

Reconciling Refugee Protection With Combating Irregular Migration: Turkey and the EU

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Introduction

During the course of the 1990s, the issue of immigration in general and irregular migration in particular, has been high up on the political agenda of many European countries. The arrival of boats full of illegal migrants to the shores of France and Italy, especially during the late 1990s, accompanied by surges in the number of asylum seekers during the same period, played an important role in the rise of anti-immigration feelings in some European countries. These developments came to dominate the domestic politics of a number of EU countries and became hotly contested issues during election campaigns. Efforts to develop a "common asylum and immigration" European Union policy has also been deeply influenced by these developments. Most strikingly during the run up to the Seville European Council in June 2002, the British and Spanish prime ministers, Tony Blair and Jose Anzar, called for tough measures to stem illegal migration and asylum applications. There were even calls for the introduction of sanctions against countries failing to cooperate against illegal migration. One of the countries threatened by sanctions for not combating transit illegal migration rigorously enough was actually Turkey itself. In the meantime the European Council authorised the European Commission to negotiate readmission agreements with a list of countries including Turkey. Furthermore, the European Union during the course of early 2004 adopted a series of Directives on Asylum which have left the refugee advocacy community deeply concerned about the erosion of the international refugee regime based on the 1951 Geneva Convention Relating to the Status of Refugees. Hence, the European Union has been increasingly depicted as a "fortress of Europe" with little room for asylum seekers, refugees and migrants.

Turkey has been one of the countries at the centre of the ongoing immigration debate in Europe. In Europe Turkey has traditionally been depicted as a country of emigration and a country of origin for asylum seekers. During the course of the last couple of years, but especially in the late 1990s and early 2000s, it also came to be seen as a source and transit country for illegal migrants. What is

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less well known is that Turkey has long been a country of immigration and asylum. From 1923 to 1990, more than 1.6 million people immigrated to Turkey, mostly from Balkan countries.¹ In the 1930s there were many Jewish and German intellectuals who sought temporary asylum in Turkey. Turkey's neutral status during the Second World War led to ten-thousands of Jews from German occupied lands in Europe to flee to Turkey and transit to Palestine while many nationals from neighbouring Balkan countries and Italians from the Dodecanese islands sought temporary asylum in Turkey. During the Cold War, thousands of asylum seekers fled to Turkey from Communist states in Eastern Europe. The overwhelming majority were recognised as refugees, and resettled to third countries such as Canada and the United States by the United Nations High Commissioner for Refugees (UNHCR). In the late 1980s, this pattern began to change as increasing numbers of asylum seekers began to arrive from Iran and Iraq, as well as other developing nations. Turkey also experienced a mass influx of almost half a million mostly Kurdish refugees from Iraq in 1988 and 1991, as well as mass influxes of Albanians, Bosnian Muslims, Pomaks (Bulgarian-speaking Muslims) and Turks in 1989, 1992-1995, and 1999. In addition, there were the Ahıska (also known as Meshketian) Turks who came to Turkey after failing to return to their homelands in Georgia from areas in Central Asia that they were deported to by Joseph Stalin during World War II. This was a period (1988-1999) during which Turkey was host to, almost, one million asylum seekers and refugees. This is in some contrast to the approximately 336,000 Turkish asylum seekers² reaching western European countries during the 1990s that continued to perpetuate the image of Turkey as a country of emigration. More recently, over the last fifteen years or so, Turkey has become a country of transit to the European Union for irregular migrants from Asian countries such as Afghanistan, Bangladesh, Iraq, Iran, and Pakistan. Turkey itself too is becoming a destination for irregular migrants from former Soviet Bloc countries and elsewhere.

The changing patterns of immigration into Turkey and Turkey's efforts to become a member of the European Union are creating pressures for an overhaul of its immigration and asylum policies. In accordance with the Accession Partnerships (AP) strategies prepared for Turkey in 2000 and 2003, Turkey adopted its own National Programmes for the Adoption of the Acquis, which aim to overhaul Turkey's practice and policy in a wide range of areas from asylum and combating illegal migration to improving the management of border control. This paper aims

¹ K. Kirişci "Coerced Immigrants: Refugees of Turkish Origins since 1945" *International Migration* 34, No. 3 (1996).

