1988 and 1991 events produced two mass influxes towards Turkey. The accumulation of all these events led Turkey to introduce 1994 Asylum Regulation to cope with these overload.

### **2.3. The Legal Structure Concerning Refugees in Turkish Republic and the Reasons behind the Adoption of Specific Legal Sources**

Today, there are three main legal sources of refugee policy of Turkey<sup>47</sup>. The oldest is the 1934 Law on Settlements<sup>48</sup>. Although this Article has been amended several times until today, the basic articles that define who can be an immigrant and refugee have not been changed. This law states that people only of Turkish descent and culture can migrate and settle in Turkey or acquire refugee status. A refugee definition present in Article 3. According to this definition, the refugee is a person who arrives to Turkey to seek asylum because of compulsion, and who has intention to stay temporarily in Turkey<sup>49</sup>. The same article states the refugees of "Turkish descent and culture" can stay permanently in Turkey. The scope of this definition is determined by the Council of Ministers; however, in practice it includes Turks, Albanians, Bosnians, Circassians, Pomaks and Tatars. In addition, people from the Turkic originated countries such as Kazaks, Kyrgyz, Turkmen, Uzbeks and Uyghurs are also admitted; though in small numbers.

Today, the 1934 Law on Settlements is still being used as a major source to accept refugees. In the early days of the Republic, the founding fathers were very concerned about creating a homogeneous sense of national identity to be one of the

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<sup>47</sup> Kirişçi, K., "UNHCR and Turkey: Cooperating for improved implementation of the 1951 Convention relating to the Status of Refugees", *International Journal of Refugee Law*, January 2001, Vol 13, No 1, Oxford University Press, p. 12

<sup>48</sup> Official Gazette, 14 June 1934, No 2733.

<sup>49</sup> Kirişçi, K., *ibid.*

cornerstones of the Republic. During the immigration programme started by the Turkish government for Muslims and Turks from Balkans to settle in Turkey, major priority were given to those Muslim Turkish speakers and people that officially considered belonging to ethnic groups that would easily melt into a Turkish national identity.<sup>50</sup> The reason that this law is still being used might be for the reason of the ever-lasting state policy to protect the Turkish national identity by the state and the fear that it might collapse if the state ceases its protection over it.

The other major legal source is the 1951 Convention relating to the Status of Refugees, which Turkey is one of the drafters and first signatory countries. It has become a part of the national law in 1961. There is geographical as well as a time limit to accept refugees in Geneva Convention, but Turkey lifted time limit when signed the 1967 Protocol relating to the Status of Refugees in 1968. However, Turkey continued to maintain the geographical limitation.

The declaration stated by Turkey in 1951 Geneva Convention is as follows:

“Upon signature:

The Turkish Government considers moreover, that the term "events occurring before 1 January 1951" refers to the beginning of the events. Consequently, since the pressure exerted upon the Turkish minority in Bulgaria, which began before 1 January 1951, is still continuing, the provision of this Convention must also apply to the Bulgarian refugees of Turkish extraction compelled to leave that country as a result of this pressure and who, being unable to enter Turkey, might seek refuge on the territory of another contracting party after 1 January 1951.

The Turkish Government will, at the time of ratification, enter reservations which it could make under article 42 of the Convention.

Reservation and declaration made upon ratification:

No provision of this Convention may be interpreted as granting to refugees greater rights than those accorded to Turkish citizens in Turkey;

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<sup>50</sup> Kirişçi, K., op. cit., 2003, p. 3

The Government of the Republic of Turkey is not a party to the Arrangements of 12 May 1926 and of 30 June 1928 mentioned in article 1, paragraph A, of this Convention. Furthermore, the 150 persons affected by the Arrangement of 30 June 1928 having been amnestied under Act No.3527, the provisions laid down in this Arrangement are no longer valid in the case of Turkey. Consequently, the Government of the Republic of Turkey considers the Convention of 28 July 1951 independently of the aforementioned Arrangements

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The Government of the Republic understands that the action of "re-availment" or "reacquisition" as referred to in article 1, paragraph C, of the Convention-that is to say: "If (1)

He has voluntarily re-availed himself of the protection of the country of his nationality; or (2)

Having lost his nationality, he has voluntarily reacquired it"-does not depend only on the request of the person concerned but also on the consent of the State in question."<sup>51</sup>

The declaration stated by Turkey in 1967 Protocol is as follows:

“The instrument of accession stipulates that the Government of Turkey maintains the provisions of the declaration made under section B of article 1 of the Convention relating to the Status of Refugees, done at Geneva on 28 July 1951, according to which it applies the Convention only to persons who have become refugees as a result of events occurring in Europe, and also the reservation clause made upon ratification of the Convention to the effect that no provision of this Convention may be interpreted as granting to refugees greater rights than those accorded to Turkish citizens in Turkey.”<sup>52</sup>

The reason for Turkey to state declaration on geographical limitation was the fear of mass influx or massive population movements from Asia or Middle East. The Geneva Convention is not clear on the right to asylum regarding mass influxes; however, Turkey had to deal with mass influxes from neighbouring countries. Mass influx can be defined as the arrival of thousand of asylum seekers to the country

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<sup>51</sup> Reservations and Declarations to “1951 Geneva Convention relating to the Status of Refugees” and “1967 Protocol relating to the Status of Refugees”, <http://www.unhcr.ch/cgi-bin/texis/vtx/protect/opendoc.pdf?tbl=PROTECTION&id=3d9abe177>, UNHCR International Web Site, [www.unhcr.ch](http://www.unhcr.ch)

<sup>52</sup> Reservations and Declarations to “1951 Geneva Convention relating to the Status of Refugees” and “1967 Protocol relating to the Status of Refugees”, <http://www.unhcr.ch/cgi-bin/texis/vtx/protect/opendoc.pdf?tbl=PROTECTION&id=3d9abe177>, UNHCR International Web Site, [www.unhcr.ch](http://www.unhcr.ch)

within a very short period of time, usually measured in terms of days rather than weeks and it often occurs outside the control of the host country's authorities.<sup>53</sup>

The separation of Muslim Indians and the rest of India from British colonialism to form separate countries of India and Pakistan as independent countries led massive Muslim and Hindu movements. Furthermore, in the late 1940s the Palestinian crisis occurred. Although most of the Palestinian refugees moved to Jordan; considering the Indian and Pakistani cases and the Palestinian case, the possible risk of a mass influx or massive movements from southeast or east led Turkey to be sympathetic to place an 'option' during the drafting stages of 1951 Geneva Convention and to state a declaration to place a geographical limitation during the signing of the Convention.

During the Cold War, Turkey maintained the geographical limitation in order to remain an ally of Western countries against the Communist Bloc, and thus resettled the refugees running away from communist countries to Western countries. Between 1970 and 1996, there had been 13,500 asylum seekers benefited protection in Turkey.<sup>54</sup>

The final major legal source is the "The Regulation on the Procedures and the Principles Related to Mass Influx and the Foreigners Arriving in Turkey either as Individuals or in Groups Wishing to Seek Asylum either from Turkey or Requesting Residence Permits with the Intention of Seeking Asylum from a Third Country", hereafter referred as 1994 Asylum Regulation or 1994 Regulation, introduced in November 1994. The legal status of the refugees in Turkey from outside the European geography was established with this regulation; which provides a temporary asylum until their resettlement to a third country.<sup>55</sup> According to this law, the refugee status determination done by UNHCR is to be undertaken by

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<sup>53</sup> Kirişçi, K., "Refugees of Turkey since 1945", Boğaziçi Research Papers, ISS/POLS 94-3, p. 13

<sup>54</sup> Numbers from Ministry of Interior

<sup>55</sup> "Funding and Donor Relations", 1999 Global Appeal, Operations in Turkey, <http://www.unhcr.ch/fdrs/ga99/tur.99>

Turkish government officials. In practice however, this is still being done by UNHCR in the name of Turkish Republic. UNHCR is still responsible for refugee status determination and finding solutions for non-European asylum seekers.<sup>56</sup>

Turkey developed an asylum policy relating to the people outside of European geography mainly in 1980s, especially after Iranian Revolution. Turkey adopted a 'flexible visa policy'<sup>57</sup> which enabled Iranians to enter the country without a visa and they were permitted to stay in the country temporarily. Although there are no official statistics, a member of the Turkish Parliament put the total of Iranians that benefited from this arrangement between 1980 and 1991 at 1,5 million.<sup>58</sup> Among these Iranians, there were many Baha'is, Jews and Kurds; however, the majority consisted of the opponents of the new regime or former supporters of the Shah. Although Turkey demonstrated flexibility for their entrance, she was reluctant to satisfy internationally accepted humanitarian norms because of its concern at offending Iran by accepting large numbers of Iranians.<sup>59</sup> Most of them were encouraged to move to third countries while a few of them were given residence permits to stay in Turkey.

Until mid 1990s, Turkey allowed asylum seekers to stay in Turkey until they resettled to third countries by UNHCR. However, government had to introduce a law in 1994 regarding refugees. This was because of the increase in the number of rejected asylum seekers who were left stranded in Turkey. Furthermore, the mass influx of Kurds in 1988 - 1989 and in 1991; and Bosnians and Kosovars of approximately 40,000 led Turkey to undertake additional measures within the law. The application of the law attracted criticism since Turkey started to deport asylum seekers to the country of origin violating the principle of non-refoulement. This

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<sup>56</sup> "UNHCR Country Profiles-TURKEY", <http://www.unhcr.ch/world/euro/turkey.htm>

<sup>57</sup> Kip-Barnard, F., "Harmonization of Turkey's Asylum and Migration Policies to the European Union and Its Consequences on Turkey's Neighbourhood", Conference Paper, Eastern Studies Centre, Warsaw, Poland, November 2005 p. 7

<sup>58</sup> See Kirişçi, Cumhuriyet, 15 February 1993

<sup>59</sup> Özmenek, E., "Statelessness and Refugees as a Global Problem; Turkish Refugee Policies", MA Thesis, Bilkent University, Political Science and Public Administration, Ankara, 2000, p. 32

particular principle states that an asylum seeker cannot be sent to the country of origin in situations which their lives and human rights are threatened. Later in 1997, Turkish government and UNHCR returned again to a close cooperation.

The government statistics shows that there have been approximately 4000 - 4500 applications lodged in a year between 1995 and May 2004<sup>60</sup>.

**Table 4. Asylum Applications in Turkey and the Outcomes between 1995 and May 2004**

Country	Applications	Accepted cases	Rejected cases	Pending cases	Cases not assessed
Iraq	12,274	4,541	3,502	3,139	463
Iran	21,601	13,062	1,441	6,030	236
Afghanistan	658	221	180	196	58
Russia	43	15	13	7	3
Uzbekistan	128	36	39	24	22
Azerbaijan	33		18		5
Other Europe*	101	51	28	19	4
Other**	324	59	43	63	140
Total***	35,162	17,985	5,264	9,478	931

\* Includes Albania, Belgium, Bosnia, Bulgaria, Georgia, Greece, Italy, Macedonia, Switzerland, Ukraine and Yugoslavia.

\*\* Includes Algeria, Bangladesh, Birmania (Myanmar), Burma, Burundi, China, Congo, Egypt, Eritrea, Ethiopia, India, Israel, Jordan, Kazakhstan, Kuwait, Kyrgyzstan, Lebanon, Libya, Morocco, Pakistan, Palestine, Philippines, Rwanda, Sierra Leone, Sri Lanka, Somalia, Sudan, Syria, Tunisia, Turkmenistan, Yemen, Zaire.

\*\*\* Not appearing in the table but included in the total are 1,504 applications that were subsequently withdrawn.

Source: The data originated from the Foreigners Department of Ministry of Interior

Turkey has granted temporary asylum to 17,900 people in cooperation with UNHCR. In accordance to geographical limitation, Turkey expects those asylum seekers to be resettled if they have been granted refugee status. During this period, 17,500 people were resettled and those whose applications were rejected may be deported to their country of origin. However, there is a strong possibility that at least some of them vanished out of sight of authorities and stayed in Turkey.

<sup>60</sup> Republic of Turkey, Prime Ministry State Institute of Statistics, <http://www.die.gov.tr/ENGLISH/index.html>

## **2.4 Conclusion**

From the European point of view, Turkey has been a country of emigration and a refugee producing state. However, the historical analysis shows that Turkey has also been a country of immigration and during the difficult periods, has also been a host country to asylum seekers such as Sephardim and Ashkenazi Jews, Polish, Hungarian and Swedish political refugees, Italians, Greeks and Bulgarian Turks during the WW II, and the people from Soviet Regime during the Cold War, Iranians from the Revolution of 1979 and Kurds from crises in Iraq. Therefore, Turkey does not serve as a refugee producing country, but also undertaken the role of a refugee receiving country; furthermore she has implementations and policies from time to time that can be regarded as liberal and humanitarian; although Turkey has not had a distinct asylum law or asylum system until today. A striking example is the cases of Iranians. Although Turkey maintains the geographical limitation, and although she has not granted refugee status, she has accepted Iranian refugees from east and allowed them to stay within her territories by granting them temporary residence. Furthermore, even though the asylum seekers did not submit applications for refugee status, Turkey adopted policies to provide support to refugees from east in times of crises.

Turkey's actions to adopt of too many liberal policies and to help asylum seekers excluded from the scope of geographical limitation, yet to maintain the limitation itself poses a contradictory situation. On certain events, Turkey gave preference to policies regarding security concerns like in the cases of Kurds. Turkey adopts different implementations to asylum seekers who might pose security problems; those who enter Turkish territories illegally, and asylum seekers of political reasons. For example, before the adoption of 1951 Convention, Turkey evaluated decisions to grant asylum base only on the 1934 Settlements Law. According to this Law, Turkey granted asylum to those of Turkic origin and those who have close ties with Turkish descent and culture. Although Turkey adopted a humanitarian policy to some people, it is selective and discriminatory regarding the exclusion of others.

However, Turkey applied this discriminatory implementation - although it was a humanitarian policy - with certain security concerns, regarding the creation of a homogeneous society, and to maintain internal stability within Turkish territories.

The reason for Turkey to state declaration on geographical limitation was the fear of mass influx or massive population movements from neighbouring countries to the east and south east, from Asia and Middle East. The 1951 Convention is not clear on the right to asylum regarding mass influxes; however, Turkey had to deal with mass influxes from neighbouring countries.

The study on this chapter shows that the security dimension of events is very important for Turkey; however, alongside with security, Turkey did not avoid humanitarian concerns. Turkish policies and practices towards refugees have always included both humanitarian and security concerns; the policies do not originated only from security concerns that humanitarian subordinates to it. The historical evidence in this chapter shows us Turkey's humanitarian perspectives as well as security concerns.

## **CHAPTER III**

### **EUROPEAN UNION'S ASYLUM POLICIES**

#### **3.0 Introduction**

Neither during the times of the Community, nor at the start of the newly established Union, had there been a common policy on asylum. Until the consequences of the events proved the need of a common asylum policy; this field was under the competence of the nation states. Each member state had its own regulations. However, the European Community responded to those needs starting with the Single European Act in 1986. The reasons behind it were varied. There was the increase in the asylum applications lodged in European countries and abuses of the asylum mechanism, which led member states to introduce restrictive regulations to prevent both issues. It was obvious to deal with it by common action. However, the first initiatives started with the realization of the Single European Market, which necessitated the free movement of persons, services and goods.

The geographical limitation was not adopted only by Turkey, but all of the Western European states have maintained the limitation until the ratification of 1967 Protocol Relating to the Status of Refugees. The sole proposal to add the geographical limitation was in fact came from the French Delegation of the Ad-Hoc Committee during the drafting stages of the 1951 Convention Relating to the Status of Refugees. One of the main debates in this chapter is the reasons behind the adoption of the geographical limitation in European states. Furthermore, the general attitudes of European states towards refugee in regards of policies will also be examined. In addition, there were states like Hungary that lifted the geographical limitation during the harmonization process towards European Union membership.

European Union membership. The similarities between Hungary and Turkey in terms of geographical limitation will also be discussed in this chapter.

### **3.1. The Refugee Regime in Europe**

As explained in previous chapters, the development of the international refugee regime mainly started in Europe. Before World War I European states started to restrict the admission of foreigners to their countries because of security reasons. After the War, the disintegration of Ottoman and Austrian Empires and the Bolshevik Revolution in Imperial Russia led millions of people uprooted. Many refugees moved to Western European states. The League of Nations assembled to deal with the problem but the restrictive laws introduced before the War have been kept because of the economic instability and the high rate of unemployment caused by the Great Depression of 1930s. Through the Depression years further people started to emerge, fleeing from persecutions of Nazi regime in Germany, fascist regimes in Italy and Austria, and from Spanish Civil War.

After the World War II, refugees of greater numbers became a problem in Europe. This time the United Nations assembled and took over the duties of League of Nations which dissembled after the failure of preventing a second world war. The chaotic situation of millions of uprooted people in Europe and the newly begun Cold War led United Nations High Commissioner of Refugees (UNHCR) to prepare a new document, the 1951 Convention relating to the Status of Refugees, which contained the international definition of refugee accepted by the signatory countries for the first time.

### **3.2. The Significance of Convention regarding the Western European States**

The Convention proved to be a useful tool during the Cold War, serving in two way gain: First, as a way of rescuing people from the Soviet regime of one pole of the Cold War to the other pole of Capitalism; thus an effective tool to combat Soviets.

Second, a humanitarian action to save people who are submitted to persecutions. The humanitarian part proved to be effective all right. The cases such as the Hungarian uprising of 1956 against the Soviets resulted in 200,000 people fleeing out of Hungary, and ‘Prague spring’ of 1968 in Czechoslovakia - again a Soviet suppression, where a small number of people fled out of the country.<sup>61</sup> In all these cases, UNHCR resettled those people to other ‘capitalist’ countries. Off course, the humanitarian part included the millions of people, mostly Jews, who were left uprooted again after a World War.

Western European states welcomed those refugees. Especially Germany and France, as well as Holland, Belgium and United Kingdom, where the need for labour is extremely high for reconstruction of war wrecked, devastated countries and especially for rebuilding their industries. Refugees were welcomed at this point, and those countries called up people from their former and present colonial lands and made special labour agreements with third countries.

### **3.3. The Western European States’ Policy Responses towards Refugees Regarding the Changing Events during the Cold War**

There had been tight border controls on a divided Europe during the Cold War, and from the mid 1950s onwards until 1980s, the refugee flows were rather low compared to the former years of post World War II.<sup>62</sup> During this time European states’ governments were compassionate towards refugees and favouring integration in their countries.

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<sup>61</sup> UNHCR, “The State of the World’s Refugees, Fifty Years of Humanitarian Action”, 2000

<sup>62</sup> Alp, Ç., “Asylum Harmonization Process and Its Impacts within the Context of EU Enlargement”, Ankara: MSc. Thesis, European Studies, METU, June 2005, p. 15

**Table 5. The Asylum Applications and the Recognition Rates in European Countries between 1980 and 1989**

	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989
<i>Applications submitted</i>										
Austria	9,259	34,557	6,314	5,868	7,208	6,724	8,639	11,406	15,790	21,882
Belgium	1,700	2,400	2,900	2,900	3,700	5,300	7,700	6,000	4,500	8,112
Denmark	-	95	-	800	4,300	8,700	9,300	2,750	4,668	4,588
France	19,900	19,900	22,500	22,400	21,700	28,900	26,300	27,700	34,400	61,422
Germany	107,818	49,391	37,423	19,737	35,278	73,832	99,650	57,379	103,076	121,318
Greece	1,792	2,250	1,200	450	750	1,400	4,250	6,950	8,400	3,000
Italy	2,450	3,600	3,150	3,050	4,550	5,400	6,500	11,050	1,300	2,250
Netherlands	3,200	1,600	1,214	2,015	2,603	5,644	5,865	13,460	7,486	13,900
Norway	-	100	-	200	300	900	8,600	6,600	4,400	4,433
Portugal	-	-	-	1,500	400	100	250	450	350	150
Spain	-	325	2,450	1,400	1,100	2,350	2,300	2,500	4,516	4,077
Sweden	-	12,651	10,225	7,050	12,000	14,500	14,600	18,114	19,595	30,335
Switzerland	3,020	4,226	7,135	7,886	7,435	9,703	8,546	10,913	16,726	24,425
United Kingdom(1)	2,350	2,425	4,223	4,296	4,171	6,156	5,714	5,863	3,998	11,640
<b>Total</b>	<b>151,489</b>	<b>133,520</b>	<b>98,734</b>	<b>79,552</b>	<b>105,495</b>	<b>169,609</b>	<b>208,214</b>	<b>181,135</b>	<b>229,205</b>	<b>311,532</b>
<i>'51 UN Convention recognition</i>										
Austria	5,327	2,900	17,361	2,678	2,053	1,876	1,431	1,115	1,785	2,879
Belgium	1,500	2,080	1,100	1,180	770	640	1,190	2,680	308	514
Denmark	-	-	-	-	-	-	-	3,924	1,018	700
France	17,000	14,590	15,670	14,610	14,310	11,540	10,650	8,700	8,790	8,770
Germany	12,488	7,824	5,030	5,195	6,560	11,224	8,853	8,231	7,621	5,991
Greece	1,780	2,230	1,180	420	740	690	690	-	2,550	1,635
Italy	3,993	1,250	872	1,106	1,459	831	783	918	785	1,121
Netherlands	70	-	77	169	114	115	176	237	589	1,032
Norway	-	-	-	-	-	130	180	271	147	357
Portugal	-	-	-	-	-	-	-	-	12	25
Spain	-	-	230	330	20	294	850	513	555	264
Sweden	-	-	-	-	-	-	-	2,326	3,698	3,079
Switzerland	1,265	1,285	655	422	640	939	820	829	831	821
United Kingdom(1)	1,413	1,473	1,730	1,190	690	920	543	460	628	2,210
<b>Total</b>	<b>44,836</b>	<b>33,632</b>	<b>43,905</b>	<b>27,300</b>	<b>27,356</b>	<b>29,199</b>	<b>26,166</b>	<b>30,204</b>	<b>29,317</b>	<b>29,398</b>
<i>Decisions taken</i>										
Austria	7,361	6,186	20,544	4,144	4,498	4,155	3,625	3,550	6,718	15,013
Belgium	-	-	-	-	-	-	-	5,599	721	1,317
Denmark	-	-	-	-	-	-	-	3,924	3,406	-
France	17,000	18,767	21,210	20,862	21,928	26,662	27,279	26,624	25,421	31,170
Germany	81,951	61,984	31,636	28,256	17,988	28,237	40,808	70,231	70,604	120,610
Greece	1,780	2,230	1,180	420	740	690	690	-	6,708	4,591
Italy	4,593	2,450	3,082	2,451	3,695	3,720	4,892	5,916	7,006	1,938
Netherlands	745	-	1,640	2,133	1,756	3,139	3,988	10,278	10,265	12,977
Norway	-	-	-	-	-	480	610	3,666	7,053	10,212
Portugal	-	-	-	-	-	-	-	-	31	54
Spain	-	-	230	330	20	294	850	513	555	2,336
Sweden	-	-	-	-	829	868	2,198	12,585	14,649	23,320
Switzerland	2,104	1,556	1,379	1,516	4,078	8,083	8,879	11,239	12,505	16,353
United Kingdom(1)	-	2,360	2,944	2,956	2,010	3,811	4,045	3,476	2,702	6,955
<b>Total</b>	<b>115,534</b>	<b>95,533</b>	<b>83,845</b>	<b>63,068</b>	<b>57,542</b>	<b>80,139</b>	<b>97,864</b>	<b>157,601</b>	<b>168,344</b>	<b>246,846</b>
<i>Conv. rec. rate (%)</i>										
Austria	72.4	46.9	84.5	64.6	45.6	45.2	39.5	31.4	26.6	19.2
Belgium	..	..	..	..	..	..	..	47.9	42.7	39.0
Denmark	..	..	..	..	..	..	..	100.0	29.9	..
France	100.0	77.7	73.9	70.0	65.3	43.3	39.0	32.7	34.6	28.1
Germany	15.2	12.6	15.9	18.4	36.5	39.7	21.7	11.7	10.8	5.0
Greece	100.0	100.0	100.0	100.0	100.0	100.0	100.0	..	38.0	35.6
Italy	86.9	51.0	28.3	45.1	39.5	22.3	16.0	15.5	11.2	57.8
Netherlands	9.4	..	4.7	7.9	6.5	3.7	4.4	2.3	5.7	8.0
Norway	..	..	..	..	..	27.1	29.5	7.4	2.1	3.5
Portugal	..	..	..	..	..	..	..	..	38.7	46.3
Spain	..	..	100.0	100.0	100.0	100.0	100.0	100.0	100.0	11.3
Sweden	..	..	..	..	0.0	0.0	0.0	18.5	25.2	13.2
Switzerland	60.1	82.6	47.5	27.8	15.7	11.6	9.2	7.4	6.6	5.0
United Kingdom	..	62.4	58.8	40.3	34.3	24.1	13.4	13.2	23.2	31.8
<b>Total</b>	<b>38.8</b>	<b>35.2</b>	<b>52.4</b>	<b>43.3</b>	<b>47.5</b>	<b>36.4</b>	<b>26.7</b>	<b>19.2</b>	<b>17.4</b>	<b>11.9</b>

(1) 1980-1987: no. of persons. 1988-1989: no. of cases.

For notes, see Refugees and Others of Concern to UNHCR: 1998 Statistical Overview, Geneva, July 1999, Chapter V.

Source: Governments, compiled by UNHCR.

asy8089.xls

As it can be analyzed from the abovementioned table 5, in European countries there has been serious pressure on the asylum systems with the increasing number of applications. The asylum systems came to a point of almost collapse and there have been serious public reactions, like in the UK, and furthermore this issue has become political material in debates. Especially during the first half of 1980s, the refugee flow from other parts of the world continued in even greater number. By this time, the economic depression that originated from the oil crisis from previous years caused an increase in unemployment. These factors led many European countries to take restrictive actions against migrants.

During the 1970s there were an increasing number of people coming to Europe from other continents. The decolonization led to the creation of new states all around the world and many people were displaced. Also, the civil wars and military coups such as in Uruguay and Chile of 1973 and Argentina of 1976 led many people to leave those countries and come to Europe.<sup>63</sup> Refugees became to be a problem during 1970s in the eyes of European governments. The oil crisis in the mid 1970s caused an economic instability and the increasing number of refugees began to be unwelcomed since there was no need for migrant labour anymore.

### **3.4. The Early Stages of a Common Asylum and Migration Policy of European Union**

The efforts started with the ad-hoc committees and debates within inter-governmental conferences, however, they eventually resulted in the creation of several multilateral institutional machineries that intended to create and implement new rules and decision-making procedures for asylum and immigration issues.<sup>64</sup> If the milestones would be put in chronological order, the cooperation towards a common asylum system started with the TREVI Group in 1970s continued with the

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<sup>63</sup> Alp, Ç., *op.cit.*, p. 16

<sup>64</sup> Uçarer, E. M., "Managing Asylum and European Integration: Expanding the Spheres of Inclusion", 2002, p.295

Schengen Agreement. The White Paper and the Single European Act came later, followed by Dublin Convention. The Maastricht Treaty or the Treaty on European Union in 1992 marked an important turning point. The Tampere conclusions in 1999 and The Hague summit marked the contemporary developments.

In June 1976, “Terrorism, Radicalism, Extremism and Violence International”, namely TREVI group was officially formed at a meeting of EC Ministers of Justice and Internal Affairs in Luxembourg; managed by European Political Cooperation. The main purpose of this committee was to enhance practical cooperation on internal security and border control among the European countries to combat terrorism. The committee was formed of the interior and justice ministers of the European Community member states.

TREVI formed four working groups; the first two were established in 1977, one to exchange information on terrorism, the second to examine wider issues of police cooperation such as public order, language difficulties, training etc. The issue of terrorism was closely linked to the ongoing counter-terrorist activities of intelligence services, and brought TREVI into contact with various intelligence agencies in Europe. Informal working patterns evolved out of these relations, which had direct bearing on TREVI’s later work. A third working group was formed in 1985, to deal with cooperation over serious crime, defined mainly as drug-trafficking and organized crime, but also including computer crime, money laundering and crime analysis. TREVI was successful in bringing together officials and officers from different participating countries for cooperation over specific cases.

