

THE EXTERNALIZATION OF THE EUROPEAN UNION'S
ASYLUM POLICY: REFUGEE BURDEN SHARING
BETWEEN THE EUROPEAN UNION AND TURKEY
DURING THE SYRIAN REFUGEE PROTECTION CRISIS

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Approval of the Graduate School of Social Sciences

Prof. Dr. Tülin Gençöz
Director

I certify that this thesis satisfies all the requirements as a thesis for the degree of Master of Science.

Assoc. Prof. Dr. Galip Yalman
Head of Department

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

Assoc. Prof. Dr. Başak Kale
Supervisor

Examining Committee Members

Assoc. Prof. Dr. M. Murat Erdoğan(Hacettepe, PSPA)_____

Assoc. Prof. Dr. Başak Kale (METU, IR) _____

Assoc. Prof. Dr. Zana Çitak (METU, IR) _____

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

Name, Last name: Filiz, Yılmaz

Signature :

ABSTRACT

THE EXTERNALIZATION OF THE EUROPEAN UNION'S ASYLUM POLICY: REFUGEE BURDEN SHARING BETWEEN THE EUROPEAN UNION AND TURKEY DURING THE SYRIAN REFUGEE PROTECTION CRISIS

Yılmaz, Filiz

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This thesis analyzes a specific policy approach adopted by the European Union (EU) on externalization of asylum and refugee matters. The external dimension of the EU's asylum and refugee policy includes implementing policies on border management, visa policy and cooperation with third countries to avoid mass movements of asylum seekers. This thesis further focuses on the tools of the EU externalization policies such as the "safe third country" and the "first country of asylum" principles and the EU "readmission agreements" with third countries. In this study, the concept of burden sharing mechanisms in relation to refugees in the EU is analyzed. Moreover, the impact of the safe third country and the first country of asylum principles to the EU-Turkey relations are further scrutinized. The EU-Turkey Statement accepting Turkey as a safe third country and a first country of asylum is tested as an example of the EU's externalization policy in order to see the implications of burden sharing of Syrian refugees between the EU and Turkey. Therefore, this research aims to test whether there is a functioning refugee protection mechanism between Turkey and the EU or whether the system developed by the EU creates burden shifting over Turkey. Turkey is the main focus of this study, which is

carrying a substantial amount of responsibility and financial burden since refugee movements from Syria have started in 2011.

Keywords: Syrian Refugee Protection, Externalization, Burden Sharing, EU Asylum and Refugee Policies, Turkish Asylum and Refugee Policy

ÖZ

AVRUPA BİRLİĞİ'NİN SIĞINMA POLİTİKALARININ DIŞSALLAŞTIRILMASI: SURIYELİ MÜLTECİ KORUMA KRİZİNDE AVRUPA BİRLİĞİ VE TÜRKİYE ARASINDAKİ MÜLTECİ YÜK PAYLAŞIMI

Yılmaz, Filiz

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Bu tez, Avrupa Birliği (AB) tarafından sığınma ve mülteci konularının dışsallaştırılmasına ilişkin belirli bir politika yaklaşımını analiz etmektedir. AB'nin sığınma ve mülteci politikasının dış boyutu, sınır yönetimi, vize politikası ve sığınmacıların kitlesel hareketlerinden kaçınmak için üçüncü ülkelerle iş birliği politikalarındaki uygulamalar bu araştırmanın ana konusunu oluşturmaktadır. Bu tez, ayrıca, “güvenli üçüncü ülke” ve “ilk sığınma ülkesi” prensipleri ile AB “geri kabul anlaşmaları” gibi AB'nin dışsallaştırma politikalarının araçları üzerinde durmaktadır. Bu çalışmada, AB'de mültecilere ilişkin yük paylaşım mekanizmaları kavramı da analiz edilmektedir. Bu çalışmada, güvenli üçüncü ülke ve ilk iltica ülkesi ilkelerinin Türkiye'nin sığınma ve mülteci politikalarına olan etkileri de irdelenmiştir. Türkiye'yi güvenli üçüncü ülke ve ilk sığınma ülkesi kabul eden AB-Türkiye Anlaşması, Suriyeli mültecilerin AB ve Türkiye arasındaki yük paylaşımında risk teşkil eden AB'nin dışsallaştırma politikasının bir örneği olarak incelenmektedir. Bu sebeple, bu araştırmanın amacı işleyen bir mülteci koruma mekanizmasının olup olmadığı ve AB'nin oluşturduğu sığınma sisteminin Türkiye üzerinde bir yük devrine neden olup olmadığını ayrıntılarıyla tartışmaktır. Türkiye, Suriyeli mülteci hareketlerinin 2011 yılında başlamasından itibaren en ciddi anlamda sorumluluk

taşıyıp mali yükü üstlenmesinden ötürü bu çalışmanın odak noktasını oluşturmaktadır.

Anahtar Kelimeler: Suriyeli Mülteci Koruması, Dışsallaştırma, Yük Paylaşımı, AB Sığınma ve Mülteci Politikaları, Türkiye Sığınma ve Mülteci Politikaları

*To mother earth, to the peace in the world,
all beings deserve to live in dignity...*

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LIST OF ABBREVIATIONS

AP	Accession Partnership
APD	Asylum Procedures Directive
ASAM	Association for Solidarity with Asylum Seekers and Migrants
CEAS	Common European Asylum System
DGMM	Directorate General of Migration Management
EASO	European Asylum Support Office
EC	European Commission
ECHR	European Convention of Human Rights and Fundamental Freedoms
ECtHR	European Court of Human Rights
ECJ	European Court of Justice
EEC	European Economic Community
EP	European Parliament
EU	European Union
EURODAC	European Automated Fingerprint Recognitions System
EUROPOL	European Police Office
FRONTEX	European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union
GAM	Global Approach to Migration
GAMM	Global Approach to Migration and Mobility
HLWGAI	High Level Working Group on Asylum and Migration
ICMPD	International Centre for Migration Policy Development
IOM	International Organization for Migration
JHA	Justice and Home Affairs
MENA	Middle East and North Africa
MFA	Ministry of Foreign Affairs
MOI	Ministry of Interior
NAP	National Action Plan for Asylum and Immigration
NPAA	National Action Program for the Adoption of the Acquis
NATO	North Atlantic Treaty Organization

NGO	Non-Governmental Organization
NPAA	National Program on the Adoption of the Acquis
RSD	Refugee Status Determination
SEA	Single European Act
TEU	Treaty on European Union
TGNA	Turkish Grand National Assembly
UNHCR	United Nations High Commissioner for Refugees
UNRRA	United Nations Relief and Rehabilitation Agency
WW I	World War I
WW II	World War II

CHAPTER 1

INTRODUCTION

The increasing numbers of refugees in the world have become one of the major challenges of the 21st century. According to the United Nation High Commissioner's (UNHCR) statistics in 2016, there are in total 65.3 million people around the world who have been forced from their homes, including 21.3 million refugees and, 10 million stateless persons.¹ For the first time in the history of the UNHCR, the number of people forcibly displaced from their homes has exceeded 60 million.² The UN High Commissioner for Refugees, Filippo Grandi stated that "more people are being displaced by war and persecution and that's worrying in itself, but the factors that endanger refugees are multiplying too".³ This explains well the reasons of ever increasing numbers of refugees that are dying at sea and on land while they are trying to reach safer places. Grandi argues that closing borders will not solve the problem. He stresses that there is the need for willingness to work together because the numbers are severe and there must be collective interest on protecting human dignity.⁴ This invitation supports the idea of burden sharing of refugees among states and this discussion is the major concern of this thesis. Burden sharing certainly is one

¹ Adrian Edwards, "Global Forced Displacement Hits Record High," *UNHCR News*, June 20, 2016, <http://www.unhcr.org/news/latest/2016/6/5763b65a4/global-forced-displacement-hits-record-high.html> (accessed Sept. 10, 2016)

² UNHCR, *The Figures at Glance*, <http://www.unhcr-centraleurope.org/en/about-us/figures-at-a-glance.html> (accessed Nov. 12, 2016)

³ UNHCR Press Releases, *Statement by UN High Commissioner for Refugees Filippo Grandi on World Refugee Day 2016, June 20, 2016*, <http://www.unhcr.org/news/press/2016/6/5767ad104/statement-un-high-commissioner-refugees-filippo-grandi-world-refugee-day.html> (accessed Nov. 12, 2016)

⁴ UNHCR Press Releases, *Statement by UN High Commissioner for Refugees Filippo Grandi on World Refugee Day 2016, June 20, 2016*, (accessed Nov. 12, 2016)

of the humanitarian liabilities of states on refugee protection. Therefore, the main goal of the international community should be to seek cooperation on finding durable solutions for refugees.

As a result of the humanitarian crises, the increase in the numbers of asylum seekers and refugees in the countries that have already been exposed to a large number of migratory movements has led to an increase in the burden on that country. The burden has become even higher in developing countries compared to the wealthier countries in more stable regions of the world, especially during mass movements of refugees. The resulting problem is that the EU destination countries implement policies to prevent the migratory movement before it reaches their borders. In this case, the neighboring countries to the crisis or country of transit and origin keep struggling with the burden of processing asylum applications and providing necessary protection to refugees. Therefore, the refugee crisis turns into a protection crisis when the international community is not willing to respond to share the heavier burdens experienced by some countries. On the other hand, it has been seen that the EU has experienced a higher amount of first asylum applications in a short period of time due to the Syrian refugee movement, which has shaken the so-called common policies of the EU within itself. Indeed, the Syrian refugee protection crisis has presented clear evidence that the international community has shortcomings on equal burden sharing mechanisms of refugee protection. It seems that the consensus on protecting human dignity fall short far from what Filippo Grandi stated.

The Syrian civil war, which started in March 2011, caused one of the biggest refugee movements in the world. It is estimated that approximately 11 million Syrians have had to flee from their homes since 2011. Over 4.9 million Syrian refugees⁵ sought protection in neighboring countries such as Turkey, Lebanon, Jordan, Egypt and Iraq,

⁵ Since the Syrians, who had to escape from their countries under the international law, were accepted as "refugees" by the international community. In Turkey, Syrian refugees are under Temporary Protection Regulation, which was issued in Turkey on 22 October 2014 under the Law on Foreigners and International Protection No. 6458 in Turkey, defines the Syrians in Turkey as "those under temporary protection". They are considered as neither "refugee" nor "conditional refugee". However, for the consistency with international documents they referred as "Syrian refugees" in this study.

and 6.6 million Syrians became internally displaced. It is further stated that 13.5 million Syrian nationals are in need of humanitarian assistance within Syria.⁶ The increase of Syrian refugees in the neighboring countries has resulted in host states bearing the brunt of receiving large numbers of arrivals. It has become much more difficult to shoulder the burden when host countries are lacking the capacity to provide protection under international refugee law. This is because of the fact that the states have to cope with several issues (including legal, political, economic, social and infrastructural) to provide protection to refugees. The inability to receive refugee status and the obstacles refugees face to access the labor market, education, and health services in the host countries force refugees to search for protection mostly in the EU countries. As a result of the restrictive policies of the EU, in the last couple of years the world has witnessed the human tragedies of Syrian refugees in the Mediterranean and Aegean Sea, as well as on the land borders of Hungary and other countries.

Turkey is one of the countries most affected by the conflict in Syria, currently hosting 2,888,856 Syrian refugees,⁷ which constitutes the biggest refugee population among the hosting countries. In 2015, the approximately 1 million irregular migrants around the borders of the EU (the majority of them fleeing from Syria), paved the way for a huge struggle within their asylum system. The policies of the EU toward preventing people trying to reach the EU from Turkey through irregular ways reflected the shortcomings of the EU countries in their approach to this humanitarian crisis. Therefore, the irregular movement of refugees from Turkey to the EU via land and sea routes pushed the EU to seek a different solution. It can be said that the EU implemented more restrictive asylum policies -than it had prior to Syrian civil war- that would prevent refugees from reaching EU countries in order to make it more difficult for irregular migrants to reach the EU. This was done through mechanisms

⁶ UNHCR UN News Service, *Syria Regional Refugee Response*, June 20, 2016, <https://data.unhcr.org/syrianrefugees/rssreader.php?FeedId=3>, (accessed Sept. 10, 2016)

⁷ Directorate General of Migration Management (DGMM), *Temporary Protection Statistics*, February 2, 2017, http://www.goc.gov.tr/icerik6/gecici-koruma_363_378_4713_icerik, (accessed Feb 12, 2017) The numbers of registered Syrian refugees in Turkey is calculated as 2,854,968 at UNHCR Country Profile, *Syria Regional Response*, <http://data.unhcr.org/syrianrefugees/country.php?id=224>, (accessed Feb. 12, 2017). For this study the statistic from DGMM is used.

such as providing financial assistance to countries bordering the EU such as Turkey. On the other hand, Turkey's own resources and capacity were not enough to provide protection to Syrian refugees and Turkey asked for burden sharing, especially from the EU. Therefore, the financial contribution of the international community became evident and necessary.

The unprecedented numbers of refugee arrivals at the EU borders in 2015 forced EU leaders to enhance cooperation with Turkey. For this purpose, German Chancellor Angela Merkel took the initiative and visited Turkey in order to find a solution which would stop irregular migratory movements and provide protection to refugees while externalizing the EU policies. Financial assistance, border management, combating against human smuggling networks, visa liberalization and relaunch of accession negotiations have become crucial topics for the EU, which affect its relations with Turkey.⁸ In order to access the developments at the EU level, this thesis focuses on the EU-Turkey Bilateral Statement (EU-Turkey Statement) of 18th March 2016 and the agreement between the EU and the Republic of Turkey on the readmission of persons residing without authorization reached in 2013 (EU-Turkey Readmission Agreement). This research considers that both agreements have brought challenges to EU-Turkey relations on asylum and refugee issues.

Considering the above-mentioned developments, this thesis challenges the implications of the external dimension of the EU's asylum and refugee policies within the concept of burden sharing. It analyzes the protection of Syrians refugees in Turkey as a case study, which is both a political and humanitarian issue between Turkey and the EU. Both parties have responsibilities in providing protection to Syrian refugees. This study tries to investigate this new cooperative environment between the EU and Turkey, and whether it can be viewed as a new opportunity for reactivating Turkey's accession negotiations with the EU. While looking at these points, this research aims to identify and assess the main factors involved in the

⁸ BBC News, *Migrant crisis: EU and Turkey Plan One-in, One-out Deal*, March 8, 2016, <http://www.bbc.com/news/world-europe-35749837>, (accessed Nov.1, 2016)

externalization of asylum and refugee policy adopted by the EU and its Member States.

To pursue externalization of the EU's policies on asylum, after Introduction, this thesis looks into the harmonization efforts developed with the Union in the field of asylum in Chapter 2. In order to elaborate on the developments on the EU's immigration and asylum policy, this research looks into the strategies and programs (Tampere, Leaken, Seville, Hague, and Stockholm and etc.) developed by the EU in managing its asylum policy outside the borders of the Union that can be considered as external dimensions of the EU asylum policy. Following that, Chapter 3 presents an analysis of burden sharing within the EU framework. Accepting the fact that the external dimension of the EU's asylum and refugee policies can involve burden shifting, which occurs as a result of the externalization policies and when the problems of refugees have been avoided.

The externalization tools can include the principles of the safe third country, first country of asylum, and readmission agreements, which are the main underlying reasons for the lack of burden sharing with third countries leading to refugee protection problems. Chapter 4 analyzes Turkish asylum policies since the early Republic of Turkey until the mass movements of Syrian refugees. The main objective of this chapter is to examine the development of Turkey's orientation to more liberal and humanitarian asylum policies that have emerged from the perspective of security. In this process, the impact of Europeanization of Turkish policies on migration and asylum can be seen in the new 2013 Law on Foreigners and International Protection (LFIP). In Chapter 5, this thesis concludes with the overall analysis of the EU's asylum and refugee policy externalization on the Syrian refugee movements over Turkey under the burden sharing concept. It presents Turkey's achievements and shortcomings on providing protection to Syrian refugees.

Chapter 5 constitutes the analysis part of this thesis. The concept of burden sharing and the implications of refugee protection burden sharing are scrutinized within the framework of Turkey-EU relations. The EU-Turkey Statement is analyzed as an

example of the current EU's externalization policy on Syrian refugee protection. This thesis supports the idea that implementation of the principles of the safe third country and the first country of asylum are more likely to be disregarding of EU obligations on the international norms of refugee protection. Therefore, the shortcomings of the EU countries in their approach to this humanitarian problem have been questioned.

1.1 Conceptualization of Immigration and Asylum within the EU Context

The subjects of immigration and asylum were first mentioned within the EU context as “matters of common interest” in the Treaty of Maastricht and then communitarised with the Amsterdam Treaty. A real breakthrough was reached in the Treaty of Amsterdam by signifying that policies regarding irregular immigration would be governed under supranational auspices.⁹ One of the major steps in the development of common policies was reached during the European Council Meeting at the Tampere Summit in 1999. In this meeting, migration issues were addressed with an emphasis on human rights and political developments in the transit and origin countries of migration. It was emphasized that immigration should be considered within a broader context. On the other hand, the preventive measures of the destination countries within the EU are both challenges with humanitarian liabilities of states and international refugee law. Although refugee protection policies should be a matter of humanitarian focused responsibility, instead they become a political concern of states. This behaviour constitutes the main idea behind externalization policies in the literature of asylum policies within the EU level, which constitutes the main area of interest for this study.

In the literature, there is an increasing focus on the studies of the EU's externalization policies on migration and asylum. It has been perceived that externalization is the continuation of the EU securitization policies on asylum and migration of the post-Cold War that confused the distinction between refugees and

⁹ Johan Ahlbäck, “The Externalization of the EU's Policy on Irregular Immigration Vertical and Horizontal Venue-Shopping?” *Department of Political Science, Lund University*. (2000): 9

other migrants.¹⁰ Externalization terminology in terms of asylum issues can be described as migration control measures applying out of the extraterritorial territory of a state.¹¹ Strategies or policies to adopt externalization on asylum endanger the evaluation of the merits of asylum claims by making them legally inadmissible. As migration becomes more politicized, control measurements are applied under cooperation with the country of origin and transit in the prevention of irregular migration. Externalization corresponds to bilateral and unilateral policy initiatives for border controls to prevent entry of migrants including asylum seekers into destination countries.¹²

Lavenex believes that the EU Member States have their own interest in the externalization of the asylum policy because successful cooperation with third countries diminishes the possible burden caused by migratory movements at the EU's borders and enhances the chances of preventing inflows of migrants including asylum seekers.¹³ From this point of view, externalization is described as "remote control"¹⁴ in which control is conducted in the external borders of the Union under the supervision of the EU countries, so the EU shifts the migration management control to third countries via cooperation tools. Protection is provided by the country of origin or transit and the EU provides mechanisms to support third countries through technical, financial and administrative aids.

According to Boswell, a partnership with third countries and combating the root causes of migration, protection of refugees, and development of readmission

¹⁰ Emma Haddad, "The External Dimension of EU Refugee Policy: A New Approach to Asylum?" *Government and Opposition Ltd*, No:2, (2008):190- 205, p.196

¹¹ (see Gammeltoft-Hansen 2011; see also Crépeau 2013; see Haddad 2008)

¹² Bil Frelick, Ian M.Kysel and Jennifer Podkul, "The Impact of Externalization of Migration Controls on the Rights of Asylum Seekers and Other Migrants" *Journal on Migration and Human Security, Center for Migration Studies of New York*, no.4, (2016):190-220 p.194

¹³ Sandra Lavenex, "Shifting Up and Out: The Foreign Policy of European Immigration Control", *West European Politics*, 29: 2 (2006), p. 337

¹⁴ Aristide Zolberg, "The Archeology of Remote Control". In Fahrmeir, A., Faron, O., Weil, P., (Eds.). *Migration control in the North Atlantic world*. New York: Berghahn Books (2003), p.

agreements became the main tenets of the EU asylum policy after the Tampere Summit.¹⁵ The EU aimed at creating partnerships with the origin, transit, and third countries in order to support them in managing migration flows, enhance border controls and document security, while promoting refugee protection, and preventing irregular immigration.¹⁶ In these efforts, third countries have been encouraged to strengthen their border controls. Visa restrictions and strict border controls increased the difficulty for asylum seekers to reach EU borders and seek international protection. The asylum system of the EU perceives asylum seekers as irregular migrants due to their irregular entry. However, asylum seekers should not be blamed for their irregular entry because the Dublin system creates its own weaknesses in terms of safe access of refugees to the EU territories.

Besides shifting control to the non-EU Member States, the EU created mechanisms to involve third countries into migration ruling by making them responsible for the processing and readmitting of asylum applications of those who crossed borders irregularly via readmission agreements.¹⁷ The EU legislation on asylum has evolved through creating new principles to determine which country is responsible for asylum applications. In conjunction with and with the implementation of the safe third country and the first country of asylum, an asylum seeker can have an access to protection in accordance with the 1951 Convention Relating to the Status of Refugees (the 1951 Convention) when the person is repatriated from the country of destination to the transit or origin country.

These efforts in controlling and combating irregular migration enhance security-concerned policies of states. There has been a tendency towards securitization of asylum policies since the September 11 terrorist attacks in the USA, followed by the

¹⁵ Christina Boswell, "The External Dimension of EU Immigration and Asylum Policies", *International Affairs* 79, no. 3, (2003): 620

¹⁶ Katharina Eisele, *The External Dimension of the EU's Migration Policy: Different Legal Positions of Third-Country Nationals in the EU: A Comparative Perspective*, (Leiden, Boston: Brill, 2014), 83

¹⁷ Sandra Lavenex, "Shifting Up and Out: The Foreign Policy of European Immigration Control", *West European Politics*, 29: 2 (2006), p. 340

bombings in Madrid and London in 2004 and 2005, respectively. Not only the USA, but also EU countries started to regulate restrictive policies and strengthened their visa controls for external borders.¹⁸ Following this trend, there have been legal and institutional structure changes in EU treaties, the repercussions of which were visible in EU policies through several actions, summits, and programs. The Commission Communications of the Global Approach to Migration and Mobility (GAMM) stated that the fight against the irregular movement of persons to the EU constituted a cornerstone of a comprehensive European asylum policy.¹⁹ Similarly, readmission agreements have become an inevitable part of partnership and association agreements with the EU, which has enabled the repatriation of asylum seekers who stay in the Member States without any legal permission. Through this discourse, the EU's readmission agreements with third countries within the EU's external relations function as major tools to limit unauthorized movements to EU shores.

One other critical aspect of the EU's asylum protection which is codified in the Amsterdam Treaty is the goal of burden sharing. With the creation of the Common European Asylum System (CEAS), EU Member States acknowledged that there is an unequal distribution of asylum applications within the EU. Therefore, in order to support the principle of solidarity in the EU, burden sharing among EU Member States should be shared equally. This system was prepared in order to avoid possible free-riding situations of refugee protection, and guarantees fair and efficient protection access for those that are in need of protection under equivalent conditions in all Member States²⁰ in accordance with *non-refoulement* principle of the 1951 Convention. In that regard, EU states should aim to promote "sharing people" and "policy harmonization" through forming a set of common rules in asylum and

¹⁸ Thomas Faist, "The Migration-Security Nexus: International Migration and Security before and after 9/11" in, *Working Papers of Center on Migration, Citizenship and Development*, no.9 (2005): 42

¹⁹ Eisele, *The External Dimension of the EU's Migration Policy*, 97

²⁰ European Commission, *Green Paper on the Future Common Asylum System*, COM (2007) 301 final, 6 Jun. 2007, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-is-new/public-consultation/2007/pdf/contributions/ngo/caritas_europa_en.pdf (accessed Nov. 1, 2016)

immigration.²¹ However, these initiatives have not become deep-rooted principles and policies. Instead, they have become temporary and immediate responses, which can be observed clearly in the EU's and Member States' responses during the Syrian refugee crisis. In other words, the creation of an equal distribution of asylum applications and well-structured refugee protection system has not turned into practice and has stayed in principle. However, the current system has deficiencies and it is conflicting with fundamental rights of refugees.

The concept of burden sharing²² can be described within several areas of international law. In terms of refugee protection, it was first discussed in the Preamble of 1951 Convention. Although it does not clearly mention burden sharing, indeed it touches upon the possible heavy burden of granting asylum on some states, and therefore highlights international cooperation as the solution. The notion of burden sharing was further codified by the 1967 UN Declaration on Territorial Asylum (Article 2)²³ and 1969 OAU Refugee Convention (Article 2(4))²⁴ which relieving the burden caused by granting asylum in the Member States with the necessary measurements of the international cooperation. As the international law on refugee protection does not constitute binding instruments on burden sharing of refugees, the international law acknowledges sharing the responsibilities among states. The concepts of responsibility sharing and international solidarity are major cross-cutting themes of international protection. They provide a broader description, however, the inclusion of responsibility along with burden sharing reflects a more

²¹ Eiko R. Thielemann, "Between Interests and Norms: Explaining Patterns of Burden-Sharing in Europe", *Journal of Refugee Studies*, 16, No.3, (2003): 265

²² The dominant use in the EU level is solidarity and fair sharing of responsibility instead of burden sharing further codified in article 80 TFEU. For the clarity and simplicity, the burden sharing terminology has been used in this thesis explaining burden sharing within the EU context.

²³ 1967 UN Declaration on Territorial Asylum, no. 2312

²⁴ OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, Adopted by the Assembly of Heads of State and Government at its Sixth Ordinary Session, Addis-Ababa, 10 September 1969

positive image of refugees.²⁵ Its importance occurs when states are faced with large-scale movements of refugees fleeing persecution or/and violence. In such situations, some countries shoulder the heavy burden by accepting a large number of refugees. Therefore, other states also have a responsibility to cooperate in sharing this burden in a spirit of international solidarity.

For the purpose of this thesis, responsibility sharing is accepted as the state's responsibility to admit and protect refugees and this responsibility becomes integrated with burden sharing. This is because of the fact that the burden sharing provides benefits both to the asylum seekers, refugees and the states that are in need of lightening the burden. Burden sharing is mostly required when there is a mass of refugee movements. In the long run, refugees can become integrated into their host society, can participate in the labor market or, in general, can stand on their own two feet bring additional value to that society or state. However, in the short term, processing asylum applications and providing fundamental rights for large numbers of refugees to access shelter, food, education, and health services creates financial, technical, and political burdens for the state. This study sees burden sharing in terms of solving refugee crisis by sharing people-resettlement, money-financial distribution, and norms.²⁶ In addition to that, this thesis focuses burden sharing between the EU and Turkey in response to Syrian refugee crisis basis on resettlement and financial contribution. Therefore, how and what the EU's externalization policies change burden sharing into burden shifting in Turkey is further investigated. Burden shifting reflects the perspective that Syrian refugee protection is not the problem of the EU. It is accepted that it is an issue that Turkey has to deal with.

Externalization at the EU level has been described for humanitarian concerns as preventing asylum seekers from choosing dangerous methods such as human

²⁵ UNHCR Executive Committee of the High Commissioner's Program, *Conclusion on International Cooperation and Burden and Responsibility Sharing in Mass Influx Situations Conclusion on International Cooperation and Burden and Responsibility Sharing in Mass Influx Situations*, Oct.8, 2004, <http://www.unhcr.org/excom/exconc/41751fd82/conclusion-international-cooperation-burden-responsibility-sharing-mass.html>, (accessed Sept. 30, 2016)

²⁶ Gregor Noll, "Risky Games? A Theoretical Approach to Burden-Sharing in the Asylum Field", *Journal of Refugee Studies*, Vol. 16, No. 3, 2003, p. 237

smuggling channels in order to gain access to the EU. EU policies were centered on cooperation with the country of origin and the transit countries to increase the capacity buildings to be able to provide protection in the region. The preventive measures for solving the root causes of migration has been emphasized under rule of law, democracy, human rights and good governance. It should be questionable that whether these policies target promotion or guarantee the human rights of asylum seekers and refugees or if they further stress asylum seekers stranded in the country of origin or transit. The root causes of migration should not restrain refugees from seeking asylum and reaching safety.

The Member States have failed to institutionalize burden sharing into mechanisms when there is a need to apply it to the crisis. Creation of a common asylum has aimed to decrease unilateral national regulations and to manage the functioning of burden sharing mechanism within the principle of solidarity. This burden sharing concept becomes debatable on distributing costs among the EU states and asylum countries in the countries of origin caused by the safe third country and first country of asylum principles. The CEAS involves various mechanisms to limit asylum applications, which includes pre-frontier patrols, carrier sanctions, stringent visa requirements, as well as restrictions on accession.²⁷ These mechanisms can have a clear impact on reducing the number of asylum seekers who can reach the EU. However, they can also lead potential asylum seekers to use irregular pathways. Even when they reach the EU Member States, there have been cases where asylum seekers who have been able to cross the borders irregularly through difficult journeys have been sent to safe third countries via readmission agreements once they have arrived. These mechanisms can undermine the principles supported by the EU.

The Dublin rule of the country of first entry creates an unequal distribution of asylum seekers within and without the EU because it enables more pressure both on the Union's external borders and the Member States' borders forming the EU's external

²⁷ ECRE, *Defending Refugees' Access to Protection in Europe*, December 2007, http://www.ecre.org/wp-content/uploads/2016/07/ECRE-Defending-Refugees-Access-to-Protection-in-Europe_December-2007.pdf (accessed Nov.13, 2016)

borders. It was adopted to specify the responsible state for examining an asylum application on basis of the state through which the asylum seeker first entered.²⁸ Under this system, Member States agreed on the “country of first entry” mechanism to assign responsibility to a particular state. This system works with the establishment of the Eurodac System. The Eurodac Regulation is a mechanism which collects fingerprints of the asylum seekers on a digital basis and provides early warning if the asylum has already been registered for application in any other Member State.²⁹ In this principle, the country where an asylum seeker first enters to the Union is responsible for registering the asylum application and taking fingerprints. In the case of secondary movement of an asylum seeker to another Member State, the system enables the return of the asylum seeker to the country of first entry. The purpose was to have balanced asylum applications within the Union. With the Syrian refugee crisis, it has been understood that the EU has been struggling to harmonize asylum policies. This is due to the fact that asylum seekers arrive at the EU mostly through Mediterranean countries like Greece and Italy and seek asylum in Germany. Italy and Greece are struggling with processing asylum applications and accommodating all the arrivals. If Germany did not suspend the Dublin rule applications, these countries could have suffered more because they were already over-burdened.³⁰ The EU came to the point where it was necessary and urgent to restructure and revise the Dublin system.³¹

²⁸ Council Regulation (EC), 343/2003 *Establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Asylum Application Lodged in One of The Member States by A Third-Country National*, February 18, 2003 <http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32003R0343> (accessed Nov.13, 2016)

²⁹ Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsibility to examine an application for international protection, lodged in one of the Member States by a third-country national or a stateless person.

³⁰ BBC News Europe, *Why is EU struggling with migrants and asylum?* March 03, 2016. <http://www.bbc.com/news/world-europe-24583286> (accessed Jan.30, 2017)

³¹ European Commission Press Release, *Towards a sustainable and fair Common European Asylum System*, May 4, 2016, http://europa.eu/rapid/press-release_IP-16-1620_en.htm (accessed Jan 30, 2017)

Safe third country and first country of asylum principles were developed within the Asylum Procedures Directive (APD) of the CEAS. The safe third country is one of the tools for the externalization of the EU's asylum policies. The implication of third countries enables redistribution of asylum claims over third countries. According to Lavanex, the EU extends the safe third country principle to third countries through the Schengen and Dublin Conventions, readmission agreements, and the Third pillar measures.³² The EU implements external border measures to rotate asylum seekers from Member State's territory by shifting refugee responsibilities to other countries outside of the EU.³³ It shifts the burden from the Member States to third countries that have readmission agreements. Therefore, in Chapter 5, the Turkey-EU Readmission Agreement will be evaluated as one of the tools of the EU's externalization policy for limiting irregular immigration as a way of cooperation with third countries. EU leaders have tried to reduce migratory movements from Turkey to the EU with the EU-Turkey Statement. It seems that there are some contradictions between the EU's core norms regarding human dignity, respect for human rights of the EU *acquis communautaire*, and practices of burden sharing.

1.2 Research Design and Methodology

This thesis answers the main question: What are the implications of the EU's externalization of asylum policies on burden sharing of Syrian refugees between the EU and Turkey? To pursue the main research question, it reviews the following sub-questions: What kind of methods, tools, and mechanisms do the EU and its Member States use to externalize asylum policies? What are the instruments and strategies implemented by the EU and its Member States focusing on refugees? How does the EU deal with the issue of refugee burden sharing? How can we evaluate the EU-Turkey Statement in terms of international protection of refugees and burden sharing?

³² Sandra Lavanex, *Safe Third Countries: Extending the EU Asylum and Immigration Policies to Central and Eastern Europe*, (Central European University Press 1999), 76

³³ Sandra Lavanex, "Asylum, Immigration, and Central-Eastern Europe: Challenges to EU Enlargement", *European Foreign Affairs Review*, 3 no.2, (1998): 280

This study adopts an interpretive approach for it is mainly a descriptive study by employing qualitative methods. The EU's externalization policy tools concerning asylum are structured. This research involves a literature review on the development of a common European asylum policy at the EU level. Firstly, it analyzes the literature and the existing secondary sources, the EU *acquis* with its primary and secondary law instruments, strategy papers and policy documents. Later, in order to underline external dimension, primary and secondary sources of the EU law are analyzed. In this respect, the related articles from the Maastricht, Amsterdam and Lisbon Treaties and the Charter of Fundamental Rights are covered. Commission Communications, the Tampere, Leaken and Seville Presidency Conclusions, the Hague Program, and finally the Strategy Paper on Immigration and Asylum are reviewed in relation to this thesis.

As for the research techniques, qualitative research methods are employed. The data given by the EU Border Management Agency (Frontex) provide complementary information for this research. Eurostat for statistical data and graphs showing the numbers of irregular border crossings of asylum seekers, numbers of asylum applications, refugee protections in the EU and Turkey have additionally been utilized. The relevant policy documents, such as the Accession Partnership Documents (AP) and Progress Reports, have provided useful information. Similarly, legal documents presented by Turkey, such as the National Action Plan on Asylum and Migration as well as the National Program for the Adoption of the Acquis (NPAA), are covered to review Turkey's adoption of the EU *acquis* on asylum policy since the accession process has started in 1999. While comparing these official documents, Turkey's institutional structure has also been analyzed in order to portray Turkey's achievements and deficiencies in accordance with the EU's immigration and asylum policies.

This thesis adopts a perspective that argues that the Syrian refugee protection issue creates a political and humanitarian dilemma creating the need for effective and durable solutions at state, regional and international levels. Thus, the Syrian refugee protection policy responses at these levels are chosen as a case study to determine the

EU and Turkey's policy responses to this crisis. In order to tackle this subject this research has conducted open-ended and semi-structured interviews with staff members of Turkish and international institutions, universities and NGOs as follows: the Directorate General of Migration Management (DGMM), the Ministry for EU Affairs, the UNHCR Office in Turkey, the Research Center on Asylum and Migration (IGAM), the Association for Solidarity with Asylum Seekers and Migrants (ASAM), and the Migration and Politics Research Center (HUGO).³⁴ Most of the findings of this thesis have been collected by the researcher during in-field experience working with the Resettlement Team of the UNHCR Office in Ankara and later with the International Protection Department of the DGMM since July 2016.

³⁴ In the Appendix A, the full list of questions is attached. In Appendix B, a full list of conducted interviews is included.

CHAPTER 2

EXTERNALIZATION OF THE EUROPEAN UNION'S ASYLUM POLICY

Since the early 1990's, the increase in numbers of asylum seekers moving to EU Member States caused by political changes in the former Yugoslavian territories has motivated the Member States to coordinate their asylum policies. In this chapter of this thesis, the development of the EU asylum policies is covered to understand the underlying reasons of externalization and the extent of the measures taken at the EU level for asylum applications and refugee protection. It is understood that the EU has gradually adopted more restrictive asylum policies and this triggers contradictions between the EU's adherence to the liberal norm of asylum standards and their desire to control immigration. In the following part of this study, whether the EU's commitment to the existing norms for refugee protection enables the EU asylum policies to be more liberal or restrictive is analyzed. Before the elaboration of the gradual development of the EU's asylum competence, it will be helpful to underline international law norms and provisions on refugee protection, which facilitate better comprehension of asylum matters in the EU.

2.1 Historical Background of International Refugee Protection

The term "refugee" was first utilized under the League of Nations in quite a restrictive manner after the First World War (WWI) for political purposes. The first refugee office was set up by Western governments to give refugee status to White Russians who were opposing the Bolshevik regime. More than one million Russian refugees left Russia after the collapse of the Tsarist regime. The Nansen Office³⁵ was dedicated to solving the problems of White Russians aiming for Russian settlement

³⁵ Nansen Office was created to carry the tasks of the High Commissioner for Refugees during the League of Nation period in between 1921 and 1946

of those attempting to escape Bolshevism.³⁶ Russian refugees benefited from settling into European countries. Following the destructive Nazi regime caused millions of Jewish people to flee or be forcibly removed from their homes and homelands. During the Jewish refugee crisis in the 1930s, most of the Western governments were not eager to give refugee status to Jewish refugees and regulated restrictive admission policies because Jewish people were perceived as a social threat.³⁷ Jewish refugees were accepted as immigrants but their situation of fleeing from persecution was neglected. During this period, granting refugee status was defined by political interests.

In 1943, the United Nations Relief and Rehabilitation Administration (UNRRA) was established to provide help for war victims and repatriations of refugees. After the Second World War (WWII), there were 11 million refugees in the world. International refugee regime was accelerated since end of the WWII because the number of refugees and displaced people increased sharply. This close relationship between political concerns and refugee policy continued after WWII. During the Cold War period, refugee status was given to anti-Communist refugees. During the early post-war years, European governments had a welcoming and positive approach towards refugees in terms of ideological and geographical considerations. Although the ideological concerns generally influenced refugee protection matters due to the containment policies of the Cold War, European States had an open-door asylum policy for all Eastern European refugees under Soviet threat. In other words, European States welcomed people from the Communist Bloc as refugees. During the Cold War, there were two types of refugee groups division: the first was the asylum seekers coming from the Communist Bloc whom Europeans accepted as refugees.

³⁶ Esther Erza, "European Integration and Refugee Protection: The Development of Asylum Policy in the European Union", *Ludwig-Maximilians-Universität München, Geschwister-Scholl-Institut für Politische Wissenschaft*, (2004): 61

³⁷ Erza, *European Integration and Refugee Protection*, 86

The status determination process of refugees was based on the ideology. The second were the remaining refugees coming from outside the Communist Bloc.³⁸

For the recovery of the return of displaced people and refugees, the International Refugee Organization (IRO) was established in 1947 and oversaw the resettlement of 1.3 million refugees and displaced people³⁹ who were mainly Jews fleeing from Germany and Austria. For the status of refugees, the General Assembly of Human Rights Commission agreed to prepare a draft decision in 1947. Human rights and national interests were two of the major debates over new policy responses to the increase of refugees and asylum seekers in aftermath of WWII. The Universal Declaration of Human Rights was approved in 1948. In Article 2; it is stated that all human beings have a right to enjoy their fundamental rights and freedoms without being exposed to any kind of distinction. Following that, in Article 14.1, it is stated that everyone has a right to seek asylum from persecution in other countries.⁴⁰ This declaration and this specific article constituted the main legal basis for the rights of refugees. It is understood that the international community had the perspective of recognizing the problem of refugees.

