

# Hacettepe University Graduate School Of Social Sciences Department of International Relations

# A RECONSIDERATION OF TURKEY'S GEOGRAPHICAL LIMITATION TO THE 1951 GENEVA CONVENTION

Münevver Kır

Master's Thesis

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#### **ETİK BEYAN**

Bu çalışmadaki bütün bilgi ve belgeleri akademik kurallar çerçevesinde elde ettiğimi, görsel, işitsel ve yazılı tüm bilgi ve sonuçları bilimsel ahlak kurallarına uygun olarak sunduğumu, kullandığım verilerde herhangi bir tahrifat yapmadığımı, yararlandığım kaynaklara bilimsel normlara uygun olarak atıfta bulunduğumu, tezimin kaynak gösterilen durumlar dışında özgün olduğunu, Prof. Dr. Yonca ANZERLİOĞLU danışmanlığında tarafımdan üretildiğini ve Hacettepe Üniversitesi Sosyal Bilimler Enstitüsü Tez Yazım Yönergesine göre yazıldığını beyan ederim.

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#### ABSTRACT

KIR, Münevver. A Reconsideration of Turkey's Geographical Limitation to the 1951 Geneva Convention, Master Thesis's, Ankara, 2017.

The aim of this study is the reconsideration of Turkey's geographical limitation to the 1951 Geneva Convention. Turkey has signed the 1951 Geneva Convention for the Status of Refugees, by making use of its right to sign the Convention with 'the geographical limitation' due to its unique geographical position. Turkey has declared that it will not grant 'refugee status' to those coming from outside of Europe albeit hosting millions of migrants under 'guest' status for humanitarian reasons.

The lifting of the geographical limitation of the 1951 Geneva Convention has been brought to the negotiation table during Turkey's still ongoing attempt to become a member to the European Union. Discussions on the legal status of the Syrians in Turkey during the Syrian Civil War, which started in 2011 and continues in 2017, as a result of the 'open door policy' followed by Turkey, are frequently debated in the EU negotiations regarding the geographical limitation annotated in the Geneva Convention. In the scope of the study, asylum policy of Turkey and geographical limitation are discussed again in the last point reached.

#### **Key Words**

geographical limitation, refugee, asylum seeker, temprorary protection, Syrian asylum seekers, EU Common Immigration and Asylum Policy, 1951 Geneva Convention, Readmission Agreement

#### ÖZET

KIR, Münevver. Türkiye Cumhuriyeti'nin 1951 Cenevre Sözleşmesi'ne Getirdiği Coğrafi Çekincenin Yeniden Değerlendirilmesi, Yüksek Lisans Tezi, Ankara, 2017.

Çalışmanın amacı 1951 Cenevre Konvansiyonu'na koyulan coğrafî çekincenin yeniden tartışılmasıdır. Türkiye, Mültecilerin Hukuki Durumuna İlişkin 1951 Cenevre Konvansiyonu'nu, bulunduğu coğrafya sebebiyle Konvansiyon'da tanınan 'coğrafî çekince' koyma hakkını kullanarak imzalamıştır. Türkiye, Konvansiyona coğrafî çekince koyarak Avrupa kıtası dışından gelen göçmenleri 'mülteci' statüsü ile kabul etmeyeceğini beyan etmiş ancak insani nedenlerle milyonlarca göçmeni 'misafir' statüsünde sınırları içerisine kabul etmiştir.

1951 Cenevre Konvansiyonu'na koyulan coğrafi çekincenin kaldırılması Türkiye'nin Avrupa Birliği müzakereleri süresince gündem maddesi olmuştur. 2011 yılında başlayan ve 2017 yılı itibariyle devam eden Suriye İç Savaşı ile birlikte Türkiye'nin izlediği 'açık kapı politikası' neticesinde sınırlarından giren Suriyelilerin Türkiye'de bulundukları süre içerisindeki yasal statüleriyle ilgili tartışmalar, Cenevre Konvansiyonu'na koyulan coğrafi çekinceyi AB müzakerelerinde sıklıkla tartışılan bir konu haline getirmiştir. Çalışma kapsamında, gelinen son noktada Türkiye'nin göç ve sığınma politikası ve coğrafi çekince maddesi yeniden ele alınmıştır.

#### Anahtar Sözcükler

coğrafi çekince, mülteci, sığınmacı, geçici koruma, Suriyeli sığınmacılar, AB Ortak Göç ve İltica Politikası, Türkiye'nin Sığınma Politikası,1951 Cenevre Konvansiyonu, Geri Kabul Anlaşması

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#### **ABBREVIATIONS**

**EAEC:** European Atomic Energy Community

**EC:** European Comission

**ECHR:** European Convention on Human Rights

ECHO: European Commission Humanitarian Aid and Civil Protection Unit

**ECSC:** European Steel and Coal Community

**EEC:** European Economic Community

**EIS:** European Information System

**ENP:** European Neighbourhood Policy

**EU:** European Union

**EURODAC:** European Union Fingerprint Database for Identifying Asylum Seekers

and Irregular Border-Crossers

**EUROPOL:** European Police Office

**EUROTOM:** The European Atomic Energy Community

FRONTEX: European Agency for the Management of Operational Cooperation at the

External Borders of the Member States of the European Union

**IBS:** Integrated Border Security

**IRO:** International Refugee Organization

**OAS:** Organisation of American States

**OAU:** Organisation of African Unity

**OECD:** Organisation for Economic Co-operation and Development

**UN:** United Nations

**UNSC:** United Nations Security Council

**USA:** United States of America

**UNHCR:** United Nations High Commissioner for Refugees

**USSR:** Union of Soviet Socialist Republics

**RABIT:** Rapid Border Intervention Teams

SIS: Schengen Information System

TREVI: Terrorism, Radicalism, Extremism and Violence International

**VIS:** Visa Information System

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#### INTRODUCTION

Border crossing human movement that is a matter of fact as ancient as history of humanity constitutes one of the important titles in the discipline of international relations. Humans have been changing their places throughout history due to population growth, economic and demographical differences among regions and environmental factors. This mobility became a matter of fact that is examined together with the emergence of nation-state, and this subject was started to handle within the scope of human rights and international law after the first massive refugee movement emerged following the First World War. After the human right violations and transboundary human movements with their effects spreading from Europe to the World, the refugee question becoming as one of the most important agenda topics of the United Nations is considered as the major problem witnessed in 21st century.

1951 Geneva Convention Regarding Legal Status of Refugees and 1967 Protocol Regarding Legal Status of Refugees, which were prepared after the huge movement of migration after the Second World War, also constitute two basic texts of international refugee law at the present time. The right for limitation about the geographical scope, in which the persons to be recognised as refugee come from, was entitled to the signatory states in the article 1-B/2 of 1951 Geneva Convention having the characteristics of basic document in refugee law in Turkey, and a time limitation was also brought at the same time related to the state of being refugee. Through the declaration that was published with Law numbered 359, Turkey stated that the provisions of Convention are considered and accepted as "events occurring in Europe". With this declaration, Turkey declared that the ones escaping from human rights violation in Europe will be accepted with the status of refugee.

After the signature of Convention, the importance of geographical limitation has been understood for many times as a result of massive migration waves to Turkey, the geographical limitation was considered during the negotiation process of Turkey in the European Union membership as an aspect required to be lifted and major regulation

required to be made in immigration law. The question of refugee for Turkey took place both in national and international political agenda since the foundation of Republic as per the geographical conditions, rights for individuals, who have different status within the boundaries of country through the regulations materialised both at national and international level, were determined. The regulations especially on immigration and asylum policies as having an important place in Turkey-EU relations became a component that has been referred as from the First Progress Report issued by the EU Commission in 1998. Geographical limitation, which was considered as an element required to be lifted in the First Progress Report, continued being a matter being abstained by Turkey during ever-lasting negotiation process. Turkey continued using the right of putting limitation as foreseen in 1951 Geneva Convention, and 'hosted' millions of migrants with different legal status and within the framework of respecting human rights by making regulations in national legislations even if not accepting the migrants coming out of Europe with the status of refugee and undertook more political and economic burden compared to other countries accepting migrants with the status of refugee.

As a result of the greatest asylum seeker movement of history, which started in Syria in 2011, continued until 2017 as a civil war and affected directly Turkey, the immigration and asylum law became at the top of the agenda once again and one of the most determinant headings for Turkey both in national and international political agenda. This study assesses whether the geographical limitation being brought by Turkey in 1951 Geneva Convention and committed to lift still maintains its function now. In section two, basic principles of international refugee law has been analysed, and the embodiment of migration and refugee law in the EU was handled thoroughly in section three. In the fourth section of this study, the approach of Turkey as a candidate country about the matters of migration and asylum and legal regulations made during the

<sup>1</sup> In the "National Action Plan for the Adoption of the EU Acquis in the Field of Migration and Asylum" being entered into force on 25 March 2005, it is committed to lift the geographical limitation being brought in Geneva Convention until 2012.

accession negotiations to the EU were handled. The migration and asylum policies that are considered as an ongoing agenda topic and accepted as having a determinant role in terms of Turkey – EU relations were analysed specific to the question of Syrians at the status of temporary protection and it is aimed to contribute to the literature in this respect. In the light of this information, the purpose of this study is to answer the question of "Is the geographic limitation attached by Turkey in 1951 Geneva Convention still valid?" and reassess the geographical limitation brought in the Geneva Convention in line with latest developments.

Starting from this point, the study consists of five main sections to handle once again the policies being structured by Turkey in line with the negotiations with EU as a candidate country within the framework of international refugee law and to reassess the geographical limitation by analysing the regulations issued in the national legal order in line with the requirements in time. In this respect, the study starts with introduction and in section one, an answer for the question of what are the regulations made in international arena about migration and asylum law is sought. Moreover, legal regulations issued before the Geneva Convention were handled in the first section, and by touching upon the preparatory works for Geneva Convention, the geographical limitation and the process of involvement of time limitation into the Convention were also analysed in the first section. In this way, the question of what is the geographical limitation and how it is included in the Geneva Convention as a result of discussions are answered, and a basis is formed for the discussions about lifting the article of geographical limitation.

In the second section of study, the European Union common migration and asylum legislation was discussed as another important pillar of the matter. Policy for preventing irregular migration was analysed together with the legislative regulation requested from Turkey in the process of EU harmonisation. Common migration and asylum policies of the EU that are constituted in 1970s depend on creating a Europe with impassable borders and preventing irregular migration by forming a border protection system including third countries. This role of Turkey being considered as a third country in this structure and responsible for ensuring the security of EU external borders became

evident in the EU membership process. An answer is sought under this section for the question of why the EU needed a common migration and asylum policy, and the scope of regulations expected from Turkey and third countries are also analysed. Under the heading 2.1. of this section, while it is analysed that why the EU needed a common migration and asylum policy, under the heading 2.2., it is analysed that what kind of regulations are made with the purpose of protecting external borders through common external border policy issued as a result of the European Single Act and Schengen Agreement processes, and the expectations from third countries are also referred within the scope of this regulations. Under the heading 2.3., the content of common migration and asylum policies that was deepened by the EU in the period after Cold War and expanded by the accession of new member states is referred. In this way, a foundation was constituted to understand current and possible expectations from Turkey about the regulations on migration and asylum law as a country carrying out negotiations for EU membership. The Amsterdam Treaty and Tampere Summit were handled under the heading 2.3. as important steps taken on the way of 'Fortress Europe', and the elements of policy for detaining irregular migration, which is shaped more clearly with this process, within the borders of third countries were also discussed. The negotiations with Turkey were initiated in this period at the same time, and the first progress reports<sup>2</sup> were prepared. To understand the reason why the article of geographical limitation was brought to the agenda during the negotiations with Turkey, it is important to know the decisions taken in the Tampere Summit and to learn the attitude of EU against irregular migration in this period. This process, in which the applications such as common external border security, 'safe country' and 'safe third country' became clearer and the third countries were included into the system with the role of 'gate keeper', corresponds to a period with increasing expectations of the EU from Turkey. The process leading to the formation of FRONTEX depending on the principle of protecting EU's border with military units and the border regulations brought with the purpose of creating a perfect 'Fortress Europe' against irregular migration were referred in the section 2.4., and while it is expected from Turkey to recognise the refugee status to the immigrants coming

<sup>2</sup> The first Progress Report for Turkey was published by the European Commission on 4 November 1998.

from eastern regions by lifting the geographical limitation, the expectations of EU that is staying the course of ensuring border security with military units from this structure were also analysed.

Under the last heading of section, the approach of realist and liberal paradigm about the concept of migration and asylum was handled. As a result of ltierature review, it is realized that the European Union advocating the libral values create security oriented migration and asylum policies actually depending on realist paradigm. Authors finding the EU's realist migration and asylum policies favourable assesses these policies as a 'requirement' (see Bali 2005; Bigo1998, 2001, 2002; Bigo et. al. 2015; Geddes 2005; Heisbourg 2015; Huysmans 2000, 2006). On the other hand, it is also realized that many authors standing for liberal paradigm abstain from bringing a clear criticism on the EU's migration policies. As a result of analysis made in this section, the expectations from Turkey about preventing irregular migration took shape at the axis of developing liberal policies but while the EU develop the security oriented migration and asylum policies, it is seen that an approach complying with realist paradigm was also shown.

In the third section of study, the historical developments of regulations made in Turkey about migration and asylum legislation and basic discussions about lifting the geographical limitation brought in 1951 Geneva Convention are analysed. Primarily, the reasons for Turkey about putting limitation on 1951 Geneva Convention are discussed. Turkey has affected from irregular migration throughout history due to its location close to Middle East region as the source of massive migration movement, being at the position of target country and neighbour of other target countries. Due to its disadvantageous geographical position, Turkey retains the geographical limitation in the Geneva Convention, and does not accept immigrant from eastern regions with the status of refugee. However, Turkey, as it is in the past, also continues vesting the right of asylum to the persons, who seek asylum by escaping from home country as a result of oppression and cruelty, within the framework of respecting human rights.

On the basis of this information, under the section 3.1. of study, the history of migration in Turkey is discussed, and the regulations made on migration and asylum legislation in Turkey positioning as an immigrant, emigrant, transit and target country are assessed in this respect. The regulations made on the migration legislation are handled in the section 3.2. within the framework of policies being developed along with the EU membership negotiations.

The Progress Reports that are prepared by the EU Commission every year are taken as basis in the 3 th section analysing the reflections of common migration and asylum policies of the EU on Turkey as a third country. Regulations made in Turkish legislation are also referred under the same section, the process of signing the Readmission Agreement as one of the most important Agreement to prevent irregular migration to the EU and Syrian asylum seeker crisis corresponding to the same period are also analysed. When studying the embodiment of Turkish migration and asylum legislation during EU membership process, it is seen that Turkey always acts by considering the risk of becoming a 'buffer zone', in other words a kind of 'migrant depot' as per the literature in case the EU membership of Turkey does not take place and also took cautious steps until 2012 as the commitment date for lifting geographical limitation and the signature date of Readmission Agreement as 16 December 2013. During six-year period after the outbreak of Syrian Civil War, there has been an intense negotiation process between Turkey and the EU in the fields of migration and asylum, and the axis of negotiations has been shifted by taking the crisis of 'Syrians with the status of temporary protection' to the centre. While the expectations of EU from Turkey within this process are to detain Syrian asylum seekers at Turkish lands and prevent their passage to the EU, the expectations of Turkey from the EU are to ensure visa-free travel for Turkish citizens to Europe and the EU's financial aid for asylum seekers. Lifting the geographical limitations in this process and vesting Syrians the right of being refugee at Turkish lands continue being among the expectations of EU from Turkey. Once the question of Syrians at the status of temporary protection is brought to the agenda, the regulations made by Turkey within the framework of negotiations with the EU are elaborated under 3 th section.

While the expectations of EU from Turkey are to handle the question of asylum seeker with human rights orientation together with the crisis of Syrian asylum seeker at the status of temporary protection, Europe continues closing their borders to Syrian asylum seekers through raising the line walls. Although Turkey retains the geographical limitation that is brought at the beginning of this process in 1951 Geneva Convention, political regulations that will make the provision of this limitation questioned within the process are brought and conferring citizenship to Syrians became a title frequently brought to the agenda at the last point. The discussion about conferring citizenship to Syrians are carried out beyond the discussions on lifting the geographical condition, and it is a matter required to be handled by many different disciplines since it is an element that will affect socio-politic, economic and cultural balances of Turkey.

# 1. CHAPTER INTERNATIONAL REGULATIONS IN ASYLUM AND IMMIGRATION LAW

In this section, as the starting point of this study, the process leading to the foundation of international refugee regime will be analysed as the primary information required to focus while seeking the answer for the question "Is the geographic limitation attached by Turkey in 1951 Geneva Convention still valid?" The first steps taken with the purpose of creating asylum law as a result of refugee crisis experienced after the First World War and comprehensive legislative regulations issued for protecting the rights of refugees the big refugee crisis emerged after the Second World War will be included in this section. The article of geographic limitation will be addressed through analysing the process leading to the 1951 Geneva Convention and the place of Convention in the international refugee law, and the legislative regulations being the basis of discussions about lifting the geographic limitation to be emphasized in detail under the section three will be conveyed in this section.

## 1.1. INITIAL REGULATIONS ABOUT THE REFUGEE RIGHTS DURING INTERWAR PERIOD

The concept of asylum and immigration became an aspect analysed by the disciplinary of international relations with the new form of trans-boundary human mobility as a result of demographic and economic differences emerged through the formation of nation states. It is possible to take the mobility of refugees subject to the recent studies as basis for the immigrations witnessed in consequence of political and religious oppression or conflicts after the formation of nation states which is founded as from the Peace of Westphalia in 1648 (Betts and Loescher, 2011; Çelebi, Özçürümez and Türkay, 2011). The First World War emerged about two centuries after the formation and spreading the nation states from Europe to the world caused to start the mobility of

refugees that can be accepted as the first massive mobility in history, and the huge massive movement of immigration emerged during post war period necessitated handling the matter within the scope of human rights and international law (Agamben, 2008). International movements of immigration taking hold of the world in the last half century and emerged due to various reasons are being addressed by the social scientists from different perspectives through its unique structure covering millions of people demographically and challenging the context of nation state (Abadan-Unat, 2006). The context of immigration being analysed in social sciences through handling its different aspects will be addressed at the dimension of international regulations made in asylum and immigration law in this study with the purpose of answering the question "Is the geographic limitation attached by Turkey in 1951 Geneva Convention still valid?". this respect, with the intent of comprehending the process leading to the 1951 Convention, it would be useful to refer firstly to the initial regulations issued with the purpose of protecting refugees in international arena after the First World War and the League of Nations system. In the first heading of this section, the developments creating the need for 1951 Geneva Convention will be described, and the place and importance of the Convention in the refugee law will be referred. Primary information will be provided with the purpose of understanding the reasons behind Turkey's intend to maintain the geographic limitation through expressing the grounds for including the article in 1951 Geneva Convention about geographic limitation.

Protecting the rights of refugees who are trying to make a new and secure life within the boundaries of a different country by escaping the breaches of human rights and conflicts is among the important agenda items of international policy (Agamben, 2008; Betts and Loescher, 2011). The movements of asylum and immigration were firstly carried onto the international arena under the roof of the League of Nations founded after the First World War. It is estimated that there were 9,5 million refugees in Europe in 1926 depending on the immigration of 1,5 million Russian citizens to Europe witnessed between the years 1918 and 1922 after the 1917 Bolshevik Revolution erupted in Russia and the replacement of people as the members of different language, religion, race and communions emerged through the dissolution in the Austro-Hungarian Empire and the

Ottoman Empire (Çelebi et.al, 2011). During this short time period in which the empires entered into the process of dissolution, more than 7 hundred thousand Armenians, 5 hundred thousand Bulgarians, 1 million Greeks and hundreds of thousands Germans, Hungarians and Romans had to leave their countries (Agamben, 2008).

Following the First World War, the new nation states that were founded after the large movements of immigration emerged through the dissolution process in the empires have a structure of housing a plenty of minorities within their boundaries. The need for an international refugee regime has emerged upon the requirement for protecting the minority rights in Europe during this period, in which Europe became the centre of immigrants and millions of people being destitute of human rights left their countries (Hathaway, 2005).

The first step required to be taken while referring to the refugee rights and the responsibilities of countries against refugees is to define the concept of refugee. The definition of refugee was made for the first time in the Minority Agreements as a building stone of international refugee regime. In addition to the definition of refugee, the organisations structured for protecting refugee rights, observing the attitude of countries against refugees and finding solutions for the refugee question have an important role in terms of functioning the refugee law. Within the system of the League of Nations, the 'High Commissioner of the League of Nations for Refugees' was founded in 1921 with the purpose of finding solution to the refugee question in Europe; Fridtjof Nansen was appointed as the Commissioner (UNHCR, 2009). The High Commissioner of the League of Nations for Refugees was an entity temporarily structured with the purpose of finding solution to the refugee question emerged after 1917 Russian Revolution, supported by the non-governmental organisations and provided managerial support for the League of Nations. High Commissioner Nansen appointed after the foundation of the High Commissioner of the League of Nations for Refugees started works related to the legal status and rights of millions of refugees spread around Europe, a travel document known as 'Nansen Passport' having the characteristics of the first document ensuring international legal protection for the refugees (UNHCR, 2009). The Nansen Passport provided the Russian and Armenian refugees in 1924 and Turkish refugees in 1928 the right of entrance to the countries as the members of League of Nations (UNHCR, 2009).

However, the Nansen Passport provided for the refugees, who are the members of certain races and obliged to leave their countries in this period, was not sufficient for resolving the refugee question at international arena without making a commonly held definition of refugee (Loescher, 1994). When it comes to 1930s, it is realized that while the works performed under the roof of the League of Nations regarding the refugee rights within last decade were not sufficient, the Fascist regimes emerged at the same time against the European countries in which the refugees from different language, religion and race spread around. Moreover, the economic and politic instability witnessed in Europe also had impact on the refugees (Hathaway, 2005).

The lack of peace and stability under the roof of the League of Nations after the First World War could not also be provided in the internal regulations and international economic relations of the states. International economic system depending on the assumption that the states are interdependent in terms of credit debts, the balance of supply and demand will be maintained and the debts will be paid in due time collapsed in 1929 as a result of Great Depression<sup>3</sup>. Europe entered into an economic recession period after that date, and the economic recession dragged the states into a protective and closed national economic system. The economic depression in Germany as the most effected country from the economic crisis has created the dictator Nazi Regime (Sander, 2007). The basis for Hitler ideal is to purify first the 'pure German' race from other 'inferior races' to regain strength of Germany. Jews considered as the 'inferior race' were expatriated or forced to flee from the company.

As a result, of great economic depression, it became visible once again that the international refugee regime was not sufficient against the anti-minority attitude of Fascist regimes. However, it was tried to resolve through a regulation, which was

<sup>&</sup>lt;sup>3</sup> Germany being defeated in the First World War and trying to keep the economy alive with the credit received from the United States, witnesses economic depression once the United States cut the economic aid. As a result of the economic depression, Germany could not pay war debt to France and England, and entered into a rapid growing economic depression in Europe (Sander, 2007).

specific to the groups and not so different from the previous ones. The Nansen Office was founded on 30 September 1930 basically to deal comprehensively with the problem of Jewish refugees forced to leave Germany, and the duties and responsibilities of High Commissioner of the League of Nations for Refugees were transferred to the Nansen Office (Daver, 1953). When it comes to 1933, Europe encountered with a new refugee influx consisting of Jews fleeing from Nazi regime emerged in Germany and from Spanish Civil War. To find a solution for the new refugee crisis, the European countries signed the Refugee Convention in Geneva on 28 October 1933 (Daver, 1953). The Refugee Convention in 1933 considered as the most important step taken until that date about the protection of refugees underlies the principle of non-refoulment, and paved the way for providing equal rights to the refugees with the citizens of the country they sheltered.<sup>4</sup>

The Refugee Convention in 1933 as the basis for the refugee rights determined in 1951 Geneva Convention could not find a sufficient solution for the question of increasing refugee population due to the growing racist tendencies in the period. The refugee crisis emerged in Eastern Europe after the dissolution of Czechoslovakia and the Jewish refugees escaping from Nazi genocide in 1930s, which the European countries were in an economic rout led to the refusal of refugees in Europe due to economic reasons (Barnett, 2002). The lack of peaceful environment under the roof of the League of Nations and economic crisis experienced also gave rise to lose the function of regulations issued by the countries on the refugee law within a very short period. Moreover, the regulations made on the refugee law replaced with the new ones within short time intervals since the signatory countries were not disposed to apply them.

During this period in which the countries were not eager to protect refugees and the refugee rights could not be provided through current legal regulations, Evian Conference was conveyed on 15 July 1938 under the presidency of Roosevelt as the

<sup>&</sup>lt;sup>4</sup> 1933 Refugee Convention Article 6: "In the countries in which they have their domicile or regular residence, they shall enjoy, in this respect, the same rights and privileges as nationals; they shall, on the same conditions as the latter, enjoy the benefit of legal assistance and shall be exempt from cautio judicatum solvi."

President of United States to review the functioning of the Refugee Convention founded with the purpose of providing international protection for the Jewish refugees fled from Germany and discuss worrying economic and political issues due to the refugees in hosting countries (Daver, 1953). The status of German and Australian refugees who have fled from their countries but have not expatriated in another country yet due to political and religious reasons was included in the primary headings of the Evian Conference (Goodwin-Gill, 1996). As a result of Evian Conference held with 32 participant countries, the Intergovernmental Committee on Refugees was established, the Nansen Office was repealed and two offices affiliated to the Committee on Refugees were established. The first office was the 'High Commissioner' that will work under the League of Nations, and the duty of office is to deal with the problems of Russian, Armenian and Iraqi refugees referred as 'statuer' (Daver, 1953). The second office was referred as the 'Committee of Refugees' that will continue its works with the aid provided from the United States, structured basically with the purpose of finding solutions for German, Australian and Czech refugees (Daver, 1953). According to the Convention signed on 10 February 1938 after the Evian Conference, the refugees forced to migrate due to their political opinion, religious beliefs or races shall be relieved within the scope of the Convention (Hathaway, 1990). In the Convention established basically for regulating the rights of Jewish refugees departed from Germany and Austria, stateless persons and the ones departed from their own countries due to personal reasons were excluded from the regulation. The regulations related to the identity cards and travel passports of respective refugees were prioritized. The legal status pf refugees in the hosting countries was rules in the 6th article of the Convention, and the way was paved for German refugees to enjoy same rights with the citizens of hosting countries within the scope of 'acquired rights' (Jennings, 1939).

The regulations issued after the First World War comprised the first period of the refugee law and the refugee rights were not handled sufficiently in terms of human dimension during this period. On the other hand, aforementioned regulations reflected basically the political approach of Western countries as the economic and political sovereign, and civil and political rights of refugees were handled from a narrow point of

view within the framework of political perspectives of Western countries (Hathaway, 1990). The refugee status became a right recognized only for certain groups and races during inter-war period and the individuals fled from their countries around the world as a result of oppression and outrage were not entitled to possess the right of refugee. Within the scope of refugee law structured after the First World War, the rights of refugees migrating from Soviet Bloc and the ones departing from the Third World due to politic and religious repression and oppression were generally exempted from the scope (Hathaway, 1990).

During the period after the First World War, especially after 1930s, the countries focused on their national interests due to the economic crisis and unemployment emerged in Europe instead of protecting the minorities and refugees within their boundaries, and was not interested in finding a general solution for the refugee question. It is realized that the traditional attitude of Europe against the refugees was to keep refugees out of the continent, the refugee policy carried out during the inter-war period in Europe had a eurocentric basis instead of being universal and the attitude against the refugees coming from out of Europe (Russia, Balkans, Asia) was rather strict in the meantime (Zolberg, 1999).

The regulations were issued specific to the refugee groups in every refugee movement witnessed in Europe during this period, and these refugee movements were not handled in terms of human rights, and a definition was not made for the situation of individuals departing from their own countries (Agamben, 2008; Hathaway, 1990; Loescher, 1994). In the interwar period, temporary solutions were found related to the refugees through the regulations issued specific to the groups and it was failed to take consistent steps to create an international refugee regime. Therefore, this period was the preparation phase for the regulations to be issued in the following years related to the refugee problems. Big refugee crisis emerged after the Second World War required more comprehensive regulations and the works continued with the purpose of defining the rights for refugees beyond their protection and creating an international refugee law respecting human

rights, and respective purposes were partially achieved with the Geneva Convention signed in 1951.

## 1.2. POST SECOND WORLD WAR ERA: PROTECTING REFUGEE RIGHTS, GENEVA CONVENTION AND OTHER LEGAL REGULATIONS

The movements of cross border immigration and asylum emerged after the First World War tried to be settled by means of short term policies under the roof of the League of Nations. However, the respective system became ineffective as a result of immigration wave emerged in Europe and departure of 40 million refugees from their own countries after the Second World War. Moreover, in addition to 40 million refugees and persons displaced from their home, more than 13 million Volksdeutche (ethnic German) fleeing from the Soviet armies, more than 1 million citizens from Russia, Ukraine, Belarus, Poland, Estonia, Lithuania and Leetonia and individuals from other nations escaping from the totalitarian regime in Soviet Russia were included in the respective refugee population (UNHCR, 2000).

After the Second World War, more comprehensive destruction was witnessed compared to the impacts of the First World War and it was realized that the existence of more effective and comprehensive organisation is needed for achieving universal peace and order (Hasgüler and Uludağ, 2007). Based on this need, the Charter of United Nations entered into force on 24 October 1945 and the United Nations (UN) was founded by 50 signatory countries<sup>5</sup>. The first UN General Assembly Meeting was held on 10 January 1946, and the liquidation procedure was initiated for the League of Nations at the same time. International refugee regime created in this period as similar to the UN system established with the purpose of ensuring peace and order after the Second World War has shaped within the framework of multilateral international cooperation and with

<sup>&</sup>lt;sup>5</sup> The number of UN member states is currently193.

more official manner compared to the League of Nations (Betts and Loescher, 2011). During the Post Second World War Era, although the regulations related to the refugee law took the regulations on the refugee law a step further by including the experience gained through the regulations issued after the First World War, there is no significant difference between the regulations of these periods. The regulations executed between the years 1920 and 1950 as the period, which the foundations of international refugee regime was laid, were revived through meetings and the agreements through international organisations. Following the Second World War, the international refugee regime went through drastic changes.

In the first stage of huge refugee movements, during the Second World War as one of the most significant wars within world history between the years 1939 and 1945, the solutions, which are specific to the refugee groups and similar to the solutions asserted for the issues of refugee groups after the First World War were suggested. In this respect, the Bermuda Conference was firstly held to execute a regulation for the Jewish refugees fleeing from the holocaust during the war. The final report of Bermuda Conference held with the participation of the USA, United Kingdom, Jewish communities and Non-Jewish nongovernmental organisations on 19 April 1943 was published in December 1943 and a significant step was taken for the definition of refugee that will take its final form in 1951 Geneva Convention.<sup>6</sup> The purpose of Bermuda Conference was to find solution for the question of Jewish refugees and finalised with the preparation of final report by extending its purpose and covering all refugees departed from their own countries and settled in Europe. The definition of refugee made in the final report has an important place among the regulations issued related to the refugee law in the post first world war period since it covers all individuals who had to leave their countries due to the events erupted in Europe (Goodwin-Gill, 2007).

<sup>&</sup>lt;sup>6</sup> It is referred in the report that "...all persons, wherever they may be, who, as a result of events in Europe, have had to leave, or may have to leave, their country of residence because of the danger to their lives or liberties on account of their race, religion, or political beliefs" (Goodwin-Gill, 2007).

Shortly after the Bermuda Conference, with the purpose of finding solution for the question of Jewish refugees fleeing from the holocaust and displaced due to the War, United Nations Relief and Rehabilitation Administration (UNRRA) was founded by 44 signatory countries on 9 November 1943. The Administration was structured shortly before the establishment of United Nations system and started its works beyond being a refugee agency to support refugees who want to repatriate after the end of War and supply aid for refugees and displaced persons. In line with these purposes, the Administration carried out its works with 300 teams formed to support 7 million refugees who departed from Russia after 1917 Russian Revolution and want to return their own countries in 1945 (UHCR, 2000). The UNRRA focused on helping displaced persons about returning their home countries after the end of Second World War and carried out its works between the years 1943 and 1946 especially with the financial and humanitarian aid of the United States. The Administration entered under the roof of World Trade Organisation (WHO) after 1946.

Another organisation structured in 1947 with the purpose of finding solution for the biggest refugee crisis in the world emerged after the Second World War was the International Refugee Organisation (IRO). Instead of dealing with the issues universally, the IRO is an international organisation structured basically to carry on its works on a limited geographical area and in certain field of activities and focused on problems of European refugees. As the first organisation whose field of activities was limited with the refugees, the IRO was engaged in the field of activities such as identifying the identities of refugees, the registration and recording operations in the country they found asylum, legal and political protection, humanitarian aid, transportation, settlement in third countries and repatriation. The most comprehensive definition of refugee made until this period was also included in the IRO Constitution. It is realized that, in addition to the definition of refugee made in the final report of Bermuda Conference covering all refugee groups, a particular emphasis was made in

the definition of refugee made by the IRO on large refugee communities emerged after the War.<sup>7</sup>

While war criminals are not included in the definition of refugee in the Constitution of IRO under Annex - 1 Definitions/Section A, it is stipulated that unaccompanied children, 16 years of age or under, and orphans shall be primarily resettled to a third country (Section A/4). The IRO gathered under a general definition of refugee the refugees who were in Europe during this period, defined in groups in the previous regulations and resettled in third countries, and aimed to find solution basically to the question of refugee from the perspective of protecting refugees instead of protecting the refugee rights (Hathaway, 1990). It is realized that while IRO handled the question of refugee in the scope of resettlement in third countries, the UNRRA carried on its works within the scope of repatriating the refugees. During their period of office, as the UNRRA achieved repatriation for 7 million refugees, this figure was 70 thousand refugees for the IRO (Barnett, 2002). At the same time, it is realized that IRO ensured resettlement of more than one million refugees in the third countries as Canada, Israel, Australia and USA being in the first place (Barnett, 2002).

The Constitution of IRO could not find a permanent and humanist solution for refugee crisis since it includes provisions focusing on protecting refugees beyond determining the rights of refugees. Increasing number of refugees in Europe and lack of satisfying human needs for displaced persons through existing regulations have created the need

<sup>&</sup>lt;sup>7</sup> The definition of refugee in the Constitution of IRO under Annex - 1 Definitions/Section A is: "... the term 'refugee' applies to a person who has left, or who is outside of, his country of nationality or of former habitual residence, and who, whether or not he had retained his nationality, belongs to one of the following categories: (a) victims of the Nazi or fascist regimes or of regimes which took part on their side in the second world war, or of the quisling or similar regimes which assisted them against the United Nations, whether enjoying international status as refugees or not; (b) Spanish Republicans and other victims of the Falangist regime in Spain, whether enjoying international status as refugees or not; (c) persons who were considered refugees before the outbreak of the second world war, for reasons of race, religion, nationality or political opinion (Section A/1)."