A fourth working group, known as ‘TREVI 1992’, was initiated in 1988 to examine the consequences of abolishing internal border controls within the EU. The findings of this group formed the base for the 1990 TREVI Programme of Action, proposing measures to counter new threats of cross-border crime. Many of TREVI’s recommendations were implemented by the member states. After 1992 TREVI was

integrated into the EU structure under a new name, the ‘Co-ordination Committee for Justice and Internal Affairs (K-4)’ and its functions expanded to regulation proposals over law enforcement and intelligence issues, including the interception of communications, information databases and privacy.

In 1983, an ad hoc sub committee was formed under the TREVI group to focus on immigration and asylum issues. However, the conclusions of the TREVI group supported the negative point of views towards asylum seekers and the restrictive trends towards asylum policies, since there was a negative perception to associate refugees and terrorists.<sup>65</sup> In 1986, Ad-Hoc Immigration Group was established by the member states’ ministers responsible for immigration and migration. Again a sub committee of TREVI, the Group was responsible of the assistance in the coordination and harmonization of national visa, asylum and immigration policies. It is aimed to improve the situation of asylum seekers and refugees as well as finding solutions for the ‘refugees in orbit’, the ones who are shuffled from country to country without finding a state willing to examine their asylum claims.<sup>66</sup> There were other sub groups present; dealing with the issues on external borders, exchange of information and false documents.

Another milestone is the Schengen Agreement. It was started in 1984 with the initiative of Germany and France, the most usual refugee receiving countries in Europe. It has been introduced on 14 June 1985, but in practice, it was in 1987 that an organization of efforts were started to be directed to harmonize asylum policies. After the start by France and Germany, the Benelux countries joined the initiative and the First Schengen Agreement, or in its formal name ‘Schengen Agreement on the Gradual Abolition of Checks at the Common Borders’ has been introduced. The Schengen Agreement was a milestone for the harmonization of the asylum policies and became a pilot project or a ‘laboratory’ for a Europe wide cooperation;

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<sup>65</sup> Cels, Johan, “Responses of European States to de facto Refugees”, in G. Loescher and L. Monahan (eds), “Refugees and International Relations”, Oxford: Clarendon Press, 1989, p.210

<sup>66</sup> Bahadır, A., “Development of the EU Asylum Policy: Preventing the Access to Protection”, Ankara: MSc. Thesis, European Studies, METU, July 2004, p. 25

although there was very limited participation.<sup>67</sup> It aimed to harmonize visa policies, the controls at the external borders, adoption of common rules on asylum rights and general measures regarding the laws on foreigners, where and if necessary.

The Schengen Agreement was crucial to realize the free movement of persons within the signatory states. It has been used as a major legislative tool to realize the common market project. The negotiations between these five EC states finalized the Second Schengen Agreement, namely the 'Convention Implementing the Schengen Agreement', on 19 June 1990; which came into force on 1 September 1993. This Second Schengen Agreement set the conditions for the abolition of border checks amongst the signatory states. Furthermore, it required necessary compensatory measures for internal security, such as regulations on the entry and expulsion of asylum seekers and non-EC citizens as well as on drugs, terrorism and international crime.<sup>68</sup> This area formed by the territories of five signatory EC countries known as Schengen Area and gradually expanded towards all other member states until 1997. Only United Kingdom and Ireland refused to be a signatory state.

In the European Commission's White Paper on Completing the Internal Market of 28-29 June 1985, the need for a proposal on measures regarding asylum and the status of refugees has been stated. In 2-3 December 1985, the Single European Act was introduced, which stated the elimination of all barriers until 1 January 1993 for the completion of common market. During 1986 and 1987, the ratification continued within member states and on 1 July 1987 SEA came into force. With this plan, there was a major debate of the possible effects of common market on the movement of asylum seekers within the member states, since there would be no borders among them. It was feared by the governments that the abolition of the border controls would lead to a loss of control over the entry of the persons entering the territory, thereby opening up the way for illegal immigration for asylum seekers

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<sup>67</sup> Lavenex, S., "Safe Third Countries - Extending the EU Asylum and Immigration Policies to Central and Eastern Europe", Central European Press, 1999, p. 36

<sup>68</sup> Lavenex, S., *op. cit.*, 1999, p. 36

and economic migrants as well as criminals, drug traffickers and terrorists.<sup>69</sup> A lot of these concerns were coming from the most refugee receiving countries. They claimed that the already lax immigration controls of the southern member states combined with the abolishing borders among members states would cause the total of loss control over immigrants and asylum seekers among the common market territories. These concerns, mixed with the fear of criminals, terrorist and drug traffickers, made the concerns as a security and internal stability issue for the governments. Those concerns were countered by other concerns from the countries of transit for refugees; both member and non-member states such as Turkey, Italy and Greece. They feared that the rules to be introduced as safeguard measures might entail a dislocation of refugee movements to their debit.<sup>70</sup> To cope with the concern of security deficit expected, the European Community states accepted to adopt strict entry provisions, strengthening the controls over external borders of the Community and adoption of common measures against illegal immigrants, asylum seekers and criminals.

The Dublin Convention on the State Responsible for Examining of an Asylum Claim was a major step regarding the asylum policy development. The provisions made at the Convention have replaced the asylum chapter of the Schengen Agreement. The Amsterdam Treaty later on required the incorporation of Schengen Agreement of 1985 including the Dublin Convention; which necessitated all member states to ratify Dublin Convention. The Convention was held on 15 June 1990 and the conclusions came into effect on 1 September 1997; except Sweden and Austria ratified on 1 October 1997 and Finland on 1 January 1998. The aim of the Convention was to set up common criteria to determine which member state is responsible for examining an asylum request. The asylum seekers, once they have entered in the 'Schengen Area', began to move freely among the member states and submit multiple applications to choose the most suitable country for their claims. It was this that determined the responsible state for the applicants. It was also to find a

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<sup>69</sup> Lavenex, S., *ibid.*, 1999, p. 34

<sup>70</sup> Hailbronner 1989: 30 and Loescher 1989: 628 - 29 in Lavenex, S., *op. cit.*, 1999, p. 32

solution for those applicants whom no state would like to accept; in order to avoid having the asylum seekers be left in ‘orbit’; it was signed to ensure that asylum requests will be examined by at least one of the member states.<sup>71</sup> The Dublin II regulations issued on 26 July 2001 following the working paper presented by the European Commission on June 2001.

### **3.5. The Situation after the Cold War and the Finalization of the Common Asylum and Migration Policy**

The 1992 Maastricht Treaty, or Treaty on the European Union, was a major point on asylum issues of the Community. It was the first time that migration and asylum issues were introduced in the European Union framework. The implementation of the Dublin Convention is stated in the Treaty. An outline of the formal intergovernmental cooperation has been set out and from this Treaty onwards, the harmonization of the asylum policies started to be planned. The cooperation on the asylum area has been made formal in the Maastricht Treaty; although it was not clear how the harmonization process would take place.

It was laid out in the Treaty with a three pillar structure. The existing European Communities, EC, European Coal and Steel Community (ECSC) and Euroatom, became the first pillar of the Union; Common Foreign and Security Policy (CFSP) became the second pillar and Justice and Home Affairs (JHA) became the third pillar. Although it was planned to make synchronized development in all of the pillars, CFSP and JHA became an intergovernmental structure. The reason was the ever hot issue of sovereignty transfer from national governments to the supranational institution. Asylum and migration issues were placed under the Justice and Home Affairs pillar, and the intergovernmental development of this pillar slowed the development of a common asylum policy and the transfer of these policies to the applicant states of the Union. The asylum issues were transferred to

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<sup>71</sup> Alp, Ç., *op. cit.*, p. 27

be handled within the Union's jurisdiction; to be handled by the Council of Ministers. It was an important development since the Council has to act with unanimity so the decisions would be easy to implement without further oppositeness from the member states' governments. However, the legal instruments prepared by the Council for the harmonization process, such as resolutions, recommendations and joint positions, were not binding because of the disagreements among member states on asylum issues; and they had to develop the refugee policies on the lowest common denominator since they were reluctant to accept any possible constraints on their national sovereignty.<sup>72</sup>

The harmonization was seen as a preliminary phase for the goal of a common policy and a Common Asylum System as it was set out in Treaty of Amsterdam in 1997 and later reinforced by the Conclusions of a special summit meeting in Tampere in October 1999. The Amsterdam Treaty was signed on 2 October 1997 and entered into force on 1 May 1999. In the intergovernmental conference of March 1996, the developments on harmonization of asylum policies have been discussed. There were criticisms for the intergovernmental structure set up in Maastricht Treaty. The decisions and the legal instruments adopted were criticized as inefficient since they lacked binding. The Treaty of Amsterdam brought amendments to Maastricht Treaty by transferring the asylum and immigration issues placed under the intergovernmental third pillar to the supranational first pillar, under a new title called "Visas, Asylum, Immigration and other Policies related to the Free Movement of Persons". As always, this transfer brought concerns about transfer of sovereignty and there were strong oppositions from the member states governments. Because of this, a 'transitional period' of five years from the entry of Amsterdam Treaty into force (1999-2004) was stated in the Treaty. Through this period, the member states' governments would have right to initiate legislation with the European Commission; so the decision making on asylum issues would continue to be handle by intergovernmental framework.

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<sup>72</sup> Lavenex, S., "Europeanization of Refugee Policies: Between Human Rights and Internal Security", 2001, p. 111

Another significant amendment was about the role of the European Court of Justice. Alongside with the European Commission and the European Parliament, EJC would have a role in the decision making procedures and implementation processes except in practice for some cases ‘relating to the maintenance of law and order and the safeguarding of internal security’<sup>73</sup> Another significance of the Amsterdam Treaty was the introduction of the Schengen acquis and the Dublin Convention into the EU framework, and from May 1999 Schengen Agreement has been effective for all of the EU member states except for UK and Ireland which has not signed the Schengen Agreement. Along with these developments, there was also a hindrance regard to the general refugee regime with the Amsterdam Treaty. There was a successful Spanish proposal to exclude EU citizens to seek asylum in other EU countries. Although the Spanish government insisted on this proposal to prevent the members of the separatist Basque organization ETA to seek asylum in other EU member states, it had placed a practical geographical limitation to the Geneva Convention.<sup>74</sup>

Another milestone for the development of a common asylum policy was the Tampere Conclusions taken at the Tampere Summit on 15-16 October 1999. In this summit, it was agreed that a common asylum policy on asylum and immigration should be developed. To achieve this aim, a more effective burden sharing and an enhanced cooperation with the countries of origin and the countries of first asylum has been decided. In the Conclusions, it has been stated ‘to create a common European Asylum System based on the full and inclusive application of the Geneva Convention; maintaining the principle of non-refoulement’ and ‘an absolute respect to the right to seek asylum’.<sup>75</sup> Furthermore, it has been suggested in the Conclusions that ‘a financial reserve to be created for situations of mass influx of refugees for temporary protection’.<sup>76</sup> Later in September 2000, this led to the creation of the European Refugee Fund. This would be used to support the existing

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<sup>73</sup> Lavenex, S., *op. cit.*, 1999, p. 46

<sup>74</sup> *ibid.*, p. 47

<sup>75</sup> Bahadır, A., *op. cit.*, p. 39-40

<sup>76</sup> *ibid.*, p. 40

refugee programs as well as the new initiatives to be undertaken by national, regional and local authorities, international organizations and NGO's for the reception of asylum seekers, integration of recognized refugees and for other that in need of protection and voluntary repatriation.<sup>77</sup>

By the end of spring 2004, following the adoption of the last few major regulations, the EU has constituted its common asylum and migration policy and relevant acqui, starting from May 2004. The last milestone was the Hague Programme that has been approved on 4-5 November 2004 in Brussels. It is a five-year programme for closer co-operation in justice and home affairs at EU level from 2005 to 2010. It is the continuation of the five year programme set out in the Tampere Conclusions in justice and home affairs. Immigration and asylum were the major focal points of the Hague agenda alongside the prevention of terrorism. The member states agreed to use qualified majority decision-making and co-decision in the fields of asylum, immigration and border control issues.

In the field of asylum, immigration and border control, the Hague programme contains several key measures. One of them is to form a common asylum system with a common procedure and a uniform status for those who are granted asylum or protection by 2009. Furthermore, to take measures for foreigners to legally work in the EU in accordance with labour market requirements; and to create a European framework to guarantee the successful integration of migrants into host societies. In addition, to create partnerships with third countries to improve their asylum systems, better tackle illegal immigration and implement resettlement programmes; and a policy to expel and return illegal immigrants to their countries of origin. Another crucial measure is to create a fund for the management of external borders. In regard to the visa policies, a measure is to build Schengen information system (SIS II) in order to create a database of people who have been issued with arrest warrants and of stolen objects to be operational in 2007; and finally to apply

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<sup>77</sup> Alp, Ç., *op. cit.*, p. 43

common visa rules which would include common application centres, introduction of biometrics in the visa information system.

A 'roadmap' for the implementation of The Hague Programme through 2005-2010 has been determined. It consists of ten key areas for priority action. The first one is regarding the fundamental rights and citizenship in order to develop policies enhancing citizenship, monitoring and promoting respect for fundamental rights. The second is related with the fight against terrorism to prepare prevention strategies, to prepare the member states and response strategies. Another one is to develop a common EU immigration policy and to counter illegal migration for managing migration. Another important area stated was the internal and external borders, and visas. This area is focused to be an area of action to develop an integrated management of external borders and a common visa policy, while ensuring the free movement of persons. Other two crucial areas involve creating a common asylum area and fighting organized crime. Furthermore, in order to maximize the positive impact of migration on society and economy further integration is also necessitated. In the area of freedom, security and justice, reviewing the effectiveness of policies and financial instrument in meeting the objectives is targeted to be completed within the period of 2005-2010. Also, developments stated to be planned to balance the need to share information among law enforcement and judicial authorities with privacy and data protection rights. Finally the Hague Programme calls for effective access to justice for all and the enforcement of judgments in the area of civil and criminal justice.

### **3.6. The Hungarian Experience**

Hungary was the first Eastern Bloc country to join the international refugee regime while still under a Communist government in 1989. Before that time, there were a lot of ethnic Hungarians wishing to return to their home country. The Hungarian constitution of 1949 contained an asylum provision, but this was only be

implemented by the government. Until 1987, Hungarian governments had not put this provision much into use, but the situation has changed when large numbers of Hungarians from Transylvania fled from the discrimination in Romania, exercised under the Romanian dictator Nicolae Ceausescu. After 1 year, there were 13,000 refugees in Hungary, and 95 percent of them were ethnic Hungarians from Romania.<sup>78</sup> The influx continued in the following years. All of them were admitted to Hungary. Later on, there were German refugees fleeing from former German Democratic Republic and used Hungary as transit country to reach Austria, and from there to Federal Republic of Germany. Then the country faced another wave of influx with the outbreak of civil war in the former Yugoslavia.<sup>79</sup>

Large numbers of Croats, Bosnians and ethnic Hungarians flee to Hungary. Hungary's decision to join the international regime was a reaction to the mass influx of ethnic Hungarians from Romania, in order to repatriate these Hungarians back to Romania. In March 1989, Hungarian government signed 1951 Geneva Convention and its 1967 Protocol. However, the Hungarian government placed a geographical limitation, and despite its promises many times to abolish, it had stayed into force until 1998. Hungary adopted two asylum procedures until the geographical limitation is lifted. On one hand, Hungarian government executed the first one for asylum seekers from European geography. On the other hand UNHCR dealt with refugees coming from outside of Europe and Hungarian government grant a temporary residence for them.

The Hungarian government argued maintaining of geographical limitation by their fear of being overwhelmed of refugees from all over the world, who could not be integrated into Hungarian society. Together with the introduction of new asylum law, Hungary adopted its legislation to the EU and adopted the concept of safe third country together with simplified procedures in asylum cases which are manifestly

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<sup>78</sup> Fullerton, M. E., "Hungary, Refugees and the Law of Return", *International Journal of Refugee Law*, Vol. 8, No. 4, 1996, p. 506

<sup>79</sup> *ibid.*, Note 66

unfounded.<sup>80</sup> Until that time, there were several criticisms from UNHCR as well as other international organizations and European Parliament, regarding the maintaining of geographical limitation. Before 1998, the most Hungary' asylum policy characterised on the acceptance of limited number of cases. Between 1988 and 1995, 133,000 asylum seekers entered Hungarian borders, but only 5,000 of them submitted asylum applications and followed the recognition process through the end. Only 4,000 of them granted formal refugee status and most of who were ethnic Hungarians.<sup>81</sup> The mass number of asylum seekers did not apply for a refugee status in Hungary and the ones that were accepted were mainly ethnic Hungarians. After 1992, Hungary adopted restrictions on it policies towards refugees, claimed to be overwhelmed by Bosnian refugees after Austria closed its borders. These restrictions were later legalized in 1998 asylum reform to harmonize EU legislation.

The refugees outside the scope of geographical limitation were not much a concern for Hungary, since the applications were few, and most asylum seekers used Hungary as a transit country. Until 1998, there were many asylum seekers arriving Hungary both legally and illegally. The Hungarian government was not concerned with illegal asylum seekers and migrants since they were not staying within the country but continuing their way towards western European countries. The average stay of these asylum seekers was four to six months after registering to authorities at the border and placing a formal asylum application. After that they disappear and continue their way to the neighbouring countries.<sup>82</sup>

Therefore, the Hungarian government never saw asylum seekers as a problem, and the abolishing of geographical limitation was not of their concern. When the government lifted the geographical limitation, it caught UNHCR officials by surprise; they had not even informed the UNHCR officials in advance. However, the Hungarian government was ready in many aspects. They had established an

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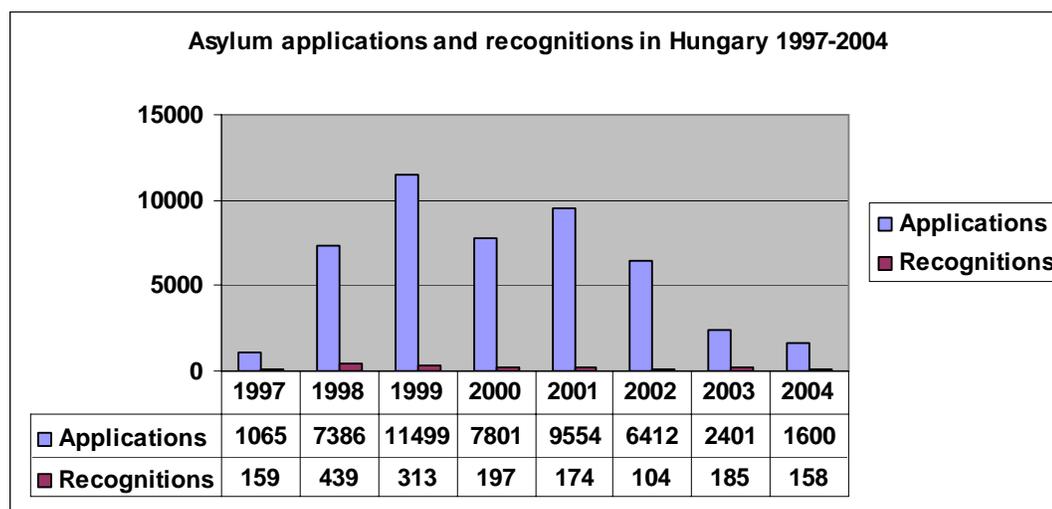
<sup>80</sup> Lavenex, S., *op. cit.*, 1999, p. 139

<sup>81</sup> Fullerton, M. E., *op. cit.*, p. 521

<sup>82</sup> Obtained from the interview with UNHCR officials at UNHCR office in Ankara

asylum system before the decision of abolish was taken. At a very early stage, Hungary signed readmission agreements with the neighbouring states and other Balkan states. They have started with Austria and Germany, and continued with Ukraine, Czech Republic, Slovakia and Bulgaria. They had also tried to sign a readmission agreement with Turkey, but Turkish government was reluctant to do so, and it had failed.<sup>83</sup> The successful establishment of asylum system in Hungary was achieved by two reasons. First, the training of government officials had started at a very early stage. It had been undertaken initially by UNHCR officials; later on German and Austrian officials also joined to train Hungarians with the Twinning Projects undertaken during the EU harmonization process. Secondly, they have allocated resources also at a very early stage; therefore, Hungary did not suffer financial cutbacks during the process.

**Table 6.**



Source: UNHCR Officials at UNHCR Branch Office Ankara

Hungary had feared a boost in asylum applications after the abolishing the geographical limitation and later joining to the EU. However, the opposite occurred. The number of asylum applications submitted in Hungary has been reduced by 25

<sup>83</sup> *ibid.*

percent.<sup>84</sup> Hungary experienced a significant increase in the number of asylum seekers from 1997 to 1999, and after the peak in 1999; there was another increase in 2001. However, since 2001 there has been a steady decrease. In 2004, the decrease was 33 percent in comparison to 2003. A similar trend can be observed in both new member states such as Poland and Czech Republic, and former member states such as Greece; according to UNHCR figures, Greece has one of the lowest acceptance rates in the European Union, having awarded asylum status to just 0.9 percent of applicants in 2004 and 0.6 percent in 2003.<sup>85</sup>

There are three reasons in respect of the decrease in asylum seeker applications. First, the asylum seekers discouraged after they found out they can no longer place an asylum application and expect to be resettled to another country; but stranded in Hungary. Therefore, they did not submit applications in Hungary. The asylum routes has changed and oriented through Italy and Spain.<sup>86</sup> The second reason was the initiation of increased legal penalties to people entering Hungary illegally. The legislation has been changed to provide to charge detention up to one year. The last reason was the increased and intense border guarding by Hungarian government; especially the borders between Ukraine and Serbia and Montenegro.

### **3.7. Conclusion**

Hungary was also one of the members of international refugee regime which maintained geographical limitation like Turkey until 1998. However, Hungary can not be a model for the projections of Turkish asylum policy in the future because Hungary was a Soviet Bloc country thus on the ‘Soviet camp’ during the Cold War. But the adoption of geographical limitation in Turkey was mainly to align a policy with the US to combat Soviet Bloc. Although Hungary declared the mass influx

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<sup>84</sup> *ibid.*

<sup>85</sup> “Greece failing to uphold asylum duties to immigrants, says NGO”, UNHCR USA web site, <http://www.usaforunhcr.org/archives.cfm?ID=2876&cat=Archives>, April 27, 2005

<sup>86</sup> At that time, there were a significant increase regarding illegal entries in Italy and Spain.; Information obtained by UNHCR officials from UNHCR office Ankara.

concerns from the surrounding region, this is unrealistic, since there were limited number of asylum seekers came to Hungarian territories compared to Turkey, and very limited number of them submitted asylum applications in the country, which by any standard is few compared to other European countries as well as Turkey. Turkey and Hungary adopted geographical limitation because of completely different reasons since the concerns of Hungary and Turkey are not the same. Hungary is not a country under the threat of mass influxes in great numbers and contains territories that pose danger to the country unlike Turkey.

The analysis of European asylum and refugee policies shows that, although there has been a common policy, this was set at the minimum standards and the area of Common Asylum Policy needs further collaborative work. Moreover, this chapter showed that a geographical limitation is unacceptable as it has not been a part of the acqui, and it has been asked from Hungary and other new member states to lift it within the harmonization process. Concerning the debate of geographical limitation, Turkey does not have an opt out and has to align its policies with the Common Asylum Policy of Europe. This has been clearly evident in Hungarian example. Although there is a general tendency around the globe, the concept of geographical limitation is more specific to Europe and seen as a security concern by European countries, thus we observe more restrictive policies in Europe.

## **CHAPTER IV**

### **A CASE STUDY ON GEOGRAPHICAL LIMITATION WITHIN THE CONTEXT OF EU-TURKEY HARMONIZATION PROCESS**

#### **4.0. Introduction**

Through the relatively new descriptions made through the first half of the 20<sup>th</sup> century, the definition of refugee introduced to the international agreements; although there have been some traces of earlier citations or small definitions made in earlier centuries. The major breakthrough however occurred in 20<sup>th</sup> century when the consequences of events inescapably brought the issue to take an action for refugees. In this chapter, the policy analysis of Turkey and European states will be discussed in respect of geographical limitation. In order to provide a better explanation, a theoretical framework consisting of the two major government approaches, the liberal and security oriented approaches, to refugee issues will be presented. All of the policy analyses will be made through the perspective of these two approaches.

#### **4.1. A Theoretical Approach to the State Policies of Refugee and Migration**

As Sandra Lavenex argues, “the refugee policy is characterised by an intrinsic tension between the principles of human rights and national sovereignty.” Furthermore she states, “As a consequence, the notions of refugees and refugee protection are contested concepts, whose perception and definition follow either more statist or more humanitarian concerns. The socio-philosophical implications of this dichotomy are reflected in the evolution of the discipline of International

International Relations.”<sup>87</sup> As Lavenex expresses, the states’ policies towards refugees can be categorized under two main groups. The first one is the most popular one among government policies and oversees through a nation state perspective regarding the security concerns and threat to national sovereignty. The latter can be expressed as a liberal approach, a humanitarian point of view concerning the rights, needs and necessities of refugees.

#### **4.1.1. The Liberal Approach**

The liberal point of view is not only stated and argued by international organizations, academicians and NGO’s; but ‘sovereign states’<sup>88</sup> as phrased by Goodwin-Gill, also adopted it in their policies from time to time, though their intentions differ by acting as such. Furthermore, the establishment of international organizations like League of Nations and its predecessor United Nations (UN), or the Organization of African Unity (OAU) are the result of the common act of the states.

The liberal perception is based on the Kant’s perspective of idealism. It rejects the idea of realism, which will be explained in later parts of this chapter to explain the nation state perspective, wherein the natural state of international relations is conflict and war. According to the Kantian perspective, the main actor in the international system is the individual in a “community of mankind”<sup>89</sup>. The individual is the sovereign and the state guarantees the rights of its people. Furthermore, the role of the state is to fulfil the universal values. It is proposed that a centralised power to be established for creating and implementing law above the states to protect peoples’ rights from manipulation of individual sovereignties and to preserve the universal norms. According to liberal perception, the idea of

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<sup>87</sup> Lavenex, S., *op. cit.*, 2001, p.10-11

<sup>88</sup> Goodwin-Gill, G.S., “Refugees: Challenges to protection”, *International Migration Review*, Vol. 35, No.1 (Spring 2001), p. 132

<sup>89</sup> Lavenex, S., *op. cit.*, 2001, p.13

international relations is to consist of individuals who have higher degrees of reason, law and morality with the interaction and interdependence of each other. This progress will depend on abolishing war, to learn from the experience and to have ambition to create common laws and institutions, and interdependence and understanding among different peoples.<sup>90</sup> Thus, the international system is the existence of universal values, growing interdependence and the increasing institutionalisation of common laws and regimes. Rather than the states' conflict with each other to serve each nation's self interest, liberal perception sees the cooperation to characterise international relations. In this point of view, moral principles come first before political considerations.

From the idealist perspective of liberal perception, refugees are individuals that have rights. They are not the debate of state sovereignty and should not be seen or treated as voluntary migrants, as the realist concept that originates the nation state perspective argues. Liberal perception sees refugees who are individuals violated in terms of basic human rights and in need of protection. Since human rights are common for all individual human beings, the violations of them are the common concern of all humanity regardless of race, religion or membership of a particular group or culture. The protection of human rights is therefore for the good of all mankind and a condition for peace; and a common responsibility for all mankind. The violation of human rights is thus a common concern for all human community; and not an issue of state sovereignty.

