

# Turkey's Asylum Policy in the Light of EU Accession

The impact of its Geographical Limitation to the Geneva Convention

# Abstract

The reader of this thesis will gain an enhanced understanding of the complexity of the EU-Turkey relations on asylum. Turkey has ratified the Geneva Convention relating to the status of refugees with a geographical limitation. This limits the country to only grant refugee status to European asylum seekers and non-European asylum seekers are resettled in third countries. According to the European Commission, this causes the Turkish asylum system to be ineffective and Turkey has been requested to lift the geographical limitation as part of its EU accession process. From a rational Europeanization perspective the thesis explores some of the reforms Turkey is undertaking to its asylum system. The theoretical approach argues that positive membership conditionality has a profound impact on candidate states' willingness to adhere to EU's requests. Drawing on the findings from five expert interviews in combination with an analysis of policy documents published by the EU and Turkey, the thesis concludes that the two actors use the geographical limitation as a bargaining chip in the membership negotiations. Whether a lifting of the geographical limitation to the Geneva Convention will be undertaken in the nearest future or not, depends on the forthcoming relationship between EU and Turkey.

*Key words: EU-Turkey relations, Asylum Policy, Europeanization, Geographical Limitation, Geneva Convention*

Words: 21 403

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# List of Abbreviations

AP	Accession Partnership
CEAS	Common European Asylum System
CEECs	Central and Eastern European Countries
EC	European Commission
ECtHR	European Court of Human Rights
EU	European Union
HCA	Helsinki Citizen's Assembly
IOM	International Organization for Migration
MoI	Ministry of Interior
NAP	National Action Plan for Asylum and Immigration
NGO	Non-Governmental Organization
NPAA	National Programme for the Adoption of the Acquis Communautaire
PKK	Partiya Karkerên Kurdistan
TEU	Treaty of the European Union
TGNA	Turkish General National Assembly
TL	Treaty of Lisbon
UNHCR	United Nations High Commissioner for Refugees

# 1 Introduction

With ongoing conflicts and breaches of fundamental human rights worldwide, the number of people in need of international protection has escalated in the 21<sup>st</sup> century. Following this development, the member states of the European Union (EU)<sup>1</sup> have started to understand the importance of joint actions on the formulation and management of asylum and immigration policies. Maintenance of sovereign immigration controls have started to become practices of the past and since the Maastricht Treaty of 1992, cooperation on this policy area has developed significantly (Genc 2009: 9). The Amsterdam Treaty of 1997 moved asylum and immigration from the third pillar to the first, hence, limiting the sovereignty of the member states and making the policy area a community competence (Genc 2009: 10, Kale 2005: 2). This treaty also committed the member states to adopt common policies on immigration and asylum by 2004. With the ratification of the Lisbon Treaty in 2009, the policy area is now of supranational concern. Accordingly, the Union has a legislative right to introduce uniform standards on immigration and asylum for all member states and the establishment of the Common European Asylum System (CEAS) is under construction (Genc 2009: 3, 9, 11).

Turkey, a country that neighbours many conflict stricken areas, has in modern times started to face heavy pressure on its borders (Icduygu 2007: 201). Large scale immigration and increased asylum flows have been a major concern among the Turkish authorities and policy makers (ibid). As the principle transit country<sup>2</sup> for illegal migrants searching for improved living conditions within the EU and as a candidate country to the EU, Turkish asylum and immigration policy has become a topic of concern for the Union (Icduygu (1) 2011: 2, 17, Düvel 2011, EUROPOL 2010: 4, Kale 2005: 8, 57, Mannaert 2003: 10, Progress Report 1999: 36). Due to the continuous migration flows, Turkey increasingly plays an important role in the European migration system. In 2010, approximately 43 000 migrants and refugees were apprehended in Greece after transiting Turkey on their way to the EU (Düvel 2011). With the last months' political turmoil in the neighbouring country Syria, thousands of people crossed the border to seek protection in Turkey (BBC 2011-06-10). Issues of border management, combating illegal migration and the development of a Turkish asylum system that reflects an EU standard are central topics in Turkey's EU accession debate (Icduygu (1) 2011: 16).

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<sup>1</sup> EU and Union will be used interchangeable for the European Union throughout the thesis

<sup>2</sup> See maps in Appendix

## 1.1 Study Background: EU-Turkey Relations on Asylum

Turkey received candidate status to the EU in 1999, and in 2005 the accession negotiations opened with the formal ‘screening process’ of accession chapters. Since then, only one chapter has been closed, the chapter of science and research (ec.europa.eu). In a Council meeting in 2006 it was decided that eight chapters would be politically blocked due to the ongoing conflict between Turkey and Cyprus. Moreover, 10 other chapters have been blocked because of member states’ refusal to open them. Hence, out of 35 chapters, 18 are still blocked. The Turkish public and policy makers have started to show hesitation towards EU’s capability or willingness to deliver the reward of full membership even if all “conditions” are met. This can be seen in the debates of the ‘privileged partnership’ which has been requested for Turkey by Germany, among other states and the general anti-Turkey sentiment within many EU member states. It is argued that for the first time in EU’s enlargement process, the Union has lost its credibility of conditionality which according to some Europeanization scholars restricts the possibility of Europeanization in the candidate state (Kirisci 2007: 7). The screening report on the chapter of Justice, Freedom and Security<sup>3</sup> (Chapter 24) has not yet been adopted by the Council and although many amendments have been added, Turkey still needs to change its policies towards asylum seekers and refugees in order for the negotiations to open on this chapter (ec.europa.eu). Accession Partnership, National Programmes and Regular Reports<sup>4</sup> are main documents which identify priority areas that candidate states need to reform in order to become members of the EU (EU-Turkey chambers forum). Information from those documents will be continuously applied and analysed throughout this thesis.