Further developments in the refugee regime were seen under the independent agency the UNHCR. To find a solution to the problems of refugees, the 1951 Convention and later on its supplementing 1967 New York Protocol were created. This document is the main instrument which constitutes the core framework for the international refugee protection regime following the Universal Declaration of Human Rights. Article 1 of the 1951 Convention defines the refugee as a person owing a well-

³⁸ Charles Keely, "The International Refugee Regime(s): The End of the Cold War", *International Migration Review*, 35, no.1 (2001): 307

³⁹ Astri Suhrke, "Burden-sharing during Refugee Emergencies: The Logic of Collective versus National Action", *Journal of Refugee Studies*, 11, no.4, (1998): 404

⁴⁰ United Nation, *Universal Declaration of Human Rights*, December 10, 1948, <http://www.un.org/en/universal-declaration-human-rights/> (accessed Sept.20, 2016)

⁴⁰ V. Convention relating to the Status of Refugees Adopted on 28 July 1951 by the United Nations Conference on the Status of Refugees and Stateless Persons convened under General Assembly resolution 429 (V) of 14 December 1950 Entry into force: 22 April 1954, in accordance with article 43

founded fear of persecution based on his/her race, religion, nationality, and political opinion or membership of a particular social group.⁴¹ The person becomes unwilling to return back to his/her home country. This well-founded fear of persecution can be driven by actions of any group or society within a country. The life of a person would be threatened by conflict during civil war, from terrorist attacks, and any ethnic, racial, social, and religious suppression of the majority population over minorities. The threat can also be caused by the government itself. The reasons for becoming a refugee can vary under the criteria stated above. The crucial point is that the person seeks protection outside his/her country because the person is not able to enjoy protection within his/her country.⁴² Fear might be a subjective term, but it is necessary that it is supported by objective reasons, which makes it “well-founded fear”. In this case, the credibility of an assessment is checked with the status determination process of asylum seeker’s claim.

Article 33 of the 1951 Convention prohibits the rejection of a refugee in any condition if the person is in the frontiers of the country’s territory. This right is defined as the *non-refoulement* principle, which imposes signatory states to protect refugees who are in their territories. Moreover, the contracting states cannot apply any penalty to refugees for their irregular entry or presence in the country. The Convention secures the protection of refugees who are unauthorized in the country. Therefore, a host country should respect this basic right including not to forcibly send a refugee back to his/her country of origin where he/she may be subjected to persecution. Thus, refugees should be allowed to stay in the country and have the basic fundamental rights to live in liberty and security. This *non-refoulement* principle was supplemented by other international documents. Article 3 of 1967 UN General Assembly Declaration on Territorial Asylum prohibits any expulsion or compulsory return of asylum seekers who would be subject to persecution. In addition, 1966 International Covenant on Civil and Political Rights, the 1977

⁴¹ UNHCR, *Convention relating to the Status of Refugees*, July 28, 1951, Article 1

⁴² UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status, under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, <http://www.unhcr.org/3d58e13b4.pdf>, (accessed Oct. 20, 2016)

European Convention on Suppression of Terrorism, and the 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment⁴³ have been crucial documents for supporting the *non-refoulement* principle. This core principle constitutes one of the major criticisms to the application of safe third country and first country of asylum principles of the EU because these principles can cause unlawful deportation of refugees who thus become unable to seek protection. The drawbacks of these principles are further evaluated in the following chapters.

The Convention is accepted as the *Magna Carta* for refugees,⁴⁴ however, it was far from universal because it was mainly focused on Europe. It was formed during the rivalry between the West and the East in the Cold War period. Assisting refugees from Eastern Europe was considered a policy by Western states. Its main principle of *non-refoulement* does not seem to be the priority of European countries, and that constitutes one of the main criticisms of this study. At first, the 1951 Convention entered into force with time and geographical limitations. The contracting states had the possibility of limiting their obligations under the Convention to give refugee status as a result of events occurring in Europe before 1951.⁴⁵ Persons fleeing from Europe due to forced displacement during WWII were accepted as refugees by the European countries. The 1967 Protocol removed the temporal limits of the 1951 Convention and left geographical limitation to countries' preferences. Today there are 142 states who are parties both to the Convention and to the Protocol. Congo, Madagascar, Monaco and Turkey are the only countries which still keep this geographical limitation.⁴⁶ The reasons why Turkey kept geographical limitation and its consequences for refugees are analyzed in the following parts of this thesis.

⁴³ James J. Hathaway, *The Law of Refugee Status*, (Toronto: Butterworths, 1991), 38

⁴⁴ Erza, *European Integration and Refugee Protection*, 75

⁴⁵ UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status, under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, <http://www.unhcr.org/3d58e13b4.pdf>, (accessed: Oct. 20, 2016)

⁴⁶ *States Parties to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol* <http://www.unhcr.org/protection/basic/3b73b0d63/states-parties-1951-convention-its-1967-protocol.html> (accessed Sept.15, 2016)

2.2 Asylum Policy in the European Union

WWII resulted in political insecurity, economic disasters and human tragedies in the world, and that induced European states to search for peace and stability. Thus, WWII was a major turning point for the EU states. They entered an era of European integration, which was a major political project in terms of limiting conflict in the European continent. Certain approaches affected governance and development of the European political integration project. Some countries supported the federalist approach, which was more likely to advocate supranational characteristics of the European Economic Community (EEC),⁴⁷ while other countries supported intergovernmentalism. From its early years of integration, the community-based method was developed and supranationality of institutionalization was the major core of the integration. States were eager to delegate sovereignty and creating mechanisms, which were above and beyond the nation-state. However, the initial aim was not to challenge traditional nation-states but to open the way to the economic and political cooperation.⁴⁸ After 1965, a strong intergovernmentalist debate took place within these integration discussions. These different approaches were crucial to the EU because the points of view in each approach are typically reflected in policy areas, such as asylum and refugee policies.

Immigration and asylum issues have been developed in the EEC's jurisdiction and implemented over many years. In the early years of integration, the founding treaty of the European Community (Treaty of Rome) included provisions on the free movement of workers, self-employed persons and the nationals of third countries who provide services,⁴⁹ but immigration and asylum matters were not correlated until the creation of the Single European Act (SEA). This is because the main purpose of

⁴⁷ Upon the formation of the European Union (EU) in 1993, the EEC was incorporated and renamed as the European Community (EC).

⁴⁸ Erza, *European Integration and Refugee Protection*, 89

⁴⁹ The provisions on free movement of workers Article 48, about the free movement of self-employed persons Article 52, and about the free movement of the nationals of a third country who provide services Article 59. For more see, *Treaty of Rome*, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3Axy0023> (accessed: June 10, 2016)

integration was gathered around economic purposes. There was not a tendency to have common policies on the issue of immigration and asylum. Indeed, immigration and asylum matters were accepted under exclusive authorities of each individual Member State. Another reason that the Community would not have the intention of developing common policies on immigration and asylum was the need for a foreign labor force in Europe. European countries adopted liberal policies for fulfilling their economic needs. Therefore, many European countries have encouraged the entrance of migrant workers by managing bilateral agreements between the Community and non-EC countries on the basis of the non-discrimination principle.⁵⁰ For example, Germany and France allowed migrants to fulfill their labor shortages. It can be understood that economic concerns of the European states have affected refugee protection policies. With the oil crisis in 1973, European governments halted their liberal attitudes toward non-EC nationals and regulated more restrictive measurements caused by economic recessions. Migrants were no longer welcomed.

Integration deepened within the intergovernmental level on immigration matters with the adoption of the Schengen Agreement, which created Europe's Schengen Area-internal border checks were abolished between Belgium, France, Germany, Luxembourg and the Netherlands. In 1986, the SEA was signed to enhance the integration process. The SEA enabled the gradual abolishment of border controls in the Schengen Area and the strengthening of external border measures. In 1990 the Agreement was supplemented by the Schengen Convention, which came into force in 1995. It aimed to create an internal market by 1992 “in which free movement of good, persons, services and capital was to be insured” (Article 58) to have “an area without internal frontiers” (Article 52).

As stated above, as a result of the Schengen Agreement and the SEA, cooperation between the Member States in the area of asylum and immigration significantly increased. The Schengen Agreement presented the beginning of intergovernmental cooperation, which in return produced substantial consequences for asylum seekers.

⁵⁰ Erza, *European Integration and Refugee Protection*, 90

For this purpose, the Commission published a White Paper in 1985 on the completion of the internal market and for the first time the link between abolishing of internal border controls and migration, which was a necessary step to achieve a single market and a requirement of harmonization policies including the asylum policy.⁵¹ Before that, the concerns on the impact of policies on refugees were very limited. The essential elements of the Schengen Agreement were to guarantee of free movements of people, goods, services and capital inside the Schengen Area in accordance with harmonization of external border checks. Therefore, a common policy was required⁵² for controlling the entry of third country nationals and asylum seekers.

After the completion of the single market with the dismantling of internal borders, in 1989, at the Madrid European Council, the Palma Document was adopted with the necessary measures defined as essential for the implementation of free movement of persons referring to which nation is responsible when asylum application is requested and what the governing rules of external border control measurements are. Accordingly, policy-makers would not make any distinction among legal migrants, asylum seekers, and irregular migrants; all of them were accepted as aliens and as obstacles to the freedom of movement within the Community.⁵³ Therefore, diminishing internal borders within the Community created the concern regarding the security of external borders because the increase in migratory movements would be accepted as a side effect of the Single Market. In addition, European Member States thought that there was a need for the provision of measurements to reduce the number of asylum applications. As a result of this concern, the externalization of borders controls⁵⁴ was constructed within the external dimension of EU asylum

⁵¹ Completing the Internal Market: White Paper from the Commission to the European Council, Milan 28-29 June 1985, COM (85) 310, 114 June 1985, para.55

⁵² Francesco Cherrubini, *Asylum Law in the European Union, Reutledge Research in Asylum*, (London: Taylor & Francis Ltd Routledge Research in Asylum, Migration and Refugee Law, 2015), 136

⁵³ Erza, *European Integration and Refugee Protection*, 95

⁵⁴ *Ibid.*, p.93

policies. Unfortunately, that makes it difficult for refugees to access their basic rights and freedoms when states show the same treatment to economic and irregular migrants.

2.2.1 Intergovernmental Cooperation in the European Union on Asylum Policies

The increase of irregular immigration created by the bloody conflict in the Balkans is related to control the external borders of the Union. The conflict in the Balkan area led to an increasing number of asylum seekers and refugees who attempt to reach European shores through irregular ways. Anna Triandafyllidou and Maurizio Ambrosini analyzed the externalization of EU migration and classified it into two levels through the utilization of ‘fencing and gate-keeping’ strategies. Fencing includes arresting and expelling refugees at the border and gate-keeping aims to limit proper access to a nation. These two types of irregular immigration and asylum control policies are interconnected with externalization measures at two levels. The first level includes the EU Member States delegation of immigration and asylum controls to southern and eastern European countries to avoid unwanted entries to the EU. In the second, the Member States give the responsibility of immigration and asylum controls to third countries.⁵⁵ In other words, the core European countries shift the burden outwards from the European borders.

The European Member States realized the necessity of concrete policy measures on refugee crises after the Yugoslavian Civil War in Bosnia and Kosovo (1991-1999). There were hundreds of irregular migrants in the EU by 1991. In the Commission Communication in 1991, to counter immigration pressure, the EU pointed out the importance of the incorporation of immigration into the Community’s external policy.⁵⁶ However, the EU system refugee protection in danger because their policies created burden shifting. The principles of external dimension were maintained by the

⁵⁵ Anna Triandafyllidou and Angeliki Dimitriadi, “Migration Management at the Outposts of the European Union the Case of Italy’s and Greece’s Borders”, *Griffith Law Review*. 22, no.3, (2013): 601

⁵⁶ European Commission Communication, COM 1991

European Council in Edinburgh in 1992 with a draft Declaration as a reaction to the displaced people and refugees caused by the conflict in the former Yugoslavia. The European Council recognized the need of reducing migratory pressure and acknowledged the importance of analyzing the causes of immigration movements and their remedies.⁵⁷ External policies can be seen as an outcome of the externalization mechanisms of the EU. Externalization corresponds to the cooperation between the EU and partner countries in immigration management in the form of sharing responsibility. Therefore, asylum seekers and refugees were linked with the EU's external policies and became part of "high politics" issues.

The Maastricht Treaty was signed in 1992 and can be considered a turning point in immigration and asylum policies. The Treaty affected intergovernmentalist and supranationalist areas of governance and therefore, brought three pillar systems. For the first time, on a legal basis, the collaboration of immigration issues were considered in the Maastricht Treaty, which transforming the European Community into the three-pillared Union⁵⁸ aimed at incorporating of old and new areas of issues under a new structure. The first pillar of the Treaty is the Community pillar dealing with internal markets and external trade, the Economic and Monetary Union (EMU), and the environment; while the second and third pillars, namely Common Foreign and Security Policy (CFSP) and Justice and Home Affairs (JHA), are defined as policy making areas under the intergovernmental governing of the Union.⁵⁹ According to Article C of the Maastricht Treaty, single unity with four institutions, which are the Council, Commission, Parliament and the Court of Justice, is stated to be achieved with a single institutional framework. However, in practice, there are differences between the first and third pillar because the decisions in the third pillar have been given to the Member States' responsibilities. For the third pillar, Member States believed that increasing cooperation and involvement of Community

⁵⁷ Eisele, *The External Dimension of the EU's Migration Policy*, 53

⁵⁸ EC as the first pillar, Common Foreign and Security Policy (CFSP) as the second pillar and Justice and Home Affairs -JHA as the third pillar

⁵⁹ Erza, *European Integration and Refugee Protection*, 102

institutions would be a threat to state interests.⁶⁰ Therefore, they declined to authorize the EU institutions over JHA issues.

The Maastricht Treaty designed the issues of immigration and asylum as a matter of common interest for the Member States, and accordingly, the European Commission declared to propose a comprehensive and an effective policy.⁶¹ The Commission had an exclusive right to submit a proposal to the first pillar whereas its ability was restricted in the third pillar; both for the Commission and the Member States. In the third pillar, there was no opportunity for a substantial institutional change. These institutional power relations influenced the development of asylum policies within the Union. The policies on asylum have become state-interest centered. In Article K of the Treaty, cooperation is defined as a requirement in the fields of JHA and asylum policy, rules for the border crossings of the external borders of the Member States, immigration policies and policies concerning third countries' citizens such as conditions of their entry, movement, residence and unauthorized immigration. Following these provisions, further areas defined as combating drug addiction, fraud, and judicial cooperation in both civil and criminal issues, customs and police cooperation⁶² were constituted under the JHA pillar. These areas were stipulated in the Maastricht Treaty in order to achieve the provision of the free movement of persons. The importance of the Maastricht Treaty was that cooperation among the Member States was constituted. The EU bodies on the issues of immigration and asylum were authorized. The integration of these subjects into the *acquis* was realized.

With the Maastricht Treaty, the integration of immigration issues was constituted into the EU's external policy, which was previously called, the External Dimension of EU Cooperation in Justice and Home Affairs. This area of framework took an

⁶⁰ Ibid., p.112

⁶¹ Rosemary Byrne, Gregor Noll and Jens Vedsteed-Hansen, eds., *New Asylum Countries? Migration Control and Refugee Protection in an Enlarged European Union*, (Kluwer Law International, 2002), 182, 165-208

⁶² The Treaty of Maastricht, *Title VI Provisions on Cooperation in the Fields of Justice and Home Affairs Article K.I*, (1992):131

intergovernmental shape dominated by the Council of Ministers and the decision-making process was based on unanimity in which there was a basis for approval or abstention by all the Member States. The Commission, European Parliament and the European Court of Justice (ECJ) were marginalized from the decision-making process and this structure of the EU was criticized as being inefficient for solving immigration and asylum problems. Indeed, it was welcoming that for the first time in legal jurisdiction, the Member States formalized asylum policy as common interests, cooperation was formalized and they declared their compliance with the 1950 European Convention on Human Rights and 1951 Convention with its additional Protocol. In the Maastricht Treaty, Part K defines cooperation in the fields of justice and home affairs as being governed by the following provisions. In Article K.2, it was defined as stated matters. In Article K.1, it should be an inconvenience with the European Commission for the Protection of Human Rights and Fundamental Freedoms and the 1951 Convention. Moreover, collaboration among the Member States in their admissions of certified subjects are promoted in the following articles of K.3 and K.4⁶³ of the Maastricht Treaty.

The Member States abstained from conducting an explicit asylum policy in the aftermath of signing the Maastricht Treaty. Although the European Commission Communication specified that decisions on asylum matters should be adopted in 1991, the Member States did not prefer pushing themselves for further progress. This was because it was thought that in the early stage of cooperation among the Member States, the issue of asylum was a matter of national security. Harmonization of the national legal system was required to have a common asylum policy within the Union.⁶⁴ Moreover, at those times the problems of immigration, immigrants' staying, residence and working permits and unauthorized immigration, and external border controls were more urgent than asylum issues. According to Erza, the Member States chose non-inclusion of asylum policy in the Treaty because the lack of exact

⁶³ The Treaty of Maastricht, *Title VI Provisions on Cooperation in the Fields of Justice and Home Affairs Article K.1*, (1992): 134

⁶⁴ Erza, *European Integration and Refugee Protection*, 111

procedures enabled countries to implement their own policies without binding themselves to the EU criteria.⁶⁵ That is to say that, if certain policies on how to handle asylum applications and refugee protections were defined, the Member States would become less flexible to practice their own national legislation. Therefore, they did not delegate substantial power to the EU institutions.

The European commitment to international norms on refugee protection has weakened. This was mainly because refugees were no longer accepted as ideologically important as they were during the Cold War. In addition, the increasing number of refugees from Third World countries was perceived as a threat to state security. The EU governments had the intention of keeping refugees out of Europe. New perspectives on “Fortress Europe”⁶⁶ was entered into the political agenda. Within the discourse on policy securitization, EU Member States searched for “subsidiary protection” for refugees and it seemed that they sought alternative solutions to the refugee protection problems, which included searching for protection of their national interests while following the requirements of the 1951 Convention. Over the years, the asylum policies in each European state became different from each other and led to extensive and widely different national asylum applications. Therefore, European countries needed to implement the Community level approach for asylum issues that was realized with the Amsterdam Treaty.

2.2.2 Asylum Issues Moving from the Intergovernmental to the Community Pillar

Starting with the Maastricht Treaty, the decisions on immigration, asylum and external border security have been defined as common policy areas within the Union, but were kept at the intergovernmental decision-making process. The increasing vulnerability of the EU states to manage irregular immigration and high numbers of asylum seekers led the EU to undertake a restructuring of this issue. In 1997, the Amsterdam Treaty was signed to address shortcomings of the Maastricht Treaty, to

⁶⁵ Ibid, p.112

⁶⁶ Andrew Geddes, *Immigration and European Integration. Towards Fortress Europe?* (Manchester: Manchester University Press, 2000)

open the way to new candidate countries, and to make the Union more democratic. The Amsterdam Treaty defined new relations between the EU institutions within the three pillars pattern. With the Amsterdam Treaty, external border management issues became crucial for the Union and therefore, Schengen cooperation was incorporated into the European Union's legal framework.

The Amsterdam Treaty transferred the asylum and immigration policy to the first pillar, which is the Community pillar. This meant that the Union had authority over immigration policies, which were previously associated with the independence of each nation's jurisprudence. Initially, a five-year transition period was accepted and immigration and asylum policies were communitarized. The remaining measures related to preventing and combating crime, racism, and xenophobia were included to be handled in the third pillar of EU- "Police and Judicial Cooperation in Criminal Matters"- under the intergovernmental decision-making ruling. The real breakthrough was reached at the Treaty of Amsterdam by signifying that policies regarding irregular immigration would be now governed under the supranational auspices.⁶⁷ This empowered the EU in the immigration and asylum fields. In this context, the Union revealed that there was a need to establish a variety of programs, an extensive set of European immigration, and an asylum law in order to regulate immigration.

The Amsterdam Treaty underlined further cooperation in the field of asylum, which enabled of the Common Migration and Asylum Policy. According to the Article 73 k (1), the minimum standards⁶⁸ of asylum seekers reception and on procedures in the Member States for granting or refusing a refugee status in accordance with 1951

⁶⁷ Ahlback, *The Externalization of the EU's Policy on Irregular Immigration Vertical and Horizontal Venue-Shopping?*, 9

⁶⁸ Minimum standards and conditions to asylum policies further developed under Lisbon Treaty. The secondary legislation of the EU law constitutes the "asylum package". The Council Directives, which portrays minimum standards on procedures in Member States for granting and withdrawing refugee status, are *Asylum Procedures Directive 2013/32/EU*, *Reception Conditions Directive 2013/33/EU*, *Qualification Directive 2011/95/EU*, and *Asylum Procedures Directive*, and. In addition, *Temporary Protection Directive 2001/55/EC*, *Eurodac Regulation 603/2013*, and the *Dublin II Regulation* has deepened the externalization of asylum within the Union.

Convention were introduced.⁶⁹ Indeed, the EU Member States were not willing to delegate their sovereignty on the issue of asylum to the competence of the Community, even though immigration and asylum were moved from the third pillar to the first pillar, because unanimous voting system was kept in the Amsterdam Treaty. In other words, the jurisdiction of asylum and immigration issues in practice were subject to several limitations dictated by the Member States, even countries like the UK, Ireland and Denmark were opting out from the policy-making of the first pillar.⁷⁰ Moreover, the Amsterdam Treaty did not include any statement for harmonization of asylum policy within the Member States. This reluctance of the Member States to delegate their power in decision-making on migration and asylum matters puts the state's interest in front of international norms.

2.2.3 Measures to Uniformity under the Lisbon Treaty

The Treaty of Lisbon in 2007 brought major changes in the field of JHA, especially on immigration policy. Immigration and asylum were mostly incorporated into the Community mechanism. The Lisbon Treaty regulates general principles of border checks, asylum, immigration, police cooperation, and so on. According to Title V, the Commission has an exclusive right of legislation, a qualified majority voting system has been accepted in the Council, and ordinary legislative procedure has been maintained in most areas of the JHA. In Article 77-80, it is stated that the Union should develop a common immigration policy by having common visa policies and external border checks, and so forth. In the Article, adopting measures on both legal and irregular immigration and human trafficking were set out.⁷¹ The major aim of the Lisbon Treaty was to create developing legislation to ensure the uniform status of asylum for third country nationals and tailor it for the Union.

⁶⁹ *The Treaty of Amsterdam*, Article 73, 1997

⁷⁰ Erza, *European Integration and Refugee Protection*, 157

⁷¹ *The Treaty on the Functioning of the European Union*, Article 77-80, 2009

The Lisbon Treaty eliminated the third pillar with the incorporation of police and judicial cooperation in criminal matters and communitarised the field of asylum under the new Title V. Article 78 of the TFEU, which assigned new roles to the European Parliament and abolished restrictions on the ECJ's jurisprudence on asylum matters. According to Article 78, the Union should develop a common policy on asylum, and offer subsidiary and temporary protection⁷² to third country nationals who are in need of international protection by considering the *non-refoulement* principle⁷³. The Qualifications Directive defines the qualifications and status of third country nationals and refugees who are in need of international protection status.⁷⁴ Here there is an identification of refugee based on conditions, which emphasizes under what conditions that an asylum seeker needs subsidiary protection or refugee status.

Subsidiary and temporary protection were not defined in the 1951 Convention. Therefore, to categorize people as asylum seekers, eligible for subsidiary protection or economic migrants, other sources were in need of definition. Under European Law, the terms subsidiary protection and temporary protection have developed within the notion of “person in need of international protection” in accordance with the 1951 Convention.⁷⁵ Subsidiary protection was to provide protection to those who does not fit the criteria of a refugee on the basis of the refugee definition set out in the 1951 Convention, but still whose life could be at risk of serious harm in the home country. Therefore, why the Council of Europe defines subsidiary protection as “*de*

⁷² Temporary protection is provided to deal with mass movements of refugees is discussed in the burden sharing chapter.

⁷³ *The Treaty of Functioning of the European Union*, Article 78, 2009

⁷⁴ The Council of the European Union, *Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted* (2004] OJL304/12, April 29, 2004, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32004L0083> (accessed Sept.4, 2016)

⁷⁵ The Council of the European Union, *Council Directive 2004/83/EC*, 2004

facto refugees”.⁷⁶ On the other hand, temporary protection applies the same reasoning, but with the focus of mass movements of people. The crucial thing is that subsidiary and temporary protection should not be alternative for granting refugee status because both protection statuses do not provide permanent solutions to refugees. It was expected for them to stay for a limited period of time in the host country.⁷⁷ After the situation in the country of origin has changed, they should leave the countries of immigration so that they will not create a burden for the host country. Therefore, the right of refugees can be underestimated. This leads to international norms being flexible in refugee protection policies. However, these norms governing refugee rights should not be flexible.

With the Treaty of Lisbon, the EU Charter of Fundamental Rights has additionally become legally binding for all Member States. Article 18 of the Charter respects the rules of the 1951 Convention. Although fundamental rights protection has been reinforced and supranational governance have been taken as a common area on asylum applications, and refugee protection was not governed supranationally. The Charter is applicable only to the bodies or agencies of the Union and only when the Member States are implementing the Union law.⁷⁸

2.3 Deeper Integration on the EU’s Externalization of its Asylum Policy

In accordance with achievements in the Treaties of Maastricht, Amsterdam, and Lisbon on asylum policies, several measures have been adopted through additional Programs, Conventions, Conclusions, and Strategy Papers within the Union.

⁷⁶ Parliamentary Assembly of the Council of Europe, *Recommendation 773 (1976) On the Situation Of De Facto Refugees*, January 26, 1976, <http://assembly.coe.int/Main.asp?link=http://assembly.coe.int/Documents/AdoptedText/ta76/EREC773.htm>, (accessed Jan.20, 2017)

⁷⁷ Livia Elena Bacaian, “The protection of refugees and their right to seek asylum in the European Union”, *Institut Européen De L’université De Genève Collection Euryopa*, 70, (2011): 43 <https://www.unige.ch/gsi/files/6614/0351/6348/Bacaian.pdf> (accessed Jan.19, 2017)

⁷⁸ Joanna, Lenart, “Fortress Europe: Compliance of the Dublin II Regulation with the European Convention for the Protection of Human Rights and Fundamental Freedoms” *Merkourios-International and European Migration Law*, 28, no.75 (2012): 10

Externalization is a concept of transferring European borders to third countries. The EU's visa policies, border controls and surveillance measures, liaison networks, readmission agreements, and the safe third country and the first country of asylum principles driven from APD are the major tools of this policy. Cooperation on diminishing irregular migration within the Union has been greatly developed and policies on asylum have been at the center of even the most crucial debates. It is more likely that the Member States will have the struggle to regulate common policies on asylum applications and refugee protections. Instead, they seek to solve the problems of refugees in the third countries. This attitude keeps asylum seekers away from the European continent.

It was understood that there was a need to have a global solution regarding the temporary protection to refugee movements to achieve European solidarity. In 1998, during the Austrian Presidency, external elements of immigration and asylum became substantial after the “exodus of Croats, Bosnians, and Kosovars” and at the time,⁷⁹ Germany and Austria were the most affected countries of higher numbers of refugees coming from the conflict through irregular ways. To address this, the Austrian Strategy Paper was issued, which focused on the necessity of efficient policies on asylum and irregular immigration.⁸⁰ According to the paper, there must be the common approach on immigration and asylum decisions within the EU institutions. It stated that each state which collaborates in the reduction of migratory movements to the EU will, in turn, be granted economic support.⁸¹ The paper further suggested supplying development assistance, humanitarian aid, and economic collaboration. For the case of asylum, the Strategy Paper declared that solving refugee problems in terms of limiting irregular immigration and enhancing border controls was a top priority. Moreover, Member States' harmonization of national

⁷⁹ The EU Council, *Strategy Paper on Immigration and Asylum Policy*, July 1, 1998 <http://archiv.proasyl.de/texte/europe/eu-a-o.htm> (accessed June 20, 2016)

⁸⁰ *Ibid*,

⁸¹ Anneliese Baldaccini. *The External Dimension of the EU's Asylum and Immigration Policies: Old Concerns and New Approaches' in Whose Freedom, Security, and Justice? EU Immigration and Asylum Law and Policy*, (Hart Publishing: Oxford, 2007), 278

legislation on migration, and reforming the decision-making structures of the Union were further realized to create future common asylum and immigration policies.

A critical development took place at the Tampere Summit in Finland in 1999. Mainly EU Member States reinforced increasing protection capacities in transit countries because the EU Member States aimed to return asylum seekers to their country of origins and prevent future arrivals into the Union. With the participation of fifteen EU member countries' prime ministers, the Tampere Program covering the years 1999 - 2004 was adopted. The Tampere Summit provided the greatest contribution to common immigration and asylum policy efforts.⁸² Regarding immigration issues, the Tampere Presidency Conclusions pointed out the requirement of developing a common European immigration and asylum policy, which include of several targets.

First of all, the European Council aimed to have partnerships with migrant transit and origin countries in human rights and development measures. The partnership policies with third countries can additionally be associated with the European Neighbourhood Policy (ENP)⁸³ of the Union. The EU's immigration and asylum policy was integrated into the ENP because most of the EU neighboring countries are either source countries of immigration or transit countries of irregular immigration. Therefore, the EU was expecting neighboring countries to cooperate on border management, irregular immigration and criminal network areas of human smuggling and trafficking. The EU considered that the economic, demographic and security

⁸² *Tampere Presidency Conclusions*, 15-16 October 1999

⁸³ The Commission stated *Wider Europe –Neighborhood* policy which was a new framework for relations with Eastern and Southern Neighbors.⁸³ The Commission proposed a new system of cooperation with all European neighboring countries by constituting new external relations. ENP policy was basis its roots on the *Partnerships and Cooperation and the Association Agreements* of the Barcelona Process in 1995. Following that the EU conducted nine Partnership and Cooperation Agreements with the countries in Eastern Europe, Southern Caucuses and Central Asia which are Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Ukraine and Uzbekistan. In addition, five of these countries became the ENP partner countries (Armenia, Azerbaijan, Georgia, Moldova, and Ukraine) with the EU. Algeria, Cyprus, Egypt, Israel, Jordan, Lebanon, Malta, Morocco, the Palestinian Authority, Syria, Tunisia, and Turkey were all the signatory states of Association Agreements. Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, the Palestinian Authority and Tunisia have become the ENP partners. Moreover, in order to participate in ENP, the country should show its commitment to human rights, democracy, rule of law, liberal market economy and so on which were prerequisite for the EU.

problems (lower income, poverty, unemployment, fertility, life expectancy and etc.) were the main root causes in of immigration the transit and source countries. Therefore, the EU exposed irregular immigration from Eastern European, North African and Caucasus countries⁸⁴ to secure and protect the EU's external border and fight against irregular immigration. The EU decided to carry on close relations with countries of origin and transit. For this purpose, cooperation with third countries through the conclusion of readmission agreements was enforced. The Action Plans were regulated on border management, visa, immigration and asylum policies, irregular immigration and trafficking and smuggling with Israel, Jordan, Moldova, Morocco, the Palestinian Authority, Tunisia, and Ukraine. In addition, financial assistance to neighboring countries⁸⁵ was seen to lower immigration tension from economically and politically unstable countries.

The second development of the Tampere Summit was that there was a need for full and comprehensive application of the 1951 Convention in cooperation with the UNHCR in order to establish a common European asylum system. Thirdly, initiating information campaigns on the legal immigration opportunities, a common visa policy on the basis of the incorporation of the Schengen *acquis* into the Union and preventing human trafficking⁸⁶ were defined as the major elements of the meeting by emphasizing the importance of controlling irregular immigration and having strong border controls. On the other hand, the EU's visa policy has complex rules and procedures, which makes it difficult for asylum seekers to acquire visas to reach Europe. At this point, we see that the European Union wants to implement more restrictive policies on border security. The EU has a common list of countries whose nationals are subject to visa obligations when entering EU Member States. The EU's common visa list was comprised of 105 countries, including refugee producing

⁸⁴ Dancova, Katerina, "Integrating the EU Migration Policy into the EU Neighborhood Policy: The Origins and Prospects" *Human Rights and Sustainability, Sant'Anna School of Advanced Studies*, (2010): p.12

⁸⁵ *Ibid.*, p.15

⁸⁶ *Tampere Presidency Conclusions*, 15-16 October 1999

countries like Syria, Afghanistan, Iran, Iraq, Somalia, etc.⁸⁷ Moreover, to prevent asylum application to EU Member States, the Airport Transit Visa (ATV) at airports in transit towards further destinations was regulated.⁸⁸ Lastly, it was stated that a creation of a fair treatment of third country nationals who stay legally in the Member States would be realized in terms of their rights and obligations comparing the EU nationals.

Another point discussed at the Summit was that the European Union signified the recognition of external dimensions in various policy fields like immigration, border management, asylum, and terrorism.⁸⁹ The Union adopted a broader perspective on immigration, which included all competencies and instruments at the disposal of the Union,⁹⁰ such as working with international organizations, communication with migrant transit countries, and signing readmission agreements. In 2000, the European Council and Commission agreed on the report in which the EU's priorities and objectives for external relations were defined in the field of the JHA. Its aim was identified as the contribution to the establishment of an area of freedom, security, and justice (AFSJ). These developments show the increasing tendency of more external border control implementations of the Union. There was a fear of higher irregular migratory movements to the EU continent and partnerships with migrant transit and origin countries aimed to create physical grounds for asylum seekers and refugees to stay in such countries instead of reaching the EU.

A better control of the Union's external border which would also provide support in fighting irregular immigration networks, terrorism, and human trafficking was agreed

⁸⁷ *List of third countries whose nationals must be in possession of a visa when crossing the external borders* http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/visa-policy/apply_for_a_visa/docs/visa_lists_en.pdf (accessed July 5, 2016)

⁸⁸ ECRE, *Defending Refugees' Access to Protection in Europe*, December 2007, http://www.ecre.org/wp-content/uploads/2016/07/ECRE-Defending-Refugees-Access-to-Protection-in-Europe_December-2007.pdf (accessed Nov.13, 2016)

⁸⁹ *Tampere Presidency Conclusions*, 15-16 October 1999

⁹⁰ Marise Cremona, "EU External Action in the JHA Domain: A Legal Perspective" *EUI Working Paper Law 24*, (2008): 7

on during the Laeken Presidency Conclusions in 2001.⁹¹ After the Tampere Summit, there was a new area of cooperation on immigration and asylum issues in terms of Member States' concerns on irregular immigration. The hope for cooperation within the Tampere despaired with the increase of state interest of securitization. In 2002, the Seville European Council took place under the Spanish Presidency and the European Council laid almost exclusive emphasis on ensuring the cooperation of countries of origin and transit in combating irregular immigration, improving border controls and undertaking readmission.⁹² The Commission underlined the EU's ambition to combat irregular immigration.⁹³ One of the major tenets of this meeting was to emphasize the incorporation of immigration policy into the EU's external relations. The EU created a strategy to fight against irregular immigration through this externalization. Immigration was seen as a problem that needed to be solved. The root causes approach of immigration and conclusion of readmission agreements were underlined in the Seville Presidency Conclusions. However, the readmission agreements seemed far from solving the root causes of migration. When migrants and asylum seekers are sent back by readmission agreements without their consent, the basic right to access protection might be in violation.

In 2004, the Council adopted a new agenda for next five years with the Hague Program. Externalization was formalized and this program specifically stressed that the EU should support specific third countries through partnerships in order to increase management capacities on refugee protection and prevention of irregular immigration. Therefore, the EU's externalization policies turned out to be closely linked with irregular immigration. The EU aimed to create partnerships with third, origin and transit countries by supporting them in managing immigration flows, enhancing border controls and document security, promoting refugee protection, and preventing irregular immigration.⁹⁴ The impact of securitization policies on

⁹¹ *Laeken European Council*, 14-15 December 2001

⁹² Boswell, *The External Dimension of EU Immigration and Asylum Policies*, 620

⁹³ *Seville European Council*, 21-22 June 2002

⁹⁴ Eisele, *The External Dimension of the EU's Migration Policy*, 83

immigration has been widely seen during the Hague Program. Huysmans stated that wider politicization was made and asylum seekers and immigrants have been portrayed as a challenge to the protection of national identity since the Austrian Presidency work program due to its linking of irregular migrants with asylum seekers.⁹⁵ In this case, if the asylum seeker is perceived similar to the irregular migrants then the international protection regime for refugees would not be applied.

The restrictions on border controls created the establishment of Frontex in 2004, which would also for the integrated management of the control of people flow and surveillance at the external borders of the EU.⁹⁶ The function of Frontex has been correlated with combating of irregular immigration. It has several operational areas and works with authorities from EU countries at the external borders. It is mainly responsible for the training of border guards, and providing assistance to the Member States when they need technical and operational supports.⁹⁷ It is stated that Frontex distances asylum seekers from international protection by the Red Cross⁹⁸ because the agency's maritime interceptions in the Mediterranean Sea were aimed to prevent asylum seekers reaching Italian, Spanish and Greek coasts.⁹⁹ The push-back operations by Greek forces were criticized by human rights advocates because the method employed by this agency in handling the identification of asylum seekers' status was not clear. Indeed, the implementation of Frontex was under questioning by the European Parliament in 2008. It was stated that Frontex has "explicitly (included)

⁹⁵ Jef Huysmans, "The European Union and the Securitization of Migration". *Journal of Common Market Studies*, 38, no.5, (2000): 756

⁹⁶ Sarah Leonard, "The Creation of Frontex and the Politics of Institutionalization in the EU External Borders Policy", *Journal of Contemporary European Research*. 5, no.3 (2009): 378

⁹⁷ European Border and Coast Guard Agency (Frontex), *Roles and Responsibilities*, <http://frontex.europa.eu/operations/roles-and-responsibilities/> (accessed Nov.15, 2016)

⁹⁸ European Red Cross Societies place a high priority on the issue of asylum, migration and displacement. They provide aid and care to refugees, asylum seekers and migrants to protect the dignity and the safety. They are against the EU externalization policy at the border. They further criticized the drawbacks of readmission agreements for the migrants and asylum seekers.

⁹⁹ Claire Rodier, "The Externalization of Migration Controls" Chapter of *Shifting Borders: Externalizing Migrant Vulnerabilities and Rights?* Red Cross EU Office, (2011): 8

an obligation to meet international human rights standards and a duty towards asylum seekers in rescue operations on the high seas".¹⁰⁰ The barriers to entry to European shores increases difficulties to get protection to seek for asylum. For that reason, asylum seekers choose a partnership with human smugglers to cross the border through irregular methods.

The externalization policies led the Commission to target action with a view to improving cooperation between the Member States on the one hand, and strengthen the dialogue and collaboration with the countries of origin,¹⁰¹ especially with the Mediterranean and African countries on the other. The EU heads of the state and governments formulated the Union's Global Approach to Migration in 2005, and they identified the immigration policy as one of the major policy areas. In 2005, the Council agreed on a Strategy where the JHA became the central priority in EU external relations.¹⁰² The Commission emphasized concentration on all immigration related subjects needed to be under the consideration of development, justice, security, external relations and freedom. The Global Approach to Migration has changed the perception of EU's migratory route.