<sup>&</sup>quot;...the term 'refugee' also applies to persons who, having resided in Germany or Austria, and being of Jewish origin or foreigners or stateless persons, were victims of Nazi persecution and were detained in, or were obliged to flee from, and were subsequently returned to, one of those countries as a result of enemy action, or of war circumstances, and have not yet been firmly resettled therein."

for finding an effective solution for the refugee question from the perspective of human rights. In line with this need, in March 1948, the UN Economic and Social Council (ECOSOC) made demand before the UN Secretariat on making studies to determine how the refugees and stateless persons can be protected most comprehensively under the roof of the UN (Glynn, 2011; Weis, 1990). Upon the request of UN Economic and Social Council, a committee was constituted on 8 August 1949 with the participation of 13 countries, and the studies regarding the comprehensive refugee law were initiated (Glynn, 2011; Hathaway, 1990; Weis, 1990). Belgium, Brazil, Canada, China, Denmark, France, Israel, Turkey, USSR, United Kingdom and Venezuela participated in the preparatory studies for the Convention related to the Status of Refugees for which the relevant studies continued between the dates of 16 January 1950 and 16 August 1950 (Weis, 1990). An agreement could not be provided at short notice about respective matters among the countries carrying on their studies to stipulate provision related to the definition of refugee and protecting refugees. The discussions running especially between France and the United Kingdom about whether the definition of refugee will cover the European refugees or all refugees in the world (Europeanist vs. Universalist) continued during the studies for draft. During the preparatory meetings of 1951 Geneva Convention, the representatives from the United Kingdom requested that a universal definition of refugee covering "all displaced persons" is adopted, and this request also supported by Belgium, Iraq, Egypt, Canada, Switzerland, Holland and Scandinavian countries together with many significant NGOs (Ben-Nun, 2015; Glynn, 2011). However, as a country objecting to the definition made within the framework of defining the persons who had to flee from their own countries due to the events outbreak in Europe before 1951 and recognising stateless persons as refugees (Ben-Nun, 2015, Weis, 1990), the definition of refugee made by France became the dominant opinion in the studies carried out by the support provided by the United States (Glynn, 2011; Johnsson, 1991). Although there were differences of opinion between the parties about limiting the definition territorially, the parties agreed that the definition of refugee shall be ideally made under the guidance of humanism and handled within the scope of 'right to seek asylum'<sup>8</sup> in the Universal Declaration of Human Rights announced in

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<sup>&</sup>lt;sup>8</sup> The Universal Declaration of Human Rights Article 14 "Everyone has the right to seek and to enjoy in other

1948 (Goodwin-Gill, 1995; Hathaway, 1990). The studies of the Committee formed by the UN Secretariat continued about the refugee law for a period of two years with the participation of national delegations and IRO employees.

The United Nations High Commissioner for Refugees (UNHCR) took over the functions of IRO as the organisation directly handling the question of refugees on 1 January 1951. The UNHCR was structured as the affiliated entity of the United Nations Secretariat and the activities shall be carried out with the purpose of protecting refugees at international arena in cooperating with the member states and finding permanent solution for the question of refugees. Although there were differences of opinion among the countries about bringing limitations in terms of time and territory to the definition of refugees to be included in the Refugee Convention, a consensus was reached about determining the responsibility of UNHCR as covering all persons displaced from country by torture due to their race, religion, nation or political thoughts (Ben-Nun, 2015; Glynn, 2011). It is realized that the UNHCR was structured in Cold War period as an entity which was not a party politically, handling the question of refugees from the perspective of human rights without classifying the refugees (UN, 1950). It was also referred in 1951 Geneva Convention signed shortly after the foundation of UNHCR that the duty of UNHCR is "...to watch over the implementations of countries regarding the international conventions about protecting refugees...". In fact, as Hathway (1990) and Odman (1995) follows, the ideological reflection of the Cold War between two blocs was the spirit behind the preparation of the Refugee Convention. During the negotiations, the Eastern Bloc objected to the comprehensive definition of refugees and asserted that it was the desire of the Western Bloc to protect the stateless persons departed from their countries and considered as traitors in the eyes of Eastern Bloc (Hathaway, 1990). The Western Bloc was dominant during the studies and it was realized that within the process, these studies were far from covering the Eastern Bloc's system of thought. Soviet Russia and Poland have withdrawn from the studies of Refugee Convention due to ideological differences (Goodwin-Gill, 1995; Hathaway, 1990; Weis, 1990). Hathaway (1990) indicates that this situation caused losing the chance to create a commonly agreed refugee convention and blocked the process for creating a convention finding solutions for all humanitarian needs of refugees and protecting human rights.

The studies for the Convention Relating to the Status of Refugees continued between the years 1948 and 1951, and the Convention was signed on 28 July 1951 in Geneva and entered into force on 22 April 1954 in compliance with article 43 of the Convention. The Geneva Convention, prepared for creating international refugee law, achieved its objective since there are more signatory countries for this convention compared to the ones participating in the previous conventions prepared for protecting refugees. In the current situation, there are 145 counties as the parties for 1951 Geneva Convention and the convention was entered into force by Congo, Monaco, Madagascar and Turkey with geographic limitation (1951 Geneva Convention).

In the introductory note of Geneva Convention, by referring to the UN Charter and Universal Declaration of Human Rights, it is stipulated that a refugee regime respecting human rights shall be observed. In the inter-war period, in the regulation made for the refugees from certain nationalities, while same rights were recognised for the refugees with the foreigners in the hosting country, it is stipulated in the Geneva Convention that regardless from the race, religion, nationality of refugees, they shall benefit from the same rights possessed by the citizens of country (Robinson, 1958). Moreover, the principle of non-refoulmet in 1933 Refugee Convention was repeated in article 33 of 1951 Geneva Convention, and it is stipulated that the refugee shall not be expelled in case their life or freedom would be threatened on account of their race, religion, nationality, membership of a particular social group or political opinion.

As a significant milestone in the refugee law, the definition of refugee in article 1-A/2 of 1951 Geneva Convention was as follows:

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

The time limitation that was on the agenda during the preparatory studies of 1951 Geneva Convention is included in article 1-A/2 having the definition of refugee as "events occurring before 1 January 1951", and in this respect, a time limitation covering the refugees departed from their countries due to Spanish Civil War is determined (Weis, 1990). With the time limitation included in 1951 Geneva Convention, it is ensured that the signatory countries avoided the ambiguity about the question of refugee that may arise in the future with indefinite number of refugees. (Fragomen, 1971; Glynn, 2011; Weis, 1990). Palestinian, Korean, Hindu and Chinese refugees who had to flee from their countries as from the beginning of Cold War were not entitled to benefit from the rights included in the Convention as a result of aforementioned time limitation (Fitzpatric, 1996; Fragomen, 1971). Another limitation on the definition of refugees in the Convention was the geographical limitation and the matter was left to the decision of signatory states with the provisions in article 1-B/1 below:

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

The right of selection in the article for geographical limitation was given to the countries with the article that was introduced as a result of conflict between the dominant opinion of French Delegation during the preparatory studies of Convention about bringing a geographical limitation for the persons to be recognised as refugee and other countries that were objecting the French opinion and trying to create a universally accepted Convention. Although it was discussed during the discussions made in the committee gathered by the UN General Assembly upon request that only the European refugees shall be included in an international refugee convention, the Convention preserved its universal feature by leaving the geographical limitation article to the preference of signatory countries upon the proposal of Holy See. At the first stage, Hungary, Madagascar, Malta, Monaco and Turkey preferred using the opportunity to sign the Convention with the geographical limitation stipulated in article 1-B/1 of 1951 Geneva Convention.

The geographical limitation, an item discussed in the preparatory work of the 1951 Geneva Convention, which was drafted under the political and ideological domination of the West during the Cold War and structured without the effective participation of the Soviet Bloc, was basically added to the convention aimed at international protection of the people who flee the communist system of the USSR (Odman, 1995). It seems that the forms of administration, which are ideologically centralized to the political values of the West and dominated by other political views, are intended to be added to the Constitution in view of the 'oppression and cruelty' environment (Barkın, 2014; Odman,1995).

After the acceptance of 1951 Geneva Convention, an additional protocol was required due to increasing refugee movements around the world and not being able to recognise many of them as refugee due to the geographical and time limitation (Parlak and Şahin, 2015). After the acceptance of Convention, it is realized that 3 million 490 thousand individuals around the world were included within the scope of refugee definition made in 1951 Geneva Convention but 17 million 318 thousand 320 individuals in total had to leave their countries (Fragomen, 1971). In this period, 5 million 206 thousand 213 African citizen had to leave their country due to increasing internal disturbance in African countries (Fragomen, 1971). Therefore, the studies were initiated with the support of the African governments and nongovernmental organisation in the middle of 1960s to find long-term solutions for the refugees and local people and supported (Crisp, 2001). The studies for refugee law carried out by Organisation of African Unity (OAU) in line with the needs of significant refugee groups revived during the period, which the colonies in the region started to declare their independence and new nation states emerged, were carried on by considering the socioeconomic structure and political situation in Africa (Hathaway, 1990). Moreover, similar studies were also performed by the Organisation of American States (OAS) in Latin America during the same period by considering the characteristics and needs of the region and similar to the regulations related to the refugee law after the First World War (Hathaway, 1990). 1 million 819 thousand 527 Asian, almost 870 thousand Middle Eastern individuals had to leave their countries in this process, and they could not acquire the right of sanctuary

with the status of refugee since they were not included in the definition of refugee in 1951 Geneva Convention (Fragomen, 1971). Regional and qualified studies were performed under the supervision of UNHCR in the Third World Countries which were not included in the definition of refugee in 1951 Geneva Convention and witnessed a large number of refugee movements, and after this period, the UNHCR became an authority finding solutions for the needs of refugees resettled out of Europe.<sup>9</sup>

After signing 1951 Geneva Convention, it was required that the definition of refugee shall be extended in terms of scope to cover all refugee groups since the significant number of refugee groups were not included in the universally accepted definition of refugee due to the 'events occurring before 1 January 1951' and Non-European refugees emerged in different regions of the world including Africa and Latin America. Moreover, the need for a new regulation also increased in this period which the Cold War continues since many refugees who fled from Eastern Bloc and wanted to resettle in Western Bloc were not recognised as refugee due to the time limitation included in the refugee definition made in 1951 Geneva Convention.

It is estimated by the UNHCR that there were totally17 million 316 thousand 320 refugees in the world (Fragomen, 1970). In this respect, the countries tried to make a closed definition of refugee as much as possible during the preparatory works for 1951 Geneva Convention and 1967 Additional Protocol due to their concerns about the function and role of refugee law to be constituted and the responsibility to be assigned on these countries as a result of structure emerged in line with the definition of refugee (Fragomen, 1970). The definition of refugee made in 1951 Geneva Convention became ineffective against the number of refugees around the world since it only covers about 6/1 of total number of refugees and the UN tried to find a solution for growing refugee crisis in Africa and Latin America through the 'Good Offices Resolution' published in 1959 (Jackson, 1991). In the end, a definition of refugee covering all refugees around

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<sup>&</sup>lt;sup>9</sup> In the UNHCR Annual Report 1965, it is stipulated that "refugees within the High Commissioner's mandate and those for whom he extends his good offices". The UNHCR will initiate the procedure of "good offices" in the regions requiring an exclusive regulation such as Africa and it is referred that "the refugees who benefit from "good offices" are persons who are obliged by political events to leave their country and may reasonably fear for their security if they were forced to return there." (Jackson, 1991).

the world was achieved through lifting the geographical and time limitation with the Additional Protocol signed in 1967. By this way, as a result of signing the Additional Protocol, 1951 Geneva Convention gained the universal nature that was aimed in the regulations after the Second World War (Jackson, 1991).

The Protocol on the Legal Status of Refugees (1967 Protocol) was signed in 1967 on the grounds that the individuals, who became refugee after the acceptance of Convention, cannot be protected by considering the provision of 1951 Geneva Convention as "...referred only to refugees as a result of events occurring before 1 January 1951....". 1967 Protocol was prepared as a legal regulation independent from the Geneva Convention and it was aimed to extend the regulations related to the refugee status as covering the countries that were not a signatory of the Geneva Convention. The provisions of "events occurring before 1 January 1951" and 'respective events' included in articles 1/2 and 1/3 in 1967 Protocol and article 1/A/2 in the Geneva Protocol were excluded from the text. By this way, the geographical and time limitations were not included in the 1967 Protocol. The states that have not signed the Geneva Convention yet were not entitled to make reservation to 1967 Protocol as per article 1/end. The right of reservation for the states signing the Geneva Convention with reservation were reserved as per article 1/3. Turkey has signed the Protocol by declaring that the reservation in terms of geographical limitation will be maintained as per article 1/3.

### 1.3. CONCLUSION

The definition of refugee made in 1951 Geneva Convention and 1967 Additional Protocol has been criticised generally by asserting that the definition was not significantly different from the regulations on the refugee law issued as from the First World War. It is also emphasized that the definition has shortcomings on the ground that it could not satisfy the need of changing refugee groups of the period (Glynn, 2011; Fragomen, 1970; Hathaway, 1990; Jackson, 1991). The definition of refugee is also criticised on the ground that the provision of 'well-founded fear of persecution' in the

definition is profoundly open-ended (Jackson, 1991) and it only covers the refugees that would be subject to oppression and maltreatment on account of their race, religion, nationality, membership of a particular social group or political opinion. Hence, there are other reasons causing immigration for all refugee groups apart from the ones referred in 1951 Geneva Convention and 1967 Additional Protocol and the definition of refugee does not cover the individuals departing from their countries on account of oppression applied by different social and political groups and the large refugee groups departing from their countries on the ground that they cannot satisfy their basic humanitarian needs (nutrition, health, education etc) (Hathaway, 1990). The purpose of respective definition of refugee is to protect refugees in the essential sense and avoid breaching basic human rights but it is realized that the conventions prepared after 1967 and signed by many countries related to the human rights were not consolidated in time within the basic documents of refugee law.

In this section, the period after the First World War was analysed as the period laying the foundations of refugee law and the regulations that were issued after the Second World War as a result of increasing refugee movements were also addressed. Moreover, the definition of refugee included in 1951 Geneva Convention and 1967 Additional Protocol as the basic legal documents of refugee law were also analysed in particular. The refugee crisis erupted after the two great wars in Europe and continued within the process and the studies carried out by Europe to create a refugee law were elaborated in the following section with the purpose of forming an understanding about the approach of the European Union (EU) to the refugee question. The preparatory studies for 1951 Geneva Convention corresponding to the foundation years of the European Union and 1967 Additional Protocol prepared in the period which the integration movements continued increasingly actually took their forms under the influence of the constituent states of EU. The EU used 1951 Geneva Convention as a complementary instrument instead of taking as basis in their common asylum and immigration policies established in time and regulations carried out with the purpose of avoiding irregular migration. In the following section, the establishment of asylum and immigration policies of the EU and legal regulations issued especially in irregular migration shall be elaborated.

### 2. CHAPTER

# ESTABLISHMENT AND DEVELOPMENT OF EUROPEAN UNION COMMON ASYLUM AND MIGRATION POLICIES

The establishment of international refugee regime and the process leading to the signature of 1951 Geneva Convention and 1967 Additional Protocol were analysed in the first section to seek the answer for the question "Is the geographic limitation attached by Turkey in 1951 Geneva Convention still valid?" as the starting point of this study, and the reason for including the article of geographical limitation in 1951 Geneva Convention was mentioned.

After massive movement of immigration witnessed as a result of the First World War, in the studies centralised in Western Europe and performed on creating international refugee law, it is realized that the European Countries have issued legal regulations to protect their own political, economic and cultural interest in addition to the refugee rights. An intertwining process was also witnessed during the preparatory studies for 1951 Geneva Convention in terms of the effort for creating a universal Convention and protecting the national interests of European countries. In the definition of refugee, it is emphasized that the term refugee shall apply to any person who had to leave their country as a result of "events occurring in Europe before 1 January 1951". Although it was decided to leave the geographical limitation article to the preference of signatory countries as a result of preparatory studies for 1951 Geneva Convention, with the time limitation included in the Convention, it is ensured that the signatory countries avoided the ambiguity about the question of refugee that may arise in the future with indefinite number of refugees. In the light of information provided in the first section, the immigration and asylum policies established in line with the process of European integration and common European interest shall be addressed. The reasons motivating the EU member states to determine common political attitude in the field of immigration and asylum and the approach of European Union established with common immigration and asylum policies towards refugees and irregular immigrants will be

examined. Moreover, it will be question that to what extend aforementioned political attitude corresponds to the liberal European values. In this respect, in the third section of the study, as a candidate country for EU membership, the regulations expected from Turkey in the field of immigration and asylum and the general political attitude of the EU will be compared. While seeking the answer for the question "Is the geographic limitation attached by Turkey in 1951 Geneva Convention still valid?", the questions of why lifting the geographical limitation in the harmonisation process of Turkey for the acquis communautaire and preventing irregular migration to the EU are the privileged issues for the EU will be analysed under this section.

## 2.1. WHY MEMBER STATES OF THE EUROPEAN UNION NEEDED A COMMON MIGRATION AND ASYLUM POLICY?

To understand the process leading the formation of the European Union's common migration and asylum policy, it will be helpful to mention primarily the historical background directing the states of Western Europe into common position in many areas. The formation process of the EU and an infrastructure will be developed by discussing the beginning of the irregular migration and asylum issues taking part in the political agendas under this topic for the analysis of developed policies.

The first step that the European States, which are currently integrated in many economic and political areas including immigration and asylum policies, takes in the road of integration, can be based the idea of establishment of United States of Europe. Churchill's this call found an answer from the European wing with the publication of the declaration that invites Germany and France to cooperation in the areas of steel and coal which are the two most important tools of the war, in order to prevent the outbreak of destructive wars in Europe once again by France's Minister of Foreign Relations Robert Schumann. 9 May 1950 which is a milestone of the entry of Europe in the road of forming a union is accepted as the establishment date of the European Union. The declaration which Schumann was published with the dream of establishing a federal

Europe, lead the formation of European Steel and Coal Community (ECSC) between Germany, France, Holland, Luxemburg, Belgium and Italy. With the treaty that was signed at the year of 1951 and came into force at 25 July 1952, first step of the EU integration process which Dedeoğlu (2003) belabours as"...using the steep ladders for climbing the higher floors and resting at the platforms between the floors..." was taken. After the year 1952, six constituent states, entered into the road of integration by spreading the cooperation they had started in sectorial basis to other areas.

After the establishment of the European Coal and Steel Union, with the Treaty of Rome, which came into force at 1958, a decision was taken about the formation of a common market in the area of agriculture, transportation and energy. Treaty of Rome, which established the European Economic Community (EEC) and European Atomic Energy Community (EAEC), is constituted important steps that are taken by six states, which were gathered for their economic interests in direction of their economic interests again. The Treaty of Rome, which ensures the entry of the European States in the process of taking common decisions in certain areas, is the first step that leads to the Union process. The Correspondences were structured as more economy centric at years of 1950's and 1960's which were the establishment years of EU and the immigration and asylum policies were determined and formalized according to the States internal legal structures in the extent of their national interests and human rights (Hathaway, 1993). The independence of the countries was playing a dominant role in the immigration and asylum policies which the European States entered an economic integration after the Second World War, and it is realized that the perspective of the European citizens towards the immigrants and refugees are far from to be hospitable (Hathaway, 1993). In these years, which the perception of the formation of the heterogeneous society as a result of the presence of the immigrants was a threat to communities' European identity, security and independence was prevalent, legal immigration to Europe is nearly impossible (Hathaway, 1993).

On the one hand, the immigration phenomenon was embraced as a factor threatening the security, independence and European identity and on the other hand, contradicted the European States, which need immigrants for inexpensive labour for the development of

Europe, about immigration between the years 1950 and 1970, which formed the establishment years of EU. In the 1960's when the economic development ranked first in the political agenda, it was observed that the liberal values were emphasized and immigrant workers were taken into the EU. In these years when especially the immigrant worker accepting policies were followed in Germany and France, France allowed the settlement of the immigrant workers via family unions and Germany implemented stricter policies and tried to minimize the settlement of immigrant workers (Hollifield, 2002). In the frame of immigrant accepting policies for supplying inexpensive labour that the European Union needs, the gates of Europe were opened to the labour immigration with the agreements signed by the countries including Turkey. The immigration policies of Europe in 1960's and 1950's were determined by national authorities rather than the super national structures, and human immigration became minimally controlled phenomenon because of the inexpensive labour force needs and the "economic miracle" of the 1950's and 1960's was achieved by continuous flow of the inexpensive labour force (Hartmann-Hirsch, 2014; Hollifield, 2002; Huysmans, 2000). In this process, the West European Countries turned primarily to Eastern Europe and then African countries.

The importance of immigration, which the Europe saw as a tool in supplying the inexpensive labour force that is needed by restructured Europe after two big wars was diminished with the economic crisis of 1970's. With the cessation of the economic development at 1970's and as a result of the beginning of the questioning of the benefit of foreign workers, the immigrant worker intake were cut and while it has been thought that the immigrant workers would have gone back to their countries, many immigrant worker decided to remain in Europe with the help of non-governmental organizations and church (Hansen, 2003). With the economic crisis of 1970's, organizations like European Council, International Labour Organization and United Nation's was started to discuss irregular migration and especially the issues like human trafficking and human smuggling were taken into political agendas (Triandafyllidou, 2010).

At the end of 1970's and at the beginning of 1980's, Western democracies that adopted the neo-liberal policies and established a political and economic platform based on the free movement of goods, capital and services have increased their control on the immigration that was contradicting with their neo-liberal policies (Hollifield, 1992). In this period, the industrial democracies as mostly the member of OECD tried to control the passage from borders for protecting their national independence. In 1980, the limitation of the immigration was started to take place among the electioneering process of European countries and liberal states, which worked towards the prevention of immigration started to face with the obstacles aroused from the international laws and constitutional norms (Boswell, 2003). The Economic Crisis that was experienced between the years of 1970 and 1980 made the European countries more close to each other in a way similar as with the latter crisis. The Foreign Minister of Europe, Davignon called the member states into political cooperation besides the economic cooperation through the Reports published (Dedeoğlu, 2003).

With the effect of the attack on the Israeli athletes in the Munich Olympics at 1972, the interviews between European states about the common position against the terrorism have been started. In the year of 1976, the European Commission invited the member states to act together in the issues of "illegal immigration" and labour (Triandafyllidou and Maroukis, 2012). With the decrees of the Commission, to increase the common positioning capacity of the European countries against terrorism, five working groups had been established and the working groups are called as TREVI Group (Terrorism, Radicalism, Extremism and Violence International). Among the groups that gather in meetings once in every six month, the issue of immigration control was among the issues assigned to TREVI 3 (Bunyan, 1993). In the year of 1976, the European Commission created the first official document related to these areas by publishing the 'Directive of fight against the illegal immigration and illegal employment' (COM/1976-331)<sup>10</sup>. Lahav (1998) stated that the free movement of people in Europe had become dangerous for all regions and emphasized that new inter-governmental and supernational actors have been formed for the prevention of the free movement of foreign nationals. It has been stated that the work groups known as TREVI Group, Vienne

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<sup>&</sup>lt;sup>10</sup> For more information see: Proposal for a Council Directive on the Harmonization of Laws in the Member States to Combat Illegal Migration and Illegal Employment (COM 1976/331), (1976). http://eur-lex.europa.eu/procedure/EN/1976\_1016

group and Schengen Group worked on the more efficient prevention of the immigration until the middle of 1980s and their organizational structures were more suitable to take decisions behind the doors which in contrast with the decision making mechanisms of the EU (Lahav, 1998). İrregular migration was started to be considered as a problem in developed welfare states during the 1970's and 1980's, and at the beginning of 2000's it has become an important issue for the entire world (Kosher, 2005).

With the placement of the prevention of irregular migration in the political agendas, it has been seen that the academic research about the subject has been started. In 1978, the first scientific article about this subject was published by Portes. In this article, the irregular migration from Mexico to the United States of America was discussed and irregular immigrants were defined as 'the illegal immigrants are the problem and also they are the solution of the problem' (Baldwin-Edwards, 2009). It was seen that the first studies about irregular migration are concerned with the economic dimensions of the problem. İrregular migration had been seen as a 'solution of the problems' of policies of the liberal economies in the point that their requirement of inexpensive labour force. In 1980's, controlling the irregular labour immigration towards Greece, Portugal, Spain and Italy became difficult because of the strict legal procedures and immigrant worker has turned into irregular immigrant status after they had obtained employment visas (Baldwin and Edwards, 2009). In this period, it is observed that in the meeting of European Commission, the economic aspect of irregular migration was discussed rather than the security problems caused by irregular migration (Triandafyllidou, 2010).

It is seen that the main motivation leading the member states into common position was the economic conditions in the years between 1950 and 1990, which was accepted as the establishment period of European Union. The entry of immigration and asylum issues into the agendas of the Union formed by member states has occurred as a result of the reduced labour needs because of the economic crisis in 1970's. While the immigration and irregular migration was a value attributed factor in the development of the countries during the establishment period, after the economic crisis it has become a less important phenomenon which was desired to be prevented. Even if the connection between the irregular migration and security started to establish as a result of the

terrorist incidents in Munich during the final periods of 1970's, the clarification of these connection and the transformation of irregular migration into a managed and protected factor has occurred in 1990's with the changing world order.

### 2.2. SINGLE EUROPEAN ACT (1985), SCHENGEN AGREEMENT (1985) AND SCHENGEN CONVENTION (1990)

The irregular migration, which was taken into consideration with its economical dimension during the formative years of the European Union has also started to be taken into consideration with its security dimension with the downfall of the dipolar world order in 1990. Taking the irregular migration into consideration as a security matter in Europe brings the requests that are expected from Turkey which came into a member state status in the extent of the EU harmonization process. The new period, which the Union entered with the Schengen Agreement projecting the free movement of the goods, capital and people and changes in Union's approach towards the irregular migration and asylum phenomenon will be discussed under this topic. Understanding the regulations introduced by the Schengen Agreement, which was an important step in the process that leads the formation of European Union and the steps in the following process will be an important building block of comprehending the rationale of the regulations that are expected from Turkey about preventing irregular migration.

The Schengen Agreement, which was prepared under the leadership of France and Germany as the countries accepting the asylum seeker at most in Europe, is at the helm of the regulations issued by the European countries, which had started to consider cooperation about the irregular migration and asylum in 1980s. As a result of signing of the Schengen Agreement between Germany, France and BENELUX States on 14 June 1985, a common will had been shown for acting commonly in the asylum and immigration policies. As a result of the Schengen Agreement, the removal of border

controls of the signatory countries was desired but some countries were remaining distant from the Agreement because of national sensibilities. England expressed her reservation about the identification of "illegal immigrants" and did not sign the Agreement (Triandafyllidou, 2010). The Schengen Agreement came into force in 1990 and during this process, Spain and Portugal as the new members of Union took their seats among the parties of the Agreement.

After the signing of the Schengen Agreement, Single European Act which contains the consolidation of the formative Agreements of European Union as a result of extensive consideration, was signed (17 February 1986) and the principle of free movement of goods, people and capital in Europe is accepted. An important decision was taken with the Single European Act, which initiates the political cooperation process in Europe and common protection of external borders and dissolved internal borders together with other countries. The security breach that may emerge as a result of the removal of the internal border controls necessitates the common position in asylum and immigration policies and increasing the external border controls at the same time (Gaddes, 2001).

The European States continued their studies performed with groups to form a multidimensional strong basis for the union they wanted and made Agreements to form at the end of the 1980's which constitutes the final period of the Cold War. The Palma document prepared by TREVI Group in 1989 is important for our subject among these studies and emphasized the requirement for the establishment of a system about protecting external borders during the process of lifting internal borders. In the Palma Document, the matters such as fighting with clandestine immigration by establishing a special police force, and terrorism, internal and external border controls, cooperation in justice and customs were handled together. Moreover, the first step for the establishment of European information system (EIS) was taken through initiating studies about the early warning system in immigration control and establishment of information system, (Bunyan, 1993; Triandafyllidou, 2010). The Palma Document also had important role in shaping the immigration and asylum policies of the period by referring to the requirements of preventing the misuse of right of sanctuary and

accepting the refugees applying for asylum in Europe after passing through stricter researches (Vink, 2001).

It has been seen that the irregular migration has been started to be seen as a security issue and common position in asylum situation by the European States in the establishment years when the European States entered into "Union" process by cooperating in various areas. However, taking significant steps for considering immigration as a security issue and increasing the external border control was taken into the agenda with the expansion process, which began with the finalization of the Cold War<sup>11</sup>. In this process, the clear separation between the EU internal and external security issues has disappeared and the EU security has become a factor that has to be considered as a multidimensional matter (Lavenex, 2009). In the framework of established European Neighbourhood Policy (ENP), the compliance of eastern and southern neighbours to the EU acquis and prevention of the security breach that will arise as a result of expansion are aimed (Lavenex, 2009). In the regulations about immigration, "new immigration" movements are used as basis, and the restrictive measures based on the fear created by the large amount of incoming refugees from the foreign countries started to become a top priority in the agenda of Europe (Collyer, Düvell and de Haas, 2012).

It has been seen that with the finalization of the Cold War, both the Union and member states increased their border controls and enlarge their immigration management capacities and made regulations in the admission, re-admission and asylum procedures (Jandl, 2007). A dissuasive policy that prevents the immigration even before it started was tried to be formed and creating a police-centred structure that the border security of other countries will be ensured through the police forces of each member states by forming a "Schengenland" was aimed (Lahav, 1998).

<sup>&</sup>lt;sup>11</sup> Detailed information: Bloch and Chimienti, 2011; Boswell, 2000; Favell, 2008; Huysmans, 2000; Jandl, 2007; Lavenex, 2001; Lavenex and Kunz, 2008; Özçürümez and Şenses, 2011; Trauner, 2009; Triandafyllidou and Dimitriadi, 2014.

The Convention about the execution of the Schengen Agreement, which has not been entered into force until the dissolution of the Eastern Bloc in 1990 was signed on 19 June 1990 and the Schengen Agreement came into force in this respect. It is possible to state that the application of Schengen Agreement is prolonged as a result of security concerns of the countries that will remove the internal border control in the transition period and the priority of the member states was to be protected from immigration wave rather than free movement in years corresponding to the dissolution of the Eastern Bloc. Moreover, by means of the Schengen Information System (SIS) which was aimed to be established with the Agreement, the security application at the internal borders was aimed to be directed to the external borders, but the problem in the establishment of respective system affected the delay in the execution of the Agreement (Özcan, 2005). As a result of executing the Schengen Agreement, the protection of the external borders is ensured by common security system and the internal border controls between the member states were removed (Schengen Agreement, Article 8/a). The governments of the member states agreed to increase the external border controls, common position in visa, asylum, police, justice and action against the terrorist elements by accepting the Agreement in their national legal systems. The employment of inter-governmental decision making mechanism in the matters related to the application of Schengen Agreement is agreed (Lavenex, 2001). In this period, it has been observed that the member states are resistant in delegating the authority about the issues in the area of Schengen Agreement and with the selection of inter-governmental decision making mechanism, the scope of issues that will be decided commonly on the basis of Schengen Agreement were limited (Lavenex, 2001).

The Schengen Information System (SIS), which was activated with the execution of the Schengen Agreement, led the formation of common databank that includes the information of people passing the borders of the member states. In the system where the personal record were hold under five distinct topics, the topics of "undesired foreigner whose entry was rejected into Schengen area" and "the ones whose identity cards were stolen or lost" were particularly taken into consideration to prevent irregular migration (Broeders, 2007). İrregular migration was accepted as the most important threat for the

countries that desired to direct their internal border security applications to external borders and eliminating this threat was aimed with the common visa system and efficient external border control (Hathaway, 1993; Özcan, 2005). Through the establishment of digital borders and assessment mechanism (surveillance), the prevention of the border crossing of irregular immigrants was aimed and the foreigners were monitored and their access to employment, health and other rights were restricted, and an important step has been taken in the formation of a European Fortress (Broeders, 2007). There are some writers asserting that the issues of human rights and the refugee rights were ignored with the SIS, which was categorizing the foreigners into classes with digitalized information system (see Hathaway, 1993).

Another important step taken by the European states for the common position on the issues of immigration and asylum in the road of becoming a Union is the Dublin Regulation. In the Dublin Regulation which was held on 15 June 1990 within the rapid integration process initiated with the fall of Eastern bloc, the matters such as the integration of European Union not only in economic areas but also in political areas and the rights of the citizens were brought to the agenda. The most important step taken with the convention is the prevention of a refugee to submit more than one asylum application inside the Schengen Area (Dublin Regulation, Article 3/2). The Convention, which prioritizes the provisions about the assessment of the asylum applications, is has a parallel structure with the asylum related provisions of the Schengen Agreement and the most important difference between two documents are the signatory countries. The Dublin Regulation was signed by all member states that did not sign Schengen including United Kingdom and Ireland (Özcan, 2005). Moreover, the Dublin Regulation includes more detailed articles than the Schengen Agreement about the refugee rights and asylum applications of the refugees. With the Convention, the right for asylum application was granted to a person who owns an expired residence permit or owns a visa expired more than six months ago (Dublin Regulation, Article 5/4). The asylum application of a refugee that entered into the Schengen area through irregular ways will be taken in the country of initial entrance (Dublin Regulation, Article 6). If the refugee changes the country until the asylum application date and if refugee stays in the new country longer than six months, the asylum application will be assessed by the refugees' current country of residence (Dublin Regulation, Article 6). The provision about the delivery of the application of refugee in the situation of transferring from one country to another is not included in the Schengen Agreement, and in any case, the application is required to be submitted to the country of initial entrance (Özcan, 2005). In the process of Dublin Regulation, the burden of irregular transit immigrants on the country of initial entrance will be shared among member countries.

Not allowing the temporary and humanitarian asylum applications is one of the important deficiencies of the Dublin Regulation, which brings detailed regulations about the refugee rights. Moreover, the oppression applied on the asylum seekers in their native country is a prerequisite for the application. Not granting the right of sanctuary to the individuals who were oppressed by non-governmental people or communities in contrast with the Geneva Convention in 1951 is among the major deficiencies of Dublin Regulation (Özcan, 2005). As it is elaborated in the first section, it is also possible to see the aforementioned deficiencies in 1951 Geneva Convention, which was the basic legal document of refugee law.

The most important step taken by the European Communities in the rapidly progressing integration process after the end of Cold War in 1990 was the Maastricht Treaty which was signed in 1992 and came into force in 1993 (European Union Treaty). The matters that were included in the AEC, ACSC, EUROTOM under the first pillar were stipulated in the Maastricht which established the three-pillar European Union System. The second pillar was determined as the Common Foreign and Security policies pillar. The issue of enlargement was also included in this pillar that was formed with the principle of common position of the EU member states in foreign relations and security. Third pillar aimed the cooperation in Justice and Internal Affairs and represented the topics of free movement of the people, European citizenship, fight against terrorism and the European Police Force (EUROPOL) (Treaty on European Union/ Article K.1).

The inter-governmental cooperation about the immigration and asylum, entry, employment, residence permits are integrated into the third pillar by TREVI Group and the EU organs are authorized in these issues. With the European Union Treaty that came into force in 1993, it is realized that the European Commission focused especially on the border control and prevention of irregular migration, and handled primarily the fight against illegal worker employment and human trafficking (Özçürümez and Şenses, 2011). In this structural alteration period, many European countries accepted the consideration of immigration and asylum policies under the roof of the Union and by this way, the distribution of refugees more equally among the member states and prevention of retraction of member states in immigration and asylum policies were aimed (Boswell, 2007).

It is observed that with the receipt of signals about the dissolution of the Eastern bloc and new candidate countries will request to join the Union established in Western Europe as a result of the great immigration waves from Eastern Europe, the decision making mechanism at Union level was developed in the issues of asylum and immigration. In the first period when the asylum and immigration policies were structured (1985-91); the nation states started the depart from independent decision making processes related to immigration with their privileges by cooperating unofficially with decision making mechanisms gathered in meetings (Kostakopoulou, 2000). The second period is the Justice and Cooperation in Internal Affairs period (1992-98) and this period had started with the European Union Treaty and the intergovernmental decision making process was adopted in Justice and Internal affairs related issues (Kostakopoulou, 2000). In this period, even if the immigration related issues were taken into consideration with common areas, the decisions have been taken by the governments of the member states, and the common decision making process was not effective as desired since it was not binding to the countries (Kostakopoulou, 2000). The third period, where the common decision making process functioned effectively in the areas of asylum and immigration is commenced with the Amsterdam Treaty and under the topic of Justice and Internal Affairs which was carried to the first pillar, the decisions in the Justice and internal Affairs topic are taken mutually by the Parliament and Council and common position was achieved. (Kostakopoulou,2000). Through the regulation introduced with the Amsterdam Treaty, the member states were entitled to make intergovernmental cooperation and handle their security issues with the dimension of Union (Kostakopoulou, 2000).