It is commonly known that issues of democracy and human rights in Turkey have dominated the membership debate. However, another topic, which is closely related to the issues of human rights are the various aspects of migration and asylum (Icduygu 2011: 3). Here, Turkey as an emigration country and an immigration and transit country has been contested. The politicization of the migration/asylum debate between EU and Turkey is of major importance for Turkey’s accession process and is what guides this research. According to various scholars and politicians, asylum law is one of the most controversial areas of EU-Turkey relations. Turkey needs to reform its policies and regulations on asylum in order to meet the EU *acquis* within Chapter 24 of Justice, Freedom and Security. This thesis will mostly focus on Turkey as an immigration and transit country for asylum seekers and refugees and does not take the emigration of Turkish citizens to the EU (as a consequence of a potential EU membership) into consideration.

According to many researchers, Turkey’s EU membership will be determined by Turkey’s ability to produce and implement policies that comply with EU’s international migration and asylum regime (Icduygu (1) 2011: 14, Kale 2005, Kirisci 2002: 10). Turkey lacks an effective asylum system and its current system doesn't have a legislative structure that

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<sup>3</sup> former Justice and Home Affairs

<sup>4</sup> Regular Reports on Turkey’s progress towards accession have been prepared by the European Commission annually since 1998. After the accession negotiations opened in 2005 these reports are referred to as *Progress Reports*

corresponds to EU's asylum system. Although it was one of the first countries to sign the 1951 Geneva Convention relating to the status of refugees it did this with a 'geographical limitation'<sup>5</sup>. This limits Turkey to only grant refugee status to asylum seekers uprooted by events taking place in Europe. Before the introduction of a regulation on asylum in 1994, Turkey did not have any legal documents regulating the asylum procedure and still today it has not adopted a law on asylum (Kaya 2009:2). Two requirements that the EU demands of Turkey as part of its accession process are to lift the geographical limitation to the Geneva Convention and to introduce a law on asylum (Kirisci 2002: 10).

## 1.2 Aim of Study & Research Questions

Turkey is an interesting example for the evaluation of the relationship between a nation state and an international refugee regime. Turkey is both a refugee producing and refugee accepting country. It is a transit country for asylum seekers and refugees as well. It has to deal with mass influxes of people from conflict stricken areas in its neighboring countries. These refugees mainly come from Iran, Iraq, Afghanistan and Somalia, but as Turkey maintains a geographical reservation to the 1951 Geneva Convention, they are not accepted as conventional refugees. Therefore, they can only obtain temporary protection in Turkey.

The research, with Turkey as a case study, will be based on the theoretical framework of Europeanization. The purpose of this study is to understand the importance of the geographical limitation to the Geneva Convention in Turkey's EU accession process. The thesis will give an account of previous and current amendments in Turkey within the policy field of asylum and migration and discuss why the geographical limitation is a big hurdle in the process towards an EU-membership. This debate has been presented as the "central issue with regard to Turkish asylum reform" (Kaya 2009: 2); hence it is highly relevant for improving the understanding of the complexities encountered in the Turkish accession negotiations.

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<sup>5</sup> According to international refugee law, a refugee is defined as a person who: "owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it" (Geneva Convention 1A (2))



*The aim of the study is to assess the importance of the geographical limitation to the Geneva Convention in Turkey's EU accession process.*

To respond to this overall research objective, the thesis will firstly answer two sub questions:

*Is Turkey regarding a lifting of the geographical limitation as interchangeable to a membership in the EU, if so, how can this be characterized?*

*Is Turkey preparing its asylum system for a lifting of the geographical limitation and if so, how can these actions be described and interpreted?*

### 1.2.1 Delimitations

The aim of this thesis is not to present a final conclusion on whether Turkey will lift the geographical limitation to the Geneva Convention. What it aims to provide is a well-founded argumentation of some of the issues within accession Chapter 24 and of a potential lifting of the geographical limitation in particular. The thesis will not go into details about the larger debate about a Turkish EU membership nor will it include the financial aspects a lifting of the geographical limitation potentially could have on Turkey. Moreover, it will not discuss the political party structure within Turkey.

Governmental officials as well as UNHCR personnel have not been interviewed because of the belief that it would be difficult for them to be critical to their own institutional practices. Therefore, instead, five interviews with experts on Turkey's asylum policy were conducted, considering that they can be more critical to these institutions as they govern outside their framework and thus can view the reforms more critically.

Additionally, it should be stated that the Turkish asylum system has undertaken many reforms in recent years. The reforms that are relevant to understand the geographical limitation of the Geneva Convention will be addressed.

### 1.2.2 Disposition

The aim of this study is to contribute to the debate regarding the Turkish geographical limitation to the Geneva Convention and thus provide the existing literature on the EU-Turkey relations on asylum with some novel insights. Therefore, the subsequent chapter will give an account of previous research within this policy field. Thereafter, the theoretical framework of Europeanization will be introduced. The concept and theory of Europeanization will firstly be explained from a broad perspective. This is followed by a narrower theoretical focus on candidate states and how rational incentives to obtain membership status may contribute to the Europeanization process. The methodology chapter will explain the research design and how the analysis was conducted. This will be followed by the empirical analysis which is divided into three subchapters. Firstly a

chapter on the two actors' preferences (i.e. EU's and Turkey's agenda on asylum policy) will be presented. The following two subchapters are comprised of the main analysis, where the lifting of the geographical limitation will be analysed in greater detail by assessing policy documents and the findings from the five expert interviews. In the final chapter, I will summarize the study and answer my research questions.

## 2 Literature Overview

After Turkey got candidate status in 1999 and with the opening of the accession negotiations between Turkey and the EU in 2005, the number of studies and reports on EU-Turkey relations has increased tremendously. This has contributed to an intense debate by academics as well as practitioners regarding the EU-Turkey relationship. In a time of increased global movements, it does not come as a surprise that migration issues are heavily debated in the membership negotiation between Turkey and the EU. These debates include many different aspects. With irregular border crossings as a new major phenomenon of international migration in the last decade, this has been one main concern of the debate between EU and Turkey since many transit migrants reach the EU through Turkey (Icduygu (1) 2011: 2, Icduygu in Ette and Faist 2007: 215, Icduygu and Toktas 2002: 26). The debate of a so called readmission agreement<sup>6</sup> to be established between Turkey and the EU has promptly been promoted by EU officials in order for the EU to send ‘unwanted’ migrants back to Turkey (Icduygu (2) 2011, Icduygu in Ette and Faist 2007: 214). Additionally, many are sceptical to a Turkish EU membership because they fear that if Turkey becomes a member, there will be a Turkish ‘invasion’ to the EU. And given the bad track record of Turks integrating well in Europe they believe it could be a burden for the rest of the EU (Icduygu (1) 2011: 2). A third topic of concern is when and how Turkey will be able to adhere to the EU *acquis* on asylum (Icduygu in Ette and Faist 2007: 215). This topic is of foremost interest in this thesis.