² The figure is obtained from *The State of the World's Refugees: Fifty Years of Humanitarian Action* (UNHCR, Oxford University Press, Geneva, 2000), Annex 10, p. 325.

to study the reforms that the Turkish government has been introducing in these two areas. However, the paper will argue that these efforts to overhaul the system are trapped between two conflicting pressures. Turkey is, on the one hand, under pressure to improve its asylum system to match EU and international standards and on the other hand it is expected to combat irregular transit migration as immigration issues become "securitised" in many EU member countries. The emphasis that the EU governments and publics have been putting on the security dimension of asylum and irregular migration risks jeopardising the gains that have been achieved in Turkey in terms of human rights. The paper will conclude by arguing that greater emphasis on a developmental approach in addressing the challenges created by asylum and illegal migration trends over the last decade or so may better help to reconcile human rights and security priorities.

Asylum

Turkey is among the original signatories of the 1951 Convention relating to the Status of Refugees.³ However, Turkey together with Congo, Madagascar and Monaco is today among a very small number of countries that maintains a "geographical limitation" to the agreement's applicability as defined in Article 1.B(1)(a) of the Convention. Accordingly, Turkey does not grant refugee status to asylum seekers coming from outside Europe, and maintains a two-tiered asylum policy.

The first tier of this policy is centred on Europe and is deeply rooted in Turkey's role as a western ally neighbouring the Soviet Union during the Cold War. During that period, in close cooperation with UNHCR, Turkey received refugees from the Communist Bloc countries in Europe, including the Soviet Union. Such refugees, during their stay in Turkey, enjoyed all the rights provided for in the 1951 Convention relating to the Status of Refugees. Only a very small number were allowed to stay on in Turkey, often as a result of marriages with Turkish nationals. The others were resettled out of Turkey. Although it is very difficult to obtain accurate statistics on their numbers, the Ministry of Interior has indicated that some 13,500 asylum seekers benefited from the protection of the 1951 Convention between 1970 and 1996. Statistics for previous years are not available. Additionally, during the 1990s there were almost 40,000 Bosnians and Kosovars that were granted temporary asylum in Turkey.⁴ The majority have returned.

³ For a detailed examination of Turkey's asylum policies see K. Kirişçi, "UNHCR and Turkey: Cooperating towards an improved implementation of the 1951 Convention on the Status of Refugees" *International Journal of Refugee Law*, Vol. 13, No. 1/2, 2001.

⁴ *Ibid.*, pp. 75-76.

The second tier of Turkey's asylum policy deals with people from outside Europe. The new policy emerged in 1980 in the wake of the Iranian Revolution, and subsequent instability in the Middle East, Africa, and Southeast Asia. Upheaval in these areas led to a steady increase in the number of asylum seekers coming from outside Europe. For a long time, the government allowed UNHCR considerable leeway to temporarily shelter these asylum seekers with the tacit understanding that they would be resettled out of Turkey if UNHCR recognised them as refugees, and that those whose claims were rejected would be deported. However, the growth in the number of illegal entries into Turkey and in the number of rejected asylum seekers stranded in Turkey strained this practice. The situation was also aggravated by the 1988 and 1991 mass influxes of Kurdish refugees amounting to almost half a million. To cope with this overload, the government introduced the 1994 Asylum Regulation, which reflects the ascendance of national security concerns over refugee rights. Its application led to an increase in the number of violations of the principle of "non-refoulement" (the return of asylum seekers to situations in which their lives and human rights may be threatened) and attracted widespread criticism from refugee advocacy and human rights circles.⁵

However, starting in 1997, UNHCR and the Turkish government returned to the closer cooperation that had characterised their relationship up until 1994. This cooperation was also subsequently supported by EU governments. As a result of this cooperation, which placed particular emphasis on training in asylum law, the cases of violations of the principle of "non-refoulement" were reduced. More significantly, administrative decisions concerning deportation orders on asylum seekers have been opened to judicial review since 1997. There have been a number of local court rulings on appeals lodged by asylum seekers suspending government issued deportation orders. These orders have been accompanied by a similar ruling of the European Court of Human Rights (*Jabari vs. Turkey*, 2000), too.⁶ One important consequence of these rulings has also been a government decision to introduce some improvements to the 1994 Asylum Regulation to reduce potential cases of deportations of asylum seekers or recognised refugees.