Therefore, it is the responsibility of international community to prevent the human rights violations and the production of refugees. To achieve this, the nation states must cooperate to prevent the main reasons of flight including economic cooperation and perhaps go as far as humanitarian intervention. Furthermore, the international community has the responsibility to provide protection for refugees. This responsibility also creates a limit on the decision of judgment over the composition of their population and entry of refugees into their territory; except in

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<sup>90</sup> Hurrell 1990: 194ff in Lavenex, S., *op. cit.*, 2001, p.14

the situation where the amount of individuals that states receive as refugees come to violate the fundamental rights of citizens of those states. According to liberal point of view, the basic rights of individuals are by far superior to the political considerations of national interests of states.

The liberal approach had seen both World Wars and continued through the second half of the 20<sup>th</sup> century until the end of Cold War. Especially, after the Second World War many people uprooted were refused both entry visas and asylum in other European countries. The general guilt led to a special treatment being awarded to ‘political refugees’, such as persons in fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion as stated in the 1951 Geneva Convention.<sup>91</sup> Also, Cold War environment effected this action. Later, this point of view has not been confined with Europe, but other organizations have taken similar actions or enlarged the scope of these treatments in different parts of the world. For instance, in Africa, where refugee movements have also been caused by generalized violence, recognition and assistance have been extended to several additional categories of refugees. This was enacted by a decision in Organization of African Unity (OAU) Convention.

During the period of 1960s, the 1951 definition was generally interpreted liberally so that many asylum seekers who were not labour migrants were accommodated under the 1951 Convention. For instance, in some countries women were given Convention status under the “social group” category. The Executive Committee of the UNHCR programme indicated in 1985 that states were free to grant refugee status to women who were persecuted as a “particular social group”.<sup>92</sup> This kind of flexibility adopted for special cases such as war refugees, deserters and persons avoiding military service. A number of countries also created *ad hoc* solutions allowing asylum seekers to stay under another status though differed in their names: “B” status in Scandinavian countries, “exceptional leave” to remain in the UK,

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<sup>91</sup> Joly, D., “Haven or Hell?: Asylum Policies and Refugees in Europe”, New York: St. Martin's Press, 1996, p.34

<sup>92</sup> *ibid.*, p.10

*Duldung*<sup>93</sup> in Germany. For instance, in Germany the Länder may decide to allow asylum seekers to stay although they have been refused status. As an example, in 1966 the Interior Ministers of Länder formally agreed not to return any foreigner from a Warsaw Pact nation.<sup>94</sup> The policy adopted in this example however, is probably taken by the affects of the Cold War disputes of the time, although it seems to be taken by humanitarian concerns.

At the end of the 1980s, the parameters of the Cold War began to crumble. A realignment of powers and a global reformulation of policies were needed. This had a deep impact on refugee policies. The asylum seekers from Eastern Europe did not enjoy the same preferential treatment as before. Few countries agreed to accept victims of the civil war in the former Yugoslavia despite the well publicised atrocities taking place which affected several groups.

The reasons that sometimes states' policies are driven or heavily affected by the political concerns rather than humanitarian to take a liberal action by stressing humanitarian points are open to debate and it is argued by academicians such as Danièle Joly<sup>95</sup> and Kim Salomon<sup>96</sup> in their works.

According to Goodwin-Gill, as one of the academicians expressing the liberal view, there was a clear sense of protection ever present. However, the term 'protection' was never defined separately, rather referred or expressed within other sources such as 'legal protection', 'political and legal protection' or 'international protection'. The Refugee protections system started with League of Nations and was later institutionalized with United Nations High Commissioner for Refugees and the universal legal structure formed with the 1951 Convention relating to the Status of Refugees. Through the following years, it has evolved with the further needs and to cover extensive situations and geographical areas. According to Goodwin-Gill, the

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<sup>93</sup> *ibid.*

<sup>94</sup> *ibid.*

<sup>95</sup> *ibid.*

<sup>96</sup> Salomon, K., *op. cit.*

system had worked up until 1980, but through the 1990s, it did not, regarding to the granted protection and finding solutions to refugees.

From the liberal point of view, there has been improvement on the refugee determination procedures and the concept of persecution is better understood as a result of the human rights doctrine.<sup>97</sup> Furthermore, the sense of obligation on protection has become more clear as the action against torture in state parties have increased and the protection of human rights mechanisms have been extended to include expulsion and admission; areas which fall into the nation states' sovereign territories. Also, statelessness and nationality have become an important international concern.

Goodwin-Gill stresses that the 'sovereign states' are still the destination of flight and the solution. On the other hand, UNHCR also operates for protection and solutions as an international organization in those states' territories, most of which are party of either 1951 Convention or 1967 Protocol or other agreement or declarations following 1951 Convention. The important point is that the Convention regime includes individual rights as well as state obligations. Here, one of the weak points of the Convention regime is that the organization that leads the regime as *de facto*, UNHCR is greatly in need of voluntary donations for international protection and assistance. The individual interests of donors, which are generally state governments, have an undeniable effect on the regime. According to Goodwin-Gill, although the regime has to be nonpolitical and humanitarian, the regime has weak spots on the effect mentioned above and the three-way relationship concerning mass movements, state obligations and international solidarity.<sup>98</sup>

Less than 5 percent of the UNHCR's annual expenditures are covered by the UN regular budget; the remainder of its funding and resources come from voluntary contributions, mainly from national governments most of which are developed

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<sup>97</sup> Goodwin-Gill, G.S., *op. cit.*, 2001, p. 132

<sup>98</sup> *ibid.*, p. 132

states such as United States, Western European countries, Japan, Canada and Australia. While having resources is critical for the organization to be genuinely operational, this process has, of course, created dependency on a small number of developed states for which they are rewarded with permanent membership on the agency's governing body.<sup>99</sup> UNHCR's dependence on voluntary contributions forces it to adopt policies that reflect the interests and priorities of the major donor countries. Politics and foreign policy priorities cause donor governments to favour some refugee groups over others. For instance, during the 1980s, international aid per Afghan refugee in pro-Western Pakistan was more than three times higher than that allocated to Afghan refugees in anti-Western Iran.<sup>100</sup> The High Commissioner herself also accepts the fact that foreign policy considerations are reflected during funding priorities and that some projects are better funded than others. She provides the example that the Yugoslavian operation was heavily funded by European states and that Cambodia by Japan which in fact reflects a kind of geopolitical interest.<sup>101</sup>

Because of this situation, UNHCR has often either become subservient to the policies of powerful donors or become immobilized, thereby damaging its credibility as an effective and impartial advocate for refugees. An example to this is that, during the 1980s, UNHCR objected to the US policy of returning Salvadorans to their homelands and criticized the substandard conditions of collective accommodation centres for asylum seekers within the Federal Republic of Germany. But in both cases, the High Commissioner could exercise only very limited influence, because of the American and German donations form an essential portion of the UNHCR budget. Criticism was met with threats to cut off from funding. In the 1990s, the United States and West European governments have

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<sup>99</sup> Hathaway, J. C., "New Directions to Avoid Hard Problems: The Distortion of the Palliative Role for Refugee Protection", *Journal of Refugee Studies*, Vol. 8, No.3, 1995, p. 291

<sup>100</sup> Loescher, G., "Beyond Charity: International Cooperation and the Global Refugee Crisis", New York: Oxford University Press, 1993, p.131

<sup>101</sup> Ogata, S., "The Evolution of UNHCR", *Journal of International Affairs*, Vol.47, No. 2, Winter 1994, p.422

continued to override UNHCR protests and disregard criticism on their forcible repatriation of thousands of Haitians and Albanians.<sup>102</sup>

In his article of early 2001<sup>103</sup>, Goodwin-Gill states that the state perception of security towards refugees is being used wrongfully as a defensive measure against the migration flows into the state territories and human trafficking. He also criticises both governments and international organizations failures to respond to the large movements of refugees, the changes in the root causes of flights, their decision making mechanisms and the inability to set strategic goals and tactics to tackle it.

Goodwin-Gill does not oppose all the interests of the host states. He respects and agrees with the efforts of states to protect their citizens' rights, their host communities, and other refugee groups residing in the host communities. However, he stresses that these interests regarding the security concerns to protect the rights of their citizens should not cover another agenda, such as foreign policy concerns; which will be explained in the nation state perspective. Furthermore, the interest of states has to make a compromise with the protection of refugees in a joint effort of interdependence among states and between states and international organizations.

There exist other challenges to the liberal perception concerning the application of this view. It has been mentioned that the essential factor of liberal perception in practice are the international organizations. The interests of donors to these organizations is one weak spot pose as a challenge. On the other hand, the accountability of international organizations is another important challenge to the implementation of liberal view. In the early years of UNHCR, this potential problem has been overcome by annual reports to the General Assembly. However, as Goodwin-Gill points out<sup>104</sup>, through the following decades and especially in the 1990s, measures to ensure the accountability of UNHCR - the biggest organization

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<sup>102</sup> Loescher, G., *op. cit.*, p.137-138

<sup>103</sup> Goodwin-Gill, G.S., *op. cit.*, 2001, p. 11

<sup>104</sup> *ibid.*, p.135

to protect refugees - have failed. During 1990s, in Great Lakes, Rwanda and Kosovo, the role of international organizations and their loyalty to their principles have been under question. The events that took place in Kosovo in 1991, put UNHCR's non-political characteristic under question. Following that in 1996 in Zaire, UNHCR failed to protect the people under their protection from cross-border raids.

As a consequence, Goodwin-Gill stresses that states have the following obligations: to respect the principle of non-refoulment, to have protection obligations with regard to admission and treatment after entry, to not create refugee outflows, and to cooperate with other states to resolve any outflow occurs. He accepts the realist perception of nation state point of view, that the nation state is inherently violent and causes exclusion for security concerns or under national interests among its citizens. However, he stresses that the states are obliged to provide a certain standard of treatment in accordance with human rights.

James Hathaway<sup>105</sup>, another strong debater of the liberal perception towards refugees, states that the lawyers working in the field of refugees are often hindered by the paradoxical fact that the governments try to solve the problems on refugees that they create themselves with the nation state perspective and furthermore, they try to solve those problems only by themselves and with the same nation state perspective that caused the problem in the first place. As Daniel Warner criticises, "What is within a country that causes violence to some is the same form of politics that denies entry to others."<sup>106</sup> Hathaway too criticizes that many states fail to fulfil their obligations and the intergovernmental organizations has limitations to cope with the refugee issues. What Hathaway proposes for a solution is a supranational organization as a protective body over refugee issues.

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<sup>105</sup> Hathaway, J. C., "Reconceiving Refugee Law as Human Rights Protection", *Journal of Refugee Studies*, Vol. 4, No. 2, 1991, p. 129

<sup>106</sup> Warner, D., "The Refugee State and State Protection" in, Nicholson, F.; Twomey, P. (eds), "Refugee Rights and Realities: Evolving International Concepts and Regimes", Cambridge [England]; New York: Cambridge University Press, 1999, p. 266

#### **4.1.2. The Security Oriented Nation State Approach**

As stated at the beginning of this chapter, it is argued by Lavenex that the approach towards refugees is either originated by statist or humanitarian concerns. In international relations, from a realist point of view statism is the key word to explain the second point of view stated in this chapter and explains the nation state perspective: the security oriented perception towards refugees.

Statism implies that the key actors in the international system are “sovereign states”; as the phrase has been also mentioned by Goodwin-Gill. The sovereignty of states has two dimensions as internal and external. In the internal dimension, the state is the supreme authority to make and enforce law within its territories. Basically, this is based on the idea that there is a social contract exists between the people and the state to guarantee their security. So, to guard the internal security is the first priority of the state. Accordingly, state leaders are the ones who act to protect the national interest of the state; as it directly means the interests of people. According to this logic, it can be said that in times of crisis, human rights falls into second plan compared to security concerns to preserve the national order. Unfortunately, from this point of view, human rights are not universal like the basic rights of mankind, but they are applied between the state and its people, namely its citizens, and differ from state to state. On the other hand, in external dimension of sovereignty the states are the supreme controller over their own territories and there is no other authority allowed to interfere the internal affairs of states. Realist views states that if a common power does not exist, there are no common principles or norms in the international system. In this case, every state follows its own foreign policy as it sees fit. This is called self-help in the realist discourse.<sup>107</sup> Every goal including economic goals is bound to the national interest of the state.

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<sup>107</sup> Lavenex, S., *op. cit.*, 2001, p.17

According to the nation state perspective, refugees are in the context of state sovereignty which includes the control of its population and territory. With the absence of human rights in universal, the refugee becomes no different than any other voluntary migrant. The violation of human rights in one state does not interest another state because it does not present an international violation since there is the absence of universal human rights and since those rights are only subjected to the respective country of origin. In this case, refugees are either seen as a tool for foreign policy of other states to gain power over the country of origin or seen as a threat to internal security or 'national security'. If a state loses control of migration flows towards inside and outside of its territories, then there is a risk of disrupt in its internal stability, by either emigration or immigration or both. Interrelated with this, it becomes a risk to the social, economic and political stability. At this point, migration becomes a security threat.

This brings an explanation to the current phenomena of European Union's effort to transfer their policies outside the countries of EU to create safe third countries to control the refugee flows - or migration flows in basic nation state perspective - to preserve the internal stability of EU states and possible conflict between the refugee producing states and refugee receiving states.

The refugees can also be used as a tool for foreign policy<sup>108</sup>, as stated above. In this case, a provocation of refugee flow by one state in another state will disrupt the targeted state's internal stability by draining its manpower skills. In addition, if an opposition group of government in the targeted state is encouraged to emigrate to its own territories, a state can support and increase the power of opposition groups and therefore strengthen its own position for power against targeted country. Furthermore, refugees can be used as icons of propaganda campaigns against the targeted states.

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<sup>108</sup> Jacobsen, K., "Factors Influencing the Policy Responses of Host Governments to Mass Refugee Influxes", *International Migration Review*, Vol. 30, No. 3, Autumn 1996, p. 662

The foreign policy discourse also brings an explanation, that the 1951 Geneva Convention relating to the Status of Refugees was prepared by ‘capitalist’ ‘western states’ and affected heavily with the emerging Cold War policy of United States; and until 1990s the Convention regime were heavily influenced by United States in a bipolar Cold War world; where USSR claimed the regime was protecting traitors and serving US policies and refused to take part in it.<sup>109</sup> Therefore, sometimes states’ policies are driven or heavily affected by the political concerns in accordance to security oriented nation state perspective rather than humanitarian to take a liberal action by stressing humanitarian points. It is especially true for the reasons of drafting the 1951 Geneva Convention relating to the Status of Refugees, to serve the foreign policies of western states and United States against the Communist Bloc through the Cold War era, although there is an undeniable fact that there was a need for humanitarian action for the uprooted people of Second World War, however subordinates to the former reason.

After the Cold War however, the concept of security has taken a different dimension. The nation state point of view has received alterations in itself towards the concept of national security. It has become to be perceived in three dimensions; as strategic, regime, and structural dimension.<sup>110</sup> Where the strategic dimension refers to the external dimension of nation state security concept as explained above, and where the regime dimension is the capacity of the government to protect itself from internal threats arising from domestic conflict and disorder. The structural dimension is the balance between a state’s population and its resource capabilities such as accommodation, food and water supplies. This balance comes under threat, along with the internal stability, when demands on resources become too much to accommodate, such as in a refugee mass influx scenario; although in this case all three dimensions come under threat.<sup>111</sup>

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<sup>109</sup> Salomon, K., *op. cit.*, p. 251

<sup>110</sup> Jacobsen, K., *op. cit.*, p. 671-672

<sup>111</sup> *ibid.*, p. 671-672

From the nation state - security concerns point of view, the possible threat conditions can be explained under four categories. The refugees can be a threat in opposition to the host state's regime; a political risk; a threat to the cultural identity of the host state; and a social and economic burden.<sup>112</sup>

The host state's decision to grant refugee status often creates an adversary relationship with the country that produces the refugees. If the host state gives refugee status for the well-founded fear of persecution, it automatically accuses the country of origin for persecuting their citizens. The refugee producing country may think that the host country might using her citizens, as explained above, as a foreign policy tool against her regime. There are examples for this scenario as the effort of United States to arm the Cuban refugees to overthrow Castro regime at the Bay of Pigs, or the support of Arab states given to Palestinian refugees against Israelis. Another scenario is that, refugees might actively lobby in the host states in order to force those governments to adopt specific foreign policies towards their home countries. An example to this scenario is the presence of almost one million of Cuban refugees in United States, almost all of whom are opposed to Castro regime have made it difficult to achieve the normalization of relations between USA and Cuba.<sup>113</sup> In such cases, the state of origin may hold the host state responsible for their activities and claim it to be hostile. For these concerns, the host state may perceive refugees as a threat to its national security.

As another example, and much more important one concerning Turkey, is the presence of great numbers of Kurdish refugees in Europe and especially in Nordic States such as Sweden, that make the relationship between the European Union and Turkey difficult when regarding human rights concerns. Until 2004, when Turkey was still being monitored to be qualified as a candidate state for future membership of the Union, Turkey had been under pressure for her treatment of its citizens of Kurdish origin; however, not relating to those who live in cosmopolitan cities or

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<sup>112</sup> Lavenex, S., *op. cit.*, 2001, p.18

<sup>113</sup> Weiner, M., "A Security Perspective on International Migration", *The Fletcher Forum of World Affairs*, Vol. 20, No. 2, 1996, p. 23-24

any region of Turkey, but specifically those in the south eastern region of Anatolia. Although there are many citizens of different ethnic origins (such as Arabs, Assyrians and Syrians) living in the region apart from Kurdish originated, European Union and especially Swedish government and delegations to Turkey have stressed the humanitarian condition and treatment of Turkish governments to Kurds must be improved in order for Turkey to be qualified for further negotiations with European Union. This can be an example to the scenario mentioned above; as Kurdish refugees has strong pressure over Swedish government to adopt a policy towards Turkey in order for it to improve the conditions of Kurdish minority only, and to make it a prerequisite for Turkish accession to EU.

In accordance with the concern of risk to its regime, the host state sees refugees as a political risk to itself by the same reason of possibility in order to force those governments to adopt specific foreign policies towards their home countries. If the host state does not compel to their wishes, there arises a risk of the received refugees that were given protection to turn against the host state. During the invasion of Kuwait by Iraq, the invaders were counting upon the support of those around 400,000 Palestinians who held important positions in the Iraqi administration. After the war, the Kuwaiti government expelled the Palestinians as a security threat.<sup>114</sup> Furthermore, there is also a risk of refugees to launch terrorist attacks within the host state, ally with the domestic opposition against host governments' policies, smuggle arms, and be involved in drug traffic; thus increasing the crime rate, disrupting political stability and causing international political problems with other states. For example, Palestinians, Kurds, Armenians and Northern Irish asylum seekers have been investigated not only for their claims of being well-founded fear of persecution, but the possible threat of their presence constitute to the host community; especially within the context of increased international terrorism throughout the world.<sup>115</sup>

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<sup>114</sup> Weiner, M., "Security, Stability, and International Migration", Chapter 6 of "International Migration and Security", Myron Weiner (ed), Boulder, Oxford: Westview Press, 1993, p. 109

<sup>115</sup> Weiner, M., *op. cit.*, 1996, p. 24

In another dimension, the refugees are perceived by the nation state point of view as a threat to national identity; especially in states where ethnic rivalries are strong, with weak governments and where essential resources are limited. In those cases, refugee movements might disrupt the inter-communal harmony and may alter the major societal values by changing ethnic, religious linguistic and cultural compositions within the host society; and therefore propose a risk to cause a great strain on the system. A large refugee influx with ties to a particular domestic group can disrupt the internal balance within the host state and even be a threat to the existing political system.<sup>116</sup> Since refugees usually seek to preserve their own cultural heritage and national identity, to hold to their dreams of eventually to return to their states of origin, their integration into the host society becomes much more difficult. This attitude of refugees might trigger xenophobic reactions within the host society, not only complicating their integration further, but with the gradual rise of xenophobic and racist feelings in society, most governments fear the anti-refugee or anti-migrant parties to threaten the regime of nation state.<sup>117</sup>

The last point of argument from the perception of nation state towards refugees is the social or economic burden they would cause. From this point of view refugees might create a substantial economic burden by limiting accommodations or housing, education, and transportation facilities. In advanced industrial societies, a dependency to services created by the welfare state would be added. On the other hand, in less developed states, refugees may illegally occupy private or government lands or produce waste.<sup>118</sup> In some states, an influx of refugees is accompanied by drug and arms traffic; thus creating an increase in crime and violence in the host states, leading to domestic instability.<sup>119</sup>

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<sup>116</sup> Dowty, A.; Loescher, G., "Refugee Flows as Grounds for International Action", *International Security*, Vol. 21, No. 1, Summer 1996, p. 48

<sup>117</sup> *ibid.*

<sup>118</sup> Weiner, M., *op. cit.*, 1996, p. 27

<sup>119</sup> Loescher, G., *op. cit.*, 1993, p. 24-25

### **4.1.3. A Conclusion to Theoretical Framework Concerning both Approaches**

Goodwin-Gill assumes that if all states fulfil all their obligations there would be no exceptions and therefore no refugees. Citizens are protected by their governments because the primary obligation of states is to protect their citizens. In addition, governments are supervised by various treaties and organizations for keeping an eye on and supervising those treaties to make sure that states fulfil their obligations to their citizens. These organizations do not protect citizens; they try to guarantee that states do. And states themselves establish those organizations.

According to a realist explanation of the nation state perception, or statist discourse, it was accepted that there is the natural resistance of nation state for an international authority or common power because it would be a threat to the states' sovereignty. However, in the case of UNHCR, whatever the initial reasons of establishment were, it is currently there to be an international organization to protect refugees; although there is the resistance to an international authority existence coming from the very nature of the nation state - the security perception. The role of UNHCR is not to create new state obligations in the normal function of states, but rather to see that states function in such a way that the citizens will be protected. Therefore, both the nation state security concern and humanitarian concern will be sufficed together. As stated by Arthur C. Helton, "UNHCR's protection responsibility, which is entrusted to it by the international community, makes it distinct among international organizations...In a fundamental sense; protection means to secure the enjoyment of basic human rights and to meet primary humanitarian needs"<sup>120</sup>

The protection of refugees is an extension of human rights protection taken in very specific and exceptional situations. It is assumed that if all states respected their obligations to their citizens in terms of human rights there would be no refugees or refugee flows, which are caused by violations, by exceptions to the rules of proper

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<sup>120</sup> Helton, A. C., "UNHCR and Protection in the 90s: The Institutional Dimension of Protection", *International Journal of Refugee Law*, Vol. 6, No:1, 1994, p.1,2

state behaviour. Therefore, as in Daniel Warner's words, "...norms dealing with refugees are extensions of the normal obligations of states in extraordinary situations and they are not extraordinary rules."<sup>121</sup>

As I have stated above, it is not the role of UNHCR to create new state obligations in the normal function of states, but rather to see that states function in such a way that the citizens will be protected. Therefore, as internationally accepted, UNHCR becomes an authority in the international relations to protect refugee rights and act as an overseer to propose guidance and criticisms if the protection conditions are breached.

In this sense, a similarity between UNHCR and the European Union can be established. European Union is a semi supranational organization acts in the European geographical area and desires to extend its importance as a major actor in international relations; alongside with USA, Russian Federation, Japan and China. The EU prepares its own policies in order to compete with other major actors and furthermore tries to export them to countries in neighbouring areas in order to increase its influence. These policies can be categorized as economic, security, environment, migration and asylum. In some examples such as economic policy, the member states of the EU are more determined and centralized on decision making and implementation. The European Central Bank is the ultimate centre on decision making on European economy, and EU trade agreements and quotas can be expressed as the implementation of the EU economic policy. In some areas however, EU members are more reluctant to fully cooperate in practice and build up the necessary laws to be more centralized; such as security, migration and asylum. These areas are still in need of more time for debate and persuasion on sovereignty transfer from states to Union. However, the European Union tries to export its complete and yet to be completed policies among neighbouring states in order to expand its influence, thus placing importance to being an international actor. The

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<sup>121</sup> Warner, D., "The Refugee State and State Protection" in, Nicholson, F.; Twomey, P. (eds), *op. cit.*, p. 264

major method of the EU to export those policies is to give the impression to other countries that they can be a future member of the Union. This has been done towards Central and Eastern Countries (CEEC) in the latest enlargement of European Union. The EU had already started economic relations with CEEC by trade agreements before the collapse of Communist Bloc. Through the following years, EU extended its governance over the CEEC area initially by association agreements. The model type of EU governance and the policies created with the agreements allowed systematic progress on democratization and free market economy made it possible for CEEC to take EU governance as a model and adapt it into their system. The EU has used this role model on maintaining the security and order in Europe, like in the case of the split of Czechoslovakia.<sup>122</sup> Both parties were careful to prevent hostile engagement for the prospect of EU membership, the split of Czechoslovakia into Czech Republic and Slovakia progressed peacefully. Later on, the EU had chosen to include these neighbours to its order by membership, thus preventing the possibility of security a problem among its neighbours to spring its own territories; although this was not the only major reason for the EU on enlargement. As a conclusion, by making membership opportunities available, the EU has extended its policies towards neighbouring states.

Turkey will also harmonize the EU *acquis* with its own legislation as all other - once candidate - member states have done through the accession partnership period. These will include the EU laws on human rights and migration, as well as the EU's asylum system. Turkey does not have an option but to lift the geographical limitation in order to be a member of the European Union because no other the EU state has the limitation within their legislation; and therefore the EU law does not contain it. Turkey will harmonize the *acqui* in order to be a member, and will abolish the geographical limitation during the process, since the EU *acqui* does not contain the limitation.

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<sup>122</sup> Barta, P., "Czechoslovakia's 'Velvet Divorce' ", *East/West Letter*, Vo. 1, No. 4, Fall 1992, p. 3

Although Turkey has maintained the geographical limitation for security concerns since she introduced it in 1963, she will lift it because of the rules of an international organization she wants to be a part of, and therefore there will be a shift from the security perspective to a more humanitarian perspective. This is a very good development from the human rights perspective. Even if the asylum policy and laws of the EU on this area are criticized to be not comprehensive, not complete and fair. Here, the EU can be said an example to semi supranational organization that has been mentioned previously during the explanation of statist perspective. As a part of this organization, Turkey will shift its point of view from security concerned nation state perspective to a more humanitarian liberal point of view by accepting and harmonizing this international organization's treaties. And EU, as a semi supranational organization, will be an initiator and a catalyst for Turkey's shifting attitude to refugees more humanitarian. Whatever the reasons for the EU to accept Turkey as a member: economic, the young and educated population, a big market for trade, a bridge between a Christian Community and Muslim countries - these are all discussed by academicians as well as politicians and heavily in media - the outcome regarding Turkey's attitude towards refugees will be much more positive and humanitarian.

According to the nation state point of view, the state exists to guarantee the security of their citizens; except the threat to national security is coming from some of its citizens. Also, in times of security concerns like crises, human rights subordinates to security to preserve the national order. Furthermore, according to the statist point of view human rights are not universal but they are applied between the state and its citizens, and differ from state to state. In addition, the states are the supreme controller over their own territories and there is no other authority allowed to interfere the internal affairs of states. And finally, if a common power does not exist, every state uses self-help; that follows its own foreign policy as it sees fit. Refugees are seen either a foreign policy tool or a threat to 'national security'; as refugees seen from the state point of view as voluntary migrants and therefore a risk to the social, economic and political stability.

What lacks in this scheme described was the lack of a common power; one that voluntarily formed by states themselves such as United Nations and United Nations High Commissioner for Refugees. As I have stated above, it is not the function of UNHCR to create obligations to states, but instead to perform that states function that the citizens will be protected. That has been achieved 55 years ago; however, there is some deficiency, occurred during the time being. Turkey was one of the founders of UN and both the drafter and a party to the 1951 Geneva Convention. But Turkey has also declared a geographical limitation and has maintained it since then. According to the humanitarian point of view, party to the Convention is a remarkable thing; however, the absence of geographical limitation would be much better; including the cessation of human rights violations. Turkey is a refugee receiving country but also had long been a refugee producing country. In addition, Turkey's attitude towards refugees is evasive. The state policy of Turkey towards the refugees is to provide them temporary protection, without further aid, such as accommodation, food and health services. Therefore, from liberal view it can be said that there is a common power among nation states, but with deficiencies.