Kemal Kirisci is one of the most prominent scholars on EU-Turkey asylum relations. Kirisci’s work has been an inspiration source for this thesis and much of the empirical material that is referred to is collected from his work (for instance see Kirisci 1998, 2002, 2003, 2007). Many academics are interested in the transition process and in their studies they include information about the Turkish legal system and how it is changing due to EU pressures. In most of the studies the geographical limitation to the Geneva Convention is mentioned as one of the main obstacles that must be removed in order for Turkey to adjust to an EU standard. However, except for some short references by scholars such as Kirisci and Icduygu there is not much material reporting on this in a deeper and more detailed way. The securitization debate of EU’s asylum and migration policy as well as a similar notion of securitization within the Turkish asylum system (and that this forms the base for the country’s policies on this area) have been emphasised. However, what I aspire for, is a more detailed analysis of the geographical limitation *per se* in order to come closer to an understanding of whether Turkey is in the direction towards lifting it or not. The purpose of this study is therefore to give a more empirical account to what is actually at stake and why Turkey has decided to maintain this opt-out of the Geneva Convention for so long.

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<sup>6</sup> ”Readmission Agreements are part of the EU’s broader strategy for combating illegal immigration, adopted by the European Council in Tampere, Laeken and Seville. Such agreements involve reciprocal undertakings by the European Union and third-country partners to co-operate over the return of illegal residents to their country of origin or transit” (www.europa.eu, press releases: readmission agreements)

Alper Tarimici in his dissertation, “The role of the Geographical limitation with respect to asylum and refugee policies within the context of Turkey’s EU harmonization process”, from 2005 provides an account for reasons behind Turkey’s decision to opt-out and maintain the geographical limitation to the Geneva Convention. He presents a well-founded argumentation of the security aspects guiding the policy makers to this decision. His argumentation is based on a security verses humanitarian debate and he states that nationalistic premises have favoured a humanitarian asylum policy for some people (of Turkish or European descent) but not for others. Since the Turkish EU accession negotiations opened in 2005, numerous reforms and steps towards an adjustment of the Turkish Asylum system towards EU’s requirements have been proposed and these need an examination in relation to the lifting of the geographical limitation. According to Kirisci, it was not until 2003 that “Turkey started to focus its attention and energy on JHA issues (Kirisci 2005: 347)”. As the theoretical framework of Europeanization previously has been applied when explaining domestic changes in candidate states and member states due EU pressure, I found it highly relevant to apply this theoretical framework when evaluating the reforms (and lack of reforms) within the Turkish asylum system.

The Europeanization theory has gained much attention in recent years. It is frequently applied as a complement to theories of European integration and is especially useful when studying policy-, institutional-, and sociological-changes triggered by EU pressure within candidate states (Sandrin 2010: 5, Moga 2010: 1, Kirisci 2007: 1, Lavenex 2002). The Europeanization research is guided by a top-down and bottom-up approach, where the top-down is of most concern when it comes to explaining Europeanization processes in candidate states (Keser 2006: 116). Studies on Europeanization of asylum policy within the member states and within candidate states have been conducted and one of the outstanding scholars on this topic is Sandra Lavenex. In her research she is explaining how the topic of asylum and migration within the EU has emerged from being a truly sovereign realm to include more cooperative practices between the member states and between the EU and candidate states. As a result of this development, Europeanization has started to become highly noticeable within this policy area.

Peshkopia is, in accordance with many other scholars on this research field, noticing the securitization debate of EU’s asylum and immigration policy. He agrees that the policy field often is debated from a security-driven perspective; however, he claims that theorizing on it has so far been too analytical with a lack of empirical evidence (Peshkopia 2005: 31). Rather than applying a security-centered theoretical framework, he suggests that a rational choice theory better explain the development of immigration and asylum policies in the EU and in candidate states. With a high public support for an EU membership within the CEECs and a constant urge for a reunification with Europe, the CEECs were placed in a situation of “being merely consumers to the EU policies without giving them any say on the issues” (Peshkopia 2005: 33). He claims that all actors involved in EU’s immigration and asylum policy are rational actors. On one side there are the EU member states with an aim to halt the unbearable number of asylum seekers and illegal entrants arriving to their territories. The EU institutions are there to support the member states and therefore adopt the approach that benefits the member states and the Union the most. On the other side, the candidate and transit states are positioned. They do not have any domestic interest *per se* in implementing a new financially burdensome asylum regime; however, their rationale lays in membership conditionality. Moreover, Peshkopia states that countries with a high

number of asylum seekers tend to be more willing to rapidly establish new institutions to solve the problem, although at the same time it takes longer to bring their asylum regime in line with international protection standards. The same goes for the opposite argument, if governments have no need for a domestic asylum regime the authorities are less prone to put the effort into establishing one. However, Peshkopia fails to take cases such as Turkey into consideration as it is difficult to place Turkey into any of these two categories. Due to its geographical location, Turkey attracts a large number of asylum seekers and refugees. However, with a geographical limitation to the Geneva Convention, the country is left with the possibility of 'forwarding' the asylum seekers to other countries. Before the EU accession negotiations started, Turkey has not shown any willingness or interest in lifting the geographical limitation as this would indicate that a new national asylum system would have to be implemented. However as this is a requirement for EU accession, as long as Turkey aims for membership status, it is necessary to reconsider the stance on this issue. Drawing on Peshkopia's criticism towards the security-oriented theoretical framework within this policy field, this thesis will apply the theoretical approach of Europeanization with a rational choice angle.