⁵ See for example the following reports Turkey: Selective protection: Discriminatory treatment of non-European refugees and asylum seekers (London: International Secretariat, March 1994), U.S. Department of State: Turkey Country Report on Human Rights for 1996 (US State Department, Washington DC, released on January 1997), Bill Frelick, Barriers to Protection: Turkey's Asylum Regulations (Washington D.C.: Report issued by the U.S. Committee for Refugees) and Turkey: Refoulement of non-European refugees – a protection crisis (London: Amnesty International Secretariat, Document EUR 44/031/1997).

⁶ European Human Rights Court (Fourth Section), Case of *Jabari v. Turkey* (Application No. 40035/98), Judgment, Strasbourg, 11 July 2000.

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

Table 1: Applications under the 1994 Asylum Regulation, 1995-May 2004

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

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

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

Source: Data obtained from the Foreigners Department of MOI.

More than 35,000 asylum applications (see Table 1) were lodged with the Turkish authorities between 1995 and May 2004, approximately between 4,000 to 4,500 applications per year. In cooperation with the UNHCR Turkey has granted temporary asylum to more than 17,900 during this period. However, in accordance with the "geographical limitation", Turkey expects those asylum seekers who have been granted refugee status to be resettled out of Turkey. According to government statistics between 1995 and May 2004, close to 17,500 were resettled outside of Turkey, mostly to North American and Scandinavian countries as well as Australia and New Zealand. Those whose applications are rejected are supposed to be deported to their country of origin, but many go underground and stay in Turkey or try to move on to European countries illegally.

In accordance with the Accession Partnership (AP) strategy for Turkey of March 2003 and the National Program for the Adoption of the Acquis (NPAA) of July 2004 Turkey is expected to harmonise its asylum policies with those of the EU.⁷ In accordance with these two documents, Turkey will have to put into place

⁷ These documents can be reached respectively from <http://www.mfa.gov.tr/grupa/ad/adc/AccessionPartnership2003.pdf> and <http://www.abgs.gov.tr/up2003/up.htm>

institutional and legal structures which will enable it to do its own status determination as well as lift the "geographical limitation". These changes are supposed to take place by the end of 2005. Considerable progress has already taken place, however the finalisation of these changes is still very dependent on whether the European Council in December 2004 will indeed decide to open accession negotiations with Turkey. Should the decision of the Council be a positive one it is highly likely that Turkey will come under increasing pressure to implement the EU acquis on asylum and in particular in respect to the "first country of asylum". Furthermore, the current practice of resettling asylum seekers recognised as bona fide refugees out of Turkey will come under increasing pressure. Consequently, Turkey will need to put into place legislative and institutional changes to enable refugees to stay on and integrate into Turkish society.

Irregular migration

Since the early 1990s, Turkey has been witnessing new forms of immigration. These include students from a variety of countries as well as nationals of EU countries who have officially sanctioned presence in Turkey with proper residence and work permits. EU nationals include individuals engaged in professional activities and their families particularly in Istanbul, as well as European retirees in some of the Mediterranean resorts. They, too, constitute a relatively new phenomenon in terms of immigration into Turkey, and the numbers of EU nationals are estimated at 100,000-120,000.⁸ As a result of a liberal visa policy operated by Turkish governments, the 1990s were characterised by the phenomenon of "suitcase" trade, bringing nationals particularly from the former Soviet Union and Soviet Bloc countries to Turkey on repeated trips. This has led some of these people to stay on in the country, embark on more permanent business connections as well as marriages. There have also been among these people those who take up jobs illegally on a temporary or "pendular" form in various sectors of the Turkish economy. There are no reliable figures but there are such illegal immigrants from as diverse countries as Armenia and the Ukraine. Furthermore, there are also a growing number of sportsmen and women from a wide range of countries who are acquiring growing public attention. It is against this background as well as in respect to efforts to harmonise Turkish policy and practice with that of the EU acquis that the government in 2003 adopted a new labor law for foreigners to facilitate and streamline the acquisition of work permits. The government has also prepared a draft law to replace the Settlement Law of 1934 governing immigration into Turkey.

⁸ B. Kaiser, "Life Worlds of EU Immigrants in Turkey" in E. Zeybekoğlu and B. Johansson (eds.) *Migration and Labour in Europe: Views from Turkey and Sweden* (Istanbul: Şefik Matbaası, 2003).