Now, one step further, if another common power is present above the nation state, with an executive power for better implementation on refugee and asylum seekers, it would be much more better in case of humanitarian concerns. In this case, the prospect of European Union membership would be a tool to achieve it. As a supranational organization, EU can act as an organization both to create state obligations for better conditions and protection for refugees - legally, institutionally and de facto; and furthermore to create obligations and monitor that the citizens themselves would be protected. Until the Intergovernmental Conference on 17 December 2004, Turkey was under heavy pressure from European Union that human rights conditions should be improved for a precondition to start the accession partnership process. Today, Turkey is considered to be a safe country for refugees and no longer a refugee producing country. Therefore, the human rights conditions have been improved in Turkey towards its citizens with the prospect of EU membership.

As an international organization, the role of UNHCR is not to create new state obligations in the normal function of states, but rather to see that states function in such a way that the citizens will be protected. But as a supranational organization, European Union exports its laws and policies to its member and future member states through harmonization of *acqui* with national law. This way, it will be possible to improve the conditions of human rights in Turkey and to ensure the protection of citizens in Turkey by the nation state; but also, it will be a catalyst to create a national asylum system for refugees fleeing from different parts of the world, where they can enjoy their rights as refugees and protection in much more humanitarian way. In conclusion, there would be a compromise between the nation state and liberal points of view in favour of the refugees.

## **4.2. The Analysis of European Union States' Approaches towards Refugees from the perceptions of Theoretical Framework**

### **4.2.1. The Analysis of European States in General**

The approach of the European states to these two different points of views has differed through the second half of the 20<sup>th</sup> century, with the changing course of events through that time. Starting from 1957, the achievements of independence of former colonies of western European states in Africa caused many people to become refugees.<sup>123</sup> This was because of the adoption of nation-state model by most of those newly formed countries, which caused discriminations related to ethnical differences. Later on, the same series of events began in Asia. These new developments affected the perception and attitude of European states towards refugee movements. Starting from 1960s, the refugee problem ceased to be refugees mainly fleeing from the Communist Bloc and people other than the European origin and culture came and started to live in western European states as refugees. As a

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<sup>123</sup> Bariagaber, A., "States, International Organizations and the Refugee: Reflections on the Complexity of Managing the Refugee Crisis in the Horn of Africa", *The Journal of Modern African Studies*, Vol. 37, No. 4, December 1999, p. 615

second point, European states began to realize the shortcomings of 1951 Convention to cover all new refugee groups. This led them to prepare the 1967 Protocol.

The new developments in Africa and Asia originated from the disintegration of former colonies of western European states. This reason required a special treatment to accept those refugees coming from these regions. However, this special treatment does not originate from the notion of responsibility, as humanitarian liberal approach suggests; but from economical reasons.<sup>124</sup> Throughout the 1960s, the economic growth was at its peak among western European states, unemployment rates were low with a low inflation rate. It was an ideal environment for great industrial progresses. Thus there was not any argument against those new groups of refugees, since they can be utilised as additional manpower just as any other voluntary migrants to drive for further economic growth of the state. Throughout this period, voluntary migrants were encouraged to work in Western Europe; and migrants accepted not only from former colonies in Africa, Asia and Caribbean regions, but from other developing countries of the world<sup>125</sup>, including Turkey and also from the south European states.

The acceptance of migrants was regulated by systematic programs. Through this process, for instance, migrants from India and Asian countries settled in United Kingdom, from North Africa to France and from Caribbean to Belgium and Netherlands.<sup>126</sup> The welcoming of migrants and refugees had always been warm as long as the economic growth continued. But it should be noted that there was almost no difference between the migrants and refugees in Western Europe; as all were seen as factors for increasing the economic welfare.<sup>127</sup> Although European

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<sup>124</sup> Künçek, Ö., *op. cit.*, p. 92

<sup>125</sup> Loescher, G., "The European Community and Refugees", *International Affairs*, Vol. 65, No. 4, Autumn 1989, p. 621

<sup>126</sup> Loescher, G., "Refugee Movements and International Security", *Adelphi Papers* No. 268, London, England: Brassey's Publishing, 1992, p. 17

<sup>127</sup> Freeman, G. P., "Modes of Immigration Politics in Liberal Democratic States", *International Migration Review*, Vol. 29, No. 4, Winter 1995, p. 890

states were almost encouraging refugees to flee to their territories to increase their economic growth, there were difficulties to accept all of them within the scope of 1951 Convention.

Furthermore, the refugees were being treated just as the 1951 Convention obliges them to do so, including economic aid, free language courses and other necessary implementations to realise their integration into host societies. Although, migrants - along with refugees - were all seen as temporary, the need for some change to increase the scope of the 1951 Convention agreed and 1967 Protocol has been prepared. With the introduction of 1967 Protocol, the discrimination - in a way - that made in Europe towards refugees by keeping the condition of time and region has been ceased<sup>128</sup>. This is an improvement in terms of humanitarian and liberal approach. However, the 1967 Protocol has served another purpose other than to increase the scope of Convention; apart from being more humanitarian: It served as a tool to increase the presence of refugees, thus to increase employment for growing demand in increasing industrial sector.

The Protocol contained the cessation of time limitation regarding ‘events occurred before 1 January 1951’ and furthermore it consisted of the cessation of the geographical limitation. This meant the asylum seekers coming from other parts of the world regardless of the ‘events occurred in Europe’, could be accepted as refugees in western European states.

According to the UNHCR sources, the reason that the European states introduced the time and geographical limitation was because of the reluctance of European states to commit themselves to responsibility of accepting unknown amount of refugees in an unknown future. As it is stated in the UNHCR international website:

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<sup>128</sup> Blay, S. K. N.; Tsamenyi, B. M., *op. cit.*, p. 533

... One heated debate was sparked over the refusal of some delegates to commit themselves to open-ended legal obligations. In elaborating one of the Convention's core definitions, "who could be considered a refugee"; some countries favoured a general description covering all future refugees. Others wanted to limit the definition to then existing categories of refugees.

In the end, inevitably, there was a compromise. A general definition emerged, based on a "well-founded fear of persecution" and limited to those who had become refugees "as a result of events occurring before 1 January 1951." This temporal limitation and the option to impose a geographical limitation by interpreting the word "events" to mean either "events occurring in Europe" or "events occurring in Europe or elsewhere", was incorporated because the drafters felt "it would be difficult for governments to sign a blank check and to undertake obligations towards future refugees, the origin and number of which would be unknown." ...<sup>129</sup>

Through the 1960s, it can be said that western European states that formed today's European Union in the first place, have liberal implementations regarding refugees. There were no limitations against refugees as de facto; on the contrary, there were almost encouragements for refugees to seek asylum in European states. Furthermore, the humanitarian obligations of 1951 Geneva Convention were implemented such as providing ways of integration. In addition, there have been further efforts to expand the scope of the existing legal rules in a more humanitarian way, with the 1967 Protocol.

However, these liberal implementations had been used only because it served the nation state interests at that time; that is the beneficiary role of refugees to the nation state economies, thus the societies. It can be said that the liberal point of view has been adopted in 1960s because of the nation state perception without taking into account of security concerns.

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<sup>129</sup> "The 1951 Refugee Convention: Developing Protection", UNHCR international website, <http://www.unhcr.ch/1951convention/dev-protect.html>

Through the 1970s there was a shift in western European states' attitude towards refugees. With the oil crisis of 1973, when Arab states put an embargo on United States, Israel and some of the western European states because of their support to Israel during the Arab - Israel war, the industrial growth decreased rapidly, the inflation increased, the production sector decreased, the unemployment increased and in general, the economic growth of western European states slowed dramatically. This has led the marginal sections of the states' societies to blame refugees and migrants for this downfall. Until that time, Western Germany had received 18 million refugees and four million of them were residing. There were refugees in great numbers from Uganda in United Kingdom from the beginning of 1970s and on top of that 300,000 Chilean refugees kept coming<sup>130</sup> to 'the Great Britain'. There was a general discontent among the societies against refugees, since the unemployment was going up and the refugees kept coming in greater numbers, and the existing ones among societies were not paying taxes and receiving financial aid.<sup>131</sup> On the other hand, it was a five o'clock tea time for the Cold War. During the 1970s, it was a time for mutual cooperation between the European states and Soviet Bloc to keep security in Europe and for creating cooperation grounds. This environment changed the attitude of western European states towards the refugees from Communist Bloc. They were not receiving a warm welcome anymore; partly because of the security and cooperation environment and partly from the economic crisis. Furthermore, it was a time for mutual cooperation among western European states to create a common Europe. It was decided commonly to cease the immigrant acceptance outside the European Economic Community (EEC) states. This had directed immigrants to choose to seek asylum into EEC states in order to get a job; therefore the refugee applications were boosted.

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<sup>130</sup> Crisp, J., "A New Asylum Paradigm? Globalization, Migration and the Uncertain Future of the International Refugee Regime", *New Issues in Refugee Research*, UNHCR Working Paper No. 100, December 2003, p. 12

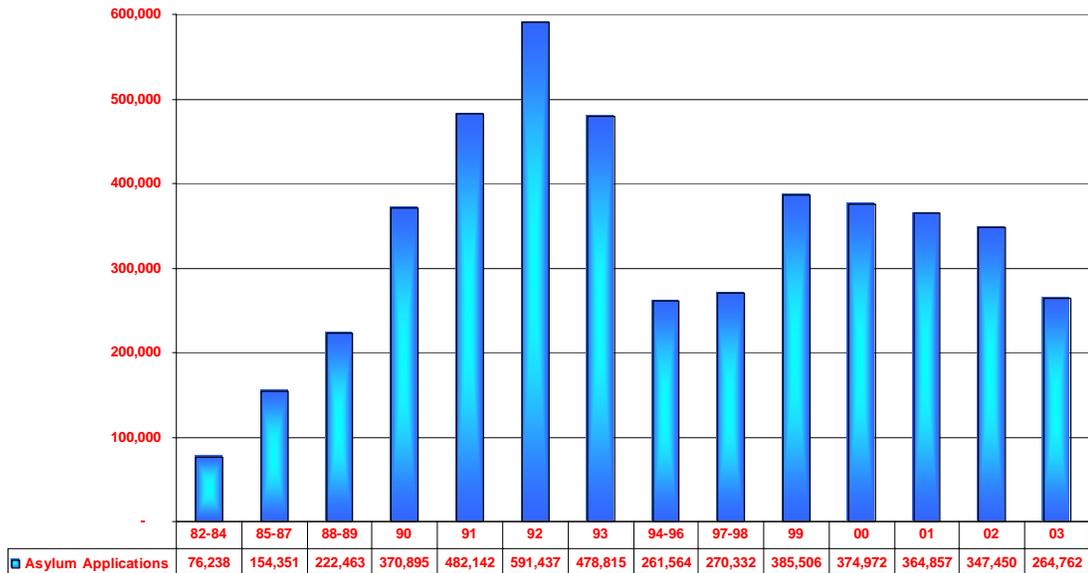
<sup>131</sup> Künçek, Ö., *op. cit.*, p. 105

Through the 1970s and the following 1980s, nation states of Western Europe, which later had become the EEC states, limited the refugee acceptance; along with the cessation of immigrant receptions outside their common territories. The 1980s led further cooperation and security measures to be taken against refugee flows and immigrants and EEC territories came under the spot as ‘fortress Europe’. This was again the continuation of the nation state approach to refugees, along with the security concerns. The fear of statist perception to observe unrest among the community, lack of sources to supply the community’s needs, in this case as unemployment and economic, the division leading anti-immigrant and anti-refugee groups, and overall a threat to regime was the main driving force to see refugees and migrants as a threat to the state. There was not any responsibility for the need and contributions of migrants and refugees in the 1960s and certainly not any humanitarian concerns for the upcoming asylum seekers. The security and the instability threat to the European states were seen to be much more important. And therefore, they took the strategy of acting together by implementing common policies; common action towards defending common territories against refugees and to share the increasing burden of refugee flows by cooperation. The implementations of the liberal approach used as a tool by nation state perspective have been completely left aside.

In the firm policies towards refugees through 1980s and 1990s, both the anti-foreigner movements had increased and the refugee regime had been battered.<sup>132</sup> Through the 1990s, refugee movements led to conflicts between refugee producing and refugee receiving states. For instance, the refugee receiving states tried to intervene in the internal affairs of refugee producing states, using human rights violations as a tool.

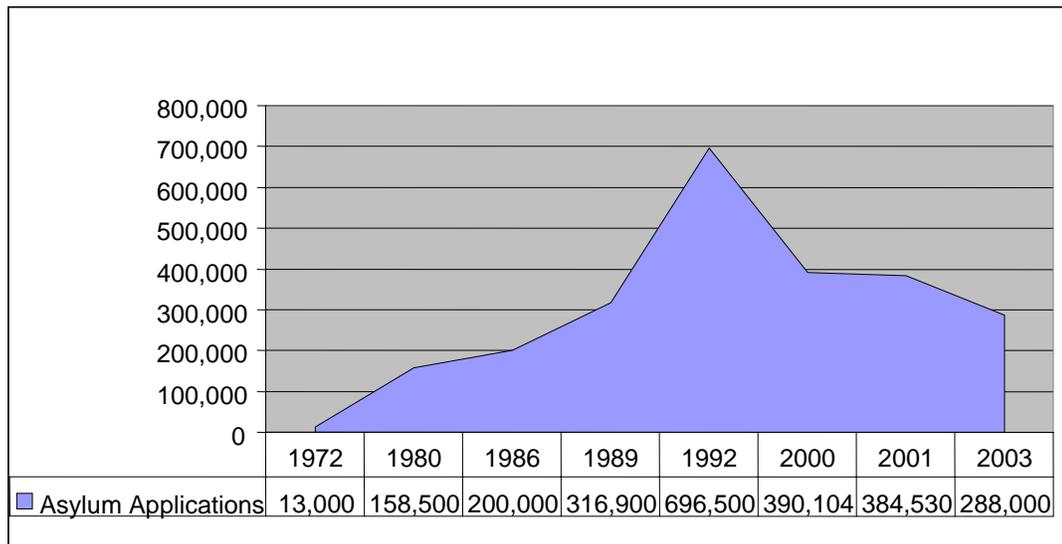
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<sup>132</sup> Künçek, Ö., *op. cit.*, p. 213



**Figure 2. Asylum Applications in EU Member States before the Last Enlargement (Between 1982 - 2003)**

Source: Data obtained from UNHCR



**Figure 3. Asylum Applications in Particular Years Submitted in EU Member States (Between 1972 - 2003)**

Source: Data obtained from UNHCR

It can be seen from the latter graph that the asylum applications in Europe began to rise dramatically during the 1970s. The oil crisis was not a happy contribution to the European economies and unrests among the societies began to form against migrants as well as refugees. The Iranian refugees fleeing from the 1979 Revolution in Iran constitutes a great deal of the continuing increase during the mid 1980s, as it can be observed in the former graph. These applications created an increased pressure on European governments; leading them to adopt common action to tackle the refugee problem and served partly until 1990s. The highest peaks during the period from 1991 to 1993 owe mainly the contribution of Iraqi asylum seekers, mostly Kurds, as well as the continuing Iranian refugees. This has caused much more pressure in Europe concerning the general migration problem as well as refugees, and led European states to implement more restrictive policies towards asylum seekers. The adoption of these policies helped to keep the pressure under control at certain levels in the following years, however, the EU states try to implement more restrictions towards asylum seekers.

The general unrest and discontent against refugees throughout European societies, coupled with the conflicts occurred in Africa, Middle East and Balkans led European states to develop and implement a new model for EU security to prevent the new refugee movements. This is a two stage intervention<sup>133</sup>. The first stage consists of military intervention of individual states or a common action to the conflict zone, in order to solve refugee problems. It has first started with the end of Gulf War in 1991, when the safe zones were established in northern Iraq. Another example is the peace operation in Bosnia by NATO operations. The latter did not change the outcome of the conflict; however, it was useful to deliver necessary supplies to displaced persons and refugees of conflict. This model was not a successful one to serve for dissuasive policies against refugees, effective as the usage of force but to some degree.<sup>134</sup> The second stage includes more humanitarian characteristics. It is executed by stressing the implementation deficiencies of human

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<sup>133</sup> Keely, C. B., "How Nation-States Create and Respond to Refugee Flows", *International Migration Review*, Vol. 30, No. 4, Winter 1996, p. 1060

<sup>134</sup> Künçek, Ö., *op. cit.*, p. 203

rights in the refugee producing state to threaten the country with sanctions against it. This is also done by international organizations. From the nation state perspective, it can be perceived as interfering with the internal relations of the targeted state. Turkey can be an example of the implementation of second stage of this model. The negotiations before the accession partnership started in October 2005; the EU has strong criticisms about the deficiency of human rights laws and implementations. EU presented this as a prerequisite accession partnership talks. Especially between 1997 to 2004, Turkey has been criticised to be far from being a European state concerning human rights standards and constantly warned to improve its conditions to suffice the Copenhagen Criteria.<sup>135</sup> From Turkish government and media, this is initially regarded as an intervention to internal affairs and protested. However, through the following years Turkey introduced the necessary laws that were required to achieve Copenhagen Criteria and presented implementations of what is accepted by EU states as improvement. In 2004, the regular reports of EU monitoring process stated that there is no more further need to monitor intensely the human rights developments in Turkey.

#### **4.2.2. The Analysis of European Union States in Particular**

Having stated the general flow of attitude among Europe towards refugees, it is important to state the individual approaches of EU states. Germany has the biggest migrant and refugee population among other states. It has the most liberal attitude towards refugees and migrants. He also took the lead role to develop and harmonize the implementation of policies throughout the Europe. France came the second regarding the degree of liberal principles applied towards refugees, considering the integration into society and granting citizenship rights. England, on the other hand, was not so generous for granting rights to refugees and migrants. Although it took an active role for the legal arrangements relating refugees after the Second World

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<sup>135</sup> 1999, 2002, 2003 Regular Report on Turkey's Progress towards Accession, pages 46, 139, 132 respectively, [www.ekutup.dpt.gov.tr/ab/](http://www.ekutup.dpt.gov.tr/ab/)

War such as 1995 Convention, she generally accepted refugees from its former colonies and did not grant residence to the families of refugees. The policies of south European states, Italy, Spain, Portugal and Greece, were much flexible and loose until the 1990s.<sup>136</sup> The Nordic Countries, Holland, Denmark, Norway, Sweden and Finland, based their attitude towards refugees on human rights concerns, until 1990s. However, the harmonization of immigration and refugee policies in European Community / European Union resulted a divergence from their policies towards the general security oriented attitude.

The United Kingdom has always been firm to refugees.<sup>137</sup> This might change considering the reception of refugees into the country, but considering the conditions for residing in the UK, it was generally far from humanitarian values. Laws regarding refugees have been evaluated under the Immigration Law in the UK. The refugees and migrants coming from colonies or former colonies sometimes regarded as ‘colourful’ and declared they potentially pose risk to society for social reasons.<sup>138</sup> Even the prime minister of the time (during 1980s) Margaret Thatcher explicitly argued the foreign cultures are threatening the English culture. Through the time, UK’s approach towards refugees shaped around economic needs of the state. Through the 1950s, the UK accepted European refugees within the framework of European Voluntary Migrants programme. However, the behaviour of the state was harsh. There were risks for refugees to be expelled from the UK if they got sick or were in an accident. Also, they were not allowed to bring their families with them. In 1968, the migrants coming from Commonwealth states issued a different passport and annual quotas began to be applied. Since refugees were taken into consideration with migrants in the Immigration Law, the same quotas applied to refugees. The Law has been revised in 1971 to limit the residence permits for foreigners for only the ones residing for five years and the ones that born in UK territory. Another revision took place in 1980 with major changes in a

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<sup>136</sup> Künçek, Ö., *op. cit.*, p. 134

<sup>137</sup> To have a detailed look, it is advised to examine Özlen Künçek’s PhD. Thesis, for both UK and other European states’ policies towards refugees after World War II, *op. cit.*

<sup>138</sup> Künçek, Ö., *op. cit.*, p. 135

statist discourse. Additional limitations applied to the reception of refugees and visa applications required. Furthermore, the refugees who were not directly coming from their country of origin to the UK would not be counted as refugees; instead they would be treated as economic migrants who would abuse the refugee system. The asylum seekers who failed to obtain visas and the ones that illegally entered the country were automatically dismissed for a refugee status.<sup>139</sup> Furthermore, UK introduced carrier sanctions for airline operators as financial charges for carrying the people who do not have proper legal documents. From the humanitarian point, visa policy was heavily criticised as refugees who fled from their countries for the fear of their lives could not obtain these kinds of documents. It was often criticised that these regulations were a part of UK's dissuasiveness policy for refugees and could not be considered humanitarian. UK's detention policy was another point of criticism for a violation of human rights. The refugees were held together at special detention centres and the time for detention took too long. Furthermore, humanitarian organizations criticised the unnecessary detention of individuals; since detention is used for mass influxes for potential security risk, however, the generalisation of detention for individuals was claimed to be unnecessary and in violation of Article 31 of 1951 Geneva Convention Relating to the Status of Refugees. Finally in 1992, another change has been made in the Law to cease the housing aid for refugees. It can be easily concluded that in the UK the attitude towards refugees is strongly oriented within nation state - security perspective. It is mostly criticised in different examples by international and humanitarian organisations throughout different times during the last 50 years that the attitude of UK towards refugees is not humanitarian.

Germany is considered to be the most liberal state among others, regarding refugees. According to law, everyone who has been persecuted for political reasons has right to be a refugee in Germany. This is mainly because of the state politics that Germany wanted to present himself as being a Nazi victim of WW2 and against

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<sup>139</sup> Hansen, R., "Citizenship and Immigration in Post-War Britain", Oxford University Press, New York, 2000, p. 134

the arguments of Nazi regime; and furthermore, an effort to be compassionate to foreigners of different ethnic origins. Thus, Germany received the most asylum applications. The limitations among western European states against immigrants led many people to use asylum as a tool for acceptance in Germany. Furthermore, the family unification principle allowed many refugees as well as migrants posed as refugees to gain residence in Germany. However, the denial of Germany to accept the fact of being a country of immigration led it to blame refugees for the problems originated by huge numbers of migrants during and the demise of economic growth and following environments of economic crises.<sup>140</sup> In 1993 the law has been changed to make limitations on the right to seek asylum, that if it is well founded by the state, the asylum seekers can be denied to enter the German territory and sent to a safe third country. Examining Germany's liberal attitude, there can be one criticism. Until a few years ago, Germany requested as a prerequisite the necessity of having at least one parent of German origin to grant citizenship to a foreigner. Here, they differed from the other members of the EU, Germany's case is different than the classic sequence of nation state - liberal interaction explained until here. Germany had provided many humanitarian aspects to refugees after WW2. It included even the housing expenses, education and state aid to refugees; which are only nowadays become common for EU countries. Of course, the reasoning of nation state can not be ignored: Germany too has benefited vastly from refugee and immigrant workers that rebuilt its country and industry, and tried to draw exactly opposite figure than the previous Nazi government. However, Germany had kept its what is called to be liberal implementations mentioned above, until the 1990s. And these implementations are what humanitarian organisations such as UNHCR had demanded and criticised the absence from other European governments. However, the balance between Germany's resources and the humanitarian needs of refugees inevitably was disturbed by the economic crisis and this time - to the sake of statist discourses fear - the sequence has reversed and government had to back up with the growing anti-refugee, anti-immigrant and anti-foreigner unrests.

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<sup>140</sup> Faist, T., "How to Define a Foreigner? The Symbolic Politics of Immigration in German Partisan Discourse, 1978-1992", in "The Politics of Immigration in Western Europe" Baldwin-Edwards M.; Schain, M. A., 1994, p. 51

The refugee policies in France had initially formed just like any other states of Western Europe as explained above; through the need of workers to rebuild the country after WW2. She also stopped accepting more migrants in 1974. With the family unification programmes most of the migrants and refugees obtained permanent residencies. Furthermore, the foreigners born in France were automatically granted French citizenship. All foreigners from former colonies in North Africa to Asia mixed with the host society became a multi cultural society. The liberal environment of France was the main reason to make it realized. Within time, however, there occurred problems of integration and fundamentalism among Muslim communities. For the French society, the cultural unity is essential; the common cultural values to be accepted and supported are an important issue. In the beginning of 1980s, it was still argued that France was a ‘melting pot’ where different cultures and colours of people can live together peacefully and every person regardless of origin who has adapted to French culture has a right to live in France as a French citizen. On the other hand, at the same time there were strong movements rising against migrants and refugees, strengthened from the general anti-migrant and anti-refugee movements among Europe. In 1979, French president started applications to encourage Algerians to return back to Algeria, however, it was faced with great amount of protest among many parts of French society. In 1980 a new law was introduced to make granting citizenship to foreigners difficult. In 1986, a similar citizenship law to that the UK was introduced, granting citizenship to the foreigners born in France with the additional condition of having to reside in France for five years.<sup>141</sup> From liberal parties, this is criticised as being discriminative, and from nation state oriented parties, this law is criticised as being encouraging more foreigners to access citizenship rights in the next five years. In the second half of the 1980s refugees in France were increasingly being perceived as criminal oriented and having an inclination towards terrorism and perceived as being potentially dangerous to security. On the other hand, another part of the French society started campaigns to protect the rights of refugees and gradually

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<sup>141</sup> Künçek, Ö., *op. cit*, p. 145

increased their support within French society. In 1989, the law of 1986 has been changed with a more moderate law. According to these developments from 1950s to 1990s, it can be said for France that it had much liberal perception until the 1980s, prevailed to survive the liberal perception from the 1973 oil crisis, in the case of refugees. However, with the general trend of protectionalism and security trends rising among Europe and the actions for common policies for European Communities, the perception of France has been also affected. But still, there are two strong sides today in France. One side still keep the liberal perspective and influences to keep the liberal policies in France, and the other more security oriented anti-refugee group which argues further restriction towards refugees and migrants and furthermore argues to encourage them to send back to where they come from.

The UK, Germany and France are the core states for the fundamental arrangements and implementations against refugees. However, sometimes UK leaves herself out in some of those arrangements, such as absencing herself with the Schengen Agreement. In the Nordic states in general, there used to be a liberal perception present. However, in Denmark, Norway and Sweden, when more liberal laws introduced in order to make the application and evaluation process it easier, there has been an enormous increase in the application rates. This would go as much as ten times in Denmark between 1983 and 1986. To cope with this, these countries changed their laws to introduce stern policies, which led criticisms from some parts of the society for taking back the humanitarian rights granted. However, both the increase in the application rates and the increasing waves of anti-refugee movements has considerable effect on the decision making. It can be said that, Nordic states today act more liberal than the other states of Europe. They have a more humanitarian approach in general; only because they have received fewer refugees than other western European states and have fewer problems with refugees than others.

The Southern European states have introduced firm policies too with the change of time in 1980s but they still had flexible implementations comparing to the other parts of Europe.<sup>142</sup> Italy introduced a law in 1986 to attract illegal refugees and migrants to register to state authorities, promising them to grant permanent residency and work permit. Actually, their intent was to grant some they promised and send back others. However, people were much too reluctant to show themselves, the law became a partial success. But the important point here is the security concerns of state leading to discrimination and disregarding human rights. Another state, Spain, furiously rejected the limiting laws taken in other EC states and calling them to respect the human rights of refugees and not to take discriminatory limiting actions. In Spain, the migration and refugees used to be examined separately under the law. The refugees were easily granted permanent residency and work permits. However, in the 1990s, Spain also changed its laws to accommodate the general European Community trend. In general, southern European states constitute the southern boundaries of European Union and the first countries to stop for refugee flows from Middle East and North Africa. As their importance grew as a first country of asylum, they seek to implement firmer policies towards refugees to protect themselves and undermine humanitarian concerns.