# 3 The Theoretical Framework: Europeanization

An extensive amount of research shows Turkey's Europeanization process within the field of migration/asylum and without a doubt, Turkey has and is continuously undertaking changes to its legal and institutional framework to adhere to an EU standard on asylum and migration management (Kale 2005: 3, Icduygu (1) 2011:16-17, Lavenex 2002, Kirisci 2007: 13-19). The theory of Europeanization will be applied as a contribution to the analysis of what is taking place in Turkey and more specifically what role EU plays in transforming and harmonizing the country's policies on migration and asylum.

## 3.1 Explaining Europeanization

Classical integration theories such as liberal intergovernmentalism, neo-functionalism and multilevel governance try to explain what impact European integration has on the state and on a supranational level. Those theories can be regarded as "bottom-up" approaches which aim for understanding the reasons behind states' intentions of pooling sovereignty to a supranational EU level. The focus lays on European institutions and their output in terms of European policies (Sandrin 2010:2, Börzel and Risse 2000: 1). This type of research is referred to as "ontological", in the way it strives to explain a process taking place in the emerging EU polity. Post-ontological research, on the other hand, is concerned with what happens after the EU institutions are constructed. This is where Europeanization comes into play. As the EU expands and European states more frequently cooperate on all kinds of matters, the concept of Europeanization has gained increased attention within EU research (Sandrin 2010:2, Bulmer and Radaelli 2004: 1, Kale 2005: 33). Europeanization does not study the same research questions as the integration theories, now it is no longer a question of whether EU matters but rather in what way, how, when and to what extent (ibid).

Europeanization can be seen as "domestic change caused by European integration" (Vink 2002:4). Howell perceives European integration as the source of change and Europeanization as the outcome of change on the governmental, legal and regulatory structures of the member states (Howell 2004). Hence, Europeanization can be regarded as a process where a domestic policy area is increasingly being defined and shaped by decisions made at an EU level (Vink 2002:1, 13). Europeanization may describe how decisions taken within the Commission, the Council, the European Parliament or other institutions have an impact on the domestic level and it can also be applied when analyzing norm or value adaptation from an EU level to a domestic level.

Europeanization started out as a process explaining change within the member states of the EU, however, in the last decade the theoretical approach has increasingly been applied to describe changes in candidate countries and non-member states as well (Moga 2010: 1, Kale 2005: 34). In this research, Turkey, serves as an example of a country where the impact of Europeanization has started to become evident since the accession talks with the EU opened in 2005 (Naz 2006: 35-37). Ette and Faist (2007) consider Europeanization of immigration policy particularly interesting because it's a policy area which recently has fallen into community competence and where the member states and candidate states today have a limited sovereign possibility to regulate the entry and residence of non-nationals in their own territory (Ette and Faist 2007: 8). Scholars have previously argued that policies on immigration would be one of the policy realms where integration would be least likely to occur (Genc 2009: 3). However, they were proven wrong, and what started out as intergovernmental cooperation among the member states have transformed into "intensive transgovernmentalism" and with the Lisbon Treaty of 2009 the policy area is of a supranational concern (Ette and Faist 2007: 6).

Featherstone and Radaelli are often quoted and their definition of Europeanization is probably one of the most commonly applied. They define Europeanization as processes of:

"...construction, diffusion and institutionalization of formal and informal rules, procedures, policy paradigms, styles, 'ways of doing things' and shared beliefs and norms which are first defined and consolidated in the EU policy process and then incorporated in the logic of domestic (national and subnational) discourse, political structures and public policies" (Moga 2010: 6, Sandrin 2010: 2, Genc 2009: 5, Icduygu 2007: 202, Bulmer and Radaelli 2004: 4, Vink 2002: 4).

Although this definition may seem quite ambitious, it is highly appreciated as it includes both policy outputs in the national political system as well as changes in the underlying structures and belief systems on a domestic level. I agree with Icduygu as he claims that this definition is useful when studying the extent of Europeanization of asylum and immigration policy in Turkey (Icduygu in Ette and Faist 2007: 202). Turkey is a key example of a nation state where the domestic immigration and asylum policies and practices are founded on a strong historical heritage, cultural notions, social validity and political incitements which in turn, especially after its candidature in 1999, are highly contested by the EU (ibid). The definition takes formal changes in terms of "direct" Europeanization of domestic *policies* as well as informal changes or "indirect" Europeanization of *norms* and *practices* of domestic actors into account.

## 3.2 The Turkey-EU Misfit on Asylum

What seems to be relevant for all Europeanization processes and academics of the field is the 'misfit', 'mismatch' or 'goodness of fit' argument which is guiding the process (Mastenbroek and Keulen 2006, Bulmer and Radaelli 2004: 8, Börzel and Risse 2000: 2). The misfit is necessary in order to generate change and it is possible to make a distinction between policy and institutional misfit (Genc 2009: 5, Börzel and Risse 2000: 10, 5): "The lower the compatibility between European and domestic processes, policies and institutions, the higher [is] the adaptational pressure" (Börzel and Risse 2000: 5). This may

be of particular relevance, and easier to trace in the cases of candidate states. A clear example of a misfit in my particular case is how the definition of a refugee in the Turkish legal system differs from EU's definition. EU's definition of a refugee is based on the Geneva Convention and applies to all individuals seeking refuge<sup>7</sup>; however, due to a geographical limitation clause, Turkey only applies this definition to individuals fleeing from Europe (see section 1.1. for the full definition). Most of the signatory countries abolished the geographical limitation when adopting the additional protocol to the Geneva Convention in 1967; nevertheless, Turkey was one of the states that kept it. Apart from Turkey, only Madagascar, Democratic Republic of the Congo and Monaco still maintain a geographical limitation to the Geneva Convention; whereas, Hungary, Malta and Latvia lifted their limitation when acceding to the European Union.

The geographical limitation clause is a fundamental policy difference which EU requests Turkey to reform before obtaining membership status<sup>8</sup> (Guild 2006: 630, TEU art K3, TL art 63). A reform of the asylum system and an implementation of an asylum law are requested to fully implement the Geneva Convention. The degree of misfit spurs adaptational pressures which vary between countries and policy fields. If EU's norms, ideas and policies are compatible to the ones already existing domestically, there will be no Europeanization process and no domestic change will occur. However, the contrary occurs in circumstances when the level of adaptation is high. Here, European policy may influence and 'frame' changes on a domestic level and in the domestic mindsets. According to Moga, this may be of particular relevance for candidate states where the adaptational pressure may be high as it is guided by membership conditionality (Moga 2010: 6).