There is also a form of transit irregular migration involving nationals of neighbouring countries such as Iraq and Iran as well as nationals from more distant countries such as Afghanistan and Pakistan. These are people that often resort to the services of human smugglers and pay large fees to get themselves smuggled into western European countries.⁹ In the case of Turkey they are more likely to enter Turkey through its eastern borders, travel through Turkey and try to enter Greece illegally across the land border and the Aegean Sea. There are also occasionally boats that try to smuggle people directly on to Italy and France. These boats carrying illegal migrants now and then sink, leading to human tragedies. It is very difficult to estimate the numbers of such irregular transit migrants in Turkey and figures that are cited are invariably speculative. However, according to government statistics there were more than 477,000 such persons apprehended between 1995 and 2004 (June).¹⁰ The general consensus appears to be that Turkey has considerably reduced the number of illegal migrants using Turkey as a transit country to reach European Union member countries. This was, for example, acknowledged in the Progress Report prepared by the European Commission in 2003.¹¹

In August 2002, in an effort to align Turkish legislation to the international standards laid down by the UN Conventions of 2000, concerning trafficking and smuggling of humans, the government introduced new articles to the Penal Code criminalising human smuggling and trafficking, and instituted stricter controls at borders and ports. Turkey has also had to sign and negotiate readmission agreements with third countries from where many of the illegal migrants originate. So far Turkey has been able to sign such agreements with Syria in September 2001, Kyrgyzstan in May 2003 and Romania in January 2004.¹² In the context of the agreement with Syria, Turkey has returned 854 illegal migrants to Syria and readmitted 18 migrants to Turkey. Turkey has proposed to negotiate readmission agreements with 15 countries, but it has failed to get any response.¹³ It is, on the other hand, in the process of negotiating agreements with Belorussia, Bulgaria, Egypt, Kazakhstan, Libya, Lebanon, Macedonia, Sri Lanka, Russia, Ukraine and Uzbekistan. The negotiation of so many agreements simultaneously is a taxing exercise, particularly considering that progress is often extremely slow and

⁹ For an extensive and thorough study of this problem A. İçduygu, *Irregular Migration in Turkey* (Geneva, IOM, 2003).

¹⁰ Cited in J. Apap, S. Carrera and K. Kirişçi, "Turkey in the European Area of Freedom, Security, and Justice". EU-Turkey Working Papers., No. 3/August 2004, (Brussels: Centre for European Policy Studies), pp.18-19.

¹¹ 2003 Regular Report on Turkey' Progress towards Accession: http://europa.eu.int/comm/enlargement/report_2003/pdf/tr_tk_final.pdf.

¹² These agreements were published in the Official Gazette: Syria, Law 4901, Official Gazette, 17 June 2001, No. 25148; Greece, Law 3914, Official Gazette, 24 April 2002, No. 25148; and Kyrgyzstan, Law 5097, Official Gazette, 17 February 2004, No. 25376. The one with Romania has not yet been ratified and put into force.

¹³ For the full list of countries as of August 2004 see Appendix.

governments often have little incentive to cooperate. The latter explains why Turkey has failed to start negotiations with 15 countries. On the other hand, it should be noted that Turkey's performance in terms of the number of readmission agreements concluded and being negotiated is much better than the performance of the European Commission. At its meeting in Seville on 21-22 June 2002, the European Council called for the speeding up of the conclusion of readmission agreements with a number of targeted countries.¹⁴ The Council also authorised the European Commission to enter into negotiations on multilateral readmission agreements with Morocco, Sri Lanka, Russia, Pakistan, Hong Kong, Macao, Ukraine, Albania, Algeria, China and Turkey. The Commission has encountered serious difficulties in the negotiations process with most of these states and has managed to conclude agreements only with Hong Kong, Macao and Albania.¹⁵

Turkey itself has been required to start negotiating a readmission agreement with the EU. Turkey had long resisted the signing of such an agreement and instead expressed a readiness to receive back any third country irregular migrants as long as they were returned to Turkey promptly and without delay. Turkey also argued that constitutionally it was required to accept back its own nationals in any event. In March 2004 Turkey, reluctantly, agreed to start negotiations with the EU on such an agreement. However, officials have expressed resentment with respect to the level of pressure they have come under to start these negotiations. They fear that Turkey will become a dumping ground for unwanted immigrants by the EU.¹⁶ Turkish officials are especially concerned because Turkey is encountering great difficulties in initiating negotiations let alone actually concluding agreements with many of the sending countries of illegal migrants. They fear that this may lead to a situation where the EU would be able to send back illegal migrants to Turkey while Turkey will not have the means of ensuring their return to their respective countries of origin.