Through the political regulations realized in Schengen and Dublin processes, crossing the EU borders in regular ways made difficult, and preventing the potential immigrants to a large extent paved the way for these people to search for alternative ways of entry into the EU (Loescher and Milner, 2003). The potential migrants who could not reach to the EU through legal procedures inclined to seek asylum and irregular migration channels. As it will be addressed in the following heading in detail, it is observed that together with the EU policies that tend to control the crossing borders with strict regulations, the EU aimed to keep the asylum seekers away from their borders and prevent the irregular migration through developing policies covering the source and transit countries instead of creating an asylum regime respecting human rights and asylum seekers' rights.

## 2.3. IRREGULAR MIGRATION: AS A SECURITY THREATENING ISSUE (1990-1999)

While seeking the answer for the question "Is the geographic limitation attached by Turkey in 1951 Geneva Convention still valid?", it is important to analyse the shaping of Western European states' perspectives toward refugees and asylum seekers since the European States frequently emphasize the issue of lifting the geographical limitation during the EU harmonisation process of Turkey as a candidate country. It is realized that crossing borders were restricted for the refugees and asylum seekers through the Schengen process and it was requested to stop these refugees and asylum seekers at the source and transit countries within the framework of 'externalization of immigration' policies in the process entered with Amsterdam Treaty. While the responsibilities, which the EU laid the burden on the transit and source countries, increased in the extent

of common asylum and immigration policies, the expectations from Turkey which is a transit country for refugees has also increased. To understand the role expected from Turkey within the scope of immigration and asylum policies through the negotiations revived in the area of irregular migration as a result of Syrian refugee crisis and the regulations made by Turkey for the EU harmonization process, the externalization of the immigration policies, which EU has initiated with Amsterdam Treaty will be addressed under this section and the answer of the question of "Should the EU must approach the refugees and irregular immigrants as a security threat?" will be sought.

The EU member states taking important steps to create a common structure about the irregular migration, transit immigration and refugee law between the years of 1985-1990 have come to a common agreement about accepting the irregular migration as a security threat between the years of 1990 and 1999 and started to develop detailed political regulations that include the third countries with the purpose of controlling irregular migration outside the borders of EU. The studies for preventing refugees and asylum seeker directing towards the EU borders have formed basis of the common sanctuary and immigration policies developed by EU for this purpose through getting to the root causes of immigration with the agreements made with source countries of immigration. The 'readmission agreements' signed with third countries have comprised the significant building block of the "externalizing of immigration" policies developed with this purpose (Lavenex and Kunz, 2008). The EU Council recommended in November 1994 that the Member States shall sign bilateral or multilateral agreements with third countries under the externalization of immigration studies (PE 425.632)<sup>12</sup>. By means of these re-admission agreements, it is aimed to repatriate irregular immigrants who failed to fulfil the formalities required in the course of crossing borders or have stayed in the Schengen area for a period longer than approved (Lavenex, 2006). In this process, the foundation for adopting the application for asylum in the countries to be accepted as 'safe third country' has been laid through the instrument of 'burden sharing' included in the Dublin Regulation (van-Selm, 2001).

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<sup>&</sup>lt;sup>12</sup> For more information see Directorate General For Internal Policies Policy Department C: Citizens Rights And Constitutional Affairs Civil Liberties, Justice and Home Affairs, http://www.refworld.org/docid/4c975df32.html

The Amsterdam Treaty which was signed in 1997 and came into force on 1 May 1999 brought about the important changes in the European Union Treaty, and addressing the policies related to 'Visa, Asylum, Immigration and Free Movement of Persons' in a security centric way was stipulated within the scope of Treaties under the Heading 4. The regulations related to the issues of immigration and asylum was taken from the third pillar, which includes the inter-governmental negotiation to the first pillar in which decisions are taken with the super-national mechanisms. By this way, the delegation of authority was performed in the matters related to the immigration and asylum law, which were considered previously as a security threat by the EU member states but accepted afterwards to handle them by prioritising the national independence. It was also accepted that the decisions to be taken by the EU as a supranational entity on afore mentioned matters shall be binding. The issues of immigration and asylum that are addressed under the pillar of Justice and Home Affairs with the Amsterdam Treaty started to address under a separate heading. As per the article 61 of the Amsterdam Treaty, it was emphasized that external border controls and additional measures related to immigration are required.

"Council, in order to establish a freedom, security and justice area gradually: ... according to article 14 takes the necessary measures for ensuring the free mobilization with the additional measures about border police stations, asylum and immigration and according to article 31(e) of the European Union Treaty take measures to prevent crime." (Article 61)

The measures to be taken against the refugees and immigrants and the process to be applied were described in a detailed way in the Amsterdam Treaty with the purpose of establishing a common security area. The Amsterdam Treaty foresees a transformation process for a period of five year and the establishment of single application in border controls, common visa policy, common system to be determined by member states in immigration and asylum regime through common policy in the entry and residence permits to be applied to the citizens of third countries in five years after the enforcement of Treaty (1 May 2004) (Horvath, 2007). Moreover, the rules of Amsterdam Treaty and Schengen Agreement and the results of Dublin Regulation were included in the founding agreement.

The UNHCR considers the establishment of the common asylum legislation through the Amsterdam Treaty binding the EU countries as a development, which is exemplary to the other regions of the world (UNHCR, 1999). Moreover, the UNHCR invites the EU to comply the 63th article of the Amsterdam Treaty related with international refugee law and human rights, which were stipulated in 1951 Geneva Convention and 1967 Protocol together with the European Convention of Human Rights (Asylum and Immigration Legislation, 2005). In the aforementioned article, it is stipulated that the measures for repatriating the irregular immigrant residing in the EU member states to their home countries and the conditions required for a third country citizen residing in a member state and willing to obtain the residence permit for another member state shall be taken as per the Agreement. The respective warning of the UNHCR emphasized that the development of an application based on the human rights and freedoms is required as in compliance with the non-refoulment principle.

Internal Affairs and Justice Council decided to gather a meeting at Tampere for the purpose of steering the foreseen five-year transition period in the matters decided through the Amsterdam Treaty (1999). The agenda of the meeting were the cooperation of the countries, which were the sources of immigration, controlling the immigration movements, fighting against human trafficking networks and ensuring the legal residence to third country citizens in the EU. As a result of topics discussed in the Tampere summit, the first official step was taken for the establishment of policies related to the externalisation of immigration (Boswell, 2007). With the decisions taken in Tampere Summit, it was declared that the EU Countries will cooperate not only with the international organizations against the border crossing human movements but also with the source and transit countries to find a solution for this problem. <sup>13</sup> It was emphasized that the decisions taken in the summit became the building stones for the development of asylum and migration policy, and it was especially indicated that it is

<sup>&</sup>lt;sup>13</sup> For more information see EU Commission Fact Sheet 3.1: Tampere Kick-Start to the EU's Policy for Justice and Home Affairs, (2002). http://ec.europa.eu/councils/bx20040617/tampere\_09\_2002\_en.pdf

also an important step against the irregular migration and human traffickers. <sup>14</sup> This system, which gives important roles to the EU's neighbouring countries, will lead the creation of 'sharp borders' between the neighbouring countries as 'chaos regions' and the EU (Lavenex, 2004). The policy for signing re-admission agreements with third countries as an important milestone making the repatriation of irregular immigrants and asylum seekers possible and the policy of externalization of immigration were again developed during the Tampere Summit (Boswell, 2003). By this way, it will be possible to receive the requests of asylum of the irregular migrants and asylum seekers in the respective transit country by means of the re-admission agreement signed. The expectation from third countries in this process is to apply the principle of non-refoulment to the irregular migrants and receive their applications for the request of asylum through the establishment of an order respecting human rights and refugee law.

It is realized that the order developed by the EU in the extent of immigration externalization policies possesses the risk of transforming third countries into buffer area and immigrant storage, and the EU follows the policy of burden shifting that will increase the burden of third countries in terms of irregular immigrants and asylum seekers rather than the policy of burden sharing. The criticism against these policies will be included in the following sections of the study.

Tampere Summit is an important step in the realization of an extensive regulation about the protection and control of external borders, asylum, immigration and fight against crime. In the extent of 'comprehensive approach to immigration' policy, the requirement of considering the issues such as human rights, development of immigration source and transit countries came up in the Tampere process (Sterkx, 2008). As a consequence of Tampere Summit, the EU member countries were invited for an agreement with the purpose of introducing clear and simple applications to investigate the asylum applications made to the member states, determining the responsible country in case an irregular immigrant or asylum seeker entered to more

than one EU countries and deciding on the issues about in burden sharing and temporary protection in case there is an intense immigrant flow. Preparing a report related to the collection of irregular immigrants and refugees' fingerprints by the establishment of EURODAC<sup>15</sup> system and the formation of common database was also among the results of the Tampere Summit (Akçadağ, 2012).

Based on the decision taken in the summit, it is seen that important changes and alterations in the EU immigration legislation were performed during the transition period of Amsterdam Treaty. On 28 September 2000, Justice and Internal Affairs Council established the European Refugee Fund with the decree numbered 2000/596/EU.<sup>16</sup> As a reason for the establishment of the fund, the idea of making persons who were displaced and seeking legal protection in Europe benefit from the freedom, justice and security area of Europe has asserted (Özcan, 2005). 20 July 2001, the provision about the temporary protection of massive refugees was determined with Commission Decree numbered 2001/55/EC.<sup>17</sup> According to the decree, the temporary protection period to be applied to the displaced persons, who were forced to flee their countries and could not go back, was determined as one year and it is allowed to extend this period up to three years at most.

The EU member states that begin the process with the idea of formation of a 'Fortress Europe' are approaching each passing day this target with the important regulations they had made after 1999 Tampere Summit. 11 September attacks happened in the United States of America (2001), Madrid attacks in 2004, and London attacks in 2005 within the EU strengthened the connection between the immigration and security issues. In a period where the opinions that the irregular migration is a security issue and immigrants constitute security risks increased, the studies related to prevention of irregular

For more information see Official Journal of the European Union, (2013). http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0001:0030:EN:PDF

<sup>&</sup>lt;sup>16</sup> For more information see Council Directive 2001/55/EC, (2001). http://eur-lex.europa.eu/legal content/EN/TXT/PDF/?uri=CELEX:32001L0055&from=EN

<sup>&</sup>lt;sup>17</sup>For more information see Council Directive 2001/55/EC http (2001). ://eur-lex.europa.eu/legal content/EN/TXT/PDF/?uri=CELEX:32001L0055&from=EN

migration were continued rapidly. After 11 September attacks, the immigration control in the EU was carried out with the perception of externalization of the immigrants and the control of borders; aggravating and delaying the passage of foreigners from the borders were adopted as a policy (Boswell, 2007). At the period after September 11, the Justice and Internal Affairs Council started discussions about the connection of irregular migration and terrorism and for that purpose; the studies aiming integration of immigration control into fight against terrorism were carried out (Boswell, 2007).

Shortly after the September 11 attacks, the European Council meeting was held extraordinarily on 20 September 2001 for the first time in its history and approved the access of the Schengen Information System (SIS) to other systems in the extent of fight against terrorism. In the meeting, the member states agreed on hardening the external border controls (SN 3926/6/01)<sup>18</sup>. The countries were invited to be very cautious in granting visa (Conclusion 26), and the participation of member states to the efficient utilization of Schengen Information System (SIS) and formation of systematic inputs were requested. In another Council Meeting held in November 2001, the development of SIS and utilization of SIS in the fight against terrorism were agreed, and the decision for the establishment of 'second generation' Schengen Information System (SIS II) was taken (Boswell, 2007). Thus, it was aimed to allow the long-time storage of the collected data's in the borders and utilization of these data by many institutions. The SIS with the main function to prevent illegal immigrants was developed to provide "order and security" and became functional through collecting data on third-country nationals and a pillar in the fight against terrorism after the attacks of 11 September. By this way, a close link was formed between the issues of terrorism and crossing borders. In a working paper published by the EU on 5 December 2001, it was suggested that the member states can reject the refugees who were suspected to be terrorists as per the F<sup>19</sup> paragraph of the 1<sup>st</sup> article in the Geneva Convention (Akçadağ, 2012). The EU put into

<sup>18</sup> For more information see Conclusions Adopted by the Council (Justice and Home Affairs) Brussels, 20 September 2001, (2001). http://www.consilium.europa.eu/uedocs/cms\_data/docs/pressdata/en/jha/ACF6BA.pdf

<sup>&</sup>lt;sup>19</sup> Provisions of this Agreement for a person who a) Commit a crime against humanity, a war crime or a crime against peace; b) commit a heavy general crime outside the country of asylum; c) guilty about the activity against the principles and objectives of United Nations; will not be applied (Article 1/F).

the agenda the provisions of 1951 Geneva Convention stating that it is possible not to apply the principles of the asylum law related to the persons as per the provision of "in case there is strong opinion about their guilt of activities that were against the objectives and principles of United Nations" (Akçadağ, 2012). In this respect, it paved the way to reject the asylum applications of persons, who were suspected about committing crimes against peace. With the Council directive numbered 2001/40/EC and published on 28 May 2001, the member states were invited to make common regulations about deportation of the individuals who reside within the borders of the EU illegally. <sup>20</sup>

The steps taken rapidly related to the irregular migration and asylum law especially in the area of Justice and Home Affairs and the study of compliance to the laws by making common definitions in the areas such as illegal entry to member states, residence and employment can be followed through the Council Directives after the Tampere Summit. The steps taken in 2001 show that the member states prioritised the pursuit of common definition in the respective issues. After the creation of common definitions, it is aimed that the law to be applied to irregular immigrants will be structured in the same frame.

In the Council Directive dated 28 November 2002 (2002/90/EC)<sup>21</sup>, the similar statements were written about strengthening border controls, and the requirement to fight against illegal immigration for the sake of creating a freedom, justice and security area in the EU. In the directive in which the prevention of border passage of illegal immigrants was mentioned, the requirement of preventing illegal employment and human trafficking was also mentioned. With the Council directive numbered 2002/90/EC, the member states of Schengen were invited to harmonise their internal laws about the issues of immigration and asylum and simplify the definition of illegal entry, transit passages and residencies before 5 December 2004.

<sup>&</sup>lt;sup>20</sup> Council Directive 2001/40/EC of 28 May 2001on the Mutual Recognition of Decisions on the Expulsion of Third Country Nationals, (2001). <a href="http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:149:0034:0036:EN:PDF">http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:149:0034:0036:EN:PDF</a>

For more information see Council Directive 2002/90/ECof 28 November 2002 Defining the Facilitation of Unauthorised Entry, Transit and Residence, (2002). <a href="http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:328:0017:0018:EN:PDF">http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:328:0017:0018:EN:PDF</a>

After the Tampere Summit, the implementations related to the conclusions of Tampere Summit were also discussed in Laeken Summit (2001) and Seville Summit (2002). In the process of starting implementation for the Amsterdam Treaty, according to the decisions taken in the Tampere; the Council Regulation governing "the criterion and mechanisms about determining responsible country for investigating an asylum application made by a third country citizen to the one of member states application" was accepted, and though the Regulation known as Dublin II (323/2003), the issue of asylum application was included into the Community Pillar (Amsterdam Treaty, Article 63/1). While Denmark did not contribute to the Regulation, England and Ireland contributed (Özcan, 2005). By means of the Dublin II which was accepted as a result of the studies that were initiated at the year 2000, the asylum applications made for the extension of residence permits period were desired to be prevented and the principles of Dublin I Convention were basically embraced (Kaplan, 2004). With Dublin II, the regulations about the Country that will receive and assess the asylum application became more rigid and required regulations were made for the limitation of the application period (Özcan, 2005). While it was aimed to prevent the 'refugee pingpong' with the Dublin Regulation, it has been observed that this aim was not achieved since the asylum seekers are sent back to make their applications at the country of entrance (Gilbert, 2015). According to the refugee rights aroused from the 1951 Geneva Convention, there is no liability of "seeking asylum in the safe country entered firstly". It was seen that the Dublin Regulation has provisions forcing the refugees into difficult situations, which were not included in the Geneva Convention. It is matter of debate that how much the closed-door policy of the EU complies with the right of sanctuary included in the 14<sup>th</sup> article of the Universal Declaration of Human Rights (Gilbert, 2015).

The argument of the irregular immigrant were threatening the internal peace and security of the EU member states was strengthened with the directives issued especially for this reason and studies about the consideration of immigration as a security problem after September 11 attacks and in addition to that, the principles of keeping the refugees

away from the borders were embraced. In 2003, the High Commissioner for EU Common Foreign Relations and Security, Javier Solana issued a report and count 'illegal' immigration among the threats for Europe in this report (Bourbeau, 2011). 4 years after the September 11 attacks, a terrorist attack carried out in Madrid, the capital of Spain as one of the EU member states. Even if there was no information referring that the immigrants were the attackers, the steps for augmenting the immigration and security connection were taken after the attack. The EU Council held an extraordinary meeting (19 March 2014) and stated the Schengen Information System (SIS) and Visa Information System (VIS) must be effectively used and an efficient strategy for fighting against terrorism must be developed. The issues of using information network and database were included in the decrees of the Hague Program (COM, 2005/184)<sup>22</sup> defining the Freedom, Justice and Internal affairs policies of Europe for a period of five years. Among the decrees of the program, the establishment of the FRONTEX structure that will be responsible for the security of external borders of Europe was present.

After the terrorist attacks in the USA and Europe, extreme right wing in the EU especially perceived the immigrants and as a subgroup of immigrants, the Muslims as 'threat and danger at home' and asserted that they constitute a security problem in Europe (Akdemir, 2009). It is also possible to say that the anti-immigrant and anti-refugee policies were shaped by connecting the economic crisis emerged in the beginning of 2000's with the immigrants and the enmity toward immigrants and refugees were increased among the population (Yılmaz Elmas and Kutay, 2011). Structuring the immigration and asylum policies of the EU that were gradually tightened and reached to its current form within the scope of externalization of immigration after the Amsterdam Treaty through burden shifting policies were discussed under this section. It is possible to perceive Tampere Summit which was held in the transition period of Amsterdam Treaty as a breaking point for the shaping of immigration and refugee policies of the EU in a security centric manner. After the

<sup>&</sup>lt;sup>22</sup> Communication from the Commission to the Council and the European Parliament - The Hague Programme: Ten priorities for the next five years The Partnership for European renewal in the field of Freedom, Security and Justice (COM/2005/0184 final), (2005). <a href="http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52005DC0184&from=EN">http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52005DC0184&from=EN</a>

Amsterdam Treaty and Tampere Summit, the EU showed political will in increasing the external borders controls, which was removed in internal borders, and preferred to take union level decisions by augmenting the connection between immigration and security, and increased its efforts in preventing the presence of irregular immigrants and refugees in the borders of EU by making agreements with the countries on the transit immigration routes and immigration source countries. The ID information and finger prints of every person who wanted to cross the borders was started to collect by means of SIS and SIS I and gathered under a single system with the access of all European Countries, and the identification of irregular immigrants who keep staying in Europe and prevention of their access to employment, health and residence opportunities became possible.

This process reached an upper level with the beginning of cooperation with the police forces and FRONTEX, and the external borders of the European Fortress were started to be protected by military and police forces of the EU members. Externalization of the border control with the Agreements made with the third countries, protection of external borders with FRONTEX and internal border control in the Schengen area can be taken into consideration as a three headed control mechanism (Triandafyllidou and Dimitriadi, 2014). Both the academicians and UNHCR started to criticise that providing the security of the illegal immigrants and refugees became the secondary importance through the three dimensional protection mechanisms which the EU formed to prevent the irregular migration.

### 2.4. INCREASING SECURITY IN THE BORDERS OF EU AND FRONTEX

FRONTEX, which was established on the basis of protecting the external borders of the EU by border guards, is another important step for the establishment of Fortress Europe.

In accordance with the decisions taken at the Hague Summit (COM, 2005/184)<sup>23</sup>, the EU member states initiated the studies about the establishment of 'European Agency for the Management of Operational Cooperation at the External Borders' (FRONTEX) and FRONTEX was established on 26 November 2004 with the Decree numbered EC 2007/2004<sup>24</sup>. This structure was criticized by human right organizations for the militarization of the borders and the human right organizations conducted campaigns against this institution. On the other hand, this structure was accepted as the most important step of the securitization of immigration (Leonard, 2011). FRONTEX draw a clear line that separates the external borders of Europe from the other countries and played the major role in forming the 'integrated border security' (IBS). FRONTEX was structured with the ability to conduct air, land and sea operations to protect external borders. With the FRONTEX, taking measures against the potential countries determined by Annual Risk Reports related to irregular migration and cross border crimes was aimed for the sake of providing 'high level and integrated control' in the Schengen area which has a 44 thousand km of land and 9 thousand km of sea borders.<sup>25</sup> FRONTEX, whose headquarters were located in Warsaw and structured with its own budged, has the EU citizen employees wearing the national uniforms of their national countries and armlet of the FRONTEX (Leonard, 2010). The budget of FRONTEX, which conducts its operations with the land, see and air vehicles provided by the EU Countries, was reached 250 million Euro in 2016.<sup>26</sup> It has been seen that FRONTEX, which was established for providing the security of Europe with a system including third countries, became responsible in the countries of North Africa, East Europe and Easter Mediterranean Countries that were wanted to be turned into buffer areas with the purpose of ceasing the flow of migrants (Baird, 2015). North Africa, Eastern Europe

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<sup>&</sup>lt;sup>23</sup> For more information see Communication from the Commission to the Council and the European Parliament - The Hague Programme: Ten priorities for the next five years The Partnership for European renewal in the field of Freedom, Security and Justice, (2005). <a href="http://eur-lex.europa.eu/procedure/EN/192847">http://eur-lex.europa.eu/procedure/EN/192847</a>

<sup>&</sup>lt;sup>24</sup> For more information see Council regulation (EC) No 2007/2004 of 26 October 2004 Establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, (2004). <a href="http://frontex.europa.eu/assets/About Frontex/frontex\_regulation\_en.pdf">http://frontex.europa.eu/assets/About Frontex/frontex\_regulation\_en.pdf</a>

<sup>&</sup>lt;sup>25</sup> For more information see FRONTEX: About the Agency. http://frontex.europa.eu/pressroom/faq/about-the-agency/

and the Eastern Mediterranean regions of the country signed an agreement on cooperation with FRONTEX in order to avoid, given the task of taking measures to prevent the transition to EU-based security of their external borders (Baird, 2015). In this respect, Turkey has signed a memorandum of understanding with FRONTEX on 28 May 2012 and committed to work in coordination with FRONTEX to prevent irregular migration and provide the EU external border security.

Two years before the signing of memorandum, in the extent of the FRONTEX operations, an operation was launched to the border between Turkey and Greece upon the call from Greece on 24 November 2010. Turkey-Greek border has been defined as 'exceptional intense entrance of the irregular immigrants' by the EU member states, and Greece requested support from the EU countries to increase the security at the border. The first operation of Rapid Border Intervention Teams (RABITs), which were structured in 2007, initiated upon the report of the Greece that notifies the entry of more than 45 thousand irregular immigrants from the land border of Greece and this number corresponds to 350 irregular immigrants per day (Özler, 2010). In that operation, it has been detected that the immigrant groups mostly consisted of Afghans, Palestinians and Somali nationals. Emergency and intervention call from Greece on 24 October 2010 was responded with sending 175 rapid border intervention groups and these groups were deployed at the border on 2 November 2010 (Özler, 2010). While the emergency call made by Greece prevented the irregular migration, its aspects in contradiction with the Dublin II Regulation criticized the operation, and the UNHCR reported that the situation abuses the refugee and human rights and emphasized that the EU didn't comply with international agreement with the operation conducted by RABIT teams (Carrera and Guild, 2010). It has been observed that Greece avoided the obligation of initiating the asylum procedures of the country based on the rule stating that the country of entrance initiates the asylum procedures from the Dublin II Regulation by placing soldiers at the border and pushing back the refugees to the border. In this period, while the status of refugee granting ratio of Greece is %0,3, this ratio reaches up to %31 in the countries such as Germany, Sweden and France (Özler, 2010). During the RABIT operation, the impact of deploying of EU military power upon the call made by another EU member state at the border of Turkey as a country in the process of membership negotiations with EU is significant in terms of implied message. From this operation, it has been understood that Turkey is seen more as a transit area which harbours the irregular immigrants rather than a 'solution partner' (Özler, 2010).

Operations of FRONTEX at Turkish-Greek border have come into agenda again with the emergence of irregular Syrian refugees towards Europe through passing over Turkey. Upon the call of the European parliament to deploy FRONTEX guards at the Greek border to reduce the amount of irregular immigrants reaching to the EU, the operation of 'Poseidon Sea' was initiated on 1 April 2013 with the highest number of participation in the FRONTEX history. In the extent of 'Poseidon Land' operation initiated on 26 March 2014, FRONTEX guards were started to be deployed at Turkish-Greek border. In 2015, similar operations were continued at the Turkish-Greek border and upon the statement of NATO forces asserting that they will support the EU in their struggle with human trafficking and irregular migration in the Aegean Sea, a supernational step has been taken for the prevention of irregular immigrant passage from Turkey to the EU.

Mechanism that were developed for protection of EU borders against the irregular migration shaped in the frame of securitization of immigration policies of the EU, augmented in time and the importance given to these mechanisms were increased. Neighbouring countries designated as walls in the desired Fortress Europe entered into cooperation with the EU and encountered with the risk to become buffer areas. The structure utilising the high tech equipment and third countries to prevent the irregular migration towards the Schengen Area was criticized with its nature focusing on the protection of borders rather than human life, and on the other hand continued to increase its operational capacity and budget (Triandafyllidou and Dimitriadi, 2014). The limited information sharing related to FRONTEX operations and the regulation in the third countries were criticized by non-governmental organizations, the EU ombudsman's and UNHCR (Triandafyllidou and Dimitriadi, 2014). Moreover, FRONTEX border guard

<sup>27</sup> FRONTEX web page http://frontex.europa.eu/operations/archive-of-operations/?year=2013&type=&host=Greece (28.03.2016).

teams were also criticized for acting against international law in consequence of having authority to bear arms and the right to use their weapons in certain situation (Keller et. al., 2011).

The European Union Constitution, which was written in the process of becoming a 'Union' and put into referendum by the member states in 2005 was not accepted in Holland and France. After the rejection of the constitution, the references such as flag, anthem that gave the impression of federal government structure were removed with the Lisbon Treaty and all the legal regulations were collected under a single founder Treaty. The Treaty, which was signed on 17 December 2007 put into referendum by the member states and came into force on 1 December 2009. With Lisbon Treaty, the issues of management of internal security and external borders were arranged under the roof of the Treaty for the first time and the alteration was made in the Maastricht and Rome Treaties. Three-pillar structure was removed and it was agreed that decisions will be taken with double majority system in which the parliament is active (Yakut, 2010). Important part of the changes made with Lisbon Treaty was in the pillar of Justice, Security and Home Affairs (Peers, 2008). Legal control authority over decision making processes was increased and European Court of Justice has become responsible for the protection of basic rights and freedoms. At this point, the assessment authority related to the violation of rights of refugees has been given to the European Court of Justice. The countries making decisions with unanimity of votes about immigration and asylum were able to take decisions with qualified majority voting with the Lisbon Treaty<sup>28</sup>. The authority to determine the amount of regular immigrant was left to the decision of member states (Yakut, 2010). It is an important step for the EU to include the EU immigration and asylum policy that was fragmented with unexplained processes within a single Treaty text (Peers, 2008).

It is possible the divide the regulations made with the purpose of creating a common political roof in the areas of immigration and asylum in the history of European Union into two time periods as the process before 2015 when the passage of Syrian refugees

<sup>&</sup>lt;sup>28</sup> Qualified majority voting system: Voting system which requires for the Union decisions at least %55 of the votes of the members and at least the % 65 of the total population of 15 member states.

caused an important crisis on the established common borders of the EU and the process after 2015. With the year of 2015 in which the questioning of common border policies has been started, the continuity of the steps that has been taken up to today has also been imperilled. Even if the similar crisis occurred in the borders of Schengen area before due to irregular immigrants, Europe has never passed through a process, in which the common internal border policy is questioned.

## 2.5. IMMIGRATION AS A SECURITY ISSUE: LIBERAL AND REALIST PARADIGMS TO THE CASE OF MIGRATION

In this section of the study, the situation of considering irregular migration and asylum issues which was placed in the top of the political agenda of EU by triggered through the different dynamics in historical process as a security issue in the EU with analysing the approach of liberal and realist paradigm will be addressed. To understand the reasons of leading geographical limitation, which Turkey placed in 1951 Geneva Convention as an obstacle in the EU membership negotiations and shaping of the regulations performed by the EU and expectations of the EU from the third countries, it will be useful to analyse the perspective of two basic paradigms towards immigration and asylum. To see the point of deployment of the attitude of EU, which is predicted as a supranational structuring shaped according to liberal paradigm, in the immigration and asylum issues and its viewpoint about irregular immigrants will be an important step in searching the answer for the question of "Is the geographic limitation attached by Turkey in 1951 Geneva Convention still valid?". In this frame, the approach of liberal and realist paradigms towards the issue of immigration and asylum will be analysed and then point of views of basic paradigms towards the security policies formed by Europe will be analysed in particular. In the literature survey, the authors, who consider the security centric immigration policies formed by the EU, and take the realist paradigm as basis, assess these aforementioned policies as a 'necessity'. On the other hand, it can be understood that many writers who take the liberal paradigm as basis, did not bring clear criticisms to these issues and cannot go beyond the assessment of the current situation. The policies developed by the EU after the latest refugee crisis cannot be explained only in the paradigm discussions. In this part of the study, the developed immigration policies will be assessed by taking into consideration the theoretic and empirical dimensions.

During the development process of the International Relations discipline, the discussion directive and shaping theories that are named as 'great discussion' has occurred. The changes in the world order requires new approaches, and the new discussions based on liberal and realist paradigms which constitute the parties of the first great discussion suggested for explaining the events occurred in the international arena (Celebi, 2011). Aforementioned paradigms approached the immigration and asylum paradigm from a nation-state centric perspective and considered as national security problem that threatens the national independence or from humanitarian perspective and considered in terms of human rights and needs of the refugees (Lavenex, 2001). While analysing the intellectual infrastructure of the EU's security centric immigration and asylum policies, we have confronted the realism, which is one of the parties of the first 'great discussion' and the basic paradigm that made the theoretical explanations of 'security' factor. Security that is defined as "Security feeling against damage or danger" (Açıkmeşe, 2011) is a phenomenon, which can be provided with 'power' and prioritized by the nation-state centric paradigm of realism. According to power and security centric perspective of the nation state, the main actors are independent nation-states, which are in the struggle of protecting external borders and internal security. Nation states must focus in maximising their military power and be ready against the factors that threaten their security and borders (Morgenthau, 1978). If the immigration and asylum constitute a situation, which threaten the security, socio-economic and political atmosphere of the nation-states, the nation-states must take measures against these factors and protect their population from the irregularities that immigration might introduce (Lavenex, 2001).

According to the realist paradigm, nation-states are independent structures acting according to their own interests; thus human right violations performed by one nation-state do not fall into other nation-states areas. Since the human right violations are

considered as internal issues of the countries in realist paradigm, the refugees do not have any other status apart from other immigrants (Tarımcı, 2005). According to the realist paradigm, nation-states can only accept refugees and asylum application if their interests are on stake and in that point; they must act selectively (Loescher, 2001). Granting asylum and then citizenship rights to the refugees escaped from communism in the Cold war can be an example of this interest (Loescher, 2001). When considering the international cooperation about immigration and asylum from the realist perspective, since the nation-states are the structures that prioritize their own interests and act in a power-accumulating way, it can be concluded that they have to avoid international cooperation in the immigration related issues and entry of a short-term partnerships in this area only if suitable conditions about their interests realized (Betts, 2009).

Weiner (1990), who stated that nation-states approached the power issue from the perspective of internal security and threat towards internal peace, perceives the immigrants and refugees as a danger to nation-state. Weiner (1996) states that firstly there will be conflicts aroused with the countries that the immigrants came from and the target countries and also the intense refugee flows can threaten the regime in the target country. Moreover, Weiner (1996), who states that the proportions of the immigration, which was perceived as threatening factor towards the social and economic lives of the target countries, are also important, perceives massive movement as more dangerous for the countries. Buzan, Waever and Kelstrup (1993), stated that 'foreigners' constitute a security threat for the local population approaching from a similar point of view with Weiner. In that point, they predicted that the coalescence of target country citizens and immigrants that do not share the same language, cultural ties, lineage and religion might cause uprising in the local population in long term (Buzan, Waever and Kelstrup, 1993). Huysmans (1995), who defended that if an issue is not considered with the language of security, will not become an issue of security and emphasized that the political and social integration to the society constitutes an important threat. According to Huysmans (2000), immigration that effect the internal order, economic, social and cultural welfare levels of the member states cause security related problems in integration point, riots, crime and disorder in the cities. The protection of mutual welfare levels of the EU members by applying security centric mutual immigration policies and the security centric policies are implemented with taking into consideration that the immigration policies affecting the welfare of the EU citizens will lead the ultranationalist insurrections within the countries (Huysmans, 2000). Weiner (1996), who emphasize the bestowment of certain socio-cultural rights to the immigrant communities in order to prevent the ethnical conflicts related to immigrants, states that the introduction of freedom of education and publication in ethnic language, etc. and bestowment of equal rights to the immigrant mass as the minorities can prevent conflicts.

When the security narrations made in the realist paradigm are analysed, it is observed that between the years of 1940 and 1970, security is understood only in the extent of military problems. It is also observed that the realist centric paradigms are diversified during the period after the Cold war and new interpretations about the realism and different similar phenomenon's were developed as from 1972. With the Petroleum Crisis of 1972, it was seen that the economic problems can cause security breaches and consideration of security in a multi centric approach commenced (Açıkmeşe, 2011). With the beginning of the final periods of the Cold War, the discussions about not only the military threats but also the environmental, economic and political threats also formed security threats has begun (Buzan, 1983). It is possible to connect the EU's underlining of immigration constitutes a 'security problem' time to time between 1970's and 1990's and more frequently after 1990's can based onto realism's increasing and changing 'security' perspective.

The principal argument of the realist studies that favours the approach towards immigration as a security problem is that the immigrants threatening the welfare of Europe have the risk of making activities that can disturb the internal order of EU including the terrorist activities primarily. According to the threat perspective that is increasing in the approach of the EU toward immigration and asylum issues in each passing day, closing mutual borders that were established as result of Europeanization of the immigration policies against foreign threats is an important requirement to avoid the political, economic, cultural and security problems which the immigrants will cause (see Bali 2005; Bigo1998, 2001, 2002; Bigo et.al. 2015; Geddes 2005, Heisbourg 2015;

Huysmans 2000, 2006). According to the nation-state centric realist paradigm, for the EU, which started to made mutual policies with its neighbours to counter the immigration wave that would come from its eastern neighbours after the finalization of the Cold war in 20<sup>th</sup> century and accepted the immigration as a phenomenon that threatens its borders, the 21<sup>st</sup> century came with its threatening incidents. The argument defending that immigration caused security problems is augmented with the September 11 attacks in 2001 and the entrance of 30.000 African to Spain between the years 2005 and 2006 and with the atmosphere created by Madrid-Rome bombings (Boswell, 2007). Jimenez (2011), who performs a status evaluation by taking the realist paradigm as basis, states that the requirement of emplacing the visibility of strict security policies in the European Union immigration policies with immigration wave aroused as a result of Arab Spring that influences the Arab countries in 2011.

Moreover, while the authors who state that considering the immigration and asylum issues as a security threat is necessary, there are also authors perceiving the irregular immigrant as a threat in general rather than the immigrants (see Broeders and Engbersen 2007; Jandl 2007; Loenard 2011). According to these approaches, with the arrangements such as FRONTEX, Visa Information System (VIS), Schengen information System (SIS), the immigrants and asylum seekers that are forced to become irregular immigrants and then restricted from all instruments required for continuation of their lives will start to behave in a way that threatens the EU. According to Broeders and Engbersen'e (2007), who suggested the registration of irregular immigrants and supply of legal work opportunities for the sake of protecting the EU against the irregular migration wave, state that the identity loss of immigrants who were already in Europe will augment the current danger. On the other hand, preventing the irregular immigrants who became a part of the inexpensive labour market of Europe in an unregistered way from the borders of the EU is important for the economy of the EU (Edwards, 2008). The authors, who consider the immigration and asylum issues from an economic perspective, predict the implementation of an immigration prevention policy especially in the economic crisis and stagnation periods (see Edwards, 2008).