According to Lavenex it is important to not limit the concept of Europeanization to legal and institutional aspects. She argues that asylum policy is more concerned with normative values and ideas and should also be studied from a discursive analytical framework. Lavenex claims that Europeanization has favoured "the implementation of a 'securitarian', state-centred policy-frame which, paradoxically, poses severe constraints on EU's capacity to develop a common refugee policy" (Lavenex 2001: 855). The securitization of EU's asylum and migration policy is increasingly being transposed to candidate states. This can be seen through the emphasis those states place on combating irregular migration and border management (Baklacioglu 2010: 1, Kale 2005: 257).

What may be seen as a paradox in the Turkish case is that the present legal system already is quite restrictive. At the same time as EU requests Turkey to improve its border management and combat illegal immigration, Turkey is also obligated to reform its asylum system and extend its present legislations to also include non-European refugees (Kaya 2009: 9). Ironically, Turkey's asylum policy as many other of its policies has often been criticized for its bad human rights record. However, now Turkey is requested to take a

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<sup>7</sup> This is a key reference of the EU asylum policy and the definition is applied in the ECHR, ECJ and the EU Charter of Fundamental Rights which was introduced into EU law with the ratification of the Lisbon treaty in 2009 ([www.europa.eu](http://www.europa.eu))

<sup>8</sup> Joint Position of 4 March 1996 defined by the Council on the basis of Article K.3 of the Treaty on European Union on the harmonization of applications concerning the definition of the term 'refugee' in Article 1 of the Geneva Convention of 28 July 1951 relating to the status of refugees (96/196/JHA)



security-driven approach to combat illegal migration which may have an exclusionary effect on asylum seekers as well (Icduygu (1) 2011: 17).

### 3.3 Rational Choice Europeanization – A Pathway to Domestic Change?

Following a rational logic of Europeanization the misfit between European and national processes, policies and institutions leave societal and/or political actors with “new opportunities and constraints in the pursuance of their interests (Pollack 2006: 41)”. The nation state follows a ‘logic of consequences’ where European institutions may facilitate for domestic actors to obtain additional resources to wield influence (Bulmer in Graziano and Vink 2008: 50, Risse 2000: 4). Rational actors are placed in situations where they have to face a new reality: the reality of being part of the EU or the aim of becoming one with the EU (for candidate states), and reforms to the domestic system are carried out according to profit maximization (Vink 2002: 11).

According to Noll (2003), states behave as rational actors when designing their protection systems on asylum and immigration. Host states attempt to calculate the costs related to increased immigration in terms of fiscal, social and political expenses (Noll 2003: 240-241). This calculation is based on the amount of beneficiaries that will receive the protection and the levels of rights those people are provided with. In order to reduce the cost, states may adopt measures of “burden sharing”: This relates to the extent of which the cost of protection can be shared with other states. Burden sharing within the EU usually refers to financial assistance from other states (or EU sponsored programmes) in the establishment of reception centers or other institutions to better handle a larger number of asylum seekers (Engelmann 2010: 6). It may also be considered in terms of sending refugees back to countries they have passed through<sup>9</sup>.

Actors behave strategically in accordance with a cost-benefit calculation and they will do what is necessary to obtain their goals (Mastenbroek and Keulen 2006: 25-26). The domestic response to the new situation generates different outcomes and the power structure among the domestic actors may be shifted (Naz 2006: 49). It is not possible to make generalizations of which actors gain power and which ones do not as a response to Europeanization. This is of course determined by different political structures in the member states and the candidate states prior to an EU membership, and policy implementations that may have a profound impact on certain actors in one state may pass unnoticed in another (Börzel and Risse 2000:6-7). At times domestic actors do not have to favour an EU commitment *per se* in order to support a change; instead the incentive of changing the status quo may be attractive enough to commit to the EU’s requests (Mastenbroek and Keulen 2006: 20). Featherstone refers to this use of the EU as an external source of domestic empowerment as “vincolo esterno”, and according to him, states are more likely to use this as a strategic device when norms and values of a certain policy areas are not yet fully internalized (Sandrin 2010: 4-5). The more power that is

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<sup>9</sup> This action has often been described as “burden-shifting” (Noll 2003: 240)

shared among various actors in the domestic sphere, the more difficult it is to build a consensus and the slower is the process of Europeanization (Börzel and Risse 2000: 7).

### 3.3.1 Membership Conditionality - a Rational Incentive?

Grabbe applied a rational choice approach to account for the extent of Europeanization of immigration policies in the CEEC countries during their accession process (Grabbe in Ette and Faist 2007: 11). It is according to Grabbe of a particular interest to study Europeanization of candidate countries because the effects are “broader in nature and deeper in scope” (Grabbe in Sandrin 2010: 7). This stems from the fact that the EU has ultimate power over the candidate states and therefore can be very persistent in its adaptability requests. Moreover, the candidate states have a direct incentive in committing to domestic reforms when the end goal is accession (i.e. if the benefit of membership is valued higher than the adoption cost) (Kale 2005: 3). Moga agrees that a vertical adaptation process is very noticeable in candidate states where the principle of conditionality is a common generator for change (Moga 2010: 6). Schimmelfenning and Sedelmeier have conducted much research on Europeanization of candidate states and according to their findings, the “the external incentives provided by the EU can largely account for the impact of the EU on candidate countries” (Pollack 2006: 42). Following this logic, the size and speed of rewards, the credibility of membership conditionality as well as the size of governmental adoption costs are independent variables that determine the dependent variable of “rule adoption” (Kirisci 2007: 2). A government is willing to adopt EU rules if the benefits of EU rewards exceed the domestic adaptation costs (Schimmelfenning and Sedelmeier in Axt and Milososki 2006: 7). Schimmelfenning and Sedelmeier emphasizes that “conditionality will not work without credibility” (Kirisci 2007: 2). Nevertheless, although the credibility is high this does not mean that rule adoption will proceed smoothly. Depending on for instance high governmental adoption costs the rule adoption may be hampered. Smith refers to *positive* versus *negative conditionality*. Positive conditionality is when the EU appreciates the progress made by the candidate state and as a result, negotiations on a particular accession chapter open and ultimately the state is awarded membership status. Negative conditionality, on the other hand, is when the negotiations are delayed due to irregularities between EU’s *acquis* and domestic legislations/practices (Moga 2010: 2).

