

THE EFFECT OF UNHCR OPERATIONS IN THE DEVELOPMENT OF TURKEY'S ASYLUM  
FRAMEWORK

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## **Abstract**

Turkey is increasingly occupying an important position within the world and more so within migration studies because of its triple role, as a sending, receiving, and transit country. This text addresses Turkey's changing position within world orders in regards to migration and asylum concerns and how UNHCR operations have affected Turkey's development of its asylum framework. Due to Turkey's geographical location at the heart of major migratory networks, it continues to strictly observe the 1951 Geneva Convention through the lens of its Geographical Limitation. This limitation is central to Turkey's current asylum system with the separation of Europeans from non-Europeans ensuing in the application of differential treatment by which only Europeans are eligible for the granting of full fledged refugee status. One of Turkey's most recent milestones is its successful completion of the draft process for its first ever law on asylum - *The Law on Foreigners and International Protection*, a significant portion of Turkey's quest of reforming its asylum framework through policy. Both the EU and UNHCR were able to exert their influence on Turkish officials throughout the draft law process. Their influential impact will be addressed through the phenomena of UNHCR-ization and Europeanization respectively. The EU's power significantly stems from EU-Turkey accession negotiations while UNHCR has become influential because of its identity as the mandated UN agency for the international protection of asylum seekers and refugees. The position UNHCR occupies in Turkey is valuable in assessing the influence an international organization can have on the development of a nation's national policy and the potential power gain, whether intentional or unintentional, in carrying out the respective policy. UNHCR's influence within Turkey's asylum system is observable in the organization's increasing operations. These operations include the processing of asylum claims, determining refugee status, and resettling refugees out of Turkey. The EU is an important actor for Turkey's asylum reform process, but they are not the only actor enacting change and they might not even be the most influential actor. The Turkey-UNHCR relationship, especially in regards to providing services of international protection to asylum seekers and refugees is worth further analysis.

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## **List of Abbreviations**

CRR – Coordination

ECJ – European Court of Justice

ECtHR – European Court of Human Rights

EU – European Union

ICMC – International Catholic Migration Commission

IOM – International Organization for Migration

MOI – Ministry of Interior

NAP – National Action Plan

NGO – Non-Governmental Organization

RSD – Refugee Status Determination

UNHCR – United Nations High Commissioner for Refugees

## List of Definitions

*Key Terms as Defined by the United Nations High Commissioner for Refugees (UNHCR)*

**Asylum:** The grant, by a State, of protection on its territory to persons from another State who are fleeing persecution or serious danger. A person who is granted asylum is a refugee. Asylum encompasses a variety of elements, including *non-refoulement*, permission to remain on the territory of the asylum country, and humane standards of treatment.

**Asylum seeker:** A person whose request or application for asylum has not been finally decided on by a prospective country of refuge.

**1951 Convention Relating to the Status of Refugees:** A Convention that established the most widely applicable framework for the protection of refugees. The Convention was adopted in July 1951 and entered into force in April 1954. Article 1 of the 1951 Convention limits its scope to “events occurring before 1 January 1951”. This restriction is removed by the 1967 Protocol relating to the Status of Refugees. To date, 137 States are parties to the 1951 Convention and/or the 1967 Protocol.

**Durable solutions:** Any means by which the situation of refugees can be satisfactorily and permanently resolved to enable them to live normal lives. UNHCR traditionally pursues the durable solutions of voluntary repatriation, local integration and resettlement.

**Persons of concern to UNHCR:** A generic term used to describe all persons whose protection and assistance needs are of interest to UNHCR. These include refugees under the 1951 Convention, persons who have been forced to leave their countries as a result of conflict, or events seriously disturbing public order, returnees, stateless persons, and in some situations, internally displaced persons. UNHCR’s authority to act on behalf of persons of concern other than refugees is based on General Assembly resolutions.

**Resettlement:** The transfer of refugees from the country in which they have sought refuge to another State that has agreed to admit them. The refugees will usually be granted asylum or some other form of long-term resident rights and, in many cases, will have the opportunity to become naturalized citizens. For this reason, resettlement is a durable solution as well as a tool for the protection of refugees.

**Temporary protection:** An arrangement or device developed by States to offer protection of a temporary nature to persons arriving en masse from situations of conflict or generalized violence, without prior individual status determination. Temporary protection was applied in some Western European States for the protection of persons fleeing the conflict in the former Yugoslavia in the early 1990s.

## Chapter I

### Introduction

Turkey occupies a unique position within migration movements because of its identification as a triple role holder. Currently, Turkey acts as a sending nation, receiving nation, and country of transit. Historically, Turkey was categorized as an emigration country, but due to Turkey's geographical location of bordering the EU to the West and neighboring a region of political instability to its East, it has evolved into a transit and immigration country. Turkey neighbors one of the world's mass-generating refugee regions, in the last few years has experienced a considerable rise in the number of persons seeking protection from persecution within its borders due to political turmoil in its eastern neighborhood.

Over the past few years, a correlation between the number of asylum seekers fleeing persecution into Turkey in search of international protection and the operations of the United Nations High Commissioner for Refugees (UNHCR) in providing humanitarian assistance to these asylum seekers has been observed. This all comes at a time when Turkey has been making long strides with reforming its framework on migration and asylum. Turkey's greatest improvement for the implementation of an effective and efficient asylum framework is Turkey's preparation of the draft law for Turkey's first-ever comprehensive law on asylum, formally known as *The Law on Foreigners and International Protection* (henceforth The Law).

The Law marks a historical change in Turkey's approach on issues of migration and asylum. The Law aims to strengthen Turkey's institutional capacity and ability regarding immigration and international protection efforts through principles and procedures

concerning the entry to, residence in, and exit from Turkey, and the scope and implementation of the protection to be provided for foreigners who request protection (Ministry of EU Affairs 5). Substantial legislative work has been completed on The Law progressing it to its current position of The Law opening up for discussion in Parliament on March 20, 2013. Its entry into force is expected later this year (Yabasun). It was with the contributions of UNHCR, academics, and civil society that the Turkish Ministry of Interior (MOI) was able to prepare and submit the law to the office of the Prime Minister, who subsequently submitted The Law to Parliament. If The Law were adopted, it would constitute Turkey's first domestic asylum law, something that is not only necessary, but also overdue.

At the beginning of 2011, the global population of asylum seekers and refugees stood at an astounding 31 million people (UNHCR in Turkey 7). This substantially high figure is evidence for the necessary development of human rights international organizations like UNHCR. UNHCR is the United Nations (UN) agency mandated to protect and support refugees worldwide. Their operations in regions of the world where the weight of these figures is felt the most, and these respective regions acknowledging the importance of their expertise and presence in promoting international protection for asylum seekers and refugees.

Throughout The Law's draft process, UNHCR shared its humanitarian expertise with the Turkish government, making the organization not only a necessity to the future development of asylum law in Turkey, but a respected source regarding the rights and needs of refugees under international protection. UNHCR has not only been a vital actor during the new law's drafting process, but also before drafting of The Law commenced and

in its ground efforts. Some of UNHCR's contributions to strengthen Turkey's asylum framework include leading the first training seminars to enhance Turkish officials' knowledge of asylum, promoting judicial appeal and improving the time frame asylum seekers have to register with Turkish authorities. Additionally, UNHCR's ground efforts of processing asylum claims, conducting refugee status determination (RSD), and organizing refugees are insurmountable and have contributed a significant amount to Turkey's socialization of the norms and standards comprising the international refugee regime.

The Turkish Government regards UNHCR as an important enough actor to allow the organization to be respected throughout the law-making process without legally being required. The longstanding relationship between Turkey and UNHCR, culminating in Turkey's respect for UNHCR's advice developed outside a legal agreement, and continues to strengthen without legal binding on a daily basis.

Turkey's asylum system relies on UNHCR due to its strict application of the 1951 Geneva Convention Relating to the Status of Refugees through the maintenance of a geographical limitation. Turkey's Geographical Limitation distinguishes Europeans from non-Europeans, granting refugee status only to European asylum seekers (as chosen by Turkey), was an option acknowledged in the 1951 Convention.<sup>1</sup> Maintaining the Geographical Limitation has produced a one-of-a-kind approach on asylum law in Turkey. Turkey has a two-tiered asylum policy in Turkey, with Europeans falling under the first tier, and non-Europeans the second tier. UNHCR provides international protection for non-European asylum seekers in Turkey, while Turkey protects European asylum seekers.

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<sup>1</sup> Article 1 B (1) of the 1951 Convention provides: "For the purposes of this Convention, the words 'events occurring before 1 January 1951' in article 1, Section A, shall be understood to mean either (a) 'events occurring in Europe before 1 January 1951; or (b) 'events occurring in Europe or elsewhere before 1 January 1951', Turkey chose option (a).



From 1995 to 2011, only 226 Europeans lodged asylum claims in Turkey, whereas by October 2012, the population of non-European asylum seekers and refugees was over 17,000. Without UNHCR and the organization's operations throughout the country, the majority of asylum seekers would not be protected and Turkey's asylum system would unreservedly collapse, as the strain on Turkey and its resources would be too demanding.

UNHCR is not the only actor that has helped Turkey's asylum system. The European Union (EU) and the looming possibility of EU membership have been major driving forces behind Turkey's choice to establish its first ever asylum law. The concept of Europeanization is utilized to explain the external influence the EU has on others, like Turkey. The EU is currently undergoing its own development process with the intent of a common approach on asylum for all EU member states. Turkey is central to the efforts of the EU to control unwanted flows of people through its borders, and thus Turkey must fully harmonize with EU asylum law before being eligible for full membership status (Soykan "Migration-Asylum Nexus" 1). It is for this reason that asylum and migration have occupied a very controversial position throughout Turkey's EU accession negotiations with no sign of faltering in its position of importance on future EU agendas.

While the EU has had important effects on Turkey's transformation, they are not the sole source of change. If the process of accession continues on its current trajectory of deadlock then their influence will only continue to dwindle. Kirişci introduced the concept of UNHCR-ization, a term that presents the other side of the argument of powers of influence, specifically UNHCR, in Turkey's asylum reform process. ("Reforming Turkey's Asylum Policy").

This concept of UNHCR-ization is necessary to understanding the overall picture of the development of the asylum framework in Turkey. UNHCR helps governments improve their asylum systems and UNHCR's intent is no different in Turkey. While Europeanization has been instrumental for policy reform, it doesn't necessarily materialize into implementation, whereas the ground operations carried out by UNHCR produce measurable outcomes and reflect an improved state for asylum seekers and refugees. The rise in lodged asylum claims in Turkey, the granted and recognized status of refugee to more persons of concern, and the continued growth in Turkey's resettlement program all resulted from UNHCR's involvement.

Though protecting refugees is primarily the responsibility of States, UNHCR remains responsible for non-Europeans in Turkey, who make up the majority of asylum seekers in Turkey. In addition, the resettlement of non-European asylum seekers in Turkey is regarded as the responsibility of UNHCR, though non-governmental organizations and safe third countries also play a role.

UNHCR normally gets involved in a country's asylum system only until the nation can take exclusive control of all operations (Jastram and Achiron 7). In Turkey, in contrast, UNHCR has gained more responsibility lending way for a "reverse transition" phase to occur. Soykan clearly states that this concept of a "reverse transition" reflects Turkey's refusal to process the asylum claims of non-Europeans (Soykan "Migration-Asylum Nexus" 4). How long this reverse transition phase will continue for is unknown as it is a direct effect of the continued maintenance of the geographical limitation.

Turkey makes for a great case study of UNHCR's effect on the development of a nation's domestic policy and the potential power gain, whether intentional or

unintentional, in carrying out the respective policy. This paper provides an in-depth analysis of UNHCR's impact on Turkey and its development of an effective and efficient asylum framework. I will leave the reader with a thorough understanding of the evolving position of asylum within irregular migration studies and the role that UNHCR occupies within this growing international humanitarian concern and just how important their efforts are for worldwide application of international protection. Turkey shows us that while a joint approach between UNHCR and a national government may be an ideal starting point to developing an effective and efficient asylum framework, unintentional repercussions can arise. The development of a reverse transition phase I identity as the most critical repercussion since it increases the responsibility of UNHCR and not the national government.

This thesis argues against the current literature of Europeanization as the sole source of change in Turkey's reform process, as analyzed through its transforming asylum framework. First, I provide a concise overview and historical analysis of Turkey's position within international migration movements in order to establish the required background knowledge of the current position that Turkey fills within migration movements and, more specifically, the situation of asylum seekers and refugees within Turkey's borders. After that, I provide a thorough discussion on the development process of Turkey's first-ever law on asylum. This will take into consideration the current joint approach involving both the Turkish government and UNHCR in the handling of asylum seekers and refugees and their impact throughout the development process. I will conclude by showing my ultimate goal of proving how UNHCR, alongside the EU has been a source of change for Turkey's asylum reform process.

UNHCH has been a fundamental actor for the developmental success of Turkey's asylum framework and I project the necessity of UNHCR's involvement for the future success of Turkey's asylum framework. UNHCR's vitality in the current and future success of Turkey's asylum process will be supported by measurable data on the lodging of asylum claims with Turkish UNHCR field offices, UNHCR's conduction of refugee status determination cases, and UNHCR's resettlement of refugees to third safe countries. All three of these operations tell the same story of increasing UNHCR operations in Turkey and reason to believe that UNHCR's long-standing relationship with Turkey will only continue on its current strengthening trajectory.

## **Chapter II.**

### **Background and Context**

To grasp the exceptionality of Turkey's asylum framework, I will construct a contextual analysis centered on asylum, progressing in a top-down order. I will accomplish this by first looking at asylum through a global lens and then explaining more specific asylum issues for the case study of Turkey. In order to achieve this I will define important terminology that will be used throughout this paper; explain current international standards addressing issues of asylum; provide a brief synopsis of the global asylum problem, and analyze UNHCR's role in alleviating this humanitarian concern on a global scale. UNHCR's extensively utilizes its mandate to provide international protection and identify durable solutions for refugees in Turkey. A misfit in international and national law has created confusion in Turkey, but UNHCR has helped in dissipating some of it.

#### ***Terminology***

To establish understandings of concepts I will use throughout this thesis I will define certain terms as applied in my research. This measure provides clarity and prevents confusion. Since Turkish national law's application of criteria for what constitutes a refugee and asylum seeker differs from international law's application, confusion within a legal context has transpired. The application of different criteria results from Turkey's maintenance of the Geographical Limitation. This misfit between international law and Turkish national law will be further explained below when discussing the difference between an asylum seeker and refugee. First I will explore Turkey's Geographical Limitation, since it is the source creating the legal misfit between Turkish national law and international law.

### *Geographical Limitation*

A geographical limitation is a clause listing the geographic areas in which coverage of a convention or treaty is effective. In the case of the Geographical Limitation explained in Article 1, Section B of the 1951 Geneva Convention Relating to the Status of Refugees, is a reservation that allowed (and still allows) States to legally limit their obligations to refugees resulting from events occurring only *in Europe* before the critical date of 1951. Only three countries in the world maintain this limitation among the parties to The Convention, Turkey, Madagascar and The Democratic Republic of Congo (Goodwin-Gill 7).<sup>2</sup> Turkey's decision to maintain this Geographical Limitation has profound effects on Turkey's application of asylum law. As briefly explained in the introduction, it limits refugee status only to asylum seekers uprooted by events occurring in Europe. Turkey defines Europe as all members of the Council of Europe, including Russia and ex-Soviet states west of the Urals (including the Caucasus).<sup>3</sup> Non-Europeans seeking protection from Turkey, receive international protection from UNHCR. This will be analyzed in further detail in a later section.

While the differences between the two procedures seem slight at some points, they have a significant impact on the usage of resources by UNHCR and the Turkish

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<sup>2</sup> Only three other states, in addition to Turkey, opted to maintain the geographical limitation in their treatment of the refugee apart from Turkey as was an original option in the 1951 Geneva Convention: Congo, Madagascar, and Monaco. Turkey ratified the 1967 Protocol on July 31, 1968, but chose to continue to maintain the geographical limitation. Monaco ratified the 1967 New York Protocol on June 16, 2010 and while doing so it did not retain the geographical limitation (Goodwin- Gill 7).

<sup>3</sup> Council of Europe is comprised of 47 countries with an additional 6 observing states.

Government.<sup>4</sup> This policy approach distinguishing between Europeans and non-Europeans is not acceptable under EU norms, creating much hysteria within accession negotiations between Turkey and the EU. Turkey opted and continues to maintain its Geographical Limitation because of uncertain future refugee needs and committing to something it may be unable to keep due to an absorption capacity limit and a strain on resources. The main reason the EU insists on Turkey eliminating the Geographical Limitation ties back to the EU's obligatory observance of the highest standards provided for in its law as well as international law. A promotion of a human rights agenda on paper, but the EU itself struggles with the implementation through practice.

The Geographical Limitation creates the most controversy within EU-Turkey accession negotiations regarding asylum and migration. The majority of this controversy stems from Turkey's maintenance of the Geographical Limitation allowing Turkey to legally bypass its responsibility of international protection of all persons of concern. Turkey currently refuses to lift the Geographical Limitation. The EU demands Turkey lifts the limitation in order to completely adhere to EU norms, something Turkey will not do without a formal agreement. Turkey considers a formal agreement to incorporate the EU's commitment in responsibility sharing of asylum seekers and refugees who seek protection in Turkey. This will relieve Turkey of some of the strain on resources expected to happen when heavier flows of asylum seekers cross its borders with the lifting of the limitation. Without the ability to foresee how the lifting of the Geographical Limitation will affect inflows into Turkey, the Turkish Government will remain unwilling to voluntarily agree to

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<sup>4</sup> Kaya gives a detailed analysis of the differing Turkish asylum procedure for Europeans and non-Europeans (Kaya Adopting 14-15).

something with an unknown outcome. This philosophy of future unpredictability continues to cement Turkey's choice to retain the Geographical Limitation.

### *Asylum Seeker and Refugee*

Asylum seeker and refugee cannot be used interchangeably because they are not synonyms. International law governs both statuses since they both occupy positions of extreme vulnerability. Understanding the differences between asylum seeker and refugee to know when to appropriately use the two terms has grave importance when discussing asylum. Knowing what constitutes an asylum seeker and what constitutes a refugee can help a nation determine inefficient processes within a system and help the country allocate resources more effectively. If the number of asylum seekers rises this could lead to a potential backlog in the processing of asylum claims developing. However, on the flipside if the number of refugees rises this may mean more resources should be allocated to identifying durable solutions. Thus, proper terminology usage has the ability to aid in developing a stronger asylum system. Thus, defining refugee and asylum seeker remains essential in the case of Turkey within a legal context.

For the past 6 decades, the world has had a legal framework to guide their treatment of the refugee via *The 1951 Geneva Convention Relating to the Status of Refugees* and its follow-up *1967 Protocol*. The Convention provides the most comprehensive codification of the rights of refugees at the international level and endorses a single common ground definition of "refugee" as defined in Article 1, Section A:

"A refugee is a person who "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is



outside the country of his or her nationality, and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country”.

The International Organization for Migration (IOM) provided the international community the following definition for asylum seeker:

“Persons seeking to be admitted into a country as refugees and awaiting decision on their application for refugee status under relevant international and national instruments. In case of a negative decision, they must leave the country and may be expelled, as may any alien in an irregular situation, unless permission to stay is provided on humanitarian or other related grounds”.

A major difference between an asylum seeker and refugee is before one can reach the status of refugee, one must first be an asylum seeker who has lodged an application for asylum. Successful applications for asylum grant a person refugee status. Therefore, one cannot occupy positions of both an asylum seeker and a refugee at the same time, nor can one be a refugee without first occupying the position of asylum seeker. A refugee is a granted and recognized status while an asylum seeker in most cases (Turkey is an exception) refers to an immediate status donned on those in need of immediate international protection.

### *Asylum*

The process of submitting an asylum application combines paper documentation and in-person interviews. This encompasses the first steps of refugee status determination

(RSD). “Everyone has the right to seek and to enjoy in other countries asylum from persecution” - Universal Declaration of Human Rights and as defined in the 1951 Convention, all persons unless specifically stated have the right to seek asylum, where asylum is defined as:

“The grant, by a State, of protection on its territory to persons from another State who are fleeing persecution or serious danger. A person who is granted asylum is a refugee. Asylum encompasses a variety of elements, including *non-refoulement*, permission to remain on the territory of the asylum country, and humane standards of treatment.

Turkey’s first instance of defining asylum-seeker and refugee occurred in 1994 when Turkey passed its first piece of legislation on asylum, the 1994 Bylaw. In the Bylaw Turkey defines refugee as “a foreigner or stateless person of *European* origin that has been recognized according to the criteria of the Geneva Convention”. This contrasts with Turkey’s definition of an asylum seeker as “a foreigner or stateless person of *non-European* origin whose status as an asylum seeker has been recognized by a decision of the Ministry of Interior that s/he meets the same criteria (Soykan “Migration-Asylum Nexus” 10). Whether a person is European or non-European constitutes the main difference between the definition of asylum seeker and refugee under Turkish national law. For non-Europeans, UNHCR by default applies them the status of asylum seeker (not the Turkish Government). This de facto set-up guarantees non-Europeans access to their irrefutable right to international protection. For all other non-origin related criterion, Turkey’s definitions of asylum seeker and refugee are harmonious with international law.

### *Irregular Migration vs. Illegal Migration*

Asylum constitutes a specific type of irregular migration. While no universal definition for irregular migration exists, the IOM uses the term “irregular migration” to refer to “migration that occurs outside of the rules and procedures guiding the orderly international movement of people” (IOM Irregular Migration 8). Using this definition as guidance, distinctions and similarities between the several forms of irregular migration can be pinpointed. Distinctions and similarities can be beneficial as well as stigmatizing to the policy making process. An important source of controversy due to confusion, but still crucial to the scope and study of irregular migration studies stems from the illegal element infused within certain types of irregular migration. This has led to the misuse of illegal migration when discussing irregular migration. It’s of the utmost importance to know neither asylum seekers nor refugees occupy illegal positions and therefore the association of asylum movements to illegal migration spreads an inaccurate myth that needs to be debunked.