Some authors indicated that the immigrants and asylum seekers were generally a threat for the EU and especially emphasized the threats that may stem from irregular immigrants. On the other hand, they also expressed the necessity to prevent irregular migration through cooperating with the countries located in the transit regions as the passage point of the irregular immigrants (see Jandl, 2007). Jandl (2007), who considers positively the border policies tightened by the EU in the process after the Amsterdam Treaty and 'externalisation of immigration' policies carried out, emphasized that the political order to be established in source countries and the effective re-admission agreements to be signed with the source and transit countries are among the long term solutions in preventing irregular migration. In the view of realist paradigm favouring to sign agreements and cooperate with third countries and supranational entities when it comes to the interests of nation states, the process after the Amsterdam Treaty has an important place in terms of measures taken by the EU against security threats. In terms the 'closed-door' policies applied by the EU against Syrian refugee crisis as the most important topic within the political agenda for Turkey and the EU, it is realized that the EU preferred to apply closed door policy by maximising the EU's perception of threat. When considering the realist perspective, the closed door and burden shifting policies adopted in this process are rather important for the security of EU counties. Heisbourg (2015) indicated that immigration became a phenomenon entirely threatening the security in EU countries as a result of the Syrian refugee crisis, and supports the respective strict policies emphasizing that the disturbance in EU countries will increase unless the human flow coinciding with the economic crisis in the EU in general is prevented.

From the point of realist perspective, together with the authors supporting the EU immigration policies taking the security in the centre, there are authors who did not clearly criticise aforementioned approach but explaining from a liberal perspective that the issue should be considered by considering the human rights as basis since the human factor is at the basis of immigration. Liberal paradigm emphasizes that nation states should act in concert about the issue of immigration, and the question should be considered by taking the issue of protecting asylum seekers and the rights of sanctuary

into account (Betts, 2009). According to the liberal perspective taking human rights to the centre, the human rights are valid for all humanity and asylum seekers and protecting them are the duty of not only nation states but also all humanity. International communities should guarantee protecting the rights of asylum seekers of communities that were forced to leave out of their country due to war, genocide, civil disturbance and other reasons (Goodwin-Gill 2001; Hathaway 2007). Although the liberal paradigm emphasized that the main discussion should be maintained on the basis of protecting the rights of asylum seekers, the rights of asylum seekers and human rights dimension of the issue became of secondary importance by the academicians and politicians as a result of 11 September attacks in particular. Moreover, the discussions about this issue were carried out by focusing on the UN and EU policies for asylum seekers rather than the connection between the regional security and the rights of asylum seekers (Loescher and Milner, 2005).

Even if liberal paradigm attaches importance to the supranational structures and international community about the rights of asylum seekers, the significant supporters of liberal paradigm continued emphasizing the nation states as the primary respondent about the asylum seekers (see Hathaway, 1991; Goodwin-Gill, 2001). From the perspective of liberal paradigm, the independent states are considered as the aim of asylum seekers and centre of finding solution for this problem, and liberal authors indicate that the states should act by respecting human rights and should not repatriate the asylum seekers, prevent them to go to different countries and keep them away from danger (see Hathaway, 1991; Goodwin-Gill, 2001). According to the perspective of liberal paradigm, in the system which the states are dominant in protecting the rights of asylum seekers, the role of UNHCR that was established by independent nation states is important (Goodwin-Gill, 2001). However, even if significant steps were taken with 1951 Geneva Convention and 1967 Protocol established under the roof of UNHCR about determining and protecting the rights of asylum seekers, the humanitarian measures to be taken against massive immigration movements and the responsibilities of the countries against massive immigrations were not stipulated in the international law and this situation weakens the system (Goodwin-Gill, 2001). In addition to the

weaknesses in the international agreements about the rights of asylum seekers, the nation states fail to fulfil their responsibilities within the intergovernmental organisations about protecting the rights of asylum seekers and these are the main reasons of not finding solution for the question of asylum seekers (Hathaway, 1991).

It is realized that liberal paradigm attaches importance to the role of international organisations in affecting international asylum policies with its slightly different structure compared to the realist paradigm about taking the action for protecting refugees when it only comes to the interests of nation states but considering the national states as the basic actor about the issue of immigration and asylum (Çelebi, 2011). Even if the importance of international organisations are emphasized, the basic points of liberal paradigm require the persistence of states about implementing the immigration and asylum law and cooperation about elimination missing parts through complying with the international law with the attitude of putting the rights of asylum seekers in the centre.

As there are authors indicating that the right of sanctuary is one of the most basic human rights in general by depending on the liberal paradigm and emphasizing that the international organisations have important role in protecting this right, there are other authors determining aspects related to the EU common immigration and asylum legislation in particular. In the literature survey made especially on the EU immigration and asylum policies, it was realized that the only criticism made is the incompliance between the EU's security centric asylum and immigration applications and the liberal foundation principles of the EU. Moreover, it is frequently emphasized by authors that the irregular migration triggered as a result of strict policies applied against asylum and immigration. It is also mentioned by the authors with liberal approach that the perception of EU about the asylum and immigration as a security threat and shaping security centric policies create concerns in the eyes of refugee groups related to the protection of their human rights (see. de Haas 2008; Düvell 2012; Guild 2009; Geddes 2002; Koff 2006; Levy, 2005). The clearest criticism about this matter is that the EU develops its policies for preventing immigration instead of refugees, and while Europe increases the measures to limit crossing the borders on one hand, makes so-called commitments related to the refugee rights on the other (Boswell, 2000; Geddes, 2002; Lavenex, 2001; Loescher and Milner, 2003). The securitisation policies for immigration that were initiated in 1970s and accelerated after the end of Cold War affect adversely the approach of EU against the immigrant and asylum with their liberal values, and taking the asylum and immigration policies into account at the union level supports this negative tone witnessed about the rights of asylum seekers (Geddes, 2002). At this point, Geddes (2002) indicates that the idea of European Fortress was exaggerated and conflicting with the purpose of foundation and the EU arising from the idea of 'neo-Westphalia country' did not correspond to the basic purpose in structuring respective security centric policies.

As the major representative of liberal democracy, the common immigration and asylum policies established by the EU with Tampere Declaration (1999) after Amsterdam Treaty and the area of Justice, Freedom and Security have some aspects breaching human rights, and a process towards structuring that will cause breaching the principles by the EU about the rights of asylum seekers based on the Geneva Convention (Levy, 2005). If security centric perspective will be adopted since the liberal democracies have the structure prioritising humanitarian aspects, the concept of security should be considered from the views of 'human security' and 'societal security' (Koff, 2006). However, blocking the refugees due to the transformation of the disturbance emerged after the end of Cold war as a result of enlargement policies into terror anxiety after 11 September attacks has triggered human trafficking and irregular migration (Koff, 2006). Irregular migration routes used by the asylum seekers and immigrants who were considered as a security threat by the EU cause the death of many people de Haas, 2008; Guild 2009; Loescher and Milner, 2003). On the other hand, in case the irregular immigrants reached to the EU remain at this status for a long time, it will lead the process of civil disturbance for the EU (Bloch and Chimienti, 2011). In conclusion, the EU created an insecure environment for both national citizens and immigrant groups, and a zero - sum game was emerged in the immigrant and asylum seeker policies (Koff, 2006). It is observed that there is an increase in the factors of nationalism during the process of developing common policy for the EU, and the factors of nationalism uniting with the concerns related to decreasing economic wealth due to the immigrants and asylum seekers continue bringing together the strict policies against immigration and asylum (Boswell, 2000).

Even if there is no information acquired for making connection between immigration and terror in 11 September attacks and afterwards the terrorist attacks witnessed in Europe, the argument of the terror threat emerged by the immigrants was asserted for preventing irregular migration and the EU policies against the immigrants and asylum seekers were developed (Boswell, 2007; Collyer, 2006; de Haas, 2009). At this point, Collyer (2006) indicates that security centric mechanisms were strengthened by considering the irregular migration in the USA and EU as threat although it is referred that the 11 September attacks were carried out by the terrorists who entered within the borders of the USA through legal ways. Linking the attacks with the immigrants and considering immigration as a security threat were not supported only by the right parties, and liberals, social democrats, some feminist and homosexual activists also supported this idea (Triadafilopoulos, 2011).

Haas (2008) indicates that another factor supporting the strict policies of the EU against asylum and immigration is the number of irregular immigrants exaggerated through the political reports and media, and thousands of immigrants starting from Africa every year and trying to reach the EU chose the dangerous routes due to the tightening policies of the EU and lost their lives. It is mentioned that over reflecting the number of African irregular immigrants reaching the EU in media causes the strict policies of EU through creating anxiety in the international community and public. In the research, it is seen that most of the irregular immigrants trying to reach to the EU from Africa stayed in the transit passage regions, and the main responsibility is laid on the neighbouring countries and transit regions (Collyer, Düvel and de Haas, 2010; Triandafyllidou and Dimitriadi, 2014).

It is possible to say that the link between immigration and terror strengthened especially after 11 September attacks was established with the purpose of creating a reason for the strict border policies developed by the EU. By considering the critics to be received

from international community related to the strict policies against immigrants and asylum seekers established after the Amsterdam Treaty, it will be possible to respond these critics with the argument that the terror threat was eliminated through these policies, and the steps towards the 'Fortress Europe' will be taken easily. In this respect, it is possible to say that a similar process was also witnessed in the Syrian refugee crisis during which the liberal European values were discussed. The EU has stayed silent against the refugee crisis at the beginning and then developed a policy for accepting the immigrants in Europe at minimum and left the burden on the neighbouring countries as Turkey. However, the EU started to be interested in this issue when the number of irregular immigrants increased in 2015, and delivered the message to the public about the intention of EU to share the burden of immigrants by prioritising the liberal values. On the other hand, shortly after this period, the attacks carried out in Paris and Brussels, the EU turned back to the closed-door policy, and closed the doors by using the argument of terror threat. First and foremost, the responsibility about the matters related to the protection of human rights and the rights of asylum seekers was left on Turkey within the scope of re-admission agreements signed within the scope of 'externalisation of immigration' policies. While the European Countries were trying to escape as much as possible from the social and economic burden as a result of immigrations, they also force the options of 'safe third country' for the asylum seekers and maintain the position of depending the strict immigration policies on the security threats by linking the irregular migration with terror (Boswell, 2007). At this point, as a matter of debate in Turkey as well, it is realized that the 'safe country' and 'safe third country' applications are not in compliance with the international norms, and the principle asserting that the countries can only accept their citizens back was changed in the new system (Lavenex, 2001; van-Selm, 2001). Moreover, the 're-admission agreements' provided a basis for burden shifting policies instead of burden sharing in the course of securitisation process of immigration in which the transit countries were also included (Lavenex, 2001). In the previous years, as it is in the movements of immigration from Iraq, Afghanistan and Somali towards Europe, the right to live in Europe is not recognised for the Syrian refugees due to the security reasons and keeping the refugees within the transit regions are still at issue (Triandafyllidou and Dimitriadi, 2014).

In the critical steps taken by the EU about externalisation of immigration and burden sharing as a result of including different actors (third countries, UNHCR, IOM etc) into the policies, the importance of UNHCR's role on supervising the implementations that may lead breaches in human rights and international agreements also increased (Lavenex, 2015). Goodwin-Gill (2015) emphasizes that the responsibility related to the people leaving their countries due to the civil war in Syria is on neither the Mediterranean countries nor the EU, and the problem requires an international solution. Moreover, it is also mentioned that the EU member states should handle the problem at the level of nation state. It is a situation breaching the human rights, EU norms and international agreements by overlooking the loss of lives at seas by closing the doors of EU (Goodwin-Gill, 2015). However, respective policies are maintained stronger by the public support.

While some authors support the idea that it is the only choice for the EU and member states to apply closed-door police against the asylum seekers due to the security reasons and the European Fortress established by strengthening walls in each passing day, it is a mistake leading to the breach in human rights. There are authors supporting the opinion that immigration threats the security of European countries on one hand, and the others asserted that the perception of threat was created as a reason to established closed Europe on the other hand. However, both groups emphasize the situation of irregular immigrants remaining at this status for a long time will cause de-identification for these persons and being deprived from all social and economic rights will lead bigger security problems in Europe.

### 2.6. CONCLUSION

As from the beginning of 1970s, throughout the EU and member states in particular, the policies limiting, controlling and preventing immigration that is considered as a security gap rather than its humanitarian dimension have been accepted as privileged issues in the political agenda. Following the Council meeting held in Tampere in 1999, to create

the area of freedom, security and justice in the European Union, it was aimed to determine strategies. In this respect, the policies covering source and transit countries were developed by considering immigration together with its internal and external dimensions. Along with the internal dimensions that take the mutual position of member states within the framework of single migration policy as basis, the international policies established the current immigration and asylum law in the EU with the purpose of preventing, ceasing irregular migration and repatriating were also established by cooperating with non-member neighbouring countries (Hampshire, 2015). With the Lisbon Treaty that was entered into force in 2009 and includes the final version of the EU policies, the issues of internal security and external border controls were included directly under the roof of a Treaty for the first time. As a result of literature survey made, in the policies developed by the EU against the immigrants and asylum seekers that are considered as 'security threat', it is realized that the EU is moving away from the liberal values taking the human rights to the centre. The negotiations made between the EU and third countries and the agreements signed with the purpose of preventing irregular migration are far from taking the protection of human rights to the centre and in contrary, the security in EU is taken to the centre. On the one hand, the EU increases its security; on the other hand, the Union expects from neighbouring countries to take measures respecting international law and human rights about protecting refugees and asylum seekers by prioritising the 'liberal values' without considering the security anxiety in these neighbouring countries. At this point, it is possible to understand the position of Turkey about lifting the geographical limitation as one of the expectations from Turkey. Hence, lifting the geographical limitation may lead the acceptance of Syrians as the biggest refugee group in the work at the moment and other irregular immigrants fleeing from other Middle Eastern countries, in which the state of disturbance and chaos continues, and trying to reach Europe through passing over Turkey as asylum seekers in Turkey.

In the current situation, even if the geographical limitation has not been removed yet after the re-admission agreement signed between Turkey and the EU, it is possible to say that Turkey faces with the risk of transforming into immigrant storage. As a result

of assessment made, while seeking the answer for the question "Is the geographic limitation attached by Turkey in 1951 Geneva Convention still valid?", after considering the factors at the centre of the subject in terms of EU and international law, it is required to address in detail the final version of immigration and asylum policies developed by Turkey within historical background and the Syrian crisis with the status of temporary protection.

### 3. CHAPTER

### TURKEY'S LEGISLATIVE REGULATIONS ON MIGRATION AND ASYLUM AND THE DEBATE REGARDING THE LIFTING OF THE GEOGRAPHICAL LIMITATION APPLIED BY THE 1951 GENEVA CONVENTION

In this part of the study, the migration policy and the law on asylum will be referred to in the light of the points mentioned in the first two chapters to answer the question "Is the geographic limitation attached by Turkey in 1951 Geneva Convention still valid?". In the course of history, the policy regarding immigrants amounting to millions heading towards Turkey and will be examined and the justifications for the conservation of the geographical limitations during this process will be discussed to seek an answer to the fundamental question of the study.

As mentioned in detail in the first part of the study, with the increasing number of refugee populations<sup>29</sup> in the years following World War II, a mandate in terms of international regulations regarding refugees was issued and the United Nations High Commissioner for Refugees stepped up its work accordingly. The status and rights of refugees have been defined with the "Convention on the Legal Status of Refugees" (Geneva Convention of 1951), which was signed on 28 July 1951 in Geneva. Furthermore, Article 1-B / 2 of the 1951 Geneva Convention grants the signatory states the right to restrict the geographical area from where the persons who are defined as refugees and at the same time a time restriction on maintaining refugee status has been acknowledged.<sup>30</sup> Turkey has exercised its right to make a reservation under Article 42

<sup>&</sup>lt;sup>29</sup>According to the data of the United Nations High Commissioner for Refugees there were 2 million 166 thousand refugees in total throughout the world in 1951. For detailed information see UNHCR (2000), *The State of World Refugees: FiftyYears of Humanitarian Action*, Oxford: Oxford University Press. According to the mid term report of the UNHCR for 2016 65 million 300 thousand persons had been forcibly displaced as of June 2016 and 21 million 300 thousand of these persons are comprised of refugees. For detailed information see UNHCR (2016) *Mid-year Trends. http://www.unhcr.org/figures-at-a-glance.html* (viewed on 27 April, 2017).

<sup>&</sup>lt;sup>30</sup> See Geneva Convention Article 1/ B.(1) For the purposes of this Convention, the expression "events occurring prior to January 1, 1951" in Article 1 will be interpreted as "(a) events occurring in Europe before January 1, 1951"; or (b) "events occurring in Europe or elsewhere before January 1, 1951", and each Party State shall declare its scope regarding the obligations it has undertaken during its signing, ratification or participation in this Convention, (2) Any

of the provision, "every state may declare restrictive records on matters other than Articles 1, 2, 4, 16, 33 and 36-46 of the Convention during signature, ratification or accession" and has indicated and accepted that its understanding of the Convention provisions applies to persons who are refugees "events occurring in Europe before 1 January" 1951and does not apply to those from the Caucasus, the Middle East and Africa because of their neighbouring status and subsequently indicated this in the declaration issued with Law number 359 (Ekşi, 2010). With this statement, Turkey declares that those fleeing Europe due to human rights violations are accepted with a refugee status. On the other hand, Turkish authorities may use their discretion regarding applicants who come to Turkey from outside Europe to be accepted as refugees (Tarhanli, 2004).

Turkey was one of the countries that took part<sup>32</sup> in the drafting of the 1951 Geneva Convention and was among its first signatories and discussed the contents of the Convention ten years after signing in parliament and the Convention entered into force on the 29th of August 1961. Irregular political and economic conditions in the Middle East and Asia can be shown as among the reasons for the debates during the drafting work, particularly in the debate regarding Article 1, which allowed the signatory countries to place geographical restrictions on the Convention. Turkey's exercising its right in terms of a geographical limitation must be understood taking into view Turkey's unique geographical position (Odman, 1995). Considering the political situation of the Middle East geography, especially the migration of the Jews to Palestine who considered it to be the 'promised land' fleeing from Russia after the Bolshevik Revolution of 1919 and the increasingly aggravated Israeli-Palestinian conflict are noteworthy. The Palestine-Israeli Wars, which occasionally included Arab League countries, generated an atmosphere of war, which included all the Arab League

Party State which has accepted option (a) may at any time expand its obligations by announcing that it has accepted option (b) with a note to the Secretary-General of the United Nations.

<sup>&</sup>lt;sup>31</sup> The expression 'Europe' geographically covers the entire continental Europe.

<sup>&</sup>lt;sup>32</sup> Talat Miras was participated as the negotiator in the draft studies on 1951 Geneva Convention, and took part into the studies as committee vice presiodent.

countries in 1948 with the establishment of the State of Israel. The collective migration movement of the Palestinians, who escaped the Jewish occupation in this process, became influential in the region in the 1950s. While the said atmosphere affected the entire Middle East region, it was closely monitored by the Turkish public, which adopted a pro-Palestinian attitude however, the Middle Eastern state policy was based and formed around neutrality. This attitude has also shaped the migration policy of the Republic of Turkey which has chosen to host asylum-seekers in the framework of the principle that migrants return to their countries after the establishment of peace, in the event of the arrival of large scale migration caused by current and future regional wars and which is included in the form of a geographical reserve annotated in the 1951 Geneva Convention (Odman, 1995).

It has also been argued that on one hand the geographical limitation, which has been annotated in order to prevent disrupting the delicate balances of Turkey which have a fragile structure economically, politically and demographically, on the other hand it was also included at the request of the West. There are authors who point out that Turkey's geographical limitation to prevent refugee flows to Europe through Turkey is an element demanded by Western countries which was included during the Convention preparatory work, thus aiming to reject demands for refugee status made in Turkey (see Odman, 1995; Tarhanlı, 2004). It is stated that rather than the desire to prevent migrants from becoming refugees in Turkey, during the Convention preparatory works Turkey was requested to annotate a reservation due to the concerns that those who gained refugee status in Turkey would subsequently go West and contribute to current irregular migration (Tarhanlı, 2004).

The 1951 Geneva Convention, which was signed in the chaotic environment that prevailed throughout the world after the Second World War started to be discussed in the Foreign Affairs Commission of the Grand National Assembly of Turkey in 1961, after a decade of delay in the continuing unstable political setup in the Middle East. On May 5, 1961, the Statute of the Convention on the Status of Refugees signed in 1951 in Geneva and the Report of the Commission on Foreign Affairs (1/125) was presented to the Constituent Assembly for approval. The Commission's report on the Convention

stated that the scope of implementation of the Convention would be restricted to refugees coming from Europe, and it was underlined that the accepted geographical limitations in the Convention's draft studies would be maintained. In the Commission report, which states that there were 1,500 refugees in Turkey at the relevant period, it is emphasized that the social and economic situation of the refugees will improve after the Convention passes through the Assembly. It is also underlined that UNHCR will support efforts to improve the situation of the refugees by donating 300,000 dollars to Turkey and close cooperation with UNHCR (State Commission Report 1/125) was also mentioned. The Foreign Affairs Commission Report was brought to the agenda of the Constituent Assembly on August 29, 1961. Parliamentary negotiations on the ratification of the Convention in the Foreign Affairs Commission were completed with a brief session and the signing process was completed without any discussion of content other than a question about the Convention's ten-year delay to the parliamentary agenda.<sup>33</sup> Thus the 1951 Geneva Convention was ratified by the Grand National Assembly of Turkey with Ratification Act number 359 dated the 29<sup>th</sup> of August 1961 (Ekşi, 2010). The Convention entered into effect by its publication in the Official Gazette dated September 5, 1961 number 10898 and was put into practice on March 30, 1962 (Ekşi, 2010).

As noted in the first part of the study, the increase in the number of asylum applications around the world following the adoption of the 1951 Geneva Convention, an additional protocol was needed because a large number of people could not be regarded as refugees due to geographical constraints as well as temporal reasons and the 1967 Protocol on the Legal Status of Refugees was drafted (Barkın, 2014; Parlak and Şahin, 2015). Turkey lifted the time reservation with the 1967 Protocol on the Legal Status of Refugees and retained the geographical limitation, which was published in the Official

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<sup>&</sup>lt;sup>33</sup> Hamza Eroğlu took the floor on behalf of the Foreign Affairs Commission in response to the question of why the 1951 Geneva Convention came to the agenda at the 24th Assembly of the Turkish Grand National Assembly on August 29, 1961, saying: "If the governing power for the last decade had followed a far-sighted policy in signing and implementing conventions which were beneficial to the country and respected human rights the reason for this delay could be understood. However, considering the fact that the behaviour of the government for the last ten years is far self-evident." respecting human rights the reason for the delav is https://www.tbmm.gov.tr/tutanaklar/TUTANAK/KM /d00/c002/km 00002024.pdf for more detailed information about the meeting.

Gazette dated August 5, 1968 and enacted. This decision by Turkey was influenced about concerns that the number of refugees in Turkey would increase due to the migration route passing through Turkey from the Middle East and Asia to Europe. Within the framework of the First Five-Year Development Plan put into practice with the 1961 Constitution, the policy of giving labour migration from Turkey to other countries in order to reduce unemployment was one of the major economic policies of the period in question (Kirişçi, 2007). As a result of this policy, workers were sent to the West through agreements signed with many European countries. In this process, it is possible to see that the possible reasons for mass migration to Turkey had been one of the reasons underlying the continuation of the geographical limitation.

As a matter of fact, between 1970-1991, 8 thousand 143 people from Eastern Europe and Soviet Bloc countries applied to get asylum status in Turkey in view of the rights arising from the 1951 Geneva Convention and the 1967 Additional Protocol (İçduygu, 2000). Many of the people who entered Turkey as asylum seekers in this period have left Turkey to live in a third country (İçduygu, 2000). A small number of asylum seekers sought Turkish citizenship through marriage and continued to live in the country, while a small number of elderly asylum seekers began to live in Istanbul under the protection of the Red Crescent and the UNHCR (Kirişçi, 2000). In addition, Turkey is working in cooperation with UNHCR currently as it has in the past in order to provide temporary accommodation for asylum seekers from outside Europe in the process of placing asylum seekers in third countries by UNHCR (Zeick, 2010).

Turkey, which leads the countries undersigning the 1951 Geneva Convention and steered asylum seekers from non-European states to temporary protection and cooperated with UNHCR to process permanent asylum applications to third countries is currently among countries which receives the most non-European immigrants (UNHCR, 2016). According to the data of the Ministry for Internal Affairs, the number of Syrians in a temporary protection status in Turkey as of May 2017 is, there are 3 million 6 thousand 298 Syrians at the status of temporary protection. In Turkey, 174 thousand 466 persons from different nationalities were apprehended during 2016 and 28 thousand 575 irregular migrants have been apprehended during the first three months of

2017 (Ministry of Interior General Directorate of Migration Administration, 2017). The said data only include the number of Syrians who have received temporary protection status and the number of apprehended irregular migrants.

With the increase in the number of refugees from the Caucasus, the Middle East and Africa, Turkey, which is one of the countries that continues to exercise its right to geographical limitation along with the Congo and Madagascar, has often been on the agenda for retaining its right to geographical limitation. In Turkey, which is frequently exposed to mass migration movements, the domestic legal system has been regulated by consideration to the needs of the groups of asylum seekers, however geographical limitation has been maintained with the idea that the number of migrant communities likely to come from the Caucasus, the Middle East and Africa will increase.

The debate over the lifting of the geographical limitation to the 1951 Geneva Convention has continued throughout Turkey's European Union negotiations. The lifting of the geographical limitation and the prevention of irregular migration into the EU has been the main agenda item of EU-Turkey negotiations during 2015-2017. Discussions on the legal status of the Syrians in Turkey during the Syrian Civil War, which started in 2011 and continues in 2017 as a result of the 'open door policy' followed by Turkey, are frequently debated in the EU negotiations regarding the geographical limitation annotated in the Geneva Convention. Before starting the current status analysis the migration history of Turkey and the arrangements in terms of migration and asylum law made in history as well as regulations that have been enacted by Turkey for the prevention of irregular migration from Turkey to the EU and the debates regarding the lifting of the geographical limitation which has been on the agenda during such legislative arrangements will be examined in this chapter.

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<sup>&</sup>lt;sup>34</sup> For EU Progress Reportssee 4 November 1998, 13 October 1999, 13 October 2000, 13 November 2001, 20 November 2002, 5 November 2003, 6 October 2004, 9 November 2005, 8 November 2006, 6 November 2007, 5 November 2008, 14 October 2009, 9 November 2010, 12 October 2011, 10 October 2012, 16 October 2013, 8 October 2014, 10 November 2015, 9 November 2016

### 3.1. TURKEY'S MIGRATION HISTORY

### 3.1.1. Turkey as an Emigrant Country

In order to understand the historical process and reasons why Turkey inserted the geographical limitation into the 1951 Geneva Convention and to analyse the reasons why it has not been withdrawn during negotiations with the EU, it will be useful to firstly refer to the introduction of Turkey into migration literature as a country with emigration as well as country that receive migration. Turkey's position as an immigrant country has changed over the course of history and in a short period of time Turkey has become a target country for irregular migrants. The immigration experience of Turkey which has been intertwined with immigration and emigration since its foundation will be considered under this heading.

Large population movements occurred throughout the world during the liquidation process of the empires, which were dispersed after the First World War.<sup>35</sup> New states began to emerge in the vast European and Middle Eastern geographies which had previously hosted the Ottoman and Habsburg empires and their disintegration and the influence of nationalism (Abadan-Unat, 2002). During this period, two population exchanges took place between Greece-Bulgaria and Turkey (see Arı, 2014). The transition of the Orthodox population in Turkey to Greece was among the first major population movements in the founding years of the Republic countering the emigration of the Muslim population living in Greece to Turkey under the "Agreement and Protocol regarding the Exchange of Greek and Turkish Citizens" which is an annex to

Before the establishment of Turkish Republic, Anotolian territory have affected large population movements. For more information of early stage immigration experiances of Anatolian territory see Arslan, H. (2001). 16. yy. Osmanlı Toplumunda Yönetim, Nüfus, İskan, Göç ve Sürgün, İstanbul: Kaknüs. Erdoğan, M. and Kaya, A. (2015). Türkiye'nin Göç Tarihi 14. yy'dan 21.yy'a Türkiye'ye Göçler, İstanbul: Bilgi Üniversitesi Yayınları. Ağanoğlu, H. Y. (2012). Osmanlı'dan Cumhuriyete Balkanların Makus Talihi Göç, İstanbul: İz Yayıncılık. Nazır, B. (2006). Osmanlı'ya Sığınanlar: Macar ve Polonyalı Mülteciler, İstanbul: Yeditepe Yayınları. Aydemir, İ. (1988). Kuzey Kafkasyalıların Göç Tarihi, Ankara: Kendi Yayınları. Karpat, K. (1985). Ottoman Population (1830-1914), Medison: Wisconsin ve London.

the Lausanne Treaty (İçduygu and Sirkeci, 1999). According to Article 1 of the Additional Protocol to the Lausanne Treaty, the scope of the exchange was declared as "the mandatory exchange (exchange obligatoire) of Greek nationals of Muslim religion settled on Greek territory and Turkish nationals of Greek Orthodox religion settled on Turkish territory, starting on 1 May 1923". Article 2 of the Additional Protocol to the Lausanne Treaty of states that the exchange does not include Greeks residing in Istanbul and Muslims of Western Thrace. Moreover, "the migrants will lose the nationality of the country they have left and be counted as having obtained the nationality of the country of destination" (Article 7).

In the population exchange that took place after 1922, 400 thousand Rumelian Muslims living in Greece and approximately 1 million 200 thousand Anatolian Orthodox were exchanged (Çağlar, 2011; Emgili, 2014: 106; Gökaçtı, 2010). The migrant groups included Turkish Orthodox Karamanli as well (Çağlar, 2011). The inclusion of Karaman Orthodox Turks among the migrant groups indicates that the population exchange did not only involve an exchange based on ethnicity and that even non-Muslim Turks were forced to migrate (Anzerlioğlu, 2002). As for their integration into their new host countries, scholars note that even though the exchanged persons were accepted based on their religious affiliations, some, like the Karamanlis were marginalised by the fact that their language was Turkish (see e.g. Özdemir 2015).

Turkey experienced a great deal of simultaneous migration and emigration with the population exchange after the establishment of the Republic and was referred to from World War II until the 1980s as a country that mainly sent 'migrants'. During this period Turkish migration to many regions of the world, primarily European countries is observed. In order to meet the need for affordable labour force in Europe which was being restructured after World War II, labour agreements were signed with Germany in 1961 and with Austria, Belgium and Holland in 1964 and France in 1965 and Australia in 1967 and mass labour migrations followed. İçduygu and Sirkeci (1999) describe the migration experience of Turkey between the years 1960-1970 as 'the period of labour

migration'. Turkey's 'labour migration period' coincided with the First Five - Year Development Plan prepared after the enactment of the 1961 "to increase national savings, to steer investments with priorities necessary for the benefit of society and to realize economic, social and cultural development with democratic means" (State Planning Organization, 1963, Kirişçi, 2007). Labour migration, unemployment reduction and the flow of foreign exchange into the country were viewed as a policy tool in the First Five Year Development Plan (Kirişçi, 2007).

Abadan- Unat (1995) assesses the mass migrations to Europe, which were regarded as a means of preventing unemployment in the first Development Plan of Turkey, in six periods starting from the 1950s. The period from 1956 to 1961was initially the recruitment period whereas the migration period was initiated with bilateral agreements during 1961 and 1972. Labour migration began to decline during 1972 and 1975. In this period, due to the influence of the economic crisis which prevailed in Europe, immigration policies were suspended and this triggered the migration of Turks to Europe. Increases were observed in going to Europe for family reunifications and education between the years 19975-1978. Between 1978 and 1985, the number of Turks seeking asylum in Europe increased and during the same period a rise in xenophobia was observed in Europe (Abadan-Unat, 1995). Migration from Turkey to Europe after 1986 incurred for ethnic, religious and political reasons (Abadan-Unat, 1995).

Traditionally, Turkey is known as a country that emigrated in the 1960s because of the Turks going west to the migrant areas to counter the demand of developing Western economies as affordable labour (Kirişçi, 2007). More than 100,000 laborers went to Europe from Turkey every year until the economic recession in Europe after the 1972 Oil Crisis. Periodic economic stagnation in Europe during this period has been directly reflected in labour migration and in 1967, the number of migrant workers decreased to 9000 workers (İçduygu, 2009). Between 1961 and 1971, approximately 800,000 Turkish labourers started to work in Europe (Akgündüz, 2008). Most of the immigrants who are described as 'guest workers' in the agreements and who are expected to be useful in the reorganization of agriculture and industrial activities of Turkey by

returning to Turkey with the skills they have acquired in the West have not returned to Turkey and have taken their families to start a new life in the West (Kirişçi, 2007). Although the recruitment of migrants had ended due to the economic recession which started in Europe in the 1970s, migration from Turkey to Europe continue due to the reunification of families (Abadan-Unat, 1995; Kirişçi, 2007). After this period when Europe's need for affordable labour decreased, Turks migrated to Libya, Saudi Arabia and Iraq to join the labour market and the number of Turkish workers in these regions amounted to more than 700 thousand between 1970-1990 (İçduygu, 2009). Regardless of the declining need for labour and the strict migration policies applied in Europe during 1970-1990 and the subsequent migration of the Turkish labour force to other geographical regions the migration to European countries continued. An examination of the data for the years 1983-1994 reveals that 95% of 1.2 million Turks migrated to Austria, Belgium, Denmark, France, Germany, Holland, Norway, Sweden, Switzerland and England during this period (İçduygu and Sirkeci, 1999). At the beginning of the 1990s, annual Turkish migration to Europe reached 111 thousand on average (İçduygu and Sirkeci, 1999). Asylum applications reached an average of 37,000 people per year by the 1990s (İçduygu and Sirkeci, 1999).

It is evident that the Turkish labour migration into the Middle East and North Africa region until the 1990s decreased due to the 1991 Iraqi Gulf War and the crisis in the region. In the 1990s when immigration movements were intense, the end of the Cold War and the disintegration of the Soviet Bloc also established a new route for Turkish labour migration. With the rebuilding process that started in the region, Turkish workers and employers entered into new job searches in the former Soviet Bloc countries (Kirişçi, 2007). Between 1990 and 2005, more than 150 thousand Turks went to the former Soviet bloc countries as workers (İçduygu, 2009).

The Turkish population in Europe has increased over the years through labour migration, asylum, family reunification and birth. According to the figures for the Ministry for Foreign Affairs (2016), the number of Turks living abroad is 5 million, of which about 4 million live in Western Europe, 300 thousand live in North America, 200

thousand live in the Middle East and 150 thousand live in Australia.<sup>37</sup> Turks increasingly participating in economic activities in countries where they have settled over the years have become employers; there are approximately 140,000 Turkish businesses in Europe, half of which are located in Germany.<sup>38</sup>

An examination of the position of Turkey as an emigrant country reveals that a decline in the number of emigrating population from Turkey to other countries has taken place. On the other hand as of the 1980s, Turkey has once again become a country of immigration with the mass migrations from outside Europe, mainly from the Middle East and has become prominent as a transit country. Nevertheless, Turkey has gone through regulations in immigration and asylum legislation in the past and has made the legal process for asylum seekers compliant with international norms as a party to the Geneva Convention, which forms the basis of international asylum law. The disadvantages generated by the geographical location and the insertion of the geographical limitation, which is one of the main reasons for being a party to the Geneva Convention have become visible with the mass migrations, which are cited under the next heading.