As part of the accession criteria, the CEECs had to adopt the parts of EU’s immigration policy which had been incorporated into the EU *acquis* (Genc 2009: 14). However, there was a considerable difference between traditional practices of refugee protection between the Western and Eastern European countries. Where the western states, prior to their EU membership had experienced receiving refugees (as a result of WWII), the eastern states had not. Hence, before applying the EU *acquis* on asylum, most of the eastern states had to establish the basic legal and administrative infrastructure essential to examine asylum claims (such as the full implementation of the Geneva Convention). It was not always easy for the CEECs to understand the EU’s demands within the chapter of Justice, Freedom and Security and they were often placed in between EU’s normative, human rights, democratic ideals of promoting European refugee protection and the Union’s increasingly restrictive policies influenced by a security concern (Keser 2006: 120). Nevertheless, Kirisci argues that the reason to why the process of Europeanization of asylum policy in the CEECs proceeded smoothly was because there was positive conditionality and the ultimate “reward” of a membership was assured (Kirisci (1) 2007: 2).

Icduygu states that the EU has played an influential role behind the reforms that can be noticed in immigration and asylum-related policies and practices in Turkey. When Turkey received candidate status in 1999, the Turkish policy makers started to carry out ‘cost calculations’ in respect to rule adoption. Many of the reforms that the EU requested such as the abolition of the death penalty and improvement of minority rights were favoured by the Turkish public and this generated further pressure on the Turkish policy makers to undertake reforms to the domestic system (Kirisci (1) 2007: 6). The credibility of conditionality was high at this point and Turkey was optimistic toward a future membership. However, although the Turkish accession negotiations officially opened in 2005, there have been many indicators of a loss in optimism of a EU membership within Turkey. However, Icduygu concludes that absorption of the EU values and practices can be noticed in Turkey rather than a transformation of the domestic political system in line of EU’s (Icduygu in Ette and Faist 2007: 216). Absorption is when European norms are implemented to a certain extent within the national logic but the national ‘core’ is perceived and EU policies are accommodated to fit the national ones (Sandrin 2010:3, Axt and Milososki 2006: 5, Naz 2006: 48). Transformation, on the other hand, is the result of ultimate Europeanization (i.e. former domestic structures are transferred by European norms, values and policies which results in a high domestic change). Ugur makes the same observation when he states that “Turkish policy-makers have consistently tried to reform the country mainly from a Turkish orientation” (Moga 2010: 3). One explanation behind this can probably be traced to the Turkey’s nationalistic doctrine commonly known as ‘kemalism’ (ibid, Ahmad 2003). However, despite a state centric notion behind the reforms undertaken, EU membership has continuously been considered as the “ultimate requirement to fulfil the Kemalist imperative of identification with Western modernity” (Moga 2010: 4).

## 4 Method

### 4.1 Research Design

This thesis will be based on a qualitative research method (Flick 2009: 33). Qualitative studies often provide the researcher with a deeper understanding of the subject of investigation than the variable-based quantitative studies. Through interviews and case studies, the qualitative research aims for gathering an ‘authentic’ understanding of the empirical data and peoples’ experiences (Silverman 1993: 10, 15).

Triangulation of methods is highly recommended when performing research because it gives a high level of reliability (Flick 2009: 26, 90, 405). Triangulation is a multi-method approach and this thesis is based on the following three elements: case study, interviews and qualitative text analysis (Flick 2009: 405, Tellis 1997). In my case study I will include empirical data from primary as well as from secondary sources. Official documents from the European Commission (EC) and the Turkish government will be analysed. Interviews conducted with experts on the Turkish asylum system and secondary sources will supplement the data collected from the legal documents. This is done in order to gain a deeper understanding of the meaning of the documents and which words have been turned into actions and how. By using this triangulation of methods, I will be able to explore the theory of Europeanization and the empirical material from different angles within the research. The experiences I encounter in one method can in a meaningful manner be applied to another (Flick 2009: 26, 130, Bryman 1997: 61). Most studies which have included the theoretical framework of Europeanization have been qualitative (Graziano and Vink 2008: 17, Haverland in Graziano and Vink 2008: 68). However, Graziano and Vink claim that the use of interviews when studying processes of Europeanization have not been frequently applied and they anticipate the methodological contribution of interviews in this type of research (ibid). These recommendations seem to motivate the methodological choices of my study.

### 4.2 Case Selection

The Turkish EU accession is a very controversial topic and so is EU’s asylum and migration policy. Turkey’s most prominent academics on EU-Turkey relations argue that Chapter 24 of Justice, Freedom and Security is and will be the most contested policy area of EU-Turkey relations. The EU demands Turkey to lift the geographical limitation in order to obtain membership status, hence, the debate is highly relevant for the country’s accession process. Cecilia Mannaert, researcher for UNHCR, stated:

“Turkey’s prolonged experience of refugee and migratory movements, the fact that it is a large asylum seeker and irregular migrant-producing country, that it is a hub for other irregular migrants hoping to reach Europe and that it is engaged in a very important process of reform in the area of asylum and migration make it a particularly interesting case study” (Celia Mannaert UNHCR 2003)

Although case studies have been performed on asylum and migration in Turkey before, these have had a different focus<sup>10</sup>. As no case study (at least not that has come to my awareness) has been conducted on the particular element of the geographical limitation, the ambition of this thesis is to contribute to the existing literature. The goal of case studies is not to present a standardized result but rather to present a case from the perspective and interpretation of the researcher (Gomm et al 2000: 71). Case studies have an explanatory nature and this method is well suited for studies which asks questions such as “how” and “why” (Yin 2006: 29). As case studies have received much criticism for making generalizations based on a few cases or on one single case, I will refrain from doing so in my study (for instance see Gomm et al 2000). Robert Stake argues that case studies can “have a general relevance even though they may not provide a sound basis for scientific generalization of a conventional kind” (Stake in Gomm et al 2000: 7). The purpose of this study is not to draw any general conclusions of transformation of asylum policy in candidate countries. Rather, the purpose is to place my case of Turkey’s geographical limitation to the Geneva Convention into the broader context of the EU-Turkey negotiations on asylum.