Acknowledgement of the differences between irregular and illegal migration must occur because at stake are the human rights of marginalized groups of migrants. Within this research, the marginalized ones are asylum seekers and refugees. Irregular and illegal are not interchangeable and the crossover usage of these terms has unfortunately landed asylum seekers with the erroneous classification under illegal migration, a stigmatized phenomenon. Castles brings this stigmatization full circle in stating, “irregular migration is increasingly framed as a danger to Europe, and the restrictive immigration and asylum

policies of EU member states are following this discourse” (Castles 26).<sup>5</sup> Asylum seekers and refugees cannot afford for their identity and position in migration movements to be blurred with the identities of other types of migrants. However, the significant rise in illegal crossings over the Turkish-Greek border landed migration higher up on the EU’s agenda. Accordingly, the EU became increasingly interested in leveraging its power over all of Turkey’s migration policies, including asylum.

While asylum seekers and refugees constitute a type of irregular migrant along with economic migrants, labor migrants, and trafficked persons, their vulnerable position deriving from involuntary and forced migration distinguishes them from the rest of irregular migrants and allows them access to irrefutable international protection. The elements of involuntary and forced migration create a more complex relationship with their homeland (Frambach 11). Central to realizing a problem exists where one should not exist, starts from using proper terminology in correct scenarios. Fortunately, asylum seekers and refugees started to finally receive increased attention from the Turkish government and its officials, as indicated throughout the drafting of new legislation and responding to human rights based concerns raised by the international community.

### **Concepts: International Asylum Law, Global Asylum Trends, UNHCR-ization, and Europeanization**

With a basic understanding of term usage throughout this paper, established, an exploration of the main concepts connected to these terms is also necessary. The four concepts I will introduce within the background and content are: International Asylum Law, Global Asylum Trends, UNHCRH-ization, and Europeanization. The first two carry

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<sup>5</sup> This encapsulates the belief that in the post 9/11 world security is rising on government’s agenda and changing how states’ approach the question of migration.

importance for contextualizing the overall picture while the latter two carry significance in the case of Turkey and the reform of its asylum framework. UNHCR-ization and Europeanization are not isolated phenomenon occurring only in Turkey, but rather occur in other nations as well. UNHCR-ization is possible in any nation where UNHCR has active operations. Candidate states, member states, and EU neighborhood countries in addition to countries can be subject to Europeanization. The effects of these concepts and phenomenon reach beyond the scope of the EU's and UNHCR's influence on Turkey and the reform of its asylum framework.

*International Asylum Law:*

*The 1951 Geneva Convention Relating to the Status of Refugees* (henceforth The 1951 Convention) and its follow-up *1967 Protocol* (henceforth The 1967 Protocol) constitute the cornerstone of international law and standards, which UNHCR has been authorized to supervise their application by all contracting states.<sup>6</sup> While the Convention and the Protocol are not the only legal entities regarding refugees, they are the two most important lawful entities forming the centerpiece of modern refugee protection.<sup>7</sup> The Convention is an international convention defining who is a refugee, and sets out the rights of individuals

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<sup>6</sup> The Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa adopted a regional treaty based on the Convention. It expands the definition of refugee to include "any person compelled to leave his/her country owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality. In 1984, a group of Latin American governments adopted the Cartagena Declaration. It expands the definition of refugee to include "Persons who flee their countries because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order (Jastram and Achiron).

<sup>7</sup> 1951 Geneva Convention Chapter 1, Article 2, General obligations: Every refugee has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order.

who are granted asylum and the responsibilities of nations that grant asylum. It also outlines the responsibilities of the refugee when under protection of another state. It establishes the most widely applicable framework for the protection of refugees. The Convention also defines which people do not qualify as refugees, such as war criminals, and thus whom the Convention is not applicable towards.<sup>8</sup> As of April 2011, 57 years after entering into force, the Convention, the Protocol or both have 147 signatories.<sup>9</sup> The convention represents most widely ratified refugee treaty (Goodwin-Gill 1).

The 1967 Protocol lifted both the temporal and geographical limitations (for the majority of contracting states), which were part of the original scope of the Convention. The lifting of these two limitations gives the convention its present-day universal coverage. The temporal limitation restricted the application of ‘refugee’ only to those persons of concern who became refugees by reason of “events occurring in Europe before January 1951” as defined in Article 1, Section A, of the Convention. Today, no party to the Convention or Protocol maintains the temporal limitation. With the temporal limitation obsolete, the contemporary refugee is accounted for universally.

Turkey, an original signatory to the Convention in addition to being party to its follow-up Protocol, observes the international law definition of refugee in a strict sense through the lens of the Geographical Limitation. This limits full-fledged refugee status available only to persons who can prove “Turkish descent or culture” with the durable solution of local integration resulting in permanent settlement only available to such

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<sup>8</sup> 1951 Geneva Convention Chapter 1, Article 1, Section C – Section F defines whom the Convention does not extend protection towards

<sup>9</sup> 1951 Geneva Convention was adopted in July 1951 and entered into force in April 1954. Turkey signed the law in August 1951 and it was ratified in March 1962 (1951 Geneva Convention, Zieck 10).

persons (Kirişci “Turkey’s New Draft Law” 66). Turkey’s national constitution makes the preferred durable solution of integration in Turkey not an option for non-ethnic Turks.

The origin of the 1967 Protocol was the presence of a disjuncture between the universal and unlimited UNHCR Statute, and the limited scope of the Convention (Goodwin-Gill 7). Reluctance on the part of the signatories made the intended complementary features between the responsibilities of UNHCR and the scope of the new Convention an unachieved reality. The Convention was limited in scope because of the inclusion of two limitations, the temporal limitation and an optional geographical limitation as explained above. The Temporal and Geographical Limitations were incorporated into the Convention because the drafters felt “it would be difficult for governments to sign a blank check and undertake obligations towards future refugees, the origin and number of which were unknown (50<sup>th</sup> Anniversary, 10; Goodwin-Gill 2). This concept of reluctance in signing a blank check when geographically situated near one of the mass-generating refugee regions of the world remains a main reason mentioned by Turkey in its defense of retaining the Geographical Limitation. The continuance of political instability in its neighborhood greatly enforces Turkey’s hesitancy in signing the blank check by lifting the Geographical Limitation.

### *Global Asylum Trends*

As the global population of asylum seekers and refugees continues to grow, issues regarding forced displacement continue to gain an increasing presence in the eyes of the international community and a high position on some nations’ and organizations’ agendas via policy reforms as witnessed with Turkey and the EU respectively. 21<sup>st</sup> century refugee problems require new and worldwide approaches as humanitarian crises and their

solutions have become more complex. Many times, asylum seekers and refugees are deemed to occupy the weakest positions in society, giving more reason to their presence and rising numbers being an even greater humanitarian problem whose solution must be global.

At the start of the 21<sup>st</sup> century, protecting refugees means maintaining solidarity with the world's most threatened, while finding answers to the challenges confronting the international system created to do just that (Jastram and Achiron 7). The global population of asylum seekers and refugees reached an astounding 31 million people at the start of 2011 (UNHCR in Turkey 7). In addition, 2011 produced the highest number of refugees this century, with 800,000 people having to flee their countries due to conflicts around the world (Deasy).<sup>10</sup> This results mainly from a greater number of conflict situations.<sup>11</sup> "Refugees are the unavoidable side effect to violence" (Haddad "The Refugee in International Society" 149). Asylum affects all regions of the world and therefore demands an international solution. Turkey happens to be a big piece of the puzzle with UNHCR figures upward of 22,000 for refugees and asylum seekers in Turkey as of January 2012 and this figure is only projected to increase (2012 UNHCR).<sup>12</sup>

Many developing countries host large numbers of refugees for long periods with ruinous consequences for their already scarce economic and natural resources (50<sup>th</sup>

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<sup>10</sup> Afghanistan tops the list, with 2.7 million refugees, followed by Iraq, Somalia, Sudan, and the Democratic Republic of the Congo.

<sup>11</sup> New conflicts appear - such as Côte d'Ivoire, Libya, Syria, Yemen, the Horn of Africa, the South Sudan-North Sudan relationship, the Tuareg unrest in Mali - while old conflicts remain - Afghanistan, Iraq, Somalia, the Democratic Republic of Congo - he said, illustrating his message that the humanitarian space worldwide was "shrinking" (UN Official Calls EU's asylum system 'extremely dysfunction').

<sup>12</sup> This figure does not include Syrians who fall under a temporary protection. March 2013, upwards of 180,000 Syrians had crossed over into Turkey (Yabasun).



Anniversary 22). Prime examples of this concept are Iran and Pakistan who play host to twice as many refugees than all the countries of Western Europe combined (50<sup>th</sup> Anniversary 22-23). A combination of reasons has led to developing nations supporting such a significant portion of the asylum seeker and refugee population.

Refugees' tendency to stay close to home contribute to the rising trend of developing countries playing host to mass asylum populations. (Jastram and Achiron 102). Significant portions of Turkey's asylum seekers come from neighbor nations. The majority of Turkey's asylum seekers originate from Iraq, Iran, Afghanistan, Somalia, and Sudan (Soykan New Draft Law 3). In addition reasons to include other geopolitical considerations and family links are more likely to determine where a refugee seeks safety as opposed to the attractiveness of a potential asylum country (Jastram and Achiron 102). Refugees choose destinations close in proximity, as these destinations are relatively easier to reach, as the distances may be shorter. Shorter distances ease refugees' fleeing, and return if the possibility for voluntary repatriation exists. The commonly cited comparison of the Mediterranean to a graveyard is not coincidental.

High asylum numbers are expected in the near future because of a lack of resolution for long-standing refugee problems, otherwise known as protracted refugee situations, rising apprehension about "uncontrolled" migration, and states finding it increasingly difficult to reconcile their humanitarian impulses and obligations with their domestic needs and political realities (Jastram and Achiron 3,7). Turkey provides a prime example of a nation that allowed domestic obligations and securing a nationalistic state override their humanitarian impulses. It needs to be brought to the international community's attention that while overall responses to refugee crises have generally been swift and generous, in

recent years worrying trends are surfacing. Most severe of these trends happens to be states turning away from open door policies for fear of endless responsibility (Jastram and Achiron 8). This represents a resurfacing of the black check phenomenon as a worrisome concept. As long as armed conflict continues to force persons to flee their homelands, the international community will have to continue to find ways to help these persons of concern. Turkey's role will remain a central piece of the puzzle.

### *UNHCR and UNHCR-ization*

The UN mandates UNHCR, the United Nations refugee organization to lead and coordinate international action for the worldwide protection of refugees and the resolution of refugee problems. UNHCR's work is humanitarian, social, and non-political. UNHCR uses The Convention and The Protocol as their guidelines in promoting international protection in an impartial manner, irrespective of race, religion, political opinion, or gender. UNHCR is particularly known for working closely with governments as partners in refugee protection (Jastram and Achiron 7). UNHCR also collaborates with regional organizations, civil society, international and non-governmental organizations in promoting international protection for refugees and asylum seekers. UNHCR pursues lasting solutions to the refugee dilemma through assisting in finding durable solutions.<sup>13</sup> While UNHCR seeks to reduce situations of forced displacement, many of the world's largest producers of asylum seekers are not party to The Convention or the Protocol, making UNHCR's task a difficult one.<sup>14</sup> Past instances of nations becoming party to the Convention and/or Protocol rest heavily on UNHCR and

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<sup>13</sup> Durable solution: Any means by which the situation of refugees can be satisfactorily and permanently resolved to enable them to live normal lives. UNHCR traditionally pursues the durable solutions of voluntary repatriation, local integration, and resettlement.

<sup>14</sup> Noteworthy states that have yet to sign The Convention and/or its Protocol who constitute some of the world's (and Turkey's) largest producers of asylum seekers are Iran, Iraq, and Syria.

nation state authorities collaborative efforts for improvement.<sup>15</sup> UNHCR continuously encourages states and other relative institutions to create conditions favorable to peaceful resolution that consider the implementation for the protection of human rights (Jastram and Achiron 147). The strengthening cooperative arrangement between UNHCR and the Turkish Government in building the nation's asylum framework captures the concept of UNHCR-ization.

In the case of Turkey, UNHCR has made an imprint on Turkey's national policy and UNHCR Turkey's operations have increased substantially. UNHCR operations have steadily been increasing as measured via the lodging of asylum claims, conducting cases of RSD, and the resettling of refugees. In 2011, Turkey's UNHCR office logged the most asylum claims out of any global UNHCR office (UNHCR "A Year of Crises" 26). The number of lodged asylum claims transfers over to the number of RSD cases that must be conducted. In addition, Turkey boasts one of the largest resettlement programs worldwide. Due to these observable increases with Turkish UNHCR ground operations, Turkey's relationship with UNHCR is a relationship worth further analysis.

There's no denying UNHCR as a major actor in Turkey's asylum adoption process. With a continuance of the undertaking of significant reforms in Turkey expected in the coming years understanding UNHCR's presence in Turkey and where the two actors relationship stands and where it may lead has significant importance. UNHCR has a long-standing working relationship with the Turkish government which has become more

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<sup>15</sup> There is hope of nations signing onto the Convention and Protocol, as was the monumental milestone for Afghanistan and its signing onto both in 2005. This marks a moment of significant recovery for Afghanistan and was only possible under close collaboration between UNHCR officials and Afghani authorities.

transparent in recent years and bringing the two actors closer together. The current relationship context consists of UNHCR helping Turkey. Due to Turkey's unique position in international migration movements and its one-of-a-kind approach on asylum law, an increased need for UNHCR assistance in handling people of concern in Turkey was produced.. Through Turkey's asylum policy transformation with much help from UNHCR, Turkey has improved its human rights reputation, and sequentially improving its overall image within the international order.

### *Europeanization*

Europeanization, a term frequently used by researches analyzing Turkey's drastic transformation process, began to appear in 1999 when Turkey was officially given EU candidacy status (Ovalı 1). Özçürümez and Şenses explain Europeanization simplistically as an external force influencing the transformation of policies in Turkey (5). Europeanization refers to the method to measure or analyze the EU's influence on Turkey throughout all policy reformation. Europeanization is neither enlargement nor globalization or modernization, each of which might impact domestic change (Lamort 5). Turkey makes for an interesting case study in regards to Europeanization because of the inclusion of strategic resistances as a protective measure (Lamort 1). Özçürümez and Şenses argue the extent to which Europeanization of irregular migration policy has occurred in Turkey may be classified as 'absorption with reservations' (233). These resistances make it impossible for the EU via Europeanization to be deemed the only influential power driving Turkey's asylum reform process. Europeanization plays a substantial role, but other actors have leveraged change when Europeanization efforts were resisted.

The literature focuses heavily on Europeanization and the EU's ability to leverage change. However, UNHCR and its influential impact on Turkey has not been discussed as much, creating a void and bias in the literature. While Europeanization, is important for transformation and alignment of policy in member states, candidate states, and the EU's neighborhood, the literature can leave a reader with the impression of the EU being the only source of change. I am arguing that the EU is not the only source of change for policy change in member states as analyzed through the transformation of Turkey's asylum framework and the role UNHCR has played in shaping it into its current form.

## **Chapter III.**

### **Historical Analysis**

Many of the factors making Turkey a unique country to study asylum and migration stem from Turkey's historical evolution within international migration movements. Turkey's geographical location contributes to Turkey's constantly evolving identity. Political instability in Turkey's eastern neighborhood first challenged Turkey with the issue of asylum and subsequently pushed Turkey into drafting legislation to respond to new problems. Additionally, the EU's decisions in Turkey's western neighborhood have proven to exert a substantial effect on Turkey's ever shifting course of action also. Therefore, to understand a historical analysis including both Turkey's evolving position within international migration movements and the development of Turkey's asylum framework I regard as indispensable.

#### **Turkey's Position within International Migration Movements**

##### *Triple Role Identity*

Turkey's position within international migration movements continuously evolves. Turkey occupies the three positions of sending, receiving, and transit country.<sup>16</sup> You cannot study international migration movements without mentioning these roles, even if briefly. There are four main categories within immigration as defined by İçduygu; transit migration flows, illegal labor migration, registered migration of foreigners, and most important to this paper, movement of asylum seekers and refugees (2). Within movements of asylum seekers and refugees, all three roles are interconnected with one another.

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<sup>16</sup> Sending nations are also referred to as origin, emigration, and source nations, receiving nations as immigration and host nations, and transit nations as transit zones.

Particularly striking about Turkey is it's a country of both refugee-creating as well as refugee-receiving forces because it sits at major global crossroads (Kirişçi Refugee Movements 9). While it remains a source country for a small number of asylum seekers seeking asylum in Western Europe, over the past two decades its identity as a host nation for asylum seekers and refugees has gained prevalence. A brief look through history is important to highlight the progress that Turkey has made over the years shows how it has historically occupied the three positions within migration movements. While Turkey's portfolio on asylum remains far from perfect, especially with no sound law on asylum in force as of the close of 2012, it has made headway on addressing the refugee issue.

While Turkey's role as a sending nation remains fundamental to understanding Turkey's overall position in international migration movements, Turkey's role as a transit nation and receiving nation are more pertinent to the current asylum situation in Turkey. The European Commission identifies Turkey as both a transit and receiving country in its progress reports published from 2002 onwards (Özçürümez and Şenses 240). This further supports Turkey's transitioning from only being labeled as a source country.

Additionally, as visualized in the two European Commission maps below from 2000 and 2011 (Map 1 and Map 2 respectively), routes across Turkey have been growing and strengthening. These maps provide visualization of the increasing role Turkey continues to gain within international migration routes as the bridge between the East and the West. The maps focus on irregular migration routes. Movements of asylum seekers and refugees constitute one of the many varying forms of irregular migration. Maps before 2004 did not register any routes transiting Turkey into the EU. In 2004, routes originating in Turkey's South-Eastern Neighborhood en route to the EU emerge on the EU's radar. This is one year

before Turkey’s accession negotiations with the EU commence. As of 2011, those networks have only intensified, as indicated with darker and brighter yellow lines.

The burgeoning networks across Turkey have attracted the attention of Turkish and EU Officials alike, civil society and most important for my research UNHCR. These networks represent a change in Turkey’s migration patterns, from outflows to transit corridors and inflows and within a period of 11 years, display Turkey’s evolving position within international migration movements.

**Map 1: Irregular Migrations Flows into the EU Circa 2004**



Source: Map obtained from The Interactive Map on Migration (i-Map)



**Map 2: Irregular Migrations Flows into the EU Circa 2011**



Source: Map obtained from The Interactive Map on Migration (i-Map)

To understand this new reality of Turkey's shift into a receiving nation there has been a rise in dynamic migration scholarship addressing the topic. The emergence of this new scholarly field of immigration into Turkey in the 1990s came about under the lead of Kemal Kirişci and Ahmet İçduygu. This field has grown rapidly and should only continue on this course as the phenomenon of migration into Turkey continues to remain a strategic and lasting phenomenon ("Discovering Immigration 1).

Tolay provides a very in-depth analysis of the literature on Turkish immigration, which displays Turkey's shifting migration identity. Tolay highlights the concept of while Turkey is mainly a country of emigration, it is increasingly becoming a country of immigration (2). Migration literature regarding Turkey heavily focuses on emigration, leaving many topics on immigration receiving little to no attention (Tolay Discovering 2). I decided to focus on asylum seekers and refugees within the irregular migration nexus

because it contributes to a developing field of study lending way for many possible research topics to emerge. In addition, while UNHCR's footprint in Turkey has been deepening, the literature does not capture this phenomenon.

Additionally, since 2004, CARIM (The Euro-Mediterranean Consortium for Applied Research on International Migration) has become a great motor for the systematic study of migration-related topics in Turkey, including in-depth studies of immigration patterns (Tolay 6). Both of these uptakes in the study of Turkish migration studies indicate a growing interest in the field. Turkey's geographical location positions it at the heart of migration movements and a frontline state for the receipt of asylum seekers. With a fixed geographical position, the study of migration movements through, around, into, and out of Turkey will continue to be studied.

Turkey's geographical position as the bridge between the West and the East, bordering 8 nations, and its location in the Mediterranean, a region of several mass migration routes, is responsible for Turkey's evolution into a burgeoning transit corridor. Turkey's emergence as a link between diverse migration systems, notably between Turkey and EU countries and between Turkey and Middle Eastern, Maghreb and Sub-Saharan as well as some Central Asian and South Asian countries speaks volumes.

Turkey's roles as both an immigration and emigration nation are fundamental to understanding Turkey's unique position in international migration movements and both connect it to the EU. The EU considers the development of Turkey's asylum framework to be strategic because of the potential of Turkey becoming the 'new' external border of the

EU and the considerable security risk this would pose.<sup>17</sup> As long as this remains a future possibility the EU will continue to try to influence Turkish policy decisions on international migration and irregular migration. However, with Turkey stuck in the accession negotiation phase and the EU putting significant effort into securing its shared borders with Turkey, it appears the EU would rather Turkey become the final destination for many migrants including asylum seekers, instead of Turkey becoming an even more navigated transit zone to Western Europe.

Security comprises a significant portion of the EU's new approach on migration. Securitization has materialized into the EU's nickname of "Fortress Europe". The phenomenon of securitization through the construction of physical barricades has made migrants complete transit through Turkey *en route* to Europe even more difficult to achieve. In addition, political turmoil to Turkey's east has created an increase in the number of lodged asylum claims producing a larger pool of refugees in need of resettlement. With resettlement out of Turkey pendent on the participation and cooperation of third safe countries (second country of asylum) and not nearly enough resettlement opportunities existing, a backlog has occurred. The length of time persons with approved asylum claims remain within Turkey waiting for their resettlement to be approved has only lengthened, and not by days or months, but unfortunately more so by years (Frambach 5, Soykan 5).<sup>18</sup> Turkey cannot be deemed as just the "Gateway to Europe".