### 3.1.2. Turkey as an Migrant Receiving and Transit Country

Many people lost their lives during the wars that took place before the declaration of the Republic (Balkan War 1912-1913, Turkish-Greek War 1912-1922, World War I 1914-1918) and thus the country's population was extremely low in the first years of the Republic. Increasing Turkey's low population was one of the main policies in the 1920s, when population size was considered as one of the main factors determining agriculture

<sup>37</sup> For more information see Ministry for Foreign Affairs of the Republic of Turkey (2016). *Turks Living Abroad* <a href="http://www.mfa.gov.tr/yurtdisinda-yasayan-turkler\_.tr.mfa">http://www.mfa.gov.tr/yurtdisinda-yasayan-turkler\_.tr.mfa</a> (viewed on June 26, 2016).

<sup>&</sup>lt;sup>38</sup> According to the results of the "Families with a migrant background: traditional values count" survey conducted by the Federal Ministry of Statistics in 2010, Turkish migrant families rank in first place among migrant families in Germany with 21%. According to the results of the "2011 Census: Just under a quarter of foreigners originate from Turkey" survey by the Federal Statistics Office, 6.2 million foreigners live in Germany as of 2011, 1.5 million (24.4%) of them are Turks which constitute the largest foreign population in Germany.

and economic productivity (Tamer and Bozbeyoğlu, 2004)<sup>39</sup>. Turkey's migration policy in the first years of the Republic aimed to increase the ethnic and religious homogenization of the country's population and initiated the process of building a nation-state and is based on the acceptance of Muslim and Turkish speakers and ethnic Turks who remained outside the migration policy carried out during the first years of the Republic into the country (Aktar, 2000).

The first regulations regarding the Settlement Law were carried out in 1926 due to the need to establish a legal statute concerning the immigrants to Turkey in the post-Turkish Greek population exchange period generating the first collective immigration movements of the Republican era (Duman, 2009). According to the first regulation of the law, Pomaks, Bosnians, Tatars and Albanians came to newly established Turkey as 'free immigrants' and settled permanently (Duman, 2009). The Settlement Law was finalized with regulations made in 1934 and the law was enacted with its publication in the Official Gazette dated the 21<sup>st</sup> of June 1934 number 2733. With the new Law including the statement "Turkish descent and culture" indicated that only the settlement of those with Turkish ethnicity or those who were Muslim and spoke Turkish would be accepted as lawful immigrants (Kale, 2005; Su, 2008).

Article 3 of the 1934 Settlement Law defines 'immigrants' and 'refugees' <sup>40</sup> while article 4 stipulates that those who are not affiliated with Turkish culture, anarchists, spies, nomads, Roma citizens and deportees will not be accepted as refugees, thus clarifying the characteristics of those who qualify as immigrants or refugees. In addition, it is indicated in the Law that no assistance will be given by the government to persons in the future "immigrants and refugees of the Turkic race who have notified in writing that they do not want resettlement assistance from the government and they are released to

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<sup>&</sup>lt;sup>39</sup> The results of the first population census carried out in 1927 with the aim of learning the population of the New Republic were officially announced in 1929 and declared that the population of Turkey is 11 million 777 thousand 814.

<sup>&</sup>lt;sup>40</sup> Article 3 of Settlement Law: "It has been notified that resident or nomadic members of Turkish descent or tribes and residents affiliated with Turkish culture can apply for émigré status in Turkey. It is further stated that those 'who have taken refuge in Turkey on a provisional basis without the intention of settling but out of necessity' have been acknowledged the right to be a refugee, refugees who declare their will to settle in Turkey permanently will be treated as immigrants.

settle anywhere they want in Turkey". Between 1923 and 1997, 1.6 million people of Turkish descent and culture have migrated to Turkey in accordance with the rules set forth in the Settlement Law (Ihlamur-Öner, 2013).

According to the Ministry of Interior's General Directorate of Migration Administration (2015), 384 thousand persons from Greece migrated to Turkey between 1922 and 1938 and 305 thousand 158 persons comprising 77 thousand 431 families from Yugoslavia-Macedonia migrated to Turkey between 1924 and 1936. Out of these families 14 thousand 494 people had been resettled by the state until 1950. The other families settled in Turkey as free immigrants.

One of the major migration flows to Anatolia incurred by the migrants from Bulgaria. Immigration from Bulgaria to Turkey continued until 1989 at intervals. With the 'Turkish - Bulgarian Residence Agreement' signed in 1925, Bulgarian people of Turkish descent migrated to Turkey in four stages until 1989. Between 1925 and 1949, 218 thousand 998 Bulgarian people of Turkish descent migrated to Turkey (Ministry of Interior General Directorate of Immigration, 2015). In the same period, 79 thousand 287 people from Romania came to Turkey. After the declaration of the People's Republic of Bulgaria in 1946, 156 thousand 63 Bulgarian people of turkish descentmigrated to Turkey between 1949 and 1951 while the "Turkey-Bulgaria Close Relatives Migration Agreement" was signed between 1968 and 1979. The last migration from Bulgaria to Turkey was carried out in 1989 when Bulgarian Turkish Muslim citizens were forced to migrate to Turkey by the Bulgarian government (General Directorate of Immigration of the Ministry for the Interior, 2015). In 1989, 345 thousand Bulgarian people of Turkish descent and Pomaks migrated to Turkey. Moreover, the occupation of East Turkestan Republic in 1950 by China generated a migration from East Turkestan to Turkey. 1850 East Turkestan citizens emigrated to Turkey in 1953-1955 (Gökmen, 2004). 800 people who fled from the Nazi regime emigrated from Germany to Turkey between 1933 and 1945 (General Directorate of Immigration of the Ministry of Interior, 2015).

The number of immigrants in the country reached 1 million 571 thousand 434 with the resettlement policies and the asylum seekers who escaped from oppression and

persecution and carried out on the basis of the return of Turkish descendants to Turkey from the first years of the republic to 1989 when the Cold War ended (General Directorate of Immigration 2015)<sup>41</sup>.

However, Turkey has faced different mass migrations since the beginning of the 1980s. As of this date, it is evident that Turkey has become a target country or transit zone for migrants who are not of Turkish descent and cultural heritage and who are fleeing the political instability and insecurity of the Middle East in particular. As of the 1980s, a new phase has started. In many situations, asylum seekers were accepted on a group basis and migrant groups whose numbers reached to millions started to live in Turkey for long periods (see e.g. in Özdemir, 2002).

# 3.1.3. Encountering Different Immigrant Societies: Iranian and Iraqi Immigrants (1970-1990)

In 1970 in the final phase of the Cold War the number of asylum applications increased throughout the world. During this period the coups in Latin America, civil wars in Africa, the Iran Revolution and the Iraqi Gulf Crisis at the end of the period increased transboundary human mobility and especially the last two had an impact on Turkey. The combined mass of migrants accompanied by the economic crisis in the same period also necessitated European states to make arrangements in the areas of migration and asylum.

Migration took place from Latin America where political instability prevailed between 1970 and 1990 due to military coups<sup>42</sup>. The Chilean coup, one of the major military

<sup>42</sup>Long-term military governments in Latin American states for significant periods from 1964 to 1990: Ecuador, 1963–1966 and 1972–1978; Guatemala, 1963–1985 (with an interlude from 1966–1969); Brazil, 1964–1985; Bolivia, 1964–1970 and 1971–1982; Argentina, 1966–1973 and 1976–1983; Peru, 1968–1980; Panama, 1968–1989; Honduras, 1963–1966 and 1972–1982; Chile, 1973–1990; and Uruguay, 1973–1984 (Loveman, 2011).

<sup>&</sup>lt;sup>41</sup> Considering that this figure does not include those with a 'free migrant' status who have arrived with their own means is indicative that it is much higher.

coups of this period caused more than 200 thousand people to leave the country (UNHCR, 2000). <sup>43</sup> After the Chilean military coup, more than 500 thousand Chileans left their country to seek asylum in another country, mainly Argentina, Australia, Canada, Venezuela, France, Norway and Sweden (Dona-Reveco and Levinson, 2012). In other Latin American countries, such as Chile, similar administrative changes and resulting civil wars have taken place. Over two million people from Nicaragua, El Salvador and Guatemala have left their homelands during the 1980s (UNHCR, 2000).

Apart from the migratory movements caused by the coups in Latin America, most important cross-border human movements between 1970 and 1990 were the migrations of Africans to the West. African asylum seekers separated from their countries due to civil wars in African countries constituted one-sixth of the world's political migrants and in 1975, one of every three political asylum seekers in the world was African (Zlotnik, 2004). In 1960, 79,000 African refugees sought asylum in different countries in the world, while the number increased to 6.4 million in 1990 (Zlotnik, 2004). Since Turkey is bordered by North Africa, it maintained its geographical limitation in the 1967 Additional Protocol signed during this period.

In the same period, the Iranian Islamic Revolution, which took place in 1979, became the herald of a massive migration wave for Turkey. Iranians, who generally opposed the Islamic regime that seized power in the post-revolution era, and whose numbers are expressed as thousands, consisting of people with middle and lower income levels, left their country and entered Turkey (Akçapar, 2006). Turkey, which does not conform to the provisions of the 1934 Settlement Law of "descending from the Turkish heritage and culture" and does not give refugee status to immigrants from outside Europe due to the geographical limitation made in the 1951 Geneva Convention, accepted asylum seekers from Iran by applying a 'flexible visa policy'. While some of the Iranians entering

<sup>&</sup>lt;sup>43</sup> The long political tensions followed by the gathering of representatives of the left wing under one roof and the economic reform package based on the Marxist ideology of the Unidad Popular government, which came to power in 1970, caused a military response (Larrain and Meller, 1991). On September 11, 1973, General Augusto Pinochet, who acted with the principle of "liberation of the country from chaos against the Marxist government" took over the government of the country and the military junta period was incepted. During this period, the UNHCR High Commissioner Sadruddin Aga Khan dispatched a telegraph to the military junta administration saying that 'Safe Havens' would be established in Chile for the protection of individuals who felt threatened by the new administration where they could stay until their asylum processes to other countries were completed (UNHCR, 1996).

Turkey in this process were registered with a visa, thousands of Iranians entered the country without going through a legal registration process (İçduygu, 2000). Some Iranians who came to Turkey after the Islamic Revolution in 1979 the official numbers of which are unknown, returned to their countries, some of them moved to Europe through Turkey and the remaining ones continued to live in Turkey (Kirişçi, 2010). Although the numbers are not fully known, it is estimated that the number of Iranians entering Turkey until the 1990s exceeded 1 million and it is estimated that about 100-200 Iranians continue to stay in Turkey (İçduygu, 2000).

İçduygu and Aksel (2013) separate the mass migration movements to Turkey which started after the Iranian Revolution into four phases. During the first mass migration movement between 1979 and 1987, which began with the Iranian Revolution, Turkey was introduced to the phenomenon of immigration due to political instability in the Middle East. The second time that Turkey was faced with mass migration was between 1988-1993. The largest mass migration movement in this period was realized when 51,542 Iraqi Kurds migrated to Turkey in 1988 from 16 different points and 467,489 Iraqi Kurd migrated to Turkey in 1991. This movement played a major role in the change of the immigration and asylum regime of Turkey (İçduygu and Aksel, 2012; Ministry of Interior General Directorate of Immigration, 2015). Iraqi immigrants who fled their countries due to war and internal unrest in Iraq between 1988 and 1991 entered Turkey in the form of three mass migration waves. During this mass migration movement, concerns were raised about terrorists who were members of the Kurdistan Workers' Party (PKK) entering Turkey along with Iraqi Kurds (Kirişçi, 2005)<sup>44</sup>. The first wave of migration from Iraq to Turkey occurred in 1988 when more than 50 thousand Iraqis were accepted as 'temporary guests' into Turkish territory (İçduygu, 2000). The provisions of the 1934 Resettlement Act and the geographical limitation inserted into the Geneva Convention the migrants could not receive refugee status and remained in Turkey to receive protection from a third country. In this period, countries outside Turkey have taken asylum applications on an individual basis. However, the

<sup>&</sup>lt;sup>44</sup> Since the Iraqi Kurds have migrated to Turkey, the increasing number of terrorist incidents that are ongoing are causing concern in terms of mass migration. Concern has been raised about terrorist group entering the country with Syrian immigrants in the process of entering Turkey.

political and economic burden of mass migration has been largely countered by the Republic of Turkey and many civilians and civil servants have lost their lives in the war carried out against the PKK.<sup>45</sup>

After the first wave of migration, about 2 thousand 500 Iraqis left Turkey and went to Iran and Syria, while about 3,000 migrated to the West with refugee status (İçduygu, 2000). There are also sources indicating that the number of Iraqi refugees reaching Europe is 8,140 as of 1990 (see Sirkeci, 2005). Two years after the first wave of Iraqi migration, Turkey was faced with the second largest Iraqi immigration in 1991. Because of the ongoing conflicts and nearly 100 thousand immigrants from the migration wave in 1989 still living in the country and the concerns regarding groups with the potential to join the procession of migrants and support the PKK, Turkey settled the immigrant groups into camps established along the zone near the Iraqi border instead of throughout the country. Nonetheless, many Iraqis have crossed the mountainous region along the Iraq-Turkey border in the process. During the Gulf War, it is estimated that close to 450 thousand Iraqis passed through the borders of Turkey (Apap, Carrera and Kirişçi, 2004). Despite the establishment of a 'safe zone' in the north of the 36th parallel and United Nations Security Council (UNSC) <sup>46</sup> resolution number 688, which envisages that Iraqis fleeing to Turkey are protected within this zone within the Iraqi border and remigration has started Turkey has borne the whole economic and political burden of mass migration during this period.

The conflicts that are ongoing in Turkey and the groups that support the PKK entering the country during the mass migrations have once again made the reason why the Republic of Turkey has signed the Geneva Convention with geographical limitation

<sup>&</sup>lt;sup>45</sup> The Subcommittee on the Investigation of Life Violations in the Context of Terrorism and Violent Events of the GNAT Human Rights Investigation Sub-Commission published a report on the 'Life Violations Investigation in the Scope of Terrorism and Violence' in 2013 and according to this report the number of civilians who lost their lives in the region was is 3924 during 1984-2012 due to attacks carried out by PKK terrorists in the gendarmerie zone. 538 of these civilian losses incurred during 1988-1991. 1633 civilian lives were lost between 1987-2011 in the security zone. Between 1988 and 1991, 7918 public servants lost their lives because of PKK terrorism.

<sup>&</sup>lt;sup>46</sup> For more information see United Nations (1991). *United Nations Security Council (UNSC) resolution number* 688http://daccess-dds\_ny.un.org/doc/RESOLUTION/GEN/NR0/596/24/IMG/NR059624.pdf?OpenElement (viewed on 19 May, 2016).

visible. The unstable political atmosphere of the region has once again been revealed, given the enormous number of asylum seekers flowing into Turkey as a result of the events in Iraq and Iran, giving an idea of the size of the immigrant potential in this region (Kirişçi, 1996). During this period, it has been noted that the geographical limitation was an important protection against irregular migration waves threatening the delicate cultural and ethnical balance of Turkey (Kirişçi, 1996).

With the 1990s Turkey which entered a third wave of migration started to receive immigrants from Iran, Iraq, the Balkans and the former Soviet Bloc countries and as a target country and transit country between Asia, Africa and Europe Turkey became associated with an irregular migrant population (İçduygu and Aksel, 2012). The Gulf Crisis coinciding with the end of the Cold War and the second largest immigrant mass entering the country during the migration of Iraqis to Turkey have made a major impact. Furthermore, approximately 20,000 Bosnians fleeing the dispersed Yugoslavia entered Turkey with a temporary protection status between 1992-1995 and approximately 17,000 Kosovars took refuge in Turkey between 1998-1999 (Kirişçi, 2007). After the Cold War, most of the Kosovars and Bosnians who entered Turkey returned to their countries (Kirişçi, 2007). It is apparent that Turkey has hosted more than a million political asylum seekers between 1988-1991.

After the Cold War ended Turkey was faced with the migration of Albanians, Bosnians Muslims, Pomaks, Ahiska Turks who were living in Turkey and wanted to return to their countries in a third wave of immigration with the collapse of Yugoslavia and Soviet Russia. At the same time with the collapse of Yugoslavia and Soviet Russia persons of Turkish descent living in these regions migrated to Turkey. During this period, a process, which included various migration types such as asylum, transit migration, and circular migration, which differed completely from one another, were introduced into migration literature (Kirişçi, 2004). Furthermore, most of the Kurds from Iraq had returned to their country and nearly half of the Bulgarian people of Turkish descent were accepted as Turkish citizens and they settled in Turkey (İçduygu and Aksel, 2012). Those who migrated from former Soviet Bloc countries initiated economic activities between their countries and Turkey and were described as circular

migrants who spent a few months in both countries. The movements of Iraqi and Iranian migrants who targeted Europe via Turkey were described as transit migrants (İçduygu and Aksel, 2012).

Irregular migration, transit migrants, human trafficking and smuggling were prominent on the agenda during the fourth migration period in Turkey between 1994 and 2001 (İçduygu and Aksel, 2012). During this period, the lack of legislative arrangements in Turkey became evident with the increase of migration waves of different qualities as well as the increase of migration-based activities (Tolay, 2012). The period between 1994 and 2001 is also a process during which important regulations were initiated in migration legislation.

The fifth period of migration, starting from 2001 with the classification made by İçduygu and Aksel (2012) and is still ongoing, is a period in which irregular migration, human trafficking and smuggling have increased considerably and which maintain a high level on the political agenda. With the influence of the EU membership process in 2000s, radical changes have been made in the legal and administrative structure of Turkey. In this period during which major steps were taken in order to harmonize the immigration and asylum regime with EU norms, efforts to enhance the maximum level of protection and minimize penetration of the borders have continued (İçduygu and Aksel, 2012). The debate over the lifting of the geographical limitation seems to have become an increasingly popular agenda item during the EU membership negotiations, which began in 2001.

# 3.2. LEGAL REGULATIONS IN THE MIGRATION LEGISLATION OF TURKEY AND THE EUROPEAN UNION MEMBERSHIP NEGOTIATIONS PROCESS

As mentioned in the first part of the study, the international norms regarding asylum began to formulate with the 1951 Geneva Convention, and Western European states initiated its integration process in the 1950s. The reasons that encouraged EU member states to determine common political attitudes in the area of immigration and asylum, and the regulations of the European stronghold regarding refugees and irregular migrants have been examined under the second chapter. In the same chapter, the role vested by the EU upon third countries to prevent irregular migration with its political stance that regards immigration as a security issue after the Cold War. Under this heading, the legislative arrangements that Turkey has made in the EU harmonization process as an EU candidate country will be referred to under this heading and the EU's policy of sharing the migratory burden with third parties will be examined through Turkey, a third country. The regulations enacted in the Turkish internal legal order are analysed under a new heading introduced into migration and asylum law with the EU harmonization process while a reply is sought to the question "Is the geographic limitation attached by Turkey in 1951 Geneva Convention still valid?".

### 3.2.1. The First Legal Arrangement in Legislation: The 1994 Regulation

As mentioned in part 3.1.3. of the study major migration waves incurred in the 1970s from Latin America and Africa and in addition to these migration waves the flow of refugees generated by the 1979 Iran Revolution and the Iraqi Gulf Crisis during 1988-91 manifested a major burden for Turkey with impacts that were tangible in European states. The fact that many Iranian and Iraqi asylum seekers, who crossed over Turkey and reached Europe and applied for asylum has transformed the geographical limitation implemented by Turkey in the 1951 Geneva Convention a matter of debate. European

states that received 13 thousand asylum applications in 1972 received 316 thousand 900 applications in 1989 and 696 500 applications in 1992 (Tarımcı, 2005). In 1990, with the end of the Cold War, more than 2.8 million people from former Soviet bloc countries crossed the Turkish border (Apap, Carrera, Kirişçi; 2004). Turkey's position as an immigrant receiving and transit country in this process became an element of concern monitored by the EU (Kirişçi, 2003).

In the post-Cold War era, the EU demanded that Turkey regulates its immigration policies at a governmental and non-governmental level in order to prevent irregular migration from reaching its borders (Kirişçi, 2003). According to one opinion, the EU demands that Turkey regulates its legislation in compliance with EU norms in order to protect the human rights of immigrants moving to Turkey and also because provided that Turkey becomes an EU member state, it is likely to be the first country where asylum is sought (Kirişçi, 2003). According to another opinion, the EU is spreading the burden of immigrants to third countries, especially Turkey, in the context of 'burden sharing' (see Tarımcı, 2005). Turkey's refugee and asylum regime has been influenced by different migration waves, which took place in the 1990s and the revival of relations with the EU, have been reflected as change in internal politics.

EU's move to regulate the migration policies to include source, target and transit countries has been reflected on the negotiations between Turkey and the EU. As a result of the ambiguous status of migrants entering Turkey, the first step in the regulation of Turkish legislation was to issue a regulation 'Regulation for the Procedures and Principles regarding foreigners and possible population movements for the purpose of collective refuge with individual foreigners demanding residence in Turkey for asylum in Turkey or to seek asylum in another country, published in the Official Gazette on 30 November 1994. The '1994 Regulation', which is the first document to be issued in the context of individual asylum and collective asylum, has filled the void in legislation. The objective of the 1994 regulation is to determine the competent institutions by determining the principles to be applied regarding foreigners who have sought asylum in Turkey or who want a residence permit from Turkey to seek asylum elsewhere collectively as well as populations movements that might be generated (Article 1).

The migration legislation which was partially scattered was agglomerated with this regulation. According to the Regulation those who enter Turkey through legal means may apply for asylum within 10 days to the governor's office of the province they are in while those who enter through irregular means can apply to the governor's office of the province of entry (1994 Regulation). After fingerprinting, identification and photographing the incumbent, the governor's office sends the file to the Ministry for Interior accompanied with an opinion report. Upon receipt of the views of the Ministry for Foreign Affairs and any other required institutions, the files are sent to UNHCR. In accordance with the 1994 Regulation, applications of foreigners from other than European countries are reported to UNHCR and asylum seekers are interviewed by UNHCR. Accommodation, transport, admission to third countries, passports, visa procedures and needs of asylum seekers whose applications have been accepted are countered by UNHCR, the International Organization for Migration (IMO) and the Turkish government. Asylum seekers who are not admitted on the basis of evaluations object within 15 days or leave the country within this period (General Directorate of Immigration, 2016) <sup>47</sup>. In its first version, the Regulation, which requires asylum seekers to apply for asylum within 5 days after their entry into Turkey, was frequently criticized in the process and with the impact of the decision made in the Jabari v. Turkey case with the European Court of Human Rights (ECHR) the time was extended to 10 days with an amendment in 2006<sup>48</sup>. In the litigation ECHR stipulated that loss of the right to asylum if the application can not be made within 5 days which was a short time was contrary to the provision of Article 3 of the European Convention on Human Rights which asserts that "no one shall be subjected to torture, inhuman or degrading treatment or punishment".

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<sup>&</sup>lt;sup>47</sup> For more information, see General Directorate of Immigration (2016). *Turkey's National Action Plan on the Adoption of the European Union Acquis in the Field of Asylum and Migration* http://www.goc.gov.tr/files/files/turkiye\_ulusal\_eylem\_plani(3).pdf (viewed on June 10, 2016).

<sup>&</sup>lt;sup>48</sup> For more information see Jabari v. Turkey, Appl. No. 40035/98 (11 July 2000). *Council of Europe: European Court of Human Rights*, http://www.refworld.org/docid/3ae6b6dac.html (viewed on June 10, 2016).

In order to put the Asylum Regulation, which entered into force in 1994, into practice the Turkish Government initiated training the staff about asylum issues in the central and provincial organizations. At this point, in cooperation with UNHCR, trainings have been formulated within the framework of 'Project for the Development of an Asylum System in Turkey'. Initiated in 1997, 527 Security personnel and 276 Gendarmerie personnel have received instruction within the scope of the Project (Kirişçi, 2012). In this process, cooperation with international organizations and non-governmental organizations to improve the conditions of asylum seekers has gained momentum. The International Catholic Migration Committee (ICMC) and the Turkish authorities have cooperated in the placement of immigrants. The Association of Solidarity with Migrants and Asylum Seekers (ASAM) was founded in 1995 and has begun to play an active role in aid to asylum seekers (Mannert, 2003). Amnesty International and Human Rights Watch started to publish reports on the situation of immigrants and asylum seekers in Turkey and the Anatolian Development Foundation has carried out efforts to provide assistance to those who have entered the country with the Iraqi asylum crisis that incurred in 1991 (Mannaert, 2003).

## 3.3. EUROPEAN UNION MEMBERSHIP NEGOTIATIONS PROCESS: FIRST PROGRESS REPORT AND ASYLUM AND MIGRATION NATIONAL ACTION PLAN INTERIM PERIOD (1998-2005)

Under this heading of the study, the history of EU-Turkey relations will be referred to, and the process of harmonizing Turkish legislation with the EU acquis, which started after Turkey's status as a candidate country, will be presented on the basis of the regulations implemented in the field of migration and asylum. The lifting of the geographical limitation in the 1951 Geneva Convention will be evaluated on the basis of the Progress Reports published annually by the EU.

### 3.3.1. A Brief History of Turkey-EU Relations

The Republic of Turkey has indicated a desire to be included in the West ever since its establishment. Turkey joined NATO officially in 1952. Following the membership to NATO Turkey applied for membership with EEC on the 31<sup>st</sup> of July 1959, one year after it was established and has maintained its intention to take part in the Community for 57 years. This long-running process is sometimes referred to as a period enclosed by negotiations which have accelerated as well as come to a halt from time to time. Turkey's EEC application for partnership was accepted seven years later and with the Ankara Agreement, which was signed on 12 September 1963 and entered into force on December 1, 1964, Turkey-EU relations officially commenced. The nature of the first Agreement signed between the Community which was established to generate an economic union among member countries and Turkey also had an economic basis. In the 2nd article of the Ankara Agreement, Turkey-EEC partnership was planned as a 3 phase process with the aim of reducing the differences between the Turkish economy and the Community and raising the level of life of the Turkish people and integrating them into the EEC. The first five-year period was called the 'preparation period' (Article 3). Unlike the 5 years foreseen for the preparatory period, it was completed in 8 years instead and with the enactment of the 'Additional Protocol', the 'transitional period' was incepted on January 1, 1973. As stated in Article 4 of the Ankara Agreement, the 'transitional period' includes the process of making the necessary arrangements to ensure that the "customs union is settling in an increasingly evolving manner". During this period, due to political and economic instability in Turkey, in 1978 Turkish authorities requested that affairs are frozen for five years. Two years later in 1980 with the military coup, relations with the EU were severed completely. Relations started to revitalize with the Ozal government (1983), the first government to be elected after the coup and in 1987 when an application for full membership with the Community was submitted, a more positive trend in comparison with the past started to follow. The positive progress of the relations continued, the Customs Union Agreement was signed in 1996 and a process started in the accompaniment of manifested criticism.

At main criticism was that Turkey, which was the only country to enter the Customs Union without EU membership, was obliged to unilaterally comply with foreign trade policies determined by EU members (Manisalı, 2012). As a result of the unilateral signing of the Customs Union, the foreign trade deficit of Turkey grew and Turkey became one of the largest markets for the EU (Doğan, 2004). Manisalı (2012) underlined that Turkey's entry into the Customs Union without EU membership created a one-way obligation for Turkey, while criticizing the model which also restricts trade relations with third countries. While Turkey's expectations in the Customs Union were 'to be an EU member' and 'to integrate with Western Europe', the EU's attitude had been shaped to the order of 'keep Turkey in tow' (Manisalı, 2012). By entering the Customs Union unilaterally Turkey agreed to abide by the foreign trade policies set by the EU, unilaterally implement EU's present and future commercial arrangements with third countries and not to execute agreements with third countries independently of the EU (Manisali, 2012). Furthermore, Turkey committed to act in accordance with the decisions of the EU Court of Justice in disputes arising in foreign trade and customs issues (Manisalı, 2012). Although 20 years have passed since the signing of the Customs Union Agreement, it is possible to say that Turkey, which has not been accepted as a member of the EU, entered into an arrangement, which generated unilateral gains for the EU in the Customs Union process. It needs to be considered that in terms of the overall asylum policy, the possibility that Turkey lifts the geographical limitation in the 1951 Geneva Convention in order to become a member of the EU while the reasons for the reservation prevail may generate a similar result.

After the signing of the Customs Union Agreement, the EU determined the countries for which full membership negotiations would be launched at the Luxembourg Summit, which convened in December 1997. According to the results of the summit, Turkey was reported as eligible for full membership to the EU, however it was indicated that there were problems in the political and economic area that prevented launching negotiations for full membership. The EU Council decided to set a strategy to prepare Turkey for full membership and to bring it closer to the EU (Öniş, 1997). Summit decisions indicated that negotiations with the Czech Republic, Estonia, Hungary, Poland, Slovenia and

Cyprus would begin in April 1998 while tighter economic relations would be established with Bulgaria, Romania, Latvia, Lithuania and Slovakia (Uysal, 2001). Two years after the Luxembourg Summit, the Helsinki Summit, which convened in December 1999, gave Turkey an official candidacy status. The issue of eliminating the geographical limitation has been prominent in the Progress Reports, which started to be published regularly since 1998, and draw a picture of the progress Turkey has made and the regulations that must be done.

The debates regarding the application of the economic and political criteria that the EU which has continued its structural and territorial by developing joint policies expects from the candidate countries at different levels for each candidate have been frequently on the agenda during the eastern enlargement process which was initiated with the Copenhagen Summit in 1993 (Erdal and Colakoğlu, 2007). The EU, which is more tolerant of Greece and Poland in terms of political reforms, has come to the point of stopping negotiations with Turkey on many occasions due to the relatively minor problems. Furthermore it is also evident that more financial assistance has been made to other peripheral countries such as Poland and Greece at the point where reforms are put into practice (Erdal and Colakoğlu, 2007). Şemşit (2008) compares the reflections of the arrangements made by Poland which gained full membership status in 2004, in the Polish regulation for immigration and asylum and the measures taken against irregular migration and measures taken by Turkey and underlines that both countries hold the position of transit country on irregular migration routes and undertake the roles of gatekeeper to the EU roles. Although Poland has not yet developed its migration and asylum legislation in line with EU norms, it has taken major steps to become a member of the European Union to prevent irregular migration, focusing on security-oriented policies and border security issues (Şemşit, 2008). There is a strong belief that Poland will be accepted as a full member of the EU in reciprocation for its security-oriented practices developed to prevent irregular migration. The aid and privileged approach extended by NATO and the EU for the reforms Poland has undertaken in other areas, such as border security, has enabled the country to an EU member in a short time (Erdal and Çolakoğlu, 2007; Şemşit, 2008). On the other hand, Turkey's long-standing EU

membership struggle has led to years of insecurity about full membership. The reflections of this insecurity have led to a period of stagnation in the process of harmonization with EU norms.

# 3.3.2. First Progress Report and Asylum and Migration National Action Plan Interim (1998-2005)

As pointed out in the second part of the study, towards the end of the 1990s, the issue of cooperation with third countries for the prevention of irregular migration became a prominent policy within the EU and major steps in this regard were taken with the Amsterdam Treaty (1999) and the Tampere Summit (1999). In the same period as of the 1990s, with the number of Iranian and Iraqi asylum seekers and millions of asylum seekers from former Soviet bloc countries, Turkey emerged as a transit country for the EU. With the accession negotiations, which began in 1998, Turkey's regulations on asylum and immigration legislation began to progress in connection with the EU accession process and Turkey's geographical limitation in the 1951 Geneva Convention became a controversial issue.

As of this date, regulations containing the process of harmonization with the EU norms within the academic literature have become a frequently discussed topic (İçduygu and Aksel, 2012). The first 'Progress Report' regarding Turkey which had not yet started full membership negotiations was drafted by the EU Commission in 1998 including comments about Turkey's progress towards accession with the EU. From this date onwards, regulations in the domestic legal system have begun to be implemented in many respects in line with the directives issued by the EU. On the other hand, the dates at which Turkey-EU negotiations started also coincide with the turnaround of Turkey-UNHCR relations.

It is important for Turkey to parallel the effort to harmonize with EU norms in the historical process with the changing political attitude of EU member states in terms of migration. The return to the nation-state oriented approach in immigration receiving

western countries during the 2000s is remarkable (İçduygu, Erder and Gençkaya, 2009). High-income EU countries with increased regular and irregular migration in the 2000s have started to adopt anti-immigration policies instead of pro-immigration policies and have developed an anti-immigrant stance politically and ideologically in public (İçduygu, Erdener and Gençkaya, 2009). The protectionist policies, which are empowered by the anti-immigrant stance of the public, have increased at both the national as well as the supranational levels. Turkey, which is anticipated to implement structural reforms within the framework of full membership negotiations with the EU while anti-immigration has increased in Western Europe and policies have begun to be formulated for the establishment of a European stronghold, has been asked to demonstrate an attitude that addresses immigration solely in humanitarian dimensions. Regardless of the national security problems ever since the first mass migration procession from Iraq, Turkey has been at the forefront of countries that have undertaken the greatest burden and been respectful of human rights in every humanitarian crisis, which has crossed the borders. The request that Turkey adapts its migration and asylum policies to European norms lifts the geographical limitation annotated in the 1951 Geneva Convention, and implements it as a whole is constantly expressed in the Progress Reports. The 1998 Progress Report, which is the first report prepared for Turkey, includes the following statements under the heading of 'Asylum' and expresses the importance of lifting the geographical limitation in terms of the EU perspective.

Turkey maintains a geographical reservation to the 1951 Geneva convention that means it only grants refugee status to people coming from European countries, thus largely rendering theasylum machinery ineffective. The lifting of this reservation is essential for Turkey's alignment on the rules in force in the European Union. There will also have to be a drastic improvement in the procedure for scrutiny of asylum requests (current deadline for submission of applications is too short) and the treatment of asylum seekers <sup>49</sup>

With the first report, which initiated relations with the EU, the geographical reservation was indicated as an element that made the asylum mechanisms ineffective and needed to be abolished. It is possible to see the reflection of the EU's policies on immigration and asylum in the third countries, developed in particular by the Treaty of Amsterdam, which entered into force in 1999, with the requirement of abolishing the geographical

<sup>&</sup>lt;sup>49</sup>For more information see Ministry for EU Affairs (2015). *Turkey Regular Progress Report 1998* http://www.ab.gov.tr/index.php?p=46224

limitation published in the Progress Report a year earlier. As of 1998, Turkey has hosted more asylum seekers than most other countries in the world. It is possible to foresee that Turkey, which still has difficulty in carrying the burden of irregular migrants and asylum-seekers while maintaining the geographical limitation, will become the final destination for asylum seekers who have difficulties entering the EU, if the regulations stipulated by the EU are carried out and the geographical limitation is cancelled (Mannaert, 2003). In particular, it is possible to say that if Turkey does not gain EU membership, Turkey will not gain any advantage from the mentioned policies and will be increasingly challenged in carrying the economic, social, cultural and political burden that it has undertaken.

With the December 1999 Helsinki Summit, Turkey officially gained candidate country status, while the first Regular Report was being discussed with regard to legislative requirements. The process of harmonization with the European Union norms gained momentum along with the acquisition of the candidate country status. With the 1999 Progress Report following the acquisition of candidate country status, Turkey was invited to lift the geographical limitation annotated in the Geneva Convention for the second time. 50 Again, the same report gave special importance to issues that could pose a security threat for the EU in the future such as the signing of re-admission agreements, the prevention of irregular migration and human trafficking and underlined the urgency of the regulations. The report emphasized the increase in the number of migrants using irregular migratory routes from Turkey to the EU and expressed concern that the number of irregular migrants had been 18 thousand in 1996 and was more than 40 thousand in 1998. It has been determined that irregular migrants, mostly from Pakistan, Bangladesh, Sri Lanka, Afghanistan and Iraq use Turkey as a transit zone. For irregular migrant groups, Turkey is the gateway to Greece and therefore to the EU, "a country which is not the final destination of migrants who seek to reach Western European countries" (1999 Progress Report). The fact that the geographical limitation is

<sup>&</sup>lt;sup>50</sup> For more information see Ministry for EU Affairs (2015). *Turkey Regular Progress Report 1999* http://www.ab.gov.tr/index.php?p=46224

maintained is regarded as an element "... which makes the asylum mechanism largely ineffective".