In all of these nation states, the common trend in the 1980s and 1990s is the implementation of firm policies by states to limit the access to asylum in Europe and the support to the residing refugees. However, the main reason for this is that the refugee issue is extremely politicized. The economic decrease and the growing unemployment among Europe have been billed to refugees and immigrants by politicians in the first place. The encouragement program of prime minister of France Valery Giscard D'Estaing, and the cries of M. Thatcher, prime minister of UK to 'announce' that UK culture is under threat by foreign cultures residing in

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<sup>142</sup> Künçek, Ö., *op. cit.*, p. 152

UK<sup>143</sup>, are some examples of politicians using immigrants and refugees as a political material to point someone to blame for economic problems; thus increase their votes - for the time being - to implement their own policies. This has caused fake agendas and misleads public and increases anti-refugee, anti-immigrant or anti-foreigner movements. In the end, general unrest and discontent against refugees and immigrants give something to act for nation states to 'protect' their citizens. It becomes a reciprocal feeding for governments and public to mobilize each other. At the end, refugees lose. It can be seen clearly that, to act on self interest, the nation state can use its own society for the benefit of that society. Security concerns can be used as an excuse to increase economic benefit for the state - and inescapably for the society. This is yet another example of the nation states perspective to undermine the humanitarian concerns in order to increase the state interests.

Because of the events and reasons stated above, western European states prepared and the 1967 Protocol. Using this Protocol, Western European states abolished the geographical limitation. But, the reason to cease the geographical limitation for European states is economic. In order to accept the refugees into the western European states, who were from the regions outside Europe, not related with the events occurred in Europe and after the events occurred in Europe, for the reasons to use them to suffice the demand of manpower through the rapid industrial and economic growth in their states, they have abolished the time and geographical limitations together with the 1967 Protocol Related to the Status of Refugees. Because of this, today none of the EU member states has the geographical limitation and therefore there is no geographical limitation in the EU legal system, namely *the acqui*. The reasoning to cease the geographical limitation is originates from the nation state point of view; not the liberal perception with humanitarian concerns.

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<sup>143</sup> Miles, R.; Cleary, P., "Migration to Britain: Racism, State Regulation and Employment", in Robinson, V., "The International Refugee Crisis, British and Canadian Responses", The MacMillan Press, Oxford, 1993, s.70

### **4.3. The Analysis of Turkey's Asylum Policies within the Theoretical Framework**

#### **4.3.1. The Historical Perspective until 1923**

The predecessor of Republic of Turkey, the Ottoman Empire, has always been open to refugees through its history. Jews from different parts of Europe are the most significant examples. Sephardim Jews fled from Spanish invasion and inquisition of Iberia in 1492, the Ashkenazi Jews fled from Germany, France and Hungary, and Italian Jews from Sicily, Otranto and Calabria<sup>144</sup> sought refuge in Ottoman Empire. Furthermore, Ottoman Empire accepted what can be called as political refugees at the time. King Charles of Sweden crossed the Ottoman borders with around 2,000 people after he was defeated by the Russians and sought asylum in the Ottoman Empire. Later on, the arrival of Hungarians and Poles fleeing the revolts in 1848 and 1849 against the rule of Austrian Empire, Prince Adam Czartorski escaped with his soldiers to the Ottoman Empire during the Polish Revolution in 1830 and continued his struggle. The Ottoman Empire provided generous administrative economic and humanitarian facilities to them in the form of land, agricultural equipment, exemption from taxation and military service.<sup>145</sup> The prince was followed by Vrangel who was defeated by Bolshevik's and moved with 135,000 people to Istanbul and settled in Gallipoli, in 1920. There were also many people of Turkish origin, who were the descendants of Turks that settled in various parts of Balkans for centuries during the expansion of the Ottoman Empire were fleeing back to the Ottoman territories as the Empire lost territories during its descend period<sup>146</sup>; which were around 1,5 million.<sup>147</sup> They were fleeing mainly because of the reasons of political, ethnic and religious oppression and mostly from Greece,

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<sup>144</sup> S. Shaw, "The Jews of the Ottoman Empire and Turkish Republic", in Kirişçi, K., "Refugee Movements in Turkey in the Post Second World War Era", Boğaziçi University Research Papers, ISS/POLS 95-01, 1995, p. 1

<sup>145</sup> Altuğ, Y., in Kirişçi, K., *op. cit.*, 1995, p. 1

<sup>146</sup> Karpat, K., in Kirişçi, K., *ibid.*, p. 1

<sup>147</sup> Eren, H., in Kirişçi, K., *ibid.*, p. 2

Bulgaria, Romania and Yugoslavia. There were also Circassians from Caucasus and Tatars from Crimea; about a total of 4 million.<sup>148</sup>

#### **4.3.2. The Policies of Turkish Republic from the Establishment until the End of Cold War**

During the time that Turkish Republic was founded in 1923, the population of the state was around 13 million.<sup>149</sup> In the 1930s many Jewish and German intellectuals came to Turkey to seek temporary asylum. This and also Turkey as a neutral country during the Second World War led thousands of Jews from Europe to use Turkey as a transit country to Palestine. During the Second World War, many people from Nazi invaded Balkan lands sought refuge in Turkey. These people included many Muslim and ethnic Turks from Bulgaria, as well as Greeks from the Aegean and Italians from the Dodecanese Islands. Although most of these people returned to their countries after the war, some of the Bulgarians stayed in Turkey because of the change of the regime in their own country.

However, during the period starting from the establishment of the Republic in 1923 to the end of Second World War, most of the refugees that came to Turkey were of Turkish descent.<sup>150</sup> Most of these people came within the scope of an immigration programme that the Turkish government started at the time, for Muslims and Turks from Balkans to settle in Turkey, in which major priority were given to those Muslim Turkish speakers and people that officially considered belonging to ethnic groups that would easily melt into a Turkish national identity.<sup>151</sup>

The reason behind this was that the newly formed Republic needed manpower and skilled people and to increase the population. There was also another important

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<sup>148</sup> Karpat, K., in Kirişçi, K., *ibid*, p. 2

<sup>149</sup> Shorter, F. C., "The Crisis of Population Knowledge in Turkey", *New Perspectives on Turkey*, Vol. 12, Spring, 1995, p. 9, see also [www.hpntech.com/popart/fs2.htm#Momentum](http://www.hpntech.com/popart/fs2.htm#Momentum)

<sup>150</sup> Kirişçi, K., *op.cit.*, 1995, p. 2

<sup>151</sup> Kemal Kirişçi, *op. cit.*, 2003, p. 3

reason. The Turkish government had the aim to form a homogeneous population to create a common identity for the newly formed state in order to strengthen its fragile situation; since the population of Turkey was 13 million at the time, and formed up from various different ethnic communities and religions, such as 4 million Circassians and Tatars, as well as Kurds, Assyrians and Anatolian Greeks.

During this era, the first major legal source concerning refugees was introduced into the Turkish legislation. The 1934 Law on Settlements was defining who can be an immigrant and refugee. Within the refugee definition, it is stated that any person who arrives to Turkey to seek asylum because of compulsion is accepted as refugee; however, those of “Turkish descent and culture” can stay permanently whereas those who are not can stay temporarily in Turkey.<sup>152</sup> The scope of this definition is determined by the Council of Ministers; however, in practice it includes Turks, Albanians, Bosnians, Circassians, Pomaks and Tatars. In addition, people from the Turkic originated countries such as Kazaks, Kyrgyz, Turkmen, Uzbeks and Uyghurs are also admitted; though in small numbers. This Law has still being used as a definition regarding the reception of asylum seekers, though it has undergone many amendments through the time.

Considering the theoretical framework given at the first part of this chapter, it can be concluded that Turkish government had acted in terms of economic concerns and security concerns, and mainly from a nation state perspective, rather than humanitarian. However, it can also be concluded that the humanitarian concerns were also evident; in the case of Jews and German intellectuals that fled to Turkey during 1930s and during the Second World War, as well as Italians and Greeks - who were perceived as one of the most formidable foe to Turks during the Independence War of Turks. Although it is questionable, where in the case of the reception of Jews whether if there were any influence from the Jewish community

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<sup>152</sup> Actually, the relevant Article in The Law of Settlements, Article 3, states the definition of refugee as “a person who arrives to Turkey to seek asylum because of compulsion, and who has intention to stay temporarily in Turkey” where only those of “Turkish descent and culture” can stay permanently within the country. It looks like a slight distinction of the statement above; however, in order to prevent any misinterpretation, I found it necessary to underline the nuance.

living in Turkey for the last five centuries over the Turkish government, there has not been found any information or data supporting either possibility. This could be important because of the argument of statist perception for the case of a security threat to nation state where the refugee population can force the governments to adopt specific foreign policies towards their home countries, or certain social groups.

After the Second World War, Turkey was a party to the United Nations, as well as its organizations of United Nations Relief and Reconstruction Agency (UNRRA) established in 1944 to deal with the population flows and later on, International Refugee Organization (IRO) established by the end of UNRRA's mandate in 1948. The world had entered a bipolar international structure and the Cold War continued until 1990s. Cold War influenced on a change in Turkey's asylum policies aligned with the United States' and the Western European States'.

During the start of this period, Turkey signed the 1951 Convention Relating to the Status of Refugees, and ratified it in her parliament and introduced into force in 1961. Turkey was one of the drafters of the Convention, among 23 countries, all of them which were from the capitalist bloc of western countries except for USSR delegation which was absent. Turkey has signed the Convention as an ally of the Western states. The western states were consisting of United States and Western European countries. As explained in the former parts of this chapter, Western European states were mainly favouring it because of the need of manpower for reconstruction and for the development of their industries. United States was using the Convention as a foreign policy tool against USSR, the other 'pole' of the bipolar world in the Cold War.<sup>153</sup> Turkey mainly signed it because of its alliance with the US and the capitalist bloc. However, Turkey has opted to have the time and geographical limitation stated as an option for the signatory states. The main reason for Turkey to state a geographical limitation was the security concerns regarding the mass influxes towards its borders, and furthermore the concern of disrupt the

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<sup>153</sup> Frelick, B., *op. cit.*, p. 4

foreign relations with the neighbouring countries. As in the case of 1979, Turkey used the geographical limitation as a tool to maintain the foreign relations with Iran stable; not to disrupt by giving refugee status to thousands of people fleeing from the Islamic regime in Iran. The second reason concerns Turkey as an ally of the United States and capitalist bloc, therefore helping the people fleeing from the Eastern European countries by receiving asylum seekers. Turkey was not opposing it, mainly because the refugees from Communist Bloc always came in few numbers and the Western European States and the rest of the capitalist bloc always eager to resettle them in a Western country. Furthermore, UNHCR and International Catholic Migration Commission met the costs of sheltering and resettling, so Turkey was not responsible to provide anything but a temporary protection.<sup>154</sup> Only a small number of them allowed to stay permanently in Turkey, which were the ones either has ties with “Turkish decent and culture”, or the ones that married to a Turk.

Throughout the Cold War, Turkey confronted with thousands of asylum seekers from Communist countries of Eastern Europe, since Turkey was an ally of the Western States and a member of NATO. By the strive of UNHCR, most of those people recognized as refugees and resettled to third countries such as Canada, Australia, New Zealand and United States. However, in the last decade of the Cold War this pattern has changed with many Iranians that come to seek asylum after Revolution in Iran in 1979.

#### **4.3.3. The Categorization of Turkish Policy Responses towards Asylum Seekers and the Developments in the 1990s**

After the signing of the 1951 Convention, the practices of Turkish authorities can be classified into three categories<sup>155</sup>; although these mainly used to describe especially the implementations during the 1980s. These are Convention Refugees,

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<sup>154</sup> Özmenek, E., *op. cit.*, p. 43

<sup>155</sup> Kirişçi, K., *op. cit.*, 1995, p.4

National Refugees and Non-Conventional Refugees. The Conventional Refugees are the refugees who sought asylum as a result of events in Europe; as it has been stated in the 1951 Convention. Turkey used Conventional Refugees to gain good international publicity in Western Europe and United States, for a price of only temporary protection; without causing any social, economic and political problems regarding the integration of refugees; except the very small number of people that granted permanent refugee status for the reasons mentioned above; which are an ignorable lot in terms of costs to the nation state.

As has been stated in the analysis of European countries in general, Turkey also used humanitarian, liberal perspective for the purposes of the nation state interests; where there was no cost in order to gain good interests; at least at those time being. The second group was the National Refugees, which can be explained under four subgroups. According to Turkish legislation, of The 1934 Law on Settlements, these refugees were either ethnic Turks, or groups closely related to Turks, or Muslims who were not of Turkic origin but whose descendants were closely associated with the Ottoman Empire, such as Albanians or Bosnian Muslims. In dealing with these refugee movements, Turkey always preferred bilateral agreements instead of multilateral ones.<sup>156</sup> For example, during the time between 1920 and 1976, Turkey signed five bilateral treaties with Greece, one with Romania and one with Bulgaria.<sup>157</sup> The criteria in order to determine the refugee status for this group of refugees is based on the cultural historical, religious factors. The first group under National Refugees was the Turks in Bulgaria. The Turks living in Bulgaria were the descendants of the former Turks who lived in the same place while it was a part of Ottoman territory. In addition, Bulgaria was a part of Communist Bloc during the Cold War, and Turks were suffering discrimination in Bulgaria. This group, including Bulgarian speaking Slav-Muslim Pomaks, came to Turkey as refugees within two waves; during 1950 - 1951 and in 1989. The second group was including the Turks in Yugoslavia, which was also a part of the Communist Bloc. The political rapprochement between Turkey and Yugoslavia

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<sup>156</sup> Özmenek, E., *op. cit.*, p. 44

<sup>157</sup> Kirişçi, K., *op. cit.*, 1991, p. 7

during the early 1950s led almost 182,500 refugees to come to Turkey through a 30 years period.<sup>158</sup> The third group consists of refugees from Romania and Greece, during the period of early 1950s to 1969. Many of them granted residence regarding family reunification provisions. The last group was coming from ancient Turkish lands, from Central Asia. Although the numbers were small compared to the groups from Balkan states, Kazaks, Uyghurs, Turkmens, Uzbeks and Kyrgyz were received as refugees concerning the National Refugee implementations.

The most important point concerning the national refugees is the lack of consistent policy of Turkey. Ad-hoc decisions were usually taken to tackle with every refugee flows. For instance, in 1950s, Turkish government accepted the demand of Bulgaria to receive 250,000 Bulgarian Turks; however, Turkey closed the Bulgarian border when the refugee numbers reached thousands. Later on, the border reopened to accept refugees. Similar event took place in 1989, when Turkish government started to receive Bulgarian Turks. When their numbers reached to 300,000, Turkish government decided to reintroduce an immigration visa requirement.

Another important point regarding National Refugees is the terminology of Turkey used to define the refugees under this category. Instead of using the term ‘refugee’, Turkey uses ‘immigrant’ or ‘guest’ for the refugees under this category. It had brought heavy criticisms from UNHCR. This has a contradicting nature with the 1951 Convention Relating to the Status of Refugees; which Turkey is one of the state parties. According to the Convention, Turkey accepts refugees as a result of the events occurred in Europe to her territories permanently. However, Turkey also uses the term immigrant or guest for them, in some cases, instead of refugee. This gives flexibility to Turkish authorities in terms of the implementation of humanitarian norms stated in the 1951 Convention.<sup>159</sup> There are factors affecting the attitude of Turkey however; the increase in unemployment and population, Turkish governments become reluctant to receive the people considered under National Refugees; such as in the case of Bulgarian Turks in 1989.

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<sup>158</sup> Kirişçi, K., *op. cit*, 1995, p.20

<sup>159</sup> Özmenek, E., *op. cit*, p. 47

It is clearly visible in this group of refugees that the government policy of Turkey towards National Refugees is ruled by the nation state perspective. When the conditions are suitable, the governments adopt humanitarian approach to refugees in order to receive them. When the conditions deter, such as growing unemployment and population, Turkey closes its borders in order to stop the refugee flows adopting a nation state perspective - explicitly - regarding security concerns. This attitude contradicts with both of the main legislations in Turkey: It contradicts with the Settlement Law in terms of not granting the refugee rights to the people of “Turkish descent and culture”, where the right of refugees granted according to the definition in the same Law “who has intention to stay temporarily in Turkey” becomes ‘permanent’. Furthermore, it contradicts with the 1951 Convention, where the people coming from the European continent in the context of “as a result of events occurred in Europe”, Turkey ‘prefers’ to define the refugees as immigrants and guests; therefore limit the humanitarian rights of them in whatever context and whenever they choose. These contradictions present the inconsistencies in Turkey’s refugee policies.

This attitude of inconsistency, however, brings the question of inconsistency as a preference of state policy, where it can be expressed as an ‘evasive’ policy. However, from the nation state perspective, it has its advantages: to use refugees as a tool for foreign policy. By adopting this ‘evasive’ policy, Turkey does not encourage the refugees of Turkic origins in the neighbouring countries; therefore strengthens Turkey’s position towards her neighbours during negotiations in international relations in general.

The third group defines the implementation of Turkish policies is the Non-Conventional Refugees. These refugees are not within the legal responsibilities of Turkey while she maintains the geographical limitation. They are not covered by the rules of 1951 Convention in Turkey, since they are not seeking asylum because of the events occurred in Europe; therefore they are outside the terms of geographical limitation as being outside the limits of geographical boundaries opted and maintained by Turkey. Turkey has not been exposed to the flow of Non-

Conventional Refugees until the 1980s. In 1979, the change of regime in Iran led many refugees of various ethnic groups including Baha'is, Christians, Jews, Kurds, Turkmens, as well as many Iranians to flee to Turkey during the 1980s. Turkey used the geographical limitation as a tool to maintain the foreign relations with Iran stable; not to disrupt by giving refugee status to thousands of people fleeing from the Islamic regime in Iran and therefore agreeing them to resettle in other countries. Baha'is and Christian groups such as Assyrians were mainly resettled by International Catholic Migration Commission to usually in United States. Others received assistance from UNHCR. However, the situation got extremely worse during 1988 and 1989, when Turkey faced with a mass influx of Kurds fleeing from Iraqi regime. The Iraqi government's decision to use chemical weapons against Kurdish peshmergas led thousands of civilian deaths in minutes and thousands of others to flee to Turkish territories within days. Initial reaction of Turkish Minister of Defence was to oppose the idea of granting them protection. However, Turkey opened its borders to accept these people into her territories, with the concerns of humanitarian needs; however, government was reluctant to give the status of refugee to them, because of the potential risk of current and future implication of legal obligations. Instead, Turkey chose to refer them as 'temporary guests' or 'asylum seekers'. UNHCR criticized Turkey since they were responsible to take care of them; however, they were left unable to make status determination since they have already been denied to define by Turkish government as refugees. This further hindered them to provide any kind of assistance and protection. In addition, Turkish government refused to provide any assistance to them and furthermore accept external assistance offered by United States, fearing it would further lead Kurds in their territories. On top of it, in 1990 Turkey faced another mass influx from Iraq because of the Iraqi invasion of Kuwait. Therefore, Turkish government decided to close its borders for the reasons of national security. Later on, United States created a 'safe haven' in Northern Iraq<sup>160</sup> and these refugees placed in there and sent out of Turkish territory.

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<sup>160</sup> Frelick, B., *op. cit*, p. 3

Here, in the Kurdish case, Turkey did not know how to respond to a mass influx, since she was not exposed to one before. It has always feared to receive one, and this fear was one of the main reasons that Turkey chose the geographical limitation in 1951 in the first place; because of a possible risk of mass influx or refugee flows from Middle East or India.<sup>161</sup> However, after almost 40 years, when the fears were realized, Turkey was unprepared to take action. Her initial reaction was of security concerned but almost immediately changed its attitude with humanitarian concerns. But the indecisiveness between security concerns of nation state perspective and liberal perception regarding humanitarian concerns led conflicting measures to be taken.

During these events on course, there were an increasing amount of illegal migrants and asylum seekers whether using Turkey as a transit country or disappearing from authorities and moving into underground if their applications were refused. With the deterioration of stability in the Middle East after the Cold War, economic problems increasingly arisen within the region, and more people from neighbouring countries came Turkey to seek asylum, or try to use Turkey as a transit country to reach the welfare of western European states. The mass influxes of Kurds in 1988 and 1991, Bulgarian Turks in 1989 and later the 1992-1993 influx of Bosnian Muslims and furthermore the increasing asylum applications of Iranians to Turkey caused an overwhelming pressure on Turkey's economy as well as its stability. The Turkish government lost control over the people coming in and out of the country; and furthermore, the people who illegally enter into Turkey. What led the Turkish government especially frustrated was that they discover the unregistered asylum seekers officially recognized as refugees by UNHCR at the time of their resettlement, which is practically at time they were just leaving the country within the autonomy of UNHCR. These concerns were toppled with the suspicions of Iran

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<sup>161</sup> At that time, there were internal disputes in India, which gradually led the formation of Pakistan and later Bangladesh; which led huge lot of people migrate or seek asylum outside the region.

supporting Islamic terrorist groups within Turkish territories and the uncontrollable assaults of Workers' Party of Kurdistan (PKK)<sup>162</sup> within the country.

**Table 7. The Persons Entered to Turkey from the Neighbouring Countries, Middle East and Balkan States between 1964 and 2003**

	1964	1970	1980	1990	1996	2000	2003
<b>Middle East</b>							
Iran	12,796	14,247	42,082	219,958	379,003	380,819	484,269
Iraq	3,919	6,518	14,046	13,372	14,137	20,776	29,940
Syria	9,996	13,184	26,384	113,959	92,033	122,417	154,108
Gulf States*	-	-	-	43,088	40,029	19,537	43,503
Pakistan	1,961	7,383	4,800	7,347	12,410	7,908	12,336
Subtotal	28,672	41,332	87,312	397,724	537,612	551,457	724,156
<b>Balkans</b>							
Albania	-	-	-	1,924	20,971	29,748	32,682
Bosnia	-	-	-	-	12,115	28,631	35,119
Bulgaria	693	18,214	26,523	-	139,648	381,545	1,007,535
Greece	3,042	11,313	19,477	203,720	147,553	218,092	368,425
Macedonia	-	-	-	-	41,269	108,928	117,819
Romania	-	-	-	352,034	191,203	265,128	184,182
Serbia-Montenegro	-	-	-	-	44,600	128,383	186,423**
Yugoslavia	5,661	28,352	13,817	296,843	-	-	-
Subtotal	9396	57,879	59,817	854,521	597,359	1,160,455	1,932,185
<b>TOTAL</b>	<b>38,068</b>	<b>99,211</b>	<b>147,129</b>	<b>1,252,245</b>	<b>1,134,971</b>	<b>1,711,912</b>	<b>2,656,341</b>
<b>GENERAL TOTAL</b>	<b>229,347</b>	<b>724,754</b>	<b>1,057,364</b>	<b>2,301,250</b>	<b>8,538,864</b>	<b>10,428,153</b>	<b>13,461,420</b>

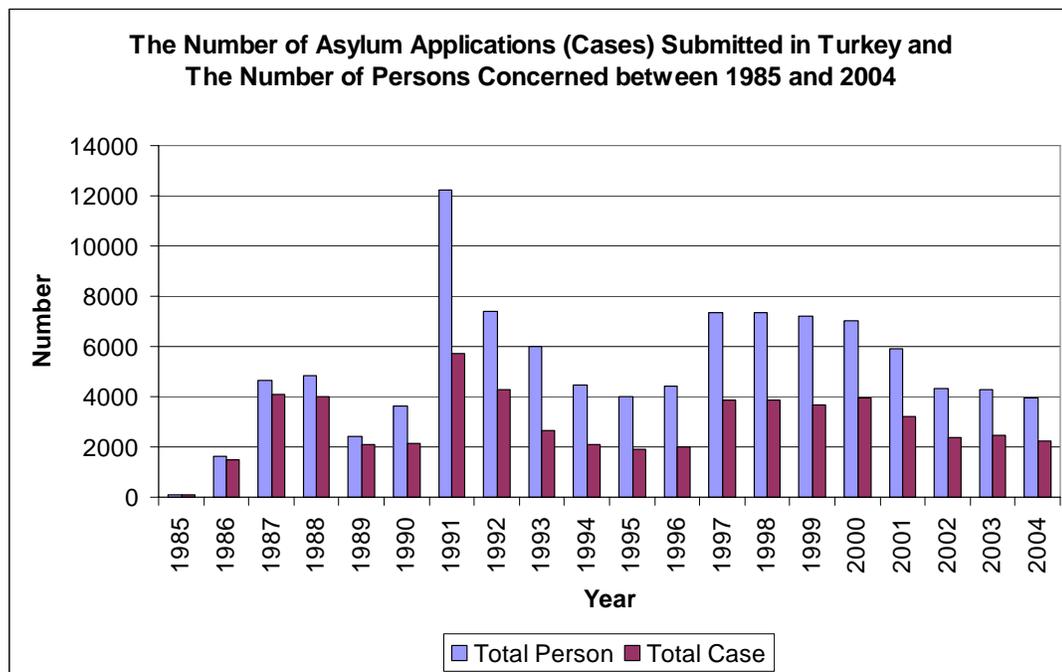
\* Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and United Arab Emirates.

\*\* In the statistics used for preparing this table, Serbia Montenegro is sometimes referred to as the Federal Republic of Yugoslavia.

Source: Compiled from data obtained from the Foreigners Department of MOI and State Statistical Institute Annual Reports

Source: The data is originated from the Foreigners Department of the Ministry of Interior and the annual reports of the State Statistical Institute, and compiled in the work of Apap, Carrera and Kirişçi, "Turkey in the European Area of Freedom, Security and Justice", August 2004

<sup>162</sup> A terrorist organization; established as a Marxist-Leninist group struggling to create a separate Kurdish state within the territories of Turkey



**Figure 4.**

Source: Compiled from the data from UNHCR Branch Office Ankara

The graph and table above shows the increase in asylum seeker applications through the years and crucial to present the increasing migration pressure upon Turkey. Until 1980s, the asylum applications are lower compared to the later years. The small peaks in 1987 and 1988 on the graph indicates the mass influx of Bulgarian Turks in 1987 and the Kurdish mass influx relating to the events in Halepçe in Iraq. The increased asylum applications and the illegal migration created an immense pressure on Turkey, which led to adopt an asylum regulation in 1994.

In November 1994, Turkish government introduced 1994 Asylum Regulation. It had attracted criticisms from UNHCR, since the government was taking control of the refugee status determination within its authority; thus ceasing the UNHCR’s autonomy on the issue. However, from the states’ view, it was aimed to increase the state control on the worsening situation of illegal migrants and asylum seekers

within its territories and those people who uses Turkey as a transit country. Many illegal migrants also began to strand in Turkey and economic difficulties lead some of them to become involved in illegal activities such as drug trafficking and prostitution. The Regulation was drafted by Ministry of Interior, only to be consulted to Ministry of Foreign Affairs and without the consultation of UNHCR or other non governmental organizations operating on refugee issues. There were both heavy criticisms from UNHCR as well as a judge from Military Court of Appeals, Tevfik Odman, focusing on the technical and substantive grounds of the Regulation.<sup>163</sup> One of the main criticisms towards the Regulation was the right of state to deport asylum seekers whose cases were found acceptable and granted a temporary residence but failed to be resettled within a reasonable period of time.

As Kemal Kirişçi points out in his work<sup>164</sup> that this the increased restrictions on immigration in Western European states led UNHCR to fail increasing number of cases to resettle within two years; which was used to be a maximum time period to realize the resettlement before. This had led Turkey to increase a concern that Turkey become a stranded zone for refugees, failed to be resettled or took an increasing amount of time to be resettled, which causes disrupt to the economic stability as well as other concerns such as an increase in illegal activities; and an overall deterioration in internal stability and inevitably a security threat for the state. According to Kirişçi, the reasons underlying the maintaining of geographical limitation during and the near future of 1994 is the growing concern of Turkey to consider neighbouring areas as unstable and prone to refugee movements, concerning the regimes especially in Iran and Iraq.<sup>165</sup> Furthermore, he argues that the Turkish officials has perceives the potential refugee movements into Turkey as a matter of national security threat; just as asylum seekers and illegal migrants are being perceived in Europe as a similar threat to the European governments. He points out that the mass influxes from neighbouring countries have strengthened

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<sup>163</sup> Odman, T., *op. cit.*, p. 180-187 ; see also Kirişçi, K., “Is Turkey Lifting the ‘Geographical Limitation’? - The November 1994 Regulation on Asylum in Turkey”, *International Journal of Refugee Law*, Vol. 8, No. 3, 1996, p. 301

<sup>164</sup> Kirişçi, K., *op. cit.*, 1996, p. 307

<sup>165</sup> *ibid.*, p. 308

this concern. Thus, he concludes, Turkey sees the geographical limitation as an important protection against an of Turkey's sovereignty to control refugee and illegal migration movements within her territories and furthermore a threat to the cultural and ethnic homogeneity and the Turkish identity<sup>166</sup>, which has been closely guarded, protected and defended from the establishment of the Turkish Republic.