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<sup>17</sup> Turkey's accession to the EU would lengthen its external land border to encompass Georgia (276 km), Armenia (328 km), Azerbaijan (18 km), Iraq (384 km), Iran (560 km) and Syria (911 km); and its sea borders at the Black Sea (1,762 km) and the Aegean and Mediterranean (4,768 km)(Irregular Migration Flows).

<sup>18</sup> The duration of refugees stay in Turkey has lengthened (up to 5-6 years), with the backlog only growing (Soykan "Migration-Asylum Nexus" 5). Those who become refugees are now more likely than ever to remain so for an extended period of time. Nearly  $\frac{3}{4}$  of the

As Turkey no longer fulfills just the transit corridor role, with the number of persons of concern mounting in Turkey, the implementation of an effective and efficient asylum process is unavoidable. Fortunately, Turkey is on track to accomplish this objective.

### *The Transition from Ottoman Empire to Republic of Turkey*

The founding of the Republic of Turkey in 1923 by Mustafa Kemal Atatürk (“Father of the Turks”) with the defeat of the Ottoman Empire marks a change not only in rule but also tradition. While similarities exist between Turkey and the Ottoman Empire, significant differences also exist. Turkey, like its predecessor the Ottoman Empire, has long been a country of immigration especially for Muslim ethnic groups, ranging from Bosnians to Pomaks and Tatars, as well as Turks from the Balkans and to a lesser extent from the Caucasus and Central Asia (Kirişçi “Refugee Movements and Turkey” 551, Kaya “Reform” 8). Yet, being a country of immigration does not imply a welcoming attitude. Unlike the Ottoman Empire, which developed a generous tradition of protection to various groups of people fleeing persecution in the world, the new Turkish Republic disallows asylum seekers and refugees to stay permanently in Turkey or acquire citizenship (qtd. Soykan “Migration-Asylum Nexus” 7). The Ottoman Empire honoring this tradition of receiving persons of concern predates the emergence of modern refugee regimes.

There are many instances when the Ottoman Empire received persons who in modern times would have been classified as asylum seekers. Three particular scenarios of importance, which display the Ottoman Empire’s, open arms attitude absent of discrimination need to be mentioned. The first dates back to 1492 when roughly a third of

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roughly 10 million refugees being monitored by UNHCR “have been in exile for at least five years awaiting a solution” (Deasy).

the almost 300,000 Jewish refugees were expelled from Spain as a result of the Spanish Inquisition, sought refuge in the Ottoman Empire (Kirişci “Refugee Movements and Turkey” 545). Many of these Jews settled down in Istanbul.

The next monumental receipt of persons of concern happened from 1848-1849 when Hungarians and Poles were fleeing the revolts against Austrian rule in Central Europe (Kirişci “Refugee Movements and Turkey” 545). The last occurrence was in 1917 when many persons of Russian origin sought refuge in Istanbul in an attempt to escape the Bolshevik Revolution (Red October) (Kirişci “Refugee Movements and Turkey” 545). One who visits Istanbul can still see the lasting effects of some of these asylum movements with a Polish village on the Anatolian shores and the architecture gems dispersed throughout the Jewish quarter on the shores of the Golden Horn.

These are examples of successful local integration, supporting a movement to make integration a more utilized durable solution in Turkey. Different cultures and ethnicities have lived harmoniously together in Turkey before giving hope to a future when the nation will return to this model.

The change occurring from the switch over of the Ottoman Empire to the Turkish Republic resulted from how *immigrant* was defined within the Second Law on Settlement, adopted in 1934. The Settlement Law contributed to the creation of national identity within Turkish policy and the strong desire for the protection of the nation (Soykan “Migration-Asylum Nexus” 8). According to this specific law, only individuals of Turkish ethnicity and culture could be accepted as immigrants, and ultimately refugees. This law also paved the way for Turkey’s securitized approach on migration.

However, with UNHCR's help, Turkey has changed its approach on migration to be more reflective of human rights in tandem with security concerns. It can be argued that the EU, which has been trying to denationalize since the Maastricht Treaty of 1993, occupies a contradictory position with an increasingly securitized approach towards migration.

Turkey received much criticism for this nationalistic approach on immigration policy, resulting in the 2006 directive as part of their EU accession negotiations, finally replacing the 1934 Settlement Law.

Turkey skirted the definition of refugee by defining the "category of people who cannot immigrate to Turkey" instead. Thus, many still feel that even under this new law Turkish immigration and asylum policy remains nationalistic and protective of the nation's identity because it doesn't adhere to the highest standards protecting human rights (Soykan "Migration-Asylum Nexus" 8). This lack of adherence and theme of nationalism is still present in the handling of asylum seekers with only persons of proven Turkish origin able to take advantage of the durable solution of integration. Soykan further argues the Settlement Law paired with the Geographical Limitation reveals a strongly nationalistic approach to migration and asylum policy in Turkey (Soykan "Migration-Asylum Nexus" 8). The adoption of the Settlement Law of 1934 made "assimilation of all the country's citizens to Turkish culture" an official government policy.

This theme of nationalism transitions nicely into a brief look into why alongside acting as host for many persons of concern, Turkey also boasts the reputation of being a source country for persons seeking asylum elsewhere, especially Europe. Persons of

Kurdish origin are notoriously known to flee Turkey in fear of persecution.<sup>19</sup> The Kurdish population might be considered a minority within Turkey, but it comprises a substantial minority representing roughly 20% of the country's entire population. The persistence of differences from cultural traditions to language continues to create political strife between the Turks in the majority and the Kurds in the minority. Turkey's nationalist goals, as ingrained in the Constitution, still reverberate throughout the nation, just not at as loud of decibels as previously.

Two factors contributing to a decline in the number of Turks seeking asylum include a tightening of European government legislation through securitization efforts and an improvement of human rights in Turkey. Up until the mid-1980s, European governments had relatively generous practices towards asylum seekers, which certainly constituted a pull-factor in respect of refugees from Turkey (Kirişci "Refugee Movements and Turkey" 554). Nowadays, stricter asylum policy practiced by EU Member States, diminishes the strong pull-factor existing before. Regarding the second factor, in efforts to meet the requirements for EU membership, Turkey has taken a more serious tone in changing its human rights reputation. Turkey started with small steps of reform through granting Kurdish persons more rights to addressing the concerns of the treatment of asylum seekers brought to the international community's attention via the European Court of Human Rights (ECtHR).<sup>20</sup> The number of persons originating from Turkey seeking asylum continue

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<sup>19</sup> Ethnic Kurds are not the only asylum seekers originating from Turkey. Persons who fled due to the military intervention of 1980 comprise another portion of asylum seekers from Turkey (politically left-leaning Turks). These individuals were associated with banned political organizations or implicated in unlawful activities before 1980 (Kirişci "Refugee Movements and Turkey 552, Düvell 2).

<sup>20</sup> In 2009, Turkey announced the commencement of its first Kurdish Television Channel through Turkey's public television outlet (TRT) called TRT-6. Prior to this TRT began

to decline, but unfortunately the numbers of persons seeking asylum within Turkey continue to rise.

Kurds represent a group that has not only fled Turkey, but has also sought out protection in Turkey. In August 1988 60,000 Kurds retreated into Turkey soon after the cease-fire between Iran and Iraq was signed (Kirişci Refugee 1, Zieck 2). Only a few years later, post the Gulf War, lasting from August 1990 to February 1991, Turkey experienced two more mass influxes of asylum seekers in 1991 and 1993 of Kurds and Shi'ite Iraqis who fled the brutal repression of their rise against Saddam Hussein (Soykan 10, Zieck 2). Roughly a third of the one and a half million people who found themselves in the mountainous region at the border of Iran, Iraq, and Turkey fled into Turkey (Kirişci Refugee 1, Zieck 2). This was Turkey's first experience of mass population movements in modern times and was a game changer for Turkey's approach on migration issues.

While Turkey possesses a far from pristine human rights record their transparent collaborative arrangement with UNHCR represents a more hopeful future. With UNHCR's presence in Turkey and significant control over the asylum process, rest can be assured international protection will be provided for all, no matter whether they are European or non-European.

## **Turkish Asylum Legislation**

### *The Current Framework*

Until the early 1990s Turkey's governing of asylum was solely done through

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broadcasting a half-hour Kurdish program in June 2004 and by March 2006 the Radio and Television Supreme Council allowed two TV channels (Gün TV and Söz TV) and one radio channel (Medya FM) to have limited service in the Kurdish language. Both the 2004 and 2006 legislations came into force in Turkey's efforts to meet EU *acquis* (Siddique).



international law, as no national legislation on asylum existed. Until then, Turkey did not consider itself a country of immigration and because of this self-identification, it never attempted to develop an effective migration policy (İçduygu Globalization 2). It must be remembered post WWII, Turkey's identity within migration movements was dominated by its status as a source nation for labor migrants to Western Europe. Turkey gained its prominence as a source country of labor migrants to Europe in 1961 when it signed a bilateral agreement based on organized labor migration with Germany (Martin 701). While this Gastarbeiter (Guest Worker) program no longer exists, the migratory flows it created continue unabated through channels like family reunification and have taken on a permanent characteristic. Family reunification programs contribute to Turkey's status as an emigration nation, especially in how the EU views Turkey.

The early 1990s marked an era of a noticeable increase in political instability in Turkey's neighborhood (Gulf War and the collapse of the Soviet Union) and denotes Turkey's transition from an emigration nation into an immigration and transit nation became visible and unarguable (İçduygu "Globalization" 3). Accompanying these rising concerns of immigration into Turkey was an increased awareness amongst Turkish officials of Turkey's evolving identity, and a growing interest within the scholarly field of immigration into Turkey being a topic worth further analysis.

In response to the urgent need to respond to the mass population movements of asylum seekers in 1991 and 1993 from Iraq, in combination with subsequent instability in the Middle East, Africa and Southeast Asia, Turkey passed its first piece of legislation in the field of asylum. This first piece of legislation entitled the "Bylaw on the Procedures and the 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 Intention of Seeking Asylum from a Third Country”, (henceforth The 1994 Bylaw) (Baklacioğlu 2, Kirişçi 8). Up until 2011 with the inception of the Syrian Civil War, Turkey has not had to deal with such a large-scale migration flow since the early 1990s and marks Turkey’s moment of no longer self-identifying as solely a country of emigration.<sup>21</sup> The 1994 Bylaw underwent amending in 2006 and was supplemented by a Government Circular Directive.<sup>22</sup> The 1994 Bylaw in combination with the 2006 Implementation Directive comprise the legal regulators of the temporary asylum regime. This means currently, only two pieces of legislation comprise the framework for the standardization of Turkey’s asylum process. Additionally, both of these texts represent secondary legislation, and are not as binding as a law (Soykan New Draft Law 3). Turkey’s asylum framework is technically not legally binding making the entry into force of Turkey’s first ever law on asylum very pertinent.

The 1994 Bylaw represents the first instance of Turkey defining “refugee” and “asylum seeker” within Turkish national law. Until this time, Turkey’s guidelines of defining the two types of persons of concern was solely done through international law (1951 Convention) with the added common Turkish practice of distinguishing between European and non-European. The misfit between Turkish national law’s definition of asylum seeker from international law’s cannot be forgotten. While Turkey experienced inflows of non-

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<sup>21</sup> The Syrian Civil War, also known as the Syrian Uprising is an ongoing-armed conflict between the current government under the rule of Bashar al-Assad and those who want him ousted. It is affiliated with the larger protest commonly referred to as the Arab Spring. The conflict has been ongoing since March 15, 2011.

<sup>22</sup> 2006 Circular (Circular No: 57 regarding the procedures and principles to be applied when implementing the 1994 Bylaw on Asylum, entering into force on June 22, 2006.

European asylum seekers before the early 1990s, the numbers were never significant enough to instigate concern or response from the Turkish government.

Turkey has been playing catch up with having a comprehensive approach on asylum and shortages in the system prove its current lacking approach. Arguments or disbelief are circulating amongst the literature that even with the implementation of Turkey's first ever law on asylum, Turkey will still be left in a position of catch up. The events of the 1990s and Turkey's geographical location drastically influenced its de facto evolution into a country of asylum, even when it wasn't systemically ready for this position. While Turkey found it necessary to maintain the Geographical Limitation when it signed onto the 1951 Geneva Convention Relating to the Status of Refugees, the mass influxes of the early 1990s it experienced only fueled Turkey with more reason to continue to maintain the limitation. The maintenance of the Geographical Limitation may have been Turkey's saving grace throughout the Arab Spring and currently during the ongoing Syrian Conflict. While it protects Turkey and its resources that would be applied to persons of concern crossing its borders, it does not leave these respective persons (non-Europeans) without protection since safeguards for the protection of these persons also exist. Either the Turkish Government provides protection via temporary protection to non-Europeans who are part of a mass movement, or UNHCR provides for individuals via international protection.

Of utmost importance is that while the 1994 Bylaw mentions UNHCR, it only does so in the brief capacity that the organization shall be one of many cooperators in providing different aspects of international protection to asylum seekers and refugees.<sup>23</sup> No standard

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<sup>23</sup> "In proceedings regarding the individual aliens who either seek asylum from Turkey or request residence permission in order to seek asylum from another country, there shall be co-operation with other Ministries, institutions and organizations, international

exists to ensure UNHCR's involvement throughout the asylum procedure (UNHCR 18). Additionally, no mechanism exists to confirm UNHCR's involvement in the handling of refugees' cases, something they are mandated to do by the UN and international law. This is due to the absence of a formal Host Country agreement between the Turkish state and UNHCR-Turkey. By no legal bindings does the Turkish Government seek the expertise of UNHCR officials and more importantly, take UNHCR's advice seriously. Much of the progression Turkey has made regards aligning legally with the EU's membership requirements, via the EU *acquis*, legislation conveniently aligned with international law.

The Turkish Government regards UNHCR as an important enough actor to allow the organization to be ingrained in the law-making process, without legally being required to do so. The long-standing relationship between UNHCR and Turkey will be analyzed in-depth in Chapter IV, but UNHCR's contribution to a slow but sure process of socialization of Turkey into the norms and rules of the international refugee regime must be reiterated (Kirişçi "Turkey's New Draft Law" 68). Therefore, UNHCR has become the force on the ground in Turkey simultaneously supporting and implementing international asylum law, and EU *acquis*, even when European influences have stalled. International law forms the foundation of Chapter 24 of the *acquis*.

The 1994 Bylaw and the 2006 Implementation Directive comprise the current legal regulators of the temporary asylum regime, but with the Geographical Limitation caveat. The Geographical Limitation remains the most influential characteristic contributing to

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organizations such as the United Nations High Commissioner for Refugees and the International Organization for Migration, and non-governmental organizations, especially on aspects such as accommodation, food, transportation, resettlement, voluntary repatriation, obtaining passport or visa.

Turkey's unique approach on asylum. As Soykan states, "the decision to retain the optional Geographical Limitation to the 1951 Geneva Convention relating to the Status of Refugees is the most prominent characteristic of the country's migration and asylum profile (Soykan "Migration-Asylum Nexus" 3). Maintaining the Geographical Limitation has caused the creation of Turkey's two-tiered asylum policy with the separation and differential treatment of Europeans from non-Europeans, as explained briefly before. Asylum seekers who are fleeing persecution due to events in Europe, or who are European proceed through a different asylum process in Turkey than those who are fleeing persecution due to non-European events, or who are non-European.

As Kirişci notes, the first tier of this policy (treatment of Europeans) centers on Europe and is deeply rooted in Turkey's role as a Western ally neighboring the Soviet Union during the Cold War (Kirişci "Turkey's New Draft Law" 65). During the Cold War, Turkey received persons of concern from the Communist Bloc countries in Europe. The second tier (treatment of non-Europeans) has not always existed. It emerged in the 1980s in the aftermath of the Iranian Revolution, and the subsequent instability in the Middle East, Africa, and Southeast Asia (Kirişci "Turkey's New Draft Law" 66).

Turmoil in these regions led to a steady increase in the number of asylum seekers coming from outside Europe. The increasingly larger figures put a strain on resources, and ultimately resulted in Turkey officially distinguishing between European and non-European asylum seekers. For clarification, the Geographical Limitation gives an option to contracting states (in this case Turkey) to provide the Convention protection to asylum seekers only coming from Europe. However, it does not restrain these contracting states from providing the same international protection to non-Europeans (Soykan "Migration-

Asylum Nexus” 4). Thus, non-Europeans who find themselves seeking protection within Turkey’s borders are protected. As will be analyzed later, additional international protection standards relating to the status of refugees provide for the safety and protection of asylum seekers in nations where the geographical limitation is maintained. This current set-up of differential treatment based on a refugee’s country of origin is why a two-tiered system exists, and will continue to exist as long as Turkey maintains the Geographical Limitation.

Turkey’s main reason for its unwillingness to lift its Geographical Limitation stems from the same fear the drafters had back in 1951 – the signing onto a blank check. As Turkey continues down the path of implementing its first ever asylum law and once Parliament votes in approval of the law, it will enter into force. However, with on-going and new conflicts in neighboring countries not losing steam, Turkey is becoming more hesitant in their approach and attitude to lifting the Geographical Limitation, a condition that will have to be met if Turkey does eventually gain EU membership. The maintenance of the geographical limitation, as stated before is what creates a slight misfit in international and Turkish national definitions of an asylum seeker.

For Turkey, maintaining the current asylum-system by only acknowledging European asylum seekers has worked in their favor resource wise. They currently do not heavily rely on their own resources and the international community does not chastise them for this since it is “legally” allowed. Turkey’s current asylum system and process lack sufficiency regarding its capacity of absorption on the level of financial, personnel, and infrastructural resources. With the majority of asylum seekers falling under the non-

European tier and this not expected to change, UNHCR's budget and operations within Turkey are only estimated to continue on their current escalating trajectory.

*The Intermediary: National Action Plan*

Along with the 1994 Bylaw and 2006 Directive, a substantial list of legislation regarding asylum and migration exists. A complete list can be found in the Turkish National Action Plan for the Adoption of the EU Acquis in the Field of Asylum and Migration (NAP), Article 2 entitled "Existing Turkish Legislation on Asylum and Migration to be aligned with the EU *Acquis* During Implementation of the National Action Plan and the EU Acquis".<sup>24</sup> In 2005, Recep Tayyip Erdoğan, the Prime Minister of Turkey, endorsed the NAP as prepared by the General Directorate of Security at the Ministry of Interior (MOI)(Kaya "Reform" 9). The NAP sets forth how Turkish national legislation should be made compatible with that of the EU and offers a time-frame giving priority to certain issues (Kaya "Reform" 9, Kirişçi "Refugee Movements and Turkey" 553). The 2006 Implementation Directive that amended the 1994 Bylaw further endorsed Turkey's new goal as envisioned in the NAP by outlining the guidelines to direct the reforms of the asylum procedure and guarantee the observation of the rights of asylum seekers and refugees in Turkey. 2005 also marks Turkey's opening of accession negotiations with the EU. The tone resonating throughout Turkey in 2005 was hope filled and pointing towards a promising future for Turkey acceding to the EU.

Article 4 Section 13 entitled "Lifting of the Geographical Limitation" specifically addresses this large question up for debate (NAP 49). This particular section sets forth the

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<sup>24</sup> Please refer to the National Action Plan for the extensive list of legislation pertaining to asylum and migration in Turkey: 2.1. Existing Turkish Law (1) Settlement Law No 34/2510 of 14 June 1934 (2) Passport Law No 5682 of 15 July 1950 (3) Law No 4817 of 27 February 2003 on Work Permits of Aliens (4) Law No 2922 of 1983 on Foreign Students Studying in Turkey

criteria that must be met before Turkey will cooperatively lift its Geographical Limitation. Turkey sincerely wants this, as it would mean full submission to international law via the 1951 Convention, instead of its current restricted application of The Convention. The NAP states, “the issue of lifting the Geographical Limitation to the 1951 Convention will take place in line with the completion of the EU accession negotiations according to 2003 National Plan of Turkey” (NAP 49).<sup>25</sup> Turkey stipulated the following two conditions be met prior to the lifting of the Geographical Limitation: (1) Necessary amendments to the legislation and infrastructure should be made in order to prevent the direct influx of refugees to Turkey during the accession phase and; (2) EU countries should demonstrate their sensitivity in burden sharing (NAP 49).

The inclusion of these two conditions are based on Turkey’s history as always being subject to intense population movements and the concrete reasoning for the placing of the limitation was due to “challenging experiences” in the region (NAP 50). The NAP also claims Turkey’s experienced migration movements may in fact be equal to the sum of all migration movements towards the EU, and thus Turkey should not be expected to handle issues of asylum and irregular migration on its own (50). Turkey as a nation located at important crossroads and still developing its asylum framework should not have to face the transition phase alone, especially when the lifting of the Geographical Limitation affects irrefutable human rights. Turkey’s asylum framework necessitates EU cooperation.

Turkey continues its promotion of sincerity in wanting to lift the geographical limitation by stamping the year of 2012 as when a proposal for the lifting of the Geographical Limitation to the Turkish Grand National Assembly (Turkish Parliament) may

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<sup>25</sup> The 2003 National Plan of Turkey is also known as the National Program for the Adoption of the Acquis. Its revised form was adopted on July 24, 2003.



be expected following suite of the completion of Turkey's accession negotiations (NAP 52). At the close of 2012 Turkey's new law on asylum was in the hands of the Turkish Parliament, but unfortunately the new law does not include a proposal for the lifting of the Geographical Limitation. Turkey's sincerity is paralleled with the EU's sincerity. With accession negotiations deteriorating at a rapid rate to the point of paralysis, it's not surprising Turkey feels the EU needs to provide more support in order for Turkey to make itself vulnerable by lifting the Geographical Limitation. Until the legal and institutional arrangements for asylum and understandings on burden sharing with the EU are in place, a proposal from the Turkish Government to lift the "Geographical Limitation" is not a guaranteed outcome. Turkey falling short in meeting its intent to put forth a proposal for the lifting of the geographical limitation will be further analyzed later on.