In the 2000 Progress Report <sup>51</sup>, it is considered important that Turkey adapts to EU norms, "improves" <sup>52</sup> immigration and asylum policies and prevents irregular migration before it reaches EU borders. In the Progress Report, it is especially reiterated that the list of countries for which Turkey issues visas must be harmonized with the EU (EU Progress Report, 2000: 47). Furthermore, the 2000 Progress Report stipulates that, "In the field of asylum, even if Turkey takes all asylum applications into consideration and acts with the UNHCR to examine these cases, the geographical limitation annotated in the Geneva Convention must be abolished" (EU Progress Report, 2000;48). This statement criticized Turkey's inability to grant refugee status to immigrants from outside Europe, in spite of the fact that Turkey, in cooperation with UNHCR, has accepted asylum applications to be processed to third countries.

In the 2001 Progress Report it is indicated that, "Turkey's willingness to lift the geographical reservation in the 1951 UN Convention on the Status of Refugees is regarded as a positive development in the area of asylum ..." (EU Progress Report, 2001: 83). The Report, which criticizes current asylum policies are criticized, has expectations regarding issues such as the establishment of reception centers and the improvement of registration conditions. While attention is drawn to the position of Turkey as a transit zone, the necessity of a re-admission agreement to be signed with the EU is expressed in order to prevent human trafficking and to make progress in the struggle against irregular migration. The signing of re-admission agreements with third countries, which constitute one of the pillars of the EU's security-based immigration and asylum policies has also become a consideration for Turkey. The European Union member states, which continue their work to establish a joint migration and asylum

<sup>51</sup> For more information see Ministry for EU Affairs (2015). *Turkey Regular Progress Report* 2000 http://www.ab.gov.tr/index.php?p=46224.

<sup>&</sup>lt;sup>52</sup> It is possible to envisage that in practice these regulations, which are referred to as 'improvements' in the EU Progress Reports, will result in the standardization of accommodation and reception centres, as well as keep migrant groups out of the EU.

regime in line with the Amsterdam Treaty signed in 1999, have concurred in the signing of re-admission agreements with third countries at the Seville Summit in 2002. The objective of this process is to transfer irregular migrants that have reached the EU through re-admission agreements signed with the countries they came from.<sup>53</sup> In 2002, the EU Council issued a directive to the Commission to initiate work on signing a readmission agreement with Turkey (Tabur, 2013). The subject of the signing of the readmission agreement, which will enable the return of irregular migrants arriving in the EU with irregular through Turkey, will frequently be on the agenda in the future. The criticisms for the Republic of Turkey in the 2001 EU Progress Report in different areas have been an argument for the early election debates were on the agenda of Turkey in 2002, and the parties in favour of early election turned the EU criticism into policy material. In order to receive positive comments in the 2002 Progress Report, the Justice and Development Party (AKP) wanted to hold early elections before the report to be published in October and have the confidence in the new government to be established reflected in the EU Progress Report.<sup>54</sup> Early elections were held in 2002 and the Justice and Development Party's election propaganda was noted to centre on the promise of EU membership. In the process of holding early elections in 2002, the coalition parties that included the issue of full membership in the EU acted to move the EU reform package from the Assembly agenda before the Progress Report.<sup>55</sup> As an output of this policy, the Turkish Grand National Assembly approved the EU reform package in August 2002, including the abolition of the death penalty. <sup>56</sup>The EU wing has welcomed this situation very positively, and its reflections have been seen in the 2002 Progress Report. In

<sup>&</sup>lt;sup>53</sup> Currently, Turkey has signed re-admission agreements forn irregular migrants with the following countries: Syria (2001), Kyrgyzstan (2003), Greece (2001), Romania (2004), Ukraine (2005), Pakistan (2010), Nigeria (2011), Russia (2011), Yemen (2011) (2012), Macedonia (2012), Belarus (2013), Montenegro (2013) and the EU (2013).

<sup>&</sup>lt;sup>54</sup> Erdoğan: Ekim Israrımız AB'den (the EU is our source of insistence in terms of October) (2002, 10July). *Hürriyet*. <a href="http://www.hurriyet.com.tr/erdogan-ekim-israrimiz-abden-83783">http://www.hurriyet.com.tr/erdogan-ekim-israrimiz-abden-83783</a> (viewed on 10 June, 2016).

Türkmen, İ. (2002, 9August). AB ve 3 Kasım. *Hürriyet*. <a href="http://www.hurriyet.com.tr/ab-ve-3-kasim-90438?">http://www.hurriyet.com.tr/ab-ve-3-kasim-90438?</a> sgm campaign=scn a004850058058000& sgm source=90438& sgm action=click (viewed on June10, 2016).

<sup>&</sup>lt;sup>56</sup> Saydemir, K., Babacan, N., Korkmaz, S. (2002, 3August). 256 Dev Adam Tarih Yazdı. (256 Giants wrote History) *Hürriyet*. <a href="http://www.hurriyet.com.tr/ab-ve-3-kasim-90438?">http://www.hurriyet.com.tr/ab-ve-3-kasim-90438?</a> sgm campaign=scn a004850058058000& sgm source=90438& sgm action=click (viewed on June 10, 2016).

addition, regulations carried out in the area of migration and asylum have had a positive reflection in the Regular Progress Report and works carried out in terms of visa regime, increased security at the external borders, work groups established within the Ministry of Interior and legislative studies for harmonization with the EU acquis have been evaluated positively. It is emphasized that the readmission agreement signed with Greece is not yet fully operational. Only 100 of the 6175 irregular migrants arrested in Greece during 2001 have been readmitted to Turkey, which has been criticized in the Progress Report.

The AKP government, which emerged as the ruling power in the early elections, had a major influence in terms of the regulations carried out in the migration and asylum legislation in 2002. It is possible to say that AKP policies differed from the policies of other actors and this effect has been felt in the Progress Reports published in the following years (Elitok, 2013). The AKP frequently expressed its EU membership issues in election propaganda, in line with the EU norms used as an early electoral drive. It is stated in the election declarations that full membership of Turkey to the European Union is regarded as the natural end result of the modernization process and that the illusion of the economic and political provisions of the EU criteria will lead to the modernization of the state and society.

Since 2003, important steps have been taken to adapt to the common Justice, Security and Home Affairs policies of the EU, working groups have been formed to bring together numerous stakeholders for the formulation and implementation of legal regulations. During these years, the efforts of policy makers to implement the Copenhagen Criteria increased (Apap, Carrera, Kirişçi, 2004). It is stated in the 'National Program'<sup>57</sup> published in the Official Gazette in 2003, that Turkey is a party to the 1951 Convention and the 1967 Protocol and that the principle of geographical reservation in the Convention has been adopted and that the principle of non-refoulement for every refugee was 'meticulously' adhered to. In the National Program it is stated that "The geographical reservation issue will be lifted, subject to extensive

<sup>&</sup>lt;sup>57</sup> For National Programme, see the Official Gazette numbered 25178 adn dated 24 July 2003.

consideration during Turkey's accession negotiations and provided that the necessary legislation and infrastructural changes are mode in such a way that direct refugee movements into our country are not encouraged and provided that EU countries display diligence in sharing the burden " (National Program, 2003, Priority 24.1). At the same time, a radical step has been taken by specifying that a special asylum law will be issued by 2005 under Priority 24.1.

The subject of lifting the geographical reservation has been revived in academic literature together with the National Program. The debate on the regulations demanded from adjacent and candidate countries during a period when the EU is endeavouring to improve its security based legislation on migration and asylum and formulate them as a way of protecting the borders of the EU and that this prepares the ground for human rights violations is still ongoing (see Kirişçi, 2003). Academic literature, politicians and state bureaucrats have also indicated that if the geographical reservation is lifted without achieving EU membership and a readmission agreement is signed with the EU which is critical (other readmission agreements have been signed with countries outside Europe, the only critical readmission agreement is with the EU) Turkey will be the first country of asylum for numerous irregular transitory migrants (see Apap, Carrera and Kirişçi, 2004; Kirişçi, 2003; Kirişçi, 2004).

Significant changes have been made in the immigration and asylum legislation between 2002 and 2005. Primarily, the "Law on Work Permits for Foreigners" <sup>58</sup>, the Ministry for Labor and Social Security has been approved as the sole authority responsible for granting work permits to foreigners (Tolay, 2012). In the first Progress Report (2004) following this regulation it was noted that 'Turkey's decision of initiating visa applications for countries on the EU's 'negative visa list' has been considered a positive development, highlighting the need to fully align visa obligations of the EU and Turkey. Turkey's struggle against human trafficking and smuggling has also been welcomed.

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<sup>&</sup>lt;sup>58</sup> With the Law numbered 4817 and accepted on 27.02.2003, foreigners in Turkey are required to get permit for working, principles related to the workinh permits to be given to foreigners are determined. Working permits are started to be given only by the Ministry of Labour and Social Security as from tgis date. Related to respective permits, many institutions and organisations were assigned to issue working permit in different fields before the enforcement of law. For detaied information, see T.R. Ministry of Labour and Social Security (2014). Operating Manuel for Working Permits of Foreigners, Publication No: 10

Within the scope of the National Program, various projects have started to be carried out in order to execute the work for the alignment of asylum and migration processes with the EU acquis. For example, a project titled "TR02-JH-03: Supporting the Development of an Action Plan for the Implementation of the Migration and Asylum Strategy of Turkey" (Twinning Project) was put into practice on 8 March 2004 with the consortium of Denmark and the United Kingdom.

To reiterate the significant developments of this period, the preparation of Turkey for EU membership started with the preparation of the text titled 'European Strategy for Turkey' on the 3<sup>rd</sup> of March 1998 by the EU Commission gained momentum with the decision taken at the Brussels Summit on the 16-17 of December 2004 for the initiation of full membership negotiations between Turkey and the EU. On the 3<sup>rd</sup> of October 2005, the EU Council and Turkey signed the "Framework for Accession Negotiations" and started full membership negotiations. During the process of Turkey-EU negotiations between 1998 and 2005, Turkey's border gates were regulated in the area of migration, asylum, a harmonization process with the EU's visa list was initiated, and re-admission agreements were signed with third countries. In 2002, the importance given to EU harmonization regulations increased with the new government and harmonization with EU norms has become a decisive element in political regimes (Öniş, 2003).

## 3.3.3. Period Between Asylum and Immigration National Action Plan-Signing of Readmission Agreement (2005-2012)

Even the period between 2005 and 2008 was a time when important regulations were applied Turkish legislation, the issue of signing the readmission agreements and the lifting the geographic limitation in the Progress Reports continued to be brought on the agenda. "Turkey's National Action Plan on the Adoption of the Acquis of the European Union in the Field of Asylum and Migration", which Turkey has drawn its own road map under the process of harmonization of the European Union-Turkey asylum

legislation, entered into force on 25 March 2005<sup>59</sup>. In the Action Plan, the following expressions are mentioned in order to lifting the geographic limitation:

The issue of lifting the geographic limitation is an issue that should be addressed in such a way as not to damage the economic, social and cultural conditions of Turkey. Because Turkey became a country that started to climb in the 1980s and was affected much by the collective population movements which are changing the world conjuncture.

Turkey's cautious approach about the steps taken after the Action Plan can be attributed to the concern of national bureaucrats, that Turkey's transformation into a buffer-zone and migrant depot.

In the 2005 Action Plan, it is envisaged that the proposal for the lifting of the geographical limitation will be presented in the parliament in 2012. Shortly after the publication of the National Action Plan, in May 2005, the deliberations with EU member states (I know that I have not signed an individual agreement with each member country where there is a single readmission agreement, or entered into such a process) related to signing of readmission agreement have been initiated.

Again, in line with the objectives set out in the National Action Plan for Asylum and Migration, the Settlement Law of 1934 was amended in 2006<sup>60</sup>. In the 1934 Settlement Law, an article is prepared that states "those who are not affiliated with Turkish culture; anarchists; spies; nomadic gypsies and those who have been excluded from the country cannot be taken as immigrant". According to the Law No. 5543, the following statements are included "Strangers who are not descended fro Turkish race or connected to Turkish culture, Those who are descended from Turkish race or connected to Turkish culture but deported and those whose presence are not considered suitable for security in Turkey are not considered as immigrants". In the New Law the necessity of

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<sup>&</sup>lt;sup>59</sup> For more information see Ministry of Interior Affairs Directorate General for Migration Administration. National Action Plan of Turkey for Undertaking European Union Legislation In the Field of Asylum and Migration <a href="http://www.goc.gov.tr/files/files/turkiye\_ulusal\_eylem\_plani(2).pdf">http://www.goc.gov.tr/files/files/turkiye\_ulusal\_eylem\_plani(2).pdf</a>

 $<sup>^{60}</sup>$  Settlement Law numbered 5543 and accepted 19.09.2006 was published in the Official Gazette numbered 26301 and dated 26.09.2006.

"belonging to the Turkish descent and the culture" has been maintained in order to gain the status of settled immigrant. However, "to be member of Turkish descent and culture", has been associated with such elements as "willingness to belong to Turkish descent and culture", and membership of a Muslim-Sunni ethnic group (Kirişçi, 2010). Due to its compatibility with the definition made, it is more difficult for those who are not included in the Sunni sect and Armenians, Greeks, Jews and Kurds to become settled immigrants in Turkey (Kirişçi, 2010). Law No. 5543 (2006) includes definitions of immigrants as well as free and immigrants and individual and collective immigrants (Law No. 5543, Article 3). Progress Reports published in 2007, 2008 and 2009 noted limited progress under the titles of migration and asylum. In the 2009 Report (page 74), the following statements were made that sufficient progress has not been made regarding the lifting of geographical limitation and the improvement of the situation of current migrants:

Turkey continues to protect the geographical limitation in the 1951 Convention relating to the Statutory Status of Refugees and the relevant 1967 Protocol. There are no high-quality preparatory studies to meet the needs of the high numbered people registered every year and a suitable plan with sufficient capacity.

On the other hand, in the process of the immigration and asylum legislative harmonization process in 2010, the Turkish Penal Code adopted amendments to Article 79<sup>61</sup> on the smuggling of migrants, which increased the penalties imposed on smugglers. In March 2010, the Ministry of the Interior issued a circular on the fight against irregular migration<sup>62</sup>. It is emphasized that the asylum applications will be taken before

<sup>&</sup>lt;sup>61</sup> In the article 79 of Turkish Penal Code numbered 5237: Any person who, by illegal means and with the purpose of obtaining, directly or indirectly, a material gain: a) enables a non citizen to enter, or remain in, the country, or b) enables a Turkish citizen or a non citizen to go abroad, shall be sentenced to a penalty of imprisonment for a term of three to eight years and a judicial fine of up to ten thousand days. (Sentence Added on 22 July 2010 – By Article 6 of the Law no. 6008) where the offence remains as an incomplete attempt, the penalty shall be imposed as if completed. (2) (Paragraph Added on 22 July 2010 – By Article 6 of the Law no. 6008) The penalty to be imposed shall be increased by a half to two-third where it: a) constitutes a danger to the lives of the victims, b) subjects the victims to degrading treatment. (3) Where the offence is committed in the course of the activities of a criminal organization, the penalty to be imposed shall be increased by one half. (4) Where the offence is committed by a legal entity, the relevant security measures shall be imposed upon that legal entity.

<sup>&</sup>lt;sup>62</sup> According to the circular dated 2010/19 and 19/037/2010 on "Refugees and Asylum-seekers" Those who declare that the financial situation of the asylum seekers is not enough to pay the residence permit are stated in the fact that

the deportation of those who have been arrested in the state of irregular migration, or who have been deported because of a criminal offense and who have been migrated to Turkey again (Çetin, 2011).

Between 2002 and 2010, when the reflection of increasing security concerns in Europe was observed in Turkey, some regulations on immigration and asylum legislation were carried out by holding the security concern on the front page. The number of irregular migrants caught was 900 thousand in 1995-2012, 32 thousand 667 in 2010, 44 thousand 415 in 2011 and 42.690 in 2013 (Ministry of Foreign Affairs, 2016). However, by definition, it is impossible to reach the exact numbers of irregular migrants. Criticisms against Turkey in the EU Progress Reports continue, with EU efforts to prevent migration in the third countries and Turkey's "illegal immigration" struggle, and joint efforts on 'border security'. As mentioned in detail in the second part of the work, terrorism-migration link in the United States on September 11, 2001, and terroristimmigration linkage in 2002 on the impact of the explosions in Madrid in 2005 in London were tightened by Western countries. As a result of this perception despite the lack of a direct link between the terrorist acts and the immigrants, the security measures implemented by the EU on immigration and asylum issues have been increased. Among the regulations implemented in this period are FRONTEX, which is a structure responsible for the border security of EU and fored as result of Decree of EU numbered 2007/2004, has begun cross-border operations.

Within the same period, the Council Regulation "On the Determination of Criteria and Mechanisms for the Identification of Member States Responsible for the Examination of the Asylum Application made to a Member State by a other Member States" was adopted within the same period, and the asylum application was included in the Community column with the Regulation called Dublin II (323/2003) (Article 63/1 of the Amsterdam Treaty). With Dublin II, which was adopted in 2003 as a result of the studies that started in 2000, it was aimed to prevent asylum application for the extension of residence permit in member countries. With Dublin II, asylum applications will be

the foreigners in the provinces of the Foreigners / Passport Branches are found to be insufficient to pay the expenses and the residence permits of the students are arranged without charge.

made and the regulations for the country to be evaluated will be consolidated, and necessary arrangements have been made to keep the application period short (Özcan, 2005). Basically, the asylum-seeker has begun to apply for asylum in the country of entry, and the procedure for the asylum application has been started to be determined by the asylum-seeker in the EU country which was first entered and returned to that country.

On the other hand, with the Lisbon Treaty, which came into effect in 2009, the issues of internal security and control of external borders were organized for the first time directly under the roof of a Treaty. A year after the Lisbon Treaty, the Parliamentary Human Rights Investigation Commission published a report <sup>63</sup> on June 18, 2010, which mentions the fact that the number of refugees in Turkey is low, while the number of irregular migrants is high. In the report it is emphasized that the asylum problem should not be considered separately from the human rights dimension due to security concerns.

Table 1. Top Five Origin Countries sending the Most Irregular Migrants, Transit Migrants and Non-Irregular Migrants with the purpose of employment to Turkey, 2000-2010

Irregular Migrants		Transit Migrants		Irregular Migrants for Working Purposes	
Country	Total	Country	Total	Country	Total
Iraq	93,862	Iraq	93,862	Moldova	50,288
Pakistan	65,604	Pakistan	65,604	Georgia	25,310
Afghanistan	58,436	Afghanistan	58,436	Romania	20,814

For more information see Human Rights Investigation Commission 23th Term Report (2010)https://www.tbmm.gov.tr/komisyon/insanhaklari/belge/3 Yasama Yili %20Faaliyet Raporu.pdf

Moldova	50,288	Iran	22,132	Russian Federation	19,943
Georgia	23,310	Bangladesh	17,409	Ukraine	19,487

For table, see İçduygu and Aksel (2012)

As mentioned in detail in the second part of the report, FRONTEX, established in 2004 as a structure responsible for the EU's external border security, emphasizes the increase in the number of irregular migrants who cross the Turkish borders and want to enter the EU in the 2010 Risk Analysis Report. According to FRONTEX (2010) data, around 29,000 irregular migrants have reached Greece through the borders of Turkey annually. In the 2010 FRONTEX Risk Analysis Report, it is stated that Turkey is the most used transit region of irregular migrants (FRONTEX, 2010)<sup>64</sup>. In response to this increase, Rapid Border Intervention Teams (RABITs), with the call of Greece, were placed on the Turkish-Greek border. With this intervention, it was targeted to arrest irregular migrants who would pass to Greece. The intention to close the 12,5 km Turkish-Greek land border with wire-wall is a product of the strict border security approach of Greece and the EU.65 (Karagül and Çiçekçi, 2011). The RABITs project, which involves violations of the right to life and security of the refuges who are in the struggle for survival, displays the attitude of the European Union to immigration and refugees (Karagül ve Çiçekçi 2011). Operation, which is an example of a strictly security-oriented policy in the EU's immigration and asylum legislation, and the contradiction of the human rights centered migration policies expected from Turkey during the period are clearly visible.

It is seen that no action was taken in 2010 regarding the geographical limitation committed until 2012 by the Turkish National Action Plan on the Adoption of the European Union Acquis in the Field of Asylum and Migration, which took effect on 25

<sup>&</sup>lt;sup>64</sup> For more information see FRONTEX Risk Analysis Report (2010) <a href="http://frontex.europa.eu/news/fran-quarterly-q02-2010-sCWzvg">http://frontex.europa.eu/news/fran-quarterly-q02-2010-sCWzvg</a>

<sup>&</sup>lt;sup>65</sup> "With the protocol signed between the Republic of Turkey and the Republic of Greece on Athens on 8 November 2001 on the implementation of Article 8 of the" Agreement on Crime and Terrorism, Organized Crime, Drug Smuggling and the Struggle against Illegal Migration "dated 20 January 2000, The Admission Agreement entered into force and was approved by Turkey on 12 March 2002 and published in the Official Gazette on 24 April 2002.

March 2005. The increasing number of irregular migrants in Turkey in these years constitutes an obstacle to bringing the issue of removing the geographical limitation into the agenda of the parliament. The constant increase in the number of irregular migrants and the tight security measures against irregular migrants on the western border increase the risk of Turkey becoming an 'immigrant depot' due to the permeability of the eastern borders and the political instability in the region.

It is emphasized that Turkey is an important 'transit country' of irregular migrants in the 2011-2012 Progress Reports, which was prepared in the light of this data. The number of third-country nationals attempting to enter the EU countries through Turkey has increased by 44% compared to 2009, according to the 2011 Progress Reports (EU Progress Report, 2011: 89). 55 thousand 630 irregular migrants were detected while trying to enter the country in 2011 and 44 thousand 415 irregular migrants were arrested (EU Progress Report, 2011; 89). The influence of the civil war that started in Syria in this period is one of the most concrete reasons of the increase in the number of irregular migrants in the entry of the first Syrian immigrant communities to Turkey.

Criticisms about the functioning of the Readmission Agreement signed with Greece in 2001 continue in the 2011 Report. The criticism that Turkey has accepted 450 people when Greece accepts the re-admission of 2.508 persons is included in the 2012 Progress Report. It is also emphasized that Turkey is an important target country as well as a transit country. In the '2015 International Migration Outlook' Report<sup>66</sup> published by the Organization for Economic Co-operation and Development (OECD) in 2015, it is reported that Turkey is a target country for irregular migrants. According to the OECD Report, Turkey is the third country in the world behind Germany and the US, which is the most targeted by asylum seekers. Syrian asylum seekers constitute the largest number of asylum seekers among these groups. Considering the increase in the number of irregular migrants coming from the complex Middle East geography, Turkey, which has completed thirteen years in EU full membership negotiations, seems to have the risk

<sup>66</sup> See OECD (2015), International Migration Outlook 2015, OECD Publishing, Paris. http://www.oecd.ilibrary.org/sites/7e30eda6-tr/index.html;jsessionid=464opu42b1tcm.x-oecd-live-02?itemId=/content/summary/7e30eda6-tr&mimeType=text/html& csp =41ad90e825b416986c9028d79b9c758b

of turning into a 'buffer zone' if it lifts the geographical limitation (İçduygu, 2015c). Political steps taken while taking this risk may create political, economic, cultural and social problems in the long run. Turkey's role as a target country for immigrants within a short period makes it necessary to go to legal arrangements with awareness of the responsibilities imposed on target countries. In the next chapter of the study, examples from transit countries playing a similar role to Turkey and the changing role of Turkey from a transit country into a target country.

### 3.3.4. Target Country for Different Migrant Groups: Turkey

Turkey, which has become a transit zone for many irregular migrants seeking to move to Europe due to its location on the migration routes between Asia, Africa and Europe, appears to be a 'target country' for immigrants at the same time in the last forty years(Erdoğan, 2015; Kirişçi, 2003; İçduygu, 2009; 2010; 2011; İçduygu and Aksel, 2012; İçduygu and Karaçay, 2012). In this section, Turkey's position as the 'transit country' and/or 'target country' in the literature along with the 1990's will be evaluated in the middle of the migration routes between Asia and Europe. Then the situation of other transit regions similar to Turkey in the world will be assessed and the tendency to remain on the routes they used as the last transit zone will be invested in Turkey rather than preferring to return to the countries of irregular migrant groups that fail to enter from Europe's thickening walls.

The transit migration phenomenon, which emerged as a new terminology in the international arena since the 1990s, is the main axis of this section. In a 'transit migration', which is generally defined as a move to a more developed country and a group of people trying to travel to Europe through a third country, it is a rather complicated phenomenon with meanings like 'irregular migration', 'human trafficking', 'human smuggling' (Düvell, 2012; Düvell and Vollmer, 2009; Wissink, Düvell and Eerdewijk, 2013; Pitea, 2010). In the middle of the 'international migration routes', countries at critical points are tasked with forming buffer zones for these migratory

waves (de Haas, 2008, Düvell, 2012, Sorensen, 2006). The third countries, which have become transit zones on the way to reach wealth, are also trying to direct increasing human movements on the axis of their internal and external security policies (Düvell, 2012).

Countries that have become transit zones usually which bordered by developing and developed countries, serve as protection walls at the point of reaching the target country (Kimball, 2007: 12). According to Kimball (2007), Russia, Czech Republic, Hungary, Morocco, Tunisia, Algeria, Slovakia, Slovenia, Poland, Mexico and Turkey are transit countries. According to Carling's (2007) classification, the buffer zones are comprised of the former Soviet bloc countries, which are located between the developed Western European countries and the less-developed ones, and the countries that received temporary labor migration from the East. According to this classification, Morocco, Tunisia, Turkey, Cape Verde, Algeria and Lebanon are categorized in the buffer zone category. De Haas (2008) who conduct his studies on the migration from Africa to Europe states that Morocco, Tunisia, Libya and Algeria are important as transit regions. It is known that these buffer zone countries are also countries where human trafficking activities are carried out by local people, which also emigrate to Europe (Carling, 2007). In other words, many authors use the term 'transit' and 'buffer' region terms as synonyms.

Following the security-cantered shaping arrangements of European Union common migration policies that were strengthened in the 1990s, it has been seen that Africans tend to settle permanently in Morocco, Tunisia, Libya and Algeria, where they are used as transit zones (de Haas, 2009). De Haas (2009) pointed out that migration from the South Sahara to Europe, which is heavily based on economic-based migration movements, moving from Morocco through Spain, through Italy via Libya and from Malta to Spain via Algeria. The studies on these countries, which are transit regions of African immigrants, have raised the question of the fact that the so-called transit countries have become target countries at the same time. According to the 2008 data, 65,000-120,000 immigrants from South African territories (sub-Saharan) have entered the North African countries, with 70-80% of this number trying to reach Europe by way

of Libya and 20-30% by choosing Algeria and Morocco. According to these calculations, it is seen that 20-38% of transit migrants can reach Europe (de Haas, 2007). In the same years, the number of immigrants living in Libya and Algeria has reached millions (Collyer and de Haas, 2012). De Haas (2008; 12) states that exaggerated numbers of media outlets in Europe are used as a means of accepting restrictive political decisions taken in the field of migration and asylum to the European public and the international community.

Many other irregular migrants from countries like Chad, Nigeria, Sudan, and Egypt entered the country with the 'open door policy' initiated in 1990s in Libya, another African country with its doors opening to Europe. It has been seen that irregular 'migrants, who are shown as passengers temporarily staying in the local community', have started to live as business owners in many professions (Bredeloup and Pliez, 2011). The idea that an millions of irregular migrants crossing from Libya with the intention of going to Europe dominated the local population, while in reality many irregular migrants constantly start living in Libya (Bredeloup and Pliez, 2011). The death of 130 South-Saharan immigrants in the uprising in Libya against African immigrants in 2000 attracted Europe's attention to this country (Paoletti, 2011). Providing aid package including economic aid for the repatriation of hundreds of thousands of irregular migrants from Libya to the Italian island of Lampedusa to Libya, prevention of their entry through FRONTEX boots and intervention at irregular municipalities are among the important interventions the EU has undertaken in order to prevent irregular migration (Lutterbeck, 2009; Paoletti, 2011).

Efforts to accumulate the necessary funds for the rest of their journey continue to create an economic input for transit countries, as immigrants who transit from their transit regions to their main objectives, Europe, and for some years in these regions, join the cheap labour market and start working in transit countries (Collyer, 2006; Collyer, 2007, Collyer and de Haas, 2012; Düvell, 2012). It is seen that this transit migration economy is forced in transit countries and these countries supported this transit economy (de Haas, 2012). On the other hand, in countries with transit zones, the reality is that there is an obstacle to the migration of irregular migrants to the EU by increasing

the security at the border with Europe as a result of negotiations with the EU (Düvel, 2012)

Transit countries on the transit routes to Europe seem to be the target country as second best option for immigrants who cannot reach Europe but do not want to return to their country (Carling, 2007). In the buffer zones, human trafficking is a rapidly developing sector, while border security is increasing in the direction of the EU's irregular migration place, that is, in the 'transit regions'. Irregular migrants who seek a way out of the transit country and join the cheap labour market to accumulate the money demanded by human traffickers during their stay in these regions often choose to terminate their journey in the transit zone in the event of the accumulation of money (Carling, 2007). The fact that the attempts to enter the EU in irregular ways resulted in fatal accidents and that the immigrants' courage with the increasing deaths during the transit breaks down, tendency to stay in the countries considered as the 'second best option' is increasing (Carling, 2007).

Italy and Spain, which have maritime boundaries to African countries, are among the transit countries used as transit zones, even though they are within the EU border, for irregular transit migrants who have managed to get out of the buffer zone (Baldwin-Edwards, 2002). Italy and Spain are a gateway for many African migrants to travel to the Netherlands and Germany. African immigrants reaching the Canary Islands via Agadez, Gao (Mali), Algeria, Morocco are often entering the EU through Italy and Spain (Sorensen, 2006). As Sorensen (2006) notes, Italy and Spain are the door to Europe for irregular Chinese immigrants from Malaysia to Nigeria and then from Morocco. Poland, another member of the European Union, maintains its status as a transit zone in the face of migration waves from former Soviet bloc countries. At the same time, Poland is the target EU country that immigrants have chosen to remain permanently in this process, such as Italy and Spain (Şemşit, 2008).

The European Union's the policy of giving less work to the migrant labour market with the 1972 Petroleum Crisis and the walls of the 'Fortress Europe' which is formed to prevent the migration waves that will come to Soviet bloc gradually increased (Açıkmeşe, 2011). It is seen that the policies of the EU have been transformed into burden-shifting policies (Düvell, 2012) in which migration policies are expressed on the basis of burden-sharing in neighbouring countries (Düvell, 2012; Lavenex, 2004). In particular, prevention of irregular migration towards Turkey through the EU is one of the main agenda items of the EU, and there is intense pressure on Turkey in this regard (Düvell, 2012). The fact that irregular migrant populations continue to remain in transit areas as a result of EU border protection as a third country, raises the question of the acceptance of irregular immigrants by indigenous people in transit countries. In Turkey, the number of immigrants is increasing day by day even the approach to immigration is not friendly (Düvell, 2012). When the graph showing the number of irregular migrants caught by years in Turkey (Figure 1) is examined, it is seen that there is a high increase in the number of irregular migrants caught between 2005 and 2015. The number of irregular migrants caught in Turkey in 2015 is 146 thousand 485 persons and 73 thousand 422 of this number consists of the Syrians who can apply to get temporary protection status. The other half is irregular migrants from the Middle East and Africa. The numbers only indicate the number of arrested irregular migrants and it can be easily predicted that the number of irregular migrant population in Turkey is much higher than this number.

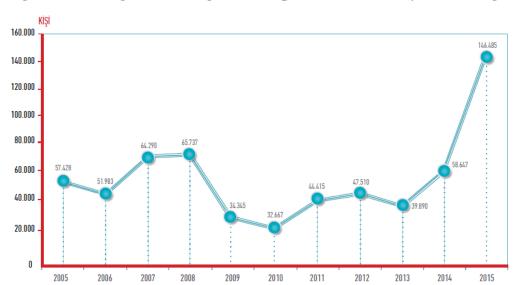


Figure 1: Irregular Immigrants Captured in Turkey according to years

### Source: Ministry of Interior General Directorate of Migration Administration Turkey Immigration Report for 2015<sup>67</sup>

It will be useful to evaluate the proportion of irregular migrants captured in Turkey together with the number of asylum applications in Turkey. When Turkey Immigration Report 2015 (General Directorate of Migration Administration, 2015) is examined, Turkey is the seventh European country with international protection applications in 2015. In 2015, 64 thousand 232 persons made international protection applications in Turkey. Also according to UNHCR data; Turkey is the most home to asylum seekers in the world (UNHCR, 2016).<sup>68</sup> Pakistan, Lebanon, Iran, Ethiopia and Jordan follow UNHCR, which is the country that hosts the most asylum seekers (UNHCR, 2017).<sup>69</sup> According to the UNHCR dated January 19, 2017 there are 4 million 863 thousand 684 Syrian refugees worldwide. 2.8 million of this number were found in Turkey, 2 million Syrians were registered in the borders of Jordan, Iraq, Lebanon and Egypt (UNHCR, 2016). According to the Ministry of Interior's General Directorate of Immigration Administration May 2017, which reflects the number of Syrians registered in Turkey better, there are registered Syrians in the temporary protection status in Turkey. Approximately, 3 million 6 thousand of the Syrians are living outside the Syrian camps. 258 thousand asylum seekers in Turkey in 2016 have the nationality of other countries. About 121 thousand of them are Iraqi and about 122 thousand of them are Afghans. In addition to the registered asylum-seeker population, in Turkey, 174,466 irregular migrants were arrested in 2016 (Ministry of Interior General Directorate of Immigration, 2017). When we consider all these numbers together, it is possible to say that there are about 4 million migrants in Turkey in 2017. This data, which has not yet been identified and does not reflect the number of irregular migrants living in the country, shows Turkey's immigrant population potential.

<sup>&</sup>lt;sup>67</sup> Ministry of Interior General Directorate of Immigration, (2015). 2015 Turkey Immigration Report, Pub. No: 35, Ankara. http://www.goc.gov.tr/files/files/\_2015\_g%C3%B6%C3%A7\_y%C4%B1ll%C4%B1k\_rapor\_18\_04\_16.pdf

<sup>&</sup>lt;sup>68</sup> See UNHCR, (2016). Evaluation of UNHCR's Emergency Response to the Influx of Syrian Refugees Into Turkey(Report No:ES/2016/03), UNIVERSALIA. http://www.unhcr.org/research/evalreports/58a6bbca7/evaluation-unhcrsemergency-response-influx-syrian-refugees-turkey-full.html?query=Turkey,

<sup>&</sup>lt;sup>69</sup> For more information see http://www.unhcr.org/figures-at-a-glance.html

Figure 2: Foreigners making international protection applications in EU and EFTA Member States in 2015

S.N.	ULKE/YIL	2015	S.N.	ULKE/YIL	2015
1	ALMANYA	476.510	18	POLONYA	12.190
2	MACARİSTAN	177.135	19	İRLANDA	3.275
3	İSVEÇ	162.450	20	LÜKSEMBURG	2.505
4	AVUSTURYA	88.160	21	KIBRIS	2.265
5	İTALYA	84.085	22	MALTA	1.845
6	FRANSA	75.750	23	ÇEK CUMHURİYETİ	1.515
7	TÜRKİYE*	64.232	24	ROMANYA	1.260
8	HOLLANDA	44.970	25	PORTEKİZ	895
9	BELÇİKA	44.660	26	İZLANDA	345
10	ISVIÇRE	39.445	27	SLOVAKYA	330
11	BİRLEŞİK KRALLIK	38.800	28	LETONYA	330
12	FİNLANDİYA	32.345	29	LİTVANYA	315
13	NORVEÇ	31.110	30	SLOVENYA	275
14	DANİMARKA	20.935	31	ESTONYA	230
15	BULGARİSTAN	20.365	32	HIRVATISTAN	210
16	İSPANYA	14.780	33	LİHTENŞTAYN	150
17	YUNANİSTAN	13.205			

Source: Ministry of Interior General Directorate of Migration Administration Turkey Immigration Report for 2015

It is possible to link the irregular migrants' transit period to the economic situation in the country, to the availability of links to help the transition to Europe, and to the politics carried out by the country (Düvell, 2012). While the average duration of stay in Turkey before the transition to Europe for African immigrants in the 1990s was 13 weeks, as Turkey's policy of preventing irregular migration to the EU on the basis of the business partnership with the EU and the case of asylum seekers from Syria Up to 2-3 years (Brewer and Yükseker, 2005). This also applies to irregular migrants from the Middle East. Border Controls became more common after the Readmission Agreement signed between Turkey and the EU in April 2016<sup>70</sup>, and the border security in the EU's environmental zone was increased, and asylum-seeking groups temporarily accepted to be temporarily held in Turkey were allowed to remain permanently in the country. This situation is accompanied by irregular migrants from geographical regions settled by the 1951 Geneva Convention, for example, the number of Syrian asylum seekers <sup>71</sup> whose number is 3 million 984 thousand 871 according to the date of 11 May 2017, which

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<sup>&</sup>lt;sup>70</sup> Agreement Between The European Union And The Republic Of Turkey On The Readmission Of Persons Residing Without Authorisation (2014). http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22014A0507(01)

<sup>&</sup>lt;sup>71</sup> Ministry of Interior General Directorate of Immigration, (2017). <a href="http://www.goc.gov.tr/icerik6/gecici-koruma">http://www.goc.gov.tr/icerik6/gecici-koruma</a> 363 378 4713 icerik

lasts for a long time or even without refugee status in Turkey. In particular, Turkey-EU negotiations, 72 which are especially prevalent in Syrian asylum seekers in the temporary protection status, accelerating political steps and the readmission process in 2015 raise the question of whether Turkey's geographical confrontation with the 1951 Geneva Convention is abrogated in practice. The negotiations carried out with the EU in particular for Syrian asylum seekers and the political, social and political burden that Turkey has undergone since 2011 will be examined under the next heading and the main question of the study will be sought.