One of the main reasons that led Turkish authorities to adopt the 1994 Asylum Regulation was the growing argument between the Turkish officials and UNHCR on the scope of the refugee. The liberal policy starting from the 1980s initially towards Iranians led to develop a flexible asylum policy towards refugees outside the geographical limitation; however, it also blurred the application of geographical limitation in Turkey. The extension of this policy to other asylum seekers outside the geographical limitation aggravated this blur. Until 1994, UNHCR and Turkey had an arrangement, initially to deal with the refugees coming from Iran but gradually extended to cover all asylum seekers outside the scope of geographical limitation. Turkey allowed Iranians that possess valid passport to enter and leave her territories within a certain time period. This policy was adopted to both serve for humanitarian needs of refugees and also to security needs of Turkey to prevent political disturbance with Iran by not accepting Iranian asylum seekers formally. Later on a practical relationship developed between Turkey UNHCR and the task of status determination was left to UNHCR office in Ankara. Turkish authorities began to grant them temporary residence and expected from UNHCR to either resettle them out of Turkey after granting refugee status or send them out of Turkish territories after rejecting their cases. Following the creation of a safe zone in Northern Iraq, Turkish authorities developed a perception towards the asylum seekers from the region and saw them as economic migrants, and began to treat them as illegal migrants. This perception and relative treatment of illegal migration had also begun to be applied to all asylum seekers outside the scope of geographical limitation.

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<sup>166</sup> *ibid.*, p. 308 - 309

Turkey developed this perception with the aftermath of Gulf War in 1991 and the response of European governments towards the people fleeing from the region; as UNHCR fail to resettle the refugees temporarily staying in Turkey because of the restrictive policies of European states to accept them. In addition, the unresolved situation of asylum seeker and refugee population with an increase within Turkish territories posed a security threat. The natural consequence of this unresolved situation is the potential threat of increase in illegal activities and crime rate, originated from unemployment, the lack of adequate resources for education and health to refugee and asylum seekers that stranded; and also from the people moved underground with the refused asylum cases. The potential unrest among Turkish society and refugee population might lead to disrupt in internal stability within Turkish state. These reasons led Turkish authorities and UNHCR to argue the scope of the refugee.

As a result, Turkish government argued the number of illegal migrants in relation with the asylum seekers has increased, and many people in regards to the asylum cases that rejected by the UNHCR retreated to underground to join those illegal migrants. Furthermore, Turkish authorities frustrated to find UNHCR officials to resettle the asylum seekers out of country without registering their entry to Turkey, to Turkish authorities.<sup>167</sup> Therefore, the increased pressure of irregular and illegal migration over Turkey led the asylum regime in became under threat.

It is clear that the decision of the introduction of 1994 Asylum Regulation by Turkey has been taken by heavily security concerns. Although there were criticisms, not from international organizations but from the authorities in Turkey as well, such as a respectable judge on the refugee issues in terms of technical and substantive grounds, Turkish government had significant points to act with the concerns of security; even if the outcome has been highly criticized.

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<sup>167</sup> *ibid.*, p. 299

In 1996, the Turkish government started again the close cooperation with UNHCR. A new arrangement has been made that characterizes today's situation, that Turkish government grant the implementation of status determination to UNHCR in the name of Turkish government. Furthermore, Turkish government signed a partnership with UNHCR for the training of its officials. Under this cooperation, The Turkish government agreed to a Cooperation Framework covering all training and capacity building activities between UNHCR and the Ministry of Interior (MOI) to create a permanent training program within the MOI on asylum. Furthermore, within the cooperation it is aimed to establish corps of specialized 'Refugee Status Determination Staff', interpreters, and a country of origin information system, in order to develop institutional and technical capacity building in asylum<sup>168</sup>; which will be essential for Turkey to lift the geographical limitation in the future. Today, the system which started with 1997 cooperation period handles approximately 4,000 - 4,500 asylum applications per year.<sup>169</sup> Turkey grants temporary protection to asylum seekers, and the status determination process and the resettlement process takes about a total of two years time. However, through this time, Turkey expected those who granted refugee status would be resettled outside of Turkish territories by UNHCR.

Through this period between 1994 and 2004, Turkey faced two other mass influxes. IN 1998 and 1999, almost 18,000 Kosovars came to seek refuge, but eventually most of them have returned. Another case was again in the 1999 with the mass influx of 17,000 Ahıska Turks, who were given residence permits.

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<sup>168</sup> Alp, Ç., *op. cit.*, p. 84 - 85

<sup>169</sup> Official statistics of UNHCR Ankara, 2004

#### **4.3.4. The Role of European Union - Turkey Relations on the Recent Developments of Turkey's Asylum Policy**

In its November 1998 Report, the European Commission stated that EC-Turkey Association Council resolutions dated 6 March 1995 and 30 October 1995 provided for cooperation between the European Union (EU) and Turkey on certain issues falling under the heading of Justice and Home Affairs (JHA). Political considerations meant that these arrangements remained unresolved until 1998. The European strategy stressed the importance of implementing these two resolutions. On 25 June 1998, a meeting was held in Brussels between the specialized Council committee and the Turkish authorities, a number of topics relating to Justice and Home Affairs were covered. The Commission stressed the need to develop active cooperation with Turkey on immigration. In its November 1999 Report, the Commission stressed that, despite some improvements, progress still needed to be made, particularly on immigration and asylum (conclusion of readmission agreements, lifting the geographical reservation to the 1951 Geneva Convention), border controls (merging the various departments responsible for border control), the fight against organized crime (stepping up the fight against the trafficking of human beings) and drug trafficking (increased cooperation with the Member States). A number of international agreements on judicial cooperation in civil and criminal law still needed to be ratified. In its November 2000 Report, the Commission brought criticism that Turkey had made no significant progress in the field of Justice and Home Affairs. According to the 2000 Report, Turkey still needed to make efforts to bring itself into line with Community law in areas such as the fight against fraud and corruption, the fight against drugs and measures to promote customs and judicial cooperation. In its November 2001 Report, the Commission noted that Turkey had made some progress in the field of Justice and Home Affairs. The October 2002 Report notes that Turkey must step up its efforts to align its legal framework on data protection, strengthening its combat against illegal immigration, strengthening its border controls and adopting the *acquis*, in particular as regards asylum and immigration. It must also concentrate on

improving coordination between law enforcement services and on continuing the reform of its legal system. In its November 2003 Report, the Commission pointed that Turkey had made serious progress in the field of Justice and Home Affairs. In particular, it had improved and intensified its cooperation with the European Union and the Member States in a range of fields, such as the fight against illegal migration and organized crime. In general it needs to begin implementing the strategies it has adopted and step up its efforts to align its legal and institutional framework. In its October 2004 Report, the Commission stated that Turkey has continued to make efforts to align with the *acquis* in the area of Justice and Home Affairs. Nevertheless, progress is required in several areas such as the reform of the judiciary, the fight against corruption, the control of illegal migration and measures to combat trafficking in human beings.

In the Luxembourg European Council in December 1997, Turkey's eligibility of accession to the membership of EU has been stated. In Helsinki European Council in 1999, Turkey's candidacy status as a member of European Union was officially declared, and the European Council decided to prepare an Accession Partnership, which defines priorities on which accession preparations must focus in accordance with the political and economic criteria and the obligations of a member state. Furthermore, the necessity of a national program to be papered was stated in order to adopt the EU *acquis*. On 8 March 2001, the Accession Partnership for Turkey has been adopted by the European Union and stated in the Accession Partnership that Turkey had to adopt a National Program by the end of 2001 for the adoption of the EU *acquis*. The harmonization of EU *acquis* on asylum and migration was a high priority in the Accession Partnership<sup>170</sup>, which would have a considerable impact of Turkey's asylum policy as well as policy on irregular migration visa policy.<sup>171</sup> The Accession Partnership contained some short term priorities regarding the field of Justice and Home Affairs such as the fight against organized crime.

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<sup>170</sup> Kirişçi, K., "Immigration and Asylum Issues in EU-Turkish Relations: Assessing EU's impact on Turkish Policy and Practice", Book Chapter from Migration and Externalities of European Integration by S. Lavenex & E. Uçarer(eds.), *op. cit.*, 2002, p. 140

<sup>171</sup> Alp, Ç., *op. cit.*, p. 80

The abolishment of geographical limitation, with the development of accommodation facilities and social support for refugees was stated as a middle term priority in the Accession Partnership. Other medium term priorities were the development of training programs for the harmonization and the implementation of EU acquis on JHA, the strengthening of border management and preparations for the implementation of Schengen Convention. Furthermore, the adoption and implementation of EU legislation on migration, which includes the readmission agreements, legislation on reception and expulsion, in order to prevent illegal migration was another medium term priority in the Accession Partnership.<sup>172</sup>

As a requirement of Accession Partnership, Turkey has adopted the first National Program for the Adoption of the Acquis. With the National Program, Turkey presented a time scale for the short and middle term priorities. It was stated in the Accession Partnership that the abolishment of geographical limitation will be considered following the completion of necessary changes in the legislation and infrastructure, together with the condition of a burden sharing with the European Union, in which would not cause a mass influx from the East. Turkey also stated further that the accommodation and social support mechanism will be developed by taking priority to vulnerable groups, and with the cooperation of UNHCR, International Organization for Migration (IOM) and NGO's.<sup>173</sup>

Later on, the Accession Partnership has been revised by the EU in May 2003 and the negotiations of readmission agreements with Turkey and the capacity building for an effective border management has been stated as short term priorities. The abolishment of geographical limitation has been placed as a top priority in the medium term; and the enhancement of status determination process and review of asylum cases, and development of a social support and accommodation system for refugees and asylum seekers also stated as a medium term priority.

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<sup>172</sup> Alp, Ç., *op. cit.*, p. 81

<sup>173</sup> *ibid.*, p. 82

Following the revision of EU on Accession Partnership, Turkey also revised the National Program with a statement of geographical limitation to be lifted after a detailed discussion during the accession negotiations and furthermore to include a Draft Asylum Law to be prepared until 2005, which has not been achieved. Turkey also stated to establish a central expert body for Refugee Status Determination during 2004 and 2005. Furthermore, it was stated that Turkey has signed readmission agreements with Greece in 2001 and Kyrgyzstan in 2003.<sup>174</sup>

Through the process of Accession Partnership and the response of Turkey as the National Program, Turkey approached the idea of abolishing the geographical limitation cautiously, from a nation state perspective; although keeping into consideration regarding humanitarian issues. The fear of mass influxes, which is the primal reason - as a security concern - of the introducing and maintaining geographical limitation, and that Turkey faced several times in the past 2 decades led Turkey on edge with the idea of abolishing it. It is not surprising that Turkey tries to buy time, by placing the abolishment of geographical limitation as middle term priority in National Plan; in accordance with the Accession Partnership. It is also not surprising that Turkey did not prepared a Draft Law on Asylum and postponed further the possible date of cessation of geographical limitation to the end of middle term priority deadline of 2012; as it will be discussed in further subchapter.

Regarding the visa policy, Turkey has introduced the requirement of visas for nationals of Bahrain, Qatar, the United Arab Emirates, Kuwait, Saudi Arabia and Oman since 2002. In 2003 the exemption from the visa requirement was abolished for nationals of thirteen other countries. Turkey has pursued its efforts to align its blacklist on the EU list, introducing a visa requirement for nationals of Azerbaijan. On the white list side, the Turkey-Brazil visa exemption agreement entered into force in July 2004.

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<sup>174</sup> *ibid.*

In respect of the control of external borders, Turkey has been set up new border posts and sea patrols in the recent years and continuing to reinforce its infrastructure and equipment. In March 2004 Turkey and Bulgaria signed a border management cooperation protocol. The Bulgarian border police and the Turkish coastguards was accepted to work together in order to prevent violations of the two countries' territorial waters and exclusive economic zones. In June 2004 the Ministry of Interior decided to set up an integrated border management directorate that will be responsible for implementing projects for the establishment of a border police force in Turkey.

In addition, Turkey made efforts in respect of the alignment with the Schengen acquis. In March 2004, Turkey set up a national bureau in the Interpol department of its directorate-general for security which will act as the central authority for Schengen purposes and as the Europol and European Anti-Fraud Office (OLAF) contact point.

There are important legislation changes concerning the harmonization of EU acqui with the national legislation. The inter-ministerial working party on immigration and asylum has produced a strategy for alignment on the EU acquis. In February 2003 the Turkish Parliament passed legislation on foreign nationals' work permits that provides for a central system of work permits for foreign nationals entering Turkey legally. From now on, only the Ministry of Employment and Social Security will issue work permits, rather than a series of different bodies. The new Act, which came into force in October 2003, allows foreign nationals to work on the same basis as Turkish nationals, which was not possible under the earlier legislation. It also aligns Turkish law on the provisions concerning refugees in the 1951 Geneva Convention. In June 2004 Turkey ratified the UN Convention for the protection of the rights of all migrant workers and members of their families.

The Turkish Nationality Act was amended in June 2003 to outlaw marriages of convenience. Although Turkey is still a major country of destination and transit for illegal migratory flows, illegal migration via Turkey is declining. The authorities have pointed out that, following stronger efforts and initiatives to combat illegal migration, international migration routes began diverting away from Turkey in 2002 and 2003. In October 2003, Turkey ratified the agreement on the prerogatives and privileges of the International Organization for Migration, which now has its own legal status under that agreement. Turkey has also continued to participate in the activities of the Centre for Information, Discussion and Exchange on the Crossing of Frontiers and Immigration.

On the other hand, Turkey has difficulties in the implementations of protocol on readmissions between Turkey and Greece. Given the problems encountered, the two sides decided in 2004 to take measures to ensure that the protocol is implemented more effectively. Some progress has been made with signing and concluding readmission agreements with third countries. A readmission agreement was signed with Romania in January 2004. In March 2004 Turkey agreed to start negotiations with the EU for a similar agreement. Negotiations are in motion with Bulgaria, Libya, Ukraine and Uzbekistan. But the agreement with Kyrgyzstan has not yet been implemented.<sup>175</sup>

#### **4.3.5. The Analysis of ‘National Action Plan to Implement Turkey’s Asylum and Migration Strategy’ and the Importance of It Regarding the Geographical Limitation**

During the EU preaccession process, specific programs were introduced by EU for Malta, Cyprus and Turkey. One of these programs is the Twinning Projects, which is a preaccession financial assistance program in order to harmonize and implement

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<sup>175</sup> ‘Support for the Development of an Action Plan to Implement Turkey’s Asylum and Migration Strategy’, March 2004, p. 26

the EU *acquis*, by providing technical and administrative assistance for the exchange of information on legislation and practices, the drafting of legislation, enhancing the efficiency of the institutions, and the training of the staff. Turkey has finalized one Twinning Project regarding the field of asylum in 2005 for the first time. Another one has started in September 2005 concerning visa policy and practice, and human trafficking.<sup>176</sup>

Turkey started the one year Twinning Project, ‘Support for the Development of an Action Plan to Implement Turkey’s Asylum and Migration Strategy’ on March 2004, in cooperation with the United Kingdom and Denmark. The aim was to align Turkey’s asylum and migration legislation and implementations with the EU *acquis*. The partner institutions were the Foreigners, Borders and Asylum Department within the General Directorate of Security branch of Turkish Ministry of Interior, Danish Immigration Service, and UK Immigration and Nationality Directorate. The outcome of the Project was the Turkey’s first National Action Plan (NAP), which was on asylum and migration. It consists of an extensive analysis of the present legal and institutional environment in Turkey, the reforms that have been made until the time and the plans for the future.<sup>177</sup>

The National Action Plan presents a list of European Union legislation regarding the asylum field and the list of tasks to be undertaken with a schedule in order to realize a complete status determination system.

However, the Action Plan has some contradictions with the previous revised National Program in case of dates. Most of the tasks have been postponed to an unknown mid-term. For instance, the establishment of a central expert body for Refugee Status Determination that has planned to be achieved within 2004 or 2005, postponed to a date between 2006 and 2010. Furthermore, Turkey has not completed the Draft Asylum Law, which stated to be completed in 2005. This gives an ambiguous impression of exactly when these tasks will be completed. It gives

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<sup>176</sup> Alp, Ç., *op. cit.*, p. 83

<sup>177</sup> *ibid.*, p. 85

the impression that Turkey tries to provide itself a wide area of movement in order to have an option of flexibility to implement these tasks. The Action Plan underlines vigorously the expectation of a satisfactory burden sharing mechanism between Turkey and EU, especially in cases of mass influxes.

What is striking though is the time stated to lift the geographical limitation. Turkey stated in the National Action Plan that, the geographical limitation will be abolished in 2012; however, taking into consideration of the finalizing and the date of Turkish membership talks to the EU.

Another important point is the readmission agreements. Turkey stated in the Action Plan that it is planned to extend the agreements first to the neighbouring countries on west and east, then to the countries producing migrants and finally to the EU member states. The countries that readmission agreements finalized are stated as Greece and Syria in 2001, Kyrgyzstan in 2003 and Romania in 2004. There are also some countries that Turkey already proposed the readmission agreements as: Pakistan, Bangladesh, India, People's Republic of China, Tunisia, Mongolia, Israel, Georgia, Ethiopia, Sudan, Algeria, Morocco, Nigeria and Kazakhstan. It is planned to undertake negotiations starting with the following countries: Russian Federation, Uzbekistan, Belarus, Hungary, Macedonia, Ukraine, Lebanon, Egypt, Libya and Iran.<sup>178</sup> There are no statements regarding of Iraq and Afghanistan; therefore it is obvious that Turkey's statement concerning readmission agreements with these two states in the revised National Program of 2003 continues: There are no considerations of proposing any agreements to Afghanistan and Iraq, due to the political instabilities within those countries. Within this context, it should also be pointed out that Turkey already concluded bilateral readmission agreements with individual EU member states, Sweden and the Netherlands for the cases of Iraqi

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<sup>178</sup> 'Support for the Development of an Action Plan to Implement Turkey's Asylum and Migration Strategy', March 2004, p. 27

asylum seekers.<sup>179</sup> Furthermore, Turkey agreed to start negotiations with the EU for readmission agreements in April 2004.

The Action Plan also states what had been achieved previously until March 2005. It is pointed that Turkey has introduced visa requirements for Azerbaijan citizens in 2003; in accordance to the EU Negative Visa List. In March 2004 Turkey signed a 'cooperation protocol' with Bulgaria to protect both countries' water within the context of border management control. Furthermore, in May 2004, Turkey signed 'cooperation agreement with EUROPOL' in order to enhance cooperation in fighting organized crime. Turkey also concluded the negotiations with the EU for a 'Joint Action Program on Illegal Migration' to increase the measures against smuggling of illegal migrants. Another achievement stated is the new 'road transportation law and regulation' including provisions on carrier sanctions.<sup>180</sup>

There are both negative and positive criticisms from various organizations including the EU, international Organizations such as UNHCR and Amnesty International, as well as academicians. EU finds it essential to finalize the readmission agreements between EU and Turkey as soon as possible, therefore it is derived that EU is not happy with the ongoing stated strategy on priorities for readmission agreements. Furthermore, EU criticized Turkey in the final Development Report in late September 2005 that Turkey does not perform the reforms as it would be expected from a candidate country. EU is especially concerned with the 'possible' date of 2012 - regarding the comment of the outcome of EU-Turkey membership talks.

In general, EU and UNHCR statements underline the National Action Plan as a positive development. There are criticisms towards Turkey's concerns to face a mass influx and a boost in asylum applications in accordance with the abolishment of geographical limitation. Both EU and UNHCR find Turkey's concerns of facing a mass influx as non realistic. It is pointed out that the asylum applications

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<sup>179</sup> Alp, Ç., *op. cit.*, p. 85

<sup>180</sup> *ibid.*, p. 86

submitted for third countries in Turkey do not exceed 5,000 over the recent years. Furthermore, the reluctance to stay of many Iranian asylum seekers because of Turkey not being found safe to stay is shown as a complementary fact to strengthen their arguments.<sup>181</sup>

There is further criticism by the EU regarding the autonomy of the central expert body for Refugee Status Determination planned to be established. EU criticizes that the autonomy of the body should be clearly pointed out, and it should be a civilian authority rather than responsible towards Security General Directorate.<sup>182</sup>

There are also criticisms of Amnesty International.<sup>183</sup> First of all, the criticisms focus on the preparation of the National Action Plan that it had been prepared and came into force without any consultation to the civil society and academicians. A further criticism focuses on the content of the Plan. It is stated that the reforms planned to be undertaken in the short and middle term are positive developments ‘on the paper’, however, considering the Action Plan as a whole, Amnesty International criticizes that it is a plan mostly prepared with the concerns of membership prospect to the EU and the ‘burden sharing’ problem, rather than humanitarian concerns in regards to the protection of the human rights of asylum seekers.

Amnesty International furthermore criticizes the date of Asylum Law to be come into force in 2012, as being too late. Another issue pointed out was training academy that to be established with the outcome of a future Twining Project in the middle term as again being a late development. Concerning the integration of refugees, all the reforms to be planned in the Action Plan has been pointed out as a promising development.

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<sup>181</sup> European Union Communication Group web site, Political Reforms and Implementations, [www.abig.org.tr](http://www.abig.org.tr)

<sup>182</sup> *ibid.*

<sup>183</sup> For a detailed version of the Criticisms of Amnesty International, see the media briefing on Amnesty International Turkey website, [www.amnesty-turkiye.org](http://www.amnesty-turkiye.org)

Regarding the date of abolishment of the geographical limitation, Amnesty International finds a matter of concern. Finally, it is stated that the reforms that planned to be made in the Turkish legislation should also be undertaken in accordance with a humanitarian perspective that protects the human and asylum rights of refugees; not only a matter of harmonization with the European Union *acquis*.

#### **4.4. Conclusion**

In this chapter, a theoretical framework consisting of the two major government policy responses to refugee issues has been presented in order to explain the significance of geographical limitation within the context of EU - Turkey harmonization process better. According to liberal approach, the individual is the main concern and the state guarantees the rights of its people. The liberal approach argues the necessity of an international organization to prevent the human rights violations and the production of refugees through the cooperation of nation states on economic cooperation and humanitarian intervention, if necessary. On the other hand, statist approach sees the security as main concern of nation states in order to provide rights and comfort to its citizens. Furthermore, to achieve the security within its borders, each nation state takes necessary actions by its own and perceives any external intervention as a threat to its security.

Along with the proposal of liberal approach there international organizations for economic cooperation present such as International Monetary Fund or humanitarian cooperation such as United Nations to achieve the goals of liberal perception. However, the security concerns for most nation states hinder the effectiveness of international organizations. The lack of autonomy in UNHCR resulting from its domination by the foreign policies of major donor states is an example to it. These policies are usually created in alignment with the statist discourses with security concerns. It is not the role of UNHCR to create new state obligations in the normal

function of states, but rather to see that states function in such a way that the citizens will be protected. Therefore, as internationally accepted, UNHCR becomes an authority in the international relations to protect refugee rights and act as an overseer to propose guidance and criticisms if the protection conditions are breached. However, the lack of autonomy creates a hindrance to implement UNHCR's humanitarian policies effectively.

On the other hand, within this theoretical framework, if another common power present above the nation state, with an executive power for better implementation on refugee and asylum seekers, it would be much more better in case of humanitarian concerns. In practice concerning Turkey, the prospect of European Union membership would be a tool to achieve it. As a semi supranational organization, EU can act as an organization both to create state obligations for better conditions and protection for refugees - legally, institutionally and de facto; and furthermore to create obligations and monitor that the citizens themselves would be protected. Turkey does not have an option but to lift the geographical limitation in order to be a member of the European Union because no other EU state has the limitation within their legislation; and therefore the EU legislation, *the acqui*, does not contain it. Although Turkey is not obliged to lift it with regards to the international refugee legislation, Turkey will harmonize the *acqui* in order to be a member, and will abolish the geographical limitation during the process, since the EU *acqui* does not harbour geographical limitation. EU, as a semi supranational organization, will be an initiator and a catalyst for Turkey's shifting attitude to refugees more humanitarian.

However, although EU will act to change the attitude of Turkey towards refugees and the improving the democratic conditions within the State, it is clear that the Common Asylum Policy of European Union is based on restrictive policies of member states towards asylum seekers. The domination of anti-immigrant and anti-refugee movements and the increase of asylum application rates through 1980s created pressure over governments and branded the first agreements towards the

Common Asylum Policy as non humanitarian. The following legislative instruments also affected by the high numbers of asylum applications in European countries during the 1990s. The origins of these policies however derived from the fact that the concept of geographical limitation is more specific to Europe and seen as a security concern by European countries and we observe more restrictive policies in European countries. In this respect EU's Common Asylum Policy characterised as restrictive and was set at the minimum standards; therefore the Common Asylum Policy needs further collaborative work. This notion will affect the future of Turkish asylum policies and the situation in Turkey after abolishing the geographical limitation, since Turkey will also align her policies with EU's Common Asylum Policy.

The European polices towards asylum seekers mainly serve the state interests of European powers; the humanitarian concerns come after the state interests and subordinate them. There were reluctance in terms of economic and security concerns among Europe to accept refugees during the interwar period, mainly due to the economic depression of 1930s. After the Second World War, the war wrecked European states needed manpower to reconstruct their countries and to rebuild their industries. Therefore they needed refugees, along with migrants. In this respect, from the end of the WW II to the mid 1970s, European states welcomed refugees and they perceived them no different than voluntary migrants. The 1951 Convention also served this purpose; along with the emerging Cold War policy against Soviet Bloc. However, European states were the initiators to introduce geographical and temporal limitations because they were reluctant to commit themselves to responsibility of accepting unknown amount of refugees in an unknown future and from regions unknown. In this sense, the European states started their restrictive polices from the beginning of the Cold War era, with regard of geographical limitation. The economic and security concerns far more surpass than the humanitarian concerns in the beginning of the Cold War era. The general policies of the European states towards refugees and asylum seekers were humanitarian; however, it was only because of their need to use them as labour, and

to align foreign policies with United States to combat Soviet Bloc. Therefore, the humanitarian concerns were subordinated to economic and security concerns in the post Cold War era. Although they have the European states lifted the temporal and geographic limitations with 1967 Protocol, when the economic crises hit Europe in 1970s, they began to restrict their policies; starting with the migrants. Since 1970s, it has continued until today.

The history of Turkish attitude towards refugees on the other hand, contains more examples of liberal attitudes than security oriented. Its predecessor, the Ottoman Empire, has a long history of receiving refugees and this attitude contains similarities with the present Turkish Republic. Although Turkey has not had a distinct asylum law or asylum system until today, she has implementations and policies from time to time that can be regarded as liberal and humanitarian. However, security concerns have always been a main characteristic of Turkish policies towards asylum seekers. Until the end of WW II, Turkey has based her asylum policies on 1934 Law on Settlements. According to this Law, Turkey granted asylum to those of Turkic origin and those who have close ties with Turkish descent and culture. Although Turkey adopted a humanitarian policy to some people, it was selective and discriminatory regarding the exclusion of others, and can be interpreted as a kind of limitation, to those of Turkic origin, descent and culture. Turkey adopted this policy because of her security concerns to create a homogeneous society and therefore to create internal stability within her territories.