The NAP focuses a fair amount of attention on the Geographical Limitation, because the reform of the Turkish asylum framework revolves around it. All discussions eventually circle back to the issue of the maintenance of the Geographical Limitation. It is the major condition Turkey must fulfill to be eligible for full EU membership (Kirişçi "Turkey's New Draft Law" 68). Turkey's resistance in lifting the Geographical Limitation speaks volumes for a policy area where the EU has been less influential via its approach of conditionality in shaping Turkey's policy choices. Turkey realizes the power of resistance it holds with the Geographical Limitation.

The NAP and its analysis from the cornerstone of the reform process. While many improvements have transpired due to the NAP, the system still does not align with all international standards and lacks efficiency. The NAP lacks efficiency because it maintains the structure of multiple laws addressing different portions of asylum and migration policy.

This translates into the inability of Turkish officials to respond appropriately to asylum seekers and refugees because it demands them to comprehend an exhaustible amount of knowledge. Multiple laws strain the efficiency of Turkish officials where a sleek and smooth process to control mass population movements into Turkey is necessary. By compounding many former laws into one piece of legislation, the intent of streamlining the asylum framework through policy channels remains an overall intent. While Turkey has not yet adopted the new law on asylum, the framework continues to progress in a straightforward and more simplistic direction.

Before the current asylum framework, the Foreigners, Passport, Borders, and Asylum Department under the General Directorate of Security at the MOI dealt with issues of asylum. Now there exists the Asylum and Migration Bureau within the MOI and as the name entails it deals exclusively with issues on asylum. The former department was notoriously known to be under staffed and lacking adequate resources (Kaya “Reform” 19). The new bureau is better about effective and efficient procedures and the use of resources as it specializes in asylum instead of the overarching umbrella category of security.

This is a specific example that shines light on Turkey’s move away from a solely nationalistic and security influenced approach. One improvement the new bureau has authorized in its efforts to be more effective and efficient includes the development of UNHCR organized training seminars for MOI officials (Kirisci To Lift 5). The availability and opportunity of these seminars was a first for many officials and has allowed many to be formally trained in the proper treatment of persons of concern. Unfortunately, a lack of resources continues to be a reoccurring theme throughout Turkey’s handling of issues on asylum, something which paved the path for the recurrent past arguments against Turkey

and having a deficient absorption capacity for asylum seekers under the present framework. While the asylum system is improving, the framework as it currently is enforced via the 1994 Bylaw and 2006 Directive still beckon for urgent reform. The necessary reforms for a stronger asylum framework are accounted for in the law on asylum that is currently awaiting Parliamentary decision.

UNHCR has been building its relations with many different Turkish line ministries in an effort to continue to share their expertise to those officials who are tasked with asylum seekers and refugees.<sup>26</sup> Turkey does not only maintain close links with numerous line ministries but also with the European Union Delegation to Turkey in efforts to maintain aligned with Acquis throughout their reform process (Turkey UNHCR Global Update 2013 4). UNHCR's long and valiant efforts in Turkey have created its current web of connections to numerous outlets allowing it to have greater influence on the development of national legislation and input its own procedures into the Turkish asylum system. Over the years UNHCR's role in Turkey's asylum system has only deepened and this trend is expected to continue with the adoption of the new and comprehensive law on asylum and migration

#### *The Future Framework: The Law*

The most important modification in the field of asylum has been Turkey's transition from having no law on asylum to the current situation of the state's first ever-comprehensive law on asylum and migration under discussion in the Turkish Parliament, with the preferred outcome being the law entering into effect marking a major milestone

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<sup>26</sup> UNHCR's main formal interlocutors include: Ministry of Foreign Affairs, General Directorate of Consular Affairs; Ministry of the Interior, Asylum and Migration Bureau, especially on the development of a national asylum system in Turkey; and the Ministry of the Interior, Department of Foreigners, Border and Asylum under the General Directorate of Security, on operation issues Turkey (Turkey UNHCR Global Update 2013 4).

for Turkey. Formal discussion of the law by the Parliament began on March 20, 2013, with its entry into force expected later this year (Yabasun). The new law is a considerable improvement on the current framework and certainly entails greater protection regarding the rights of asylum seekers and refugees. One major condition the new law lacks is the incorporation of a proposal for lifting the geographical limitation. A proposal should have been submitted to Parliament by 2012 regarding the lifting of the geographical limitation, but as of the start of 2013, no such proposal has been submitted to Parliament. As mentioned previously, Turkey's lifting of its geographical limitation is closely tied to the EU's commitment to responsibly and adequately partaking in a burden-sharing relationship with Turkey. Unfortunately, with the EU not holding up their part of the deal, Turkey too has been unable to progress forward with being able to enter a stable enough position to no longer apply the 1951 Convention in the strict sense that it presently does via the geographical limitation.

Although Turkey is party to the main UN and Council of Europe Conventions and its constitution situates international law supreme to national law in instances where the two may dispute each other, Turkey is still subpar in its observation of international standards of human rights (Efe, 1). Turkey has been going to great strides in its determination to rebuild its formerly stained human rights reputation. The European Court of Human Rights (ECtHR) has played a significant role in drawing attention to the less than satisfactory conditions in Turkey through multiple court cases. Court cases like *Abdolkhani and Karimnia v. Turkey* in 2009, and *Tehrani and Others v. Turkey* in 2010 created enough stir

on the international stage to incite action from Turkey.<sup>27</sup> Since then, Turkish authorities have redrafted the domestic provision relating to the administrative detention of foreign nationals – Article 23 of the Law on Sojourn and Travel of Aliens in Turkey (Law No. 5683) and thus improving one area of great pertinence to the human rights of persons of concern (Levitan 12).

Even with Turkey party to the main international treaties that are further endorsed through national legal documents guiding the treatment of refugees whom seek out protection within their borders, the latter still lack statutory protection since they were not enacted as laws.<sup>28</sup> Thankfully, the new law stresses the importance of the protection of the human rights of asylum seekers and refugees and corrects for this previous oversight. However the greatest improvement for the impartial observance of human rights seems to be eons away. The lifting of the geographical limitation is too tied up in accession negotiations that it has become the ultimate game changer. Turkey is preventing itself from getting caught up in reverie with the ideal future outcome of clasping full EU membership, but rather knows that its relationship must proceed forward to mutually benefit both

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<sup>27</sup> In September 2009, the ECtHR issued a watershed decision holding that Turkey's system for detaining foreign nationals in detention centers had no legal basis. As a result, the applicants had been arbitrarily detained in violation of Article 5 of the European Convention on Human Rights (*Abdolkhani and Karimnia v. Turkey*, Appl. No. 30471/08, Council of Europe: European Court of Human Rights, 22 September 2009). On April 13, 2010 the Court ruled that conditions in two Turkish detention facilities amounted to inhuman or degrading treatment or punishment. This was in violation of Article 3 of the Convention (*Tehrani and Others v. Turkey*, Appl. Nos. 32940/08, 41626/08, 43616/08, Council of Europe: European Court of Human Rights, 13 April 2010; *Charahili v. Turkey*, Appl. No. 46605/07, Council of Europe: European Court of Human Rights, April 13, 2010) (Levitan 12).

<sup>28</sup> The 1994 Asylum Regulation and the 2006 Circular are the main legal documents produced in the field of asylum in Turkey. Administrative organs produced them (not Parliament). These two documents make-up the current framework of asylum in Turkey. (Kaya "Reform" 12).

actors. Turkey will not gamble with the lifting of its geographical limitation because this will only land Turkey in a weak position and not benefit Turkey, UNHCR nor the asylum seekers and refugees who seek their protection

Kirişci addresses this concept of the necessity of “reciprocity” as explained through Turkey’s desire to only enter into a mutually beneficial relationship by quoting a high-ranking Turkish diplomat at a meeting in September 2007 with UNHCR officials. The Turkish diplomat is quoted with “if the EU aims to keep negotiations open-ended so we shall also keep developments open-ended” (Kirişci “Turkey’s New Draft Law” 82). He enforced this concept by using the example of the lifting of the geographical limitation as an area where Turkey would be reluctant to adopt EU *acquis* as long as uncertainty over Turkish membership prevailed. In 2007, Turkey’s accession negotiations were more promising than they are now in 2013, and thus the uncertainty over Turkish membership prevails. Via the process of Europeanization, eventual full membership has always constituted a powerful incentive for reform as believed by Özçürümez and Şenses, but with the achievability of full membership dwindling, it doesn’t hold the power of influence it once did (233).

## Chapter IV.

### UNHCR-ization and Europeanization Analyzed

#### *Introduction*

Numerous actors have had an influence on the development of Turkey's asylum framework. Literature on Turkish asylum policy focuses primarily on the EU. The EU and simultaneously the *acquis* have been extremely beneficial to the improvement of several policy areas within Turkish national law. A nation tends to reform policy when making improvements to its governmental structure, the effective implementation of the policy translates into changed governmental processes as is observable and measurable through practice, and represents the ultimate litmus test. UNHCR has substantially contributed to the development process of asylum policy in Turkey and additionally has effectively implemented newly introduced asylum legislation.

However, the literature accredits the EU for the majority of change and forgets to mention other important influential actors. In doing so, UNHCR has made a profound impact on the quality of Turkey's asylum framework. What the execution of Turkey's asylum system would look like without UNHCR taking on the responsibility of all non-European asylum seekers and refugees is questionable. The breadth of UNHCR's contributions for non-Europeans remains unmatched by the current Turkish Government and their available resources. For them the Geographical Limitation could in fact be a blessing in disguise. While UNHCR does not have access to unlimited funds, they do add an exceptional depth to Turkey's absorption capacity in processing and providing for asylum seekers and refugees. It can be expected that due to UNHCR's international mandate, the organization will continue to implement future policy as is forthcoming with the eventual

entry into force of The Law. I believe the EU, while an important actor for the improvement of Turkey's asylum framework, UNHCR also needs to be accredited because of their more direct impact on the operation of Turkey's asylum process and their close interactions with asylum seekers and refugees whose human rights they aim to protect.

### *Policy Change vs. Active Change*

This literature review thoroughly analyzes the impact of both UNHCR and the EU on Turkey's asylum reform process in order to display and then compare and contrast the influence of both actors. The term UNHCR-ization, introduced by Kirişci, will be used to explore the external influence of UNHCR on Turkey's asylum framework and Europeanization will be used to explore this same phenomenon through EU influence. The EU's influence stems from policy change by encouraging Turkey to align with the EU *acquis* in order to be eligible for full membership. UNHCR's influence stems from policy reform as well, but more substantial and of importance to this research is UNHCR influence through active change in its ground operation efforts in aiding in the international protection of asylum seekers and refugees. I argue that UNHCR has exercised more influence through active change as opposed to the EU and its focus on policy change.

The creation of policy and policy reform are necessary to create guidelines for carrying out effective and efficient processes. The grandeur of The 1951 Convention and The 1967 Protocol, by providing the international community with guidance for creating national asylum frameworks that uphold international standards relating to the status of refugees. The creation of policy that can effectively and efficiently benefit all parties involved, with a primary focus on humanitarian aid in the case of asylum seekers and



refugees represents the first step. However the true litmus test regards the success or failure in the implementation stage. Additionally, even the most thoughtful policy on paper remains valueless without sequential implementation. Kinks are expected in the initial implementation phases, but implementing policy that cannot withstand the rigorous demands of a system leaves an ineffective system. Policy reform only fulfills a legal requirement and remains mute in effect.

In the late 1990s, before EU accession negotiations even began, UNHCR had two significant impacts on Turkey's asylum framework. In 1997 UNHCR made monumental judicial appeals and in 1998 UNHCR implemented training seminars for Turkish Officials working in the field of asylum. The first of these occurred when two local administrative courts ruled against the deportation orders on two Iranian refugees recognized by UNHCR. These two refugees entered Turkey illegally and did not file their applications with the Turkish authorities on time and leading to Turkish authorities ruling for their deportation under the provisions of the 1994 Asylum Regulation. However, because of UNHCR's encouragement and extended support for the asylum seekers to approach the courts and try the judicial appeal process, the appeal was struck down. A second judicial appeal involving a proactive UNHCR is the ECtHR ruling (*Jabari v Turkey*) also against the deportation of an asylum seeker on the grounds of the provisions of the 1994 Regulation since this would constitute a violation of the European Convention on Human Rights. Both of these judicial developments contributed in the persuasion of getting the government to amend the 1994 Bylaw in 1999 by extending the time limit to ten days.

UNHCR's second monumental reform on Turkey's asylum framework before EU accession negotiations commenced regards the implementation of Turkey's first training

seminars. UNHCR coordinated training seminars starting in 1998 for officials who directly dealt with asylum seekers and refugees. A steady stream of officials went through these seminars assisting the gradual accumulation of expertise accompanied with a process of socialization (Kirişci “Reforming Turkey’s Asylum Policy”). Apart from instilling a greater understanding of asylum issues on these officials, the seminars also contributed to a change in attitude of these officials. UNHCR expanded upon these initial training seminars to include other officials such as judges, prosecutors and gendarmes, as well. Programs were also held with the Bar Associations for prosecutors and judges focusing on refugee law (Kirişci “Reforming Turkey’s Asylum Policy”). These seminars have helped to disassociate asylum seekers from illegal migration stigmatizations.

Both of these direct actions display UNHCR’s concern on improving asylum conditions in Turkey, before it was of significant concern to the EU. This furthers the belief of Turkey willing to make change based on what’s right and not always needing an ulterior motive like EU membership.

#### *The Draft Law Process*

Back in 2005 when Turkey-EU accession negotiations commenced, Turkey did not have a comprehensive law on asylum in place. Eight years later and Turkey still does not have a legal framework to guide its extension of international protection to asylum seekers and refugees, but the gap to fulfilling that objective continues to shrink. Turkey considers the draft law on asylum, now formally known as *The Law on Foreigners and International Protection* to be the answer to finally having a legal framework complete with a physical and administrative infrastructure clearly guiding the application of international protection

to asylum seekers and refugees. Throughout the draft law process, both the EU and UNHCR played vital influential roles.

*The Law on Foreigners and International Protection* was prepared by combining two separate laws, the Law on Aliens and the Law on Asylum. Preparation for the draft law commenced in 2008, but not until 2010 did the Bureau on Asylum, Migration and Administrative Capacity under the Ministry of Interior (MOI) actually prepare the draft law on asylum. Much of the literature discussing the initial phases of the draft law, accredit progress to Turkey acting in accordance with the EU accession process (Soykan “New Draft Law” 2). Throughout the drafting process, many contributors were involved ranging from academics, the EU, to UNHCR-Turkey, and representatives of NGOs working in the asylum field. Turkey made sure to forward the draft law to the EU, specifically the Council of Europe which provided commentary feedback. Once the draft law was complete, it was then forwarded to Prime Minister Erdoğan’s office in early 2011 and also went public (UNHCR 18).<sup>29</sup> The Law was forwarded to Parliament on May 3, 2012 and discussion opened on March 20, 2013 (Soykan “New Draft Law” 2). Commentators consider The Law to be progressive and acting as a clear indication of Turkey’s commitment to humanitarian concerns. The Law’s submission to Parliament constitutes a main legislative achievement for Turkey.

The Law covers a range of issues ranging from; standards regarding asylum procedures; subsidiary protection status; safeguards to ensure access to rights of persons of concerns and necessary institutional set-up to plan (UNHCR 18). All of these when implemented will improve the asylum regime in Turkey. One of the most important

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<sup>29</sup> The text of The Law can be found in its entirety in Turkish on the website of the Bureau on Asylum, Migration and Administrative Capacity.

foundational requirements for the treatment of asylum seekers includes a system with clearly defined procedures. Currently, too much murkiness and differing approaches between domestic (MOI through its Department of Foreigners, Borders and Asylum – General Directorate of Security) and UNHCR procedures, has left Turkey in an unclear state.

All of the contributors throughout the transparent draft law process represent a change for Turkey's usual approach (Kirisci "Turkey's New Draft Law" 5). The transparency involved in the production of The Law makes it rare, but also indicates a greater change in Turkey's law-making process. By allowing contributions from many outside actors, Turkey has created the possibility to implement a law that breaks from Turkey's traditional approach on issues of migration by pushing forth security and human rights in tandem instead of just the former element. The humanitarian agenda enforced in tandem with Turkey's national security agenda in The Law resulted primarily from the interjection of UNHCR. Additionally, aid in promoting human rights was provided by human rights and asylum NGOs working in Turkey.

### **EU's Influence in Turkey**

#### *EU Asylum Law*

Turkey must completely harmonize with the EU *Acquis Communautaire* in order to meet all membership eligibility requirements. The *acquis* includes all the accumulated legislation, legal acts, and court decisions, constituting the body of EU law. For Turkey's accession negotiations, the *acquis* has been divided into 35 chapters, with each chapter addressing one or a few different policies. The *acquis* cover all EU treaties, legislation, and case laws as developed by the European Court of Justice (ECJ) since the Treaty of Paris in 1951 (Staab 35). Asylum and migration are an important part of the accession negotiation

process for Turkish Membership. In 2010, Turkish efforts focused on reaching alignment with the EU *acquis* on asylum and migration with a view to eventually joining the EU (Zieck 2). While eventual EU membership remains the long-term goal, the lack of recent advancement concerning the accession negotiation process will have to be fixed if the EU hopes to maintain its credibility in influencing Turkey's decisions.

A large impediment that needs to be overcome in order for advancements to occur regards the unblocking of Chapter 24 by the Southern Greek Cypriot Administration (Ministry for EU Affairs 2). Paradoxically enough, even though the opening of Chapter 24 to accession negotiations remains blocked, Turkey has been recording constant progress within this respective chapter. While formal accession negotiations have yet to commence, the *acquis* has been utilized as a legal guidance throughout Turkey's reform process. While the EU requires Turkey to fully harmonize with the *acquis* before being eligible to accede to the Union, many questions of the current Member States commitment and implementation of the *acquis* have surfaced throughout the development of a common asylum system. This is worrisome in light of the EU's credibility and the continuance of its normative power capabilities.

#### *Common European Asylum System*

Similar to Turkey, the EU currently is developing its own common approach to asylum. The *acquis* is fundamental to the governance of all laws within the EU and while there exists policy on asylum and migration, the Union saw a need to create a common system on asylum and in doing so raising the minimum standards as listed in the *acquis*.<sup>30</sup> The

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<sup>30</sup> The European Union's minimum standards definition of refugee, underlined in Article 2 (c) of Directive No. 2004/83/EC essentially reproduces the definition outlined by The 1951 Convention

Common European Asylum System (CEAS) establishes an all-encompassing system amongst the Member States of the EU within the field of asylum and goes beyond the minimum standards for reception conditions, asylum procedures, and refugee determination (Humanitarian).<sup>31</sup> A fundamental aspect of CEAS includes the full and inclusive application of The 1951 Convention and The 1967 Protocol (UNHCR 6). As the past years have shown through the first and second phases of CEAS, harmonization continues to be a difficult objective to obtain. Harmonization is crucial to the EU functioning at its fullest capacity and reiterates the EU's foundation of being built on common fundamental values. The CEAS was initiated to bring Member States together to find common solutions guaranteeing high standards of equal quality across all Member States for the protection of asylum seekers and refugees. CEAS intends to instill and install fair and effective procedures impervious to abuse (Asylum).

To date, no region in the world has succeeded in harmonizing its treatment of asylum seekers and the EU represents the first to try (Humanitarian). Africa and Latin America have constructed supportive treaties to the 1951 Convention but for the governance of a common systematic approach. Byrne provides an analysis of the EU's working developments for a harmonized system on asylum (Byrne). 1997 marks the turning point

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with the added concept of subsidiary protection. Subsidiary protection is a complementary form of protection for persons who have fled a war-caused generalized violence.

<sup>31</sup> CEAS as defined by the Tampere Conclusions that were agreed upon in the European Council Meeting in October of 1999, which put CEAS into force, was described in this manner; "This system should include, in the short term, a clear and workable determination of the State responsible for the examination of an asylum application, common standards for a fair and efficient asylum procedure, common minimum conditions of reception of asylum seekers, and the approximation of rules on the recognition and content of the refugee status. It should also be completed with measures of subsidiary forms of protection offering an appropriate status to any person in need of such protection..." (Vedsted, 1).

for EU level common asylum policy with the initiation of the Treaty of Amsterdam, creating the Common European Asylum System (CEAS) and its entry into force with the Tampere Conclusions in 1999 (Novak, 79 Vedsted 1). Since then, the EU has been progressing slowly towards its end goal of ensuring a higher degree of solidarity amongst Member States in regards to asylum. The EU's intended date of completion was 2012, but due to several problems, the goal was not met and no revised date has been announced. The EU's timeline displays how much time the development of an asylum system requires. Currently Turkey's developmental timeline is shorter than the EU's, and will be if it achieves its end date of 2013 for the entry into force of The Law.

The largest hurdle the EU is currently unable to overcome regards cooperation on behalf of the Member States political will. This has led to a lack of intra-solidarity amongst the Member States. In December 2011, EU home affairs commissioner Cecilia Malmström said, "solidarity is key to Europe's fragmented asylum seeker system" (Nielsen). This was furthered with Hatton's stance that complete harmonization is needed, but the current path the EU is taking will not lead to complete harmonization.

It remains imperative to discuss EU developments on asylum policy since many of the challenges EU Member States combat gives insight into some of the reasons why Turkey currently is unwilling to lift its Geographical Limitation. The three main challenges the Member States must overcome in order to successfully apply a common approach on asylum include practicing responsibility sharing, supporting one another, and negotiating at a satisfactory rate. These three challenges also continue to be problematic throughout Turkey's accession negotiations with the EU on asylum and migration policy. If current EU Member States are unwilling and take an exceptionally long time with harmonizing,

supporting each other, practicing responsibility sharing, and negotiating at a satisfactory rate, than Turkey has fair reason to be apprehensive about the EU's intentions concerning Turkey's long-term status.