The EU regulated partnership and association agreements with third countries of the Eastern and South-Eastern regions, Western Balkan countries, Middle East and Caucasus on irregular immigration, and refugee protection. Funding to support immigration-related projects has additionally been adopted. The fight against irregular immigration has become one of the major dimensions of this Global Approach. In the Commission Communications, it is stated that prevention of and the fight against irregular movement of persons to the EU constituted a cornerstone of a comprehensive European immigration and asylum policy.¹⁰³ Since 1991, the EU

¹⁰⁰ European Parliament Resolution of 18 December 2008 on the evaluation and future development of the Frontex Agency and of the European Border Surveillance System. (EUROSUR) 2008/2157

¹⁰¹ Eisele, *The External Dimension of the EU's Migration Policy*, 91

¹⁰² Cremona, *EU External Action in the JHA Domain*, 9

¹⁰³ Eisele, *The External Dimension of the EU's Migration Policy*, 97

leaders have suggested having readmission agreements in the future agreements of the Community with third countries. Readmission agreements enable the repatriation of migrants who stay in the Member States without legal permission and these agreements with third countries are a major tool for reducing unauthorized immigration into European shores within the EU's external relations. This has become an inevitable part of partnership and association agreements with the EU.

Developing the external dimension of asylum has become a central concern for the EU since the Hague Program. The EU aimed at harmonizing asylum applications between the Member States. Through externalization channels, the emphasis was placed on cooperation with migrant-sending and third countries for the sake of providing protection access tools and solid solutions in the regions of origin at the earliest stage. The impact of the Global Approach to Migration on combating irregular immigration shaped the EU's relationship with the country of asylum and transit. The EU defined a combination of dual approaches to realize multiple goals of its immigration policy. The approach includes preventing irregular immigration through externalization tools or controlling policies. In this aspect, the Member States enable sending and transit countries to strengthen their border controls, combating irregular entry, migrant smuggling and trafficking, readmitting migrants who have crossed into the EU irregularly.¹⁰⁴

Opening immigration liaison officers' networks in third countries was implemented as another tool to control irregular immigration. Officers who are citizens of a Member State work to improve information exchange on the flow of irregular immigration through the country of origin, immigration routes, possible human smuggling, and trafficking networks, assisting host countries in the prevention of unwanted immigration and ways to send them back and so forth.¹⁰⁵ Activities of liaison offices can be described as transferring, and ensuring asylum seekers apply to

¹⁰⁴ Boswell, *The External Dimension of EU Immigration and Asylum Policies*, 622

¹⁰⁵ Frank Düvel and Bastian Vollmer, "European Security Challenge" *Improving EU and US Immigration Systems' Capacity for Responding to Global Challenges: Learning from Experiences* Centre on Migration, Policy and Society, University of Oxford, (2011):12

the UNHCR instead of seeking protection through irregular ways. Moreover, the EU has implemented a series of provisions to facilitate the return of asylum seekers and irregular migrants to third and home countries through readmission agreements. Such bilateral agreements classify certain obligations, administrative and operational procedures to send back those who cannot fulfill the legal migrant conditions and who are transit and unauthorized migrants.

2.4 Towards a Common Asylum Policy of the EU

In 2009, within the perspective of the Lisbon Treaty, the European Council regulated The Stockholm Program for the next five-year period.¹⁰⁶ This was a new way of understanding the EU's role in the globalized world. The EU's role underlined responsibility, solidarity, and partnership in immigration and asylum matters¹⁰⁷ by promoting the fundamental rights of refugees. Moreover, a new comprehensive immigration policy has brought major roles to the Global Approach to Migration into the EU's external relations. Following the Hague Program, the European Council agreed on the European Pact on Immigration and Asylum and the following measures were decided to be adopted: organizing legal immigration while considering Member State's reception capacities in terms of labour market, housing, health, education and social services; controlling irregular migration and returns of irregular migrants to their countries of origin or transit; having better control checks, creating a comprehensive partnership with third countries; and making sure the EU has a well-structured protection system for asylum seekers to have access to the Common European and Asylum System (CEAS).¹⁰⁸ Readmission agreements have become part of the concern at the EU or bilateral level. The Readmission Agreement between the EU and Turkey is analyzed in Chapter 5 as stating its negative impact on burden sharing of refugee protection.

¹⁰⁶ European Council, *Stockholm Program*, 2 December 2009

¹⁰⁷ Eisele, *The External Dimension of the EU's Migration Policy*, 122

¹⁰⁸ Boswell, *The External Dimension of EU Immigration and Asylum Policies*, 620

In the meantime, EU leaders stressed the numbers of deaths of irregular migrants while attempting to cross to the EU's southern frontiers. This approach was mainly surrounded by the security concerns of the EU Member States. This Global Approach has been defined as an external dimension and was modified in 2011 into GAMM, which aims at diminishing the movements of refugees and asylum seekers across the EU's external borders. Moreover, GAMM stressed the need for geographical prioritization taking into account migratory routes and countries of origin and transit that are of strategic interest to the EU.¹⁰⁹ These were further developed under the European Agenda on Migration which was adopted in 2015.

After the Arab Spring movements¹¹⁰, the Commission emphasized the need for further strengthening the EU's external migration policy due to the mass movement of refugees in the Middle East region. The Commission requested the following actions to be implemented; the allocation of humanitarian assistance to crisis countries, and to the management of irregular immigration as a necessity of an active engagement of Frontex.¹¹¹ The Member States of the EU adopted the plan "EU Action on migratory pressures – a strategic response". This Action Plan highlights again the external dimension of migration and asylum policies as the EU priorities and aims at regularly monitoring progress towards this goal.¹¹² In addition to that, preventing irregular migration via the Greek-Turkish border and concluding the EU-Turkey readmission agreement have been accepted as one of the strategic priority areas in 2012. These issues constitute major points in this thesis and will be discussed in the following chapters.

¹⁰⁹ Council of the European Union, *Council Conclusions on the Global Approach to Migration and Mobility*, May 3, 2012, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/129870.pdf (accessed June 10, 2016)

¹¹⁰ The Arab Spring or Democracy Spring was revolutionary movements of people expressing in violent and non-violent demonstrations, protests, riots to bring down the ruling regime in the MENA region.

¹¹¹ Eisele, *The External Dimension of the EU's Migration Policy*, 125

¹¹² European Commission Migration and Home Affairs, *Global Approach to Migration and Mobility*, November 11, 2011, http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/international-affairs/global-approach-to-migration/index_en.htm (accessed June 12, 2016)

To sum up, the legislative developments of the EU on immigration and asylum are analyzed within under this chapter. Within the Union, the Member States proposed and adopted several measures on asylum issues, however; none of them have become binding, they did not decide on how to operate common asylum standards in their national policy making. The foundation of the EU asylum policy was based on the desire to diminish the number of asylum seekers reaching Union's border. As Erza states the Member States presented a more limited approach to the interpretation of asylum.¹¹³ The European cooperation in refugee matters has begun with the intergovernmental level initiatives on the abolition of internal border controls in Schengen and Trevi Groups¹¹⁴. During these meetings removal of the checks on the internal borders has led governments to elaborate necessary measures on safeguarding internal security and public order. Therefore, the first phases of measurements and agreements evolved through internal security concerns. They targeted an increase in the control of external borders, implementation of common visa tools, harmonization of policies on irregular immigration and the determination of every state's responsibility on the asylum claim examination process. The crisis in Yugoslavia accelerated the harmonization policies on asylum within the Union.

The European discourse brought new terminologies on implementing asylum policy such as temporary protection, readmission agreements with third countries, safe third country, country of first asylum, increasing police cooperation among the Member States, etc. The focus of the EU shifted outside of the EU regarding border controls and surveillance for the immigration and asylum management. Starting with the Presidency Conclusions of Tampere in 1999 and Seville in 2002, the EU prioritized that the future agreements with third countries should include 'joint management of

¹¹³ Erza, *European Integration and Refugee Protection*, 123

¹¹⁴ Trevi groups were one of the ad hoc groups under the umbrella of intergovernmental cooperation between the 12 EC states since 1975 also worked in the subjects of immigration, asylum, policing and law.

immigration flows and compulsory readmission agreements.’¹¹⁵ However, these programs could not go further highlighting the same issues on cooperation with third countries, concluding readmission agreements, and combating irregular migration and could not go further than emphasizing the requirement of the common immigration policy.

It is clear that EU integration struggled to have sole sovereignty over border controls of the Union. This is because the states were not eager to delegate their power to the EU institutions. Thus, asylum and refugee policies have become the area of each state of which they retain control. Additionally, it includes measures that shift responsibility for preventing irregular migration to EU countries from countries of departure or transit. The externalizations of the EU on border controls prevent refugees from seeking protection in safety. In the following chapter, the concept of burden sharing is analyzed to understand whether the refugee protection policies of the EU are effective and enough or not.

¹¹⁵ Sandra Lavanex, “Shifting Up and Out: The Foreign Policy of European Immigration Control”. *West European Politics*, no.2, (2006): 342

CHAPTER 3

REFUGEE PROTECTION AND BURDEN SHARING OF REFUGEES IN THE EUROPEAN UNION

3.1 Codification of Burden Sharing

High numbers of asylum applications were one of the crucial debates in the EU during the 1990s. The issue became a matter of refugee protection problem and the definition of the responsibility in the asylum applications remained problematic. The distribution of asylum seekers in the EU was not been equal, which puts some risks on burden sharing of asylum. It is thought that countries with higher numbers of applications, try to make their asylum policies more restrictive in order to attract fewer asylum seekers and as a result, other states become more attractive.¹¹⁶ This causes negative impacts on the equal distribution of asylum applications. The inequality occurs when the largest EU states like the UK, and France (in relation to their population size) handle fewer asylum applications than some of the EU's smaller states such as Sweden, Greece, and Malta. This chapter portrays the EU efforts to coordinate their national asylum legislation and harmonization policies whether to distribute asylum applications more equally among EU states or not. Therefore, the EU efforts instead shift the burden to third countries. Asylum applications are one part of the problem and the second part of the issue is resettlement. When it comes to sharing the responsibility for refugees, the EU is far from acting with solidarity amongst the Member States as Slovakia, Hungary, and Poland as seen during the Syrian refugee crisis. This chapter first starts with the burden sharing conceptualization and looks in international refugee protection.

¹¹⁶ Eiko, R. Thielemann, "Why Asylum Policy Harmonization Undermines Refugee Burden-Sharing" *European Journal of Migration and Law* 6, (2004): 47

3.1.1 Terminology on Burden Sharing

The existing literature of international burden sharing mainly derives from the public good, cost-benefit, and norm-based assumptions. These assumptions are used for explaining the motives behind burden sharing of states of collective actions versus unilateral national measures.¹¹⁷ Additionally, burden sharing has been used alternatively with responsibility sharing and international solidarity terminology, but in the literature, the differentiation was made on the defense burden caused by military cooperation between the USA and its allies during the 1970s.¹¹⁸ The term burden sharing has been viewed as prevalent in areas such as international security, defense and peacekeeping, climate change, and refugee protection. Within those areas, burden sharing has been perceived under the public good issue, which means there is a non-exclusion principle for any country from contribution and there are non-rivalry principles between countries. In other words, countries gain benefits from the public good, which includes their own contributions along with others. Each country allocates some of its income or resources towards the supply of the public good.¹¹⁹ All parties can enjoy cooperation; positive-sum benefits occur and in return, they become willing to share the burdens. Cost-benefit considerations target mutual insurance among the partners when there is an external threat. In other words, current cooperation or contribution is done for expected cost for future crisis. Another approach can be the state's commitment to certain norms like human rights, and notions of equity to share the burden.¹²⁰

With respect to refugee burden sharing, according to Suhrke, there are some obstacles to cooperation between states. When a larger income is held by a state from a larger proportional share of the burden, the states can behave differently, which

¹¹⁷ Astri Suhrke, "Burden-sharing during Refugee Emergencies: The Logic of Collective versus National Action". *Journal of Refugee Studies*. 11, no.4 (1988): 396-415: 396

¹¹⁸ Suhrke, Burden-sharing during Refugee Emergencies, 399

¹¹⁹ Eiko R. Thielemann, and Toru Dewan, "Why States Don't Defect: Refugee Protection and Implicit Burden-Sharing", *West European Politics* 29, (2003): 8

¹²⁰ Eiko R. Thielemann, "Between Interests and Norms: Explaining Burden-Sharing in the European Union", *Journal of Refugee Studies*, 16, no.3, (2003): 256

may result in a free-riding problem. This free-riding occurs for example when the states can have conflicting interests in dealing with movements of refugees. Such as a state, seeking to decrease the number of refugees while supporting international stability may let another state shoulder the burden. When there is a common potential enemy, the states wish to cooperate by strengthening their national security and promoting international order while aiming to minimize the cost assigned to them. However, Suhrke explains that it was not this dilemma, which enabled NATO to be established. In NATO, the good of deterrence is non-excludable. On the other hand, in the case of refugees, this cooperation becomes even more difficult. If protection of refugees is an international public good, then how states manage this free-riding issue becomes an important question. One of the answers to this dilemma is the uncertainty of reciprocal benefits,¹²¹ which is clear in the NATO system. In the mechanism of NATO stated in Article 5 'an armed attack against one... shall be considered an attack against them all' diminishes this uncertainty. Refugee matters have become interrelated with defense issues and there have been evident similarities in both areas regarding cooperation. There is a higher interest in the security and stability of states, but the benefits provided by refugee protection are usually more limited. There is no such system even on the regional ground of the refugee protection problem so states are not eager to share responsibilities. Therefore, free-riding can cause inequality problems on burden sharing of refugees.

Each state has its commitments to moral duty and humanitarian obligations under international law. However, the state's best interest is to minimize the numbers of refugees in its territory because of the economic burden, domestic policy, foreign policy, and security concerns, etc. While refugee protection is accepted as a public good in which states benefit by fulfilling humanitarian duties, national interest is more concerned with diminishing the cost of security.¹²² According to Alexander Betts, there are two types of public good. The first one can be seen within Suhrke's application of the public good theory to the burden sharing debate in refugee

¹²¹ Suhrke, *Burden-sharing during Refugee Emergencies*, 400

¹²² *Ibid.*, p.412

protection. He defines “altruistic public good” as ethical and normative commitments which are held by states under jointly held obligations within international law. The second type of public good is the “security public good” in which the cost of asylum seekers are measured and seen as a national security concern. Therefore, states become more eager to control entry and exit of refugees to prevent any harm to existing institutions and their core values.¹²³ To sum up, there is a state interest on refugee provisions. For instance, as stated in the previous chapter, the Cold War structure affected refugee policies on who could be accepted as a refugee. Suhrke explains it as rational costs and benefits have been calculated by the state. Therefore, states may prefer shifting national interest rather than keeping their promises to international refugee protection law.¹²⁴ The dilemma between the international norm and the state interest has continued after all these miserable inter-state and intra-state conflicts.

On the other hand, promotion of human rights can be the motivation of some states on sharing the burden of refugees. Moreover, states can welcome refugees from a of foreign policy standpoint, such as creating alliances, signing agreements, etc. This idea is crucial in order to define Turkey’s motivation on providing protection to Syrian refugees, which will be discussed in Chapter 5. There can be a private benefit of having a higher number of asylum seekers. According to Thielemann, some states have established norms of humanitarianism and solidarity domestically and abroad, they have become active humanitarian support providers and they have voluntarily contribute to refugee protection. For example, Scandinavian countries are domestically committed to being welfare states and internationally they share the notion of solidarity on refugee protection.¹²⁵ Common rules or policy harmonization and quotas for resettlement are some of the principles of burden sharing to minimize the inequalities derived from free-riding. For instance, the CEAS would be a

¹²³ Alexander Betts, “Public Good Theory and the Provision of Refugee Protection: The Role of the Joint-Product Model in Burden-Sharing Theory”, *Journal of Refugee Studies*, 16, no.3 (2003): 277

¹²⁴ Suhrke, *Burden-sharing during Refugee Emergencies*, 405

¹²⁵ Thielemann, *Between Interests and Norms*, 260

provision for public good. In principle, the CEAS is based on the idea of burden sharing of asylum seekers within the Union. The asylum package under CEAS includes the responsibility sharing notion within the Directives,¹²⁶ but the Directives are not as binding as Regulations, additionally the state interest in limiting the number of asylum seekers has become more crucial than complying with international norms.

3.1.2 Burden Sharing in Relation with International Refugee Protection

As stated in the previous section, the major legal principles of international refugee protection occurred with the 1951 Convention and its additional 1967 Protocol. Other branches of international norms conducted in international human rights law, international humanitarian, and international criminal law constitute the legal perspective of international refugee protection. These legal branches are composed of treaties, customary international law, general principles of law and judicial decisions of States' courts, opinions of respected academics and "soft law", which can be described as political commitments of states and the United Nations Security Council resolutions in specific situations. International protection can be defined with respect to the *non-refoulement* principle; admission of refugees in safety, providing equal procedures for the determination of refugee status, enabling fair treatment and the implementation of durable solutions.¹²⁷ According to the international norms of refugee protection, the following parts of this study will analyze how the EU Member States implement their obligations under international law.

Under international law, assisting and protecting refugees is accepted as one of the major responsibilities of states. It is the responsibility of states to determine the necessary actions to be taken for fulfilling the international obligations on refugee protection. Asylum legislation harmonization should be adopted but international refugee protection instruments do not include how states should satisfy international

¹²⁶ *Asylum Procedures Directive 2013/32/EU, Reception Conditions Directive 2013/33/EU, Qualification Directive 2011/95/EU, and Asylum Procedures Directive, and Temporary Protection Directive 2001/55/EC*

¹²⁷ UNHCR, *Resettlement Handbook* rev. 2011, 11

standards. Therefore, the 1951 Convention foresaw the difficulties and the possible burdens of the refugee problems and by doing that it highlighted the necessity of international cooperation of states. In order to reach this purpose, the UNHCR takes the biggest role for the refugee protection and asylum applications in the international area and expresses the need for greater burden sharing to finance the organization's expanding mandate. For this purpose, considerations of the UNHCR's Handbook on Procedures and Criteria for Determining Refugee Status¹²⁸ while interpreting national legislation with the international refugee law is recommended.

The concept of burden sharing in relation to refugees is being operationalized under the principle of promoting international solidarity among states receiving refugees. In the 1951 Convention, the need for international cooperation on diminishing burdens of asylums was underlined. The Preamble highlighted the problems of refugee protection. The heavy burden on certain countries on the issue of asylum was stated and international cooperation was brought up as a solution.¹²⁹ It accepted that processing asylum applications and providing protection led to several responsibilities and burdens, and international cooperation is a must to solve the problems of refugees'.¹³⁰ The UNHCR, as an advocate of burden sharing stated several times in its discussion papers that national, regional and international actors should participate in sharing the responsibility.¹³¹

The UNHCR, on 29 July 1992, developed a comprehensive response to the refugee crisis caused by the war in Yugoslavia and two main actions were taken. The first one was to financially support countries of asylum through funding of UNHCR's activities. The funding was to support countries to develop and operate a fair and efficient asylum system. The second one was composed of the "resettlement"

¹²⁸ UNHCR's *Handbook on Procedures and Criteria for Determining Refugee Status*, 2011

¹²⁹ UNHCR, 1951 Convention and Protocol Relating to The Status of Refugees, see Preamble

¹³⁰ Ibid.

¹³¹ UNHCR, "Burden Sharing" Discussion paper submitted by UNHCR Fifth Annual Plenary Meeting of the APC. Retrieved in Nov 2014, 2

approach. Resettlement was one of the durable solutions¹³² in accordance with the UNHCR's mandate and role. Durable solutions to the problems of refugees constitutes a crucial norm of international protection. Resettlement is defined as the selection and then transfer of refugees from a state where they seek protection from a third state. If they are accepted as refugees, they are provided with permanent residence status and an opportunity for citizenship. They can enjoy similar rights as nationals.¹³³ There are two conditions for refugees to be resettled to a third state. The first one is that the applicant must be accepted as a refugee according to a status determination process. The second one is that resettlement must be the most appropriate action within the other two durable solutions, which are local integration and voluntary repatriation. If these two conditions are satisfied the resettlement of the refugee will be realized on the basis of submission categories.

One of the most efficient features of resettlement is its role in burden sharing because states have their international responsibilities to refugees regarding protecting and reducing their problems. Therefore, resettlement is the most tangible solution within the responsibility and burden sharing mechanisms among all states. The difficulty occurs when resettlement is not accepted as a right for refugees according to the 1951 Convention and there is no obligation for states accepting refugees through resettlement. However, resettlement is the most efficient way to equalize the sharing of the burden, which constitutes the main argument of this thesis. The types of burden sharing will be analyzed in the following pages but generally speaking, the refugee crisis is deeply related with humanity. Therefore, the solution to the problem should be humanitarian. Everyone has a right to live in dignity. One can see that resettlement gives refugees an opportunity to start a new life under the protection of the host country.

¹³² V. The Durable Solutions of UNHCR: Voluntary repatriation, local integration or resettlement

¹³³ UNHCR, *Resettlement Handbook*, rev. 2011, 36

3.2 Refugee Protection in the European Union Member States

Physical burden sharing, fiscal redistribution, and policy harmonization tools are the major dimensions of distribution of asylum burdens within the EU. It is clear that since 1997, asylum matters have been accepted as shared responsibility with the incorporation of immigration and asylum into the Community Pillar. In this case, there was a transition from soft law like, resolutions, conclusions or recommendations, which was not legally binding, to hard law, which constitutes the binding rules of the Union like regulations and directives. These directives are dependent on state's ability to implement into their national laws. Sharing responsibility or the burden of refugees has become difficult when there are not binding rules. The Treaty of Amsterdam calls for necessary measurements to be taken in compliance with the 1951 Convention, the 1967 Protocol, and other relevant treaties.¹³⁴ Soft laws are crucial to show the positive incentives and development, but when there is a national interest of concerns those soft laws are easily disregarded. As it is understood, national interest can be a driving force to regulate restrictive policies on refugee protection in terms of the cost and benefit calculation of burden sharing.

Since the 1990s, the distribution of asylum seekers in the EU has become unbalanced. The disparities of asylum burdens and the rapid rise of asylum applications in some countries has led to more restrictive policy measurements. It became apparent that the burden should be shared by all the EU Member States. For the sake of having more stable and equal distribution of asylum burden, certain actions should be taken on three dimensions, which are sharing money, people, and norms.¹³⁵ According to Thielemann, burden sharing should be understood mainly in three categories in the EU system; physical, legislative and financial. Physical sharing of the burden is based on sharing people basically from one host country to

¹³⁴ European Council (EC), *Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and related acts*. Article 63. (1997)

¹³⁵ Noll, G. *Negotiating Asylum*. The Hague: Nijhoff; uses the categorization of 'sharing people', 'sharing money' and 'sharing policy'. (2000)

another. In other words, it is the transfer or the resettlement of refugees to a state in which they are accepted as refugees so that they can enjoy their rights derived from their status. The Dublin Convention advocates sharing asylum seekers with the rules of the state of the first country, which determine of who is responsible for processing asylum applications in the EU. The legislative category requires policy harmonization within the EU for an equal process to the asylum admissions. Financial assistance is given mostly to the less developed or developing countries to support them to help refugees through funding projects or programs of the UNHCR in the countries of asylum.¹³⁶

Boswell classifies national, international and intra-European types of burden sharing regimes and within those types, there are direct and indirect burden sharing mechanisms. Direct burden sharing is divided two ways: the financial transfers of money and the physical distribution of people. According to the international view of direct burden sharing, there are tools of financing refugee camps and resettlement in the country of origins.¹³⁷ Indeed, financial burden sharing mechanisms cannot be enough for distribution of the cost of asylum seekers. For example, if the country is already overburdened by refugees and does not have enough capacity to provide protection to refugees, financial aids given by international community would not be enough. This perspective can be clearly seen in the Syrian refugee crisis. Money is one of the tools for sharing the burden but it is not enough when we consider how much more is needed for protecting these people.

On the other hand, according to Boswell, for the classification of harmonization, there is a need to determine out the causes of unfair distribution.¹³⁸ The major cause of this unequal distribution is the differences in national legislations in the Member States. There are conflicting views in the literature on the factors of this inequality.

¹³⁶ Christina Boswell, "Burden-sharing in the European Union: Lessons from the Germany and UK experience, *Journal of Refugee Studies*, 16, no.3, (2003): 319

¹³⁷ Ibid, p.327

¹³⁸ Ibid, p.330

According to Thielemann, there are structural factors among the EU Member States and therefore the implemented harmonization efforts would not be enough to create balance in the burden sharing. On the other hand, Böker, Havinga, and Boswell believe that restrictive national asylum policies creates asylum-shopping and shifts the burden to the neighboring countries.¹³⁹ When there is a share of soft norms, as Vink and Meijerink stated, it creates higher pressures to more generous states and implementing restrictive measures shifts the burden ‘laggard’ states and even non-Member States.¹⁴⁰ This is because asylum seekers chose to seek refugee status in the countries that offer more respect to refugee’s rights. Imbalances of distribution of refugees create inhumane conditions in which refugees are stuck in one place, for example on the coasts of Greece or Italy or in the borders of Hungary.

As stated in Chapter 2, the EU cooperation in asylum and immigration matters was initiated within the context of the internal market project, the abolition of internal borders.¹⁴¹ Although the Schengen Agreement and the Dublin Convention of 1990 did not aim for harmonization of immigration and asylum policies within the Union, they constituted the prospective aims of the externalization approach. The EU Member States decided to create a CEAS that would decrease the differences between their asylum systems and regulations and create common minimum standards for asylum.¹⁴² Later a number of directives and regulations were adopted within CEAS as stated in the previous chapter. The EU states tried to agree on possible forms of burden sharing mechanisms of sharing refugees and asylum seekers based on countries’ GDP, population and size of territory over the physical dispersal of temporary protection. The public good theory implies that larger and

¹³⁹ Anita Böcker and Havinga Tetty, “Asylum Applications in the European Union: Patterns and Trends and the Effects of Policy Measures”, *Journal of Refugee Studies*, 11, no.3, (1998): 254

¹⁴⁰ Maarten Vink and Meijerink Frits “Asylum Applications and Recognition Rates in the EU Member States 1982-2001: A Quantitative Analysis”, *Journal of Refugee Studies*, 16, no.3, (2003): 301

¹⁴¹ Sandra Lavanex, “Passing the Buck’: European Union Refugee Policies towards Central and Eastern Europe”, *Journal of Refugee Studies*, 11, no.2, (1998): 128

¹⁴² Minimum standards on the reception of applicants for asylum in Member States are defined in the Council Directive 2003/9/EC of 27 January 2003. Member States must allow applicants freedom of movement within their territory with the access of labor market, medical and psychological support and accommodation.

wealthier the EU states should provide higher contribution comparing to smaller and poorer states. Unfortunately, the situation, in reality, is quite the opposite. For example, the Netherlands and Denmark are economically smaller states that bear a higher number of asylum seekers in comparison to Italy and France, which have a higher GDP. Indeed, the distribution of refugees should be a matter of capacity where bigger and wealthier countries should have higher refugee admission quotas.

The EU Member states realized the necessity of concrete policy measures on refugee issues after the Yugoslavia (1991-1995) and Kosovo (1999) crises. The Balkan crisis brought the burden sharing notion to the front. In 1992, EU ministers gathered around and made explicit references to burden sharing of asylum seekers. During the German Presidency in 1994, a draft of the Council Resolution on burden sharing on temporary protection seekers was prepared. The draft made reference to the coordination requirement for national actions and their capabilities to the admissions of regular asylum policies. For the reception of refugees, three criteria were defined: the population size, the size of Member State territory and the GDP of the country. In other words, its aim was to regulate sharing of people according to those criteria. Nevertheless, the proposal on reception criteria by Germany could not garner enough support in the Council.¹⁴³ The EU burden sharing measures were centered around the physical and financial burden sharing of asylum seekers. Although the EU accepted a “spirit of solidarity” notion¹⁴⁴, the allocation of refugees would not be realized. Based on countries’ GDP per capita; Austria, Sweden, and Germany shared Yugoslavian refugees. The rest of the EU countries searched for ways of transferring them back.

A temporary protection regime was negotiated in the EU during the Bosnians and Kosovars displacements due to the Yugoslav wars. As a result, the Council Directive 2001/55/EC was implemented “in order to institutionalize in a legal framework the

¹⁴³ Thielemann, *Between Interests and Norms*, 262

¹⁴⁴ Boswell, *Burden-sharing in the European Union*, 629

humanitarian assistance”.¹⁴⁵ The Kosovo Evacuation Program in 2000 represented an attempt to promote physical burden sharing among European states on the refugees staying in the Former Yugoslav Republic of Macedonia. Macedonia unilaterally declared to relocate Kosovar refugees from Macedonia. Turkey (2,000), Greece (5,500) and Albania (10,000) took the largest numbers of Kosovar refugees.¹⁴⁶ However, a binding system would not be achieved and unilateral quotas of Member States remained as the basis.

The temporary protection rule fits with large numbers of “persons who have fled areas of armed conflict or endemic violence; persons at serious risk of, or who have been the victims of, systematic or generalized violations of their human rights” in their country of origin. Therefore, they were unable to return back. “Mass influx” is the term that has been used to describe large numbers of refugees which the system is at risk of being unable to process.¹⁴⁷ According to the Qualifications Directive, basic protection is given to refugees who comprise mass groups of people while their asylum claim is processed by the host state. During their stay, until the conflict is finished in their country of origin; they have access to residence permits. The principle of solidarity is structured by means of financial and actual reception of people in the Member States.¹⁴⁸ Moreover, the Directive includes sharing of reception capacities of each Member States showing their capacity to receive refugees.¹⁴⁹ Nevertheless, the Dublin System has creates an unfair and inequitable burden sharing on physical distribution of asylum seekers. Indeed, temporary

¹⁴⁵ Marco Sciara, “Temporary Protection Directive, Dead Letter or Still Option for The Future? An Overview on The Reasons Behind Its Lack of Implementation” *Eurojus*, (2014) <http://rivista.eurojus.it/temporary-protection-directive-dead-letter-or-still-option-for-the-future-an-overview-on-the-reasons-behind-its-lack-of-implementation/?print=pdf> (accessed Sep.2, 2016)

¹⁴⁶ US Office of Foreign Disaster Assistance (OFDA), *Center for International Disaster Information, Alert: Kosovo*, No. 19, April 8, 1999

¹⁴⁷ Official Journal of the European Communities, *Council Directive 2001/55/EC On Minimum Standards for Giving Temporary Protection in The Event of a Mass Influx of Displaced People and On Measures Promoting a Balance of Efforts Between Member States in Receiving Such People and Bearing the Consequences Thereof*, July 20, 2001

¹⁴⁸ Council Directive 2001/55/EC, Article 24

¹⁴⁹ *Ibid*, Article 25

protection has never been applied yet to any groups of refugees at the EU level. Therefore, the Dublin Regulation remained as one of the disputable components of CEAS. This Regulation enables transferring the responsibility from northern and western Member States, to southern and eastern Member States including candidate countries.

The Commission presented the Green Paper on the Future of the European Asylum System in 2007, which indicated the idea of solidarity based on responsibility sharing of refugees in the EU¹⁵⁰ and this document portrays the concerns of the EU politicians about the numbers of asylum seekers coming to Europe. The problems of physical burden sharing of refugees resulted in further progress on financial burden sharing. This initiative led to the creation of the European Refugee Fund (ERF) in 2000 to set up to provide financial assistance to the EU states receiving large numbers of asylum seekers and refugees in accordance with reception, integration and voluntary return of refugees amongst the Member States. The fund has also supported the resettlement program. This fund enables the Member States to meet the cost of reception capacities and asylum systems in the Member States. The ERF, from 2008-2013, had a budget of 628 million Euros.¹⁵¹ In April 2014, the ERF, along with the European Integration Fund and the European Return Fund, was replaced by the Asylum Migration and Integration Fund (AMIF) established for the period 2014–2020.¹⁵²

According to Helson, some host governments perceive refugees as “illegal aliens”, which is against the human rights of an individual.¹⁵³ Therefore, states should

¹⁵⁰ Commission of the European Communities (CEC) (2007a) *Green Paper on the Future Common Asylum System*, COM (2007) 301 final.

¹⁵¹ *European Refugee Fund*, <http://www.unhcr.org/pages/49c3646c305.html>, (accessed Sep.1, 2016)

¹⁵² European Commission, Migration and Home Affairs, *Asylum, Migration and Integration Fund (AMIF)*, http://ec.europa.eu/dgs/home-affairs/financing/fundings/migration-asylum-borders/asylum-migration-integration-fund/index_en.htm (accessed Oct.5, 2016)

¹⁵³ Arthur C. Helson, “Displacement and Human Rights: Current Dilemmas in Refugee Protection”. *Journal of International Affairs*, Columbia University, 47, no.2, (1994): 384

provide legal protection to refugees under their territory. Helson continues with examples of three different refugee policies from history and how each of them infringed the rights of refugees. The first strategy is the refugee containment strategy. This strategy occurred at the end of the Gulf War when there were two million Kurdish asylum seekers who fled and sought protection in Saudi Arabia, Turkey, and Kuwait. Containment strategy included the creation of “safe areas” in Iraq in which UN established “humanitarian centers” because of the continuation of the conflict, but this protection was not long-lasting.¹⁵⁴ The same types of policy justifications are done today by the government policy makers as a response to refugee protection problems. When the Syrian crisis happened, establishing “safe areas” was on the political agenda and is still a subject of negotiation. Caused by the interest of states, the common policy to create safe zone would be realized. This conflicting interest can be clearly seen when Russia and China continue to veto propositions during UN Security Councils.

The second approach includes the concept of burden sharing. Helson criticized the regional arrangements in the paper, the Comprehensive Plan of Action for Vietnamese and Laotian asylum seekers. This is because of the fact that the plan was designed to deter asylum seekers from reaching international protection. The final strategy the deterrence policies of states. He states that the EU states mostly introduce measures to discourage asylum seekers and to restrict refugee access to protection through restrictive visa requirements, detention centers, and other restrictions. Therefore, restricting access to asylum has become one of the main tenets in the EU. It can be said that one of the main reason for differences in the number of refugees is the implementation of deterrent policies of some countries.

3.2.1 The Number of Refugees in the European Union Member States

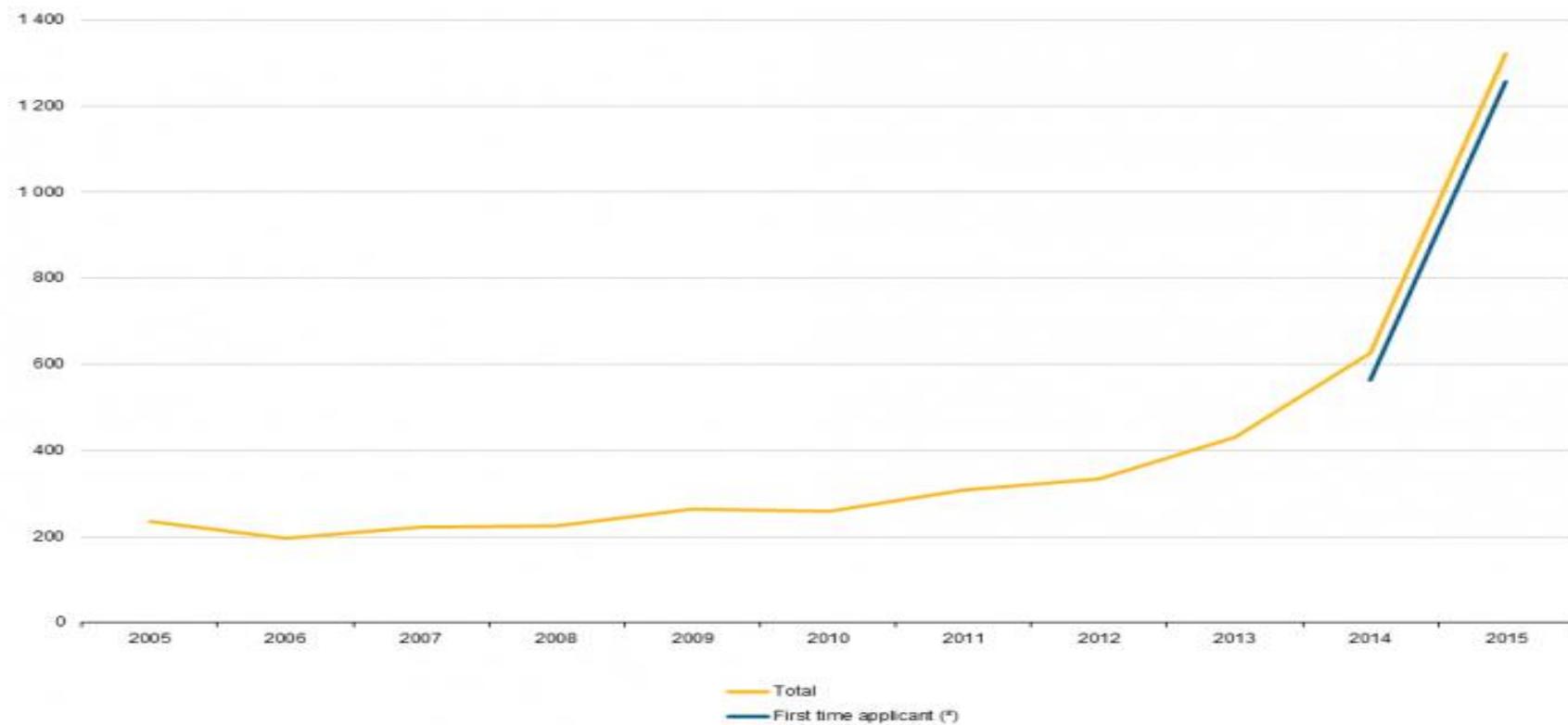
The EU has been faced with large numbers of Syrian refugees by 2015. As stated in Chapter 2, the asylum applications to the EU states peaked in 1992. This was a result of the Yugoslavian crisis, which led 672 thousand people to seek protection in fifteen

¹⁵⁴ Helson, *Displacement and Human Rights*, 390

Member States of the EU. There were 424 thousand applications of asylum seekers from former Yugoslavia to EU-27 in 2001. The number of asylum applications to the EU did not decrease until 2011. The rise of migratory movements has been affected by the Arab Spring crisis. Civil wars, and non-international armed conflicts in Northern Africa and the Middle East have led more refugees to seek protection in EU countries. There was a significant increase in the asylum applications of non-EU member citizens at the beginning of 2011, which was the year of the Arab Spring, and refugee movements started again. Specifically, with the outbreak of the Syrian crisis, the EU states again began to face the deficiencies of the EU asylum policies in responding to refugee protection. The number of asylum applications to the EU was 431 thousand in 2013. 627 thousand refugees applied to the EU in 2014. This number reached 1.3 million in 2015. This amount was almost two times higher than the numbers in 1992. Table 1 shows the numbers of asylum applications to EU States (at the time of the Member States) between the years 2005 to 2015.¹⁵⁵ We can see that after 2010, there was an increase in asylum applications.

¹⁵⁵ Eurostat, *Asylum Statistics*, http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_statistics#cite_note-1 (Accessed Oct.5, 2016)

Table 1: Numbers of Asylum Applications between 2005-2015



(*) 2005–07: EU-27 and extra-EU-27.

(*) 2005–2013: not available.