Turkey adopted a different policy after the WW II. Upon the signature to the 1951 Convention, Turkey adopted the geographical and temporal limitations, though the latter was lifted with the 1967 Protocol. The reason for Turkey to state declaration on geographical limitation was the fear of mass influx or massive population movements from neighbouring countries to the east and south east, from Asia and Middle East. The 1951 Convention is not clear on the right to asylum regarding mass influxes; however, Turkey had to deal with mass influxes from neighbouring countries. Also, Turkey aligned her foreign policies along with the Western Bloc

and United States, to combat with Soviet Bloc during the Cold War era. Therefore, security concerns were the main reason for Turkey to adopt the geographical limitation and asylum policy at the time.

During 1980s and the beginning of 1990s, there has been an arrangement between UNHCR and Turkey, in regards of the reception of asylum seekers outside the geographical limitation. Starting with the 1980s, Turkey adopted a liberal policy with humanitarian concerns towards Iranian asylum seekers and began to allow them to stay temporarily in Turkey, where UNHCR resettled them out of the country. This policy has extended through time to include all asylum seekers outside the geographical limitation, and mostly Kurdish refugees from the events of 1989 and 1991 benefited them, as well as asylum seekers from Asia and Africa. Due to the restrictive policies of European states to accept asylum seekers after 1991 Gulf War, UNHCR in Turkey failed to resettle the asylum seekers from outside the geographical limitation which led the arrangement between Turkey and UNHCR to crumble. As a response, Turkey developed a policy to treat asylum seekers outside the geographical limitation as economic and illegal migrants, and argued her non-existent responsibility towards them, because Turkey began to see them a security threat as they began to strand and pile up in Turkish territories. Although there has been geographical limitation in Turkey adopted in terms of security concerns and which inevitably necessitated Turkey not to determine and grant the refugee status to those out of the scope of the limitation, Turkey wanted to enable the control of determining the status of these refugees outside the geographical limitation again with another security concern.

There are flexible visa policies Turkey adopts, which has been mentioned in chapter 2 and the implementations explained in this chapter regarding the treatment of Iranian asylum seekers.<sup>184</sup> Turkey has to cease these implementations within the harmonization process. As a part of the European Union's future territory, Turkey will apply visas to new countries, especially her neighbouring countries. This will

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<sup>184</sup> Kip-Barnard, F., *ibid*, 2005, p.8

bring more restrictions to the access to Turkey and consequently a decrease in asylum applications. A Twinning Project mentioned in this chapter has started in September 2005, on visa policy and practice, and human trafficking.<sup>185</sup> Today, Turkey applies do not apply visa to Iranian nationals to reside up to 3 months, which constitutes a big caseload regarding the asylum applications submitted in Turkey.<sup>186</sup> Turkey also does not apply any visa to Bulgarian nationals, again up to 3 months. Nationals from Azerbaijan, Armenia and Georgia issued a visa at the border for one month to the former two and 15 days for Georgians. The application of visas and increase of border controls will harden the asylum seekers from those countries to come to Turkey and the asylum applications from neighbouring countries will fall. The readmission agreements which Turkey planned to sign in the near future with these countries will furthermore discourage Turkey to be a transit country for illegal migration. So far, Turkey has signed readmission agreements with Greece and Syria among her neighbours. There are on going negotiations with Bulgaria, and response is awaited from Iran and Georgia.

As a concluding analysis, all of these events taken place between 1980 and 1994 prove us that Turkey's security concern has been a significant factor in the invitation of the 1994 Regulation, however, due to different reasons. The geographical limitation has been adopted because of a fear of mass influx in which 1951 Convention was not clear, to prevent the massive population movements from Asia or Middle East, and to align with the anti-Soviet policies of Western Bloc, which all of them originated from security concerns. However, the security reasons that invited the 1994 Regulation were originated from increased illegal migration, the loss of Turkish authority to control its borders and to control over the registration of asylum seekers, and furthermore the unresolved situation of asylum seeker and refugee population with an increase within Turkish territories.

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<sup>185</sup> Alp, Ç., *op. cit.*, p. 83

<sup>186</sup> Officials of UNHCR, the Branch Office Ankara

On the other hand, the 1994 Regulation can be expressed as a big crack in the geographical limitation, a wall against asylum seekers outside the European geography. After the decision taken with the Regulation and the following implementations of status determination, there has been an increased international pressure towards Turkey to abolish the geographical limitation. This led Turkey to back up from her decision and left the status determination to UNHCR to create a wider cooperation towards asylum seekers outside the geographical limitation. The cooperation further included applications such as the training of Turkish officials and capacity building activities by UNHCR. However, the pressure over Turkey has not ceased until today; and instead, it has increased with the prospect of membership to European Union and the harmonization process.

Turkish policies and practices towards refugees have always included both humanitarian and security concerns; the policies do not originate only from security concerns that humanitarian subordinates to it. The historical evidence presented in the second chapter shows us Turkey's humanitarian perspectives as well as security concerns. Nowadays, Turkey is adopting a new policy with the prospect of European Union membership. The new policy will mainly be characterised by the alignment of Turkish policies with European Union Common Asylum Policy. In this respect, the European Union will be an initiator and a catalyst to create more humanitarian environment for refugee regime in Turkey. However, there is a potential for Turkish asylum policies to be more restrictive towards asylum seekers, since restrictive policies are the characteristic of European Common Asylum Policy.

## CONCLUSION

The prospect of Turkish membership to the European Union will certainly provide a better situation for refugees in Turkey. There will be a compromise between ever lasted security oriented nation state perspective of Turkey and the humanitarian concerns and a compromise between Turkey and the EU in transfer of sovereignty. However, during this process Turkey should seriously consider several risk factors including the readmission agreements with the EU states and the burden sharing; which has recently changed into the responsibility sharing mechanism.

The negotiations between Turkey and the European Union started on 3 October 2005 and it is estimated that it might take at least 10 years to be completed. Furthermore, historically there have been concerns in respect of Turkey's full membership and even proposals including 'privileged partnership' has been stated; which shows that the accession partnership process will be a long road for Turkey towards the European Union membership. On the Turkish side, there are strong debates about the actual intentions of the EU to accept Turkey as a member and speculations on whether the negotiations would stuck or result in another compromise rather than the full membership. But whatever the outcome, there would be a compromise between the security oriented perception of Turkey and liberal perception in favour of both the refugees and the citizens of Turkey in a humanitarian dimension.

Because of the events and reasons stated in chapter 4, western European states prepared the 1967 Protocol. Referring to this Protocol, Western European states abolished the geographical limitation; however, the main reason to cease the geographical limitation for European states was originated from economic concerns. Due to the lack of manpower to suffice the demand for the rapid industrial and economic growth in their states, western European states have abolished the time and geographical limitations together with the 1967 Protocol Related to the Status of Refugees in order to accept the refugees outside the scope

abolished the time and geographical limitations together with the 1967 Protocol Related to the Status of Refugees in order to accept the refugees outside the scope of these limitations. The reasoning to cease the geographical limitation is originated from the nation state point of view; not the liberal perception with humanitarian concerns.

All in all, none of the EU member states has the geographical limitation today; and therefore the EU legal system, namely *the acqui* does not harbour the geographical limitation. Within this context Turkey has to harmonize the EU *acqui* into its own legislative system in order to be a full member of EU. This has been both stated in the Preaccession Protocol and in the following documents; .

Although EU has become a crucial catalyst in order to lift the geographical limitation, Turkey has already been under serious international pressure regarding this issue. There have been criticisms by international organizations and various NGOs in respect of Turkey's reluctance and unwillingness to change this implementation. The drawbacks were constantly being stated in different refugee flows and crises; thus the geographical limitation became a problem for Turkey before the EU accession process. Because of this, Turkey has started to work with UNHCR in cooperation to deal with the refugee crisis within her territories; long before the EU membership negotiations started. Although this cooperation had halted for a short time after the November 1994 Regulation, the cooperation started even more closely in 1997. Turkey agreed to cooperate with UNHCR as well as other international organizations and various NGOs before the preaccession process started in 1999. Turkey granted UNHCR the responsibility to perform the status determination process and agreed to take training from UNHCR to his officials ranging from gendarmerie of military forces, officials of police forces to lawyers of the state and the officials of Ministries of Foreign Affairs and Internal Affairs and furthermore encouraged local NGOs to do so. This process has all being started before 1999. However, Turkey never made concession in respect of geographical limitation since it was a major security problem and kept it as the main factor to

shape its asylum policies. This explains the question of importance of geographical limitation for Turkey.

Not only the demand from the EU, but the common asylum and migration policy of the EU constituted and relevant *acquis* came into force starting from May 2004, which creates an obligation for Turkey to harmonize her legislation. After this time, Turkey has to align their policies with respect to European Union's. And of course, one of the main demands of the EU from is to lift the geographical limitation; because none of the EU states has it and therefore the common policy and the *acquis* of EU does not contain it. Therefore, Turkey has to make necessary arrangements as soon as possible.

The existing pressure of migration on Turkey is more than the pressure in European Union; particularly concerning the illegal migration. The high numbers Turkey already faces might increase with the abolishing of geographical limitation and in a situation of crisis and the pressure of migration would increase. The present numbers are already high; and although there is no crisis at present, there is a very high illegal entry into Turkey. Turkey has problems regarding the separation of illegal migrants from asylum seekers. The sensitivity of Turkey towards readmission agreements originates from these concerns, which are a security problem for Turkey. In addition, Turkey faces technical and financial problems to cope with the migration pressure. On top of this, when Turkey become a part of the EU territory in the future, she will become a country of destination, especially for illegal migrants, and in mass influxes. Therefore, the burden sharing notion is extremely important for Turkey and in this respect a fair burden sharing mechanism must be established between EU and Turkey. There have been historical examples presenting the burden sharing as problematic issue between EU and Turkey. During all the previous mass influxes, Turkey has not received adequate support from European Union.

There may be three future projections that can be derived concerning the situation of asylum in Turkey. First one is related to Turkey's full membership to the EU and its consequences on Turkey's asylum and immigration system and policies. The two other projections are based on other possible situations rather than full membership.

First of all, if the application of Turkey to a long desired membership to the European Union is accepted without any restrictions, such as the 'privileged partnership' that has been discussed among EU states lately. Turkey fulfils her commitments in the National Action Plan of 2005 and creates a full scale operational asylum system. Furthermore, Turkey introduces a strongly guarded border control system, especially on the eastern and south eastern borders. Turkey and the EU develop a fair and well functioning burden sharing mechanism. Considering the mass influxes, this mechanism serves as a crucial assistance to Turkey in times of crises. Turkey also reduces the illegal migration flows by increased border controls and readmission agreements, especially with neighbouring countries. Inevitably, Turkey also lifts the geographical limitation. The international pressure and the pressure from the EU would decrease. Turkey would align her policies with the EU's, which would bring more restrictive policies towards asylum seekers. The asylum applications would fall because Turkey would no more be a 'waiting room' for resettlement to a third country. There would be the pressure of the illegal migrations on Turkey, since the asylum seekers would try to use Turkey as a transit country to reach other European states, but the border controls would keep this pressure under control and decrease it.

However, in this projection, Turkey has to negotiate certain elements very clearly such as the burden sharing mechanism. In the crises before, like in the Gulf War of 1991, the European Union states did not give assistance to Turkey. Furthermore, they have increased restrictions in order to avoid receiving asylum seekers. During the EU membership negotiations, Turkey has to create a fair burden sharing mechanism with the EU. The other point is the legal penalties for human smugglers and illegal migrants. This is actually not a part of negotiations, but Turkey should

be careful on decisions taken on the issue. In Hungary, the detention time for illegal migrants can be up to one year. This is clearly a discouraging implementation to prevent illegal migration flows. Therefore, the penalties for illegal migration and human smuggling should be increased. Another point to be negotiated is the funding on creation of the asylum system. It is clear that Turkey has limited resources to accomplish the commitments she has stated in the National Action Plan. Therefore, a fair and realistic assistance should be negotiated between the EU and Turkey. Fund can be allocated from the European Refugee Fund. The other important issue is to create a close border control. Turkey stands on an important geopolitical area, bordering to instable and potentially instable regions, is a big country with long sea borders and has serious problems to guard her borders. Therefore the importance of strengthening the control on these borders would decrease the international pressure and the pressure from the EU on Turkey. Finally the decision to lift the geographical limitation is tied to the outcome of the European Union membership negotiations, as it has been stated in the National Action Plan.

The second projection is based on a situation in which the membership to the EU is not realized. In this case, Turkey might not lift the geographical limitation, since she does not have an obligation to lift within the international legislation. Turkey may create an asylum system until 2012 as stated in the National Action Plan and decrease the international pressure upon her. Consequently, Turkey might increase the border controls to combat illegal migration. In addition, with the readmission agreements signed with third countries and the increased legal penalties, Turkey might develop a better response and strengthens her ground against illegal migration. However, on the situations of crises Turkey has to confront the mass influxes alone, just like in her previous experiences.

The last scenario is based on the Turkey's acceptance to the EU as a member but with restrictions; such as the privileged partnership that has been heavily discussed in European states until a few days before the negotiations started officially on 3

October 2005. In this projection, Turkey creates an asylum system until 2012, signs the readmission agreements with third countries, increase border controls and introduce increased legal penalties regarding illegal migration. However, in Turkey might request flexibility in her policies to some degree; such as implementing a more flexible visa policy towards her neighbouring states. The scope of such policy might range from maintaining the current situation, to create a more restrictive policy towards the region. Regarding the mass influxes, Turkey might receive assistance from the EU within the scope of burden sharing mechanism created through the negotiations. In this case, Turkey might lift the geographical limitation, and decrease both the international pressure and the pressure from the EU upon her. The asylum applications might rise in the beginning; however, Turkey might prefer adopt the common trend among Europe and decrease the acceptance rate, maybe even below 10 percent or less than five percent, like in most of the new members of EU and in Greece. It is important to state that the acceptance rate of asylum seekers in Greece in 2003 and 2004 was less than 1 percent. If Turkey adopts a restrictive visa policy towards the neighbouring countries and the third countries, it might generate a difficult environment for asylum seekers to enter Turkish territories. In this case, the asylum applications will gradually decrease.

Whatever the outcome of the membership negotiations, Turkey has to be careful on certain points for the future. These points can be summarized as the funding of the asylum system to be created in Turkey, the burden sharing mechanism with the EU, the increased border guarding, the increased legal penalties to be implemented, and the policy to be adopted regarding the acceptance of asylum seekers cases.

Turkish policies and practices towards refugees have always included both humanitarian and security concerns; the policies do not originated only from security concerns that humanitarian subordinates to it. However, the security dimension of events is very important for Turkey. In this respect, the European Union will be an initiator and a catalyst for Turkey's shifting attitude to refugees more humanitarian.

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tır. Bu suretle adı iskan, borçlu iskan ve tefizihi kanunî şekiller tasnif ve tasrih edilmiş bulun-  
maktadır.

Yeni tesis edilmiş köylere müstakem müstakem alit hükümler öski mevzuatımıza nazaran daha  
mükemmeli nakatı cematmek üzere tedvin kılınmıştır.

Mühtelif mütakalim yerleşim yerlerinde olanlar temin edilmiş olanlar emlak askerî mülkiyet ve  
mafi müstakem bu hususlara ait mevzuatımıza müstakem olarak teyin ve tasrih edilmiştir.

Yeni yurtlarmıza yerleşecek olanları istishal beyanata ukuyü için kitasaden ziyade olan yar-  
dımın bilhassa dahili iskan faaliyetini ve memleketimize haricen gelecek olanların refahını ar-  
tırmak mahiyetindedir. Bu suretle müstakem başlı gelenlerin iskan vaziyetlerinin istikrarını ve bil-  
hassa dahilde nakilleri icra edilmede iskan edilen yurtlarmızın ve aşiretler efradının tümümen  
mazi ile ailekalarını keserek bütün emellerini kendilerinin ve yetmişsekileri nesillerin istikhaline  
başlıklarının temin için mecburî ikamet, müstakem tasarrufla ait hükümler daha kuvvetli mü-  
eyyehelere rapitohunmaktadır.

Yukarıda tafsilatı zikrolunan ve bütün emsall ve teferuatla belli başlı bir Devlet için maliyetini  
arzedin iskan temini ve temini faaliyetlerinin tuzamını ve idaresi merkezi ve taşralarda için  
ekonomiyetle mütemasip keyyifetle kuvvetli ve kemiyete tasarrufla teşkilata vabeste olmak için  
harika merkezi alihablar vöcdelerine ve mafi müstakemlere mensup etmiş ile vukuf ve itisadern-  
dan istifade edilcek zevattın mürekkep bir merkezi iskan komisyonunun bütün iş-  
kan işleme tekâmük noktasından nazam olmasın vazifedar Devlet devair ve suabatının ma-  
tebisif ve mütemeriz sarvete iştraki mesaisine hâdim bulunmuş, tagna tekdâtında da her hangi  
bir şahadet iskan faaliyetinin arzedeceği ihtiyaca göre tesbii için Meclisten salihiyet alınması  
zaruri görülmüştür.

İskan işleri şimdiki kadar gerçekleştirilmiş tesirbelende olduğu gibi ferdi olmayıp program dâire-  
sinde işlenmesi derliğ olunduklarına göre Devlet bütçesinde bu husus için ihtiyar olunacak fedaîliğin  
mükannen aşarî bir miktara bağlanmasın ve bu miktarın bilhase temin edilmesinde binasise masnun tu-  
tulması zaruri görülmüş ve verilmiş tahsisatın için hususiyetinin istihdam ettiği şekilde Zirast ban-  
kasi eli ile derri sarf ve Hükümetçe imkân bulunmuş, suretle iskan ait uzun vadeli tasahhütlere  
girişilme üzere kanunî salihiyet istishalı mevzuatı müstakem müstakem olmuştur.

Diğer teferrüta ait hükümler kanununun tabii suretlerini müteyyin olmak üzere tuzam edilmiş  
olan nizamnameye bırakılmıştır.

Merbut hayta meriyete girildiği takdirde 1771 numaralı kanun ile 716 numaralı boy-  
lanma kanununun hükümleri mahfuz kalmak üzere yedüçüncü tadil ve imsan eden ve muhtelif mo-  
tifiyede dağrak halde bulunan bilânet iskan mevzuatı kaldırılmış ve iskan ait bütün kanunî hü-  
kümler bu kanunda toplanmış bulunacaktır.

Tahhüta uzun zaman ve müstakem mesaiye mütevakki olmakla beraber Türk millî hare birliğinin iş-  
leno işleme tekdâmlisine ve Türk vatanında istihsalın unanuru ilâhi olan nüfusun kemiyet ve keyyifetçe  
istiksalın hâdim olduğuna kuvvetli umidler bağlayarak kanuniyetini tekdif ve takdim eylediğimize  
İkhtisatın dördüncü Büyük Millet Meclisinin nizamnamelerinde ve isabekler tekdif ve tadillerinden de  
kuvvet olarak mafi eserlerine parak bir önüne teşkil edeceğine kana bulandığımız arz olunur.

İskan kanunu muvakkat eminden mahzatası

T. B. M. M.  
İskan Kanunu İhtisat  
Muvakkat eminden  
Karar No. 6  
Esas No. 1/355

Yüksek Resüğe

altında kalmak zorluğuna dâğmonis eğıldir.  
Ancak hiç durmadan sikişmiş kalkmayı, bir so-  
luk göz önünden kaçırmış ve böylece ezildiği  
yeri bırakarak ötede yine hakanklık kurmuştur.  
Bu yüzyük, isa doğumundan altı bin yıl önce  
başlayarak bu güne kadar böyle gelmiştir.  
Sana Türkün bir başka ve özdü gücü daha var-  
dır ki yedüçüğü yerde parak bir medeniyet ku-  
rar, abak işer ve üçünece de atığı dikti eri-  
diliğe işi ileri atar, ülkeler agrak dört cev-  
roye yayılır ve her yayıldığı yere medeniyet  
reşek on bin yıldan önce, işte (Milletler kapaından) gi-  
lep bu serpişimede işle uğraşırken buluyor.  
Bu yüzyük, önüne katıldıkları işle kaka ileri  
sürerek çok yerlerde onlarla karmarak çok yer-  
de onları eline alarak böyle sürüp gitmiştir. İş-  
te Türk soyundaki öz benlik arvası, bu göce-  
be yayışının çok yerde bu güne kadar bu yön-  
den yürüdüğü gimesini ortaya, gidarış ve bu  
günü görüldükçe Türkmen, Yürük gibi ola ve  
oymaklar böylece kalmıştır.

En son Anadoluda içinde kurulmuş Türkaydan  
Tuna, Vastili kıyılarında yayılan Osmanlı impara-  
torluğı irkilemeğe başlamıştır. Bu gerileyiş ora-  
lara yayılmanın adam adam ana yurda döme-  
lerle yeni bir göç işi çıkmıştır. Aşığı yukarı üç  
yüz yıla yaklaşıp bu ana yurda döbüş ve toplu-  
nus daha önce bir dizen içinde, bilimli bir yolda  
olmuştur. Oralandan Türklerin bu geti dö-  
nüş işine ise, artık ileri atış gücünü yitirerek  
irkiğin Osmanlı imparatorluğı, hiç kulaak asma-  
mıştır. Hâle Moskof ve Avusturya savasla-  
rından sonra göçmeler, Anadoluda ve Trakya  
doğru gelirken üst üste ve kendi istekleriyle şü-  
reda burada yer tutmak üzere rast gele  
birakılmış, onların şu döbüş ve yer tutuşuna  
başlıklarını gösterilmiştir. Ancak Kırm sav-  
şından sonra darış (Muhacirin idaresi) ku-  
rulanak bu işe Hükümet el koymuştur. Ancak  
bu müntazir işi çok çetin olmakla beraber yur-

altında kalmak zorluğuna dâğmonis eğıldir.  
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bu müntazir işi çok çetin olmakla beraber yur-









14 — (D) fkras da Hükümetçe satın alınacak ve...

22 İnci maddede 488 numaralı karar hükümlerinden...

24 İnci maddede muhasefelerin, müfettişlerin,...

25 İnci maddede ile de yerleştirilmede Dahiliye...

Maddede 26 - 30 Hükümet teklifindeki 20 ve 21 İnci maddeler...

Hükümet (3) numaralı muntakalarda 600...

Bu maddelerin ikinci fıkrasındaki mesaj ve...

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Bu maddelerin ikinci fıkrasındaki mesaj ve...

14 — İnci ve muayyenlik birleşiminde asli görülmüştür...

Hükümet teklifinde mektep, köyöçü, kara...

Hükümet, teklifinde 885 numaralı kararın...

Hükümet, teklifinde 885 numaralı kararın...

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Hükümet, teklifinde 885 numaralı kararın...

mevzul ve gayrimenkullerini tasfiye ettirmelerini ve kendileri bu müddet içinde tasfiye etmezlerse Hükümetçe tasfiye ettirilmesini ve bundan itibaren bunların gayrimenkullerine karşılık istihlak mahabatı verilmesini kabul etmişlerdir.

Yine Hükümet teklifinde istihlakleri takdirde müteahhiflere de on yıllık teklüfîye istihlaklarına karşılık istihlak mahabatı verilmesini esas koymuş ise de aynı hayata çok alıngan olmayan müteahhiflerin her hangi bir muvafakatsizlikte karşılarında bütün bütüne perçan ve serfi kalmalarını intice etmesi enilgüseli kabul olunmamıştır.

Hükümetin 24 üncü maddesi yerine yazılan 23 üncü maddede de mecburi ikamet koymuş ve Hükümetin teklifinde boş yıl olan mecburi ikamet müddetini on yıla eklemiştir.

Hükümetçe geçirilen İttihat ücrası gış etmelerinde yedinci maddesinin her kababın birer Yekiller heyetinin kararına bağlı tutulmuştur.

Hükümetçe geçirilenlerin on yıl ikamet mecburiyeti ile beraber bu müddet içinde Hükümetçe kendilerine verilmiş olan gayrimenkullerinin satılması, tehcin ve huzurlu olması emredilmiştir.

Böğüm : V  
Madde : 31 - 35

Muvafakata ayrılan bu bölünün birinci bölümü gümrük muafiyetlerine mahustur. Gümrük muafiyetleri Yüksek Meclisten 22-III-324 tarihinde kabul olunan 2398 sayılı kanunla tasvir edilmiş olup muahhiflere ait bütün hükümler bu kanunda toplanarak istenildiğinden bu kanunun muvafakat maddesinden masadaki maddeleri 31, 32, 33, 34, 35 inci maddede olarak ayrılmıştır.

Bu kanuna 34 üncü maddede olarak geçirilen 2386 numaralı kanunun (4) üncü maddesinde hükümlerden girecek muahhiflerin ve müteahhiflerin muafiyetleri için (mizannameinde pekli ve masıfıyeleri tespit edilince bir vesika göstermeleri) şart koymuş olduğundan her hangi bir sebeple bir vesika göstermeğe muvafak olamayacak olan çok müktefil vaziyette kalmışlar kabul edilmiştir. Gümrük ve imharlar vesikili Beyin hü-

si zararı görüldüğünden bu maddede ayrıca müddet ve tasvir izahı ile tasvir edilmiştir. Yine borçlanma kanununun tasvir tablisinin iki yıl sonra tablisine bağlanmasını emir bellemektedir. Ancak bu kanun daha ziyade o güne kadar geçirilmiş olanların borçlanmasını emir göstermektedir. Üzerine yapılmış olup bu kanunun tasvirine kadar geçirilmemiş bir borç tablisine belanılığında göre geçirilmeye ile buç tablisine aralarında bir fasla, bir süre alına devresi kabul olunmuştur.

Burdan önceki tasvirde son ile idemeye başlama aralarında - sebak alına, tutumuna devresi, tasvirinde hayli dırınmış olup gaye yeni geçirilmiştir. leri hayatta müteahhif hale getirip ve tutumundayı yediler dercesine getirilmeden sonra borçları idemeye başlatılmak olacağını görülmüş olarak bu devreyi mükemle olacağı kabul edilmiştir. Bu kanunla da (1) numaralı maddelerde verilmiş olan yapı ve topraklar mahabatı olarak bu kanunun nesri tasvirine kabul edilmiştir. Şu halde borçlar geçirilmemiş olanların tasvirine verilmiş bulunan topraklar ve yapılar borcu kalmakta ve bu suretle iki kere arasında bir fark yapılmakta olduğundan bu fark kaldırılmak üzere bunlara verilmiş olan yapı ve toprakların borçlarından tahsil alınmasıyla tasvir tablisine atılmak üzere muvafak görülmüştür.

Memleketin masuru kuvvetli bir toprak olmak üzere dağıtım etvelinde 3 üncü bendine konan baş ve mevzuat olarak verilmiş esas tutulmuştur. 39 üncü maddenin birinci bendi bu suretle parast, borçlar verilince mallara kasıllanmıştır. Maddenin ikinci bendi borçlanmadıkları mahabatı. Bu bentte ayrıca borçlanma mahabatı tasvir ve tablisinin kimler tarafından yapıldığı gösterilmiştir.

Maddenin üçüncü bendi borçlanma müddetini ve tabil yolunu göstermektedir. Hükümet teklifi borçlanma için 716 numaralı borçlanma kanununa bağlanmıştır. Ancak bu kanunun birinci maddesinde müddete ait olan cümle kanunun nesri tasvirinden sonra gelince ikinci maddenin birinci fıkrasının ikinci fıkrasında tasvir olunmuş olan yirmi yıl borçlanma müddetini koymakta ise de bu müddet bu kanunun nesri tasvirinde 4 kattan fazla olan 1996 tarihinden itibaren iki yıl sonraki hadanında olduğuna göre bu müddet bu gıda hadanında olduğu için her serse diğer yıl bayhemekte belanmıştır. Bunun için bu cümle değiştirilmiştir.