The first challenge and one leading to a considerable amount of disagreement and frustration in the case of Turkey, regards responsibility sharing. Responsibility sharing, sometimes termed burden sharing, refers to the international community coming to the aid of those nations that encounter larger caseloads of asylum seekers and refugees due to factors outside the host country's control. UNHCR believes the usage of the term "burden-sharing" casts providing aid to asylum seekers and refugees in a bad light not promoting global solidarity and therefore the organization prefers to use the term "responsibility sharing". An equal distribution of roles and responsibilities amongst 27 Member States has proven extremely difficult to achieve, but responsibility sharing needs to occur. A lack of willingness towards responsibility sharing highlights an even more worrisome concern of a lack of mutual trust amongst member states that making up a Union that should be united. This unresolved distribution of responsibility gives Turkey much reason to be concerned with and doubt the EU's approach to responsibility sharing.<sup>32</sup>

The second challenge the EU currently faces concerns supporting each other, especially through tough times. Greece has taken much blame and finger pointing in its management of asylum policy.<sup>33</sup> It has even come to the point where some Member States are unwilling

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<sup>32</sup> A frequently cited case where there has been a lack of responsibility sharing is Italy in 2011 when their requests for help from their fellow member states to alleviate them of the asylum seekers that were arriving on the small island of Lampedusa in the Mediterranean were left unanswered (Migration #1 2).

<sup>33</sup> Greece has one of the lowest refugee recognition rates in Europe in addition to a practice of detaining asylum seekers for up to six months while their applications are being considered, the latter of which goes against the Directive on Reception Conditions (Humanitarian).



to participate in CEAS until Greece can fully secure and police its borders from illegal crossings and follow proper asylum procedures as reported by Deutsche Presse-Agentur (Nielsen). Greece did not adhere to EU legislation, but other EU Member States have been unsupportive in supporting Greece.

The third and final challenge observable through the CEAS regards slow coming advancements. “Negotiations so far have been too slow” (Malmström). Agreement on the necessity of intensified talks if progress is to materialize within the Justice and Home Affairs chapter exists. The EU for more than ten years has been inching closer to its goal (Malmström). Without an intensification of talks, the EU may reach a stalemate on the asylum debate, mirroring the deadlock of the EU-Turkey negotiations. The EU and the world at large cannot afford a stalemate to occur within EU negotiations, because it would have implications far greater than migration alone.

The EU itself has been combating many weaknesses throughout the creation process of its own common approach on asylum. Even if Member States do not want to be united under a common asylum system, as is interpreted from the current lack of intra-solidarity, they are still obligated by international law to uphold the international protection standards of asylum seekers and refugees.<sup>34</sup> The degree to which all Member States accord with international law in practice remains dubious. With the EU as a major actor in Turkey reforming its asylum policy, its inability to achieve its own milestones jeopardizes its credibility. Europeanization depends on the EU’s credibility to exert influence, something the EU cannot afford to lose if it wants to maintain its normative power. The EU’s own stagnant process in the creation of CEAS, their lack of intra-solidarity and reluctance to

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<sup>34</sup> All 27 Member States are signatories to the 1951 Convention and the 1967 Protocol

support one other advances the idea of an uncertain future for the handling of asylum within its own borders. Additionally, many Member States actions have been contradictory to not only the EU *acquis*, but international law.

### *Europeanization*

To continue with the simplistic definition of Europeanization explained previously in Chapter II within the section on concepts, Europeanization refers to an external force influencing the transformation of policies in Turkey (Özçürümez and Şenses 5). The literature is swarming with numerous definitions of Europeanization. Furthering Özçürümez and Şenses, short and simple definition, Radaelli, provides one of the most widespread definitions on Europeanization, and explains it as:

processes of (a) construction (b) diffusion and (c) institutionalization of formal and informal rules, procedures, policy paradigms, styles, 'ways of doing things' and shared beliefs and norms which are first defined and consolidated in the making of EU decisions and then incorporated in the logic of domestic discourse, identities, political structures and public policies (5).

Radaelli's complex definition, is more suitable for examining the effect of Europeanization on EU Member States. Europeanization can refer to the influence of the EU on Member States, candidate states, or the EU's neighborhood countries. Turkey falls in the second category of candidate states, a position it officially acquired back in 2005.

Schimmelfennig and Sedelmeier provide one of the most studied models of Europeanization on candidate states. They argue that domestic reforms are prompted

through 'external incentives' throughout the process of EU enlargement (Schimmelfennig and Sedelmeier). During accession negotiations, the EU holds considerable sway over aspiring member states determined to align their national policy with the EU *acquis*. It is the process of conditionality when the EU possesses the ability to leverage economic and political reform in candidate countries (Dinan 485). This displays the argument of the dangling of the carrot, with the potential for eventual EU membership as the major factor influencing the degree of Europeanization.

Dinan's explanation additionally includes credibility and the concern of how long membership prospects can dwindle before the EU loses its influential powers. Turkey's EU membership prospects have continuously been undermined by certain EU Member States, a challenge for the EU's credibility over Turkey and others. France and Germany made their preference of Turkey pursuing a "privileged partnership" publicly known, something Turkey will not stand for (Dinan 485). Turkey-EU relations, as analyzed through asylum and migration policy, gives one example of what happens when the carrot has been dangled for too long; resistance.

Turkey makes for an intriguing case study of Europeanization because of its utilization of careful resistance as a protective measure. Turkey has been branded as the "Gateway to Europe", "a prominent stepping stone" and with this has taken protective measures in order to not become the "dumping ground" or "buffer zone" of the unwanted EU asylum seekers ("Kaya "Reform" 24, Kirişçi "Turkey's New Draft Law" 17, Lamort 6, Düvell). Özçürümez and Şenses capture Turkey's resistance best in their explanation of "absorption with reservations" (1). While Europeanization has proven to be a very effective way in initiating the alignment of Turkish asylum policy with EU policy, it has been faced with

numerous barriers and has stopped progressing with the same fluidity originally intended. By proceeding with strategic resistance, Turkey protects itself from the unknown future.

One of the greatest fears of Turkish decision-makers regards the question of what would happen if they were to adopt all the *acquis*, including the lifting of the Geographical Limitation. Adopting all the *acquis* would turn Turkey into a potential Safe Third Country or a First Country of Asylum, meaning resettlement would no longer be an employable durable solution (Lamort). Additionally, it would make Turkey subject to the Dublin Convention and Turkey would be obligated to take responsibility for the return of all refugees who first entered through their borders but were obtained in another EU Member State. This fear of becoming the “dumping ground” or the “buffer zone” of the EU has the possibility of becoming a reality and solidifies Turkey’s cautious approach.

Düvell’s educated guess assumes that more than half of all persons passing through Turkey and seeking asylum in the EU would probably agree to stay in Turkey if they were able to access asylum procedures. Düvell explains his reasoning via the element of familiarity for people who come from neighboring countries. Familiarity could mean the presence of common religion to similar language, or the already significant presence of communities comprised of Turkey’s neighbors including but not limited to Iran, Iraq, and Syria. Düvell’s argument presents a challenging opposition for the literature. He raises the EU’s concern of an uncontrollable influx of migration flooding its Member States if Turkey were to join the EU as an insufficient concern on the basis of familiarity, an overarching theme throughout asylum studies, and a factor of where asylum seekers seek protection. If the opportunity to apply for full refugee status as a non-European existed in Turkey, this might encourage more migrants to claim asylum in Turkey rather than continue their

journey onwards to the EU. With UNHCR processing non-Europeans and the Turkish Government processing Europeans, unclear avenues of access resulting in confused asylum seekers occurs more frequently than it should.

The opening of EU-Turkey accession negotiations in 2005 for Turkey's eventual full membership into the EU marked a noticeable and positive change in Turkey's approach and attitude regarding the topic of asylum. This milestone sometimes receives too much credit and casts the EU as the greatest influence over Turkey and its reforms, a distortion from reality. Additionally, the *Golden age of Europeanization* that climaxed with the opening of accession negotiations in 2005 has slowed down tremendously (Öniş 36).<sup>35</sup> By 2008 Turkey-EU relations reached a certain stalemate and the past five years seem to exude the same quality (Öniş 36).

Many declare 2012 as the year when EU-Turkey relations went from bad to worse and further this with the statement "Turkey's EU journey has been a paralyzed process that goes nowhere" (Gültaşlı). The changing Turkey-EU relationship stresses the point that the EU cannot be considered the only major actor. Change has come directly from the Turkish Government and UNHCR, and the relationship between these two actors only seems to be strengthening, while the relationship between Turkey and the EU is waning. The presence

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<sup>35</sup> According to Öniş and Yılmaz, the period between 2002 and 2005 can be described as the "Golden Age of Europeanization" in Turkey and refers to the rapid speed at which the accession negotiations were proceeding in "Between Europeanization and Euro-Asianism: Foreign Policy Activism in Turkey During the AKP Era", *Turkish Studies*, Vol. 10, No 1. March 2009, p. 13

of other actors and their influence is evident in recent developments within Turkish asylum law at a time when EU-Turkey relations dwindle.

The never-ending debate on Turkey lifting the Geographical Limitation encapsulates the greatest example of Turkey's strategic resistance. When Turkey signed onto The 1951 Convention and The 1967 Protocol they made sure to retain the Geographical Limitation as a protective measure of not signing onto an unknown future and winding up in a position in which they lacked the resources to abide by their international engagement of treaty ratification. Turkey has made their point very clear; the lifting of the limitation continues to remain subject to two conditions. The first condition regards legislation and infrastructure being amended to prevent a direct influx of refugees into Turkey during the accession phase. The second condition regards Turkey's geographical location since this will make it a major first asylum state in the Union, EU member states should share this burden with Turkey (Zieck 2). Without providing both of these conditions, Turkey will continue to stand guard and retain its Geographical Limitation.

Retaining the Geographical Limitation has safeguarded Turkey from the added strains that result from mass influx, strains that could collapse Turkey's developing and fragile asylum system. Consider Syria, a humanitarian crisis that continuously is dangerously stretching the international humanitarian response capacity ("Number of Syrians"). As of March 2013, upwards of 180,000 Syrians have fled the ongoing-armed conflict in their homeland and have crossed the border into Turkey in search of international protection. If it were not for Turkey's Geographical Limitation limiting the granting of refugee status to non-Europeans, than Turkey's asylum system would have had

to lodge asylum claims and conduct refugee status determination for all those persons.<sup>36</sup> However, due to Turkey's Geographical Limitation, Turkey does not have to grant these persons of concern refugee status, but rather these persons are provided humanitarian aid through the observation of temporary protection instead. While employing the function of temporary protection on hundreds of thousands has been a financial strain on Turkey's budget, not having the Geographical Limitation could have meant an even greater resource strain.

Temporary protection is an immediate, short-term response to mass influx ensuring protection in frontline nations (Jastram and Achiron 56). Temporary protection might be an innovative program but should not continue for too long, since it is comprised of minimum conditions of protection ("UNHCR Global Appeal 2013 Update – Turkey" 18). In the case of Turkey, Syrians who have crossed into Turkey are referred to as refugees in the media, but they are not legally refugees (Krajeski 66). Instead they are living in an indefinite situation in which their rights are comparatively lower than those of recognized refugees. Since they have not been granted refugee status, they will continue to reside indefinitely in the camps and live in sub-par conditions.

With the Syrian Uprising reaching its two-year limit, the question of Turkey as a host country becomes extra relevant of whether things will ever stabilize in Syria (Krajeski 68). In order for voluntary repatriation to be a viable durable solution, a stabilization of conditions must occur.

In an unbiased fashion it must be mentioned that the EU has made small efforts in encouraging change from within Turkey. The EU has been implementing efforts to

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<sup>36</sup> As of March 2013, the number of war refugees due to the Syrian Uprising surpassed one million (Taylor).

encourage change from the ground level up. In 2010, the Coordination for Refugee Rights (CRR) in Turkey was created (TASCO). The CRR consists of seven leading human rights organizations building a new framework for cooperation and joint advocacy efforts in promoting and upholding the legal protection of individuals escaping war and persecution and sequentially seeking asylum in Turkey (TASCO). CRR is a EU funded project, and provides an example of an indirect way in which the EU is tries to influence Turkey's drafting of asylum law from the level of civil society in Turkey. This is an effective method because it puts a spotlight on the problems within Turkey. Other projects supported by EU funds include the Twinning System of the European Commission, established in 1998 as a way to influence immigration policy by linking Turkey with organizations in the EU (Global). The EU has introduced new concepts to the development of the asylum framework at the ground level, but UNHCR's efforts are more numerous and diverse.

### **UNHCR's Influence in Turkey**

Analyzing UNHCR's influence in Turkey's asylum reform process provides an assessment of to what degree an international organization can influence national policy making and more importantly implementation. This ties into understanding the power capabilities of an international organization influencing state officials and domestic policy, and the responsibility that such an organization may undertake when helping transform a nation and its international reputation. While Turkey's journey towards developing its first ever law on asylum has been exceptional, many countries can relate because it has propelled Turkey forward on its quest of further abiding by international laws and standards. Through this ongoing transformation, Turkey has improved its human rights reputation, thus improving its overall image within the international order. With the



humanitarian aspect of asylum pushed strongly by UNHCR, Turkey continues working towards a more balanced medium in its approach and attitude towards migration issues by equalizing its securitization angle in defense of its national identity with the humanitarian recommendations of UNHCR.

In analyzing the influence of UNHCR and the degree of UNHCR-ization in Turkey I take into consideration three specific things as follows: UNHCR's responsibility of non-European asylum seekers throughout the entire asylum process, the observation of a reverse transition phase in the UNHCR-Turkey relationship, and UNHCR's push for the protection of human rights over securitization.

With the sharp increase in the number of non-European asylum seekers coming to Turkey in the 1980s and 1990s, UNHCR stepped in and tried to address this humanitarian concern by helping Turkey (Tolay 5). Around this same time period, with the Bylaw of 1994, Turkey began making changes to its approach on asylum after being the target of international criticism. These improvements were primarily encouraged by UNHCR, instead of the EU who had yet to accept Turkey's bid for candidacy. It must be reiterated that the relationship between Turkey and UNHCR has not been formally regulated but has developed along informal lines of close cooperation over the past few decades. Therefore, much of Turkey's progression with UNHCR stems from a stance of "doing what's right" instead of "doing something for benefits" with EU membership as the greatest award.

#### *UNHCR Budget*

An unpredictable budget in an unpredictable world constitute UNHCR's budgetary capabilities. UNHCR faces budgetary shortfalls and has been forced to cut back on staff and programs (Jastram and Achiron 9). For Turkey, however the staff has been growing in

response to the greater demand of UNHCR support. Many proponents for the resolution of the refugee issue believe unrestricted responsibility sharing to be key. The EU tops lists as one unit restricting asylum access and offering limited resettlement places.

UNHCR is one of the few UN agencies that depends almost entirely on voluntary contributions to finance its operations. Funding for the UN and its agencies comes from two sources, assessed and voluntary contributions. Assessed are obligatory and account for 2% of UNHCR's budget, while voluntary contributions are left to the discretion of each member state and account for 98% of UNHCR's budget. Voluntary contributions typically finance most of the globe's humanitarian relief and development agencies (UN Refugee Agency). UNHCR has been able to change the lives of millions of persons of concern over the past 60+ years almost entirely on a voluntary contributions budget. UNHCR receives the majority of its funding from just 15 donors: 14 governments and the European Commission (Jastram and Achiron 115).

Widening their donor base remains a vital objection for UNHCR. A second crucial improvement addresses the concern of earmarking, the act of attaching specific conditions to donations. UNHCR persuades donors not to earmark their donations since this limits UNHCR's independence and weakens its coordinating role (Jastram and Achiron 116). In 2011, for all UNHCR contributions only 24% were unrestricted in their intended utilization. The rest were earmarked as follows: 19% country specific, 28% sector/thematic specific, and 29% regional/sub-regional specific.

Unrestricted funds help the most with the resolution of protracted refugee situations lacking the media hype of emerging refugee crisis. No media or little media makes the raising of funds for the resolution of protracted refugee situation more difficult.

UNHCR unfortunately works with an unpredictable and inflexible budget, something that can and needs amending. The EU, while a significant donor to UNHCR, continues to be chastised for not doing enough as a western, forward, international human rights promotion Union. Another escalating problem regarding the overall UNHCR budget concerns the gap increasingly evident between funds available and what UNHCR requires to carry out its mandate (“Funding UNHCR’s Programmes 2011” 89). An expansive budget only worsens this already prevalent problem.

UNHCR’s budget for Turkey has steadily been rising. From 2012 to the estimated expenditures for 2013, a substantial budget revision was made. In 2012, Turkey’s budget was USD 32.3 million. For 2013 the budget has been revised, mostly to account for displacement and influx related to the Syrian Refugee Crisis and is currently placed at USD 43.1 million. It is important to note that while Turkey may not use its entire budget, it also could need more funds before the year’s end, as the 2013 budget is only an estimate on current on-going crisis and concerns and does not take potential, and unknown issues into consideration.

#### *Reverse Transition Phase*

The 1951 Convention was originally drafted under the concept to primarily work as an agreement between States and guide their treatment of refugees, and accordingly placing the responsibility in the hands of States (Goodwin 1). When protecting refugees is primarily the responsibility of States, it is intriguing why throughout the UNHCR-Turkey relationship UNHCR has gained incredible power regarding the actual asylum process. This highlights the concept of unintentional power gain. I consider the gain unintentional because UNHCR, while the mandated agency for the international protection of refugees, it

does not possess the capacity to care for all persons whom are considered to be of UNHCR concern. This lacking ability directly results from a lack of resources, primarily financial. In the case of Turkey, UNHCR has become the “dumping ground” that Turkey has adamantly avoided. UNHCR’s role as the authoritative power supervising the application of international law on the protection of refugees, caused its transformation into the de facto dumping ground.

RSD provides the most visible example of power gain in the Turkey UNHCR relationship. Instead of a power transfer over to the Turkish government, as is the intended outcome (Jastram and Achiron 7). UNHCR is responsible for the majority of asylum seekers in Turkey. A reverse transition phase has been observed in Turkey where UNHCR has been given more responsibility, instead of the usual outcome of the national government slowly taking over responsibility. Soykan clearly states that what I have labeled a “reverse transition” results from Turkey’s refusal of processing the asylum claims of non-Europeans and leading to UNHCR assessing the applications of non-European asylum seekers (Soykan “Migration-Asylum Nexus” 4).

Since UNHCR is the authoritative power to supervise the application of international law on the protection of refugees, the responsibility falls on them. Many consider UNHCR a fundamental actor for many states implementation of asylum law and their improvement of the asylum process to harmonize with international standards. The importance of their assistance in Turkey, especially for Turkey’s human rights record is immeasurable.

The question looming on the horizon regards how UNHCR will eventually transfer all the power that it has obtained completely back over to hands of the Turkish government. Even when taking into consideration all of the changes and implementations

that will enter into force once the Turkish Parliament votes and approves Turkey's Asylum Law, the distinction and separation of Europeans from non-Europeans will still exist.<sup>37</sup> All the reforms of the asylum system with more scheduled have been fundamental for Turkey's alignment with both international and EU standards, but maintaining the Geographical Limitation means Turkey does not recognize all persons, no matter nationality as asylum seekers.

With the number of persons of concern rising who are crossing Turkey's borders, there has been an increased need for UNHCR assistance in handling these persons. This clear increase in pressure on Turkey's asylum system made Turkish officials realize how viable and opportune their relationship with UNHCR was and for them to instill more trust with UNHCR. Legally, as codified in international law, the protection, refugee status determination, and resettlement of non-Europeans will continue to be the responsibility of UNHCR and not Turkey.

The current relationship between Turkey and UNHCR built on close cooperation can be interpreted as a positive example of international cooperation. Kirişci expands this idea by stating the collaboration between the two does not need to come to end but rather just needs to continue under circumstances where Turkey exercises thoroughly its own sovereignty ("To Lift or Not to Lift" 9). The implementation of a well-developed national asylum policy represents the most effective way for Turkey to become more sovereign. Turkey has put itself on the right path in achieving this by drafting its first comprehensive asylum law, and with its adoption will inch closer to a qualifying national asylum policy.

### *Lodging of Asylum Claims*

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<sup>37</sup> Lifting of the Geographical Limitation is not part of the Asylum Law that is currently waiting approval by the Turkish Parliament.

Turkey as part of the group of select few nations who observe the Geographical Limitation, has a two-tiered asylum policy for persons originating from European countries versus people originating from non-European countries. While the former group may be granted refugee status by Turkey, the latter can only be granted temporary protection and the Ministry of Interior (MOI) transfers these person's claims over to the jurisdiction of UNHCR. Thus, UNHCR has come to occupy a powerful position within Turkey's asylum claims process, due to the majority of asylum seekers categorized as non-European.

Until Turkey can implement an effective and efficient asylum process on its own, UNHCR will continue to register asylum seekers, conduct RSD for all non-Europeans, intervene to strengthen the protection environment and find durable solutions for refugees. As the number of non-Europeans seeking protection in Turkey rises, UNHCR's lodged asylum claims workload will continue to grow. However, UNHCR continues to reach out to non-Europeans to let them know their asylum rights, even though they operate with limited resources.

### *Refugee Status Determination*

UNHCR conducts refugee status determination (RSD) under its own mandate rather than on behalf of the country of refuge. The RSD procedure covers the process by which states or the UNHCR determine if an asylum seeker meets the refugee definition. Thus, it represents the crucial point in the asylum process where a person of concern can transition from the position of asylum seeker to that of refugee. In Turkey, the conduction of RSD involves both the Turkish government and UNHCR. The reason for a joint approach naturally results from Turkey's maintenance of its Geographical Limitation. While the Turkish Government alone handles RSD for Europeans, both actors are involved in RSD for

non-Europeans. Turkish law does not acknowledge asylum seekers originating from places outside of Europe, but because international law observes the right for all individuals to seek asylum, UNHCR provides for the problem of non-Europeans not being cared due to the misfit between national and international law.