### 4.3 Selection of Material

The analysis of this thesis is based on primary as well as secondary sources. The primary material is gathered from official documents prepared by the EC and the Turkish government as well as from interviews conducted with experts on the Turkish asylum system. It should be noted that due to language barriers, the official documents had to be limited to sources available in English. Although many of the EU related documents have been translated to English, the Turkish authorities seem more reluctant in translating and providing public access to national legislations and draft laws (such as the draft law on asylum which currently is under preparation). This is why secondary sources from previous research will be a useful complement in the analysis. The official documents that are applied in the analysis are the following: *Accession Partnership* documents, *National Programmes for the Adoption of the Acquis Communautaire (NPAA)/National Action Plan (NAP) and Progress Reports*.

Progress reports are prepared by the EC annually and presented to the Council as part of the pre-accession strategy of candidate countries. Within each report, every accession

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<sup>10</sup> See for instance Icduyugu’s case study on human trafficking and smuggling in Turkey: “How Do Smuggling and Trafficking Operate via Irregular Border Crossings in the Middle East” (2002) and Sema Erder’s “Irregular Migration and Trafficking in Women: the case of Turkey (2003)”.

chapter is outlined and the reforms that have been undertaken during the year or still must be undertaken are presented. Progress is determined on the basis of what decisions actually have been taken, legislations adopted and international conventions ratified. The analysis of this thesis will exclusively look at Chapter 24 of Justice, Freedom and Security and mainly what is stated under the heading “asylum”. The first progress report on Turkey was published in 1998.

On the European Council meeting of Luxemburg in 1997, it was decided that the Accession Partnership documents should be prepared by the Commission and had to be agreed by all member states. The first Accession Partnership between EU and Turkey was adopted by the EU Council in 2001 and has been revised in 2003, 2006 and 2008. In the Accession Partnership, short- and medium-term priorities are outlined and Turkey needs to meet those for an effective and credible implementation of the *acquis*. The short-term objectives are measures that should be undertaken within a year and the medium-term objectives may take more than a year.

National Programme for the Adoption of the *Acquis Communautaire* is an operational plan formulated by each candidate state usually with technical assistance from the EU. The national programmes intend to give a formal response to the priorities presented in the Accession Partnership. The first national programme was published by Turkey in 2001 after the introduction of the Accession Partnership. National Programmes have been prepared by Turkey in 2001, 2003, 2008. In 2005 a National Action Plan on Asylum was published, this developed the measures and objectives of the National Programme of 2003.

From these documents I aim to get an understanding of what EU requests from Turkey when it comes to asylum policy and the formal stance of how EU values Turkey’s reforms within Chapter 24 (and on asylum specifically) and the direction of the accession process. From the Turkish documents I will increase my understanding of how Turkey considers its reforms, what are the intended reforms and how Turkey regards EU’s requests. The aim is not to do a text analysis in a linguistic sense rather it is to gain a broader understanding of the context to generate possible explanations of the lifting of the geographical limitation. Rather than considering the geographical limitation as an isolated variable that has to be lifted, I will analyze the previously mentioned documents in a broader context of the Turkish asylum reform.

### 4.3.1 Methodological Considerations

It is highly important to precisely evaluate the official documents that I have chosen for my case study. Policy documents of this kind are usually vague in their nature and the neutral statements that can be drawn from them do not reveal much. The intention of this study is to analyse the particular policy area of asylum and migration and what Turkey does to reform its domestic asylum system to meet EU’s requests. To understand underlying messages and hidden meanings within the policy texts it is of importance to show an awareness of the meaning of the texts in the broader context of Turkey’s accession process to the EU as well as in the context of EU’s asylum and migration policies. The researcher should not regard the official documents as simple representation of facts or the reality, one should have a critical approach when analysing the documents and ask questions such as: “who has produced this document, for which purposes and for whom? (Flick 2009: 257)”. The knowledge the researcher has of the chosen field of study

in combination with the tools he or she chooses to apply when analysing the material have an uttermost impact on the validity of the study (Bergström and Boreus 2005: 34-35). To maintain a high reliability throughout the study, it is important that the researcher make conscious reflections of his/her interpretation of the texts (ibid 2005: 36-37).

## 4.4 Interviews

### 4.4.1 Interview Technique

To increase the validity of the research and to gain a deeper understanding of the Turkish asylum system and the geographical limitation to the Geneva Convention in particular, five face-to-face interviews were conducted (Opdenakker 2006). Flick defines expert interviews as interviews conducted with people that have a “technical process oriented and interpretive knowledge referring to their specific professional sphere of activity” (Flick 2009: 166). The five interviews that have been conducted in this research can accordingly be regarded as ‘expert interviews’ (Flick 2009: 165). The interviews are indispensable as a complement to the theoretical approach, official documents and previous research when analysing the policy documents.

Semi-structured interview questions<sup>11</sup> were prepared in advance. The purpose of using this interview technique rather than a more structured one was to enable the interviewees to add their own reflections and inputs on the research topic. The challenge of this interview technique is to ask relevant questions which cover the purpose of the study and the theoretical angle, while at the same time keeping the ‘open’ structure. Therefore, as a researcher it’s key to remain focused and flexible when conducting the interviews. The structure of the interview guide followed the same setup in all of the interviews. However, depending on how the interview proceeded and due to the different expertise of the interviewees, not all questions were asked/answered in every interview. The interviews started off with some general questions asking about the interviewee’s profession and expertise. Thereafter the topic of the geographical limitation to the Geneva Convention was introduced and the interviewees were asked about what role it plays in the Turkish asylum system and for the EU accession process in particular. The interviews were transcribed in order to get easier access to the empirical data and to facilitate the analysis that would follow. Not all of the information encountered during the interviews will be presented in the thesis, however, citations and material of particular importance for the research objective will be displayed. The interviews lasted between 30 – 60 minutes and they were conducted at the workplace of the interviewees in Istanbul in October 2010 and in Brussels in January 2011. Four of the five interviewees consented to the use of their names in this thesis. The remaining interviewee requested to remain anonymous.