Memleketin tasvirinde 33 üncü maddede olan 40 üncü maddeden önceki tabil edilmiştir. Hükümet teklifinin 33 üncü maddesinde ait olan 24 üncü maddede tasvirde hayli durulmuştur. Ürün müzakere ve Hükümetle temastan sonra Hükümeti bütüncü muayyen bir para koymakla bağlanmak ve mahasebi tutumuna göre muayyen ve mallı presuplere ayrı ayrı olarak olan tabisatları ertesi yıla devretmek cümlesine girilmiştir. ve 41 inci maddede buna göre hazırlanmıştır. 39, 40, ve 41 inci maddeler de tasvir ve Dahiliye vekillerinin ve müteahhiflerin kanunla emirlerle edilmiş muvafakatalele kararlaştırılmıştır.

Böğüm : VII  
Madde : 42 - 43

Bu kanunla kabul olunan hükümleri tasvirinde bir kabilyette gerek mevkide ve gerek





Appendix B. Excerpts from the Parliamentary Records of Turkish Republic Regarding the Reasons of Ratification of 1951 Convention and the Declaration Stated by Turkey

Cenevre

Kurucu Meclis S. S A Y I S I : 53  
Cenevre'de 1951 tarihinde imzalanmış olan Mültecilerin Hukuki Durumuna dair Sözleşmenin tasdikı hakkında kanun tasarı ve dışişleri Komisyonu raporu (1/125)

5 . 5 . 1961

T. C.  
Başbakanlık  
Kamusal ve Kurumsal  
Tadilat Dairesi  
Sayı : 712/108/1444

Kurucu Meclis Başkanlığına

Değişikliği Bakanlığınca hazırlanan ve Kurucu Meclis arzi Bakanlar Kurulunca 28. 4. 1961 tarihinde kararlaştırılan «Cenevre'de 28 Temmuz 1951 tarihinde imzalanmış olan Mültecilerin Hukuki Durumuna dair Sözleşmenin tasdikı hakkında kanun tasarı»na gereğinceyle birlikte ilişik olarak sunulmuştur.

Gereğinin yapılmasını rica ederim.

Devlet Başkanı ve Başbakan  
Org.  
Cemal Gürsel

GEREKÇE

İlk olarak Birinci Dünya Harbinden sonra mültecilerden bir mahiyet arz eden mülteciler meselesi, İkinci Dünya Harbinden sonra daha büyük bir önemle kazanmıştır. Gerek harp hareketi, gerek harp müdahaleleri, Avrupa'da vukuca gelen rejim değişiklikleri dolayısıyla vatanından ayrılan ve daha önce dahi bulunmuşları devletin himayesini kaybeden milyonlarca mülteci kimsenin barınmaması ve durumlarının bir hal tarzı bulunmaması büyük eptta bir mülteci- arası mesele olarak ortaya çıkmıştır.

Birleşmiş Milletler Mülteciler Teşkilâtı (BMO) Avrupa'nın muhtelif bölgelerine dağılmış olan mültecilere yardım hususunda 1948'de 1951 tarihli kararında büyük faaliyet göstermiştir : 1951 bağından itibaren (BMO) nun yerini doğrudan doğruya Birleşmiş Milletler Genel Kuruluna bağlı bulunan Mülteciler Yüksek Komiserliği almıştır. Mülteciler Yüksek Komiserliği statüsünde, bu teşkilâtın himayesine girecek mültecilerin tasdikı yapılmıştır. Buna göre «1 Ocak 1951 den evvel cereyan eden mülteci meselesinde ve rika, dini, tabiiyet, nüfus, ekonomik korkutucu için vatanı terk edenlerin nüfuslerinden takribata üçyüzbeşyüzünü ilahifake edenlerin veya baki kısmı korkuya binası istifade etmek istemeyen, yahut devletin himayesinden istifade etmeyen veya devletin himayesini talep edemeyen her şahıs Birleşmiş Milletler Mülteciler Yüksek Komiserliğinin himayesini taleb edebilir. Birleşmiş Milletler Mülteciler Yüksek Komiserliğinin kurulumunu müteakip, Birleşmiş Milletler Genel Kurulunun daveti üzerine Cenevre'de bir konferans toplandı ve 28 Temmuz 1951 tarihinde «Mültecilerin Hukuki Durumuna dair Sözleşme» imzalanmıştır. İhtisamimiz bu konferansa ilişkin «Mülteci-leş ve Sözleşme» imzalanmıştır. Sözleşmenin tabiiik şahası hususunda iki ihtimal dermiş olun-





## **Appendix C. Excerpts from the NAP Regarding the Geographical Limitation**

Programs should be developed to inform potential migrants in Turkey about migration opportunities and risks of illegal migration.

### **4.12. Funds for the Implementation of the National Action Plan on Asylum and Migration**

Institutions in charge of the implementation of the National Action Plan on Asylum and Migration shall make the necessary budgetary preparations in order to identify the sources required for the implementation of the EU harmonization strategy. These institutions shall try to identify the principal fund resources in particular for the suggested systems/facilities, when deemed necessary, by contacting national and international institutions, NGOs and donor foundations/institutions.

The continuous supplementary contribution of EU to Turkey in addition to the financial assistance provided to candidate countries during enlargement should be determined by negotiations to take place.

Within the framework of burden sharing and in addition to the financial assistance to be provided to Turkey, policies should be developed for sharing of the following by the EU countries:

- Some of the asylum seekers admitted to the procedure in Turkey,
- Some of the refugees,
- Some of the aliens arriving in Turkey during mass population movements and receiving temporary protection,
- A portion of the food, accommodation and travel expenses of aliens of illegal status and cooperation should be enhanced and EU practices should be disseminated.

Steps should be taken to utilize the international funds such as the funds of EU Commission, UNHCR, and IOM besides the National Fund in the implementation of the National Action Plan.

The total financing needs of the asylum system to be established should be identified as a whole. Within this scope, there should be independent budget for the asylum system within the budget of the Ministry of Interior.

### **4.13. Lifting of the Geographical Limitation**

Lifting the geographical limitation is an issue which should be resolved without giving harm to the economical, social and cultural conditions of Turkey, since Turkey had been a country very widely affected by the mass population movements, which took a rise in 1980s, and which changed the world's conjuncture.

Within his framework a total of 934,354 aliens were granted residence permits with the right to work in Turkey including:

- 51,542 people during the Iran-Iraq war of 1988,
- 20,000 people during the civil war, the disintegration of former Yugoslavia and the events which took place in Bosnia-Herzegovina between 1992 - 1997,

- A total of 345,000 people including 311,000 people deported from Bulgaria and 34,000 people arriving with visas between May – August 1989
- 7,489 people between 2<sup>nd</sup> August 1990 and 2<sup>nd</sup> April 1991 before the Gulf Crisis and War, and 460,000 afterwards,
- 17,746 people after the events which took place in Kosovo in 1999,
- 32,577 Ahiska Turks on exile from their countries, who were dispersed to a large geographical area.

The children of these families born in Turkey enjoyed the same rights.

The issue of lifting the geographical limitation to the 1951 Convention, which was placed due to challenging experiences in the region, has been planned to take place in line with the completion of the EU accession negotiations according to 2003 National Plan of Turkey subject to two conditions. These conditions are set forth as follows;

- Necessary amendments to the legislation and infrastructure should be made in order to prevent the direct influx of refugees to Turkey during the accession phase,
- EU countries should demonstrate their sensitivity in burden sharing.

Keeping in mind the refugee movements Turkey may encounter with the lifting of the geographical limitation the following points stated in Article 4.4 should be realized with the financial support to be provided supplementary to the Pre-Accession Financial Assistance Programs of EU:

- Establishing reception and accommodation facilities for asylum seekers and founding refugee guest houses,
- Operation of the mentioned centers,
- Training personnel to be recruited at these centers,
- Establishing a country of origin and asylum information system,
- Establishing a Training Academy (Institute),
- Establishing a service building for the asylum unit.

The above-stated facilities should be established, equipment should be provided and investment projects should be realized for the implementation of the EU Acquis.

EU countries and other countries with economical power should continue to receive refugees from Turkey during the transition phase.

Turkey wants this sincerely. Turkey, which has always been subject to intense population movements, which may be equal to the sum of all movements towards of EU, should not be expected to handle issues of asylum and irregular migration on its own.

In the case of a mass population flow towards Turkey due to its geographical location other states, in particular EU Member States, individually or as partners through UNHCR or other international institutions shall take necessary measures to enable an equal sharing

of the burden of Turkey, which is the first country of asylum, upon Turkey's request, and within the scope of equal sharing of responsibility.

UNHCR should continue for a certain period to work in the field of resettlement of refugees, who have been granted the status, within the framework of burden sharing following the lifting of the geographical limitation. UNHCR should also contribute to the integration programs of refugees to be subject to integration.

Sharing should both include the financial burden and refugees/asylum seekers according to parameters such as national income and population density of the countries.

The validity of Turkey's concerns for burden sharing becomes obvious when it is considered that countries making up the European Union have in the recent period been working towards establishing stricter practices and policies in the field of asylum and migration, where there is the lack of a common European system, and debates on safe 3<sup>rd</sup> countries still continue, during which probable conflicts may arise in the geographical area occupied by Turkey particularly in the Middle East and the Caucasus, and a mass influx may occur with half a million people arriving at the borders of Turkey.

Within this scope Turkey hopes that the EU countries recognize such concerns, and expects a concrete and realistic approach and support.

Therefore a study should be initiated after 2005 to reveal the burden of lifting the geographical limitation and implementing the EU Acquis on Turkey.

The following topics should be included within the scope of the study:

- The expected amount of increase in the number of refugees to arrive in Turkey following the lifting of the geographical limitation,
- Locations and costs of asylum seeker reception and accommodation centers, refugee guest houses, accommodation centers and return centers to be established,
- Costs related to the establishment of a permanent training academy for the regular training to be provided to personnel working/to work in the field of asylum and migration,
- Costs of financing required for the integration of migrants and refugees in Turkey.

A program and protocol should be drafted by the EU Commission before lifting the geographical limitation within the light of the above-stated study for the purpose of enabling opportunities for the equal sharing of responsibility and equal distribution of Turkey's burden and an understanding should be reached with Turkey.

A task force with the participation of the Turkish and EU authorities should be established within this framework with respect to burden sharing or lifting of the burden. Findings of the task force should be analyzed and arranged with a view to the time frame, and be approved and implemented by the parties.

A proposal for lifting the geographical limitation may be expected to be submitted to the TGNA in 2012 in line with the completion of Turkey's negotiations for accession to the EU following the finalization of the abovementioned projects and meeting the abovementioned conditions.

Developing cooperation with Turkey in this field, and providing all the support and assistance required, shall play an important role in the evaluations to be made by the TGNA with respect to lifting the geographical limitation in the future.

**ANNEX: Analysis grid of the NAP**

**Endorsed by  
25/03 /2005  
Recep Tayyip ERDOĞAN  
Prime Minister**

## Appendix D. Analysis Grid of NAP Regarding the Geographical Limitation, Placed in the Annex of the NAP

<p>Other states – in particular the EU member states – either individually or jointly shall take the necessary measures to provide an equal sharing of Turkey's burden through UNHCR or other international institutions where there is mass influx to Turkey, which is the first country of asylum due to its geographical location, within the scope of equal sharing of responsibilities and on the request of Turkey. (See NAP Art. 4.13.)</p>	<p><b>Lifting the Geographical Limitation</b></p>		<p>Establishing a task force under the coordination of the Ministry of Interior</p>		<p>A recommendation to lift the geographical limitation is likely to be submitted to the TCNA in 2012 in parallel with the completion of Turkey's EU accession negotiations after the completion of projects stated in NAP Art. 4.4 and meeting the conditions in Art. 4.13.</p>
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Endorsed by  
 .../... /2005  
**Recep Tayyip ERDOĞAN**  
 Prime Minister

## Appendix E. State Parties to the 1951 Convention and the 1967 Protocol



UNHCR, United Nations High Commissioner for Refugees

# States Parties to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol

Date of entry into force:  
22 April 1954 (Convention)  
4 October 1967 (Protocol)

### *As of 1 September 2005*

Total number of States Parties to the 1951 Convention:	143
Total number of States Parties to the 1967 Protocol:	143
States Parties to both the Convention and Protocol:	140
States Parties to one or both of these instruments:	146

### *States Parties to the 1951 Convention only:*

Madagascar, Monaco, Saint Kitts and Nevis

### *States Parties to the 1967 Protocol only:*

Cape Verde, United States of America, Venezuela

The Convention was adopted by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, held at Geneva from 2 to 25 July 1951. The Conference was convened pursuant to resolution 429 (V)<sup>1</sup>, adopted by the General Assembly of the United Nations on 14 December 1950.

The dates indicated are the dates of deposit of the instrument of ratification or accession by the respective States Parties with the Secretary-General of the United Nations in New York. In accordance with article 43(2), the Convention enters into force on the ninetieth day after the date of deposit. The Protocol enters into force on the date of deposit (article VIII (2)). Exceptions are indicated below.

### *Most recent ratification:*

Afghanistan	30 Aug 2005 a	30 Aug 2005 a
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Country	Convention	Protocol
Afghanistan	30 Aug 2005 a	30 Aug 2005 a
Albania	18 Aug 1992 a	18 Aug 1992 a
Algeria	21 Feb 1963 s	08 Nov 1967 a
Angola	23 Jun 1981 a	23 Jun 1981 a
Antigua and Barbuda	07 Sep 1995 a	07 Sep 1995 a
Argentina	15 Nov 1961 a	06 Dec 1967 a
Armenia	06 Jul 1993 a	06 Jul 1993 a
Australia	22 Jan 1954 a	13 Dec 1973 a
Austria	01 Nov 1954 r	05 Sep 1973 a
Azerbaijan	12 Feb 1993 a	12 Feb 1993 a
Bahamas	15 Sep 1993 a	15 Sep 1993 a



Belarus	23 Aug 2001 a	23 Aug 2001 a
Belgium	22 Jul 1953 r	08 Apr 1969 a
Belize	27 Jun 1990 a	27 Jun 1990 a
Benin	04 Apr 1962 s	06 Jul 1970 a
Bolivia	09 Feb 1982 a	09 Feb 1982 a
Bosnia and Herzegovina	01 Sep 1993 s	01 Sep 1993 s
Botswana	06 Jan 1969 a	06 Jan 1969 a
Brazil	16 Nov 1960 r	07 Apr 1972 a
Bulgaria	12 May 1993 a	12 May 1993 a
Burkina Faso	18 Jun 1980 a	18 Jun 1980 a
Burundi	19 Jul 1963 a	15 Mar 1971 a
Cambodia	15 Oct 1992 a	15 Oct 1992 a
Cameroon	23 Oct 1961 s	19 Sep 1967 a
Canada	04 Jun 1969 a	04 Jun 1969 a
Cape Verde (P)		09 Jul 1987 a
Central African Republic	04 Sep 1962 s	30 Aug 1967 a
Chad	19 Aug 1981 a	19 Aug 1981 a
Chile	28 Jan 1972 a	27 Apr 1972 a
China	24 Sep 1982 a	24 Sep 1982 a
Colombia	10 Oct 1961 r	04 Mar 1980 a
Congo	15 Oct 1962 s	10 Jul 1970 a
Congo, Democratic Republic of	19 July 1965 a	13 Jan 1975 a
Costa Rica	28 Mar 1978 a	28 Mar 1978 a
Côte d'Ivoire	08 Dec 1961 s	16 Feb 1970 a
Croatia	12 Oct 1992 s	12 Oct 1992 s
Cyprus	16 May 1963 s	09 Jul 1968 a
Czech Republic	11 May 1993 s	11 May 1993 s
Denmark	04 Dec 1952 r	29 Jan 1968 a
Djibouti	09 Aug 1977 s	09 Aug 1977 s
Dominica	17 Feb 1994 a	17 Feb 1994 a
Dominican Republic	04 Jan 1978 a	04 Jan 1978 a
Ecuador	17 Aug 1955 a	06 Mar 1969 a
Egypt	22 May 1981 a	22 May 1981 a
El Salvador	28 Apr 1983 a	28 Apr 1983 a
Equatorial Guinea	07 Feb 1986 a	07 Feb 1986 a
Estonia	10 Apr 1997 a	10 Apr 1997 a
Ethiopia	10 Nov 1969 a	10 Nov 1969 a
Fiji	12 Jun 1972 s	12 Jun 1972 s
Finland	10 Oct 1968 a	10 Oct 1968 a
France	23 Jun 1954 r	03 Feb 1971 a
Gabon	27 Apr 1964 a	28 Aug 1973 a
Gambia	07 Sep 1966 s	29 Sep 1967 a
Georgia	09 Aug 1999 a	09 Aug 1999 a
Germany	01 Dec 1953 r	05 Nov 1969 a
Ghana	18 Mar 1963 a	30 Aug 1968 a
Greece	05 Apr 1960 r	07 Aug 1968 a
Guatemala	22 Sep 1983 a	22 Sep 1983 a
Guinea	28 Dec 1965 s	16 May 1968 a
Guinea-Bissau	11 Feb 1976 a	11 Feb 1976 a



UNHCR, United Nations High Commissioner for Refugees

Haiti	25 Sep 1984 a	25 Sep 1984 a
Holy See	15 Mar 1956 r	08 Jun 1967 a
Honduras	23 Mar 1992 a	23 Mar 1992 a
Hungary	14 Mar 1989 a	14 Mar 1989 a
Iceland	30 Nov 1955 a	26 Apr 1968 a
Iran, Islamic Republic of	28 Jul 1976 a	28 Jul 1976 a
Ireland	29 Nov 1956 a	06 Nov 1968 a
Israel	01 Oct 1954 r	14 Jun 1968 a
Italy	15 Nov 1954 r	26 Jan 1972 a
Jamaica	30 Jul 1964 s	30 Oct 1980 a
Japan	03 Oct 1981 a	01 Jan 1982 a
Kazakhstan	15 Jan 1999 a	15 Jan 1999 a
Kenya	16 May 1966 a	13 Nov 1981 a
Kyrgyzstan	08 Oct 1996 a	08 Oct 1996 a
Korea, Republic of	03 Dec 1992 a	03 Dec 1992 a
Latvia	31 Jul 1997 a	31 Jul 1997 a
Lesotho	14 May 1981 a	14 May 1981 a
Liberia	15 Oct 1964 a	27 Feb 1980 a
Liechtenstein	08 Mar 1957 r	20 May 1968 a
Lithuania	28 Apr 1997 a	28 Apr 1997 a
Luxembourg	23 Jul 1953 r	22 Apr 1971 a
Macedonia, The Former Yugoslav Republic of	18 Jan 1994 s	18 Jan 1994 s
Madagascar (C)	18 Dec 1967 a	
Malawi	10 Dec 1987 a	10 Dec 1987 a
Mali	02 Feb 1973 s	02 Feb 1973 a
Malta	17 Jun 1971 a	15 Sep 1971 a
Mauritania	05 May 1987 a	05 May 1987 a
Mexico	07 June 2000 a	07 June 2000 a
Moldova, Republic of	31 Jan 2002 a	31 Jan 2002 a
Monaco (C)	18 May 1954 a	
Morocco	07 Nov 1956 s	20 Apr 1971 a
Mozambique	16 Dec 1983 a	01 May 1989 a
Namibia	17 Feb 1995 a	17 Feb 1995 a
Netherlands	03 May 1956 r	29 Nov 1968 a
New Zealand	30 Jun 1960 a	06 Aug 1973 a
Nicaragua	28 Mar 1980 a	28 Mar 1980 a
Niger	25 Aug 1961 s	02 Feb 1970 a
Nigeria	23 Oct 1967 a	02 May 1968 a
Norway	23 Mar 1953 r	28 Nov 1967 a
Panama	02 Aug 1978 a	02 Aug 1978 a
Papua New Guinea	17 Jul 1986 a	17 Jul 1986 a
Paraguay	01 Apr 1970 a	01 Apr 1970 a
Peru	21 Dec 1964 a	15 Sep 1983 a
Philippines	22 Jul 1981 a	22 Jul 1981 a
Poland	27 Sep 1991 a	27 Sep 1991 a
Portugal	22 Dec 1960 a	13 Jul 1976 a
Romania	07 Aug 1991 a	07 Aug 1991 a
Russian Federation	02 Feb 1993 a	02 Feb 1993 a
Rwanda	03 Jan 1980 a	03 Jan 1980 a



Saint Kitts and Nevis (C)	01 Feb 2002 a	
Saint Vincent and the Grenadines	03 Nov 1993 a	03 Nov 2003 a
Samoa	21 Sep 1988 a	29 Nov 1994 a
Sao Tome and Principe	01 Feb 1978 a	01 Feb 1978 a
Senegal	02 May 1963 s	03 Oct 1967 a
Serbia and Montenegro ***	12 Mar 2001 s	12 Mar 2001 s
Seychelles	23 Apr 1980 a	23 Apr 1980 a
Sierra Leone	22 May 1981 a	22 May 1981 a
Slovakia	04 Feb 1993 s	04 Feb 1993 s
Slovenia	06 Jul 1992 s	06 Jul 1992 s
Solomon Islands	28 Feb 1995 a	12 Apr 1995 a
Somalia	10 Oct 1978 a	10 Oct 1978 a
South Africa	12 Jan 1996 a	12 Jan 1996 a
Spain	14 Aug 1978 a	14 Aug 1978 a
Sudan	22 Feb 1974 a	23 May 1974 a
Suriname	29 Nov 1978 s	29 Nov 1978 s
Swaziland	14 Feb 2000 a	28 Jan 1969 a
Sweden	26 Oct 1954 r	04 Oct 1967 a
Switzerland	21 Jan 1955 r	20 May 1968 a
Tajikistan	07 Dec 1993 a	07 Dec 1993 a
Tanzania, United Republic of	12 May 1964 a	04 Sep 1968 a
Timor-Leste	07 May 2003 a	07 May 2003 a
Togo	27 Feb 1962 s	01 Dec 1969 a
Trinidad and Tobago	10 Nov 2000 a	10 Nov 2000 a
Tunisia	24 Oct 1957 s	16 Oct 1968 a
Turkey	30 Mar 1962 r	31 Jul 1968 a
Turkmenistan	02 Mar 1998 a	2 Mar 1998 a
Tuvalu	07 Mar 1986 s	07 Mar 1986 s
Uganda	27 Sep 1976 a	27 Sep 1976 a
Ukraine	10 Jun 2002 a	04 Apr 2002 a
United Kingdom of Great Britain and Northern Ireland	11 Mar 1954 r	04 Sep 1968 a
United States of America (P)		01 Nov 1968 a
Uruguay	22 Sep 1970 a	22 Sep 1970 a
Venezuela (P)		19 Sep 1986 a
Yemen	18 Jan 1980 a	18 Jan 1980 a
Zambia	24 Sep 1969 s	24 Sep 1969 a
Zimbabwe	25 Aug 1981 a	25 Aug 1981 a

**Limitations:**

Article 1 B(1) of the 1951 Convention provides: "For the purposes of this Convention, the words 'events occurring before 1 January 1951' in article 1, Section A, shall be understood to mean either (a) 'events occurring in Europe before 1 January 1951'; or (b) 'events occurring in Europe or elsewhere before 1 January 1951', and each Contracting State shall make a declaration at the time of signature, ratification or accession, specifying which of these meanings it applies for the purposes of its obligations under this Convention."



The following States adopted alternative (a), the geographical limitation: Congo, Madagascar, Monaco and Turkey. Turkey expressly maintained its declaration of geographical limitation upon acceding to the 1967 Protocol. Madagascar and Monaco have not yet adhered to the Protocol.

All other States Parties ratified, acceded or succeeded to the Convention without a geographical limitation by selecting option (b), ‘events occurring in Europe or elsewhere before 1 January 1951’.

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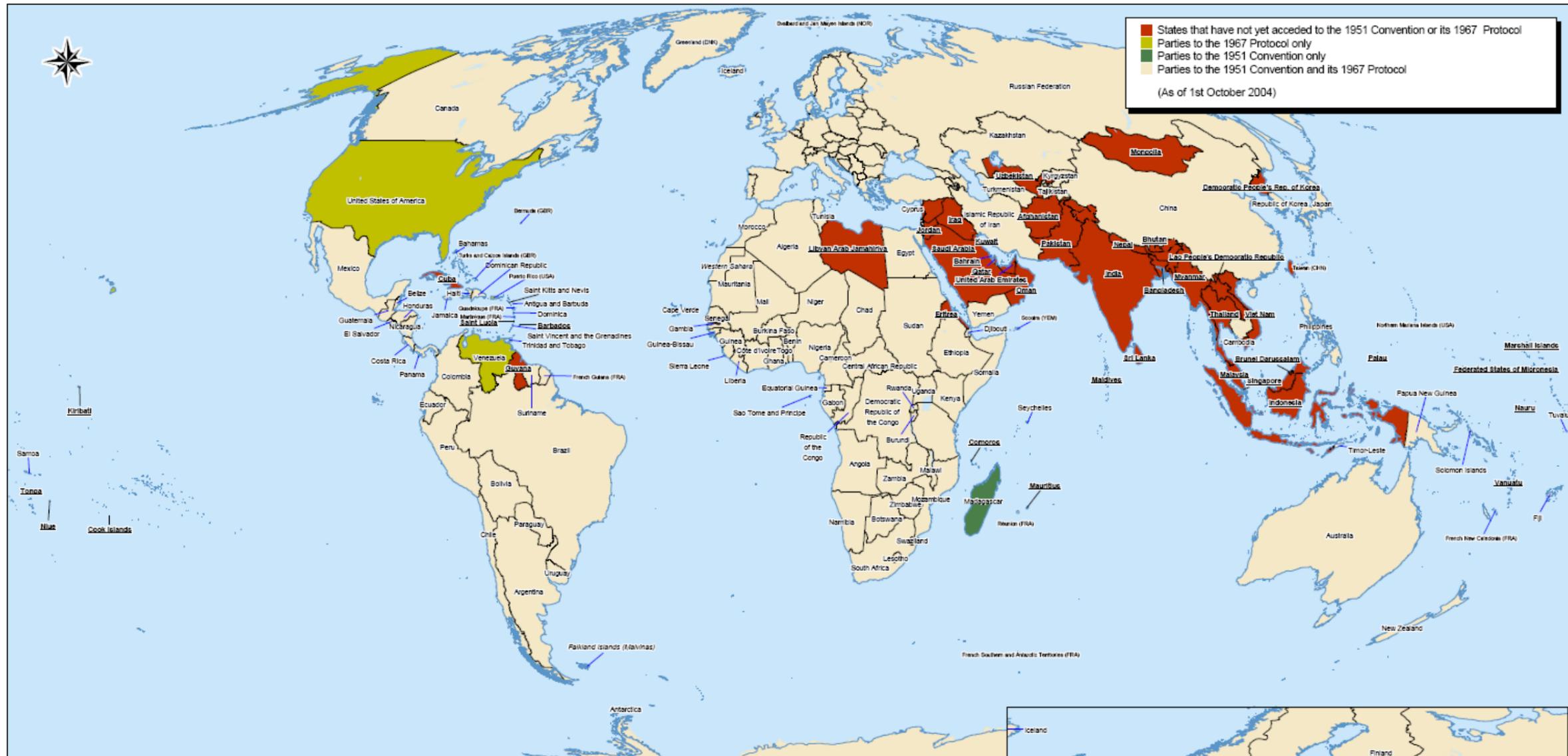
**Notes:**

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

\*\* (C) denotes States Parties to the 1951 Convention only; (P) denotes States Parties to the 1967 Protocol only.

\*\*\* As of 4 February 2003, following the adoption and promulgation of the Constitutional Charter of Serbia and Montenegro by the Assembly of the Federal Republic of Yugoslavia, the official name of “The Federal Republic of Yugoslavia” has been changed to “Serbia and Montenegro”.

Appendix F: States That Have Acceded to the 1951 Convention or the 1967 Protocol



States that have acceded to the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees<sup>1</sup>

<sup>1</sup> States that have not yet acceded to either instrument are indicated in red and their names are underlined.

The boundaries shown on this map are those used by the UN Cartographic Section, New York. The boundaries and names shown and the designations used on this map do not imply official endorsement or acceptance by the United Nations.



Printed: 01 October 2004