A joint approach in the conduction of RSD happens in other countries, but Turkey's maintenance of the Geographical Limitation cements its continuation indeterminately. Even in joint approaches, it remains the responsibility of States to identify refugees in order to give effect to their obligations under the Refugee Convention (Jastram and Achiron 49). Thus, in the case of Turkey, Turkish officials usually wait until UNHCR has reviewed a case before taking a decision on whether or not to grant "temporary asylum" as full-fledged refugee status is not an option for non-Europeans. Temporary asylum allows non-Europeans to stay in Turkey until they are matched with a resettlement place outside of Turkey. With this set-up, the bulk of the task of RSD comes under the responsibility of UNHCR. Generally, the Turkish officials agree to grant temporary asylum to persons UNHCR considers to be refugees (under the international law definition). There do exist the rare cases where Turkish officials do not agree with UNHCR's refugee recognition in which an appeal by the refugee can be made (Zieck 4).

This common practice of joint RSD where UNHCR carries significant weight in refugee decision making and is now underway in Turkey was solely done of the basis of cooperation between UNHCR and Turkey and has yet to be formally authorized. UNHCR intends to continue to provide support to the Government of Turkey for the establishment of a national asylum system with required institutional capacity and technical expertise to be able to take over RSD activities from them. Until then, UNHCR will continue to register

asylum seekers, conduct RSD for all non-Europeans, intervene to strengthen the protection environment and find durable solutions for refugees (2). Turkey should aim to become more active in the RSD conduction of non-Europeans as this could foster an ever closer working relationship between UNHCR and Turkey.

Since Turkey sits between two regions, it possesses a greater likelihood of playing host country to a wider array of nationalities because of the rule of proximity. UNHCR-Turkey 's population of concern is very diverse with asylum seekers and refugees comprising over 50 nationalities (UNHCR 22). Iraqi, Iranian, Afghani, and Somali citizens comprise the biggest groups of newly arrived asylum seekers. Expectations point in the direction of many more coming from these four nations due to their protracted refugee situations (UNHCR 22).

Having to cater to refugees from such a breadth of nations affects Turkey's ability to cater to the individual needs of each asylum seeker. A specific need that plays a significant role in the conduction of RSD is language. As codified in international law, all persons of concern have the right to an interpreter so that all legal matters are understood. However, strains on budgets and available personnel may delay the conduction of an RSD case if an interpreter cannot be provided because of unavailability. Soykan comments on the absence of interpreters who are supposed to be accessible to translate communications between officials and asylum seekers as a significant problem to delivering information to persons of concern on hand at the point of entry to the country ("New Draft Law" 13). Problems created by a lack of interpreters need to be addressed, but this requires more funding, something UNHCR's restricted budget has difficulty in fixing. Delays caused by a lack of resources are primarily noticeable in the conduction of RSD cases but exist elsewhere in the asylum process as well.



One delay that many refugees are unhappy about is the length of time it takes to cycle through the entire asylum process. Specific dissatisfaction stems from the very long and uncertain time in between RSD and resettlement. UNHCR drew attention to this and by including a clause, The Law accounts for this concern by limiting the waiting period for an RSD interview to thirty days, and to six months for a result (Soykan “New Draft Law” 6). No time limits currently exist so this inclusion in The Law will ease applicant’s uncertainty generated from this. Frambach also highlights on the presence of time delays and contributes them for the reason why some refugees choose to avoid RSD and continue their journey to Europe, or stay illegal in Istanbul (45). Refugee’s decision to avoid RSD even after they have lodged an asylum claim creates a discrepancy in the numbers of lodged asylum claims compared to RSD cases conducted.

Turkey will remain far from implementing RSD on its own, as long as it is able to rely on the support of UNHCR. UNHCR and its dedicated efforts in Turkey will continue to address concerns within Turkey as much as its budget allows. The next step in the asylum process, resettlements, stretches not only UNHCR’s budget, but third countries resources as well. If and when refugee status is granted by UNHCR and approved by Turkish officials, the refugee has one more hurdle in Turkey to overcome, resettlement.

### *Resettlement*

UNHCR handles the lodging of non-European asylum claims, the conduction of non-European RSD and thus naturally in order to finish the asylum process, a substantial amount of the resettlements for non-Europeans out of Turkey. Resettlement refers to the process when refugees are selected and transferred from the country of refuge to a third State which has willingly agreed to admit them as refugees with permanent residence

status (UNHCR Resettlement Handbook 12). As part of its mandate, UNHCR identifies refugees in need of resettlement, but States remain the ones offering resettlement within their nations. Along with international protection, the identification of durable solutions are considered UNHCR's core objectives, with subsequent UN General Assembly Resolutions expanding on both of these (UNHCR Resettlement Handbook 12). International law does not legally oblige any country to resettle refugees, but the global community regards it as an active expression of responsibility sharing within the international community. Resettlement is revered and promoted within the international community because it promotes intra-solidarity amongst all signatories to The 1951 Convention and The 1967 Protocol.

Most refugees remain within their region of origin when seeking persecution.<sup>38</sup> In 2011, 75-93% of refugees remained within their home region when seeking asylum (UNHCR Global Trends 11). This variance results from different percentages depending on the different UNHCR regions (Africa excluding North Africa, Americas, Middle East and North Africa, Asia & Pacific, and Europe). The high end represents persons originating from Europe and the low end for persons originating from Latin America/Caribbean. The reasons for the variance could be anything from regional economic development attractiveness, proximity of safe third countries, to ease of fleeing outside the region. Due to geographical proximity as one of the main determinants of where a refugee seeks protection, 80% of the world's refugees are hosted in developing countries (Park). This

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<sup>38</sup> Two examples that display ease of fleeing a region to proximity is the tendency of correlation between largest host countries and neighbor nation status to refugee originating nations. South Africa is the largest recipient of refugees fleeing from Zimbabwe, and at the end of 2011, Syria was the host to the largest population of Iraqi refugees (UNHCR Year 12-13).

contradicts the media induced notion of most asylum seekers flocking to developed, wealthy nations (Park).

Resettlement is one of the best tools available for the production of responsibility sharing amongst nations and for a nation to actively contribute in assisting with the refugee issue. Developing countries argue that the burdens of asylum are not shared equally: while they host thousands, and sometimes millions, of refugees, wealthier countries are restricting access to their own territories and reducing support to the countries of first asylum on a global scale.

Two preconditions must be met, prior to resettlement being the chosen durable solution. The two preconditions include the applicant for resettlement must be determined a refugee by UNHCR and prospects for all durable solutions were assessed, and resettlement is identified as the most appropriate solution ("UNHCR Resettlement Handbook" 18). The former of these two requires UNHCR involvement, even if another organization like the IOM or the International Catholic Migration Commission (ICMC), a non-governmental organization, facilitates the resettlement. The latter of these two conditions denotes resettlement as the durable solution of last choice due to its financial cost on all actors involved and the emotional distress the refugee is placed under.

More and more refugees are being resettled across the globe. Resettlement serves three equally important functions. First, it is a tool used to provide international protection and meet the specific needs of individual refugees whose life, liberty, safety, health, or other fundamental rights are at risk in the country where they have sought refuge ("UNHCR Resettlement Handbook" 12). Resettlement refers to the durable solution used only when all other solutions have been exhausted. Second, it is a durable solution for larger numbers

or groups of refugees, alongside the other durable solutions of voluntary repatriation and local integration. Due to this function, many large-scale resettlement programs have been adopted. A very recent example of such an occurrence happened on January 15, 2013 when Canada announced its commitment to resettle up to 5,000 refugees now residing in Turkey by 2018 (ReliefWeb). The third function of resettlement is its roles as a tangible expression of international solidarity and a responsibility sharing mechanism, allowing States to help share responsibility for refugee protection, and reduce problems impacting the country of asylum. Turkey contends this function of resettlement to be the reason why the EU should formally agree to the resettling of refugees in Turkey, but as of yet the EU remains unmovable in the direction Turkey wishes.

While respected and admired within the international community, not all States choose to partake or do so minimally in resettlement programs. This has led to the current problem in Turkey, and globally of the number of refugees identified in need of resettlement surpassing the availability of resettlement places. As of April, 2012 resettlement needs outpaced resettlement places by a factor of 10 to 1 (UNHCR Frequently Asked Questions 3). This ratio was generated from the annual demand of upwards of 800,000 refugees awaiting resettlement and approximately only 80,000 resettlement places available on an annual basis. UNHCR, along with fellow non-governmental organizations continue to promote, search, and build resettlement programs with willing countries worldwide. Within Turkey, UNHCR, IOM, and the ICMC constitute the three main organizations committed to the successful resettlement of refugees in Turkey.

Another commonality between Turkey's resettlement program and resettlement across the globe, is the United States of America (USA), Canada, and Australia respectively

comprising the top three nations of resettlement. Without these three alacritous nations, almost 90% of resettlements would not occur (UNHCR Frequently Asked Questions 2). These three nations have allocated extreme generosity upon themselves. However, these three nations alone cannot solve the worldwide resettlement program and thus a new and continuously spawning goal broadening the base of resettlement. From 2005 to 2012 the number of resettlement nations increased from 14 to 26 to include countries in Latin and South America, Europe and Asia (UNHCR Frequently Asked Questions 2).<sup>39</sup> On a global scale in 2011 alone, the US, Canada, and Australia accounted for 55,639/61,231 facilitated resettlements. These three nations have been extremely key to Turkey's resettlement program. During the 15-year period of 1995-2010 the US, Canada, and Australia were the top three nations of resettlement for persons who gained refugee status in Turkey. Together they equated for almost 32,500 resettlements ("UNHCR – Global Appeal 2013 Update – Turkey").

On the reverse side of the argument are the subpar contributions of Europe regarding resettlement. Of those resettlements (61,231 in 2011), EU countries accounted for 3,950 of those resettlements, roughly 6%. On average, European countries (EU and non-EU) account for approximately 8% of resettlements worldwide (Nicholson). The common theme of the EU should provide for an increased number of resettlement opportunities there currently virtually no EU resettlement of asylum seekers from Turkey happens runs thick within the literature (Crépeau 4, Frambach, Lamort). With much international

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<sup>39</sup> Argentina, Australia, Brazil, Bulgaria (implementation in 2012 onwards), Canada, Chile, the Czech Republic, Denmark, Finland, France, Germany, Hungary (implementation in 2012 onwards), Iceland, Ireland, Japan (pilot program), the Netherlands, New Zealand, Norway, Paraguay, Portugal, Romania, Spain, Sweden, the United Kingdom, Uruguay, the United States of America.

distraught created over the lack of responsibility being contributed by European nations, as an intentionally positive decision, the Joint EU Resettlement Scheme was adopted on March 29, 2012 in efforts to increase the number of resettlement places made available in EU Member States, and to contribute to greater funding opportunities for resettlement.

The program's main aim is to encourage EU Member States to take up refugees by enlarging the list of those whose resettlement will be financed by the European Refugee Fund ("EU Countries to Take up More Refugees"). UNHCR continues to take active steps encouraging the expansion of responsibility sharing (Frambach 16). Turkey remains a firm believer in the EU needing to contribute more to its personal resettlement program. This is a main point of contention for the lack of responsibility sharing on the part of the EU.

Over the years the size of Turkey's resettlement program has continuously grown concomitantly with the international call for humanitarian assistance due to protracted refugee situations and the creation of new refugee situations. The headlines tend to be dominated by new or recently emerging refugee crises, but what tends to be overlooked is the continued suffering of millions for years, maybe even decades who are part of the protracted refugee crisis.<sup>40</sup> A lack in reporting protracted refugee situations exists, even though they are as much in need of funding and aid as new refugee emergencies.

Protracted refugee situations are just as susceptible if not more so to serious humanitarian and security threats. Iraqis, Iranians, and Afghanis continue to represent some of Turkey's largest refugee populations.<sup>41</sup>

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<sup>40</sup> Protracted displacement situations are those which have moved beyond the initial emergency phase, but for which solutions do not exist in the foreseeable future. One of its criteria are the exile of persons for more than 5 years (Loescher and Milner).

<sup>41</sup> As of 2011, Turkey's top ten refugee populations by nationality are: Iraq 3,656, Islamic Republic of Iran 2,881 Afghanistan 1,248 Somalia 448 Kyrgyzstan 246 Uzbekistan 101

Consequently enough, Turkey now hosts one of the largest resettlement programs worldwide a direct result of Turkey's Geographical Limitation. Resettlement constitutes a major defining characteristic of Turkey's current asylum policy and remains the main durable solution for non-Europeans in Turkey. The other two methods of local integration and voluntary repatriation are minimal in their application in Turkey since only ethnic Turks have the possibility to integrate and voluntary return homes are pendent on home nation conditions ("UNHCR Global Appeal Update 2013 - Turkey").<sup>42</sup> This indeed will need to change if Turkey plans on harmonizing its policy and practice with that of the EU (Kirişci "To Lift or Not to Lift" 6). As long as Turkey continues to facilitate resettlements out of its borders, it will not be considered a country of safe asylum. All countries of the EU must oblige to this criteria. As long as the demand for resettlement out of Turkey is significantly greater than the number of resettlement places, there will always exist a belief that more international cooperation, especially in regards to the EU offering more resettlement places as part of its responsibility sharing. Discussion on the issue of resettlement will continue within Turkey, the EU, and across the globe.

The observed increase in political turmoil in Turkey's Southeastern neighborhood, has created an increase in the number of lodged asylum claims within Turkey and additionally has created a larger pool of necessary resettlements. With resettlement out of Turkey hinging on the participation and cooperation of other States and not nearly enough resettlement opportunities existing, an accumulation of refugees awaiting resettlement has

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Democratic Republic of Congo 66 Occupied Palestinian Territory 64 Sudan 48 Pakistan 42.  
<sup>42</sup> Voluntary repatriation is the method by which refugees return in safety and with dignity to their country of origin and re-avail themselves of national protection; Local integration, in which refugees legally, economically and socially integrate in the host country, availing themselves of the national protection of the host government.

developed. This is not ideal since the mass majority of refugees in Turkey, only have resettlement as a possibility to obtain a durable solution to end their plight.

With the number of refugees who require resettlement surpassing the number of resettlement opportunities, a backlog in Turkey was produced. The backlog only exacerbates the duration of the refugee's stay in Turkey with some waiting as long as 5-6 years to be resettled outside of Turkey. A longer stay in Turkey translates into greater consequences and problems for them in terms of human rights protection (Soykan "Migration-Asylum Nexus" 5). This does not only address the concern of an absorption capacity overflow on the resettlement program, but also addresses the concern of what this overflow and backlog translates into for a refugee's conduction of everyday life.

UNHCR-Turkey operations intend to reach an annual resettlement submission of 6,000 refugees from 2012 onwards (Ay). On average the annual resettlement is roughly 2,000 which means that Turkey is amplifying its annual resettlement substantially in order to meet its goal of 6,000 resettlements a year. The reasons are simple, non-Turks are not allowed to integrate and voluntary return to source nations remains slim due to the perpetuation of political turmoil. If UNHCR Turkey intends to manage the backlog of refugees in Turkey, much attention and a substantial portion of resources will have to be directed to the resettlement program.

The issue of resettlement, along with the previously mentioned issue of responsibility sharing, demands the need for a global solution in addressing migration movements, and specifically the humanitarian assistance for asylum seekers and refugees. A one-nation solution will not suffice for solving the shortfalls regarding movements of



asylum seekers and refugees; rather an internationally collaborated approach is mandatory.

### *Burden/Responsibility Sharing*

An equal division of responsibility sharing does not currently exist nor does it look promising for the near future. UNHCR, an organization that works primarily with voluntary contributions on a yearly basis is not financially secure enough to be able to promise its continuance of providing for the majority of asylum seekers who find themselves within Turkey's borders. An uptake in responsibility from Turkey and the EU with contributing resources and sharing the responsibility with UNHCR can no longer be an option but now represents a necessity. Turkey will not lift its Geographical Limitation without an official agreement from the EU confirming its intent to share the responsibility of unknown and undetermined influxes of asylum seekers that could happen. This will remain Turkey's safeguard to not become a buffer zone; something it fears would surely ensue without a formally committed EU.

It may be impossible to subdue the fear Turkish officials hold of the possibility of the EU defecting from its informal commitments to assist Turkey once it lifts the Geographical Limitation. The only true determinant of the EU's response would be if Turkey did lift its Geographical Limitation, but that does not seem imminent. An intriguing analysis provided by Kirişci discusses the possibility of this vicious circle of doubts between the EU and Turkey that continues to prevent progress to be made being broken ("To Lift or Not to Lift" 11). If both actors could see past the doubts, there exists the potential for Turkey to develop a national asylum policy, initiating a "virtuous circle" of confidence building that serves the interests of all sides (Kirişci "To Lift or Not to Lift" 11). With the aid of UNHCR-

Turkey operations, and Turkey's assurance that UNHCR will continue to uphold its mandate and share the responsibility of asylum seekers and refugees, there may exist a smidgen of hope that Turkey may feel enough at ease and confident to lift the limitation. UNHCR's operations and continued support contributes to Turkey's strengthening asylum system. A "virtuous circle" would be beneficial to the EU and Turkey, but more to UNHCR who has become the "dumping ground" by virtue of its mandate to extend international protection to all.

*Humanitarian Aid vs. Securitization (Still need to develop this section)*

The EU's growing emphasis on security in its approach and attitude towards the discourse on migration has created a wide breadth of the literature addressing this phenomenon that has been labeled as *securitization*. As securitization has become the new approach of the EU, it has made migrants complete transit through Turkey exceptionally more difficult. With increased control at the borders between Turkey and the EU, as is visible through increased personnel, physical barricades, and surveillance systems, it is with good reason that the Union has been endowed the nickname "Fortress Europe" (Baklacioğlu).<sup>43</sup> However, Turkey's borders with the EU remain vulnerable despite intense law enforcement focus, and hint at the necessity for further collaboration between the EU and Turkey. While the EU does promote human rights adherence through its *acquis*, the actions of some member states raise the question of who the enforcer of making sure the *acquis* is adhered.

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<sup>43</sup> December 2012, the EU completed the construction of a 10.5 km fence along the Greek-Turkish border. The project cost 3 million and its purpose is to prevent a wave of unregistered immigrants from flowing into the country (Greece Completes Anti-migrant Fence at Turkish Border).

Italy and Greece continue to be the EU's problem children by engaging in disputed treatment of human rights. Andrijasevic conducts a case study on the Italian island of Lampedusa to bring light to a number of negative factors surrounding asylum policy. Notoriously known for repeatedly being denounced for instances of procedural irregularities and alleged human rights violations, Lampedusa has been a media sensation (Andrijasevic 148). Greece's asylum portfolio raises problems because it has one of the lowest refugee recognition rates in the EU in addition to a practice of detaining asylum seekers for up to six months, while their applications are under consideration (Humanitarian).

UNHCR's solid promotion of a human rights focused agenda is traceable as far back as the late 1990s with UNHCR's implementation of training seminars for officials and opening avenues to the judicial appeal process for asylum seekers and refugees. UNHCR has helped Turkey improve upon its human right record in more ways than one.

## **Chapter V.**

### **Data Analysis**

#### *Methodology*

A statistical analysis of data sets obtained from the Turkish Ministry of Interior and UNHCR comprise my methodological approach. This represents a quantitative research style effective in providing trends and estimating trajectories regarding the increasing operations of UNHCR-Turkey. The three different UNHCR operations analyzed include the lodging of asylum claims with Turkish UNHCR field offices, UNHCR's conduction of refugee status determination cases, and UNHCR's resettlement of refugees to third safe countries. The combination of these three operations comprise a significant portion of UNHCR-Turkey operations for the asylum process that all non-Europeans seeking protection in Turkey must proceed through. Other operations of UNHCR-Turkey not analyzed here include, but are not limited to providing services to refugees on a daily basis, and the planning logistics of refugee camps.

Additionally, Turkey's position on a global scale continues to change because of UNHCR-Turkey operations. Specifically, Turkey's position changes in regards to the number of lodged asylum claims with Turkish UNHCR offices and the growth of Turkey's resettlement program. All three operations are analyzed individually below in the linear order in which asylum seekers proceed through the asylum system, lodged asylum claims, RSD, and resettlement.

To position Turkey within different scales of asylum and migration studies, I provide a brief comparative analysis of Turkey's position on the global stage, within a study

of 44 industrialized countries, and within the region of the Mediterranean. Large scales of comparison represent a part of asylum and migration studies, because while it is necessary to determine the trends within Turkey over a selected time frame, not considering ongoing occurrences outside Turkey leaves much unanswered. Much would be left unanswered especially in regards to global movements and systems, and the asylum and refugee issue requires an international and not a one country response for its solution. Both UNHCR and the Turkish Government, via the Ministry of Interior (MOI), were the main sources used for the collection of my statistical data.

### *Comparison Scales*

Two different scales of comparison briefly analyzed are Turkey's relative position amongst other Mediterranean/South European countries and amongst the group of 44 industrialized nations of the world. First a regional look at how Turkey ranks amongst the countries of the Mediterranean/Southern Europe, a region very susceptible to migration movements. Southern Europe refers to Albania, Cyprus, Greece, Italy, Malta, Portugal, Spain, and Turkey. In 2011, Turkey ranked 2<sup>nd</sup> after Italy for the overall lodging of asylum applications (UNHCR Asylum). The Mediterranean represents one region that attracts a lot of attention within migration studies because of its linkage of a Northern Mediterranean belonging in the EU and a Southern Mediterranean trying to either become a part of the EU (i.e. Turkey), or countries that have or are still experiencing political instability, (i.e. Syria and Libya). Countries experiencing political instability tend to be origin nations for asylum seekers and refugees and prolonged political instability only further instigates this. With these nations in Turkey's neighborhood, the geographical proximity element is increasingly regarded as an important factor. Of particular interest here is Turkey outranking Greece in

overall lodging of asylum claims, an EU Member State that has been confronted by other EU Member States for its acts of debauchery regarding the treatment of asylum seekers.