Source: Eurostat (online data codes: migr_asyctz and migr_asyappctza)

The main contributors to the increasing numbers of asylum applications are mostly Syrian, Afghan and Iraqi nationals. Albanians and people from Kosovo and Pakistan have higher numbers compared to other non-EU nationals. Table 2 shows the distribution of asylum seekers in the EU-28 in the year of 2015.¹⁵⁶ Most of the EU countries have the highest numbers of applications from Syrian asylum seekers due to the war in Syria. More than 250,000 civilians have lost their lives and approximately 5 million Syrian refugees have fled from Syria to seek protection since 2011. The pro-democracy protests towards President Bashar al-Assad resulted in a civil war between different ethnic and religious groups from which the jihadist Islamic State (ISIS) emerged and escalated the war into the most destructive dimension. Neighboring countries such as Lebanon, Jordan, and Turkey have been struggling with the highest numbers of refugees in their respective histories.¹⁵⁷

¹⁵⁶ Eurostat, *Asylum Statistics*, http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_statistics#cite_note-1 (Accessed Oct.5, 2016)

¹⁵⁷ Rodgers, Lucy. David Gritten, James Offer & Patrick Asare. (2016) "Syria: The Story of The Conflict" *BBC News Middle East*, March 11, 2016 <http://www.bbc.com/news/world-middle-east-26116868> (accessed Oct,6, 2016)

Table 2: Distribution of Asylum Seekers in 2015

Belgium		Bulgaria		Czech Republic (*)		Denmark	
Syria	10 295	Iraq	6 910	Ukraine	565	Syria	8 580
Iraq	9 215	Afghanistan	6 165	Syria	130	Iran	2 745
Afghanistan	7 730	Syria	5 955	Cuba	125	Afghanistan	2 215
Somalia	2 010	Pakistan	570	Vietnam	55	Eritrea	1 705
Unknown	1 095	Iran	170	China (including Hong Kong)	35	Stateless	1 685
Other	8 650	Other	395	Other	325	Other	3 895
Germany		Estonia (*)		Ireland		Greece	
Syria	158 655	Ukraine	95	Pakistan	1 350	Syria	3 325
Albania	53 805	Russia	15	Bangladesh	285	Afghanistan	1 545
Kosovo (UNSCR 1244/99)	33 425	Syria	15	Albania	215	Pakistan	1 505
Afghanistan	31 390	Iraq	15	Nigeria	185	Albania	915
Iraq	29 785	Georgia	10	India	145	Iraq	575
Other	134 750	Other	75	Other	1 090	Other	3 505
Spain		France		Croatia (*)		Italy	
Syria	5 720	Sudan	5 315	Syria	25	Nigeria	17 780
Ukraine	3 340	Syria	4 625	Kosovo (UNSCR 1244/99)	10	Pakistan	10 285
Palesline	795	Kosovo (UNSCR 1244/99)	3 925	Afghanistan	10	Gambia, The	8 015
Algeria	650	Dem. Rep. of Congo	3 800	Turkey	10	Senegal	6 370
Venezuela	585	Bangladesh	3 345	Ukraine	10	Bangladesh	6 015
Other	3 510	Other	49 660	Other	75	Other	34 780
Cyprus		Latvia		Lithuania		Luxembourg	
Syria	910	Iraq	85	Ukraine	60	Syria	635
Palesline	175	Vietnam	80	Georgia	45	Iraq	545
Vietnam	125	Ukraine	45	Russia	35	Afghanistan	220
Pakistan	120	Afghanistan	35	Afghanistan	30	Kosovo (UNSCR 1244/99)	190
India	85	Iraq	30	Iraq	25	Albania	130
Other	690	Other	55	Other	80	Other	640
Hungary		Malta		Netherlands		Austria	
Syria	64 080	Libya	895	Syria	19 640	Afghanistan	24 840
Afghanistan	45 560	Syria	395	Eritrea	7 390	Syria	24 720
Kosovo (UNSCR 1244/99)	23 690	Ukraine	70	Iraq	3 010	Iraq	13 225
Pakistan	15 010	Eritrea	45	Afghanistan	2 550	Iran	3 380
Iraq	9 175	Somalia	35	Stateless	2 460	Pakistan	2 890
Other	16 920	Other	255	Other	8 985	Other	16 450
Poland		Portugal		Romania		Slovenia	
Russia	6 985	Ukraine	370	Syria	550	Iraq	45
Ukraine	1 575	Mali	80	Iraq	190	Afghanistan	45
Tajikistan	525	Pakistan	65	Afghanistan	90	Iran	30
Syria	285	China (including Hong Kong)	55	Turkey	45	Pakistan	25
Georgia	230	Guinea	35	Ukraine	35	Kosovo (UNSCR 1244/99)	25
Other	655	Other	225	Other	315	Other	90
Slovakia (*)		Finland		Sweden		United Kingdom	
Iraq	170	Iraq	20 400	Syria	50 890	Eritrea	3 735
Afghanistan	25	Afghanistan	5 190	Afghanistan	41 190	Iran	3 680
Ukraine	15	Somalia	1 975	Iraq	20 190	Pakistan	3 245
Unknown	15	Syria	875	Stateless	7 445	Sudan	3 005
Cuba	5	Albania	755	Eritrea	6 515	Syria	2 840
Other	40	Other	2 955	Other	29 880	Other	21 865
Norway		Switzerland					
Syria	10 535	Eritrea	9 860				
Afghanistan	6 910	Afghanistan	7 800				
Iraq	2 935	Syria	4 650				
Eritrea	2 785	Iraq	2 285				
Iran	1 310	Sri Lanka	1 775				
Other	5 995	Other	11 690				

(*) Iraq: also 35.

(*) Afghanistan, Armenia, Palesline and Sudan: also 10.

(*) Iran: also 10.

(*) India, Bangladesh, Syria, Pakistan, Russia and Iran: also 5.

Source: Eurostat (online data code: migr_asyappctza)

Table 3 shows the numbers of asylum applications to EU-28 by nations in 2015. There were 363 thousand Syrian refugees who constituted the highest share among the other country of origins such Afghan, Iraqi or Pakistani refugees. Following that, Table 4 compares asylum application levels in the EU Member States. Within the Union, Germany has the highest asylum applications. There were 173 thousand asylum applications in 2014, which increased to 442 thousand in 2015. Hungary, Sweden, and Austria had relatively higher numbers of applications in 2015 compared to 2014. One can see that some Member States have higher rates of asylum applications than the others like Romania, Croatia, Slovenia and etc. It is obvious that the distribution of asylum seekers is not equal within the Union.

Table 3: Numbers of Asylum Applications by Nationals in 2015

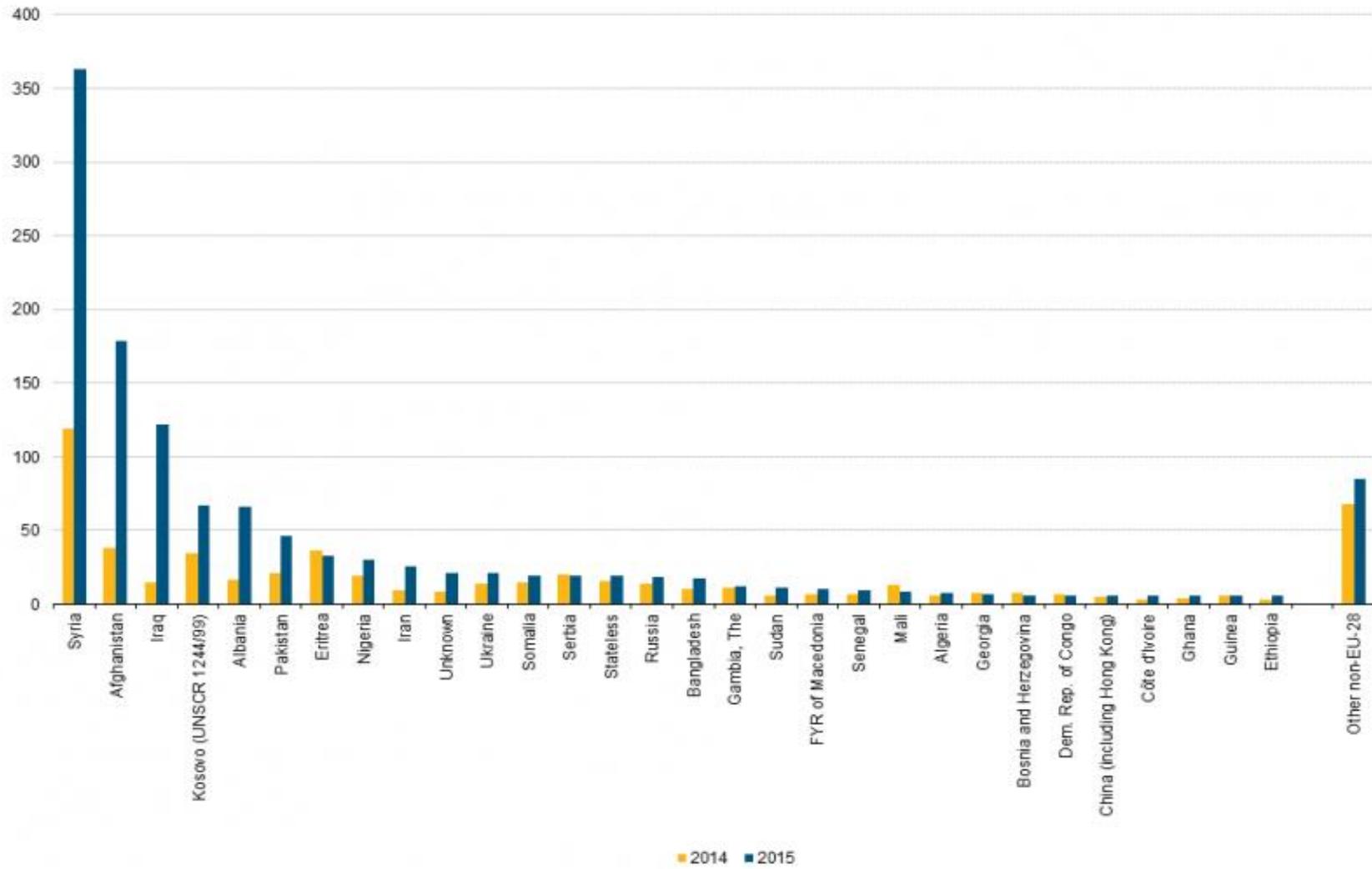
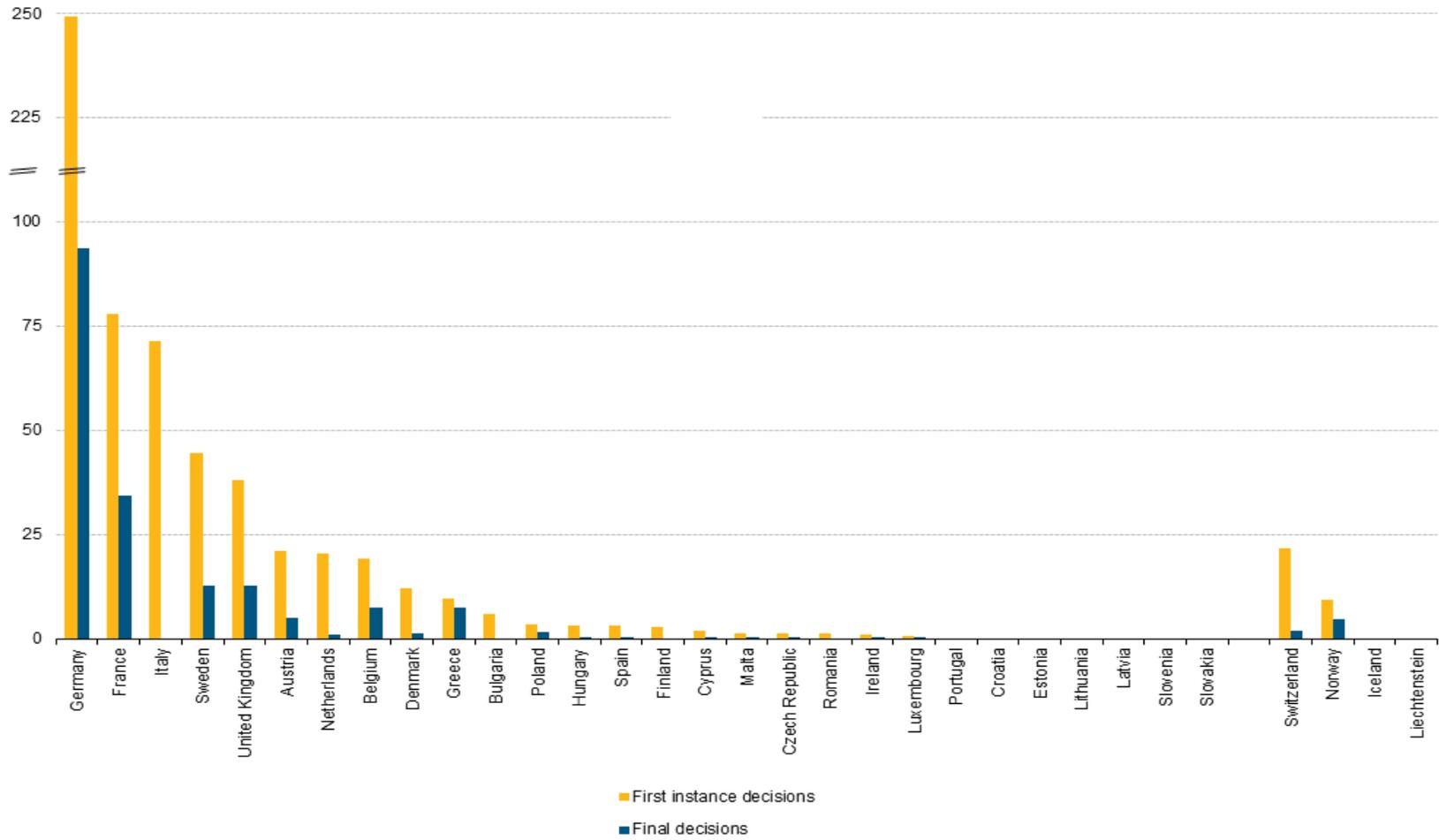


Table 4: Asylum Applications in the European Union Countries

65



Source: Eurostat (online data codes: migr_asydcfsta and migr_asydcfina)

The numbers of asylum application in 2016 to the EU states are crucial for the discussion of the EU-Turkey Statement. Between January 2016 and March 2016, there were 287,100 first time asylum seekers; including 102,000 Syrians who applied for international protection in the Member States of the EU. Germany, Italy, France, Austria and the UK had the highest numbers of asylum seekers. Compared to the population of Member States, the share of asylum seekers was highest in Germany, Austria, Malta, Luxembourg, and Sweden.¹⁵⁸ From April 2016 to June 2016, 305,000 first time asylum seekers including 90,500 Syrians have applied to the EU to seek protection. Germany, Italy, France, Hungary, and Greece received more applications, but in terms of their population size Germany, Hungary and Austria were recorded as having the highest numbers of first-time asylum seekers.¹⁵⁹ From July 2016 to September 2016 there were 358, 300 asylum seekers; including 87 900 Syrians sought asylum in the EU Member States. After the EU-Turkey Statement, there was a downward trend of asylum applications to the EU which can be seen in Table 5.

The numbers of Syrian refugees who seek international protection are high in the EU, but the majority of Syrian nationals who fled from their countries are hosted in the Syria's neighboring countries. There are 1,017,433 Syrian refugees in Lebanon, 655,496 in Jordan, 230,836 in Iraq, 116,013 in Egypt,¹⁶⁰ the largest share 2,888,856 in Turkey. The main problem of the EU dealing with the Syrian refugee crisis is that the Member States could not get a common agreement or consensus in response to the problem. A coherent policy to regulate the flow of Syrian refugees would not be applied. Germany and Sweden remained alone in coping with the numbers of refugees. On the other hand, Eastern European Member States have refused to share

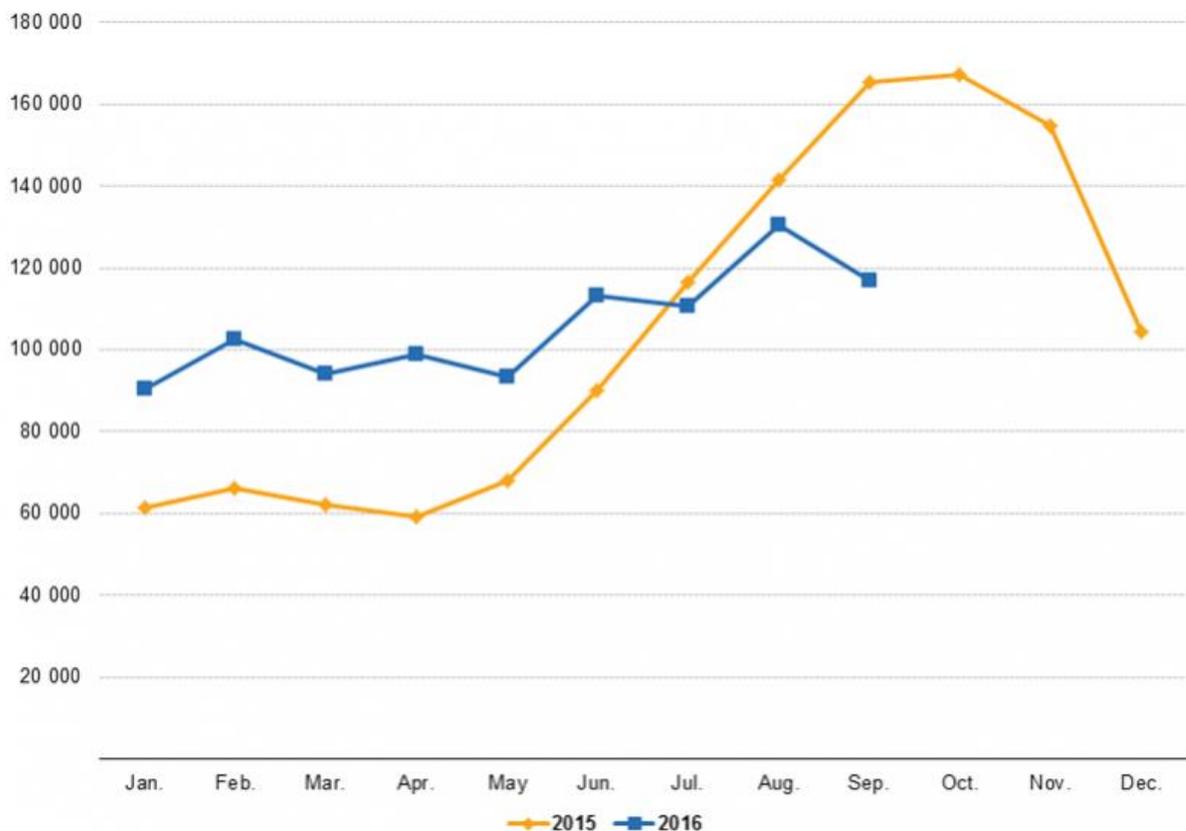
¹⁵⁸ Asylum in the EU Member States, 16 June 2016, <http://ec.europa.eu/eurostat/documents/2995521/7494855/3-16062016-BP-EN.pdf/4ff50bf8-82fc-4af0-9907-9c8546feb130> (accessed: Nov.23, 2016)

¹⁵⁹ Asylum in the EU Member States, 22 September 2016, <http://ec.europa.eu/eurostat/documents/2995521/7662180/3-22092016-AP-EN.pdf/22f5de3b-b5a8-4195-82fe-3072a4a08146> (accessed: Nov.23, 2016)

¹⁶⁰ UNHCR Data, *Syria Regional Refugee Response*, <http://data.unhcr.org/syrianrefugees/regional.php> (accessed last Jan.24,2017)

the burden.¹⁶¹ For instance, Slovenia and Croatia regulated new border restrictions to refugees and did not allow them to pass in transit through their territories. Macedonia closed their border, thus refugees could not reach Greece, and hundreds of Syrian refugees were stranded in a refugee camp between Macedonia and Serbia.¹⁶² These worrying events show us the division between EU Member States. They could not create a common action plan as a Union and had difficulty dealing deal with the refugee crisis. It seems that the EU commitment to the international law of refugee rights and protection is more likely to be damaged.

Table 5: First-Time Asylum Applicants between January 2015 – September 2016



¹⁶¹ The Economist, *A Plan for Europe's Refugees How to Manage the Migrant Crisis*, February 6, 2016, <http://www.economist.com/news/leaders/21690028-european-problem-demands-common-coherent-eu-policy-let-refugees-regulate> (accessed Oct. 1, 2016)

¹⁶² The Guardian, *Slovenia And Croatia Ban Transit of Refugees to Other European Countries*, March 16, 2016 <https://www.theguardian.com/world/2016/mar/09/slovenia-and-croatia-ban-the-transit-of-refugees> (accessed Oct. 3, 2016)

3.3 Reasons for the Unequal Distribution of Refugees in the European Union

As stated in Chapter 2, the EU has developed cooperation with third countries through externalization tools in the frame of the safe third country, asylum principles, visa policies and readmission agreements. While doing that, transfer responsibility of protecting refugees was applied to transit or origin countries of migration from the EU. Although refugees try to reach to the EU to seek protection, the responsibility is shifted to third countries. In addition, under the principles of the CEAS, the EU enables the return of asylum seekers even if refugees have reached EU territories. The Member States have responsibility on the entry of asylum seekers or residence in the EU. In this case, the rights of refugees and asylum seekers are undermined, policies are created without legitimacy, which results in burden shifting instead of burden sharing. The EU tried to determine which state was responsible for asylum seekers and they agreed on the Dublin Convention which brought “the first country of entry” to equalize the responsibility. With this system, however, they extended the issue over the EU’s external borders. It is noteworthy that burden shifting also happens within the EU itself under the Dublin system. Hence, the third safe country and the first country asylum principle are two of the tools which lack an equal burden sharing mechanism to the third countries.

3.3.1 Dublin Convention and Regulations

Since the 1980s, the new cooperation environment among the Member States to handle the refugee movements has evolved. The system of distribution of the Dublin Convention was specified in the Schengen Implementation Agreement. During the period that higher numbers of asylum seekers from the former Yugoslavia reached the EU, who was going to be responsible was not be managed. The Dublin Convention occurred from this mentality based on asylum sharing arrangements in Western Europe.¹⁶³ The Dublin II Regulation, which is the 343/2003 Council Resolution was created as one of the cornerstones of the CEAS, and it established the mechanisms and the criteria for determining asylum applications in Member States.

¹⁶³ Helson, *Displacement and Human Rights*, 394

The Dublin II Regulation was aimed at abolishing disadvantages of the Dublin Convention including slowness of the system, uncertainty for applicants, insufficient remedies for refugees, *refoulement* and lack of equitable readmission rules for refugees, and inequality of the burden sharing.¹⁶⁴ It is very much questionable how far the Dublin II Regulation achieved its targets or to what extent it removed the deficiencies of the previous Convention. The revised Regulation still keeps the same system of determining asylum applications responsibility.¹⁶⁵ The asylum seeker can only apply for refugee status in the first EU member country in which the person enters. The Dublin II Regulations mainly focus on two undesirable circumstances, which are “asylum-shopping” (multiple applications of an asylum seeker in the Member States) and “refugees in the orbit” (refugees who do not have access to adequate application).¹⁶⁶

Although examining the asylum applications by the Member States was based on the idea of responsibility sharing or principle of solidarity, it has resulted in shifting the burden to the third countries. For example, an African asylum seeker reaches the EU territories transiting through Italy and wants to apply for refugee status in Germany. If evidence (fingerprints or previously issued visa for an EU country, etc.) was shown that the asylum seeker traveled through Italy, the asylum seeker would be returned to Italy, where the application would be processed. In this case, the responsibility of processing asylum application is transferred to another contracting state. Moreover, the subsequent country does not examine the asylum seeker’s application to determine whether the applicant meets the requiring criteria of refugee status. It can be understood that the status determination process can be seen as time-consuming. However, when there is a mass transit refugee movement in Italy, the

¹⁶⁴Commission of the European Communities (Commission), ‘Revisiting the Dublin Convention: Developing Community Legislation for Determining Which Member State is Responsible for Considering an Application for Asylum Submitted in One of the Member States’ (Staff Working Paper) SEC (2000) 522 final.

¹⁶⁵ Steve Peers, *Analysis The second phase of the Common European Asylum System: A brave new world – or lipstick on a pig?* (University of Essex, Statewatch, 2013), 1-17

¹⁶⁶ Kaunert, Christian 2011 and Lenart Joanna 2012

implication of the Dublin system leads Italy to become overburdened. According to Leonart, this is why countries like Croatia, Greece, and Italy have crucial concerns of asylum on implementation. Although the Tampere Program indicated the rules to be adopted, there are large differences in their practice in the Member States, which leads to the system becoming more like a tottery rather than a system composed of unified rules.¹⁶⁷

One can see that the problem occurs when the asylum seeker is transferred from the country in which person wants to seek asylum. This creates inconsistencies with the human rights of refugees. The Dublin II Regulation has been criticized by NGOs and the UNHCR. This is because the Member States do not have proper implementations of the Dublin provisions. Therefore, it results in shifting the responsibility to the third countries and additionally creates a possible risk of detention for the refugee. It leaves no space for asylum seekers to make a choice. If an asylum seeker's application is refused, it creates the risk of *refoulement* of refugees, which in turn may cause this person to become an irregular migrant. That is to say that, the right to asylum has not been recognized by the EU with the Dublin system. Moreover, when the states implement the Dublin Regulation and transfer the asylum seeker to another state, human rights can be violated. With the Syrian crisis, it has seen that the Dublin system is not efficient on burden sharing. The Office Director of the Federal Office for Immigration and Asylum of Austria, Nino Hartl says that the EU is trying to release Greece because if the Dublin system worked, the refugees in Germany had to be sent to Greece. The current Dublin System is not working and does not help with refugee protection within the Union.¹⁶⁸ Therefore, considering the protection of human rights of refugees and asylum seekers, the EU should not try to determine from where the refugee enters the country.

¹⁶⁷ Joanna Lenart, "Fortress Europe: Compliance of the Dublin II Regulation with the European Convention for the Protection of Human Rights and Fundamental Freedoms" *Merkourios-International and European Migration Law*, 28, no.75 (2012): 4

¹⁶⁸ Informal talks during the Workshop of ICMPD, Country of Origin, December 14-16, 2016, Ankara

3.3.2 The Safe Third Country and First Country of Asylum Principle

The unequal burden sharing within the Union has an inevitable impact on third countries through association, cooperation, and readmission agreements. The safe third country and first country of asylum principles are the results of externalization tools of the EU. The Council Directive on Asylum Procedures 2005/85/EC regulates the notion of European safe third countries. Article 27 explains in which conditions the safe country principle can be applied to a person who wants to seek asylum and the principles meet with the international norms of the Refugee Convention. The Council Directive 2005/85/EC was renewed with the 2013/32/EU Directive. Article 38 states that the Member States can send asylum seekers to third countries with which the person has some connection to and a possibility of seeking for refugee status without any risks of persecution, *refoulement* or treatment of violation in accordance with the 1951 Convention.

Article respects the *non-refoulement* principle, refugee definition and providing refugee protection when the persons' status is confirmed. However, the APD does not mention exactly how or when to conduct this principle because in the Article 38 it is stated that the safe country principle "shall be subject to rules laid down in national law". In this case, there might be inconsistent national applications of each Member State and refugees might be exposed to unequal treatment within the Union.¹⁶⁹ Moreover, it says "the rules require a connection between the person in search of asylum and the third country concerned on the basis of whether it would be reasonable for that person to go to that country". The question of reasonable is debatable because there is no equal treatment in EU Member States in regarding the expulsion of an asylum seeker back to the transit or origin country.¹⁷⁰ Moreover, an asylum seeker may have a connection where it would be reasonable for an applicant not to remain in the safe third country.

¹⁶⁹ Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status

¹⁷⁰ Silvia Morgades, "The Externalisation of the Asylum Function in the European Union" *GRITIM Working Paper Series* n. 4, (2010): 12

Article 33 (1) of the 1951 Convention prohibits *refoulement* of an asylum seeker to a territory where she/he might be at risk of expulsion. An expulsion can only be realized with a decision reached by law in the occurrence of a threat to the national security of the country in which he/she committed a serious crime.¹⁷¹ The only possible explanation for practicing safe third country principle can be by transferring the responsibility of protection to another country under the Dublin Convention, which might increase the risk of multiple *refoulement*. If an asylum seeker in France was returned to Italy because the person traveled to France from Italy, that person could not seek asylum application there and would be returned to Italy due to the Dublin Regulation. Italy may want to send the asylum seeker to safe third countries, for example to Greece due to the same reason. In such examples, the right of the asylum seeker to reach protection has become at risk of chain *refoulement*. The EU Member States accept each other as the safe third country.

In the literature, the first country of asylum and safe third country principles are seen as two dimensions of the same process.¹⁷² If an asylum seeker's application is found "inadmissible" then the asylum seeker would be readmitted to the first country of asylum, which can be outside the EU borders. Article 35 of the Council Directive 2013/32/EU on common procedures for granting and withdrawing international protection regulates the principles of the first country of asylum. "Inadmissible" means that an application is not processed or examined. In the case of being inadmissible, an asylum seeker gets protection from another state which is the country accepted as the first country of asylum and safe third country.¹⁷³ The first country of asylum can be considered if the person has already been recognized as a refugee or there is protection for the person and the person is benefiting from the principle of *non-refoulement*, then he/she can be transferred to his/her first country of

¹⁷¹ UNHCR, Convention and Protocol Relating to the Status of Refugees, Article 33

¹⁷² Stephen Legomsky, "An Asylum Seeker's Bill of Rights in a Non-Utopian World", *Georgetown Immigration Law Journal* (2000): 619

¹⁷³ Official Journal of the European Union, *Council Directive 2013/32/EU the European Parliament and of The Council on Common Procedures for Granting and Withdrawing International Protection*, June 26, 2013 Article 33.

asylum. The fingerprint information of refugees¹⁷⁴ from the Euradac system identifies any former applications made by refugees. This opens the way for the easy deportation of refugees. The notion of the ‘first country of asylum’ is to justify the removal of an asylum seeker to a third country where a person has obtained international protection.

The safe third country and the first country of asylum provisions have and been used as a deterrence factor by the EU Member States’ governments to conduct asylum applications. An asylum seeker will be refused and returned due to his/her entries into the country if the person travels through another country which is described under the safe third country and the first country of asylum. Asylum seekers who travel through land and sea to EU countries are considered to no longer be able to seek asylum application in the country of destination if they pass in transit to any member country.¹⁷⁵ These principles aim to relieve domestic asylum procedures in the EU Member States through the limitation of access and the adoption of responsibility rules.¹⁷⁶ In other words, safe third country and first country of asylum principles create burden shifting by relaxing national asylum procedures of the EU Member States through adopting one state responsibility ruling.¹⁷⁷

3.3.3 The Readmission Agreements with Third Countries

The readmission agreements are used for the implementation of the safe third country and first country of asylum principles. These agreements do not target asylum seekers’ equal access to procedures and their protection from *refoulement*. Instead, expulsions of third country nationals and asylum seekers are implemented automatically under the safe third country and the first country of asylum principles. Readmission agreements have become the guarantees of this system. Readmission agreements have additionally been contributed to the association and cooperation

¹⁷⁴ Official Journal of the European Union, *Council Directive 2013/32/EU*, 2013

¹⁷⁵ Thielemann, “Why Asylum Policy Harmonization Undermines Refugee Burden-Sharing”, 55

¹⁷⁶ Lavanex, *Passing the Buck*, 130

¹⁷⁷ *Ibid*, p.132

agreements with third countries. Since 1999, the Council's policy on readmission agreements was further enhanced with externalization policies.

Adoption of the readmission agreements shaped the relationships of the EU with Central and Eastern European countries during the accession negotiations of the candidacy process. By 1995, readmission clauses were added to the association and cooperation agreements of the Union.¹⁷⁸ At the EU level, a visa facilitation program was seen as an incentive of readmission agreements for the candidate countries. Visa facilitation is similar to the outcome of European relations with Balkan countries, also the policy of ENP to diminish irregular immigration. This incentive is one of the tools of the European externalization policies of asylum because, through readmission agreements, the EU creates buffer zones outside European borders for refugees in third countries. During the accession process, Central and Eastern European countries had to introduce new visa requirements. After the Amsterdam Treaty, the readmission agreements were one of the negotiation points for the visa facilitation. Therefore, readmission agreements and visa facilitation were planned under the same umbrella.

Readmission agreements are used for controlling unwanted immigration flows by the EU. The evolution of this instrument goes back to the principle of territorial sovereignty of nation states in the 19th century, which did not include expelling a refugee to the third countries or country of origins.¹⁷⁹ States would easily expel an unwanted individual in accordance with Treaty of Gotha of 1851 and the Dutch-German Treaty of 1906 to show state cooperation on the basis of expulsion agreements.¹⁸⁰ After WWII, readmission agreements regulated among the European countries rather than third countries to manage the immigration flows. Benelux

¹⁷⁸ Katerina Dtancova, "Integrating the EU Migration Policy into the EU Neighborhood Policy: The Origins and Prospects" *Human Rights and Sustainability, Sant'Anna School of Advanced Studies*, (2010): 3

¹⁷⁹ Ibid.

¹⁸⁰ Nils P. Coleman, *European Readmission Policy: Third Country Interests and Refugee Rights*, Leiden, Martinus-Nijhoff Publishers, (2009): 12-13

Convention in 1960 can be given as an example of this type of readmission agreement.¹⁸¹ The Benelux Convention¹⁸² is a smaller version of the EU because internal borders in this region were removed and the parties agreed on the free movement of people within the area. In the case of an unwanted foreigner, she/he would be expelled to the home country within the Benelux. Migratory movements were not a big problem in those times and readmission agreements were not a priority within the Benelux Economic Union.

The increase in irregular immigration movements since the dissolution of the Soviet Union led the European Union to engage in bilateral readmission agreements in accordance with the Schengen Agreement. The Schengen Convention enabled the expelling of a person from the territory of the state party to the Convention through readmission agreements.¹⁸³ For this purpose, the first agreement was signed between Schengen countries and Poland in 1991. With this agreement, Poland had to accept irregular migrants from Schengen countries who came through Poland, including nationals of third countries. Moreover, the agreement foresaw that each Schengen country was responsible for its own external borders. In other words, readmission agreements within the EU level are based on the Schengen Agreement with a couple of bilateral agreements. With the increase in the tension of migratory movements, the institutionalization of asylum matters including readmission agreements is handled in a more intergovernmental and communitarian way since the 1990s.

The European Commission adopted a communication on immigration in 1991 and the common readmission policy among the Member States was maintained through the harmonization of national readmission agreements.¹⁸⁴ With the inclusion of

¹⁸¹ Ibid, p.16

¹⁸² Convention Concerning the Transfer of the control of persons towards external borders of the Benelux territory, 11 April 1960.

¹⁸³ *The Schengen Convention*, Article 23

¹⁸⁴ Commission Communication to the Council and the European Parliament on Immigration of 23 October 1991, SEC (91) 1855

cooperation with third countries, external aspects of the asylum policies, which are discussed in Chapter 2, enabled readmission agreements to stand out. The Justice and Home Office Council emphasized the principles of harmonization of readmission agreements. Later, the Commission communication has stressed out the possible burdens of readmission agreements to the third countries and emphasized assisting to third countries.¹⁸⁵

With the HLWG, in order to have a successful readmission agreement, it was understood that there was a need to implement coherent and integrated policies for the countries of asylum seekers and their countries of origin. These initiatives have continued under the EU asylum externalization policy. Since 1999, the five-year programs of Tampere, Hague and Stockholm readmission agreements have been developed. In the Tampere Program, irregular immigration and Return Action program were foreseen and the first readmission agreement was completed.¹⁸⁶ For the Hague Program, the Council developed a policy based on a common standard for returning a person considering human rights and dignity.¹⁸⁷ Further progress was achieved during the Stockholm Program and mobility partnerships with third countries were underlined.

To sum up, one of the core principles of refugee protection is driven by equal responsibility sharing of the refugee burden. The redistribution of the responsibilities of managing asylum applications within the EU leads to the loosening of state requirements or obligations. It is driven by international refugee law to third countries through externalization tools of the safe third country and the first country of asylum principles. Both of these principles decrease equal distribution of refugees within the Union. The burden shifting of refugees is further maintained by readmission agreements of the EU. Readmission agreements are part

¹⁸⁵ Ibid.

¹⁸⁶ Presidency Conclusions, Tampere European Council of 15-16 October 1999, sf.27.

¹⁸⁷ *The Hague Program*: Ten priorities for the next five years. The Partnership for European renewal in the field of Freedom, Security and Justice, COM (2005) 184

of the return policies of the EU. In the following chapter, the Turkish asylum system will be analyzed to show the impact that the EU's asylum policies have had on it.

CHAPTER 4

ASYLUM POLICIES IN TURKEY

The 1934 Settlement Law, the 1951 Convention and the 1994 Regulation on Procedures and Principles related to Mass Influx and Foreigners arriving in Turkey either as Individuals or in Groups wishing to seek Asylum either from Turkey or requesting Residence Permits with the Intension of seeking Asylum from a Third Country¹⁸⁸ constituted the main legal documents of Turkish asylum legislation until the acceptance of the 2013 Law on Foreigners and International Protection (LFIP). There has been a gradual development of Turkish asylum policies and practices starting with the nation building process. Although developments of Turkish asylum and refugee policies were affected by global events; the current law on asylum presents a more liberal, and humanitarian perspective compared to past legislation.

This chapter will not compare and the contrast the Turkish legislation with other legislative mechanisms, rather, it will for portray the major developments in the legislation. Since the 1999 Helsinki Summit, where accession negotiations started, the Europeanization process has affected the improvement of Turkish asylum and refugee policies. The draft law in 2008 on migration and asylum was created to have more harmonized policies with the EU. Moreover, asylum and refugee issues have become one of the crucial debates of Turkey's political and social conjuncture. For this purpose, the impact of Turkey's membership process to the EU over asylum policies is covered in this thesis. It has been observed that there is Europeanization in Turkish asylum policies. The geographical limitation to the 1951 Convention has shaped Turkey's asylum and refugee policies in the current legislation of LFIP. It

¹⁸⁸Official Gazette, *the 1994 Regulation on Procedures and Principles related to Mass Influx and Foreigners arriving in Turkey either as Individuals or in Groups wishing to seek Asylum either from Turkey or requesting Residence Permits with the Intension of seeking Asylum from a Third Country*, no: 94/6169, *The*, No. 22127, (accessed 20 January 2017)

brought a new status for refugee protection and will be further discussed in the following parts.

4.1 Historical Background of Turkish Migration Policy

The Republic of Turkey has inherited immigration movements from the Ottoman Empire, in which migration was a long tradition. The large numbers of immigration movements to Turkey came from former Ottoman territories.¹⁸⁹ The downfall of the Ottoman Empire at the end of the First World War (WWI) resulted in the separation of Turkish ethnic communities in the Balkans. In the early years of the Republic of Turkey, the founding fathers aimed to generate a homogeneous sense of national identity, so that during the nation building process immigration became a vital area of policy legislation. This philosophy of building a population was affected by the perception of defining a “migrant”¹⁹⁰(*muhacir*). The Turkish government’s cultural and traditional citizenship background remained from the Ottoman Empire on the status determination of asylum seekers.¹⁹¹ 1.676,819 million Bulgarians, Greeks, Romanians, Bosnians, Yugoslavians and others from the Balkans immigrated to Turkey between 1923 and 1997.¹⁹² Therefore, immigration from Balkans constituted a crucial part of immigration in the history of the Republic of Turkey. So, the settlement and resettlement of migrants have been shaped accordingly.