In the meantime, in November 2001, Turkey signed a bilateral readmission protocol with Greece. This is the longest-standing readmission agreement that Turkey has had with a current EU country. In spite of a dramatic improvement in Greek-Turkish relations in recent years and the presence of a very positive cooperative climate, the implementation of the agreement has encountered difficulties. Since the agreement came into force, Greece has provided Turkey with

¹⁴ See Presidency Conclusions Seville European Council, 21-22 June 2002, point 30 that deals with measures to combat illegal immigration.

¹⁵ See Report on the Proposal for a Council Decision concerning the signing of the Agreement between the European Community and the Macao Special Administrative Region of the People's Republic of China on the readmission persons residing without authorization, European Parliament, 24.2.2004.

¹⁶ Apap et al, Op cit p. 25.

a list of more than 14,101 illegal migrants that they would have liked to send back to Turkey. Turkey has agreed to admit 2,416 from this list, but Greece was only able to hand over to the Turkish authorities 1,006 persons from this list. These illegal migrants, 270 Iranians and 736 Iraqis, were handed over to the Turkish authorities between October 2002 and January 2004. They were subsequently repatriated to Iran and Iraq.¹⁷ According to the Turkish authorities, an additional 2,816 illegal migrants were forced back to Turkey in violation of the provisions of the agreement. On the other hand, the Turkish side asked 753 illegal migrants of 28 nationalities to be readmitted by Greece. Greece was able to accept back 19 Somalis.¹⁸ The problems encountered are indicative of the practical difficulties associated with readmission agreements even when they involve two neighbouring countries with reasonably good relations.

Policies on illegal migration continue to be a major source of concern for EU governments. An impressive body of *acquis* has been developed in this area. The new accession countries have had to adjust their policies accordingly.¹⁹ Turkey is under pressure to follow precisely the same route. However, many Turkish officials feel that they are not receiving the recognition they deserve for the energy and resources that are being channelled into combating irregular migration. Furthermore, they also feel that Turkey is being treated differently to the previous candidate states, who signed readmission agreements only after accession talks started and then only on a bilateral basis.

This difference constitutes a major source of distrust. This distrust is further aggravated by what Turkish officials consider an absence of burden-sharing. They complain that Turkey is basically left to its own devices with respect to combating irregular migration in general and to arranging for the return of the illegal migrants to their countries of origin. The offer to grant Turkey EU financial and technical assistance, an offer which is typically made to 'third countries' in the areas of migration and asylum (the so-called AENEAS programme),²⁰ also represents a fundamental factor in the lack of confidence by the Turkish side on its potential candidacy status. In addition, Turkish authorities often pay out of their own salaries for the upkeep of migrants and encounter great financial and administrative difficulties in ensuring the deportation of such persons. They frequently cite a

¹⁷ The readmission and repatriation of Iraqis were suspended between when the war in Iraq started, March 2003 and June 2003.

¹⁸ Figures reported in Apap et al, p. 23.

¹⁹ For a general analysis of this situation see S. Lavenex and E. Uçarer (eds) (2002), *Migration and the Externalities of European Integration*, Lanham, Maryland: Lexington Books.

²⁰ Regulation (EC) No. 491/2004 of the European Parliament and of the Council establishing a programme for financial and technical assistance to third countries in the areas of migration and asylum (AENEAS), of 10.3.2004, OJ L80/1, 18.3.2004

project that Turkey has carried out with Holland, Sweden and Switzerland together with the International Organisation for Migration (IOM) involving the return of rejected asylum seekers to Iraq via Turkey. The project protocol was signed in October 2001 and until its completion in July 2003, ensured the return of 91 migrants. The project was strictly based on voluntarism and was actually carried out by the Anatolian Development Foundation, a Turkish non-governmental organisation with extensive experience dealing with refugees, with the cooperation of the Turkish authorities.