Debatable is whether Turkey or Greece is more in accordance with proper asylum law.

The second and largest scale of comparison mentioned is Turkey's comparative position amongst the 44 industrialized nations of the world. The 44 industrialized nations of the world include the 38 European states and 6 non-European states (USA, Canada, Australia, New Zealand, Japan and the Republic of Korea). In 2011, Turkey was ranked third for the greatest increase in asylum applications after the US and Italy ("UNHCR – Global Appeal 2013 Update – Turkey"). In 2011, 441,300 applications were received for all 44 industrialized countries. The 44 industrialized countries are not representative of all refugee host countries, but they do provide a larger scale of comparison for analysis.

Additionally, Turkey jumped from 14<sup>th</sup> to 10<sup>th</sup> place amongst major receiving countries of asylum in that same period (as indicated in Table 1 below). In 2010, Turkey represented 3% of the world's share of asylum applications and in 2011 they represented 4% ("UNHCR – Global Appeal 2013 Update – Turkey"). These numbers may seem small and insignificant, but if annual changes continue on the same scale of 2010 to 2011 and 2011 to 2012, then Turkey will find itself making up an ever-greater percentage of global asylum statistics. Moreover, it must be reiterated that an increase in lodged asylum claims represents an increase in all other UNHCR operations that follow. This translates into more resources, financially, institutionally, and personnel wise making sure the asylum system progresses smoothly. Resources cost money, and UNHCR works with a restricted budget that does not typically receive all the necessary funding for its operations. As the number of

asylum seekers looms increasingly larger with 4.3 million more in 2011, Turkey is a nation that is affected by these rising global figures.

**Table 1: Changes in the ranking of the top-15 receiving countries from 2007-2011**

<b>Countries</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
<b>United States</b>	1	1	1	1	1
<b>France</b>	3	3	2	2	2
<b>Germany</b>	7	7	5	3	3
<b>Italy</b>	8	5	7	14	4
<b>Sweden</b>	2	6	6	4	5
<b>Belgium</b>	10	14	9	7	6
<b>United Kingdom</b>	5	4	4	6	7
<b>Canada</b>	4	2	3	5	8
<b>Switzerland</b>	11	9	13	8	9
<b>Turkey</b>	13	12	15	15	10
<b>Austria</b>	9	13	11	11	11
<b>Netherlands</b>	15	11	12	8	12
<b>Australia</b>	19	16	16	10	13
<b>Greece</b>	6	8	10	12	14
<b>Norway</b>	17	10	8	13	15

Source Obtained from UNHCR: All data is based on first instances of asylum claims

### *Lodged Asylum Claims*

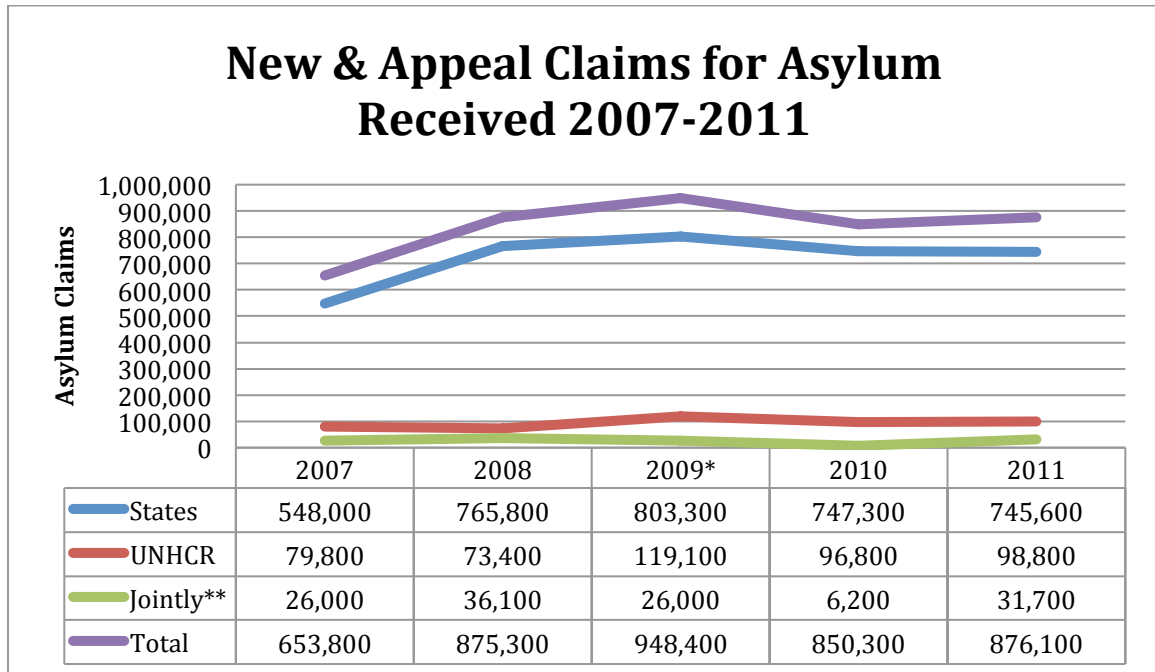
The lodging of asylum claims with UNHCR-Turkey offices represents the first UNHCR operation analyzed. Currently three UNHCR offices are located in Turkey. The three

cities hosting offices in Turkey are Ankara, Van, and Istanbul, with the latter two designated as field offices and the one in the capital operating as the country office. The location of Turkey's three current offices were strategically chosen by placing them in the capital and two cities where the number of people of concern to UNHCR ranks exceptionally high (Frambach 38). Additionally, both Van and Istanbul are located near Turkey's borders, Southeastern and Northwestern respectively, a logical choice for persons crossing borders and needing to register within a relatively short amount of time. UNHCR's deployment of staff was logistically considered.

The lodging of an asylum claim, along with registering with both the Turkish Government and UNHCR constitutes one of the first things non-European asylum seekers must do when arriving in Turkey. Mandatory registration with both actors results from Turkey's chosen joint approach in the handling of asylum. There are different approaches for the lodging of applications, whether with just the nation, just UNHCR or a joint approach. Graph 1 below depicts the receipt of new and appeal asylum claims lodged in UNHCR offices since 2007. In 2011, when Turkey landed itself in the number one position of most asylum claims lodged with UNHCR, the global figure of lodged asylum claims with UNHCR offices was 98,800. This means Turkey accounted for 16.2% of asylum claims lodged with UNHCR offices in 2011. Predictably, as the number of asylum applications lodged with UNHCR-Turkey offices increases, all successive operations handled by UNHCR correspondingly experience an increase. Thus, it is pertinent that the lodging of asylum claims is analyzed first.



**Graph 1: New & Appeal Asylum Claims Lodged in UNHCR Offices  
2007-2011 (Worldwide)**



Source: Data obtained from UNHCR. Data current as of June 2012

\*Originally published data for 2009 were underestimates. The total changed from an original 923,400 to 948,400. This is noted because post-2009 years may be updated.

\*\*Jointly refers to refuge status determination conducted jointly between UNHCR and the government

The amount of asylum applications lodged with UNHCR-Turkey (indicated in Table 2 below) has been on the rise since 2007. Furthermore, UNHCR-Turkey's workload has comparatively been increasing when compared to other nations UNHCR office's workload. Some of the most significant jumps have been observed in recent years, because of ongoing conflict and political instability in its southeastern neighborhood.

**Table 2: New Asylum Claims Lodged in the Turkey UNHCR Office Since 2007**

Year	2007	2008	2009	2010	2011	2012
Total	7,650	12,980	7,830	9,230	16,020	August (12,035)

Source: Data obtained from UNHCR. Data current as of August 2012

From 2007 to 2011, Turkey experienced a doubling of applications, with a tripling expected to occur by the end of 2012.<sup>44</sup> UNHCR estimates applications to reach an all time record of 22,000 by the close of 2012. While there was a significant decline in applications lodged between 2008 and 2009, the average trajectory for Turkey reflects an incline. In 2009, Turkey was ranked fourth amongst worldwide UNHCR offices for lodged asylum claims. By 2011, Turkey made its most substantial jump yet and surpassed Malaysia and Kenya to move up two spots from its third spot position in 2010. In 2011, the top five offices (Turkey, Malaysia, Yemen, Egypt and Jordan) accounted for 59% of all newly lodged asylum claims (UNHCR Global Trends 26).

It must be noted this is within the confines of countries where a joint approach incorporating both the national government and UNHCR is applied. One cause for an upsurge in applications was the inception of new conflicts, particularly events related to the 'Arab Spring' in nearby Libya and Tunisia, and the continuation of protracted conflicts mainly comprising neighboring countries of Iran and Iraq, nearby Afghanistan and more distant, but still ubiquitous Somalia.

For the case of Syria, their numbers are not included here since they are observed under temporary protection. This is a prime example of two push factor phenomena within migration studies. The first concerns how new conflicts in a region are one of the many

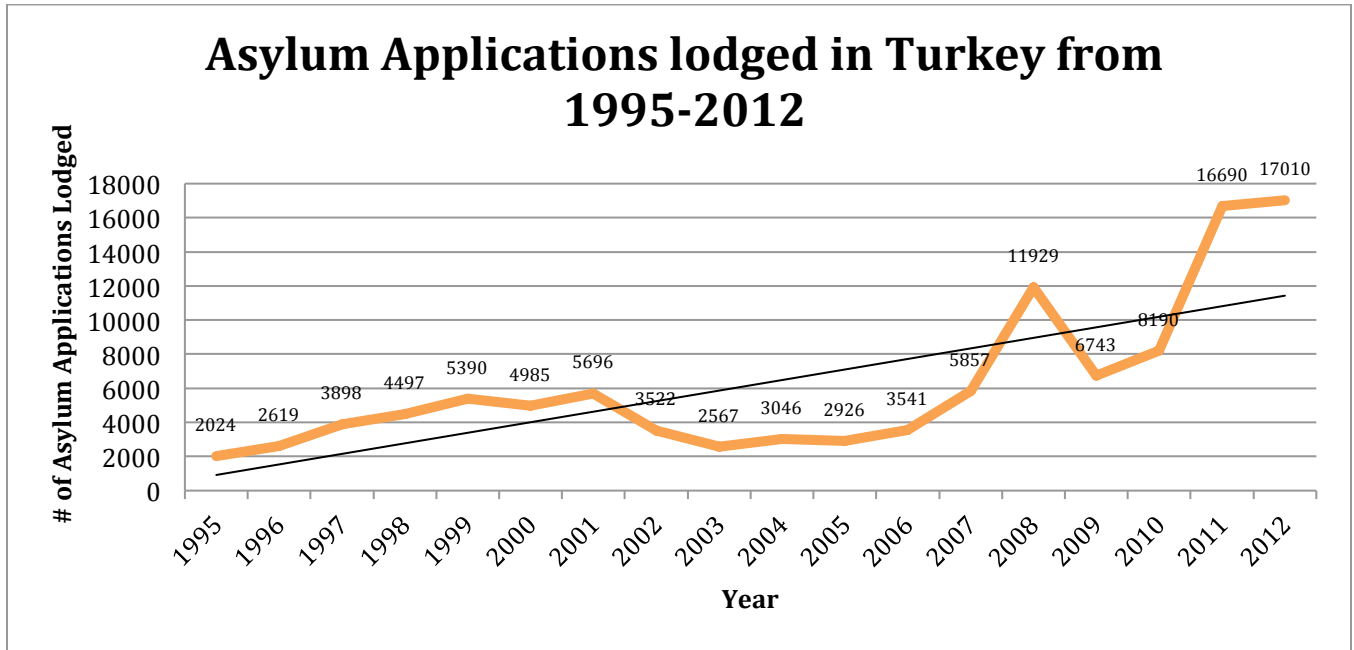
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<sup>44</sup> UNHCR numbers for the close of 2012 were not yet available at the time of publication.

push factors contributing to irregular migration movements. The second phenomenon concerns how the inability to control for protracted refugee situations continues to escalate the refugee issue. As of 2011, reports stated that over 7 million persons were living in upwards of 30 protracted refugee situations worldwide (“Protracted Refugee Situations”).

While Table 2 looked strictly at asylum claims lodged with UNHCR, the rest of the picture encompasses the total number of asylum claims lodged in Turkey. The total number of applications for asylum lodged in Turkey has been steadily rising over the 17 year period from 1995-2012 with a few periods of time where a decline in application is observable (notably 2002-2005 and 2009 – 2010). The trajectory is visualized in Graph 2 below. 2012 hails as the year with the most received applications in Turkey with 17,000+ received at the start of October. The number of applications processed for the rest of 2012 have not yet been published, but as mentioned this shows that all other nations aside and on an individual scale, a rising phenomenon is occurring within Turkey. UNHCR’s planning figures for Turkey in 2013 estimate the total population of asylum seekers and refugees in the nation to reach 28,470.

Graph 2: Asylum Claims Lodged in Turkey from 1995-2010



Source: Data obtained from MOI

\* October 2012

### *Refugee Status Determination*

UNHCR is required to carry out RSD in diverse and complex operational environments, in which the unpredictability of population movements presents planning challenges. The difference in the figures in Graph 1 from Graph 2 regarding the number of applications lodged results from Graph 1 only recording the number of applications lodged with UNHCR-Turkey while Graph 2 records the number of applications lodged in Turkey, with either UNHCR or the Turkish MOI. The Turkish MOI is currently reporting higher figures in comparison to UNHCR for the number of asylum claims lodged with the organization. This discrepancy in numbers did not occur because of the lodging of European asylum claims. From 1995 to 2011, a mere 226 Europeans lodged asylum claims

in Turkey (Kirişci Turkey's New Draft Law 66).<sup>45</sup> This number does not include mass influx of Europeans into Turkey before and during this same period.<sup>46</sup> T

he Turkish MOI through the practice of the Turkish National Police (TNP) and UNHCR perform RSD. Two bodies perform RSD because of the separation and differential treatment of non-Europeans from Europeans. As indicated earlier, UNHCR conducts RSD along with the rest of the asylum process for non-Europeans, and the Turkish Government handles all Europeans. The Turkish Government has come to rely on UNHCR for the vast majority RSD cases conducted.

Both UNHCR and the Turkish Government have increased their institutional capacities to deal with asylum seekers and their claims. The eventual entry into force of the law will only expedite the future capabilities of the asylum system with the introduction of clearly defined standards and procedures. While an increase in work capacity, primarily through additional staff and training could be the answer to helping alleviate a heavier caseload, and thus allows more people to benefit from Turkey's asylum system. At the beginning of 2011, Turkey had a staff of 116, but as of December 2012, the staff has grown to 153 with an additional minimum of 25 to occur within the coming months to help fill gaps in man capacity (UNHCR 15, Ay). While the number of UNHCR personnel is nowhere near ideal to accommodate for the increase in lodged asylum claims, an expanding staff

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<sup>45</sup> The figure includes the nationals of Armenia, Azerbaijan, Belorussia, Bosnia, Bulgaria, Croatia, Georgia, Greece, Kosovo, Macedonia, Moldova, Romania, Russia, Serbia and Ukraine. Data obtained from the Foreigners Department of MOI.

<sup>46</sup> In 1989 more than 310,000 Bulgarian nationals of Pomak and Turkish origin fled to Turkey en masse. 20,000 Bosnians were granted temporary asylum in Turkey during hostilities in the former Yugoslavia between 1992 and 1995 In 1998 and 1999, approximately 17,000 Kosovars came to Turkey to seek protection from the strife in their ancestral homeland ((Kirişci Turkey's New Draft Law 66).

represents a crucial component to the processing of RSD cases which require a significant portion of time in the asylum process.

### *Resettlement*

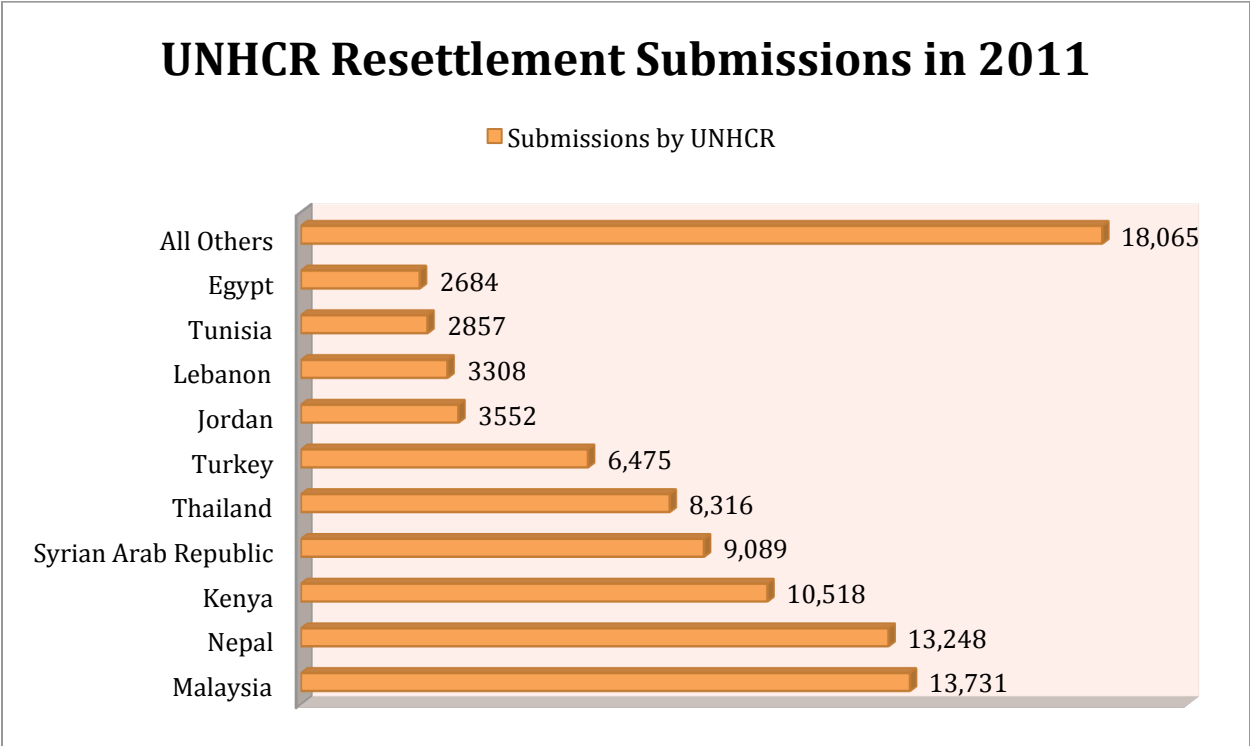
Resettlement increasingly has become a defining characteristic of Turkey's asylum policy due to its maintenance of its Geographical Limitation. Turkey has become prominent within worldwide resettlement programs due to its growing size. The statistical data that best displays Turkey's emergence of resettlement needs are its resettlement submissions and its respective resettlement departures.

Resettlement submissions reflect the number of refugees who require a resettlement place. Resettlement departures reflect the number of refugees who are actually resettled. The difference between the two exposes the demand of resettlement needs outpacing the supply of resettlement places and brings forth a significant concern for the globe over.

In 2011, Turkey ranked sixth worldwide with 6,475 resettlement submissions (as indicated in Graph 3 below). In 2011, the total number of resettlement submissions worldwide was 91,843. This means resettlement submissions by UNHCR Turkey represent approximately 7% of worldwide submissions. While the numbers for 2012 are still officially being calculated, the estimated resettlement needs in 2012 are 12,299 required places (UNHCR Projected Global Resettlement Needs 2012 42). This projection indicates a substantial increase in UNHCR filing resettlement submissions. UNHCR calculated these estimations from the increase of arrivals registered during 2010 and in the first months of 2011 in Turkey. There exists a significant time delay between lodging an asylum claim is lodged, and when a refugee status determination is reached, and ultimately the filing of a

resettlement submission is filed. Increasing its capacity in order to reduce pending RSD backlogs and increase resettlement submissions remains one of UNHCR’s ongoing objectives. Additionally, 2013 estimations have been provided and tell a similar story. UNHCR estimates Turkey’s resettlement needs in 2013 as 17,165 ((UNHCR Projected Global Resettlement Needs 2013 43). This means UNHCR Turkey will have to continue to increase its operation capacity in order to accommodate for the expected forthcoming increases.