The nation-building process of the Republic of Turkey, which led the voluntary and involuntary population exchange from Greece and Bulgaria motivated migration to shape the Turkish population. The Lausanne Treaty involved a compulsory population exchange between Turkey and Greece. According to this exchange,

¹⁸⁹ Dilek Latif, *Refugee Policy of the Turkish Republic*, (The Turkish Yearbook, 2002), 6

¹⁹⁰ In the Turkish legislation, the term of migrant, refugee and asylum seeker has been used interchangeably, which makes diffusion with the international law on asylum.

¹⁹¹ Ahmet İçduygu, and Kemal Kirişci, *Land of Diverse Migrations*. (Istanbul: Bilgi University Press. 2009), 327

¹⁹² Ahmet İçduygu and Deniz Sert “The Changing Waves of Migration from the Balkans to Turkey: A Historical Account” Chapter: Migration in the Southern Balkans, Part of the series *IMISCOE Research Series*, (2015): 85-104

360,000 Muslims were accepted into Turkey from Greece.¹⁹³ The voluntary settlement of Turkish minorities from Bulgaria to Turkey was regulated for the purpose of population building.¹⁹⁴ Settlement of people was based on the idea of coming from Turkish descent and culture¹⁹⁵(*Türk soyu ve kültürü*). This governing of immigration was constituted in the legislation under the 1943 Law on Settlement (no2510). Therefore, this was the beginning of the main ideology of Turkish legislation on asylum matter because the definition of an immigrant was stated in the Law on Settlement as people who come from Turkish descent or culture. Thus, people coming from former Turkish territories had a right to enjoy protection.¹⁹⁶ In other words, this Law enabled only the settlement of people who only fit the criteria. At this point, the Turkish legislation would not make any differentiation between the terms of migrant and refugee. In short, immigration and asylum policies were considered as a component of building the Turkish nation-state.

Kirişci defines refugee movements of ethnic Turks coming from Bulgaria as “national refugees” who sought protection in Turkey after the suppressive government regime in 1985. They were not accepted as refugees, rather they were mostly accepted as migrants.¹⁹⁷ Migration movements from the Balkans were welcomed because it was believed that refugees or migrants from the Balkan region would be integrated into Turkish society much easier than other migrants from other

¹⁹³ Renee Hirschon, *Crossing the Aegean: An Appraisal of the 1923 Compulsory Population Exchange Between Greece and Turkey*, Oxford: Berghan, 2003, p.34

¹⁹⁴ İçduygu, A. and et.all (2015), op.cit. p.92

¹⁹⁵ In the Law of the Settlement (1926) defined who can or cannot be accepted as immigrant of refugee in accordance with belonging to Turkish descent and culture. Pomaks, Bosnians, Tatars are deemed as bounded to Turkish culture as well as the applications from Albania. The Law on Settlement (1934) promoted settlement of people based on the cultural and ethnic homogeneity. Communities in the Balkans and Caucasus have also benefited from this policy since Georgian Muslims, Lezgis, Chechens, Circassians, Abkhazians, and other Muslims who are deemed as bounded to Turkish culture. Foreign Kurds, Arabs, Albanians; other Muslims who speak languages other than Turkish and all foreign Christians and Jews were not accepted as to be found by Turkish decent and culture.

¹⁹⁶ İçduygu, A. and et.all (2015), op.cit. p.97

¹⁹⁷ Kemal Kirişci, “Refugee Movements and Turkey”, *International Migration*, 29, no.4 (1991), p. 545-560

regions.¹⁹⁸ Bulgarian nationals were accepted on the basis of possessing Turkish descent and culture. Many of them were integrated into Turkey. As a result of the economic, political, social, and cultural conditions, the migratory movements of ethnic Turks from the Yugoslavian regions during the early years of the Republic were accepted for the purpose of shaping the population in terms of religious and ethnic ties.¹⁹⁹ Speaking Turkish and having the Muslim faith had become prior preferences of issuing immigration investigation to become settled migrant in Turkey.²⁰⁰

4.2 Refugee Movements to Turkey and Asylum and Refugee Policy Development

The 1934 Settlement Law was the only official source of the processing status of migrants and refugees until the adoption of the 1951 Convention in Turkey. Although Turkey did not have a Refugee Status Determination (RSD) procedure, this did not prevent asylum seekers from seeking protection in Turkey during the early years of the Republic.²⁰¹ By the end of WWI, the emergence of authoritarian regimes were introduced in Central Europe, and anti-Semitism became an important additional factor for refugee movements.²⁰² Aside from the Turkish and Muslim communities of the Balkans, many Jewish people who were fleeing Nazi persecution in Germany and Austria arrived in Turkey in order to seek protection in the 1930s. Several well-educated people from the Jewish population sought asylum in Turkey between 1933 and 1945.²⁰³

¹⁹⁸ Kemal Kirişçi, “Disaggregating Turkish Citizenship and Immigration Policies”, *Middle Eastern Studies*, 36, No.3: (2000b), p. 3

¹⁹⁹ Latif, D. (2002), op.cit., p.7

²⁰⁰ Başak Kale, “The EU’s Transformative Power in Changing Migration Policy: Discourses and Implications on Migration Management in Turkey”. *Les Migraciones Internacionales en el Mediterraneo y Union Europa*. Chapter 2, (2009):47-72

²⁰¹ Ibid,

²⁰² Latif, *Refugee Policy of the Turkish Republic*, 7

²⁰³ Ibid.

As it is stated in Chapter 2, the 1951 Convention was influenced by this Cold War environment. The conjuncture of the Cold War led to an anti-Communist foreign policy of the Western governments, which influenced the determination of refugee status to people who were coming from the Soviet Union and Eastern Europe. Turkey was inevitably affected by the ideological divisions within the region. Turkey chose its side with the Western allies (NATO) and joined international organizations (UN). Turkey signed the 1951 Convention with the time and geographical limitation (with the 1967 Protocol, Turkey agreed to remove the time limitation, but kept the geographical limitation). People coming from Eastern Europe were accepted as “Convention refugees”.²⁰⁴ Therefore, it was expected that there were asylum seekers who fled from communism in Eastern Europe and the Soviet Union in Turkey. Turkey experienced refugee movements from Bulgaria, Yugoslavia, and Romania as a result of the Cold War context.²⁰⁵ Changing political structure in the neighboring countries led Turkey to become geographically critical. Turkey served as a transit gateway for refugees coming from the Communist Bloc and facilitated refugee flows to Western European countries.²⁰⁶ In the meantime, Turkey became concerned about being a buffer zone between the Western countries and the Soviet Bloc.

By the end of the Cold War, the conflict between states turned into the conflict within states. Many ethnic, religious and civilian conflicts created refugees and internally displaced people in the world. Turkey’s geographical position was attractive to pull the flow of refugees from poor, economically and politically unstable countries from the less developed countries of the Middle East, Africa, and Asia in the post-Cold War era. For a long time, Turkey was considered as a country of emigration, but this view started to change by the late 1980s as Turkey turned into

²⁰⁴ Kirişçi, *Refugee Movements and Turkey*, 545-560

²⁰⁵ Celia Mannaert, “Irregular Migration and Asylum in Turkey”, *New Issues in Refugee Research Evaluation and Policy Analysis Unit United Nations High Commissioner for Refugees*. Working Paper, no. 89. (2003)

²⁰⁶ Kale, *The EU’s Transformative Power in Changing Migration Policy*

a country of immigration, transit, and asylum.²⁰⁷ Turkey has been attractive for asylum seekers from Bosnia, Iran, Iraq, Afghanistan, Pakistan, Somalia, and Syria. In each case Turkey was hosting different types of migrants, asylum seekers, refugees, and transit migrants.²⁰⁸ Turkey received increasing numbers of asylum seekers and refugees due to its geographical location as a bridge between the continents of Asia and Europe, which is a major transit route for migrants.²⁰⁹ Not only because of its geographical location, but also for historical reasons inherited from their Ottoman legacy and local political instabilities, especially conflicts in the Middle East, Turkey became a major gateway for refugees from Iran, Iraq, and Syria.

Turkey has accepted the terms of the 1951 Convention for refugees who has fled from his/her country of origin by having the well-founded fear of being persecuted for reasons of race, religion, nationality, or membership of particular social or political groups in Europe as a result of events prior to 1951.²¹⁰ With 1967 the Protocol to the 1951 Convention, Turkey agreed to remove the time limitation, but kept the geographical limitation because it had concerns of having mass movements of refugees. Therefore, in the Turkish refugee system the difference between “European asylum refugees” and “non-European asylum refugees” evolved. In other words, only people fleeing from Europe could apply for refugee status from Turkey. The non-European asylum seekers could also apply for refugee status in Turkey, but they would not be able to get it from Turkey.

²⁰⁷ Kemal Kirişci, “Turkey: A Transformation from Emigration to Immigration”. *Migration Policy Institute*, (2003), <http://www.migrationpolicy.org/article/turkey-transformation-emigration-immigration> (accessed: Nov.3 2016)

²⁰⁸ Ahmet İçduygu, "The Irregular Immigration Corridor between the EU and Turkey: Is it Possible to Block it with a Readmission Agreement?" *EU-US Immigration Systems, European University Institute*, (2011):14

²⁰⁹ *Ibid*, p. 16

²¹⁰ Kirişci, K. (1991), *op.cit.*, p. 545-560

4.2.1 Mass Movement of Refugees in Turkey and Turkish Legislation Development

Turkey experienced large numbers of refugees within a short period of a time, which was described as a “mass influx” of refugee movements. As Kirişci states, Turkey experienced an “international refugee or non-Convention refugee” movement from geographically outside of Europe, especially from the neighboring Middle Eastern countries.²¹¹ After the regime change in Iran in 1979, Turkey adopted a policy which enabled Iranians to enter the country without a visa and approximately 1.5 million Iranians were permitted to stay in the country temporarily between 1980 and 1991.²¹² The UNHCR examined their cases and the majority of Iranian refugees accessed resettlement to third countries such as Canada, USA etc.

After the war between Iraq and Iran in 1988 almost 60.000 Iraqi Kurds sought asylum in Turkey and it was decided by the Turkish government to open the border due to the humanitarian dimension of an international norm.²¹³ Large movements of refugees continued to come from Iraq as a result of the Gulf War in 1991. 7,489 Iraqi citizens including foreigners sought protection in Turkey between August 1990 and 2 April 1991.²¹⁴ The refugee movement continued to take place after the Gulf crisis, when Iraq was forced out of Kuwait. Kurds and Shiites rebelled against the Saddam regime, however, they were not successful and as a result, Northern Iraqi Kurds fled to Turkey. There were half a million refugees who needed protection. The Turkish government did not officially categorize them as refugees, but provided them temporary asylum.²¹⁵ Turkey did not want to host Iraqi refugees permanently and

²¹¹ Kirişci, *Refugee Movements and Turkey*, 545-560

²¹² Kemal Kirişci. “Disaggregating Turkish Citizenship and immigration Practices”, *Middle Eastern Studies*, 36, no. 3: (2000)

²¹³ UNHCR, *Country Profiles*, 1

²¹⁴ Kemal Kirişci, “Refuge Movements and Turkey in the Post Second World War Era”, *Boğaziçi University Research Papers*, ISS/POLS 95-01, İstanbul, Boğaziçi University, (1995): 35

²¹⁵ Kemal Kirişci, “Refugee Movements and Turkey”, *International Migration*, 29, no.4 (1991), 545-560

therefore managed to adopt a UN Security Council resolution. This resolution provided the repatriation of Iraqi refugees from Turkey with the international community in the creation of a “safe zone” in northern Iraq after the UN Coalition.²¹⁶

The flow of Kurds into Turkey was perceived as a threat to national security.²¹⁷ The security concerns reached a peak because it was thought that asylum seekers were militants of the Kurdistan Workers’ Party (PKK) trying to enter Turkey from Northern Iraq.²¹⁸ The Turkish government called Iraqi refugees “temporary guests”, “asylum seekers”, or “Peshmerga” because the large Iraqi refugee movement coincided with the climax of ongoing PKK activities in Turkey. Therefore, security concerns have rose during the Kurdish refugee movements from Iraq in 1988 and 1991.²¹⁹ Turkey showed hesitation to name their status as refugees. Such security concerns led Turkey to shut down its borders and to announce that military intervention would be used if necessary to stop the refugee flow. The Iraqi refugee crisis led Turkish authorities to seek stricter securitization procedures and practices for coping with and managing asylum applications.²²⁰ This tendency to link national security with Iraqi refugees created tension between Turkey and international community. Turkey did not want refugees coming from northern Iraq by alleging northern Iraq was safe. Turkey’s deportation of those people was considered to be a breach of the *non-refoulement* principle by refugee organizations as well as Western governments.

As previously stated, Turkey did not have any specific provisions for refugee status determination in the legislation, which was shaped by the 1951 Convention. The

²¹⁶ Latif, *Refugee Policy of the Turkish Republic*, 15

²¹⁷ Latif, *Refugee Policy of the Turkish Republic*, 15

²¹⁸ Kemal Kirişci, “Turkey’s New Draft Law on Asylum: What to Make of it? Turkey, Migration and the EU, *Hamburg University Press*, 5, (2011): 79

²¹⁹ Ibid,

²²⁰ Kemal Kirişci, “The Question of Asylum and Illegal Migration in European Union-Turkish Relations”, *Turkish Studies*, 4, no.1, (2002): 85

1994 Asylum Regulation can be accepted as the first piece of Turkish legislation to determine mass refugee movements, manage refugees coming to Turkey from the Middle East, and to handle the refugee determination status from the UNHCR.²²¹ This was the first provision in Turkish legislation for asylum seekers coming from outside of Europe. In the meantime, the EU Member States were regulating restrictive policies over asylum matters as stated in Chapter 2 and Chapter 3. This Asylum Regulation was drafted after the Iraqi refugee crisis of 1991 under national security concerns and very strict regulations were applied on governing asylum application. The Asylum Regulation was enforced to regulate irregular migrants and asylum seekers in Turkey. Therefore, liberalization on asylum and refugee policies was not realized and it was thought that the rights of asylum seekers and refugees were underestimated.²²² This Asylum Regulation led to the processing of refugee status determination under the control of the Turkish government.

There were mass refugee movements from the Balkan region to Turkey. The ethnic conflicts resulted in many people fleeing from their countries and seeking asylum. As a result of the war between Bosnia-Herzegovina, about 2 million people fled to seek protection and became IDP. There were approximately 25,000 Bosnian refugees who came to Turkey because of the war in former Yugoslavia between 1992 and 1994. The refugee influx from the Balkans continued in 1999, when 8,300 refugees from Kosovo came to Turkey and registered into camps. In total 18,000 refugees were granted temporary protection after the outbreak of the Kosovo crisis.²²³ It seemed that acceptance from Balkan countries was much easier compared to Iraqi refugees in terms of security concerns because of close historical and cultural ties with the Balkans.²²⁴

²²¹ Kemal Kirişci, "Refugee Movements and Turkey", *International Migration*, 29, no.4, (1991): 545-559

²²² Kirişci, Turkey's New Draft Law on Asylum, 65

²²³ Country Operation Turkey at Glance, *UNHCR Global Report*, 1999, <http://www.unhcr.org/3e2d4d681c.pdf> (accessed Jan.4, 2017)

²²⁴ Mannaert, Irregular Migration and Asylum in Turkey

Turkey's practices on refugee status were driven by the 1951 Convention and were built into the 1994 Asylum Regulation, which indicated procedures applicable to refugees. It was the first attempt at national legislation formation and policy building. There was a distinction between the terms of "refugee" and "asylum seeker" according to the 1994 Asylum Regulation with regard to international law. In that respect, a "refugee" (*mülteci*) is defined as a foreigner (*yabancı*) who has a well-founded fear in terms of being persecuted due to his/her religion, nationality, ethnicity, political opinion or being a member of a particular social group and fleeing from persecution in Europe. Similarly, an "asylum seeker" (*sığınmacı*) is defined in the Asylum Regulation as a foreigner (*yabancı*) seeking asylum with the same purpose as a refugee but coming from the regions outside Europe.²²⁵ Generally speaking, in the context of international law, when an asylum seeker applies for refugee status, an RSD search is conducted to define whether the applicant possesses refugee status or not. If the asylum seeker is granted as a refugee, permanent settlement in the host country is provided. In international refugee law, the asylum procedure is transformed into refugee status using temporary protection. In Turkey, only asylum seekers coming from Europe can get an actual refugee status. For non-European asylum seekers, if they are granted refugee criteria, Turkey resettles them to third countries through the assistance of UNHCR. Until their resettlement to the third country, Turkey provides temporary protection. Turkey respects the *non-refoulement principle* of 1951 Convention, and cannot send back asylum seekers to a country in which they can be persecuted.

The 1994 Asylum Regulation was accepted as a cornerstone for the institutionalization of some norms on the implementation of asylum rules. However, this Regulation was criticized by Western governments and international human rights advocacy groups in terms of Turkey's undermining of the rights of asylum seekers. From the experiences of the return of Iraqi people by the Turkish government, Turkey was criticized for denying their refugee status. Besides, Turkey

²²⁵ Official Gazette of the Turkish Republic (T.C. Resmi Gazete) (1994), Bylaw, Art. 3

was criticized for depriving refugees of asylum procedures and disregarding the *non-refoulement* principle.²²⁶ The deportation problem of refugees was also occurred because of the strict ruling of time to asylum applications. The Regulation gave five days to asylum seekers to apply for protection when they arrived in Turkey. The applications were refused when they exceeded this time frame. In this case, asylum seekers would face deportation. Moreover, a two-tiered status determination system was creating conflicting situations between the UNHCR and the Turkish government simply because that one asylum seeker could be accepted under international protection, and at the same time the same asylum seeker could be asked to be deported.²²⁷

A number of reforms on the liberalization period of Turkish asylum policies were done in the late 1990s. Judicial developments were taken to extend the five day' limit to ten days. In addition, several officials such as judges, prosecutors, gendarmes and police began to be trained in refugee law, international protection, and etc. by the UNHCR. The close cooperation with NGOs such as the Turkish branch of Amnesty International and the International Catholic Migration Commission were provided by the Turkish government. The first Turkish NGO specializing in asylum matters, the Association for Solidarity with Asylum Seekers and Migrants (ASAM) was established in 1995. One can see that the human rights dimension of asylum policies was stimulated in Turkey. Moreover, the positive effects of the ECtHR decisions became visible on the government's side in their application of the *non-refoulement* principle. The further improvements continued with the EU's role in the process of transformation. In 2006, the Implementation Circular (*Genelge*) was approved by the Ministry of Interior and it changed the time limits of the application into "appropriate time" (*makul bir zaman*).²²⁸ This opened the way for further liberalization in the legislation.

²²⁶ Kirişçi, Turkey's New Draft Law on Asylum, 71

²²⁷ Ibid.,70

²²⁸ 2006 Asylum Circular, 22.06.2006, Circular No: 57 Regarding the Procedures and Principles to Be Applied When Implementing the 1994 Regulation on Asylum by The Ministry of Interior

4.3 Europeanization of Turkish Asylum Policies

European integration impacts cause changes in the domestic policies of both the Member States and candidate countries. Some scholars argue that this transformation can be described as Europeanization where policy changes occur as an outcome within the countries exposed to this influence at almost all levels. Europeanization has a larger impact on European integration and governance by creating a culture as a way of doing things.²²⁹ Transformation can be seen at the legislative, institutional, and political, and policy structures reflect the adaptation of European norms, standards, principles to deepen political, social and economic integration at the domestic level.²³⁰ That is to say, Europeanization is a way of thinking, regulating, applying and managing within a European set of rules that includes EU citizens, institutions, and the Member States. Europeanization also has an inevitable influence on prospective candidate countries through EU's membership. The adoption of the EU *acquis* brings harmonization and transformation of domestic law, institutions, and policies in candidate countries. Turkey as a candidate country was not immune from this process.

Research on Turkey's Europeanization process started with the official declaration of Turkish candidacy for membership during the Helsinki Summit in 1999, which launched the process of pre-accession including a transitional period of adopting the EU *acquis* and harmonizing domestic policies. The pre-accession process was followed by the launch of the opening accession negotiations with Turkey at the Brussels Summit on 16-17 December 2004.²³¹ This process further enhanced harmonization of domestic policies and transformation of Turkish legislation in line with the EU *acquis*. Turkey's developments on harmonization and adaptation with the EU *acquis* are crucial for the EU. As stated in Chapter 2, asylum and irregular

²²⁹ Claudio M. Radaelli, "Whither Europeanization? Concept Stretching and Substantive Change" *European Integration Online Papers*, 4, no.8 (2000)

²³⁰ Kale, The EU's Transformative Power in Changing Migration Policy

²³¹ Ministry of Foreign Affairs, *TR-EU Relations in General*, <http://www.mfa.gov.tr/relations-between-turkey-and-the-european-union.en.mfa> (accessed: Sept 28, 2016)

migration have become one of the crucial policy areas within the Union, so they have tried to build a common mechanism to control unwanted movements of refugees. It was previously discussed in this chapter Turkey has become a country of asylum and a transit for many refugees and migrants, which makes Turkey a crucial partner to cooperate with. On the other hand, efforts to become compatible with the EU legislation on asylum enhanced Turkey's capacity and the legislation. Therefore, migration and asylum policies became crucial in Europeanization.

The development of Turkish asylum legislation, policies and procedures were positively affected by Turkey's membership process to the Union.²³² During this period, border management, migration, and asylum became increasingly crucial areas of concern between the EU and Turkey. The EU encouraged Turkey to enhance its capacity on sheltering asylum seekers and refugees, to establish a civilian migration institution, to harmonize its visa policy with the Schengen visa regime, to sign a readmission agreement, and to control its borders more effectively.²³³ Moreover, regarding asylum, the EU expected Turkey to fulfill the tasks of being the first country of asylum and a safe third country for refugees, lifting its geographical limitation per the 1951 Convention to process asylum seekers' application, and granting permission to stay those who were granted as refugee status.

A clear impact of the EU can be seen on the development of Turkish asylum and refugee policies.²³⁴ Since the late 1990s, Turkey's relations with the EU have been accelerated and several reforms on refugee protection have been taken. Later on, after the accession negotiations started, Turkey developed its immigration and asylum policies in line with the EU legislation. The EU Commission issued the first Accession Partnership (AP) Document in 2000, stating a pathway to satisfaction of the main priority areas, which were underlined in the Copenhagen criteria as short, medium and long-term targets. Within the scope of the JHA, in terms of immigration

²³² Kirişçi 2002: 10, Kale 2005, İçduygu 2011: 14

²³³ Kale, The EU's Transformative Power in Changing Migration Policy, 66

²³⁴ Ministry for EU Affairs, *Interview*, 30.11.2016

and asylum issues, the AP included adopting and implementing the EU *acquis* and practices on border management, visa legislation, and immigration policies on admission, readmission, and expulsion to prevent illegal migrations and to lift the geographical limitation to the 1951 Convention.²³⁵ In 2001, Turkey adopted the National Program for the Adoption of the Acquis (NPAA) to address the issues raised in the AP. The commitments to the goals under the JHA heading were maintained with the exception of lifting the geographical limitation.²³⁶ With the AP, the role of the EU has become more visible on Turkey's asylum policies via "rule adopting" which implied that Turkey would develop its institutional, legislative and structural capacity. The goals stated in the 2000 AP were revised three times by the European Commission in 2003, 2006 and 2008. Accordingly, Turkey adopted legislative changes concerning asylum, border control, visa legislation and irregular migration in the following national programs: The National Action Plan on Asylum and Migration (NAP) and the National Action Plan towards the Implementation of Turkey's Border Management Strategy.²³⁷

Turkey had a liberal visa regime to several countries in the Middle East and Caucasus. With the adoption of the Schengen *acquis* criteria, there was a priority to be fulfilled by the candidate countries in order to have strict border controls. For this purpose, the EU and Turkey cooperated on border management in terms of Turkey's visa policy with its neighbors. Turkey was expected to rearrange its visa policy according to the EU legislation considering the Schengen visa principles by adopting the Schengen *acquis*, abolishing visa-free travel for some countries and the usage of sticker visas at border control points.²³⁸

²³⁵ Accession Partnership 2000 by the European Commission http://www.ab.gov.tr/files/AB_Iliskileri/Tur_En_Realitons/Apd/Turkey_APD_2001.pdf

²³⁶ Ministry of the EU Affairs, *National Program for the Adoption of the Acquis*, Official Gazette, March 24, 2001 No. 24352, <http://www.ab.gov.tr/index.php?p=58&l=2> (accessed Sept.3, 2016)

²³⁷ National Program for the Adoption of the Acquis, https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/turkey/ipa/tr_07_02_15_integrated_border_mgt_ph_en.pdf (accessed Dec.23, 2016)

²³⁸ Vukašinovic, *Illegal Migration in Turkey-EU Relations*, 157

In the 2003 NPAA, Turkey stated that the visa requirements for six Gulf countries (Bahrain, Qatar, Kuwait, Oman, Saudi Arabia and the United Arab Emirates) were regulated according to the EU requirements. In addition, NPAA declared that Turkey has been listed for visa requirement for thirteen countries (Indonesia, Republic of South Africa, Kenya, Bahamas, Maldives, Barbados, Seychelles, Jamaica, Belize, Fiji, Mauritius, Grenada and Santa Lucia).²³⁹ In addition, the determination of visa requirements to third countries could be varied from country to country depending on the irregular immigration flows, public policy, and security. In this respect, there was a clash between Turkish foreign policy and the EU in terms of former foreign minister's "zero problems with the neighbors" policy, which was created to increase trade, economic and cultural relations. Therefore, Turkey abolished visa-free policy with Syria, Jordan, and Saudi Arabia. For the case of Syria, Turkey lifted its visa-free program on 8th of January 2016. Syrian citizens holding an ordinary and official passport for their entry through air and sea routes now had to get a proper visa. Syrian nationals who enter Turkey via Turkey-Syria land border gates are exempt from visa in terms of humanitarian concerns.²⁴⁰

Considering Turkey as a migrant transit, sending, receiving and candidate country for EU accession, it was requested to contribute EU's measurements on preventing irregular migration. Managing Turkey's borders is crucial both for Turkey and the EU because Turkey has 13 points of entry in total with neighbouring countries and 10 more on the Aegean and Mediterranean coasts,²⁴¹ which makes Turkey easily accessible for refugees trying to reach Europe. DGMM Director Atilla Toros stated that the irregular migration routes across Turkey have a critical geographical setting. Turkey is a natural bridge and exposed to irregular migration because of economic

²³⁹ National Program for the Adoption of the Acquis, 2001 by Turkish Republic, can be find at Ministry for EU Affairs <http://www.ab.gov.tr/index.php?p=196&l=2>

²⁴⁰ Ministry of Foreign Affairs, "Visa Regulation Update for Syrian Citizens", December 12, 2015 <http://kuwait.emb.mfa.gov.tr/ShowAnnouncement.aspx?ID=247840>, (accessed Jan.21, 2017)

²⁴¹ Catherine Macmillan, *Europeanisation and Migration and Asylum Policies in Turkey*, Chp.12 Turkey and the European Union: Processes of Europeanisation, (Burlington, VT: Ashgate, 2012): 251

and political turmoil in the region. 58,000 and 146,000 irregular migrants were apprehended by Turkish authorities in 2014 and 2015 respectively.²⁴² In 2015 it was calculated that 850,000 irregular migrants arrived from Turkey to Greece through sea roads, the number decreased to 126,166 irregular migrants in 2016. 91,611 of them were apprehended by Turkish coast guards in 2015. He further stated that this irregular passage turned the Mediterranean Sea into a graveyard. In 2015, 20-25 thousand irregular migrants lost their lives.²⁴³

Moreover, irregular immigration has become correlated with asylum policies because of its inevitable nature as a result of refusing the application of an asylum seeker. When a failed asylum seeker does not want to return to his/her country of origin, he/she may seek irregular ways to exit Turkey and enter EU territories. In this way, irregular immigration becomes closely related to asylum and refugee matters. Therefore, Turkey has always been expected to harmonize its migration laws with the EU *acquis*, and to have stricter border controls for the sake of decreasing irregular immigration to the EU. Since there has been an increase of asylum seekers and refugees searching for better living conditions in the EU reaching through irregular entries from Turkey, Turkish asylum policies have become the subject of the major concern for the Union. Reflecting EU standards on asylum has become one of the major topics during Turkey's accession negotiations.²⁴⁴

Turkey has gradually developed its asylum and immigration policies since 2003 with the renewal of the AP and for the harmonization of Turkish domestic law with the EU *acquis*, the Asylum-Migration Twinning Project (TR02-JH-03) under cooperation with Denmark and England was implemented in 2004. With this initiative, the NAP was adopted and the 9th Development Plan (2007-2013) aimed to establish an independent Immigration and Asylum Institution for the sake of setting

²⁴² Speech by Atilla Toros, http://www.goc.gov.tr/icerik/genel-mudurumuz-sayin-atilla-toros-cenevrede-konusma-yapti_359_8898

²⁴³ Ibid.

²⁴⁴ Ahmet İçduygu, "Europe, Turkey and International Migration: An Uneasy Negotiation", *Robert Schuman Centre for Advanced Studies, European University Institute (EUI)*, (2011)

legal and institutional mechanisms on shelter and return centers on the borders while combating irregular immigration.²⁴⁵

Turkey's Europeanization process has not been one-sided, in other words, the EU has the intention to cooperate with Turkey in terms of asylum policies. The EU's externalization of asylum policies includes close relations with third and candidate countries. According to Frontex, Turkey was considered one of the main transit countries for irregular access for asylum seekers and refugees to the EU; therefore, cooperation with Turkey is emphasized more than ever before. Turkey's efforts on border management to prevent irregular movements of refugees have often been criticized through several legal documents of the EU. For example, in the first official document, the Commission Communication Paper, on Turkey's progress to the accession in 2004, it was stated that closer cooperation on asylum was needed for further managing the EU's external borders.²⁴⁶ This document was important for showing the asylum policies as an integral part of accession negotiations in the eyes of the EU where the EU's primary concerns on securing and managing its external borders were stated.

In 2005, Turkey's Action Plan on Asylum and Migration was followed by the Implementation Directive of 2006 as "law on asylum". In this Directive, the asylum practices were regulated by a number of pieces of legislation linked to the Law No. 2510 on Settlement, Law No. 5683 on Residence and Travel of Foreigners in Turkey, the Passport Law No. 5682, and Law No. 4817 on Work Permits of Aliens, and by the Bylaw on No. 6169 of 1994. Turkey's Progress Report, published in 2007, further suggested that Turkey should provide institutional and technical improvement

²⁴⁵ T.C Prime Ministry State Planning Organization, *Ninth Development Plan 2007-2013*, <https://www.maliye.gov.tr/Lists/TabMenuIcerik/Attachments/106/9developmentplan.pdf> (accessed: Nov 11, 2016)

²⁴⁶ Communication from the Commission to the Council and the European Parliament - Recommendation of the European Commission on Turkey's progress towards accession, COM/2004/0656 final available at EURLEX: http://eurlex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=504DC0656 (accessed Nov.27, 2016)

under a single institutional body to regulate its migration and asylum affairs.²⁴⁷ Reducing irregular migration was enhanced in the 2008 National Action Plan.²⁴⁸ The plan foresaw the approval of roadmap on Turkey's Action Plan on Asylum and Migration to develop its institutional capacity, and harmonization of Turkish legislation with the EU *acquis*. Europeanization led to observable legal and institutional initiations after 2009, which is discussed in the following chapter.

In the case of lifting geographical limitation, Turkey proclaimed that the limitation can be removed in the accession process “on the condition that it should not encourage large-scale refugee inflows to Turkey from the East” and burden sharing would be provided by EU Member States.²⁴⁹ Turkey had some hesitations that the EU would not take its membership process to the Union seriously, caused by Member State's (France and Cyprus) veto to Chapter 24 in 2007; in which the screening process dealing with asylum was completed. However, the EU could not adopt the screening report, which repetitive encompassed asylum. Moreover, Turkey feared to become the first country of asylum responsible for status determination and a safe third country of the first asylum due to the lack of burden sharing mechanisms in the current EU *acquis*. It is thought that lifting the geographical limitation would make Turkey a possible target country for the EU's unwanted asylum seekers and refugees. According to Kirişci, the fear of becoming a buffer zone is also aggravated by Turkish officials' perception of a growing tendency in the EU to externalize its asylum policies and its efforts to create a “fortress to Europe”.²⁵⁰ With a readmission agreement, the EU will have the opportunity to return unwanted refugees and shift their responsibilities of processing asylum applications to Turkey.

²⁴⁷ Communication from The Commission to The European Parliament and The Council, *Turkey 2007 Progress Report, Enlargement Strategy and Main Challenges 2007-2008*, November 6, 2007,663, http://www.ab.gov.tr/files/AB_Iliskileri/Tur_En_Realitons/Progress/turkey_progress_report_2007.pdf (accessed: Dec.27, 2016)

²⁴⁸ Ministry for EU Affairs, 2008 NPAA National Program of Turkey for the Adoption of the EU Acquis, <http://www.ab.gov.tr/index.php?p=42260&l=2> (accessed: Dec.17, 2016)

²⁴⁹ Turkish Republic, *National Program for the Adoption of the Acquis*, 2003 by can be find at <http://www.ab.gov.tr/index.php?p=196&l=2>

²⁵⁰ Kirişci, Turkey's New Draft Law on Asylum, 75

4.4 A New Era on Turkey's Migration and Asylum Policies with the Law on Foreigners and International Protection

A new Bureau of the Development and Implementation of the Legislation on Asylum and Migration and Administrative Capacity under the Ministry of Interior was established in 2008. The preparation of a new Draft Law on migration and asylum was started in 2010, due to the need for a comprehensive and exclusive law on asylum, immigration, and refugee protection in accordance with Turkey's accession process. It was constructed to have several particular legislations focusing on foreigners, passport protection, asylum seekers, refugees and human trafficking. The law was drafted gathering several contributions from academicians, UNHCR Turkey officials, and various NGOs working in the field.²⁵¹ A comprehensive codification of national laws was completed under a single law, which constitutes one of the major achievements of the EU accession dialogue.²⁵² The Council of Ministers approved the Draft Law on 16 January 2012 and it came to the Parliament on 3 May 2012. The Law on Foreigners and International Protection (LFIP) adopted in 2013 reflects the consensus shared by academics, experts and the UNHCR officials, which signifies a major transformation in Turkey's asylum policy. With this regulation, the Directorate General of Migration Management (DGMM) was created under the Ministry of Interior to regulate policies and strategies related to immigration; guarantee coordination between the related agencies and organizations; implement the tasks and procedures related to foreigners' entry into, stay in, exit and removal from Turkey, processing asylum applications, international protection, temporary protection and protection of victims of human trafficking.²⁵³

LFIP has been welcomed by the UNHCR and perceived as showing Turkey's development on international protection and its commitments on humanitarian norms

²⁵¹ Directorate General of Migration Management, *Interview*, 04.01.2017

²⁵² The Ministry for EU Affairs, *Interview*, 30.11.2016

²⁵³ Official Gazette, *Law on Foreigners and International Protection*, 28615, April 10, 2013

and principles.²⁵⁴ The European Commission has further acknowledged that Turkish law on asylum and protection has been incompatible with international and EU law.²⁵⁵ LFIP is additionally crucial on the institutionalization of asylum applications and refugee protection. It handles all asylum claims irrespective of their nationality, race, gender and etc. The LFIP can be considered one of most the crucial steps in Turkish asylum law since the 1994 Asylum Regulation and this process occurred as a result of Turkish desire to become a member of the EU. It does not lift the geographical limitation and argues that Turkey is not obliged to give refugee status to asylum seekers coming to Turkey as a result of events occurring outside Europe.²⁵⁶ Government officials state that Turkey practically does not have geographical limitation. Turkey enhances and extends temporary protection to asylum seekers. In the meantime, Turkey provides protection to over 3 million refugees.²⁵⁷ Therefore, the geographical limitation should be removed in *de jure* too.

As previously states, in Turkish asylum regulations, refugees and asylum seekers were divided into two. Firstly, a refugee is a person coming from European countries who would benefit from refugee status according to the 1951 Convention in Turkey. Secondly, people coming from non-European regions are defined as asylum seekers who seek short, temporary residence in Turkey in order to be resettled to third countries. Its goal is that after the status determination process of non-European refugees, they will to leave the country via resettlement to third countries. In comparison to the 1994 Asylum Regulation, the new Law provides a much more comprehensive and inclusive look at refugee protection. The Law removed the confusion between refugee and asylum seeker and brought a new framework for refugee protection, explained the groups of people who can enjoy protection.

²⁵⁴ UNHCR Press Briefing Notes, *UNHCR welcomes Turkey's New Law on Asylum*, (2013)

²⁵⁵ European Commission, *Report on Progress by Turkey in Fulfilling the Requirements of its Visa Liberalization Roadmap*, (2014), Brussels COM 646 final, 16

²⁵⁶ Official Gazette, *Law on Foreigners and International Protection*, 28615 (2013) p.1-149 Article 61

²⁵⁷ Directorate General of Migration Management, *Interview*, 04.01.2017, *The Ministry for EU Affairs*, 30.11.2016

Moreover, the Law secured the *non-refoulement* principle and underlined the conditions of the asylum process and status determination. The DGMM, under Ministry of Interior, was designed to implement and regulate this asylum process.

The LFIP provides three types of protection categories under international protection “refugees”, “conditional refugees”, and “subsidiary protection”. “Temporary protection” is provided to regulate mass movements of refugees under the other provisions on temporary protection and international protection. Article 61 defines the term refugee with the same definition as the 1951 Convention. Article 62 defines a conditional refugee as simply a refugee from a non-European country, and notes that ‘conditional refugees shall be allowed to reside in Turkey temporarily until they are resettled to a third country’.²⁵⁸ It can be understood that the term asylum seeker from the 1994 Asylum Regulation is dismissed and has been changed to conditional refugees within this new law. Additionally, the word foreigner or alien has changed with regard to person. This choice of wording indicates as that the law is more humanitarian compared to the 1994 Asylum Regulation.

“Subsidiary protection” is new term for Turkish legislation on asylum but had a background from EU and international law as stated in Chapter 2. The subsidiary protection regime constitutes protection for *de facto* refugees, which do not fit the traditional definition of a refugee. Beneficiaries of this protection are not in the scope of the 1951 Convention and the 1967 Protocol, but still have a reasonable fear of being persecuted in the case of a returning back home and still need international protection. The LFIP accepts the *non-refoulement* principle of the 1951 Convention and regulates subsidiary protection under Article 63 by defining conditions for this protection in which the applicant is faced with death penalty or any torture or inhumane treatment or punishment and if there is a serious threat to the person in situations of international and nationwide armed conflict.²⁵⁹ In these circumstances, a foreigner or stateless person can enjoy subsidiary protection in Turkey, but it seems

²⁵⁸ Official Gazette, *Law on Foreigners and International Protection*, Article 62 (2013): 28615, 1-149

²⁵⁹ Official Gazette, *Law on Foreigners and International Protection*, Article 63 (2013) :28615, 1-149

that defining a targeted person who can be evaluated under this principle can be confusing.