### 3.4. TURKEY-EU READMISSION AGREEMENT AND CRISIS OF SYRIANS IN THE TEMPORARY PROTECTION STATUS

The Syria issue, which started in 2011 and has been withdrawn from the countries due to the ongoing Syrian Civil War in 2017, constitutes the main heading of negotiations between the EU and Turkey in this period. Following the 'open door policy', assuming that the Syrians who will enter the border at the beginning of the war will return to their countries in a short period of time, Turkey is hosting 3 million 6 thousand 298 Syrians with the temporary protection status (Ministry of Interior General Directorate of Migration Administration, 2017). Under this section, two important arrangements, first introduced in 2013 and 2016; The Foreigners and International Protection Law No. 6458 and the Readmission Agreement signed between Turkey and the EU will be addressed. Subsequently, the Turkey-EU negotiations, which took place after the Revert Admission Agreement and which took the Syrian center in temporary protection status, will be transferred on the basis of historical chronology. The political solutions produced to 'solve' the Syrian asylum crisis within the framework of the aforementioned negotiations are carrying the question of "Is the geographic limitation attached by Turkey in 1951 Geneva Convention still valid?" into the agenda.

<sup>&</sup>lt;sup>72</sup> Summits were held between Turkey and the EU on November 29, 2015, March 7, 2016, and March 18, 2016, where the situation of Syrian asylum seekers was discussed.

#### 3.4.1. Law No. 6458 on Foreigners and International Protection

The Foreigners and International Protection Act entered into force in 2014. Purpose of the Act: "Procedures and principles concerning the entry and exit of foreigners seeking protection from Turkey with their entry into Turkey, their stay in Turkey and their exclusion from Turkey, and the organization, duties, powers and responsibilities of the General Directorate of Immigration Administration under the Ministry of Interior. "The legislation, which regulates the rights of strangers with the said law, has been put together (Kaya, 2008). With the entry into force of the Act, some provisions of Law No. 5683 on Foreigners' Residence and Travel in Turkey dated 15.07.1950 and Passport Law No. 5682 dated 15.07.1950 were abolished and the law became the basic legal text of foreign law (Arap and Çerçi, 2014)

Following the entry of the first group to the country in 2011, Syrian immigrants were granted 'temporary protection' status based on Article 10 of the 1994 Regulation. With the entry into force of the Foreigners and International Protection Law No. 6458 in 2014, the rights of the 'temporary protection status' are specified in details. Subsequently, with the Regulation No 2014/6883 of 22.10.2014, it was decided that the decision of the Council of Ministers should be taken and terminated by the Council of Temporary Protection. 2 years later, under the 'Population Services Law', <sup>75</sup> it is stated that persons who are given a foreign identity number will be able to benefit from the rights such as health, education, access to labor market, social assistance and services

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<sup>&</sup>lt;sup>73</sup> The Foreigners and International Protection Law published in the Official Gazette dated 11.04.2013 and numbered 28615 entered into force on 11.04.2014.

<sup>&</sup>lt;sup>74</sup> See In addition, the legislation that remains in force by the entry into force of the Kaya (2008) Passport Law (Law no. 5682, 1950), Law on Foreigners' Residence and Travel (Law no. 5683, 1950), Law on Struggle with Global Crime Organizations (Law no. 4422, 1999), the Turkish Criminal Code (Law no. 5237, 2004), the Labor Act (Law no. 4857, 2003), the Law on the Students Educated in Turkey (Law no. 2922, 1983), the Turkish Citizenship Law (Law no. 403, 1964), the Law on Foreign Direct Investments (Law no. (2003), Regulation on Intercity Passenger Transport (2003), Regulation on Intercity Passenger Transport (2003), Regulation of People and Goods (1994), Regulation on Intercity Passenger Transport Regulation on the Procedures and Principles to be Applied to the Existence of Foreigners and Possible Population Movements for Collective Refuge (1994)

<sup>&</sup>lt;sup>75</sup> The Population Services Act was enacted on April 25, 2006 with the number 5490.

and interpreting services recognized in temporary protection status (Law No. 2014/6883, Article 26) The date of the right to protection is based on UNHCR's Resolution 2312 on 14 December 1967 (Bidinger, 2016). With this decision, it was aimed that the host countries could quickly solve the problem of refugee status in the mass migrations of humanitarian crises (Bidinger, 2016). Forcibly returning during temporary protection 77 and meeting the human needs are obligations of the host country. Turkey, which comes from the tradition of humanitarian aid to asylum seekers, has provided temporary protection to millions of asylum seekers under the guest definition since the first Iraqi asylum crisis. With Law No. 6458, an additional regulation was made in line with EU legislation and international norms (Bayraktaroğlu Özçelik, 2013). This situation was also reflected in the 2014 Progress Report, and the regulation was evaluated positively. It is stated in the Progress Report of the year 2014 that the Syrian refugee was granted 'high level protection' by Law No. 6458. It is stated in the Progress Report of 2014 that the increase in the number of Syrian asylum seekers entering Turkey as of this year is highlighted, as it was in the previous years, that Turkey managed the problem in a well-organized way. It is stated that 220 thousand of the Syrians, estimated to be more than 1 million in total in the period, lived in the camps established on 10 cities in Turkey. Despite the fact that the residents of Refugee camps do not suffer from the difficulty in getting to social services, they can see difficulties in registering and accessing services for the people who continue their life outside the camps (2014 Progress Report, 18).

Although there have been positive criticisms that the temporary protection status given to the Syrians in the framework of the Regulation No. 6458 and the Temporary Protection Regulation No. 2014/6883 in the Progress Report of 2014 produced effective

<sup>&</sup>lt;sup>76</sup> In the decree numbered 2312: "14th Universal Declaration of Human Rights. Without prejudice to the existing documents relating to the status of States, asylum and refugees and stateless persons, recognizing that the granting of asylum to a person entitled to asylum is a peaceful and humanitarian act and, as such, can not be regarded as a hostile act by another State. Recommends that they do not depend on the following principles in their refugee practices ".

The European Union law also has a definition of status with similar qualifications. "Directive 2001/55 / EC of the European Council of 20 July 2001 on the minimum standards for temporary protection in the case of massive asylum and for the acceptance of such persons in the territory of the Member States and the consequent consequences thereof" The EU has established temporary protection and legal rights.

solutions for humanitarian crisis in the current situation, criticism that the said regulations were not enough for the solution of the crisis (2014 Progress Report, 63) The fact that the collective deportation provision, which is explicitly prohibited in Article 4 of the European Convention on Human Rights (ECHR), is not included in Law No. 645, constitutes a significant shortcoming of the Law.

Liberal wing writers, for example, point to the lack of geographical confusion with the Law on Incorporation (2015), noting that the temporary protection status still does not receive refugee status, and that the duration of the temporary protection status with Law No. 6458 is left unsettled for the Syrians. On the other hand, Kirişçi (2014) states that the law is the mission of renewing the Turkish asylum system in a genuine sense and emphasizes that the 1950s is a law that is prepared with awareness that Turkey is facing a different portraiture from the practice of migration. On the other hand, nationalist wing writers draw attention to the political and economic implications of the Republic of Turkey, pointing out that the end of the Syrian civil war is uncertain and that millions of people who are displaced within the country may continue to flow to Turkey (see Ağbaba et al., 2016; Barkın, 2014, Orhan and Gündoğar, 2015).

#### 3.4.2. Turkey-EU Visa Liberalisation Process and Readmission Agreement

The signing of readmission agreements with third countries in the EU's fight against irregular migration has an important place. During the EU accession negotiations, Turkey has also participated in bilateral talks with Syria (2001), Kyrgyzstan (2003), Greece (2001), Romania (2004), Ukraine (2005), Pakistan (2010), Nigeria (2011), Bosnia and Herzegovina (2012), Macedonia (2012), Belarus (2013), Montenegro (2013)

and the EU (2013).<sup>78</sup> Signing of a readmission agreement within the Progress Reports during the negotiations on Turkey's accession to the EU has been voiced many times.

The readmission agreements, which can be regarded as a condition that the EU places in front of the candidate countries in order to secure itself against the irregular poverty in the enlargement process, are from the documents signed at the beginning of the negotiations with the candidate countries. EU member states have begun signing bilateral readmission agreements with third countries, which are irregular migrants in the first years of the enlargement process, or irregular migrants in the transit region, which are among the ways to reach the EU. In the course of EU membership negotiations, the first readmission agreement between Schengen countries and a candidate country was signed with Poland (1991). In 1999, a total of 130 readmission agreements were signed between 58 third countries and 15 EU member countries (Kruse, 2006). Poland also signed bilateral readmission agreements with EU countries. Albania was among the countries that signed the readmission agreements with the EU in 2005, followed by Bosnia-Herzegovina, Macedonia, Montenegro and Serbia in 2007, following the setting of EU road maps.<sup>79</sup>

Readmission agreements are generally texts that regulate the return of illegal persons in one or a group of countries, for example in countries within the framework of the EU, to the country they have recently transited to. Readmission agreements are criticized by the EU for its involvement in irregular migration prevention policies but on the grounds that civil society and human rights-based organizations may violate asylum seekers' rights and may create political, social, and economic burdens for third countries outside

<sup>78</sup> On December 16, 2013, the Readmission Agreement between Turkey and the European Union was signed and entered into force on 1 January 2014. On the occasion of the Syrian crisis in the temporary protection status that started in 2015, the EU requested Turkey to put the agreement into full force. As a result of the negotiations, the agreement was set to become effective on June 1, 2016 (Ekinci, 2016), which was withdrawn on March 18, 2016 and the Agreement was launched on March 18, 2016 pursuant to the Joint Action Plan adopted on 29 November 2015.

<sup>&</sup>lt;sup>79</sup> The citizens of the country have also been entitled to a visa-free trip to the Schengen region in 2009 and 2010, shortly after signing the Agreement.

<sup>&</sup>lt;sup>80</sup> For more information see About the Basic Questions and Answers About Turkey-EU Visa Waiver Process and the Readmission Agreement Booklet: <a href="http://www.ab.gov.tr/index.php?p=49332">http://www.ab.gov.tr/index.php?p=49332</a> (viewed on, June 11, 2016).

the EU (İcduygu, 2011)<sup>81</sup>. In addition, the third country must be 'safe' in order for an irregular migrant to be sent back to the country of last transition. How to define the 'safe' country is crucial so that readmission agreements can be implemented without causing human rights violations (Boswell, 2003). However, 'safe country' lists are creating debates. The difficulty of identifying the country to which the irregular migrants have recently crossed constitutes another obstacle in the course of the implementation of the agreements (Lavenex, 2003). The issue that should be addressed outside the benefit and cost calculations between the parties and which should have the priority designation is human rights violations caused by readmission agreements (Lavenex, 2001; Lavenex, 2006). It seems that liberal democracies remain unresponsive to human rights violations that irregular migrants have experienced during their repatriation to their countries (Lavenex, 2006). While irregular migrants take responsibility for the needs of irregular migrants within the responsibilities of third countries, in the sense of respect for human rights during the time they are in the third country during the readmission and after the recuperation, they are laying the grounds for inadequate human rights violations in fulfilling the obligations of the third countries with limited capacities (Kruse, 2006). Again, at this point it is clear that the focal point of the EU is the elimination of irregular migrants, and human rights violations that may arise in third countries are not among the priority issues of the EU (Lavenex, 2006).

Generally, in the readmission agreements signed between an underdeveloped country and a developed country, it appears that the developing country carries the burden of negotiation (Cassarino, 2007). This leads to an agreement between the two unequal parties, which results in the benefit of the parties in favor of the target country (Cassarino, 2007). Transit or source countries (Cassarino, 2007), usually for maintaining economic and political relations with the EU, taking into account the benefits of possible EU membership, or benefiting from temporary financial assistance from the EU. The heavy burden of their signing agreements attracts the political, social and economic planet in the long run.

Readmission Agreements have been criticized by organizations such as Human Rights Watch and Amnesty International . Human Rights Watch Executive Director Roth (2016) noted that "" Readmission Agreements are auncomfortable disrespect to international law protecting refugees, asylum-seekers and migrants' rights."

Third countries go to benefit-cost analysis in terms of undertaking the cost of the readmission agreement and are hesitant to sign the agreement if the benefit is low from the cost (Lavenex, 2006). The process of signing a readmission agreement with the EU, Russia, Morocco and Ukraine is an important example in this respect. Countries have extended the process because of the limited amount of benefit they will be able to afford without contracting, but the signing process of the financial aid and readmission agreements provided by the EU Commission has been completed (Lavenex, 2006).

The Readmission Agreement between Turkey and the EU entered into force on 16 December 2013 and was enacted on 28 June 2014 by the Law on the Approval of the Agreement on the Reconciliation of Persons Who Stay Unauthorized between the Republic of Turkey and the European Union in the Official Gazette No. 29044.

According to the agreement, if the citizens of the third country pass through Turkey illegally and get caught, the EU will send them back to Turkey and Turkey will be obliged to accept them (Turkey-EU Readmission Agreement, Article 3)<sup>82</sup>. The signing process of the readmission agreement, which is a document signed before the start of negotiations or negotiation process, has progressed differently in Turkey than in other countries. The EU wanted to start negotiations on this issue in 2002 but did not open a negotiating head on this issue until 2005 because the EU member states opposed the launching of the visa liberalization process for Turkey. In addition, it has also been effective in blocking the process of Turkey's failure to join the EU and the withdrawal of a 'buffer zone' and a 'migrant depot', where Turkey sends irregular migrants who are not wanted by the EU (İçduygu ve Yükseker, 2012; Kirişçi, 2014). The first draft of the Readmission Agreement was drafted by the European Commission, the text of which was finalized in 2013. The Readmission Agreement between the EU and Turkey was signed on 16 December 2013.

<sup>&</sup>lt;sup>82</sup> Again, according to the Agreement, if the full provisions of the Agreement are provided for a period of three years, Turkish nationals will be granted the right to travel to EU countries without a visa. Since the United Kingdom and Ireland are subject to different rules in the EU Freedom, Security and Justice Area, the provisions of the Treaty do not apply to these countries. Moreover, the provisions of the Agreement are invalid for Denmark because of the limitations it has placed on Schengen (Ministry of EU, 2015).

On October 1, 2014, the 'transition process' of the agreement <sup>83</sup> was initiated. On the other hand, the EU did not want to implement the 'visa liberalization' 84 process for Turkey, which is a candidate for full membership to the Union and which has been pursuing countries that have signed readmission agreements in the process. In this process, Turkey is the only country that is expected to fulfil readmission requirements without the inclusion of visa liberalization, unlike other countries that have signed readmission agreements. The EU did not include the visa liberalization process in the text of the Treaty and demanded the continuation of the 'Visa Dialogue' with Turkey (Vukasinovic, 2011). In the beginning of the process of visa liberalization with Turkey, countries such as Germany and France have begun to oppose the Turks because of the irregular migration to the EU (Bürgin, 2012). Italy has expressed a stance against this point, emphasizing that Turkey's desire to emigrate due to the developing economy of Turkey is decreasing and it is necessary to initiate visa liberalization (Bürgin, 2012). Turkey, on the other hand, emphasized that the process followed by other countries should be applied to Turkey by rejecting the demand for the initiation of the visa dialogue process from the very beginning. The current visa travel is contrary to the EU law. 85 In 2011, Turkish Foreign Minister Davutoglu stated that the visa dialogue process was being introduced to Turkey without mentioning a clear visa exemption and voiced that Turkey would not accept the agreement without the rights offered to other countries.<sup>86</sup> With the Readmission Agreement signed on December 16, 2013, the

<sup>&</sup>lt;sup>83</sup> In the Turkey-EU readmission agreement, the parties are expected to begin accepting third-country nationals at the end of a three-year transition period after the entry into force of the Agreement. Accordingly, Turkey will begin to take back third-country nationals who illegally travel to their EU countries through their country (EU Ministry, 2013), three years after the Convention enters into force.

<sup>&</sup>lt;sup>84</sup> The Council Regulation EC 539/2001 and dated 15 March 2001 establishes the conditions for third country nationals' visa-free visits to the Schengen region and entitles citizens of eligible countries to entry into the Schengen zone without a visa.

<sup>&</sup>lt;sup>85</sup>Article 1 paragraph 41 of the Additional Protocol, which was signed in 1970 and entered into force in 1973, does not allow visa applications for citizens of the countries whose members have exempted visa before this date. The decision of the Court of Justice of the European Union (ATAD / ABAD) in 1974, the decision of Abetnassir War (C-37/98) on 11 May 2000, Abatay / Şahin (C-317/01) 16/05), Sahin (C-228/06) in September 2009, Şahin (C-242/06) in September 2009 and Earth (C-300/09) on 9 December 2010 and Demirkan decisions in 2013 and Additional Protocols Ignorance of the ruling.

Hürriyet Daily News (2011, 13 January). http://www.hurriyetdailynews.com/turkey-eu-preparing-to-sign-readmission-agreement.aspx?pageID=438&n=turkey-eu-at-last-stage-on-readmission-agreement-2011-01-13 (viewed on May 4, 2016).

'Memorandum of Understanding on the Visa Liberalization Dialogue' was signed on the same date. When the 72 provisions in the 'Visa Liberalisation Roadmap' determined for Turkey by the Memorandum of Understanding are fulfilled, it will be possible to stay in Schengen countries of Turkish citizens for up to 90 days without a visa in every 180 days period. The Road Map, consisting of 72 items, is dealt with in five main groups. These groups are: Document security, immigration management, public order and security, basic rights and the acceptance of irregular migrants. <sup>87</sup> On November 20, 2014, the EU Commission prepared the first report on the progress of Turkey's visa liberalization requirements. The report generally includes a recommendation on the arrangements to be made for each item.

Turkey has continued to take a cautious step due to the driving of insecurity on the subject of full membership to the EU and the Syrian asylum crisis that broke out in 2011. Turkey has set the Readmission Agreement to be a 'Roadmap for Prompt Roads'. The Predictive Roadmap method is the first of its kind in the readmission agreements that the EU has signed with third countries. A provision stating that irregular migrants will be recaptured three years after signing the Agreement with the Legitimate Road Map has been added by Turkey to the Treaty. It seems that the Geographical Conflict of the Road Map can only be removed when the full membership of the EU takes place (Ministry of the EU, 2015). Given the situation in Syrian asylum seekers who are allowed to work together, it can be considered that the geographical restriction has already been physically removed. Regulation No. 2016/8375, published in the Official Gazette dated 15 January 2016, regulating the work rights of Syrian asylum seekers, entered into force with the Regulation on Work Permits of Foreigners under Temporary Protection.

If we go back to the provisions of the Revert Admission Agreement, the question of what will happen next to those who will be sent to Turkey from the EU is on the agenda. In order for third country nationals to be sent back to Turkey to be sent back to their country of origin, the 1951 Geneva Convention requires that these third countries

<sup>&</sup>lt;sup>87</sup> See Report from the European Parliament and the Council The Third Report on the progress of Turkey on fulfilling the requirements of the visa liberalization roadmap (COM 2016/278)

be 'safe'. Moreover, in order for the irregular migrants in Turkey to be able to be sent back to the country they have recently transited to, it is a different requirement that the third countries have signed the readmission agreements. The fact that Turkey, <sup>88</sup>, which has already signed a readmission agreement with 11 countries and the EU, needs to complete the process of signing a readmission agreement with all third countries before launching the readmission process with the EU. Nonetheless, the first readmission started on 4 April 2016.

By 2015, the Syrian asylum crisis has led to unpredictable progress in the readmission process. The crisis created by the Syrian immigrants who moved through the land and sea routes to reach the European borders through Turkey has been common since 2015 and the readmission process has become the main topic of these negotiations. The Readmission Agreement, which is planned to be operational in October 2016, was implemented 8 months ago as of March 2016, 8 months prior to the target date of negotiations. The latest situation reached in the course of negotiations on the Syrian asylum crisis and the steps taken in the readmission process in the following sections of the training will be handled together.

The signing of the readmission agreement reflects the entry into force without the Schengen visa exemption for Turkish citizens, a similar gain to the media and to the EU's unilateral gains in the Customs Union process. Discussions with irregular migrants about Turkey's social, political and economic burden on transit country and the loss of the meaning of geographical confusion that Turkey has kept on paper in the context of immigrant burden have also taken its place in the media. The Republic of Turkey is hosted by millions of non-European asylum seekers sent back to Turkey from the EU, determined to have passed through the EU through Turkey.

<sup>&</sup>lt;sup>88</sup> Nigeria (2011), Russia (2011), Yemen (2011), Bosnia and Herzegovina (2012), Russia (2005), Syria (2001), Kyrgyzstan (2003), Greece (20012), Macedonia (2012), Belarus (2013), Montenegro (2013) and the EU (2013).

# 3.4.3. Crisis of Syrians Under Temporary Protection Status and Latest Discussions Related to Lifting of Geographical Limitation

During the accession negotiations, the issue of the removal of the geographical grudge seen by Turkey as well as the EU as a trump card or negotiating instrument has come to the agenda again with Syria, which entered Turkey with the number of millions expressed in the Syrian Civil War that erupted in 2011 (see Example İçduygu, 2015a, 2015b, 2015c; Kirişçi, 2003, 2005, 2009). The government of the Justice and Development Party, which stating that the war would start with an 'open door policy' against the Syrians who were fleeing due to vital concern with the beginning of the war, adopted Syria as early as April 20, 2011 (Ihlamur-Öner, 2014). The first Syrians to be temporarily admitted were placed in the tent cities of Hatay Province Yayladağı, Altınözü and Reyhanlı districts. On the other hand, in the 2012 EU Progress Report, "since the crisis began in Syria, Syrian citizens have demonstrated competence and operational capacity at a high level in their struggle with the continuing influx of troops to Turkey." The government's 'open door policy' has been appreciated by the EU. At the end of October 2011, In the report it is emphasized that the temporary protection status granted to those staying in the camp was comply with the principle of providing the necessary humanitarian aid and not forcibly returning it. Public conditions are also praised by many international organizations, including UNHCR and the European Commission Humanitarian Aid and Civil Protection Unit (ECHO).<sup>89</sup> Turkey, which has placed a number of Cambodians close to the borders of the Syrians they have accepted into their country and mostly records them, assumes that the crisis will still be temporary and will return to the Syrian people's countries by 2011 (İçduygu, 2015; Kirişçi, 2014; Ihlamur-Öner, 2014). However, by the year 2012, the number of Syrians in the camps and outside the camp continued to increase and the Civil War in Syria became even more widespread. According to AFAD (2014) data of 2012, 15 tent cities, five container camps and one Syrians The number has exceeded 148 thousand 257, but

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<sup>&</sup>lt;sup>89</sup>2012 EU Progress Report http://www.ab.gov.tr/files/AB\_Iliskileri/AdaylikSureci/IlerlemeRaporlari/2012\_ilerleme\_raporu\_tr.pdf

it is getting harder day by day to estimate the number of people who live outside the camps and whose borders are unregistered. According to the information in the AFAD Report published in 2014, it is stated that the number is increasing gradually by 2013 and the Syrian population spreading out of the camps is mostly living in the border cities near Syria. Only 282 thousand 860 of 2.8 million Syria registered in Turkey AFAD has been living in 25 settlement centres established in 10 countries. 2.6 million Syrians continue to live in cities.

According to data of UNHCR dated April 6, 2017, which entered the sixth year of the Syrian Civil War in 2017, there are 5 million 29,526 Syrian asylum seekers in the world. 2.9 million of this number were found in Turkey, 2 million Syrians were registered in the borders of Jordan, Iraq, Lebanon and Egypt.29 thousand Syrian asylum seekers were registered in North African countries.<sup>90</sup>

According to the EU Commission Humanitarian Aid and Custodial Protection Report; Syrian refugees are the largest refugee population in the world after World War II. Turkey has hosted more than 2 million 700 people of this population, making it the country that has the highest number of Syrian citizens on its territory (ECHO, 2016).<sup>91</sup>

The journey of a part of the Syrians who flee from the war and enter the territory of Turkey continues by searching for ways to transit through Turkey to the EU. The EU is able to respond to asylum claims of a small number of Syrians from regular routes. According to FRONTEX 2015 Risk Analysis Report; In 2009, 40 Syrians were found to be trying to enter the EU with irregular routes. This number increased to 581 in 2012, 11 thousand 503 in 2013 and 39 thousand 651 in 2014. <sup>92</sup>In 2014, the highest irregular migration of the last eight years 885 thousand 386 of the illegal border crossings to the

<sup>91</sup> For more information see Syria Crisis: http://ec.europa.eu/echo/files/aid/countries/factsheets/syria\_en.pdf (viewed on, September 3, 2016).

<sup>92</sup>FRONTEX Annual Risk Report (2015): http://frontex.europa.eu/assets/Publications/Risk\_Analysis/Annual\_Risk\_Analysis\_2015.pdf (21.02.2016).

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<sup>&</sup>lt;sup>90</sup> See Syria Regional Refugee Response: <a href="http://data.unhcr.org/syrianrefugees/regional.php">http://data.unhcr.org/syrianrefugees/regional.php</a> (viewed on, April 26, 2017)

EU were realized from the South Mediterranean route which included Turkey. <sup>93</sup>In the 2015 Report, while the Syrian asylum seekers were the main reason for the increase in this route, the increase in human trafficking activities It is mentioned that it is effective in increasing irregular migration. Reported that the number of Syrian asylum seekers who left Turkey in January-February 2016 to Greece reached 4,000 per day. <sup>94</sup>

When legal asylum applications are considered, 150,000 Syrian asylum seekers will be granted asylum in EU countries by 2014 (UNHCR, 2016). . Most of the applications were made in Germany (66 thousand 845) and Switzerland (57 thousand 390). As of August 2016, nearly 1 million 151 thousand 865 of the nearly 5 million Syrian asylum seekers in the world have applied for asylum in Europe, and 137 thousand 798 applications have been accepted by EU member states since 2014 (UNHCR, 2016).

On the other hand, those who live in the top of the transit areas have been given the duty to prevent the 'irregular' migration of the EU to the EU, due to the ongoing civil war, According to the General Directorate of Immigration, 600 people in the Mediterranean in 2013 are believed to have died or died on European migration routes. This number is expected to rise to 3276 in 2014 and to 3771 in 2015 (Ministry of Interior General Directorate of Immigration, 2016). As of 2014, western countries have been viewed as a worrying situation in the public opinion by "opening the eastern border to the end, but closing the Western borders tightly" (Erdogan, 2014; 8). Negotiations between Turkey and the EU continued to progress in the framework of the Syrian Crisis, and by 2015 negotiations between the parties accelerated with the increasing number of irregular migrants.

<sup>&</sup>lt;sup>93</sup>FRONTEX Annual Risk Report (2015): http://frontex.europa.eu/assets/Publications/Risk\_Analysis/Annual\_Risk\_Analysis\_2015.pdf (21.02.2016).

<sup>&</sup>lt;sup>94</sup> AB Türkiye'ye 15 Gün Süre Tanıdı (2016, 20 February) http://www.milliyet.com.tr/ab-turkiye-ye-15-gun-sure-tanidi/dunya/detay/2196983/default.htm (viewed on February 21, 2016).

## **3.4.4.** Changing Political Conditions (2015-2016)

In this part of the work, irregular migrations between Turkey and the EU and negotiations on Syrian asylum seekers will be transferred on the basis of some turning points. Discussions on the removal of the geographical indignation from this day and age again will be discussed along with the current situation analysis.

From 2013 until March 2015, Turkey's Syrian population has tripled. According to the Ministry of Interior, as of May 2017, the number of Syrians in the temporary protection status in Turkey was 3 million 6 thousand 298 (Ministry of Interior General Directorate of Migration Administration, 2017). The asylum seeker lives scattered in 81 provinces of Turkey. By 2017, the integration of Turkey into Turkey has been spoken rather than the return of the Syrians to their countries.

Compared to the number of Syrian in Turkey in 2015, in 2013, it is seen that most of the Syrians live or are registered in the camps (İçduygu, 2015a). However, this situation reversed when it came to 2015, the number of Syrians in the camps became a minority of those living in the cities. Looking at the economic aspect of the matter, a \$ 5 million budget was spent for the Syrians in the temporary protection status by early 2015, with 3% of this budget being covered by the international community (Erdogan, 2014). With the summer months of 2015, irregular migratory movements accelerating to the west and news about Syrian migrants trying to reach the Greek islands through the Aegean Sea have begun to increase.

On September 03, 2015, a boat carrying immigrants in the Aegean Sea began to occupy a large part of the world's agenda due to the humanitarian crisis of the Syrian asylumseeker with the hit of lifeless human bodies once again on the Bodrum shores as a result of an accident that was sunk while Greece was passing through Kos Island. The Independent, the Guardian, the Times and the BBC, published articles criticizing the

'Fortress Europe'. <sup>95</sup> The news that the Syrians reaching the EU countries via land are not banned from the Hungarian border have also been on the agenda in the same period. <sup>96</sup>

At the same time, human rights defenders and non-governmental organizations have also expressed their reactions to the deaths in the Aegean and have been organized to spend the Syrians from the Hungarian border. A group of 350 people came to Hungary from Vienna to meet the Syrian refugees. 97 As human activity increased gradually in the Schengen area and the number of Syrian people reaching the borders soon reached unsettling dimensions, on 14 September 2015, German Chancellor Angela Merkel temporarily announced that the Schengen application was suspended by Germany. With the increasing public reaction to the death of Aylan Kürdi, the border control has been abolished shortly. After this step, attempts were made to create solutions covering other EU countries related to crisis management. Among these 'solutions', the Syrians have regularly circulated to the big EU countries after financial assistance has been provided to the Balkan countries, especially Serbia and Macedonia, where buffer zones have been established in these areas and asylum seekers have been registered in these areas (Çarmıklı, 2015). German Interior Minister Thomas de Maiziere proposed the establishment of the asylum seekers 'camps in Turkey, where the EU will assess asylum seekers' asylum seekers, as well as the buffer zones in the Balkans and suggested that

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<sup>&</sup>lt;sup>95</sup> According to the news dated 04.09.2015 of Cumhuriyet Newspaper; The Times and Guardian newspapers chose to publish footage of a gendarmerie officer shooting Aylan's corpse. The headline on the Guardian's photo is "the shocking and cruel truth of Europe's refugee crisis". On the first page of the Independent, he says, "He is also a child of one," with regard to Aylan, who caused his comments to be made with his photograph "Humanity hit the shore". In the editorial of the Independent, it says "the mission of Europe" and adds: "EU member states must now come together and form a quota system for sharing refugees." The headline of the Times is "Europe divided". <a href="http://www.cumhuriyet.com.tr/haber/dunya/360625/insanlar oluyor Avrupa ne diyecegini tartisiyor.html">http://www.cumhuriyet.com.tr/haber/dunya/360625/insanlar oluyor Avrupa ne diyecegini tartisiyor.html</a> (viewed on February 23, 2016).

<sup>&</sup>lt;sup>96</sup>As of September 6, 2015, it allowed controlled passage from the borders of Hungary and by train the roads of Syrian refugees reached Germany. The same day, 7,000 refugees entered Germany. Cumhuriyet Gazetesi (2015, 7 September), <a href="http://www.cumhuriyet.com.tr/haber/dunya/362374/Almanya hayaline kavustular.html">http://www.cumhuriyet.com.tr/haber/dunya/362374/Almanya hayaline kavustular.html</a> (viewed on February 23, 2016).

<sup>&</sup>lt;sup>97</sup>Cumhuriyet Gazetesi (2015, 7 September ), http://www.cumhuriyet.com.tr/haber/dunya/362374/Almanya\_hayaline\_kavustular.html (viewed on February 23, 2016).

Turkey be declared a 'safe country' and stop irregular migration here. The German and Austrian prime ministers, who made a joint statement on September 15, 2015 regarding the bordered Syrians and the passport control initiated, underlined the need for detailed negotiations with Turkey. Referring to the fact that asylum seekers cannot be abandoned, Austrian Prime Minister Faymann stated that the EU should not remain silent on the expression "it is important that we cannot bury our clothes". While negotiations and statements were being held with the EU, the need to meet with Turkey, which hosts the largest community of asylum seekers in the world, continued to be underlined.

On November 18, 2015, German Chancellor Angela Merkel came to Turkey and found a close encounter with the Turkish government regarding Syrian asylum seekers. The financial assistance to be made by Turkey to Europe in order to improve living conditions during the stay of asylum seekers in Turkey has created controversy. "Erdoğan's Turkey's new buffer zone in Europe", "Merkel Turkey's role as a border guard", and "Turkey, which wants a buffer zone in Syria, has become a buffer zone" has been moved to the headlines. On the other hand, Turkey's recently stagnant EU negotiations process has revived with meetings involving the problems of Syrian asylum seekers, and Turkey's membership in the EU has been revived. The EU, which has been struggling to solve its internal problems, such as the Greek economic crisis, the debate over whether Britain will continue its EU membership, has caused uneasiness in the member countries facing the Syrian asylum crisis and has led to disagreements over crisis management (Heisbourg, 2015).

If we repeat, it seems that the number of migrants reaching Europe during the year 2015 has increased. 58 thousand in April and 89 thousand asylum seekers in Europe (Heisbourg, 2015). It is estimated that the number of Syrian asylum seekers entering the EU as of November is 507 thousand (Heisbourg, 2015), while the number of Syrian

<sup>&</sup>lt;sup>98</sup> Hürriyet (2015, 16 September), http://www.hurriyet.com.tr/siginmacilari-yuzustu-birakamayiz-30086001 (viewed on February 24, 2016).

<sup>&</sup>lt;sup>99</sup> Hürriyet (2015, September 16), http://www.hurriyet.com.tr/siginmacilari-yuzustu-birakamayiz-30086001 (viewed on February 24, 2016 ).

asylum seekers passing the Aegean Sea to the Greek islands in September reached 153 thousand. In the period beginning in September 2015 and continuing until November, the Syrians in the temporary protection status are seen to be in demand for the transition to EU countries. In this period, despite the short-lived shift of the EU policy towards the humanitarian axis from the security axis through the influence of the international public, the asylum-seekers continued to follow the policies based on the third countries' carrying principle. The crisis experienced by the EU member states, which had difficulty in forming a common policy to be followed against Syrian asylum seekers, deepened after the terrorist attack in Paris in November 2015.