Trafficking in human beings is yet another form of migration that has come to attract considerable government and public attention. The new legislation incorporating the UN Conventions on human smuggling and trafficking has made trafficking a serious crime and training programs have been run to make the police, the Gendarmerie and the judiciary more sensitive. Most strikingly the Interior Ministry officials together with the Gendarmerie were able to make arrangements with a non-governmental organisation, Human Resources Development Foundation (Insan Kaynaklarını Geliştirme Vakfı-IKGV) and the Directorate General of the Status of Woman to provide social assistance to victims of trafficking until their return to their countries of origin could be arranged. The IKGV has also instituted a mechanism which enables it to receive instant information about trafficked women apprehended by the Police. The Police, together with IKGV, cooperate closely with the authorities and non-governmental organisations of the country of origin of trafficked women to ensure safe repatriation. The cooperation between the Turkish state and this particular non-governmental organisation is significant in terms of the transformation that Turkey is going through and constitutes an example of the close cooperation that is developing between bureaucracy and civil society in Turkey.²¹ Furthermore, the Interior Ministry has also instituted the practice of granting humanitarian residence permits of up to six months for victims of trafficking. These developments did not go unnoticed in the US, when the US State Department's Victims of Trafficking and Violence Protection Act of 2000: Trafficking in Persons Report for 2003 upgraded Turkey from the "tier three" group of countries threatened with sanctions for their failure to combat trafficking.²²

In respect to combating irregular migration and trafficking in human beings on the one hand and putting into place an asylum system that lives up to the standards of the norms and principles of the international refugee regime, on the other Turkey faces a number of challenges, as it prepares for pre-accession. Firstly,

²¹ For an extensive and thorough study of this problem, see S. Erder and S. Kaska (2003), *Irregular Migration and Trafficking in Women: The Case of Turkey*, IOM International Organisation for Migration, Geneva.

²² These reports can be accessed from: www.state.gov/g/tip/rls/tiprpt/.

there is a degree of contradiction between the emphasis put by the EU on combating irregular migration and the protection of the rights of asylum seekers and refugees. Many of the asylum seekers that make it to Turkey come as part and parcel of movements of irregular migrants. They frequently make use of the services of human smugglers and enter the country illegally. At training seminars for officials a great effort is made by non-governmental organisations and the UNHCR to increase sensitivity towards asylum seekers who might be caught up among illegal migrants. This effort is sometimes actually lost, however, against the massive attention paid to combating illegal migration and human smuggling by the European Union. The increasing securitization of immigration issues in the EU is indeed undermining the almost decade-long effort to move asylum-related issues to a human rights policy agenda in Turkey.

Secondly, the AP requires Turkey to lift the ‘geographical limitation’ to the 1951 Convention. Turkey in the NPAA has undertaken to do so and is working on a draft of a fully fledged asylum law that envisages a national status determination system. Nevertheless, the lifting of the limitation issue is very sensitive. Officials realise that other candidate countries, especially Hungary, Malta and Latvia,²³ had to do the same and that Turkey will need to follow suit. They are also well aware that this is part and parcel of the exercise to harmonise Turkish law and practice with that of the EU. However, the EU suffers from a credibility deficit in the eyes of Turkish officials. The greatest nightmare scenario of officials is one in which they would find themselves lifting the ‘geographical limitation’ without Turkey’s membership being taken seriously by the EU. Many Turkish officials as well as a large proportion of the public in Turkey do not trust the European Union and do not believe that the EU is serious about Turkey’s membership.²⁴ There is deep concern about giving up a ‘right’ engraved in international law and then ending up facing a huge refugee-generating region all alone.

A third and related issue in this respect is burden sharing. Owing to its geographical location, Turkish officials are concerned that Turkey risks becoming a buffer zone or a dumping ground for the EU’s unwanted asylum seekers and refugees. The current *acquis*, if and when membership occurs, would make Turkey

²³ These three countries had acceded to the 1951 Convention with the “geographical limitation” but subsequently lifted the limitation before starting accession negotiations with the EU.