The DGMM is responsible for the status determination of all refugees. The refugee status determination process is completed for non-European asylum seeker by the UNHCR and the Turkish government. Both European and non-European asylum seekers have to be registered to Turkish authorities and receive a residence permit. There are 62 satellite cities for refugees to reside.²⁶⁰ For the non-Syrian refugees, the dual system of registration is applied. The Provincial Directorate of Migration Management (PDMM) registers the new asylum seekers and also the Association for Solidarity with Asylum Seekers (ASAM), on behalf of the UNHCR completes their registration. After registration, the international protection applicant status is given with an ID card issued by PDMM. With these ID cards, they can access health services, public schools, and social assistance.²⁶¹ Syrian refugees are under temporary protection. However, it is debatable whether it enables an effective policy on refugee protection to the current Syrian refugee protection crisis, to which this study tries to find an answer. Therefore, the UNHCR themselves are not completing RSD for Syrian refugees. According to the referral list provided by the DGMM, the UNHCR resettles Syrian refugees to Europe, EU Member States, Canada, Austria and the USA. If they are accepted refugees, they will be resettled to third countries. Eventually, non-European refugees are expected to leave Turkey. It has been said that the DGMM will take over the RSD for non-Syrian asylum seekers.²⁶²

This newly established civilian institution and the new law aims at providing harmonization of migration and asylum legislation with the EU *acquis*. This law has

²⁶⁰ Directorate General of Migration Management, *Interview*, 04.01.2017

²⁶¹ European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2016 Communication on EU Enlargement Policy, 9 November 2016, http://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_turkey.pdf (accessed Nov.16, 2016)

²⁶² Directorate General of Migration Management, *Interview*, 04.01.2017

a positive impact on Chapter 24 in terms of migration governing. Unfortunately, Cyprus has frozen six negotiating chapters including Chapter 24 in 2009. It has been thought that if the blockage is lifted, Turkey can move forward in adaptation with the EU *acquis*.²⁶³ The EU Ministry and Atilla Toros²⁶⁴ have tried to explain that Turkey had a lack of asylum policy and needed its own asylum and refugee law. The LFIP was established because there was a lack of a migration, asylum, and refugee policy, and it served to close this legal gap. However, the major misfortune of the DGMM is to come across the troublesome situations during the discussions of readmission agreements and the visa liberalization process and the Syrian refugee movements. The law-making process of the Turkish asylum system has coincided with the readmission and visa liberalization talks, which makes the readmission agreement a political issue. It has also been said that DGMM should have been established earlier. However, it should be considered that the law occurred not just as a response to Syrian refugee protection crisis. In short, the LFIP was created because Turkey needed a national law on asylum and migration. It can be seen as a product of Turkey's accession negotiation process to the EU, to which the ECtHR was an impetus.²⁶⁵

In conclusion, the development of Turkish migration and asylum policies goes back to the early years of the Republic of Turkey. In addition, Turkey has faced several migratory movements from the Balkans, Middle East and Caucasus and has served as a country of immigration, asylum, and transit. For the purpose of nation building, migratory movements were accepted on the condition of being of Turkish descent and culture. Turkey's definition of refugee originates from the international norm constituted in the 1951 Convention which includes a geographical limitation. The first piece of legislation on asylum was created with the 1994 Asylum Regulation to regulate mass refugee movements. This piece of secondary law was built under the

²⁶³ The Ministry for EU Affairs, *Interview*, 30.11.2016

²⁶⁴ Manager in Immigration and Asylum Office, in 2008-2013, Undersecretary of Ministry of Interior. He was assigned as General Director in Directorate General for Migration Management on 09.03.2014

²⁶⁵ The Ministry for EU Affairs, *Interview*, 30.11.2016

securitization policies. There was an inevitable impact of the Europeanization process on Turkish asylum and migration policies since the declaration of the initiation of Turkey's accession negotiation. After years of preparation, the Draft Law was successful in establishing Turkey's first law on migration and asylum, known as LFIP. While doing institutional and legal regulations before having time to implement them, Turkey faced massive refugee movements from Syria and had to develop programs and services for Syrian refugees. In the next chapter, the policies of Turkey regarding mass movement from Syria will be examined. At the same time, how and in what ways the burden sharing principle is implemented between the European Union and Turkey will be examined.

CHAPTER 5

THE BURDEN SHARING DILEMMA AND THE EUROPEAN UNION'S ASYLUM EXTERNALIZATION ON TURKEY: SYRIAN REFUGEE PROTECTION CRISIS

5.1 The European Union's Externalization and Refugee Burden Shifting

As an inevitable consequence of the EU's externalization policies on asylum, Turkey has become a crucial partner. This approach is based on the EU's ambition to cooperate with the country of transit on border management to control irregular movements of asylum seekers. Therefore, the EU-Turkey bilateral Statement and the readmission agreement can be seen as the toolbox of EU asylum policies' externalization on Turkey. This externalization is driven by accepting Turkey as the safe third country and the first country of asylum for refugees. Turkey is a neighboring country of Syria and shoulders most of the burden. On the other hand, the resistance in the admission of Syrian refugees to the EU has demonstrated that the crisis is the actual crisis of protection. This is because of the fact that the immediate need of burden sharing and equal distribution of asylum admissions has not been acknowledged. Increasing hostility towards refugees has made it impossible for the EU to make effective decisions. Humanitarian centered response to the crisis came quite late, 2015 in fact. Thus, closer cooperation with Turkey is necessary. However, there are some problems and unclear provisions in the EU-Turkey Statement. In addition, the main aim of the EU has been centered on letting Turkey close its western borders while keeping the east open. Therefore, the actual practice of burden sharing is not as successful as the need to achieve burden sharing of Syrian refugees between the EU and Turkey. In this chapter, the current discussions of whether Turkey is a safe third country or not are analyzed. In this manner, the Syrian refugee protection crisis is referred to as a case study for the discussions of burden shifting instead of burden sharing. The discussions, conducted by interviews with

people who work in the institutional authorities and representatives of relevant bodies, are included in this chapter.

5.1.1. Syrian Refugee Exodus

In March 2011, Syria was influenced by the Arab Spring movements by people in Middle East and North Africa (MENA) countries.²⁶⁶ The democratic demonstrations of society turned chaotic and ignited a civil war in the country. Syrian citizens began demonstrations for their rightful demand. Assad government responded to the demonstrations by opening fire, which caused increased tensions between the government and the opposition. The demonstrations turned into nationwide protests against the government. The opposition became armed, which resulted in the rise in tension and the start of a civil war which has continued for almost six years.²⁶⁷ In Iraq and Syria, a terrorist organization which emerged from the groups fighting against the regime took advantage of the authority gap in these countries. The terrorist organization first declared itself as the “Islamic State of Iraq and Syria” (ISIS), and then “Islamic State” (IS)²⁶⁸ became one of the main actors in the crisis, especially in 2014, and made the Syrian crisis even more problematic and complicated. It is clear that the ISIS is not the cause but a result of the Syrian crisis. However, ISIS has become the most horrific actor of this crisis. Moreover, the ISIS has changed the priority of the resignation of the Assad regime in eyes of

²⁶⁶ The Arab Spring or Democracy Spring was revolutionary movements of people expressing in violent and non-violent demonstrations, protests, and riots against to bring down the ruling regime in the MENA region. The first movement started with Tunisian Revolution on 17 December 2010. Major insurgencies and civil wars happened in Iraq, Libya and Yemen along with civil arising in Bahrain, Egypt. There were large street demonstrations in Algeria, Iran, Lebanon, Kuwait Morocco, Oman and Sudan. There were minor protests in Djibouti, Mauritania, the Palestinian territories, Saudi Arabia, Somalia and the Western Sahara.

²⁶⁷ Syria: The Story of the Conflict, *BBC News*, March 11, 2016 <http://www.bbc.com/news/world-middle-east-26116868> (accessed: Dec. 17, 2016)

²⁶⁸ The Islamic State of Iraq and the Levant (ISIL), also known as the Islamic State of Iraq and Syria (ISIS) and Islamic State (IS), and by its Arabic language acronym Daesh.

international public opinion.²⁶⁹ In this war, it is important to note that Syria has become the scene for proxy wars between the allies of the west.

Since the civil war started in Syria, 386,000 people including civilians were killed. The killing of 14,000 children needs to be separately mentioned.²⁷⁰ The number of deaths was estimated at 250,000 by 2015. Approximately half of the Syria's 22 million population became either displaced or become refugees. More than 4,9 million Syrian refugees seek protection in neighboring countries such as Turkey, Lebanon, Jordan, Egypt, and Iraq, and 6.6 million Syrians have become internally displaced. According to the Humanitarian Response to Syria²⁷¹ report published on 29th December 2015 by the UN Office for the Coordination of Humanitarian Affairs, it was estimated that there are 13.5 million people in the country, including 6 million children, who are in need of humanitarian assistance and protection.²⁷² These numbers clearly show the size of the devastation in Syria. From this point, it has become a humanitarian issue in terms of international law.

The issue of Syrian refugees in Turkey has become a matter of internal and external politics²⁷³, besides being a humanitarian crisis. Turkish politicians have found

²⁶⁹ M. Murat Erdoğan, *Syrians in Turkey, Social Acceptance and Integration*, İstanbul: Bilgi University, 2015

²⁷⁰ Syrian refugee crisis FAQ: What you need to know, *World Vision*, Updated December 22, 2016 <https://www.worldvision.org/refugees-news-stories/syria-refugee-crisis-faq-war-affecting-children> (accessed Jan. 22, 2017)

²⁷¹ According to report; 11.5 million Syrians require health care, 13.5 million need protection support and 12.1 million require water and sanitation, while 5.7 million children need education support, including 2.7 million who are out of school in Syria and across the region. About 2.48 million people are food insecure, while more than 1.5 million need shelter and household goods. Syria's development situation has regressed almost by four decades. Four out of five Syrians now live in poverty. Since the crisis began in 2011, life expectancy among Syrians has dropped by more than 20 years, while school attendance has dropped over 50 per cent, with more than 2 million children now out of school. Syria has also seen reversals in all 12 Millennium Development Goal indicators. The Syrian economy has contracted by an estimated 40 per cent since 2011, leading to the majority of Syrians losing their livelihoods. <https://www.humanitarianresponse.info/en/node/117522> (accessed Dec. 5, 2016)

²⁷² Human Rights Watch, *2016 World Report: Syria 2015 Events*, March 2015, <https://www.hrw.org/tr/world-report/2016/country-chapters/285672> (Accessed: Aug. 2, 2016)

²⁷³ Başak Kale, "Ineffectiveness to Protect Syrian Refugees and International Community in Turkey", *City and Society*, no.6 (2017) And M. Murat Erdoğan, *Syrians in Turkey, Social Acceptance and Integration* (2015)

bilateral contacts with Syria over the crisis but no results were obtained from these contacts. Turkey tried to encourage the international community to pressure the Assad government to resign. This is because of the fact that Turkish government believed that there was no solution other than the withdrawal of Assad in Syria, so Turkey supported the Syrian opposition. The war in Syria has been a political crisis in the international arena and it seems that the solution is blocked between different interest groups. The international community came to a consensus at a NATO coalition mission in Libya in 2011. NATO answered the international call to protect Libyan civilians.²⁷⁴ However, the same consensus would not be provided for Syrian citizens. Russia and China blocked resolutions in the Security Council of the United Nations. The Civil war in Syria resulted in a human tragedy and refugee protection problem of mass movements of Syrians into neighboring countries, and to the EU, and created less solidarity globally.

The Syrian war created an unexpected situation in Turkey, which is hosting 2,888,856²⁷⁵ million registered Syrians. It was not imagined that such high numbers of Syrians would flee to Turkey. Turkey has been never witnessed such a large number of refugees in its history before the mass movements of Syrian refugees. Turkey, in response to the crisis, has regulated an open-door policy and declared that its doors would not be closed to those who have escaped from the war since the beginning and that they would accept those who flee from war and persecution. Turkey's humanitarian approach to the Syrian refugees has continued in the face of domestic political pressure, societal anxiety, security concerns and the growing financial burden on society.²⁷⁶ This perspective and policy are one of the major achievements of Turkey in response to Syrian refugee crisis. Despite the decision of

²⁷⁴ NATO and Libya, updated. November 9, 2015 http://www.nato.int/cps/en/natohq/topics_71652.htm (accessed: Jan. 22, 2017)

²⁷⁵ DGMM, *Temporary Protection Statistics*, http://www.goc.gov.tr/icerik3/gecici-koruma_363_378_4713,(accessed Feb. 12 ,2017) In addition to Syrian refugees, Turkey hosts 122,000 Afghans, 30,000 Iranians, 128,000 Iraqis, 3,500 Somalis and 8,000 other nationals. In total, there are 3,162.612 registered refugees in Turkey, taken from the UNHCR Turkey: Key Facts and Figures, November 2016, <http://data.unhcr.org/mediterranean/country.php?id=224>, (accessed: Jan.24, 2017)

²⁷⁶ M. Murat Erdoğan, *Syrians in Turkey, Social Acceptance and Integration*, İstanbul: Bilgi University, 2015

the EU Member States of Slovenia, Serbia, and Macedonia to close their borders, Turkey should be appreciated for keeping its border open. Moreover, in addition to being humanitarian in approach, opening the borders brings a difficult burden to the host state.

5.1.2 Status of Syrian Refugees in Turkey

In October 2012, over 100,000 Syrian refugees entered Turkey while 100,000 were accepted as “psychological limit”. As of 2017, almost 3 million Syrian refugees are living in Turkey. This gap shows the limited expectations the Turkish government had and the ignorance of the possible protection problems created by the war in Syria. According to AFAD statistics, in total there are 258.333 refugees living in 25 camps in Turkey. This shows that 92% of refugees are living outside the camps.²⁷⁷ Humanitarian aid and protection (shelter, food, health facility, education, etc.) are provided by AFAD in cooperation with Kızılay at the camps. The highest numbers of Syrian refugees are staying in the cities of İstanbul (456.846), Şanlıurfa (408.469), Hatay (379.689), and Gaziantep (320.758) in Turkey.²⁷⁸ Atilla Toros, the Director of DGMM, stated that Turkey has encountered the most refugees its history since the 2011 crisis started in Syria. The numbers in camps doubled in 2016 compared to the early years. In 2012, there were 170 thousand refugees at camps. The government thought that they would stay for a while and then leave Turkey.²⁷⁹

Ahmet İçduygu argues that Turkey performed its moral duty by opening the borders to people who were escaping from conflict, but the numbers were too high. If any country like the USA, Germany, or France would have had to bear such a burden, there would have been immense discussions and debate about the issue. That’s why

²⁷⁷ Prime Ministry, Disaster and Emergency Management Presidency (AFAD in Turkish), *Current Situation in Refugee Centers*, <https://www.afad.gov.tr/tr/2374/Barinma-Merkezlerinde-Son-Durum>

²⁷⁸ Directorate General of Migration Management, *Interview*, 04.01.2017

²⁷⁹ Güliz Arslan, “Suriyeli Meselesini Dilenci Sorunu Olarak Görüyoruz”, *Milliyet Gazetesi*, November 30, 2016 <http://www.milliyet.com.tr/-suriyeli-meselesini-dilenci/pazar/haberdetay/30.11.2014/1977010/default.htm> (accessed Jan. 5, 2016)

Turkey should consider its capacity.²⁸⁰ While İduygu said in his speech in 2014, Turkey at that time had 1,519,289 Syrian refugees, and now the numbers of people doubled. Therefore, the international community should provide more assistance to Turkey, in addition to Turkey’s capacity. Since 2011, the capacity of Turkey to assist refugees has increased tremendously. However, as Murat Erdogan pointed out, international cooperation was not fully established.²⁸¹

At the beginning of the Syrian refugee movements, Turkey did not ask for burden sharing from the international community. In addition, Turkey hesitated to give temporary protection and Syrian refugees were called “guests.”²⁸² but this did not correspond to any legal status in international asylum law. Because of the lack of capacity, Turkey did not have its new asylum legislation and the DGMM was not fully established yet. These were some reasons for Turkey's hesitation to determine the status of Syrian refugees in Turkey. The first entry from Syria to Turkey was from the Cilvegözü border crossing in the Yayladağı district of Hatay with 252 people in 2011.²⁸³ The Turkish government thought that it would solve the crisis by providing protection to Syrian refugees in the camps. This policy discourse has created uncertainty in Syrian refugee status determination. Secondly, the guest discourse can be seen in Turkish foreign policy. There were policy fluctuations by failed expectations on the collapse of the Assad regime.²⁸⁴ Therefore, it was expected

²⁸⁰ Ibid,

²⁸¹ Murat Erdoğan, *Interview*, 14.11.2016

²⁸² Guest discourse started within humanitarian open-door policy to Syrians. It does not have any legal correspondence in the international law. The Turkish media and public opinion used this term. Former Prime Minister Abdullah Davutođlu spoke to the Syrians in his speech as a guest. <http://www.mfa.gov.tr/disisleri-bakani-davutoglu-suriyenin-her-bir-kosesinde-insanlar-onurlu-yasayana-kadar-onlarla-beraber-olacagiz.tr.mfa>, <http://www.mfa.gov.tr/disisleri-bakani-davutoglu-turkiye-suriyeli-turkmenlerin-yaninda-olmaya-devam-edecektir.tr.mfa>

²⁸³ M. Murat Erdoğan, *Syrians in Turkey, Social Acceptance and Integration*, İstanbul: Bilgi University, 2015

²⁸⁴ Kemal Kirişci, “Syrian Refugees and Turkey’s Challenges: Going Beyond Hospitality” Brookings, (2014) <https://www.brookings.edu/wp-content/uploads/2016/06/Syrian-Refugees-and-Turkeys-Challenges-May-14-2014.pdf> (accessed Dec. 15, 2016), “Davutođlu Esad’a Ömür Biçti”, NTV, August 24, 2012, http://www.ntv.com.tr/turkiye/davutoglu-esada-omur-bicti,Nsez_e7zmEO7uz5O9Pv6hw (accessed Jan.22, 2017)

that Syrian refugees would return their home country sooner. Indeed, five years later, Turkey is finally adjusting itself on what should have been done and current policies are more likely to open the way and prepare public common sense for the integration of Syrians in Turkey.

According to Metin Çorabatır, Turkey's geographical restriction to the 1951 Convention affects its whole immigration policy.²⁸⁵ Therefore, as stated in Chapter 4, the old tradition of asylum policies in Turkey can be the second reason of this guest discourse. The main idea was not to settle non-European refugees in Turkey. If Turkey did not keep geographical limitation, status determination of Syrian refugees would be realized on the basis of international refugee law. However, if the war does not come to an end, which does not seem likely in the near future, Syrian refugees cannot return back home. Keeping in mind that it has been six years since the Syrian refugee settlements have begun it is not realistic to think that it is possible for Turkey to resettle about 3 million refugees to third countries. Therefore, it seems that Turkey cannot be successful in continuing its former tradition of asylum policies. On the other hand, according to the UNHCR Resettlement Unit Supervisor, geographical limitation can only limit people's options in terms of accessing durable solutions. If it is not applied, local integration for all refugees would see to it that thousands of people would stay in Turkey and work, live, and regularize the state. That is the key impact, in practice. It will be not fair to say that Turkey does not provide protection, rather it is safe to state that geographical limitation in terms of the durable situation is a concern.²⁸⁶

The last reason for the guest discourse might be the Draft Law itself. As the new law of Turkish asylum legislation is prepared for the protection of individual applications, it does not cover details of how to handle or process temporary protection when there is a mass movement of refugees. Therefore, the policies during the onset of the Syrian refugee movements were not targeted to find long-term

²⁸⁵ Metin Çorabatır, *Interview*, 14.11.2016

²⁸⁶ *The UNHCR Resettlement Unit*, *Interview*, 15.11.2016

solutions, which can be understandable to a certain extent. Instead, immediate responses and short-term policies were taken. Afterward, the idea to class Syrian refugees' status as "Temporary Permanence" was discussed by Turkish authorities.²⁸⁷ The guest discourse was changed into "temporary protection," developed by EU law for the protection of mass movements of refugees until the end of the crisis in the country of origin. Temporary protection was accepted for Syrian refugees with the Circular of the Prime Ministry in April 2012.²⁸⁸ This development shows us that the Turkish government started to change its perspective from guest discourse to temporary protection. However, there was still a lack of status determination.

The temporary protection regime has limits on the rights of people seeking international protection (acceptance as refugees, following social and economic rights). The main purpose was to accept them for the short term. However, as a result of the unexpected continuation of the war, Turkey changed its policies regarding Syrian refugees. On 24th of October 2014, the Temporary Protection Regulation came into force. This status determination has clarified the rights of Syrian refugees in access to health, education, jobs²⁸⁹, social aid, and translation. Temporary protection ID Cards were issued.²⁹⁰ Instead of refugee or conditional refugee status, all registered Syrian nationals and stateless people from Syria were only accepted under temporary protection,²⁹¹ which was mostly criticized by NGOs that advocate for human rights and refugee rights as well. The very first reason is that the Regulation prevents Syrian refugees, from applying for asylum. According to Article

²⁸⁷ Başak Kale, "Suriyeli Mültecilerin Umuda Yolculuğu" *Bir Gün Gazetesi*, January 3, 2016, <http://www.birgun.net/haber-detay/suriyeli-multecilerin-umuda-yolculugu-99572.html> (accessed Jan. 15, 2016)

²⁸⁸ Prime Ministry, *Syrian Refugees*, September 12, 2012 http://www.basbakanlik.gov.tr/genelge_pdf/2012/2012-0010-006-8020.pdf

²⁸⁹ Turkey issued "Regulation on Work Permit of Refugees Under Temporary Protection" in the Official Journal No. 2016/8375, dated 15 January 2016

²⁹⁰ Temporary Protection Regulation, <http://www.goc.gov.tr/files/files/temptemp.pdf>

²⁹¹ N. Aslı Şirin Öner, and Deniz Genç, "Vulnerability Leading to Mobility: Syrians' Exodus from Turkey". *Migration Letters* :12, no.3, (2015): 252

1, international protection applications cannot be processed while Temporary Protection is in effect.²⁹² It can be said that the determination of the status of Syrian refugees has been realized in accordance with the Temporary Protection Regulation two years after their entry into the country.

There are some other criticisms to the Regulation. One of the problems is the undefined duration of the Regulation.²⁹³ The Regulation states that the Council of Ministers has the right to determine the date on which the temporary protection will start, if necessary, the deadline, and in which territories it will be valid.²⁹⁴ Moreover, according to the Regulation, the Council of Ministers may limit or stop temporary protection.²⁹⁵ Turkey's reluctance to the status determination of Syrians left them fragile and vulnerable. The temporary protection regime has resulted in uncertainty; several Syrian refugees were stuck in Turkey because they could not access refugee status in Turkey. This drawback of temporary protection forced several Syrian refugees to leave Turkey because they did not see long-term prospects for themselves and their families, so they looked for irregular ways to reach Europe. Within Syrian refugees in Turkey, there are people who wish to reach Europe, want to go to the EU Member States to have better jobs, education and housing opportunities for themselves and their families.

Sufficient mechanisms for Syrian refugees to integrate them into education and work life have not been able to be provided since the early years of crisis. In terms of durable solutions; resettlement could be the best option, but it was not feasible for all Syrians. At the moment, about voluntary repatriation is a non-issue. The local integration of Syrian refugees would be one of the solutions but there are several doubts in terms of how to handle the integration. In this case, there are questions on how the application of citizenship should be implemented and those questions have

²⁹² Official Gazette, Temporary Protection Regulation, No.6883, (2014), Article 1

²⁹³ Directorate General of Migration Management, *Interview*, 04.01.2017

²⁹⁴ Official Gazette, Temporary Protection Regulation, No.6883, (2014), Article 10

²⁹⁵ Official Gazette, Temporary Protection Regulation, No.6883, (2014), Article 15

not been answered yet. Opinions about using local integration as a solution, albeit not a total remedy for the problems of Syrian refugees, have started to circulate very recently.²⁹⁶

Since July 2016, government officials have started to discuss how to process Syrian refugees into Turkish citizenship. President Recep Tayyip Erdoğan, speaking at his *iftar* program in Kilis, said that Turkey would grant citizenship to Syrian immigrants in Turkey.²⁹⁷ Çorabatır thinks that it is necessary to recognize the refugee rights of Syrian refugees before citizenship status is granted. This is because of the fact that it should enable them to develop their language skills and refugee status should be granted only after it is certain sure that people can fend for themselves once they have been granted status. Çorabatır further thinks that not all Syrian nationals would like to take Turkish citizenship because they may want not to lose their Syrian citizenship.²⁹⁸ Besides, the UNHCR considers that if it applies to Syrians, at some point it might be applied to Iraqis, Afghans, and other nationals too and how the implementation process would be shaped in the legislation.²⁹⁹

The future of refugees can vary depending on the policies implemented in Turkey. Çorabatır says that according to the research conducted with Syrian refugees, amongst the refugees who traveled from Turkey to the EU by irregular ways, the percentage of refugees who stayed in Turkey for less than a year is over 30 percent. This shows that Turkey has become a transit country for Syrian refugees on their journey to the EU to access refugee status. On the other hand, refugees get information from their relatives and friends who have reached to the EU that the life standards do not seem promising for refugees in Europe.³⁰⁰ There are also several

²⁹⁶ Metin Çorabatır, *Interview*, 2016

²⁹⁷ The Citizenship Declaration to Syrians in Turkey from Erdoğan, *BBC News Turkey*, July 3, 2016, http://www.bbc.com/turkce/haberler/2016/07/160703_erdogan_suriyeliler (accessed: Jan. 25, 2017)

²⁹⁸ Metin Çorabatır, *Interview*, 2016

²⁹⁹ The UNHCR Resettlement Unit, *Interview*, 15.11.2016

³⁰⁰ Milliyet, “Suriyeliler Daha İyi Bir Gelecek” September 3, 2016 <http://www.milliyet.com.tr/-suriyeliler-daha-iyi-bir-gelecek-gundem-2353638/>

people who are waiting for the war to come to an end, in order to return to their homes. The remaining percent prefer to stay in Turkey because of cultural proximity.³⁰¹ Murat Erdoğan says that more than 90 percent of the Syrians in Turkey will not return to Syria. It is argued that a future-oriented refugee policy should be established.³⁰² Therefore, Turkey should focus more on local integration.

5.2 The European Union-Turkey Readmission Agreement and Visa Liberalisation Processes

The Readmission agreement and visa liberalization process have been one of the measurements of the EU enlargement during the accession process of a candidate country. However, the processes have evaluated separately so technically they should be differentiated from each other. The readmission negotiations between the EU and Turkey go back to 2002.³⁰³ The European Commission encouraged Turkey to sign a readmission agreement as a prerequisite for its accession to the Union. It is stated since 2005 that the EU created a link between the start of readmission talks and the start of EU accession.³⁰⁴ However, this process seems a bit complicated for Turkey. When we consider Turkey's first application for joining the Union in 1987, and the accession negotiation process which started eighteen years later in 2005, visa facilitation still remains deadlocked. There are additional several obstacles, objections by the Member States against Turkish citizens' free movements within the Union which are normally granted with the Ankara Agreement for purposes of business.³⁰⁵ Even though this dilemma has been noted several times in the resolutions of the ECJ, both for the Member States and the Union, free movement for Turkish

³⁰¹ Metin Çorabatır, *Interview*, 2016

³⁰² M.Murat Erdoğan, "Syrian Refugees in Turkey and the Implications of the EU-Turkey Deal", CES-METU Migration Seminar, December 21, 2016

³⁰³ *The Ministry for EU Affairs*, Interview, 30.11.2016

³⁰⁴ Diğdem Soyaltın, "Good News, Bad News or No News: Management of Irregular Migration in Turkey" *Centre for Policy Analysis and Research on Turkey* (ResearchLondon), London 2, no.3, (2013): 33-45

³⁰⁵ Council of the European Commission, *EU-Turkey Association Agreement a Protocols and Other Basic Texts*, 1992

people has never been realized. Moreover, it is stated that the current visa policy applied to Turkish citizens contradicts with the partnership agreement.³⁰⁶ In addition, currently, the blockage to Chapter 24 creates distrust between the EU and Turkey. It is not a surprise that the visa liberalization dialogue and the readmission agreement have become part of the deal to Turkey's accession to the Union.³⁰⁷

The European Commission prepared a roadmap for the Turkish government in which the duties are presented for the implementation of the readmission agreement and visa liberalization by Turkey.³⁰⁸ The Turkish government rejected some of the issues within the roadmap; therefore, the annotated version of the roadmap was implemented. The annotated version of roadmap reflects the hesitations and the point of view of the Turkish government to the visa liberalization and readmission process. The first hesitation is that Turkey can ratify lifting the limitation to the 1951 Convention when it becomes a Member State of the EU. Moreover, Turkey will accept to partake in international agreements and treaties only if they are related to the readmission agreement and visa liberalization process.³⁰⁹ In terms of these conditions, Turkey has made achievements in defining its perspective and has taken approval from the EU. Additionally, it has been stated that Turkey will withdraw the readmission agreement if visa liberalization is not applied by April 2018.

The readmission agreement was designed to control irregular migration and the EU aims to decrease irregular immigration through this readmission agreement with Turkey. The agreement focuses on rules and requirements related to document security, such as using biometric passports in accordance with the EU *acquis*,

³⁰⁶ Diğdem Soyaltın, "Good News, Bad News or No News: Management of Irregular Migration in Turkey", 38

³⁰⁷ The Ministry for EU Affairs, *Interview*, 30.11.2016

³⁰⁸ European Commission, Report from the Commission to the European Parliament and the Council on Progress by Turkey in Fulfilling the Requirements of Its Visa Liberalization Roadmap, pp. 7-21

³⁰⁹ See the Q&A Report from the Republic of Turkey Ministry for EU Affairs, 'Türkiye-AB Vize Muafiyeti Süreci ve Geri Kabul Anlaşması Hakkında Temel Sorular ve Yanıtları', available at: <http://www.abgs.gov.tr/index.php?p=49332&l=1>.

managing migration on the borders and combating organized crimes to provide public order and security, and the fundamental rights of people including non-exclusion of refugee to have an ID card to have proper functioning of readmission of irregular migrants and visa liberalization³¹⁰ Therefore, one of the crucial dimensions of readmission agreements is about the possible return of asylum seekers to Turkey. Normally, the readmission agreement is not designed for returning asylum seekers whose claims for asylum and protection have not been adequately implemented due to their irregular entry to the state. In practice, however, the rights of refugees could be interfered with. The readmission agreement can be used for refusing refugees' admission at the border without conducting the proper status determination process. There might be a violation of their rights as granted by the 1951 Convention. In this case, repatriating refugees may leave them in worse situations and stuck in Turkey. Due to geographical limitation, if they cannot access refugee status they can be deported.

The readmission agreement was signed on 16th of December 2013. The agreement would come into force gradually after a three-year transition period of the ratification by the Turkish GNA on 1st of October 2014. An additional 6-month period to test its functioning was determined. In the first stage, the EU and Turkey have put into practice the reciprocal returning of their citizens since 2014. The EU and Turkey can return each other's citizens who are exceeding their visa duration. In the second stage, the readmission agreement allows irregular migrants and third country nationals coming through Turkey to the EU to be returned to Turkey. This condition is valid for returning irregular migrants and third country nationals from Turkey to EU. The cooperation dialogue under the EU-TR Statement in terms of diminishing irregular migratory movements from Turkey to the EU decided to implement the readmission agreement by June 2016 and the visa liberalization by October 2016. Turkey is still trying to fulfill the criteria within the visa liberalization roadmap. Accelerating implementation of visa liberalization has become part of the deal during the EU-Turkey summits in November 2015 and the EU-Turkey Statement on March

³¹⁰ Ibid,

2016. To gain visa liberalization to the EU requires Turkey's compliance on 72 criteria (67 of them have presently been completed), however Turkey is currently stuck with European criticism to change the definition of terrorism and Turkey's pressure on the opposition and the press.³¹¹

The agreement is part of Turkey's Europeanization process on its immigration and asylum policies. Therefore, the readmission agreement is one of the tools of the European Union's externalization policy as stated before for reducing irregular immigration as a way of cooperation with third countries. The readmission agreement shifts the cost of managing irregular immigration from the destination country to the transit country. In this case, Turkey takes the all responsibility of irregular migrants on the road to reaching the EU by preventing them from reaching the EU. Even if the readmission agreement can diminish successfully irregular migration, the problems of refugees are still valid and the root causes of migration will not be solved. Indeed, Turkish EU Affairs Minister Ömer Çelik said that the cancellation of the readmission agreement should be carried out in case the EU breaks its promise of visa-free travel because the 2013 agreement requires re-accepting back irregular migrants in return for visa liberalization. He argued that "if visa liberalization is not implemented by the end of 2016 it would have reached its natural death".³¹² Although this statement was made, the coup attempt on 15th July 2016³¹³ caused division regarding the visa liberalization talks. At this point, it is

³¹¹ Charles Marcilly de "The EU-Turkey Agreement and its Implications" *Foundation Robert Schuman, The Research and Studies Centre on Europe*, June 13, 2016, <http://www.robert-schuman.eu/en/european-issues/0396-the-eu-turkey-agreement-and-its-implications-an-unavoidable-but-conditional-agreement> (Accessed Nov 12, 2016).

³¹² <http://www.reuters.com/article/us-europe-migrants-turkey-idUSKCN12I26L>

³¹³ The consequences of the failed coup d'état in Turkey are already visible, especially in domestic policy. It has brought drastic changes in order to fight against FETÖ in all government bodies and in private sectors including especially media sector. The relations with the EU has influenced from the changes and political discourses of Turkey. Turkey had disappointed from the EU's reaction to the coup attempt. There was a tendency for Euroscepticism. The EU's called for "the need to respect democracy, human rights and fundamental freedoms and the right of everyone to a fair trial in full compliance with the European Convention for the Protection of Human Rights and Fundamental Freedoms" and the death penalty discussions in Turkey changed the relations in the opposite direction.

difficult to forecast the future developments on visa-free travel for Turkish citizens and the application of returning irregular migrants.

5.3 New Refugee Statement between the European Union and Turkey

In the informal meeting of heads of state or governments at the European Council on 23rd September 2015, the ways to respond to unprecedented numbers of refugees arriving in Europe, possible measures to protect external borders of the EU and to provide assistance to refugees and neighboring countries were discussed.³¹⁴ The EU leaders decided to boost cooperation and dialogue with Turkey.³¹⁵ That is to say, the EU leaders accepted that they need Turkey in order to stop unwanted migratory flows to the EU. Since then, several initiatives and negotiations have started between the EU and Turkey. On 5th October 2015, the President of the European Council Donald Tusk met with Turkey's President Recep Tayyip Erdoğan to discuss solving the refugee and migration crisis based on financial assistance, border management, and fight against smugglers, integration policies and visa liberalization.³¹⁶ The President of European the Council Donald Tusk and German Chancellor Angela Merkel's visited Turkey on 18th October 2015, the second meeting on irregular immigration to the EU from Turkey where the situations of Syrian refugees were held on the basis of a draft action plan.

European leaders agreed on a Joint Action Plan at the third meeting on 29th November 2015 which aimed to give political and financial support to Turkey for enabling tighter border controls and strengthening the care for refugees within Turkey. The EU committed to providing financial aid to Turkey, to start visa liberalization for short term visas and to relaunch the accession negotiations, which

³¹⁴ European Council of the European Union, *Informal Meeting of Heads of State or Government*, September 23, 2015, <http://www.consilium.europa.eu/en/meetings/european-council/2015/09/23/> (accessed: Aug. 14, 2016)

³¹⁵ European Council of the European Union, *Informal Meeting of Heads of State or Government*, September 23, 2015, <http://www.consilium.europa.eu/en/meetings/european-council/2015/09/23/> (accessed Aug. 12, 2016)

³¹⁶ Meeting with President Erdoğan, October 5, 2015, <http://avrupa.info.tr/en/resource-centre/news-archive/news-single-view/article/meeting-with-president-erdogan.html?cHash=8a2e975fed883636ace21c1ce0133e7d&print=1> (accessed Sept 17, 2016)

were paralyzed due to the Cyprus veto. The agreement suggested providing international protection to Syrians and increasing the cooperation to control irregular migration to the EU. They committed financing to enhance Turkey's situation. In addition, on 15th December 2015, the Commission proposed a Voluntary Humanitarian Admission scheme for Syrian Refugees in Turkey to build the system of solidarity and responsibility sharing.³¹⁷ Member States were invited to participate voluntarily according to their capacities. It was decided that when the irregular movements of refugees show sustainable reduction to Europe through Turkey, the Member States are encouraged to admit refugees from Turkey. Moreover, the Commission proposed the distribution of refugees to the EU Member countries by means of a resettlement basis on their absorption, reception and integration capacities, GDP size, asylum efforts, and national unemployment rates.³¹⁸

Following the Turkish Statement of 7th March 2016 on the issue of Europe's refugee protection problem due to increasing irregular arrivals through Turkey,³¹⁹ the EU and Turkey were finally able to agree on a Statement on 18th March 2016.³²⁰ They discussed Turkey's role in mitigating one of the biggest refugee protection problems in the Middle East and the burden sharing of the issue. The agreement between the EU and Turkey acts as a reconciliation statement between the parties without legal status.³²¹ It can be seen that the EU is trying to solve the very slow-running

³¹⁷ European Commission - *Press Release Commission presents Recommendation for a Voluntary Humanitarian Admission Scheme with Turkey for refugees from Syria*, December 15, 2015 http://europa.eu/rapid/press-release_IP-15-6330_en.htm (accessed: Nov.22, 2016)

³¹⁸ European Commission, *Commission Presents Recommendation for a Voluntary Humanitarian Admission Scheme with Turkey for Refugees from Syria*, December 15, 2015 http://europa.eu/rapid/press-release_IP-15-6330_en.html (accessed Jan. 23, 2017)

³¹⁹ European Council of the European Union, *Statement of the EU Heads of State or Government*, March 7, 2016, <http://www.consilium.europa.eu/en/press/press-releases/2016/03/07-eu-turkey-meeting-statement/> (accessed: Aug. 15, 2016)

³²⁰ European Council of the European Union, *EU-Turkey Statement*, March 18, 2016, <http://www.consilium.europa.eu/en/press/press-releases/2016/03/18-eu-turkey-statement/> (accessed: Aug. 15, 2016)

³²¹ ASAM, *Interview*, 05.01.2017

procedures with a consensus. In other words, the EU-TR Statement is not an agreement under international law thus, it is not legally binding.³²² That is to say that there might be possible revisions to the Statement. Although the DGMM does not think that there would be unilateral cancellation of the Statement among the parties, there is still a possibility of abolishing the Statement. As, the UNHCR was never consulted during the EU-Turkey deal. After the Statement, the UNHCR was consulted on the method of application. The UNHCR approved of the Statement because it is an opportunity for resettling people.³²³

In the Statement, both parties have agreed that starting from 20th March 2016 all the third country nationals reaching the coast of Greece through irregular entries would be returned back to Turkey. Third country nationals include people who do not apply for asylum in Greece, whose asylum applications are deemed unfindable and whose asylum applications are considered to be under an “inadmissible clause”. However, it is misleading to classify Syrian refugees under irregular migrants, by doing so the EU aims to point the inadmissible cause of their *refoulement* of refugees from Greece to Turkey driven by the APD. Therefore, in this case, the right of refugees is undermined. There is a dilemma with the core principles of the 1951 Convention. There are some conflicting areas of the context in terms of international refugee and human rights law. The EU-Turkey Statement is based on the idea that Turkey would be accepted as a third country of asylum for refugees from Syria, Iraq, Afghanistan and other countries and therefore, Greece would be able to return asylum seekers to Turkey.³²⁴ In other words, the safe third country and the first country of asylum principles are the underlying reason of the EU-Turkey Statement and in this case, *refoulement* of Syrian refugees from Greece to Turkey would be implemented according to these procedures of the EU. The returns of irregular third country

³²² Yiğit Kader, *Interview*, 28.12.2016

³²³ *The UNHCR Resettlement Unit*, Interview, 15.11.2016

³²⁴ , European Stability Initiative Background Document, *Turkey as a “Safe Third Country” for Greece*, 2015, available at: <<http://www.esiweb.org/pdf/ESI%20-%20Turkey%20as%20a%20safe%20third%20country%20-%202017%20October%202015.pdf>>

nationals were based on the signed readmission agreement between Greece and Turkey in 2002.