#### 3.4.5. Paris Attack and Return to Fortress Europe Policies

On November 13, 2015, France's capital city, Paris, simultaneously bombed actions in six regions, 142 people were killed and hundreds were injured. 100 The restaurant, where the civilians are located, performed live bombs in the attack area targeting the canters like the concert area, where the Syrian people were active and the attack was undertaken by ISIS. After the attack, EU countries increased measures against irregular poverty and began reassessing policies against Syrian asylum seekers. They demanded that extreme right-wing parties re-evaluate their asylum-seeking policies by establishing an immigration-security relationship after the explosion. Anti-immigrant voices began to rise in EU Member States such as Slovakia, Poland, Czech Republic, Hungary, and these policies turned into Muslim opposition (Heisbourg, 2015). Regarding the attitude of the countries in question, EU Commission President Juncker criticized the situation by saying that "walls and fences do not have a place in EU member countries" (Carrera et al., 2015). As of December 2015, the EU Commission has launched an official

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<sup>&</sup>lt;sup>100</sup> Fortuneturkey (2015, 14 October) http://www.fortuneturkey.com/7-ayri-saldiri-142-olu-22847 (viewed on April 26, 2017).

procedure against Hungary against the EU norms on asylum and municipal practices (Carrera et al., 2015). 101

After the Paris attack, questions about the sustainability of uncontrolled border crossing between EU member states and the extent to which national security could be achieved in the current system (Bigo et al., 2015). "The EU, which has undergone a decade of years of irregular migration from the Syrian origined irregular migration to the EU countries, coupled with the effects of multiple crises that it has been forced to overcome, has brought about a kind of 'existential crisis' in the EU, along with the prevention of irregular migration, Turkey, which is one of the most crucial countries for the EU, accelerated negotiations. <sup>102</sup>

On November 29, 2015, Turkey-EU Summit was held in Brussels. Prime Minister of Turkey Ahmet Davutoglu emphasized the importance of providing border security and prevention of smuggling, which is defined as a historic daytime in terms of our EU accession process. Again, at the same summit, it was decided that Turkey would fully implement the Readmission Agreement in June 2016, and the EU has pledged a financial support of 3 billion euros for capacity building to Turkey. According to the Turkey-EU Summit Joint Final Declaration (2015), after the Readmission Agreement is implemented as of June 2016, the EU visa exemption process for Turkish citizens will commence (Ministry of EU, 2015).

On the other hand, in the field of "Justice, Freedom and Security" (Chapter 24)<sup>103</sup> where immigration and asylum issues are dealt with, it is said that the regulation which

See Ministry of EU Affairs (2016). Turkey's European Union Strategy,http://www.ab.gov.tr/files/pub/turkiyenin\_yeni\_ab\_stratejisi.pdf

<sup>&</sup>lt;sup>101</sup> As of September 2015, Hungary has closed its border with Serbia and has undertaken studies to prevent the passage of asylum seekers by not starting to build walls around their borders (Amnesty International, 2017).

<sup>&</sup>lt;sup>103</sup> 24. SectionJustice, Freedom and Security: EU policies aim to protect and further develop the Union as a field of freedom, security and justice. They must have the capability to adequately enforce Member States' growing common framework in the areas of border control, visas, out migration, asylum, police co-operation, combating organized crime and terrorism, co-operation in the field of drugs, customs cooperation and judicial co-operation in criminal and civil matters. First of all, this requires a strong and well integrated administrative capacity within the institutions and other relevant bodies to enforce laws that must have the necessary standards. A professional, reliable and efficient police organization is very important. The most detailed part of the EU's policies on justice, freedom and security are the Schengen acquis, which includes the abolition of internal border controls within the EU. However, for the new

is expected to be done from Turkey is at the beginning of removing the geographical limitation and reflected in the EU Progress Reports since 1999. In the negotiations carried out, in the first place, the EU has been hesitant to remove the geographical grudge in the direction of the requests (İçduygu, 2015a, 2015b, 2015c, Kirişçi, 2003, 2005, 2009). In the EU Progress Report of 2015, the geographical prudence has been maintained from criticism.

However, the steady increase in the number of immigrants to Turkey from the ongoing Syrian civil war has laid the groundwork for further developments to question the continuity of Schengen even in the member states of the EU. On 4 January 2016, Sweden announced that it would start inspections on the Danish border, then Denmark announced that it would launch controls on German borders. Speaking in the EU Parliament on January 19, 2016, EU Council President Donald Tusk announced that Schengen will come to an end if the solution to the Syrian asylum problem is not resolved within two months, and countries will resume border checks. <sup>104</sup> As of January 2016, temporary checks have been started on the borders of Germany-Austria, Denmark-Germany, Sweden-Denmark, Austria-Slovenia, Austria-Hungary and Slovenia-Croatia. <sup>105</sup> Dutch immigration minister Dijkhoff stated that taking measures at border is inevitable, many EU member states have applied to the European Commission for the extension of the period of border checks implemented since summer of 2015. <sup>106</sup>

With the Syrian Civil War that started in 2011, Turkey's shift of Syrian asylum seekers, which is a burden placed on its own, to the EU borders, the common immigration and asylum policies of the EU countries in a long history have been shaken and the crisis has caused rising tensions among the member countries. In the process of debating

Member States important parts of the Schengen acquis are implemented following a separate Council decision to be taken after accession.

<sup>&</sup>lt;sup>104</sup>Euronews (2016, 19 January). http://www.euronews.com/2016/01/19/tusk-gives-the-eu-two-months-to-save-schengen/ (viewed on February 24, 2016).

Euronews (2016, 19 January ). http://www.euronews.com/2016/01/19/tusk-gives-the-eu-two-months-to-save-schengen/ (viewed on February 24, 2016)

<sup>106</sup>BBC (26.01.2016): http://www.bbc.com/turkce/haberler/2016/01/160126\_schengen\_2\_yil (viewed on February 24, 2016).

Schengen's ending, it has been seen that Member States have seen different policies at the point of closing borders, increasing border controls and accepting asylum seekers. It is seen that the general attitude strengthens the Fortress Europe by showing flexible approaches to asylum policies in line with public opinion and criticisms from international organizations. The EU's expectation from Turkey is that the security of Syrian asylum seekers is shaped in the direction of securing Turkey and restricting access to the EU. The burden placed on Turkey and third countries on asylum seekers has also increased due to the EU's common border policy and the threat of Schengen to the asylum-seeker crisis.

# 3.4.6. Migration Wave of 9 February 2016 and Safe Country-Safe Third Country Discussions

The Syrian Civil War, which started in 2011, continues with the involvement of different actors in the war by 2017 and continues to cause new asylum crisis. In 2016, a new wave of immigration has been created as a result of the encirclement of the anti-Assad regime in Aleppo with Russian air support. Turkey closed this limited time for the first time. Instead of 59,000 Syrian Turks arriving at the frontier of Kilis's Öncüpınar, eight camps were established in Syrian territory near the border. In a short time period, the population of 8 camps approached 70 thousand. As of the end of the year, it is estimated that 1 million Syrians will enter the country if the borders are opened (Kızılkoyun, 2016). Following this development, on February 8, 2016, Germany's Prime Minister Merkel made a new visit to Turkey. The proposed package of financial aid, proposed to stop the new wave of migration towards Turkey before reaching the EU, was brought to the agenda again. Although the financial support proposed by the EU is planned to be accepted as an asylum seeker, the budget of 20-30 thousand Euros allocated for Syria by 800 thousand and the budget of 8 billion Euros

<sup>&</sup>lt;sup>107</sup> Hürriyet (2016, 9 Februaryhttp://www.hurriyet.com.tr/suriyeden-turkiyeye-yeni-goc-dalgasi-40051743 (viewed on February 24, 2016).

between 2011-2015 is considerably low, (see Erdoğan, 2015). This attitude holds the risk that Turkey will be transformed into a security provider for the EU (Erdoğan, 2015).

As will be remembered, at the beginning of the crisis, the European Commission presented a proposal to the EU Parliament and the Council to define Turkey as a 'safe source country' and / or a 'safe third country' under the 2013/32 / EU directive. To be recognized as a safe source country requires being a country that has "no violations of human rights and conforms to the Copenhagen Criteria". International protection applications of citizens coming from safe source countries are being processed faster. The debates that stood in the way of defining Turkey as a safe country have flared up with this process. The proposal of the Republic of Turkey's claim that asylum-seekers cannot be declared a safe country is the proposal. (see. Ignatieff, Keeley, Ribble and McCammon, 2016). The Schengen Agreement and the Dublin Convention (1990) made regulations on the concept of a safe third country, and the concept was finalized by Council Regulation No. 343/2003. According to safe third-country practice, it is possible to send asylum seekers to a safe third country where they arrive, and to make their application there, without taking asylum seekers from countries considered safe as being safe (Lavenex, 2006).

Transit countries continue to take on the economic burden of asylum seekers with economies that are weaker than those of the EU member states and resources that have become even more limited since the 2008 financial crisis (Gilbert, 2015). In other words, the 'safe third country' practice does not go far enough to prevent asylum seekers from seeking asylum seekers in the destination country and goes beyond the practice of transferring the political, social and economic burden of asylum seekers out of the EU. With the proposal of the Netherlands, According to the statement made by Amnesty International (2015), "The plan, which includes sending tens of thousands of people back to Turkey, which is called as safe third country with ferries via Greece without

<sup>&</sup>lt;sup>108</sup> See Regulation of the European Parliament and of the Council establishing an EU common list of safe countries of origin for the purpose of Directive 2013/32/EU of the European Parliament and of the Council on common prodedures for granting and withdrawing international protection, and amending Directive 2013/32/EU , 2015/0211 (COD)

access to asylum application, On the other hand, with the objection and obstacles to the acceptance of Turkey as a safe third country, with the implementation of the Readmission Agreement, Turkey was actually deemed as a safe third country and the process of sending the immigrants to Turkey through the EU was initiated.

As the 'safe third country' debate continued, studies on integration of the social life of the Syrians in the temporary protection status on the Turkish front have begun. The first step to ensure the legal employment of the Syrians took place in February 2015. The draft legislation on work permits issued by the Ministry of Labor and Social Security for temporary protection status was submitted to the Turkish Grand National Assembly on February 2015 and the 'Regulation on Work Permits of Foreigners under Temporary Protection' was published in the Official Gazette dated 15 January 2016, has entered into force.

According to Article 91 of the Law No. 6458, the working permits of the foreigners in temporary protection status were regulated (Regulation No. 8375, Article 1). According to the directive, foreigners with temporary protection status may apply for a work permit 6 months after the provisional identification document is issued. More than a million of the Syrian's in the working age had the possibility of obtaining a legal working permit with the law and participating in the register economy (Özpınar, Çilingir and Düşündere, 2016). On the other hand, it was observed that the rate of unemployment in Gaziantep, Hatay, Kilis and Adiyaman, where Syrian population was especially high, increased by 25% and the main reason for this situation was unregistered employment of Syrians (Özpınar, Çilingir and Düşündere, 2016). However, after work permits, there is concern that unemployment will increase in the local community. Occording to the Ministry of Labour and Social Security, 6 thousand 868 Syrian work permits were granted in the first six months after the enactment of Law No. 8375, which allowed the Syrians to work legally, 5 thousand 502 Syrians participated in the labour market as of July 2016 within the boundaries of

For more information see TEPAV (2016, Nisan). *Türkiye'deki Suriyeliler: İşsizlik ve Sosyal Uyum*. Ankara: Özpınar, E., Çilingir, Y., Düşündere, A.

Turkey on legal leave. With the permission to work for the Syrians, it was aimed to speed up the recording of the irregular immigrant populations and to facilitate the legal follow-up by reducing the number of unregistered Syrians. It is also desirable to prevent informal employment and labour exploitation. However, this situation can set the stage for many problems and social conflicts in the long run for Turkey, a country where local people struggle with unemployment (Ağbaba et al., 2016; Erdoğan, 2015).

Turkey's negotiations with the EU in 2015 and efforts to ensure the readmission agreement have continued. The 'safe country' and 'safe third country' issues that came into play during the process of the readmission agreement became the subject of the reactions of international organizations and non-governmental organizations. Although Turkey has not been clarified as a 'safe country' or a 'safe third country' in the EU, irregular migrants reaching the EU in practice are sent back to Turkey without taking asylum applications and Turkey actually functions as a 'safe third country'. The question of where the geographical tenacity of the Geneva Convention remains valid has increased along with the readmission process.

# 3.4.7. Is The Geographic Limitation Attached by Turkey in 1951 Geneva Convention Still Valid?

As an EU candidate country and as a transit country, Turkey has made legislative arrangements in order to manage the mass migrations it has encountered since the 90's. In the EU harmonization process, the request for the removal of the geographical concern set by the Geneva Convention has been brought to the agenda many times by the EU. In addition, with the recent mass migration wave, close to 3 million registered Syrians have been arrested after the introduction of Turkey. In the process of adapting Turkish legislation to the EU acquis, which is a long-standing process, if there is no full membership to the EU after the removal of geographical impasse, Turkey will have a 'buffer-zone', a 'migrant-depot' (Apap, Carrera and Kirisci, 2004). On the one hand, Turkey is committed to expecting full membership in the EU to abolish the

geographical trap, which is the last step in achieving important regulations in the migration legislation during the EU harmonization (Baird, 2015).

Controversy over the removal of geographical concern has been added to the debate over the fact that, with the Syrian asylum crisis, the geographical indignity has actually lost its validity. There is criticism that the consent of the 1951 Geneva Convention has lost its power as an elephant, as in the case of the Syrians, who live in Turkey for more than five years and are not expected to return to their countries in the short term (see, for example, İçduycu, 2015b). The fact that the work permit is given to the Syrians emphasizes the effects of this situation on the labor market position of the Turkish Republic citizens, unemployment to be increased and similar potential problems (Erdoğan, 2015; Lordoglu, 2015). With the Syrian asylum crisis, asylum-seekers once again became a bargaining point in Turkey-EU negotiations and the visa exemption for Turks was introduced to the EU in the face of mitigating the asylum-seeking burden (İçduygu, 2015c).

After 14 th December 2015 Conference, Turkey attended the summit which took place between Turkey and EU on 7 March 2016 with new demands from Turkey. Among these requests; (EC-110/16) on the issue of the legal refugee status of a Syrian asylum seeker to EU countries in the face of every irregular migrant that Turkey has reclaimed. On March 16, 2016, EU countries decided to take 72 thousand Syrian refugees. This number is quite low for the EU, where 1,1 million migrants entered the

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<sup>&</sup>lt;sup>110</sup> See (EC 110/16) "Remarks by President Donald Tusk after the meeting of the EU heads of state or government with Turkey" http://www.consilium.europa.eu/en/press/press-releases/2016/03/07-tusk-remarks-eu-turkey-meeting/ (viewed 26 April, 2017). Speech by Donald Tusk, President of the Council of Europe, held on 07.03.2016 after the Turkey-EU Summit stated that he met with a partner in Turkey. It is mentioned that the proposals presented by Turkey will be studied. At this point; It draws attention to the fact that all irregular migrants passing through Turkey from Greece are returned to Turkey and that Syrian refugees will be placed in the EU countries by applying a one-to-one rule in response to irregular migrants to be reclaimed. It is an unsettling factor for Turkey to send all irregular migrants, regardless of their nationality, to Turkey, which is thought to have passed through Turkey through Greece. On the other hand, any time for Syrian refugees to be taken as a remedy for any refugee received is avoided. All documents and minutes issued by the European Council after the meeting say that only a single rule may operate, but there is no reference to the period of time that refugees will be admitted. It can be seen that the initial interviews can be carried out within a period of 6 months for the period of acceptance of asylum seekers in the EU. The subject was the subject of interviewing in Turkey and the issue of accepting those accepted in the EU countries afterwards. It is known that refugee admission times are indefinite, ranging from 1 to 6 years. There is ambiguity about the way in which the Syrians can enter EU countries with their asylum status.

<sup>&</sup>lt;sup>111</sup>TheGuardian (2016, 16 March ) <a href="http://www.theguardian.com/world/2016/mar/16/eu-cut-number-syrian-refugees-coming-europe">http://www.theguardian.com/world/2016/mar/16/eu-cut-number-syrian-refugees-coming-europe</a> (viewed on March 18, 2016). )

border in 2015 and 363 thousand Syria had asylum applications. At the meeting dated March 16, 2016, the priority was given to accelerating the transfer of the existing funds of 3 billion Euros to Turkey, and in addition, the EU was able to provide 3 billion Euros in total assistance for the Syrian asylum seekers in Turkey until the end of 2018. Apart from that, the date for visa-free travel has been brought forward and as of June 2016. The visa-free travel of the Turks to the EU countries has been foreseen, but it is necessary to fulfil the 72 conditions stated by the EU before visa liberation 112

On 4 March 2016, the preparation document of the "Second Report on progress by Turkey" (COM 2016/140) prepared by the EU Commission has been published and the 72-item arrangement to be implemented before the visa exemption to be applied to Turkey, it is given. As the second title, it is mentioned as an important step that the Migration Administration takes place and the Law on Foreigners and International Protection No 6458 has been issued. However, due to geographical concerns put into the 1951 Geneva Convention, the disapproval of asylum requests from outside Europe is underlined. It is praised for Turkey to remain committed to the 'open door policy' and the principles of non-returning, saying that there are more than 250 Syrians in the 26 camps and that many millions of Syrians continue their lives in various illusions of Turkey under 'temporary protection status' outside the camps. However, it is also reported that the same rapporteur should be implemented in accordance with EU standards and with respect to the 1951 Convention and the Additional Protocol of 1967, "without any geographical restrictions." Report also criticizes that the regulations on the enjoyment of public rights of asylum-seeker status have not yet been completed.

Under the third heading, the steps taken since 2014 on public order and security issues are assessed. It is criticized that the necessary steps have not been taken in relation to the prevention of human trafficking. Under the fourth heading are regulations on basic rights of asylum seekers. In the fifth chapter, the Readmission Agreement and irregular migrants are being discussed, and it is stated that the Agreement has not yet reached full

BBC 2016, 17 March) <a href="http://www.bbc.com/turkce/haberler/2016/03/160317">http://www.bbc.com/turkce/haberler/2016/03/160317</a> ab turkiye (viewed on 18 March, 2016). 1 (viewed on April 27, 2017).

functionality. However, the first 'readmission' rituals began to enter Turkey on 4 April 2016. 113

Unregistered immigrants are informed that Turkey will reclaim irregular migrants passing from Turkey to Greece after the reinstatement process started on April 4, 2016. <sup>114</sup>On March 20, 2016, irregular migrants from Turkey to Greece will be admitted as of April 4, 2016 Return to Turkey has been initiated. 131 Pakistani people formed the first group accepted by the majority of the population. The process of delivering Syrian asylum seekers to the EU has been initiated in response to irregular immigrants who have been reinstated as required by the bilateral agreement. EU Commission Speaker Schinas reported that after the first readmission, 32 Syria came to Turkey from Germany and 11 Syria to Finland <sup>115</sup>

On the other hand, as of November 2016, 721 migrants who were found to have migrated from Turkey to Greek islands were returned to Turkey. 82 migrants from Syria, 354 from Pakistan, 72 from Afghanistan and 213 from different countries were placed in recruitment centres. Between April 4 and November 26, 2016, 2 thousand 330 Syrians were sent from Turkey to Europe under the Re-Admission Agreement. 937 Syria was placed in Germany with refugee status, while France adopted 401 Syria. On the 4<sup>th</sup> of May 2016, the EU Commission published 'Turkey's progress on the visa liberalization roadmap' while the readmission procedures were in progress and the point reached in the 72-item regulation package that Turkey needs to make. There are five

In the "Second Report on progress in Turkey", COMS 2016/140, the applicants 'statistics and visa application rates for the Turks' EU countries were also included in the visa liberalization roadmap (COM 2016/140). It is also seen that In report it is worried that the numbers of asylum seekers of Turks will increase due to the internal unrest in Turkey. Another noteworthy concern is that the non-Turkish people through Turkey can enter the Schengen region by issuing false documents. In the Commission's Report, it is seen that the recognition of the freedom of visa-free travel to Turks draws particular attention to the negative picture that can be created in Schengen countries. The 72 articles on immigration and asylum-related regulations point to the lifting of the geographical disaffection of international law and compliance with EU norms.

Habul başladı (2016, 4 April). Al Jazeera. Retrieved from http://www.aljazeera.com.tr/haber/geri-kabulbaşladı (viewed on April 27, 2017).

<sup>115</sup> Geri kabul başladı (2016, 4 April). *Al Jazeera*. Retrieved from <a href="http://www.aljazeera.com.tr/haber/geri-kabul-basladi">http://www.aljazeera.com.tr/haber/geri-kabul-basladi</a> (viewed on April 27, 2017)

<sup>&</sup>lt;sup>116</sup> 2 bin 330 Suriyeli gönderildi (2016, 11 November). *Hürriyet*. Retrieved from http://www.hurriyet.com.tr/2-bin-330-suriyeli-gonderildi-40288819 (viewed on April 27, 2017).

thematic groups separated by 72 items, which are arranged according to the materials needed for further study. As of May 2016, 66 of these 72 criteria were fulfilled, 3 were partially fulfilled and 3 were not yet completed. In the 24th article, which is under the heading of migration management, there has been a need for alignment with the EU acquis by removing the geographical impasse, and the article is among the 'completed' regulations. The issue of removing the geographical concern, which is stated to be among the legislative arrangements that Turkey has to fulfil in the process of visa liberalization, has taken its place among the 'realized regulations' at the last point. However, Turkey has not declared that it removes geographical reserves in the present In the framework of the report, Turkey is well known in the EU, where geographical limitation has been lost, despite the fact that Turkey has maintained geographical limitations, in consequence of the regulations it implements in domestic law. It has been argued that millions 117 of Syrians in Turkey can apply for asylum in Turkey and that Syrians can apply for Turkish citizenship after being accepted as asylum seekers. Discussions regarding the granting of Turkish citizenship to the Syrians in the temporary protection status were initiated in the Turkish public as of July 2016, while maintaining the official validity of the Geographical Conflict of 1951 Geneva Convention.

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<sup>&</sup>lt;sup>117</sup> According to the Ministry of Interior Immigration Administration General Directorate, the number of Syrians in the temporary protection status in Turkey as of May 2017 is 3 million 6 thousand 298. This number does not include the Syrians who have not yet been registered.

### **CONCLUSION**

Being a party to the 1951 Geneva Convention, which has been the main document of international refugee law since 1951, Turkey exercised its right to apply limitation based on Article 1-B/2 of Convention to the geography of origin of people who came to Turkey with intent of immigration and stated that Turkey accepted the provisions of Convention because of "events occurring in Europe before 1 January 1951". With this statement, Turkey continues to accept refugee status of those who escape from human rights violations in Europe. As of May 2017, there are a few refugees and millions of people who do not have refugee status and live their lives under different legal statuses in Turkey<sup>118</sup>. Considering the current numbers, Turkey has become the country, which hosts highest number of asylum seeker in the world. When mentioned numbers and people who reside 'permanently' in Turkey but without refugee status are considered, the question of "Is the geographic limitation attached by Turkey in 1951 Geneva Convention still valid" came into mind. The study, which was formed within the framework of this question, covered all aspects of the geographical limitation made by Turkey against 1951 Geneva Convention is covered.

The international regulations on refugee law discussed in the first chapter are evaluated together with the development process of the legal texts and all the elements that affect this process. The definition of refugee by the 1951 Geneva Convention and the 1967 Additional Protocol, which are the basic documents of international refugee law, has been criticized in general terms for not discriminating with fundamental differences from the regulations on refugee law since the First World War, and not meeting the needs of the changing refugee groups. The geographical limitation, an item discussed in the preparatory work of the 1951 Geneva Convention, which was drafted under the political and ideological domination of the West during the Cold War and structured without the effective participation of the Soviet Bloc, was basically added to the convention aimed at international protection of the people who flee the communist

<sup>&</sup>lt;sup>118</sup> According to official data, as of 11 May 2017, there are 3 million 6 thousand 298 Syrians at the status of temporary protection, more than 290 thousand Afqhan, Iraqi and Iranian living in Turkey.

system of the USSR. It seems that the forms of administration, which are ideologically centralized to the political values of the West and dominated by other political views, are intended to be added to the Constitution in view of the 'oppression and cruelty' environment (Odman, 1995). Although it was intended to prevent the burden of asylum seekers leaving their countries in the timeframe added to the Convention and in an indefinite period of time, time limitation was lifted in 1967 Additional Protocol, taking into account the needs of the period. There is a criticism in the literature asserting that the refugee definition in the 1951 Geneva Convention and the Additional Protocol of 1967, which are the main documents of international refugee law, is not enough to ensure that people and groups who have to leave the country for many different reasons in the world today are defined thoroughly (Glynn, 2011; Fragomen, 1970; Hathaway, 1990; Jackson, 1991). Understanding the process of formation about the international refugee law, which is shaped under the political hegemony of the West, is also an important basis for understanding the European Union's approach to the refugee issue. The 1951 Geneva Convention draft studies, corresponding to the years of the foundation of the European Union, and the 1967 Additional Protocol prepared during the period of increasing integration movements, were shaped under the influence of the EU's founding states in general terms. The EU has used the Convention as a complementary instrument, rather than on the basis of the 1951 Geneva Convention, and taken the prevention of irregular migration in its common immigration and asylum policies to the centre. The EU, which often reminds the articles of convention to the third countries, is warning the third countries to establish a refugee law respecting human rights in their domestic law. The EU is laying the groundwork for common migration and asylum policies and human rights violations in its own interests. At the beginning of these applications the situation where the unsecured countries are considered as 'safe country' comes and the asylum seekers are sent back to them with the readmission agreements signed (Lavenex, 2001).

Policies of restricting, controlling and stopping immigration being assessed from the point of view of security vulnerability, which have been generated throughout the EU and specific to the member states beyond human dimension, are also considered as

priorities in the EU political agenda. Together with the Council meeting in Tampere in 1999, the European Union aimed to set up strategies to create freedom, security and justice. For this purpose, policies covering the source and transit countries have been developed by taking the internal and external dimensions of migration together. It is important that Turkey's changing immigration and asylum policies coexist with the changing political attitude of the migrating Western countries. The return of the nationstate centred approach in the Western countries that migrated with the 2000s is remarkable (İçduygu, Erder and Gençkaya, 2014). High-income EU countries, which have been experiencing regular and irregular migrations in the 2000s, have begun to adopt anti-immigration policies rather than encourage immigration, and have developed an anti-immigrant posture politically and ideologically (Içduygu, Erdener and Gençkaya, 2009). International policies based on preventing, stopping and repatriating irregular migration by working together with neighbouring countries that are not members of the European Union together with the internal dimensions of the movement of member states within a single migration policy constitute the EU immigration and asylum law (Hampshire, 2015). As a result of the literature review in the second chapter, it seems that this process has moved away from liberal values centering on human rights in the policies developed by the EU against immigrants and asylum seekers, which the EU regards as 'security threat'. The negotiations and signing of the EU by third countries in order to prevent irregular migration are shaped by taking the EU security centre away from centralizing the protection of human rights. On the one hand, the EU expects to take measures to protect human rights and international law on the protection of asylum-seekers and migrants by keeping 'liberal values' on the front, without raising security concerns on the one hand and surrounding countries on the other. At this point, it is possible to understand Turkey's hesitant approach to the removal of the geographical despair, which is one of the expectations from Turkey.

As a matter of fact, the removal of the geographical limitation may result in the acceptance of other irregular migrants seeking access to the EU from Turkey through refugees in Turkey, escaping from other Middle Eastern countries where the mess and disorder are prevailing with the Syrians, which currently constitute the largest

immigrant community in the world. As a matter of fact, the Republic of Turkey continues providing temporary protection to the millions of asylum seekers under the definition of 'guests' since the first Iraqi asylum crisis, depending on the tradition of humanitarian aid to asylum seekers. As a country with sensitive economic, cultural and social balances, Turkey should carry out arrangements to protect such balances, while retaining human communities on the ground as refugees, at the concentration of which the balance will be deeply shaken. In the current situation, it is observed that there are chaotic environments that frequently conflict with local people and asylum seekers in areas where there are more than 3 million asylum seekers living in Turkey with temporary protection status or other ambiguous statues while maintaining geographical limitation. It is possible to foresee that Turkey, which still has difficulties in carrying the burden of irregular migrants and asylum seekers while maintaining geographical limitation, will become a permanent destination point for refugees who experience difficulties about passing to the EU if Turkey would lift the geographic limitation and make arrangements demanded by the EU (Mannaert, 2003).

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### APPENDIX.1.1



### HACETTEPE ÜNİVERSİTESİ SOSYAL BİLİMLER ENSTİTÜSÜ YÜKSEK LİSANS/DOKTORA TEZ ÇALIŞMASI ORJİNALLİK RAPORU

#### HACETTEPE ÜNİVERSİTESİ SOSYAL BİLİMLER ENSTİTÜSÜ ULUSLARARASI İLİŞKİLER ANABİLİM DALI BAŞKANLIĞI'NA

Tarih: 04/07/2017

Tez Başlığı / Konusu: Türkiye Cumhuriyeti'nin 1951 Cenevre Sözleşmesi'ne Getirdiği Coğrafî Çekincenin Yeniden Değerlendirilmesi

Yukarıda başlığı/konusu gösterilen tez çalışmamın a) Kapak sayfası, b) Giriş, c) Ana bölümler ve d) Sonuç kısımlarından oluşan toplam 155 sayfalık kısmına ilişkin, 03/07/2017 tarihinde şahsım tarafından Turnitin adlı intihal tespit programından aşağıda belirtilen filtrelemeler uygulanarak alınmış olan orijinallik raporuna göre, tezimin benzerlik oranı %11'dir.

Uygulanan filtrelemeler:

- 1- Kabul/Onay ve Bildirim sayfaları hariç,
- 2- Kaynakça hariç
- 3- Alıntılar dâhil
- 4-  $\,$  5 kelimeden daha az örtüşme içeren metin kısımları hariç

Hacettepe Üniversitesi Sosyal Bilimler Enstitüsü Tez Çalışması Orjinallik Raporu Alınması ve Kullanılması Uygulama Esasları'nı inceledim ve bu Uygulama Esasları'nda belirtilen azami benzerlik oranlarına göre tez çalışmamın herhangi bir intihal içermediğini; aksinin tespit edileceği muhtemel durumda doğabilecek her türlü hukuki sorumluluğu kabul ettiğimi ve yukarıda vermiş olduğum bilgilerin doğru olduğunu beyan ederim.

Gereğini saygılarımla arz ederim.

O(4.07.2017 Tarih ve İmza

Adı Soyadı: Münevver KIR

Öğrenci No: N11125935

Anabilim Dalı: Uluslararası İlişkiler

Programı: Uluslararası İlişkiler

Statüsü: X.Lisans Doktora Bütünleşik Dr.

### **DANIŞMAN ONAYI**

UYGUNDUR.

Prof. Dr. Yonca ANZERLÍOĞLU

### **APPENDIX.1.2**



# HACETTEPE UNIVERSITY GRADUATE SCHOOL OF SOCIAL SCIENCES THESIS/DISSERTATION ORIGINALITY REPORT

## HACETTEPE UNIVERSITY GRADUATE SCHOOL OF SOCIAL SCIENCES TO THE DEPARTMENT OF INTERNATIONAL RELATIONS

Date: 04/07/2017

Thesis Title / Topic: A Reconsideration of Turkey's Geographical Limitation to the 1951 Geneva Convention

According to the originality report obtained by myself/my thesis advisor by using the Turnitin plagiarism detection software and by applying the filtering options stated below on 03/07/2017 for the total of 155 pages including the a) Title Page, b) Introduction, c) Main Chapters, and d) Conclusion sections of my thesis entitled as above, the similarity index of my thesis is 11 %.

Filtering options applied:

- 1. Approval and Decleration sections excluded
- 2. Bibliography/Works Cited excluded
- 3. Quotes included
- 4. Match size up to 5 words excluded

I declare that I have carefully read Hacettepe University Graduate School of Social Sciences Guidelines for Obtaining and Using Thesis Originality Reports; that according to the maximum similarity index values specified in the Guidelines, my thesis does not include any form of plagiarism; that in any future detection of possible infringement of the regulations I accept all legal responsibility; and that all the information I have provided is correct to the best of my knowledge.

I respectfully submit this for approval.

Date and Signature

Name Surname:	Münevver KIR		
Student No:	N11125935		
Department:	International Relations		ns
Program:	International Relations		ns
Status:		Ph.D.	☐ Integrated Ph.D.

**ADVISOR APPROVAL** 

APPROVED.

Prof. Dr. Yonca ANZERLİOĞLU

### APPENDIX.2.1



# HACETTEPE UNIVERSITY GRADUATE SCHOOL OF SOCIAL SCIENCES ETHICS BOARD WAIVER FORM FOR THESIS WORK

## HACETTEPE UNIVERSITY GRADUATE SCHOOL OF SOCIAL SCIENCES INTERNATIONAL RELATIONS TO THE DEPARTMENT PRESIDENCY

Date: 15/06/2017

Thesis Title / Topic: A Reconsideration of Turkey's Geographical Limitation to the 1951 Geneva Convention

My thesis work related to the title/topic above:

- 1. Does not perform experimentation on animals or people.
- 2. Does not necessitate the use of biological material (blood, urine, biological fluids and samples, etc.).
- 3. Does not involve any interference of the body's integrity.
- Is not based on observational and descriptive research (survey, measures/scales, data scanning, systemmodel development).

I declare, I have carefully read Hacettepe University's Ethics Regulations and the Commission's Guidelines, and in order to proceed with my thesis according to these regulations I do not have to get permission from the Ethics Board for anything; in any infringement of the regulations I accept all legal responsibility and I declare that all the information I have provided is true.

I respectfully submit this for approval.

Date and Signature

Adı Soyadı: Münevver KIR

Öğrenci No: N11125935

Anabilim Dalı: Uluslararası İlişkiler

Programı: Uluslararası İlişkiler

Statüsü: X.Lisans Doktora Bütünleşik Dr.

### **ADVISER COMMENTS AND APPROVAL**

Prof Dr Vonca ANZERLIOGIL

### **APPENDIX.2.2**



### HACETTEPE ÜNİVERSİTESİ SOSYAL BİLİMLER ENSTİTÜSÜ TEZ ÇALIŞMASI ETİK KURUL İZİN MUAFİYETİ FORMU

#### HACETTEPE ÜNİVERSİTESİ SOSYAL BİLİMLER ENSTİTÜSÜ ULUSLARARASI İLİŞKİLER ANABİLİM DALI BAŞKANLIĞI'NA

Tarih: 15/06/2017

Tez Başlığı / Konusu: Türkiye Cumhuriyeti'nin 1951 Cenevre Sözleşmesi'ne Getirdiği Coğrafi Çekincenin Yeniden Değerlendirilmesi

Yukarıda başlığı/konusu gösterilen tez çalışmam:

- 1. İnsan ve hayvan üzerinde deney niteliği taşımamaktadır,
- 2. Biyolojik materyal (kan, idrar vb. biyolojik sıvılar ve numuneler) kullanılmasını gerektirmemektedir.
- 3. Beden bütünlüğüne müdahale içermemektedir.
- 4. Gözlemsel ve betimsel araştırma (anket, ölçek/skala çalışmaları, dosya taramaları, veri kaynakları taraması, sistem-model geliştirme çalışmaları) niteliğinde değildir.

Hacettepe Üniversitesi Etik Kurullar ve Komisyonlarının Yönergelerini inceledim ve bunlara göre tez çalışmamın yürütülebilmesi için herhangi bir Etik Kuruldan izin alınmasına gerek olmadığını; aksi durumda doğabilecek her türlü hukuki sorumluluğu kabul ettiğimi ve yukarıda vermiş olduğum bilgilerin doğru olduğunu beyan ederim.

Gereğini saygılarımla arz ederim.

15.06.2017

Adı Soyadı: Münevver KIR

Öğrenci No:

N11125935

Anabilim Dalı:

\*\*\* 1 - 41, 1.1

nabilim Dali:

Uluslararası İlişkiler

Programı:

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Statüsü: X.Lisans

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