²⁴ For Turkish skepticism towards the EU see A. Çarkoğlu ‘Who Wants Full Membership? Characteristics of Turkish Public Support for EU Membership’ in B. Rubin and A. Çarkoğlu (eds.) (2003): *Turkey and The European Union*, London: Frank Cass and *Türk Halkının Avrupa Üyeliğine Bakışı – (The Perspectives of the Turkish public on membership to the European Union)*, (Istanbul: TESEV, 2002). Available at: <http://www.tesev.org.tr/temmuz2002/t1.html>.

a typical 'first country of asylum' responsible for status determination.²⁵ This raises considerable concerns among officials in terms of the economic, social as well as political implications. Turkish officials will expect to see burden-sharing mechanisms that go beyond those which the current Refugee Fund has to offer.²⁶ An important confidence-building measure would be that with membership, there is a transition period, during which EU member countries and leading immigrant-receiving countries continue to accept refugees for resettlement from Turkey. This will be particularly critical at a time when Turkish officials perceive a tendency in Europe in the direction of creating a 'fortress Europe', a tendency recently reinforced by the Council Proposals on Qualifications and Asylum Procedures Directives adopted on 29 April 2004.²⁷ The notion of a 'safe third country of asylum', associated with these directives, may leave Turkey with the prospect of having to face rejected asylum seekers before it has put into place a status determination system that meets international standards. A Europe that tries to complicate, if not deny access to asylum seekers trying to reach the EU, is not setting a good example for Turkey in terms of harmonisation and credibility.

Turkey's Strategy Report on Asylum, prepared in the context of twinning projects, lays down what Turkey aims to achieve in terms of aligning its asylum law and practice with that of the EU. A twinning project is already in place to draw up an Action Plan and to determine the steps for institution-building. Turkey continues to cooperate very closely with the High Level Working Group of the EU, the UNHCR, as well as non-governmental organisations such as Amnesty International, with respect to training and awareness seminars. Asylum is going to be the Achilles heel of Turkey's efforts to develop enhanced border protection. The balance between protecting Europe from illegal migration and protecting the 'right to asylum'²⁸ is going to be a critical test of credibility for the EU, in Turkey as well as in Turkey's neighbourhood.

Conclusion

The issue of illegal migration and asylum continues to be highly sensitive on the agenda of many governments and the public in the EU. The public in many

²⁵ Council Regulation (EC) No. 343/2003 of 18.2.2003 published in Official Journal of the European Union, 25.2.2003, L 50/1.

²⁶ Commission Proposal for a Council Decision on the European Refugee Fund COM(1999) 686, 14.12.1999. Council Decision 2000/596/EC on 28th September 2000 adopting a proposal establishing the European Refugee Fund.

²⁷ Both the UNHCR and Amnesty International put out reports and statements criticizing these Directive Proposals for undermining the letter and the spirit of the 1951 Convention.

²⁸ Tampere Council, Presidency Conclusions, 15-16 October 1999 called for an "absolute respect of the right to seek asylum" and agreed that the development of the Common European Asylum System would be based on "the full and inclusive application of the Geneva Convention".

European countries feels threatened by immigration. The rise of extremist and fundamentalist terrorism and the climate created by the 9/11 and Madrid attacks has also increased the emphasis on advocating policies that aim to control the movement of people and immigration into the EU. Turkey, as a country of emigration and transit, has been at the centre of the debates around these issues. At the same time, there is a growing awareness that Turkey is also becoming a country of immigration. Furthermore, over the last decade or so the nature of immigration into Turkey has changed very significantly. In particular, the question of asylum, immigration and irregular transit migration are having an important impact on Turkish policy and practice. Turkish legislation and practice is changing and these issues have come to have a growing impact on Turkish-EU relations. This is an inevitable function of Turkey's interest in becoming a member of the EU but also of Turkey's geographic location at the crossroads of countries of origin in Asia and of destination in western Europe. Turkey is coming under growing pressure to cooperate with the EU, control the flow of transit illegal migrants and introduce an asylum system that will allow recognised refugees to stay in Turkey.

Turkey's asylum policy once used to be criticised from a human rights perspective. Ironically, since Turkey's performance improved significantly, Turkey is also being asked to take a security driven approach especially towards irregular transit migration if not also on asylum. In the context of asylum, most importantly Turkey, as long as certain conditions are met, has accepted to eventually lift the "geographical limitation" to the 1951 Geneva Convention Relating to the Status of Refugees.²⁹ This is a very significant and revolutionary change as it reflects the Turkish state changing attitude towards Turkish national identity. The improvement in asylum practice in Turkey is also reflection of the growing influence of a "human rights" agenda over "national security". This is also reflected in the Turkish authorities' preparedness to work more closely with the international community and civil society.