5.3.1 Resettlement Problem

To support Syrian refugees, the resettlement and humanitarian admission schemes are the two major tools of the EU's burden sharing mechanism implemented with the EU-Turkey Statement. It has been stated that since the beginning of 2015, 850.000 people have entered Greece from Turkey through irregular ways.³²⁵ As stated above, the major purpose of the Statement is to prevent these much higher irregular crossings from Turkey to the EU through the Eastern Mediterranean/Western Balkans route. In line with the EU-Turkey Statement, it is stated that all new irregular migrants and asylum seekers arriving at the Greek islands whose asylum applications have not been accepted as of 20th of March 2016 are required to be returned to Turkey starting by 4th of April 2016.³²⁶ According to the EU-Turkey Statement and the Turkey-Greece Readmission Agreement, 1187 irregular immigrants with a total of 95 Syrians have been extradited from Greece to Turkey.³²⁷

The very first problem with the Statement in terms of resettlement is that the EU's intends to stop smuggling networks and irregular migration in order to externalize their borders instead of providing humanitarian consensus. The language of the Statement does not guarantee that the EU will resettle Syrian refugees within the EU, instead, it proclaims that those who reach Greece will be sent back to Turkey. In return for each Syrian from Greece, Turkey will resettle another Syrian from registered in camps to the EU. It is the "1 for 1" principle. Under "1 for 1" scheme, refugees who have already reached Greece to seek asylum in the EU lose their

³²⁵ https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/managing_the_refugee_crisis_-_greece_state_of_play_report_20160210_en.pdf

³²⁶ Implementing the EU-Turkey Agreement-Questions and Answers, April 4, 2016

³²⁷ Communication from The Commission to The European Parliament, The European Council and The Council Fourth Report on The Progress Made in the Implementation of the EU-Turkey Statement September 12, 2016

chance at asylum as they are returned to Turkey and “swapped” for a registered refugee. Thus the EU is implementing a penalty on refugees who reach EU shores irregularly, which goes against international refugee law. Resettlement should not be a condition for refugees for their rights to spontaneously seek protection in the EU.

Depending on the readmission agreement between Greece and Turkey, the return of irregular migrants is going to be realized. The problem is that irregular crossing of Syrian refugees, non-Syrians, and economic migrants all meld with each other. Preventing irregular crossing requires strong cooperation and burden sharing between the parties. Despite tight precautions, for the refugees who are worried about the future and those who are hopeless for what the future will bring will try again to cross the border to have a better life. As Frans Timmermans, First Vice-President of the European Commission said, it is an illusion to think that the immigrant crisis will end up in the underlying causes, namely the ongoing war and conflict in Syria. Therefore, the irregular crossings of Syrian refugees seem less likely to come to an end.

The “1 for 1” decision was taken in order to prevent the loss of life in the Aegean Sea and to prevent abuse by migrant smugglers. It has been seen in the European Commission Fact Sheets; both the EU side and Turkey mutually promised to each other. Turkey accepted these returns, ensured that temporary protection would be granted to Syrians and international protection application status procedures would be provided to non-Syrians. On the other hand, the EU would arrange resettlement from Turkey. Since 4th of April 2016 until 5th of December 2016, 2.761 Syrian refugees have been resettled to EU Member States and Norway, and there are 340 Syrians awaiting resettlement under the “1 for 1” scheme. This number was 1.147 in 28th of September 2016. Syrians were resettled to eight Member States (Belgium, Finland, France, Germany, Italy, Luxembourg, the Netherlands and Sweden).³²⁸ That is to say that, EU efforts on resettlement on Syrian refugees should not be

³²⁸ Communication from The Commission to The European Parliament, The European Council and The Council, *Fourth Report on the Progress made in the implementation of the EU-Turkey Statement*, Dec. 08 2016, 9

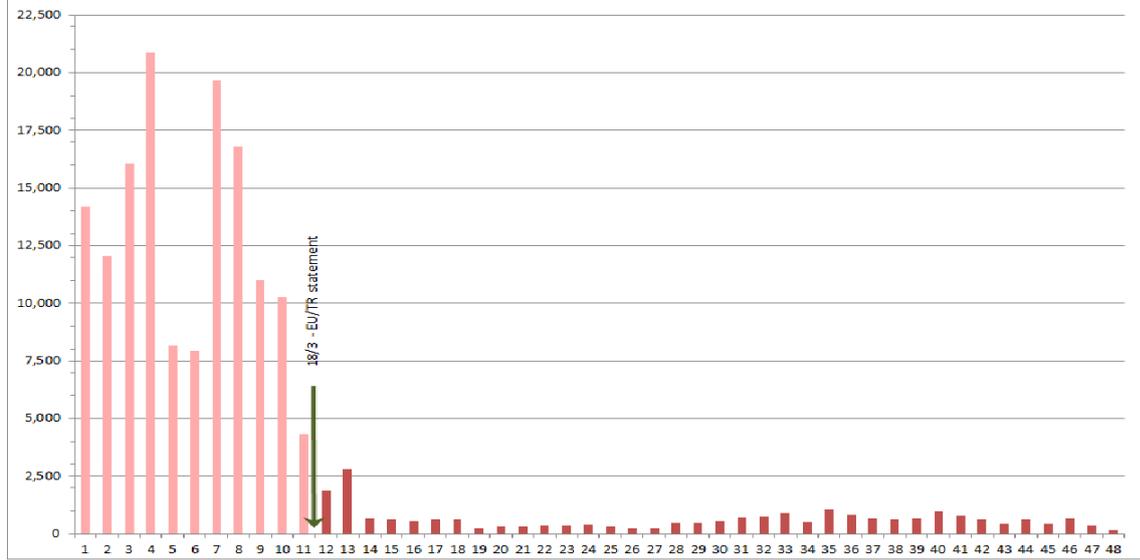
underestimated. However, the actual resettlement numbers remain lower than the targets. Also, 2,761 Syrian refugees could be resettled through bilateral agreements between the UNHCR and the EU governments. The EU does not specifically provide any new resettlement commitment under the EU-Turkey Statement. It only helps to speed up the process of settlement.

The EU Member State's aim was to reach the target 18,000 resettlements and to limit the maximum number of refugees from Turkey to 54,000. When the Voluntary Admission Scheme is later implemented, the more burden sharing will be achieved between the EU and Turkey. It has been further stated in the EU-Turkey Statement that a Voluntary Humanitarian Admission Scheme will be realized when the irregular crossings from Turkey to the EU have been "substantially reduced".³²⁹ A Voluntary Humanitarian Admission Scheme means providing subsidiary protection or an equivalent temporary status to Syrian refugees who are in need of protection (registered in Turkey prior to 29th of November 2015) in accordance with the EU Directives.³³⁰ However, it is not clear what the term "substantially" refers to and how they are going to define the substantial amount. Who is going to decide to implement this humanitarian admission makes this statement subjective and unclear for the future.

³²⁹ *The Council, Fourth Report on the Progress made in the implementation of the EU-Turkey Statement*, 10

³³⁰ European Commission Recommendation of 15.12.2015 For a Voluntary Humanitarian Admission Scheme with Turkey, Strasbourg, c (2015)9490 https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/securing-eu-borders/legal-documents/docs/commission_recommendation_for_a_voluntary_humanitarian_admission_scheme_with_turkey_en.pdf (Accessed Jan. 15, 2017)

Table 6: Irregular Crossings in 2016 from Turkey to Greece by weeks



On the other hand, according to the Frontex report, it declares that there is a substantial decrease in the number of crossings after the activation of the Statement in comparison with the former Statement. For example, there were 5,687 total arrivals between 28th September 2016 and 4th December 2016.³³¹ During the same period in 2015, the number was 390.000.³³² The decrease in numbers can clearly be seen in Table 6 above. Regarding visible decline, the Voluntary Humanitarian Admission Scheme will be expected to be implemented by the EU. On the other hand, it is stated that between January and November 2016, 171.909 migrants arrived irregularly to Greece.³³³ This upward trend may have been influenced by events like the coup d'état attempt in Turkey in July. The average daily number of arrivals to Greece increased in August 2016. The Turkish Liaison Officers, recalled after the coup attempt in Turkey, were redeployed on the Greek islands on 25th October 2016.

³³¹ Frontex, *Risk Analysis for 2016 Data of 4 December 2016*, http://frontex.europa.eu/assets/Publications/Risk_Analysis/Annula_Risk_Analysis_2016.pdf (accessed Jan 16, 2017)

³³² *The Council, Fourth Report on the Progress made in the implementation of the EU-Turkey Statement, 2*

³³³ Frontex, *Risk Analysis for 2016 Data of 4 December 2016*

5.3.2 Financial Burden

Financial assistance is another burden sharing mechanism for the protection of Syrian refugees in Turkey. The Statement includes accelerating financing process of Turkey with 3 billion euros under the Facility for Refugees in Turkey. After this payment is done, an additional 3 billion Euros by 2018 was agreed to be mobilized, in total 6 billion Euros will be allocated for Turkey. This financial support assists Turkey in fulfilling the social, economic, shelter and food needs of Syrian refugees. It has been stated that 2.2 billion euro has already been allocated and 677 million has been disbursed.³³⁴ The financial burden sharing mechanism is planned to be implemented gradually. However, it is difficult to understand how this fund will be established. President Recep Tayyip Erdoğan declared that the cost of this crisis to Turkey is \$25 billion in total, \$12 billion from the government's budget and the remaining from NGOs and the municipalities in the country.³³⁵ In terms of the financial support of the EU to Turkey, when Turkey asked for financial burden sharing, it was understood that Turkey was negotiating with the international community.³³⁶ However, it should be understood that the EU should reconsider its system and how it will effect Turkey. 677 million Euros would not be enough to cover Syrians refugees' life expenses at the moment.

The check and balance mechanism for this financial support has not been provided yet, and it is difficult to see how the EU will ensure the financial burden sharing mechanism will be implemented effectively in Turkey. Therefore, how the allocation of the next 3 billion Euros by 2018 will be organized has not been decided. On the other hand, Turkey, is struggling to show its expenses so far. It is said that the problem is that each ministry spends from their budget and the total calculation of

³³⁴ Communication from The Commission to The European Parliament, The European Council and The Council, *Fourth Report on the Progress made in the implementation of the EU-Turkey Statement*, Dec. 08 2016

³³⁵ TRT World News, *Erdoğan Addresses Syria Crisis, EU-Migrant Deal at UN Speech*, September 20, 2016 <http://www.trtworld.com/turkey/erdogan-addresses-syria-crisis-eu-migrant-deal-at-un-speech-190416>, (Accessed Sept 25, 2016)

³³⁶ *Ministry for the EU Affairs*, Interview, 30.11.2016

expenses becomes difficult to have. For example, the Ministry of Education implements dual-triple education programs³³⁷ and consumes more electricity, water, and pays overtime to teachers. These are all budgetary items, but it is really a big issue to gather all the parts of the expenses.³³⁸ According to the research from the Cologne Institute for Economic Research, the cost of per refugee is counted as 15.000 Euros for the housing, food, welfare expenses and language, integration classes per year in Germany.³³⁹ When we multiply with this amount with 3 million refugees, the cost will add up to 45 billion Euros per year. Although the estimate of the research is high indeed, 6 billion Euros can be useful but will not be enough.

In the beginning, this Statement could be seen as a crucial step in strengthening relationships between Turkey and the EU regarding the cooperation on asylum issues. Enhancing the EU-TR accession process and lifting the Schengen visa requirements were on the table. The Statement opened the way to the Visa Liberalization Dialogue of Turkey based on both parties' commitments. It was targeted to lift the visa requirements for Turkish citizens at the latest by the end of the June 2016. Moreover, already slowed down accession negotiations would be revitalized. Chapter 33 of the *acquis communautaire* would be opened during the Dutch Presidency of the Council of the EU. The Statement additionally highlighted continuing humanitarian cooperation between the EU and Turkey in Syria.³⁴⁰ However, none of these have been realized so far.

The current relationship between the EU and Turkey shows that there is a mutual distrust. The refugee Statement cannot be viewed in an optimistic way. The deal to stop irregular migratory movements has become a part of Turkey's accession

³³⁷ Ibid,

³³⁸ Ibid,

³³⁹ Andreas Becker, "The Costs of The Refugee Crisis", *DW*, February 1, 2016, <http://www.dw.com/en/the-costs-of-the-refugee-crisis/a-19016394> (accessed Jan 10, 2017)

³⁴⁰ European Council of the European Union, *The EU-Turkey Statement*, March 18, 2016, <http://www.consilium.europa.eu/en/meetings/european-council/2016/03/17-18/> (accessed June 20, 2016)

process. The only success reached was when the EU-Turkey Statement diminished numbers of deaths in the sea and numbers of irregular crossing from Turkey to Greece. Turkey perceived that it is vitally important to play its migration cards in return for visa liberalization. However, this bargain jeopardizes the humanitarian side of refugee protection. At the moment, Turkey is not satisfied with burden sharing in terms of financial and physical aspects. In addition, The EU countries prefer giving money to neighboring countries to keep the refugees in the third countries, arguing that the life expenses are cheaper in these countries compared to the EU Member States. For example, it is estimated that the cost for covering food, water, education per refugee in Jordan is approx. \$3,000. In contrast the same services will cost approximately \$30,000 in Germany or Austria for compared to Jordan.³⁴¹ Similarly it is estimated that the cost will be lower in Turkey.

5.4 Turkey as a Safe Third Country and First Country of Asylum

The legal basis of returning asylum seekers from Greece to Turkey is dependent on Turkey's acceptance as a safe third country and the first country of asylum by Greek authorities. According to Article 33 and (2)(b) of the APD, it is declared that Greece can apply the inadmissible cause to Turkey on refugees who seek international protection in Greece since Turkey can be considered the first country of asylum under Article 35(b) and as a safe third country under Article 38 of the APD.³⁴² The principle of *non-refoulement* in international refugee law can be violated through the EU-Turkey Statement which endangers the rights of refugees to choose the country to seek asylum. In other words, when a case is accepted as inadmissible, the Member States are not required to examine asylum applications for international protection, it

³⁴¹ Rob Williams, "Syrian refugees will cost ten times more to care for in Europe than in neighboring countries", *Independent*, February, 2016, <http://www.independent.co.uk/voices/syrian-refugees-will-cost-ten-times-more-to-care-for-in-europe-than-in-neighboring-countries-a6928676.html> (accessed Jan 10, 2017)

³⁴² "Legal considerations on the return of asylum-seekers and refugees from Greece to Turkey as part of the EU-Turkey Cooperation in Tackling the Migration Crisis under the safe third country and first country of asylum concept", 3

is accepted as rejected. For a case to be considered inadmissible, the EU attributes this stance on the third country of asylum and first country of asylum principles.³⁴³

The conditions, as analyzed in Chapter 3 of this thesis, have seen that two principles are eliminating burden sharing of refugees within the EU. After one of either of the conditions is acknowledged, the asylum seeker is to be readmitted to that country. Inadmissible criteria apply to both member and non-member countries of the EU, which makes it difficult to share the burden within the Union.³⁴⁴ However, it can be said that the safe third country and the first country of asylum principles create dilemma with the *non-refoulement* principle and access for the international protection. They seem more like tools for legalizing the return of asylum seekers to Turkey. This way of externalization of the EU makes Turkey a buffer zone for refugees. It forces refugees to return to Turkey even though they want to reach the EU.

According to both Greek and EU refugee legislation, the safe third country principle states that if refugee status is confirmed then necessary protection should be provided to the refugee within the country. However, Turkey keeps its geographical limitation to the 1951 Convention, therefore it cannot provide full-fledged protection to non-European asylum seekers. The UNHCR questions how Syrians can apply for international protection under the Temporary Protection Directive in Turkey and further stresses that Turkey cannot grant Syrians as refugees in accordance with the 1951 Convention.³⁴⁵ Therefore, protection of refugees under Turkish law provides

³⁴³ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection

³⁴⁴ European Commission (2016), Communication from the Commission to the European Parliament, the European Council and the Council, Next Operational Steps in EU-Turkey Cooperation in the Field of Migration, COM(2016) 166 Final, Brussels, 16 March, 3; see also UN High Commissioner for Refugees (UNHCR) (2016), "Legal considerations on the return of asylum-seekers and refugees from Greece to Turkey as part of the EU-Turkey Cooperation in Tackling the Migration Crisis under the safe third country and first country of asylum concept", 23 March, 1

³⁴⁵ "Legal considerations on the return of asylum-seekers and refugees from Greece to Turkey as part of the EU-Turkey Cooperation in Tackling the Migration Crisis under the safe third country and first country of asylum concept, 5

limited rights and there is a lack of mechanisms for long-term integration of non-European refugees. Turkey cannot be the safe third country from this point of view. Moreover, the APD does not define what “sufficient protection” means in which asylum seeker is returned to the first country of asylum. According to the UNHCR, sufficient protection includes protection from *refoulement*, no risk of persecution or serious harm, access of legal stay, effective protection basis on international refugee and human rights standards in the law and practices of the first country of asylum and providing durable solutions.

On the other hand, as the readmission agreement between Turkey and Greece loses the definition of the safe third country and this bilateral agreement makes Turkey a *de facto* third country of asylum and opens the way to infringe on human rights of refugees under the *non-refoulement principle*. The EU- Turkey statement regarding the return of irregular migrants increases the risk of *non-refoulement* while considering Turkey’s past history of deporting asylum seekers.³⁴⁶ Human rights and refugee advocates in Turkey stress that lacking safeguards against *refoulement* will result in chain *refoulement* facilitated by the state transfers based on readmission agreements. Additionally, the Statement’s duration is not clear. The rights of refugees during this uncertainty may be derogated, which may endanger to provide durable solutions.³⁴⁷ This may increase the chain risks of *refoulement* of refugees. Turkey has readmission agreements with Syria, Greece, Kyrgyzstan, Romania, Ukraine, Pakistan, Russia, Nigeria, Bosnia and Herzegovina, Yemen, Moldova, Belarus, and Montenegro. Agreements with Nigeria, Yemen, and Pakistan were waiting for ratification This may increase the risk of returning of non-Syrians who are sent back from Greece to Turkey could be exposed to *refoulement*. Greece started making returns to Turkey on 4th April 2016, based on the EU-Turkey deal. 748

³⁴⁶ Cavidan Soykan, *Turkey as Europe’s Gatekeeper: Recent Developments in the Field of Migration and Asylum and the EU-Turkey Deal of 2016*, (2016) p.9

³⁴⁷ Steve Peers, “The final EU-Turkey refugee deal: a legal assessment”, *EU Law Analysis*, March 18, 2016, <http://eulawanalysis.blogspot.com.tr/2016/03/the-final-euturkey-refugee-deal-legal.html>, (accessed Nov 2, 2016)

refugees have been sent back to Turkey by the end of September 2016.³⁴⁸ Therefore, this Statement is criticized from the Turkish academia and NGOs as being inappropriate to the Turkish position to the 1951 Convention.³⁴⁹

The legality and the legal content of the Statement have been greatly criticized. For example, The Defender of French Law, Jacques Toubon, stressed that the Statement can be accepted as “legally correct” but states can “only implement it if Turkey was deemed to be a safe country”. There are conflicting views on whether to accept Turkey as a safe third country or not. According to both the 1951 Convention and the EU law on asylum procedures under Article 38 of the Procedures Directive II, Turkey contradicts the measure because Turkey both keeps geographical limitation and cannot give refugee status to non-European asylum seekers.³⁵⁰ Turkey provides other types of protection statuses; conditional and temporary, but they are not derived from the 1951 Convention and Syrian refugees are under temporary protection, which is not in accordance with 1951 Convention and operates for an unknown duration.³⁵¹ It has been considered that Turkey provides sufficient connection to asylum seekers and therefore, Turkey can be accepted as a safe third country for Syrian refugees. However, “1 for 1” refugee transfers are regulated bases on the readmission agreement between the Greece and Turkey.³⁵² The connection is not realized in the APD.

³⁴⁸ Implementing the EU-Turkey Agreement – Questions and Answers,

³⁴⁹ See the website of Amnesty International Turkey office: <http://amnesty.org.tr/icerik/2/1776/askalegeri-gonderme-merkezi%E2%80%99nde-neler-oluyor> (last accessed on April 24, 2016).

³⁵⁰ Steve. Peers, and E. Roman (2016), “*The EU, Turkey and the Refugee Crisis: What could possibly go wrong?*” 5 February; and D. Thym (2016), “*Why the EU-Turkey Deal Can Be Legal and a Step in the Right Direction*”, 11 March

³⁵¹ Orçun Ulusoy, “Turkey as a Safe Third Country?” *University of Oxford, Faculty of Law*, March 29, 2016 <https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2016/03/turkey-safe-third> (accessed Sep 17, 2016)

³⁵² UN High Commissioner for Refugees (UNHCR) (2010), “UNHCR comments on the European Commission's proposal for a Directive of the European Parliament and of the Council on minimum standards on procedures in Member States for granting and withdrawing international protection (COM(2009)554, 21 October 2009)”, August; reaffirmed in UN High Commissioner for Refugees (UNHCR) (2016), “Legal considerations on the return of asylum-seekers and refugees from Greece to

It has been declared that all applications are treated case by case in accordance with EU and international law in which *non-refoulement* is referred to and there are not any automatic returns of asylum seekers.³⁵³ An asylum seeker's claim should be taken into consideration before they are going to be returned to Turkey. However, Cavidan Soykan finds it difficult for Greek authorities "to assess the merits of all the applications."³⁵⁴ Indeed, the system is quite recent and cannot be fully grasped at the moment, maybe in ten years' time human rights violations during these returns will be more visible.

To sum up, Turkey, with its 911 kilometer border, has been one of the biggest acceptors of Syrian refugees. The numbers of Syrian refugees was not been expected to reach 3 million in Turkey. Therefore, the policies during the onset of Syrian refugee movements were not targeted to find long-term solutions, which can be understandable to a certain extent. There was an irregular migration crisis in the EU when Syrian and non-Syrian refugees came to the EU's border. The EU aims to send all the irregular migrants, including Syrian and non-Syrian refugees in EU, within cooperation to Turkey. It should be questioned that if Turkey has enough capacity to provide refugee protection after they are sent back with readmission agreement, but it should be kept in mind that Turkey hosts approximately 3 million Syrian and around 300.000 non-Syrian refugees.

Sharing the administrative, technical, financial and legal burden should not be a favor for the EU; instead, it should be a necessity for the international regime for refugee protection. The rights of Syrian refugees are not protected or the problems of refugees are not solved. The "collective expulsion" in a fast track mechanism

Turkey as part of the EU-Turkey Cooperation in Tackling the Migration Crisis under the safe third country and first country of asylum concept"

³⁵³ Dış İşleri Bakanlığı, Vatandaşlarımızın Schengen Alanına Vizesiz Seyahati, Geri Kabul Anlaşması ve Göç Eylem Planı, <http://www.mfa.gov.tr/soru-cevap.tr.mfa> (accessed Oct.9, 2016)

³⁵⁴ Cavidan Soykan, *Turkey as Europe's Gatekeeper: Recent Developments in the Field of Migration and Asylum and the EU-Turkey Deal of 2016*, (2016)

damages their access to equal treatment to seek asylum and it appeals to a negative decision because to decide whether a person requires international protection or not takes time.³⁵⁵ Özgehan Şenyuva and Çiğdem Üstün define the deal as “more like putting a bandage on an open wound and less like a solution”.³⁵⁶ One of the three durable solutions to Syrian refugees would not be applied effectively. The relocation mechanisms of the EU on the resettlement of Syrian refugees are troublesome regarding its limitations. The current situation in Syria makes it difficult for Syrians to have a safe return back home. In the meantime, more effective solutions are implemented with Regulation such as the right to work in Turkey. Policies on harmonization of Syrian refugees have started to become organized. Therefore, it seems that Turkey will continue to carry the burden of Syrian refugees.

³⁵⁵ Human Rights Watch (2016) “EU: Turkey Mass-Return Deal Threatens Rights”. <https://www.hrw.org/news/2016/03/15/eu-turkey-mass-return-deal-threatens-rights>

³⁵⁶ Özgehan Şenyuva and Çiğdem Üstün. (2016) A Deal to End “the” Deal: Why the Refugee Agreement is a Threat to Turkey-EU Relations”, *The German Marshall Fund of the United States(GMF)*

CONCLUSION

Since international human rights law is applicable to all human beings in the world, it is crucial for states to provide international protection to people in order to prevent violations of basic human rights regardless of their status. Refugee protection has become one of the core principles of the international law, which highlights the equal and rightful treatment of refugees. For this purpose, the 1951 Convention was adopted to solve international refugee protection problems and highlights the need for international cooperation after the WWII. The principle of *non-refoulement* constitutes the core of the burden sharing principle, which embodies the responsibility to states to provide protection to refugees. In this case, there is an emphasis on the humanitarian issue of protection of refugees, requirement of international cooperation and getting assistance from the UNHCR for the successful implementation of the 1951 Convention. For that reason, this thesis strongly believes that international human rights of refugees should be under the protection of the states as well as the international community. If protection is not provided by the country of origin, -if the root cause of migration is the state itself- a country of asylum or a host country should provide protection in accordance with international refugee law with the help of international community.

Since the 1951 Convention does not define any status other than the refugee status and any explanation on how the responsibility sharing will be achieved on refugee protection, the *non-refoulement* principle can be underestimated by states when their own interest becomes the priority. As a result, this thesis found that the biggest challenge occurs in the question of how the burden will be shared when there is a mass movement of refugees. The equal burden sharing of processing asylum applications and accommodating all the arrivals requires responsibility sharing and international solidarity. This study analyzed asylum distribution and refugee protection in the EU to clarify if there is a fair burden sharing mechanism established between the EU and Turkey for the protection of Syrian refugees. The EU, as a major actor of human rights and democracy in the wake of the Syrian crisis, led to question

its advocacy to universal human rights norms and principles. This question has been chosen as the main focus of this thesis because the Syrian refugee movement is the biggest refugee protection crisis that impacts Turkey's demographic composition, foreign and domestic policy and more importantly its asylum and refugee implementation. It is safe to deduce from this research that Turkey's humanitarian perspective is crucially necessary, while there is increasing intolerance towards refugees, migrant, and foreigners in the world. The far-right political discourses threaten the rights of these groups of people. Therefore, Turkey's "open-door policy" was a responsibility that needed to be shouldered by the Turkish government. However, infrastructure problems, and legislative developments on the management of migration and asylum policy management have become struggles that Turkey had to overcome in the first years of the Syrian crisis.

It seems that since the early 1990s, the EU countries have established more restrictive policies to for migrants, asylum seekers, and refugees. To this respect, the asylum seekers and refugees have found themselves in countries of first arrival or transit which have more generous and humanitarian policies. However, due to the lack of capacity to provide protection, most of the refugees have moved from transit countries to more distant the EU Member States. In return for a tremendous increase of asylum seekers coming to the EU borders, the EU implemented deterrence measures to stop the attraction of new arrivals from reaching its shores.

This thesis is provided to present the application of the EU's asylum externalization which has the intention of controlling migratory movement coming from Turkey, especially during the Syrian refugee crisis. It further sought to support the implications of the externalization policies which create an infringement of rights of asylum seekers. This study, therefore, emphasized the most obvious and problematic externalization strategies used by the EU in close cooperation with third countries. The cooperation occurred by imposing the conclusion of readmission agreements for returning irregular migrants and third country nationals. Such cooperation deployed an unfavorable situation in the third countries. It shifted the responsibility of refugee protection to transit countries over the destination EU countries. Consequently, the

return of asylum seekers is achieved through accepting Turkey as a third safe country and the first country of asylum-driven by Asylum Procedures Directive³⁵⁷ which is guaranteed by the readmission agreements. Although the EU Member States had their own responsibility to provide protection to asylum seekers who had already reached their border, the EU countries in this process sought ways to return them to Turkey. The EU-TR Statement is clear evidence that the EU continues implementing externalization strategies on its migration and asylum policies.

In order to begin pursuing the research question of this thesis, the factors that diminish the burden sharing of refugee protection needed to be determined. For that reason, it has been required to look at EU externalization policies developed through EU legislation. The externalization policies were rooted with the idea of creating the Schengen Area with the four freedoms of people, capital, goods, and services. Therefore, Chapter 2 discovered out that the elimination of internal borders has been closely linked with the harmonization of asylum policies, immigration and external border management ruling within the Union. The tools of externalization are composed of partnership, association and readmission agreements with the country of origin and transit, restricting their visa policies, strengthening border controls and harmonizing their asylum policies. Chapter 2 portrayed the EU's historical and legislative backgrounds on immigration and asylum. The first and most important finding of this chapter is that EU governments seek principles to rotate processing asylum applications to third countries. The principles of the safe third country and the first country asylum driven by APD are the major outcomes of this way of thinking. In addition to that, asylum seekers were engaged with irregular migration causing EU governments to regulate more restrictive policies to control their borders.

This thesis has employed burden sharing codification and the burden sharing mechanism within the EU. Unequal burden sharing occurred because there is no clear-cut division between EU externalization of immigration policies and asylum

³⁵⁷ EU Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in member states for granting and withdrawing refugee status. EU Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in member states for granting and withdrawing refugee status.

policies. Research also shows that state interest diminishes the public good and deterrence is the driving force for asylum seekers to seek protection elsewhere, which damages burden sharing within the Union. This can be seen in the Dublin system which could not prevent some countries from becoming more attractive to asylum seekers. This is because some countries attract more asylum seekers, whereas some countries attract less and the national systems are differentiated from each other. As the control of irregular migration has become influential on EU's policies, the readmission agreements were not adequate enough for sharing the burden. It has been seen that the burden of asylum seekers is not shared; instead, readmission agreements shifted the responsibility to third countries. Therefore, Chapter 3 analyzed the tools that diminish equal burden sharing. It can be argued that the EU is less likely to achieve burden sharing on asylum admissions among the Member States and it is less likely to adopt the EU's common policies on asylum and migration in the future. The EU's concern is driven by limiting numbers of asylum seekers to the EU and diminishing responsibilities of the Member State's on processing asylum claims. Therefore, the burden is shifted from the EU to transit and third countries. In addition, the principle of *non-refoulement* with the readmission agreements, safe third country and the first country of asylum principles overlap with each other.

The Syrian refugee protection crisis presented clear evidence that there are difficulties in finding applicable, efficient and durable solutions to solve the problems of refugees because of the states' interests. EU Member States still overlook their responsibilities over humanitarian crisis when these affect their own borders and policies. This is because of the fact that political mechanisms to deal with the issue differ in each Member State and they are regulating different measures to prevent irregular immigration. The European Union is a community, which advocates that everyone is entitled to live in a safe territory and enjoy fundamental rights and freedoms. In this respect, one would assume that the EU would play an active role in asylum and refugee protection. It can be fair to say that European governments can seek international cooperation in order to share the burden of providing refugee protection with the international community and also with third

countries. However, the evidence in this analysis clearly presented that the EU, through its various mechanisms is more likely to regulate burden shifting instead of shouldering the burden sharing of refugee protection. This is mainly due to the development and implementation of the “first country of asylum” and the “safe third country” principles.

During the conducted interviews, it was realized that there is a common sense that the current system of CEAS is not an efficient way to solve refugee problems and support an equal burden sharing within the Union. The Dublin system loses its core mentality. The core idea was to stabilize asylum applications within the Union through the Eurodac and Dublin Regulations which aimed to diminish possible asylum shopping. Nevertheless, the system creates more burden on a few countries, such as the EU bordering countries like Greece and Italy. After the Syrian refugee crisis, the gap between the Union has become much wider; they have tried to set up new reallocation mechanisms, and resettlement to release Greece because the system is not working efficiently. Money transfers have been allocated in the Dublin system, however, they were not successful. The reason for that is the EU’s perception of money transfers as an aid to third countries to enhance their capacities to provide protection to refugees. It is a cost-effective way to finance third countries instead of providing support within the EU. However, financial assistance shifts the burden onto the third countries’ shoulder. The EU’s responsibility should not just be supporting countries financially to enhance their asylum systems. The EU should provide protection for refugees who arrive at their borders. It is not just the responsibility of the neighboring countries to open their borders.

Linking these arguments, Chapter 4 looked at the Turkey’s history on immigration and asylum policies. The major deficiency is the old tradition of keeping the geographical limitation to the 1951 Convention. The Turkish asylum system allows refugees to stay in Turkey if they come from Europe, and non-European asylum seekers can stay in Turkey until their RDS process is completed. Only after this process is completed, non-Europeans who are granted refugee status can be resettled in a third country. In that respect, Turkey has structured its relations with the EU on

asylum and refugee matter based on this geographical limitation. In addition to that, there has been the influence of Europeanization on Turkey's migration and asylum policies since 1999, starting with the pre-accession process. Asylum issues and irregular immigration have become one of the crucial topics of the European Union which significantly affect the relations with Turkey as a candidate country.

Chapter 5 started with Turkey's policies in response to Syrian refugee movements starting from 2011, which was the biggest refugee movement in history since WWII. Besides, it is the longest refugee crisis and the most severe humanitarian crisis in the world. Turkey has lots of achievements on asylum policies and has increased its capacity on the protection of refugees in the last decade. Turkey regulated an open-door policy as part of its foreign policy, and when the conflict in Syria has started, Turkey took a side with a humanitarian perspective. Initially, the Syrian refugees were accepted as guests for a couple of years and their status was ambiguous. However, there was a delayed understanding of the severity of the Syrian situation. This seems to be caused mostly by perceiving Syrian refugees as temporary settlers in Turkey. Indeed, it can be said that the geographical limitation remains *de facto* when we consider Turkey's achievements on the protection of Syrian refugees. Temporary protection status for the Syrians has enhanced the rights of refugees in terms of accessing jobs, health and education. The Temporary Protection Regulation is a major challenge for projecting the future of Syrian refugees. On the other hand, Turkey should have done these regulatory changes for the rights and livelihoods of the refugees earlier than 2015 before, thousands of refugees lost their lives while trying to reach better opportunities in the EU. It can be stated that Turkey was late to launch the process of local integration.

Chapter 5 constituted a major analysis of this thesis that is, as an externalization policy of the EU asylum and immigration policy, it is expected that Turkey fulfill the "first country of asylum" and the "safe third country" requirements for returning irregular migrants and Syrian refugees. Therefore, the EU-Turkey Statement provided the arguments of this thesis that a clear lack of burden sharing mechanisms can be seen in Turkey-EU relations and in the EU's approach to the Syrian refugee

protection crisis. According to the Statement, Greece can return irregular migrants including Syrian and non-Syrian asylum seekers and refugees transiting through Turkey by accepting Turkey as the safe third country and the first country of asylum based on Article 35 and 38 of the APD. However, application of these principles is quite problematic as there is no consensus on who is considered the safe third country by the EU. One of the outputs of this thesis was that people who were interviewed in the scope of this research found these principles debatable. It is thought that Turkey can be accepted as a safe third country, compared to Bulgaria for example. On the other hand, the Turkish government does not accept the term but approves the provision of sufficient protection to Syrian refugees under temporary regulations and enables non-Syrian refugees to be part of the international protection process. Due to Turkey's geographical limitation and because Turkey does not provide access to seek international protection for Syrian refugees, so Turkey cannot be referred as a safe third country.

The EU's aim to involve Turkey into its initiatives in response to Syrian refugee crisis is caused by the increase of asylum seekers reaching the EU. This event directed the EU to restructure its asylum policies only after 2015 when higher number asylum seekers, who are mostly Syrians, approached the EU's borders. Therefore, Turkey is seen as a critical country to control irregular immigration coming from the Middle East, Africa and Asia. Although the Statement first brought the hope for a revival of relations between the EU and Turkey, Turkey's criticism of the slow flow of funds and the obstacles to visa-free travel discourages Turkey from implementing the readmission agreement. Turkey further thinks that the EU does not keep its promises on the opening of new accession negotiation. On the other hand, the Statement can be viewed as successful because of the decrease in irregular migratory movements and deaths in the Aegean Sea. However, this Statement does not provide any solutions to the root causes of their migration. Moreover, the legality and ethics of the EU-Turkey Statement are questionable in terms of the EU's commitment to human rights, which shifts burden to Turkey.

While considering the major tools of burden sharing between the EU and Turkey, the Statement enables the resettlement of refugees from Turkey to EU countries and provides for financial assistance from the EU to Turkey. One of the major obstacles of resettlement is that EU governments are reluctant to accept refugees. Therefore, at the moment, the EU is far from reaching its targets of resettlement. For the case of sharing the financial burden, as it is already stated, through financial contribution to the country of asylum for protection in the transit country, the EU aims to keep asylum seekers to remain in the third countries. Turkey is already a country overburdened by more than 3 million refugees including both Syrians and non-Syrians. It would be much costlier than the one-time monetary assistance of 3 billion Euros to afford effective protection for Syrian refugees in Turkey. There is a need for further investigation on the implementation of 6 billion Euros, which has not been realized yet.

This thesis could not cover the implications of the EU-TR Statement with respect to Greece. The reallocation mechanisms within the EU to release the burden on Greece were not analyzed. Moreover, within the scope of this research the USA, Canada, and Australia that are the major countries for non-European refugees who are resettling from Turkey were not analyzed in dept. In addition to that, this research could not look into each Member State's asylum policies individually due to reasons of efficiency and accessibility; rather it is concentrated on the EU at the regional level. Similarly, human smugglers and their services, which have turned into a black market, are not included under the scope of this thesis. One of the major difficulties of this thesis was to be able to analyze monitor the fund of 6 billion provided by the EU-TR Statement as publicly available information was unattainable. Lastly, one important challenge was the July 15th coup attempt which has frozen the implementation of the return of refugees from Greece.

It seems that the international system is in deadlock to stop the conflict in Syria. Lack of political solutions to Syrian refugees has resulted in an increased responsibility for protecting Syrians refugees fleeing the war in neighboring countries. It should be noted that the EU has systematic implementations and vision

in response to the international refugee crisis. The tendency is driven by limiting numbers of asylum seekers in the EU and diminishing responsibilities of the Member State's on processing asylum claims, therefore the burden is shifting from the EU to transit and third countries. Other than regulations and directives that aim to solve the Syrian refugees' problems and needs, there must be a political will within the international community. Without solving the root causes of Syrian refugees, Syrian nationals will continue to be uprooted. According to the UNHCR, in order to solve the root causes of the refugee crisis, there is a need for diplomacy and political will for prevention and resolution of the conflict which forces people to seek asylum.³⁵⁸ Durable solutions should be provided to refugees to provide international protection. Burden sharing should be considered within various grounds, every actor who becomes part of this crisis should not discharge the humanitarian, conscientiousness, and legal responsibility. The devastating reality is that hundreds of people have died trying to reach a better, safer life. Those people tried crossing the border to reach EU states in dangerous ways, and unfortunately, many of them were caught or found to be dead. International concern should stop the human rights violation in Syria but if they are not capable of ceasing the war, then they should provide protection to refugees. Turkey is succeeding in carrying the burden of Syrian refugee protection and will be more prominent in solving the root causes of refugees in future.