**Graph 3: UNHCR Resettlement Submissions in 2011**



Source: Data obtained from UNHCR

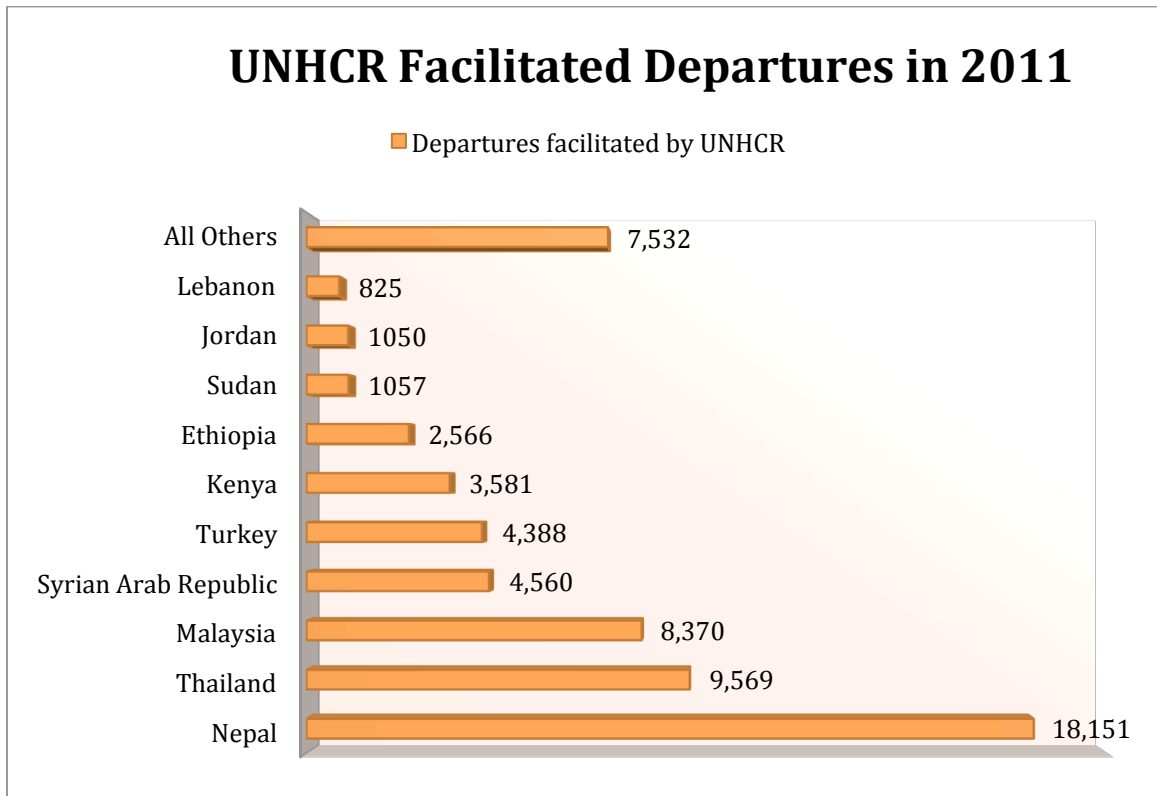
Resettlement submissions only explain half of the resettlement process. While a resettlement submission is one form of proof that an asylum system is processing asylum seekers at a somewhat effective level, the more telling number regarding resettlements is departures which reflects the handling of resettlement needs on a global scale. In 2011,

Turkey was ranked fifth for resettlement departures with the facilitation of 4,388 resettlement departures (as indicated in Graph 4 below) (UNHCR Projected Global Resettlement Needs 2013).

This means resettlement departures by UNHCR Turkey represent approximately 7% of worldwide departures. This percentage is almost equal to the resettlement submission global percentage and accounts for the gap in departures from submissions of 30,194 submissions. With the estimated resettlement needs of both 2012 and 2013 substantially greater than what was observed in 2011, and the rates of submissions and departures equivalent when compared on the global scale, it is expected that as Turkey's resettlement submission figure increases, so too will its resettlement departure figure. The true test will be if UNHCR-Turkey is capable of employing enough workforce to significantly reduce the gap currently occurring between submissions and departures.



**Graph 4: UNHCR Resettlement Departures in 2011**



Source: Data obtained from UNHCR

A reiteration of what was stated previously in Chapter IV of UNHCR not an exclusive actor facilitating the resettlement of refugees since this statistical data only reflects the operations of UNHCR and not the IOM or ICMC. However, even with the additional operations of these two actors, the demand of resettlement needs far outstrip the supply of resettlement places.

With the substantial rise in UNHCR resettlement submissions expected in 2013, UNHCR places Turkey in the list of top four countries of first arrival for refugees needing resettlement alongside Kenya, Ecuador, and Syria (Nicholson).

*Temporary Protection for Syrians*

Asylum claims lodged with UNHCR-Turkey or the Turkish Government do not include Syrian Refugees who are currently being attended and mandated by a de facto temporary protection regime that equates to an open border policy, non-refoulement, and no limit to duration of stay. Temporary protection is employed because of economic and institutional strains these numbers would cause on even the most effective and efficient systems. Furthermore, the Syrian crisis has affected the role of UNHCR by designating it as the lead agency for the planning and coordination of the Syrian emergency response.

While Syrians are labeled as refugees in the media, they are legally considered “persons of concern” since many have yet to lodge an asylum claim and be granted or denied refugee status. They are first and foremost classified under “temporary protection” as opposed to “asylum seekers”. UNHCR and the Turkish Government provide for Syrians treatment and protection under a joint effort. This is important to reiterate because Syrians that they are receiving international protection, but under minimal conditions and their situation is less than ideal.

While the charts above do not reflect the numbers of Syrians, they do affect Turkey’s image, place a separate burden on Turkey’s infrastructure, and draw more media attention to the question of asylum within Turkey’s borders. Turkey’s handling of the Syrian refugee crisis has boded well with the international community. Turkey originally set its absorption capacity ceiling at 100,000, but during the summer of 2012 the number of asylum seekers seeking protection in Turkey surpassed this pre-determined ceiling and Turkey continued its observation of an open-door policy. For the international community, Turkey continues to respond in a humane way. While not the ultimate litmus test, Turkey’s handling of the Syrian crisis represents a more human rights conscious nation.

## Chapter VI.

### Conclusion

What I have tried to clarify is the importance of UNHCR in Turkey's asylum reform process through its ground operations. The literature is full of arguments of why the EU through the process of Europeanization has been fundamental in Turkey's asylum reform process, but the correlated success rate of Europeanization falters when Turkey is still improving, when accession negotiations have stalled. Europeanization is important for the initial success rate and initiating reform, but UNHCR's close cooperation with Turkey throughout the asylum process and its influential power cannot be overlooked. Turkey has come a long way in the development of its asylum framework with the most important milestone being the completion of the drafting of the country's first comprehensive law on asylum and migration. Recent news of the commencement of Parliamentary discussion on Turkey's long-awaited *Foreigners and International Protection Law* lends a promising future to include the adoption and implementation of the law later this year. The implementation of The Law by the Turkish Government working in tandem with UNHCR will be the true test of whether or not a progressive reform has occurred. Turkey has put itself on the path towards having an effective and efficient asylum process, and hopefully the law's entry into force will occur by the end of 2013.

While the law addresses and amends for many elements that were lacking in former Turkish asylum regulation, it comes up short in meeting the EU's requirement of lifting its Geographical Limitation. Without lifting its Geographical Limitation, Turkey does not fulfill the criteria to gain full membership eligibility. As was analyzed throughout, the

Geographical Limitation constitutes the defining element in Turkey's asylum system by creating a two-tiered asylum policy, making UNHCR's presence in Turkey necessary.

Without Turkey's two subjected conditions being met of legislation and infrastructure amended to prevent a direct influx of refugees into Turkey during the accession phase and a formal agreement from the EU on responsibility sharing Turkey will continue to stand guard by retaining its Geographical Limitation. Turkey will proceed forth by continuing to strictly apply The 1951 Convention through the lens of its Geographical Limitation indefinitely. The separation and differential treatment of non-Europeans from Europeans will continue to cement UNHCR's involvement in Turkey's asylum framework, with the inflow of non-Europeans dictating the necessity for UNHCR's presence.

UNHCR's growing operations are grounds for UNHCR expected continuance of maintaining its presence in Turkey in order to make certain non-European asylum seekers receive their irrefutable right to international protection. UNHCR's presence will not falter as long as Turkey maintains its Geographical Limitation, and even thereafter if it is ever lifted, UNHCR will have to transfer all of its gained power through the reverse transition phase back over to Turkish officials. Turkey's resistance against the EU, and the EU's stubbornness in responding to Turkey, has inevitably turned UNHCR into the dumping ground for the overflow of non-European asylum seekers. Since it appears the Geographical Limitation will not be lifted anytime soon, other avenues of improvement are recommended for UNHCR, the EU, and Turkey, with specific regards to Turkey's burgeoning resettlement program.

As Turkey's resettlement program continues to mushroom, reductions in the processing of asylum seekers, from lodging an asylum claim to resettlement of the refugee

in a safe third country need to happen. Reductions in time processing is possible through UNHCR increasing its work capacity, as addressed in UNHCR-Turkey expanding its staff. The EU needs to increase its responsibility sharing by accepting more resettlement submissions and installing large-scale resettlement programs. The adoption of the Joint EU Resettlement Programme is a development in the right direction, but its adequate implementation still needs to be determined. Turkey can improve by contributing more resources, whether financial, institutional or whatever might be needed, to assisting UNHCR with its facilitation of resettlements. While Turkey, along with other countries whose host roles are substantial, should not be required to carry the burden of all the responsibilities of hosting, Turkey still needs to be held accountable and increase its efforts alongside UNHCR in providing international protection. Turkey's continuation of an open-border policy for cases of mass influx like Syria shall be a model for other nations whose situations mirror Turkey's.

Turkey's recent and ongoing asylum framework developments have been crucial in Turkey gaining closer alignment with international and EU norms and standards. These developments offer a promising future for Turkey's improved observance of human rights and commitment to the plight of asylum seekers and refugees. UNHCR shall be one actor accredited with promoting a human rights agenda in Turkey. Turkey continues to improve upon its deficient system in preparation to handle future inflows of asylum seekers. If Turkey continues to experience similar increases (especially 2010 to 2011 and 2011 to 2012), then now more than ever before, Turkey requires the effective and efficient system currently being developed through the law-making process with Turkey's first ever law on asylum. However, Turkey's response of general indifference and reliance on society and

civil society to attend to the most immediate needs of migrants, will have to change and is changing (Tolay Discovering 9).

While much has been studied, researched and discussed on Turkish migration thus far, more will come. The development of a field of Turkish migration studies is a matter of concern for migration scholars all over the world (Tolay Discovering 11). Turkey will be brought up in numerous migration discussions because of its location in a hot spot for many different phenomena within migration. As Kirişçi notes, “Turkey’s asylum policies are receiving growing attention from the public as well as the international community (Kirişçi 5). Recent events surrounding Turkey will continue to keep the country high on people’s agenda. Additionally, they provide a non-stereotypical model of Europeanization, something important to the study of EU enlargement efforts. Turkey has the potential to make a positive difference on human rights in the region, however it depends on how Turkey implements The Law and the continuance of Turkey’s strengthening relationship with UNHCR, which has already proved vital to Turkey’s reformation of its asylum framework.

## Bibliography

- "2012 UNHCR Country Operations Profile - Turkey." *UNHCR*. United Nations, 2012. Web. 25 Mar. 2012. <<http://www.unhcr.org/pages/49e48e0fa7f.html#>>.
- Andrijasevic, Rutvica. "DEPORTED: The Right to Asylum at EU's External Border of Italy and Libya." *International Migration* 48.1 (2010): 148-174.
- "Asylum- Common European Asylum System." *European Commission - Home Affairs*. European Commission, 07 Dec. 2012. Web. 17 Dec. 2012.
- Ay, Elif Selen. "UNHCR Operations in Turkey." Boğaziçi University, Istanbul. 29 Nov. 2012. Lecture.
- Baklacioğlu, Nurcan Özgür. "'Building 'Fortress Turkey': Europeanization of Asylum Policy in Turkey." *Romanian Journal of European Studies* 7.8 (2009).
- Byrne, Rosemary. "Harmonization And Burden Redistribution In The Two Europes." *Journal Of Refugee Studies* 16.3 (2003): 336. SocINDEX with Full Text.
- "Council of Europe". *Council of Europe*. 2012.
- Castles, Stephen. "Chapter 1: The Migration-Asylum Nexus and Regional Approaches." *New Regionalism and Asylum Seekers: Challenges Ahead*. Ed. Susan Kneebone and Felicity Rawlings-Sanaei. New York: Berghahn, 2007.
- Deasy, Kristin. "UN: World Refugee Population Skyrockets in 2011, Highest This Century." *GlobalPost*. Global Post, 17 June 2012. <<http://www.globalpost.com/dispatch/news/regions/americas/united-states/120617/un-world-refugee-population-skyrockets-2011-high>>.
- Dinan, Desmond. "Beyond the EU's Borders." *Ever Closer Union: An Introduction to European Integration*. London: L. Rienner, 2010. 483-528. Print.
- Düvell, Franck. "Studying Migration from, to and through Turkey: The Context", in Centre on Migration Policy and Society". *Turkish Migration Studies group at Oxford University*, January 2011.
- "EU Countries to Take up More Refugees under New Resettlement Programme." [Http://www.europarl.europa.eu/](http://www.europarl.europa.eu/). European Parliament, 21 Mar. 2012. Web.
- Frambach, Nina. *Refugees in Istanbul: Lost Between Policy and Practice*. Thesis. Utrecht University, 2011.

- Frontex Annual Risk Analysis 2012*. Working paper no. 5202.  
<[http://frontex.europa.eu/assets/Attachment\\_Featured/Annual\\_Risk\\_Analysis\\_2012.pdf](http://frontex.europa.eu/assets/Attachment_Featured/Annual_Risk_Analysis_2012.pdf)>.
- Goodwin-Gill, Guy S. *Convention Relating to the Status of Refugees & Protocol Relating to the Status of Refugees*. United Nations, 2008. Print.
- "Greece Completes Anti-migrant Fence at Turkish Border." *Ekathimerini.com*.  
Ekathimerini.com, 17 Dec. 2012.  
<[http://www.ekathimerini.com/4dcgi/\\_w\\_articles\\_wsite1\\_1\\_17/12/2012\\_474782](http://www.ekathimerini.com/4dcgi/_w_articles_wsite1_1_17/12/2012_474782)>.
- Gültaşlı, Selçuk. "EU and Turkey in 2012: When Relations Went from Bad to Worse." *Today's Zaman* [Brussels] 25 Dec. 2012.
- Haddad, Emma. "Refugees and International Protection in the Cold War Era." *The Refugee in International Society: Between Sovereigns*. Cambridge: Cambridge UP, 2008. 128-161. Print.
- Hatton, Timothy J. "Seeking asylum in Europe." *Economic Policy* 19.38 (2004): 5-62.
- "Humanitarian News and Analysis." *IRIN news*. UN Office for the Coordination of Humanitarian Affairs, 21 Nov. 2012. Web. 06 Dec. 2012.
- Jastram, Kate, and Marilyn Achiron. *Refugee Protection: A Guide to International Refugee Protection*. Geneva: Inter-Parliamentary Union, 2001.
- "Irregular Migration Flows - Patterns of Migration to and from Turkey."  
*www.parliament.uk*. Parliament UK, 1 Aug. 2011  
<<http://www.publications.parliament.uk/pa/cm201012/cmselect/cmhaff/789/78905.htm#note92>>
- Kaya, Ibrahim. "Reform in Turkish Asylum Law: Adopting the EU Acquis?" *CARIM Research Reports* 2009/16: Academic Search Premier. Web. 23 Feb. 2012.
- Kirişci Kemal. "Reforming Turkey's Asylum Policy: Is it Europeanization, UNHCR-ization or ECHR-ization?" (2012). Paper prepared for "Turkish Migration in Europe: Projecting the Next 50 Years." Regent's College, London, 7-9 December 2012.
- Kirişci Kemal. "Refugee Movements and Turkey." *International Migration* 29.4 (1991: 545-560. *Historical Abstracts*.
- Kirisci, Kemal. "'To Lift or Not to Lift' the Geographical Limitation to the 1951 Geneva Convention Relating to the Status of Refugees: Turkey's Pre-accession to the EU and Asylum." (2005). Draft paper prepared for the "4th METU International Relations", Ankara, 30 June – 2 July.



- Kirişci, Kemal. "Turkey's New Draft Law on Asylum: What to Make of it?" in Turkey, Migration and the EU: Potentials, Challenges and Opportunities. *Hamburg Institute of International Economics* 5 (2012): 63-83.
- "The Interactive Map on Migration (i-Map) Serves as a Support Instrument to Intergovernmental Dialogues on Migration by Facilitating Access to and Exchange of Information through Country Profiles, Visualisations and Up-to-date News." *I-Map: HOME*. EU Commission, 10 Jan. 2012.
- Lamort, Sarah. *The EU Asylum Acquis in Practice and the Europeanization of the Turkish Asylum System: A Burden-sharing Perspective*. Thesis. Université Lumière Lyon 2, France.
- Levitan, R., E. Kaytaz, and O. Durukan. "Unwelcome Guests: The Detention of Refugees in Turkey's 'Foreigners' Guesthouses'." *Refuge* 26.1 (2009): 77-90. SCOPUS. Web. 5 Apr. 2012.
- Malmström, Cecilia. "European Commission - Cecilia Malmström." *European Commission - Members of the European Commission Cecilia Malmström - Common Asylum System Moving Closer*. European Commission, 19 Sept. 2012. Web. 15 Nov. 2012. <[http://ec.europa.eu/commission\\_2010-2014/malmstrom/news/archives/2012/09/20120919\\_en.htm](http://ec.europa.eu/commission_2010-2014/malmstrom/news/archives/2012/09/20120919_en.htm)>.
- Nicholson, Mike. "Migration Information Source - Refugee Resettlement Needs Outpace Growing Number of Resettlement Countries." *The Migration Information Source*. Migration Policy Institute, Nov. 2012. Web. <<http://www.migrationinformation.org/USFocus/display.cfm?ID=912>>.
- Nielsen, Nikolaj. "Asylum Seekers Flock to EU Safe Haven." *EUobserver.com / Justice & Home Affairs* /. N.p., 26 Mar. 2012. <<http://euobserver.com/justice/115702>>.
- Novak, Goranka Lalic, and Ivan Padjen. "The Europeanization of Asylum Policy: From Sovereignty via Harmony to Unity." *Politicka Misao: Croatian Political Science Review* 46.5 (2009): 75-101.
- "Number of Syrian Refugees Hits Million Mark: UNHCR." *Number of Syrian Refugees Hits Million Mark: UNHCR*. Al Arabiya News, n.d. Web. 08 Apr. 2013. <<http://www.alarabiya.net/articles/2013/03/06/269900.html>>.
- Ovalı, Ali Şevket. "From Europeanization to Renationalization: Contextual Parameters of Change in Turkish Foreign Policy." *Studia Universitatis Babeş-Bolyai* September 3 (2012): 6-17.
- Özçürümez, Saime, and Nazlı Şenses. "Europeanization and Turkey: Studying Irregular Migration Policy." *Journal of Balkan & Near Eastern Studies* 13.2 (2011): 233-248.

- Öniş, Ziya. "Turkey-EU Relations: Beyond the Current Stalemate." *Insight Turkey* 10.4 (2008): 35-50.
- Park, Madison. "Which Countries Take in Most Refugees? Not the West." *CNN. Cable News Network*, 05 July 2012. Web. <<http://www.cnn.com/2012/07/05/world/asia/refugees-asylum-statistics>>.
- Loescher, Gil, and Milner, James. "Protracted Refugee Situations." *Understanding and Addressing the Challenge*. University of Oxford, Refugee Studies Centre, 29 Jan. 2012. Web. <<http://www.prsproject.org/protracted-refugee-situations/>>.
- Radaelli, Claudio. "Europeanization: Solution or Problem?" *Palgrave Advances in European Union Studies*. Ed. Michelle Cini and Angela K. Bourne. Basingstoke [England: Palgrave Macmillan, 2006.
- "ReliefWeb." *Canada to Welcome 5,000 Refugees Now in Turkey*. Government of Canada, 15 Jan. 2013. <<http://reliefweb.int/report/turkey/canada-welcome-5000-refugees-now-turkey>>.
- Schimmelfennig, Frank and Sedelmeier, Ulrich. "Governance by Conditionality: EU Rule Transfer to the Candidate Countries of Central and Eastern Europe." *Journal of European Public Policy* 11.4 (2004): 661-679.
- Siddique, Abubakar. "Turkey's New Kurdish TV Hopes To Win Hearts And Minds." *RadioFreeEurope RadioLiberty*. Radio Free Europe Radio Liberty, 2 Jan. 2009.
- Soykan, Cavidan. "The Migration-Asylum Nexus in Turkey." *Enquire* 5 (June 2010). *Academic Search Premier*. Web 28 Mar. 2012.
- Soykan, Cavidan. "The New Draft Law on Foreigners and International Protection." *Oxford Monitor of Forced Migration* 2.2 (2012): 38-47. Print.
- Taylor, Alan. "Syria in Ruins." *The Atlantic*. The Atlantic, 05 Apr. 2013. Web. <<http://www.theatlantic.com/infocus/2013/04/syria-in-ruins/100488/> via @in\_focus>.
- Tolay, Juliette. "Discovering Immigration into Turkey: The Emergence of a Dynamic Field." 2012.
- Turkish National Action Plan for the Adoption of the EU Aquis in the Field of Asylum and Migration (2005): <http://www.unhcr.org.tr>, [www.deltur.cec.eu.int](http://www.deltur.cec.eu.int), [www.egm.gov.tr](http://www.egm.gov.tr), [www.abgs.gov.tr](http://www.abgs.gov.tr), and <http://www.ir.metu.edu.tr/iom/pdf/tr3.pdf> (English version), download 1.7.2011.

"UNHCR – A Year of Crises – Global Trends 2011." *UNHCR*. Mar. 2012.  
<http://www.unhcr.org/4fd6f87f9.html>

"Funding UNHCR's Programmes 2011." *UNHCR*.

"UNHCR – Global Appeal 2013 Update - Turkey." *UNHCR*. p246-250. Dec. 2012.

"UNHCR Projected Global Resettlement Needs 2012." *UNHCR*. July 2011.

"UNHCR Projected Global Resettlement Needs 2013." *UNHCR*. July 2012.

"UNHCR Resettlement Handbook." *UNHCR News*. UNHCR, July 2011.  
<<http://www.unhcr.org/4a2ccf4c6.html>>.

"UN Official Calls EU's Asylum System 'Extremely Dysfunctional'" *EurActiv.com*.  
EurActiv.com, 21 Mar. 2012. Web. 04 Apr. 2013.

Yabasun, Dersim. "Turkey: Establishing a New Asylum System." Editorial. *The Foreign Report.com*. N.p., 28 Mar. 2013. Web.

Zieck, Marjoleine. "UNHCR and Turkey, and Beyond: Of Parallel Tracks and Symptomatic Cracks." *International Journal of Refugee Law* 22(4) (2010): 593-619. *Lexis Nexis*.