The securitisation of immigration issues in Europe and the pressure put on Turkey to combat illegal transit migration, jeopardises the improvements made in Turkish asylum policy. This could otherwise lead inadvertently to a paradoxical situation whereby the EU on the one hand assists in bringing about a significant improvement in Turkey's asylum practices, but on the other hand, undermines those gains, as potential asylum seekers risk being deported without having their case fairly heard. Without a mechanism for burden sharing in place, the main EU

²⁹ This goal has been mentioned in the National Program for the Adoption of the Acquis under the Section 24 on Justice and Home Affairs, see Official Gazette, 24 July 2003, No. 25178, p. 675.

legislative provisions on asylum, which call for asylum applications to be treated by the first safe country of entry into the EU, may lead to Turkey becoming a 'dumping ground' or 'buffer zone', rather than a member state that shares benefits and responsibilities equitably. With respect to combating illegal migration, the EU should give Turkey more credit for the progress it has achieved than is implied by a mere acknowledgement in the Progress Report. This recognition should extend to an effort directed towards the EU governments and the public to stop portraying Turkey as a major conduit of illegal migration. Particular efforts should be made to stop citing figures for the alleged number of migrants transiting through Turkey, which are devoid of any empirical basis. The continued use of such figures generates considerable mistrust on the part of Turkish officials towards Europe. The lack of confidence and trust will inevitably lead to the question "What if Turkey at the end of all the adjustments is not admitted to the European Union as a member?" to linger on in the back of the minds of many officials.

Arriving at a balance between combating illegal migration and upholding the norms of international refugee and human rights law will continue to constitute an important challenge for European countries. This balance inevitably will be dependent on whether the EU is able to develop a relationship based on mutual trust and interest with countries which are sources of illegal migration. The same applies for the countries of transit. A European policy that solely emphasises the control and restriction of movement of people, and puts the burden on third countries, is not going to be a successful policy. It is difficult to see how third countries, often with little motivation and scarce resources, can be expected to cooperate with the EU. European countries will need to adopt credible policies that address the root causes and the push-factors behind emigration and refugee movements. Inevitably, such an approach will need to focus on human rights and development strategies rather than solely on the security and control priorities demanded by conservative and anti-immigration circles in European countries. Confidence and trust building is going to be critical too. In that respect Turkey can be a test case.

A European Union that continues to engage Turkey and does take the critical decision to start accession negotiations is going to be a EU that instills confidence among the Turkish public and officials. This will not only help to maintain the goodwill needed to cooperate effectively in stemming illegal migration it will also help to continue the process of reform in Turkish economics and politics. A Turkey that continues to institute reforms will in itself be a Turkey that alleviates the causes of emigration as well as the factors that exacerbate illegal migration. Yet most importantly, the decision on the part of the EU to start

membership talks with Turkey, will send a message to developing countries that the EU does live up to its promises and does actually care for a developmental approach. This in turn may lend greater credibility to the EU's Wider Europe - neighbourhood policy, which wants both to stem illegal immigration with the cooperation of target countries and at the same time promises these countries offers of concrete developmental incentives.³⁰ Furthermore, Turkey itself can become a country which helps to improve the economics and politics of at least its neighbouring countries which are sources of irregular migration. Such a Turkey, would be a much more constructive Turkey than one which, thanks to its geo-strategically important location, served as the bastion of western Europe's defence during the Cold War against the Soviet Union, this time serves yet another security objective by becoming a buffer zone for managing the unwanted and/or uncontrolled movement of people into the EU.

Appendix: Turkey's Readmission Agreements with Third Countries

Group I (signed)	Date
Turkey - Syria	10 October 2001
Turkey - Greece	8 November 2003
Turkey - Kyrgyzstan	6 May 2003
Turkey - Romania	16 January 2004

Group II (on going negotiations)

Belarus
Bulgaria
Egypt
Kazakhstan
Libya
Lebanon
Macedonia
Sri Lanka
Russia
Ukraine
Uzbekistan

Group III (awaiting response to start negotiations)

Algeria
Bangladesh

³⁰ European Commission, "Wider Europe – neighbourhood: a new framework for relations with our eastern and southeastern neighbours", Brussels, March 2003.

China
Ethiopia
Georgia
India
Iran
Israel
Jordan
Mongolia
Morocco
Nigeria
Pakistan
Sudan
Tunisia