³⁵⁸ UNHCR, The Proposals in Light of the EU Response to The Refugee Crisis and the EU Package of 9 September 2015, 10 September 2015, <http://www.unhcr.org/55f28c4c9.pdf> (accessed Nov. 21, 2016)

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APPENDIX A. INTERVIEWS WITH THE AGENCIES INVOLVED IN THE MANAGEMENT OF SYRIAN REFUGEE PROTECTION IN TURKEY AND THE BURDEN SHARING WITH THE EU

By Filiz Yilmaz, M.S. Student, European Studies, METU

Questions for Interview:

Name of the Institution:

(The views expressed in the interview are personal views of the participants. They do not represent their institution or agency. This questionnaire aims to provide an academic insight into how the impact of externalization policies of the EU on asylum and refugee policy influence Turkey on burden sharing of Syrian Refugees)

1. How do you perceive Turkey's institutional and legal capacity and performances on refugee protection?
2. How can you evaluate Turkey's position on refugee protection in the international area?
3. What is the basis of the Turkey's asylum policies? Are there any effects of Turkey's accession negotiations to generate of asylum policies in Turkey?
4. Do you think that Law on Foreigners and International Protection is enough on refugee protection in Turkey? Should Turkey lift geographical limitation to 1951 Refugee convention and its 1967 Protocol? And why?
5. Since the beginning with Syrian refugee movement how does Turkey cope with the issue? How can you evaluate Turkey's assistance to Syrian refugees? What are the rights and opportunities that Turkey offers to Syrian refugees?
6. Do you think are there any problems of temporary protection?
7. What do you think refugee status determination is important and how do you analyze Turkey's capacity on refugee status determination system?
8. How many Syrian refugees has been resettled to European states from Turkey? Do we have lower numbers of acceptance from European governments? Why do you think that some European Member states are less likely to take less refugees?

9. How irregular migratory movements can be reduced from Turkey to Europe?
Why do you think that decreasing irregular migration is so important?
10. Resettlement is one of the durable solutions of UNHCR it is also a way for burden sharing. How can you evaluate the refugee Statement signed on 18th March of 2016 and the following process on equal sharing refugees between the EU and Turkey? Do you think that is there an equal burden sharing on refugee resettlement? Has UNHCR been resettling according this agreement, or?
11. Turkish Government has criticized that the financial assistance (3 billion Euro) would not be allocated in time. Do agree with this argument? What should be done?
12. How do you evaluate cooperation between UNHCR and Turkish government?
13. What you think about “Safe Third Country” and “First Country of Asylum principle of the EU? Can Turkey be considered as the safe third country and the first country of asylum for Syrian refugees?
14. How do you analyze the situation in Readmission Agreement and Visa Facilitation between the EU and Turkey?
15. Do you think will there be any change in the status of Syrian refugees? What is the future for Syrian Refugees in Turkey? What should Turkey do remaining Syrian refugees in Turkey?

APPENDIX B. INTERVIEWS

1. ASAM, Association for Solidarity with Asylum Seekers and Migrants, Interview, Ankara, January 2017
2. Bilkent University, Department of Political Science and Public Administration, Assoc. Prof. Dr. Saime Özçürümez, December 2016
3. Hacettepe University Department of Political Science and Public Administration, HUGO Director Assoc. Prof. Dr. M. Murat Erdoğan, November 2016
4. Ministry of Interior, Directorate General of Migration Management Department of International Protection, Interview, Ankara, December 2017
5. Ministry for EU Affairs, Directorate for Political Affairs, Interview, November, 2012
6. United Nations High Commissioner for Refugees, Resettlement Unit, Interview, Ankara, November 2016
7. The International Centre for Migration Policy Development (ICMPD), Project Manager Mr. Yiğit Kader, December 2016
8. The Research Center on Asylum and Migration (ARCAM) / İltica ve Göç Araştırmaları Merkezi (İGAM), President Mr. Metin Çorabatır, November 2016

APPENDIX C. TURKISH SUMMARY

Bu tez, Avrupa Birliđi (AB) tarafından sığınma konularının dıřsallařtırılması politikalarını ve bunun Suriyeli mültecilerin korunmasında Türkiye'ye olan yansımalarını incelemiřtir. AB'de 1990'lı yılların bařlarından itibaren oluřturulmaya bařlanmış olan göç ve sığınma politikalarının dıř boyutunu oluřturan politika yaklařımını analiz etmiřtir. AB'nin sığınma politikasının dıř boyutu; sınır yönetimi, vize politikası ve sığınmacıların kitlesel hareketlerinden kaçınmak için üçüncü ülkelerle iř birliđi politikalarını içerdiđi görülmüřtür. Bu kapsamda AB'nin dıřsallařtırma araçları olarak güvenli üçüncü ülke ve ilk sığınma ülkesi prensipleri ile AB geri kabul anlaşmalarının üzerinde durulmaktadır. Bu çalışmada, AB'de mültecilere iliřkin yük paylaşım mekanizmaları kavramı da analiz edilmektedir. AB'nin dıřsallařtırma mekanizmalarının mültecilerin korunmasında ve yükün paylaşılmasında bazı sıkıntılar yarattıđı görülmüřtür. Türkiye'yi güvenli üçüncü ülke ve ilk sığınma ülkesi kabul eden AB-Türkiye Anlaşması, Suriyeli mültecilerin AB ve Türkiye arasındaki yük paylaşımına zarar veren AB'nin dıřsallařtırma politikasının bir örneđi olarak incelenmiřtir. Dolayısıyla AB'nin oluřturduđu sığınma sisteminin Türkiye üzerinde bir yük devrine neden olup olmadıđı incelenmiřtir. Türkiye; Suriyeli mülteci hareketlerinin bařlamasından itibaren sorumluluk olarak mali yükü üstlenmesinden ötürü bu çalışmanın odak noktasını oluřturmuřtur.

Bu tez beř bölümden oluřmaktadır. Giriř bölümünden sonra ikinci bölümde Birlik içerisinde sığınma alanında geliřtirilen uyum çabaları analiz edilmiřtir. Bu çerçevede, AB sığınma politikasının dıř boyutu olarak görülebilecek Birlik sınırları dıřında sığınma politikalarını yönetmek için AB tarafından geliřtirilen stratejiler ve programlar (Tampere, Leaken, Seville, Hague ve Stockholm vb.) incelenmiřtir. Bu bölümde AB'nin göç ve sığınma politikasındaki geliřmeleri ayrıntılı bir şekilde ortaya koymak amacıyla AB'deki yasal mevzuat irdelenmiřtir. Üçüncü bölümde, AB çerçevesinde yük paylaşımının bir analizi sunulmaktadır. Bu terminolojiye son bölümde AB ve Türkiye arasındaki yük paylaşımını irdelemek için yer verilmiřtir. Yük paylaşımının uluslararası mülteci koruma politikalarının temelini oluřturduđu

savunulmuştur. Bu sebeple mültecilerin korunması konusunda yük paylaşımının önemi açıklanmış, uluslararası toplumda eşit yük paylaşımına vurgu yapılmıştır. Bu tez AB'nin sığınma politikasının dış boyutunun yük kaydırması içerebileceğini analiz etmiştir. Yükün kaydırılması ya da devredilmesi dışsallaştırma politikalarının bir sonucu olarak ortaya çıkmakta ve kaçınılmaz olarak mültecilerin sorunlarının çözümü konusunda yükün üstlenilmesini üçüncü ülkelere bırakmaktadır. Yük kavramı mültecilerin kabulü ve yeterli koruma sağlanması (barınma, yemek, sağlık, eğitim ve iş piyasalarına erişim vb.) sırasındaki ülkelerdeki kapasite yetersizliklerinden ortaya çıkmaktadır. AB'de yükün paylaşılması mültecilerin Üye Ülkeler arasında yerleştirilmesi, maddi yardım ve ortak politikaların oluşturulması olarak ele alınmıştır. Bu tez; dışsallaştırma araçları olarak mülteci koruma sorunlarına yol açan üçüncü ülkelerle yük paylaşımı yapılamamasının başlıca nedenleri olan güvenli üçüncü ülke, ilk sığınma ülkesi ve geri kabul anlaşmalarının ilkelerini içermektedir.

Dördüncü bölümde, Türkiye Cumhuriyeti'nin kuruluşundan itibaren Türkiye'nin sığınma politikaları Suriyeli mültecilerin kitlesel hareketlerine kadar analiz edilmiştir. Bu bölümün temel amacı, Türkiye'nin güvenlik açısından daha korumacı olan sığınma mevzuat ve uygulamalarının daha liberal ve insani sığınma politikalarına doğru yöneliminin incelenmesi olmuştur. Bu süreçte, yeni 2013 Yabancılar ve Uluslararası Koruma Yasası'nda (YUKK) göç ve sığınma konularında politikaların Avrupalılaşmasının etkisi olmuştur. Sonuncu bölüm olan beşinci bölüm, yük paylaşımı kavramı çerçevesinde Türkiye üzerinden Suriyeli mülteci hareketlerinin AB'nin sığınma politikalarının dışsallaştırılmasının genel analizi ile sonuçlanmaktadır. Ayrıyeten Türkiye'nin Suriyeli mültecilere koruma sağlama konusundaki başarılarını ve eksikliklerini sunmuştur. Ayrıca beşinci bölüm bu tezin analiz bölümünü oluşturmaktadır. Yük paylaşımı kavramı ve mülteci korumasında yük paylaşımının sonuçları, Türkiye-AB ilişkileri çerçevesinde irdelenmiştir. AB-Türkiye Anlaşması (2016) ve AB-Türkiye Geri Kabul Anlaşması (2013), mevcut AB politikalarının mültecilerin korunmasında dışsallaştırma politikasının bir örneği olarak analiz edilmiştir. Bu tez, güvenli üçüncü ülke ve ilk sığınma ülkesinin ilkelerinin uygulanmasının, uluslararası mülteci koruma normları üzerindeki AB

yükümlülüklerini göz ardı etme olasılığının daha yüksek olduğu fikrini desteklemiştir. Bu nedenle, AB ülkelerinin Suriyeli mülteci krizindeki insani soruna yaklaşımlarındaki eksiklikleri sorgulanmıştır.

1990'lı yılların başından bu yana, eski Yugoslav topraklarında meydana gelen siyasi değişikliklerden dolayı sığınmacıların AB Üyesi Ülkelere ulaşmaları Üye Devletleri sığınma politikalarını koordine etmeye yönelmiştir. Bu tezin vardığı en temel sonuçlardan biri, AB'nin göç kontrolü için kısıtlayıcı sığınma politikaları benimsediği ve bunun AB'nin sığınma standartlarında liberal normuna bağlılığı ve göçü kontrol etme arzusu arasındaki çelişkileri tetiklediğidir. Yasal mevzuatta göç ve sığınma politikalarının ortaklaştırılması yönünde adımların atılmasıyla başlayan süreç, üye devletlerarasında göç yönetiminin eşit dağılımlarla oluşturulamama durumu ortaya çıkmıştır. Ülkelerin kendi egemenlik kurallarından biri olan kendi sınırlarını koruma isteği ve istemediği kişileri almamasındaki çelişki bu alanda ciddi olarak ön plana çıkmıştır. Ayrıyeten Bu Birlik içindeki iç sınırların kaldırılması, dış sınırların güvenliği ile ilgili endişeleri beraberinde getirmiştir çünkü göç hareketlerinde meydana gelen artış Tek Pazar'ın bir yan etkisi olarak kabul edilmiş ve Üye Devletleri sığınma başvurularının sayısını azaltmak için mekanizmalara ihtiyaç duymuşlardır. Bunlar da AB'de sığınma politikalarının dışsallaştırılmasının temel nedenlerini oluşturmaktadır. Devletlerin güçlerini AB kurumlarına devretmeye istekli olmaması, böylece sığınma ve mülteci politikalarının her devlet kendi kontrolü altına alma arzusu haline gelmesi olmuştur. Buna ek olarak, AB transit ülkelerden AB ülkelerine gelen düzensiz göçü önlemede sorumluluğunu üçüncü veya transit ülkelere kaydırmıştır. AB'nin sınır kontrolleri üzerindeki dışsallaştırmaları, mültecilerin korumaya erişmelerini önlemektedir.

Göç ve sığınma konularına AB bağlamında "Maastricht Anlaşması'nda "ortak çıkarlar" olarak bahsedilmiş ve daha sonra Amsterdam Antlaşması ile göç ile ilgili kararların topluluklaştırılması söz konusu olmuştur. Amsterdam Anlaşması'nda, düzensiz göçle ilgili politikaların uluslar üstü himaye altında yönetileceğini belirterek gerçek bir gelişme sağlanmıştır. Ortak politikaların geliştirilmesindeki ana adımlardan bir tanesine, 1999'daki Tampere Zirvesinde düzenlenen Avrupa Konseyi

toplantısında ulaşılmıştır. Bu toplantıda göç konuları, transit ve menşe ülkelerindeki insan hakları ve siyasi gelişmelere vurgu yapılarak ele alınmıştır. Göçün daha geniş bağlamda ele alınması gerektiğini vurgulanmıştır. Bu olumlu gelişmelere rağmen, öte yandan AB içindeki önleyici tedbirler hem insani yardım yükümlülükleriyle hem de uluslararası mülteci hukukuyla çelişmektedir. Mülteci koruma politikaları insani yardım merkezli bir sorumluluk konusu olması gerekirken devletlerin politik bir endişesi haline gelmiştir. Kısıtlayıcı politikalar bu çalışmanın temel ilgi alanını oluşturan sığınma politikalarının AB düzeyindeki literatüründeki dışsallaştırma politikalarının ana fikrini oluşturmaktadır.

Sığınmanın dışsallaştırması bir devletin sınırları dışına uyguladığı göç kontrol önlemleri olarak tanımlanmıştır. Göç politikalarında dışsallaştırmayı benimseme stratejileri veya politikaları, sığınmacıların korumaya erişim hakkını hukuken kabul edilmez hale getirerek riske attığı görülmektedir. Göç kontrol mekanizmaları düzensiz göçü önlemek için menşe ülke ve transit ülke ile iş birliği altında uygulanmaktadır. Burada düzensiz göç ile sığınmacıların korumaya erişim haklarının içe içe geçtiği görülmektedir. Dışsallaştırma politikaları sığınmacılar da dâhil göçmenlerin varış ülkelerine girmesini önlemek için sınır kontrollerinin ikili veya tek taraflı anlaşmalar yoluyla sınırlandırılmasıyla uygulanmıştır. AB Üye Devletlerinin sığınma politikalarının dış boyutu üçüncü, menşe ve transit ülkelerle iş birliği yapılarak AB sınırlarında göç hareketlerinin yol açabileceği olası yükün azaltılması ve sığınmacılar dâhil göçmenlerin girişlerini önleme olasılığını artırdığı görülmüştür. Bu bakış açısına göre, dışsallaştırma, AB ülkelerinin denetimi altında Birliğin dış sınırlarında kontrolün yapıldığı "uzaktan denetim" olarak tanımlanabilir. Bu nedenle AB, göç yönetimi kontrolünü iş birliği araçlarıyla üçüncü ülkelere kaydırmaktadır. Koruma, menşe ülke veya transit tarafından sağlanmakta ve AB, teknik, finansal ve idari yardımlar yoluyla üçüncü ülkelere destekleme mekanizmaları sağlamaktadır.

Üçüncü ülkelerle ortaklık, göçün temel sebepleriyle mücadele etmek, mültecilerin yerinde korunması ve geri kabul anlaşmalarının geliştirilmesi politikaları Tampere Zirvesi sonrasında AB sığınma politikasının temel ilkelerinden biri haline gelmiştir. AB, menşe, transit ve üçüncü ülkelere mülteci korumasını destekleyerek ve

düzensiz göçü önlemekle birlikte, göç akışlarını yönetmek, sınır kontrollerini geliştirmek üzerine ortaklıklar kurmayı amaçlamıştır. Bu çabalarla, üçüncü ülkeler sınır kontrollerini güçlendirmeye teşvik edilmiştir. Vize kısıtlamaları ve sıkı sınır kontrolü sığınmacıların korunma talep etmek için AB'ye girmelerini zorlaştırmıştır. Sığınmacılar düzensiz girişlerinden dolayı cezalandırılmamaları gerekirken, AB sığınmacıları düzensiz girişleri nedeniyle düzensiz göçmen olarak kabul etmiştir. Dublin sistemi de mültecilerin AB topraklarına güvenli bir şekilde erişmesi açısından problemler doğurmuştur. Yükün AB üyesi olmayan devletlere kaydırılmasının yanı sıra, üçüncü ülkeleri, geri kabul anlaşmaları yoluyla sınırı düzensiz şekilde aşan sığınma başvurularının iade edilmesi ve AB Üye Ülkeler dışındakilerin sorumlu kabul edilerek göç kararlarına dâhil olmaları için mekanizmalar yaratılmıştır. Sığınma ile ilgili AB mevzuatı, sığınma başvurularından hangi ülkeden sorumlu olduğunun belirlenmesi için yeni ilkeler yaratarak gelişmiştir. Güvenli üçüncü ülke ve ilk sığınma ülkesi prensipleriyle, sığınma talebinde bulunan bir kişi, varış ülkesinden transit veya menşe ülkesine geri gönderilmesi kararı alınmıştır.

Düzensiz göçü kontrol altına alma ve bunlarla mücadele etme çabaları, devletlerin güvenlikle ilgili politikaları doğrultusunda geliştirmiştir. Amerika Birleşik Devletleri'nde (ABD) 9-11 terörist saldırılarının ardından ve sırasıyla 2004 ve 2005 yıllarında Madrid ve Londra'daki meydana gelen bomba saldırılarından sonra sığınma politikalarının güvenlikleştirilmesi eğilimi izlemiştir. Sadece ABD değil, aynı zamanda AB ülkeleri kısıtlayıcı politikaları artırmaya başlamıştır ve dış sınırlar için vize kontrollerini güçlendirmişlerdir. Bu eğilimi takiben, AB antlaşmalarında yasal ve kurumsal yapılanma değişiklikleri gerçekleşmiş; bu değişiklikler, çeşitli eylem zirveleri ve programlarıyla AB politikalarında görülmüştür. Göç ve Hareketliliğe İlişkin Küresel Yaklaşım 'da kişilerin AB'ye düzensiz hareketine karşı verilen mücadelenin kapsamlı bir Avrupa sığınma politikasının temel taşı oluşturduğunu belirlemiştir. Benzer şekilde, geri kabul anlaşmaları, herhangi bir yasal izin olmaksızın Üye Devletlerde kalan sığınmacıların geri gönderilmesini sağlayan AB ile ortaklık ve iş birliği anlaşmalarının kaçınılmaz bir parçası haline gelmiştir. Bu söylemle, AB'nin üçüncü ülkelerle olan AB'nin dış ilişkileri içindeki geri kabul

anlaşmaları, göç hareketlerini AB kıyılarına sınırlamaya yönelik temel araç olarak işlev görmektedir.

Amsterdam Antlaşması'nda kodlanan AB sığınma korumasının bir diğer kritik yanı yük paylaşımının amaçlanmış olması olmuştur. Ortak Avrupa Sığınma Sisteminin oluşturulması ile AB Üye Devletleri, eşit ve adil olmayan bir sığınma başvuru dağılımı olduğunun farkına varmışlardır. Bu nedenle, AB'deki dayanışma ilkesini desteklemek için AB Üye Devletleri arasındaki yük paylaşımı eşit şekilde paylaşılması kararı alınmıştır. Bu sistem, 1951 tarihli Mültecilerin Statüsüne İlişkin Sözleşme (1951 Sözleşmesi)'ne göre geri göndermeme ilkesine uygun olarak tüm Üye Devletlerde eşdeğer koşullar altında korunmaya ihtiyacı olanlar için adil ve etkili koruma erişimini garanti etmek için hazırlanmıştır. Bu bağlamda, AB ülkeleri sığınma ve göç alanlarında bir dizi ortak kural oluşturarak "insan paylaşımı" ve "politika uyumlaştırması"ni teşvik etmeyi amaçlamıştır. Bununla birlikte, tezin diğer çıkarımlarından biri olarak bu girişimler köklü ilkeler ve politikalar şeklinde gerçekleşmemiştir. Bunun yerine, Suriyeli mülteci krizi sırasında AB ve Üye Devletlerin yanıtlarında açıkça görülebilen geçici ve acil çözüm önerileri şeklinde olmuştur. Başka bir deyişle, sığınma başvurularının eşit dağılımının oluşturulması ve iyi yapılandırılmış mülteci koruma sistemi pratiğe dönmemiş ve ilke olarak kalmıştır. Dolayısıyla mevcut sistemde eksiklikler vardır ve mültecilerin temel haklarıyla çelişmektedir.

Yük paylaşımı kavramı, uluslararası hukukun çeşitli alanlarında tanımlanabilir. Mülteci koruması açısından ilk olarak 1951 Sözleşmesinin Önsöz'ünden bahsedebiliriz. Yük paylaşımı konusundan açıkça bahsetmese de bazı ülkelerde sığınma hakkını tanımanın muhtemel ağır yüküne değinmektedir, bu nedenle çözüm için uluslararası iş birliğine ışık tutmaktadır. Uluslararası Mülteci Koruma Hukuku, mültecilerin yük paylaşımı bağlamında bağlayıcı bir araç oluşturmadığından, uluslararası hukuk, devletlerarasında sorumluluk paylaşımını kabul eder. Sorumluluk paylaşımı ve uluslararası dayanışma kavramları, uluslararası korumanın kesişen konularını kapsamaktadır. Bu kavramlar konunun bütünlüğü ve insani yanı için daha geniş bir açıklama sağlarlar. Bununla birlikte yük paylaşımına sorumluluğun dâhil

edilmesi, mülteci sorunlarının daha olumlu algılanmasını yansıtmaktadır. Bunun önemi, devletlerin zulüm ve / veya şiddetten kaçan kitlesel mülteci hareketleriyle karşı karşıya kaldıkları zaman ortaya çıkmaktadır. Bu gibi durumlarda, bazı ülkeler çok sayıda mülteci alarak ağır yük altında girmektedir. Dolayısıyla, diğer devletler de bu yükü uluslararası dayanışma ruhuyla paylaşmak ve iş birliği yapma sorumluluğuna sahip olmalıdır.

Üye Devletler, krizin çözümüne başvurma ihtiyacı olduğunda yük paylaşımını mekanizmalar haline getirmek için kurumsallaşmayı başaramamışlardır. Ortak bir sığınma sistemi yaratılması, tek taraflı ulusal düzenlemeleri azaltmayı ve dayanışma ilkesi çerçevesinde yük paylaşım mekanizmasının işleyişini yönetmeyi amaçlanmış fakat pratikte gerçekleştirilmemiştir. Aynı zamanda kontrol mekanizmaları AB'ye ulaşabilen sığınmacı sayısının azaltılması üzerinde açık bir etkiye sahip olmaktadır. Bununla birlikte, potansiyel sığınmacıları düzensiz yolları kullanmaya yönlendirebilirler. Mevcut düzende sınırları aşmak için sığınmacılar zorlu yolculuklarla AB Üye Devletlerine ulaşırlar dahi, sığınmacıların geldiklerinde geri kabul anlaşmaları yoluyla güvenli üçüncü ülkelere gönderilmektedirler. Bu mekanizmalar AB tarafından desteklenen ilkeleri baltalamaktadır.

Bu tezin çıkarımları doğrultusunda yük paylaşımı, devletlerin mültecileri kabul etme ve koruma sorumluluğu olarak kabul edilir ve bu sorumluluk yük paylaşımı ile bütünleştirilir. Bunun nedeni, yük paylaşımının hem sığınmacılara hem mültecilere hem de yükü hafifletmeye ihtiyaç duyan devletlere fayda sağladığı gerçeğidir. Mülteci hareketleri kitlesel olduğunda yük paylaşımı çoğunlukla gereklidir. Uzun vadede, mülteciler ev sahibi topluluğa bütünleşmiş hale gelebilir, emek piyasasına katılabilir veya genel olarak kendi ayakları üzerinde durabilirler, topluma veya devlete ek değer katabilirler. Bununla birlikte, kısa vadede sığınma başvurularının işleme konması, konaklama, yemek, eğitim ve sağlık erişimine vb. temel haklar sağlanması, çok sayıda mülteci için devletin finansal, teknik ve politik yükünü artırmasına sebep olmaktadır. Bu çalışma, sığınmacıların yeniden yerleşim, para-finans dağılımı ve normlar paylaşımı konusundaki mülteci krizinin çözümünde yük paylaşımı oluşturmaktadır. Buna ek olarak, bu tez, yerleştirme ve mali katkı üzerine

Suriyeli mülteci krizinin temelini oluşturan AB ve Türkiye arasındaki yük paylaşımına odaklanmaktadır. Bu nedenle, AB'nin dışsallaştırma politikaları Türkiye'de kayda değer yük devri veya kaydırılması olarak değerlendirilmektedir. Yükün kayması, Suriyeli mülteci korumasının AB'nin sorunu olmadığı perspektifini yansıtmıştır. Sorun daha çok Türkiye'nin problemi olarak kabul edilmektedir.

AB'nin dışsallaştırma politikalarının Türkiye'ye yansımalarının sebebi Suriyeli mülteci krizi sırasında Türkiye'den AB'ye gelen düzensiz göç hareketini kontrol etme niyetidir. Bu nedenle, bu çalışma, AB tarafından üçüncü ülkelerle yakın iş birliği içerisinde kullanılan en belirgin ve sorunlu dışsallaştırma stratejilerini Türkiye üzerinden vurgulamıştır. İş birliği, düzensiz göçmenlerin ve üçüncü ülke vatandaşlarının iadesi için geri kabul anlaşmalarının sonuçlandırılması yoluyla olmuştur. Bu tür iş birliği, üçüncü ülkelerde olumsuz bir durum ortaya çıkarmaktadır. AB ülkelerindeki mülteci korumasının sorumluluğunu transit ülkeler üzerine yönlendirmektedir. Sonuç olarak, sığınmacıların geri dönüşleri, Türkiye'yi güvenli üçüncü ülke olarak kabul ederek ve geri kabul anlaşmalarıyla güvence altına alınan İltica Usulleri Direktifi tarafından iltica talebinde bulunan ilk ülke olarak kabul edilerek sağlanmaktadır. AB-Türkiye Anlaşmasına göre, 20 Mart 2016 tarihinden itibaren düzensiz yollardan Yunanistan sahillerine ulaşan üçüncü ülke vatandaşlarının ve iltica başvuruları "kabul edilmez hüküm" kabul edilen ve Yunanistan'da sığınma başvurusunda bulunmayan kişilerin Türkiye'ye geri gönderileceğine karar verilmiştir. Üçüncü ülke vatandaşları, sığınma başvuruları kaçınılmaz olarak görülen ve AB üyesi ülkelerin sınırlarına zaten ulaşan sığınmacılara koruma sağlamak için kendi sorumlulukları olmasına rağmen, AB ülkeleri onları Türkiye'ye geri götürmenin yollarını aradığını göstermektedir. AB-TR Anlaşması, AB'nin göç politikalarında dışsallaştırma stratejileri uygulamaya devam ettiğinin açık kanıtıdır.

Güvenli üçüncü ülke ve ilk sığınma ilkeleri Ortak Avrupa Sığınma Sistemi'nin Sığınma Prosedürleri Direktifi içinde geliştirilmiştir. Güvenli üçüncü ülke, AB'nin sığınma politikalarının dışsallaştırılmasına yönelik araçlardan biridir. AB, üçüncü ülke ilkesini Schengen ve Dublin Sözleşmeleri, geri kabul anlaşmaları ve aracılığıyla

üçüncü ülkelere taşımaktadır. AB, mülteci sorumluluklarını AB dışındaki diğer ülkelere kaydırarak sığınmacıları Üye Devlet topraklarına çekmemek için dış sınır tedbirlerini uygulamışlardır. Bu nedenle, Türkiye-AB geri kabul anlaşması, üçüncü ülkelerle bir iş birliği yolu olarak düzensiz göçü sınırlandırmak için AB'nin dışsallaştırma politikasının araçlarından biri olarak değerlendirilmiştir. AB liderleri, Türkiye-AB Anlaşması ile Türkiye üzerinden mülteci konusunu azaltmaya çalışmışlardır. AB'nin insan onuru üzerindeki normları, AB müktesebatının insan haklarına saygı ve yük paylaşımı uygulamaları arasında çelişki olduğu göstermektedir. Henüz üçüncü ülke vatandaşların iade edilmeye başlanmadığı AB-Türkiye Geri kabul anlaşmasının yürürlüğe konması için Vize Serbestisi Diyaloğu süreci başlatılmak istenmiş, geri kabul anlaşmalarının doğası gereği sığınmacıları kapsayamayacağından AB-Türkiye Anlaşması altında Suriyeli mültecilerin geri gönderilmesi 1-1 modelinde gerçekleştirilmiştir.

Suriyeli mülteci krizi, mültecilerin sorunlarını, devlet çıkarları nedeniyle uygulanabilir, verimli ve dayanıklı çözümler bulmakta zorlukların bulunduğu açık bir kanıtını sunmuştur. AB Üye Devletleri sınırlarını etkiledikleri zaman bile insani kriz üzerindeki sorumluluklarını hala göz ardı etmektedirler. Bunun nedeni, konuyla ilgilenen siyasi mekanizmaların her Üye Devlette farklılık göstermesi ve düzensiz göçü önlemek için farklı tedbirler düzenledikleri gerçeğidir. AB, herkesin güvenli bölgede yaşama ve temel hak ve özgürlüklerden yararlanma hakkına sahip olduğunu savunan bir topluluktur. Bu bağlamda, AB'nin sığınma ve mülteci korumasında etkin rol oynayacağı varsayılabilir. Mülteci koruması yükümlülüğünü uluslararası topluluk ve üçüncü ülkelerle paylaşmak için Avrupa hükümetlerinin uluslararası iş birliği arayışını değerlendirmek adil olabilir. Bununla birlikte, bu analizdeki deliller, AB'nin çeşitli mekanizmaları yoluyla, mülteci korumasının yük paylaşımı yerine, yük devrini düzenlemeye daha olası olduğunu açıkça ortaya koymuştur. Bunun başlıca nedeni, ilk sığınma ülkesi ve güvenli üçüncü ülke ilkelerinin geliştirilmesi ve geri kabul anlaşmalarının uygulanmasından kaynaklanmaktadır.

Türkiye, 911 kilometrelik sınırıyla Suriyeli mültecilerin koruma aradığı ülkelerden biri olmuştur. Suriyeli mülteci hareketlerinin başlangıcındaki politikalar, belli ölçüde anlaşılabilir olabilecek şekilde uzun vadeli çözümler bulmayı hedefleyememiştir. Türkiye bugün yaklaşık 3 milyon Suriyeli mülteciye ev sahipliği yapmaktadır. Yükün paylaşılmasında da uluslararası camiadan yardım beklemektedir. 2015 yılında Suriyeli ve Suriyeli olmayan mültecilerin AB sınırına ulaşmasıyla AB'de düzensiz göç krizi yaşanmıştır. AB, Türkiye ile iş birliği içinde Suriyeli ve Suriyeli olmayan mültecilerin de dâhil olduğu tüm düzensiz göçmenleri AB'den Türkiye geri göndermeyi hedeflenmesiyle AB ile Türkiye'deki yükün paylaşılması ortaya çıkmıştır. AB-Türkiye Anlaşmasıyla düzensiz göçün caydırıcılığını azaltmak için Yunanistan'dan Türkiye'ye gönderilecek her bir Suriyeli mülteci için Türkiye'de kamplarda kayıtlı bir mültecinin AB Üye Ülkelerine yerleştirilmesi başlanmıştır. Burada önemli nokta her ne kadar AB'de belli ülkelerde çabaların olmasına rağmen yerleştirme kotalarının miktarı konusunda kendi içlerinde anlaşamadıkları ve yerleştirmelerin Anlaşmadaki belirtilen hedeflere henüz ulaşamadığı görülmüştür.

Bu tez AB-Türkiye Anlaşma 'sının AB ile Türkiye arasındaki yük paylaşımının önemli araçlarını değerlendirirken, AB'nin Türkiye'ye maddi yardımını da incelemektedir. Mali yükün paylaşılması için, transit ülkedeki sığınma ülkesine mali katkıda bulunmak suretiyle, AB, sığınmacıları üçüncü ülkelerde kalmaya teşvik etmeyi amaçlamaktadır. Türkiye hâlihazırda hem Suriyelileri hem de Suriye dışından gelen mültecilerle fazlasıyla yük ile karşı karşıya kalmış bir ülkedir. Türkiye'deki Suriyeli mültecilere etkin koruma sağlamak için bir defalık 3 milyar avroluk parasal yardımın aktarım şeklinden dolayı sıkıntılar yaşanmaktadır. Henüz gerçekleşmemiş olan 6 milyar Avronun nasıl aktarılacağı ve kullanılacağı yönünde de belirsizlikler vardır.

İkinci Dünya Savaşı'ndan bu yana tarihin en büyük mülteci hareketi olan, Suriyeli mülteci hareketine, Türkiye açık kapı politikası belirlemiştir. Ayrıca, dünyanın en uzun mülteci krizi ve en ciddi insani krizdir. Suriye'deki ihtilaf başladığında Türkiye insani bir perspektifle taraf tutmuştur. Başlangıçta, Suriyeli mültecilerin misafir

olarak kabul edilmeleri statülerini belirsiz kılmıştır. Suriye'deki şiddetin durumu sonradan anlaşılacaktır. Bunun nedeni, çoğunlukla Suriyeli mültecilerin Türkiye'de geçici olarak algılanmasından kaynaklanmıştır. Türkiye'nin Suriyeli mültecilerin korunması konusundaki başarılarını göz önüne aldığımızda, Türkiye'nin koruma sağlamada başarı kaydettiği söylenebilir. Suriyelilerin geçici koruma statüsü, çalışma hayatına, sağlık ve eğitime erişim açısından mültecilerin haklarını geliştirmiştir. Sorun, Geçici Koruma Yönetmeliğinin bilinmeyen süresi ile ortaya çıkmaktadır ve uluslararası korumaya erişimde kısıtlama getirilmiştir. Öte yandan, Türkiye eğitim ve çalışma hakkı konularındaki düzenleyici değişiklikler zamansız yapılmıştır ve AB'de daha iyi bir hayat fırsatı bulmaya çalışırken hayatlarını kaybeden binlerce mülteci vardır. Bu sebeple Türkiye'nin yerel uyum süreçlerini başlatmak için başta geç kaldığı belirtilebilir.

İdari, teknik, finansal ve yasal yükü paylaşmak AB için bir kaçabileceği bir alan olmamalı; Bunun yerine, uluslararası mülteci koruma rejimi için bir gereklilik olmalıdır. Mevcut sistemde Suriyeli mültecilerin hakları yeterli düzeyde korunmamakta veya mültecilerin sorunları çözülmemektedir. Uygulanan sistem daha çok "toplu ihraç" gibi ortaya çıkmakta ve sığınma talebinde bulunan kişiler için eşit muamele ilkesiyle çelişmesine neden olmaktadır. Normalde bir kişinin uluslararası korumayı gerektirip gerektirmediğine karar verilmesi zaman almaktadır. AB-Türkiye Anlaşması, bu tezin argümanlarını, Türkiye-AB ilişkilerinde ve AB'nin Suriye'deki mülteci koruma krizine yaklaşımında açık bir yük paylaşımı mekanizması eksikliğini gördüğünü ortaya koymuştur. Açıklamaya göre, Yunanistan'ın, Sığınma Prosedürleri Direktifinin 35. ve 38. Maddelerine göre Türkiye'yi güvenli üçüncü ülke ve ilk sığınma ülkesi olarak kabul etmesi beklenmektedir. Bu mekanizmayla Suriyeli ve Suriyeli olmayan sığınmacıların ve mültecilerin de yer aldığı düzensiz göçmenler Türkiye'ye geri gönderilmektedir. Bu ilkelerin uygulanması, kimin AB tarafından güvenli üçüncü ülke olarak kabul edildiği konusunda fikir birliği sağlanması açısından oldukça sorunludur. Öte yandan Türk hükümeti bu terimleri kabul etmemekte ancak geçici yönetmeliklerle Suriyeli mültecilere yeterli koruma sağlanmasını ve Suriye dışındaki mültecilerin uluslararası korumaya erişim haklarının olmasını sağlamaktadır. Akademinin ve insan ve mülteci

hakları savunucularının görüşüne göre de Türkiye'nin coğrafi sınırlaması nedeniyle, Suriyeli mültecilere uluslararası koruma arayışı için erişim sağlamadığı için Türkiye'yi güvenli bir üçüncü ülke olarak kabul edilmemektedir.

Türkiye AB için her zaman Ortadoğu, Afrika ve Asya'dan gelen düzensiz göçü engelleyen kritik bir ülke olarak görülmektedir. AB'nin Suriye'deki mülteci krizine tepki olarak Türkiye'yi önceliklerine sokma amacı, sığınmacıların AB'ye ulaşmasıyla durumyla hızlanmıştır. 2015'ten sonra çoğunlukla Suriyeliler olan yüksek sayıda sığınmacının AB sınırlarına gelmesiyle AB'yi sığınma politikalarını yeniden yapılandırmaya yönlendirmiştir. Dolayısıyla Anlaşma, önce AB ve Türkiye arasındaki ilişkilerin canlandırılması yönündeki pozitif gelişmeler getirirse de Türkiye'nin yavaş fon akışı ve vizesiz seyahatin önündeki engeller hakkındaki eleştirisi, Türkiye'yi geri kabul anlaşmasını uygulamaktan vazgeçirmektedir. Türkiye ayrıca AB'nin yeni fasılların etkinleştirilmesi konusundaki sözlerini tutmadığını dile getirmektedir. Öte yandan, Anlaşma'nın, Ege Denizi'ndeki düzensiz göç hareketleri ve ölümlerin azaltılması nedeniyle başarılı olduğu söylenebilir. Bununla birlikte, bu Anlaşma, göçlerin kökenine herhangi bir çözüm getirmez. Dahası, AB'nin insan hakları konusundaki taahhütleri açısından AB-Türkiye Anlaşmasının yasallığı ve ahlaki tartışılmalıdır. Anlaşma'nın yarattığı yük devri nedeniyle Türkiye, güvenli bir üçüncü ülke olarak görülmemelidir.

Sonuç olarak bu tez literatürde yeni çalışılmaya başlanmış olan AB'nin göç ve sığınma politikalarının dışsallaştırmasını ve bunun Türkiye'ye olan yansımalarını incelemiştir. Partner ülke, aday üye ve transit ülke olarak Türkiye ve AB arasında ilişkilerin göç ve sığınma politikaları açısından da oldukça önemli olduğu görülmektedir. Suriyeli mülteci krizi ve bunun sonucu olarak AB'nin aradığı çözümler dışsallaştırma politikalarının daha da yaygınlaşacağını göstermektedir. Bu çalışma ve temel çıkarımları yeni akademik çalışmalara ışık tutabilecektir.

APPENDIX D.TEZ FOTOKOPİSİ İZİN FORMU

ENSTİTÜ

Fen Bilimleri Enstitüsü	<input type="checkbox"/>
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YAZARIN

Soyadı : Yılmaz
Adı : Filiz
Bölümü : Avrupa Çalışmaları

TEZİN ADI (İngilizce) : The Externalization Of The European Union's Asylum Policy: Refugee Burden Sharing Between The European Union And Turkey During The Syrian Refugee Protection Crisis

TEZİN TÜRÜ : Yüksek Lisans Doktora

1. Tezimin tamamından kaynak gösterilmek şartıyla fotokopi alınabilir.
2. Tezimin içindekiler sayfası, özet, indeks sayfalarından ve/veya bir bölümünden kaynak gösterilmek şartıyla fotokopi alınabilir.
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