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<sup>11</sup> See *Interview Guide in Appendix*

#### 4.4.2 Selection of Interviewees

The ‘snowball’ technique was used for the selection of interviewees. According to Atkinson and Flint (2001), this sampling technique is useful when the aim is to reach a target group (experts) and it is especially advantageous for sampling elites (Atkinson and Flint 2001: 1). With this strategy, interviewees recommended other experts to contact. I contacted the interviewees by email and explained how I got their contact information and the purpose of my study. It should be mentioned that I am fully aware of the fact that only including five interviews in my analysis will not give me a full and final picture of the research topic. However, I want to emphasise that the analysis is based on a combination of material collected from the interviews with other primary and secondary sources.

Two interviews were conducted with professors focused on asylum and migration at highly respected universities in Istanbul. **Didem Danis** is a professor in sociology at Galatasaray University (Istanbul). She has conducted research for the Swedish-Turkish academic cooperation under the Swedish Consulate in Istanbul and her doctoral dissertation was about Iraqi transit migration.

**Sema Erder** is a professor in sociology at Bahçeşehir University (Istanbul) and has conducted research on international-, internal- and irregular-migration. Moreover, she has been a research partner to Professor Ahmet Icduygu whose research is frequently cited throughout this thesis.

A third interview was carried out with **Cengiz Aktar** who is the Chairman of the Department of EU Studies at Bahçeşehir University in Istanbul<sup>12</sup>. Cengiz Aktar has also worked more than 20 years for the UNHCR and the International Organization for Migration (IOM).

Fourthly, an interview was conducted with **Rachel Levitan**. She is the legal director at the Helsinki Citizens' Assembly<sup>13</sup> (HCA) in its Refugee Advocacy and Support Program in Istanbul. HCA is a global NGO that is working in close cooperation with the UNHCR by providing legal assistance to asylum seekers and refugees. Moreover, HCA gives training to other NGOs and lawyers in refugee law and human rights issues.

Lastly, an interview was conducted with an EU official working for the Turkey Unit at the Directorate General (DG) enlargement of the EC in Brussels. This interviewee will not be referred to by name but simply as **EU official**. DG Home and DG Enlargement work together and formulate the yearly progress reports on Turkey.

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<sup>12</sup> The Department has been designed to provide students with a deep knowledge of the history, institutions, policies and functioning of the EU. For more info see:

[http://www.bahcesehir.edu.tr/files/UserFiles/katalog/bolumler/avrupabirligi\\_katalog.pdf](http://www.bahcesehir.edu.tr/files/UserFiles/katalog/bolumler/avrupabirligi_katalog.pdf)

<sup>13</sup> For more info about HCA see: <http://www.hyd.org.tr/?pid=175>



## 4.5 Operationalization

When I approached the primary documents that will comprise one important part of the analysis of this thesis, I realized that not much was written explicitly about the geographical limitation to the Geneva Convention. Based on findings from the interviews, in combination with secondary literature, I came to the conclusion that some other measures highly relevant for the lifting of the geographical limitation had to be studied. Those were, in particular, the implementation of a new asylum law and the establishment of a new asylum institution. It is necessary with an asylum law that takes all refugees into consideration and includes other aspects of protection aligned with EU's standards. Moreover, a national institution which can handle the asylum procedures which today is shared with the UNHCR must be established if the geographical limitation is to be lifted. When I "screened" the documents, I was also taking these two interlinked 'aspects' into consideration, and looked for reforms on those as well.

The empirical analysis of this thesis will be divided into three sections. Sections I and II will more generally present the preferences and interests on asylum policy of EU and Turkey. By studying the view of the two rational actors regarding their preferences and agenda for the Turkish asylum policy, I will be able to gain a deeper understanding of the importance of the geographical limitation to the Geneva Convention in Turkey's EU accession process. In section III, the consequences of a lifting of the geographical limitation will be studied in greater detail and here the two sub research questions<sup>14</sup> will guide the analysis. The sub research questions will be analyzed in the same manner. The analysis will be performed by referring to policy documents published by the two actors as well as information gathered in the five expert interviews. The aim is to understand the importance of the geographical limitation to the Geneva Convention in Turkey's EU accession process by applying the theoretical assumptions from the Europeanization theory.

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<sup>14</sup> Is Turkey regarding a lifting of the geographical limitation as interchangeable to a membership in the EU, if so, how can this be characterized? Is Turkey preparing its 'asylum system for a lifting of the geographical limitation, if so, how can these actions be described and interpreted?

## 5 Empirical Analysis

The intention of this chapter is to give an account of EU's and Turkey's agendas and preferences on the reform of the Turkish asylum system and the complexity behind a lifting of the geographical limitation. The first section will give a brief account of EU's asylum policy and its preferences for Turkey; this is followed by a section on Turkey. The third subchapter will discuss the opinions of the interviewees towards a lifting of the geographical limitation to the Geneva Convention. By combining the answers from the interviews with Turkish and EU policy documents, the theoretical stance of Europeanization and the information presented in the previous subchapters, the aim is to *assess the importance of the geographical limitation to the Geneva Convention in Turkey's EU accession process.*

### 5.1 First EU cooperation on Asylum and Migration

The policy field of Asylum and Immigration within the EU has had an interesting development. Asylum and Immigration policy moved from informal intergovernmentalism of 1985-1993 to formal cooperation on an intergovernmental level in 1993-1999 and with the Amsterdam treaty of 1999 it was inserted to the first pillar (i.e. became subject to communitarisation). The latest development, with the ratification of the Lisbon Treaty in 2009, has provided the Union with legislative power on asylum and immigration in the member states. As the cooperation on asylum policy within the Union has expanded, so has the externalization of EU's asylum policies to also include third countries and candidate states. In 2010, Turkey was considered the main transit country for irregular migration into the EU (Frontex 2011: 14). Due to this, in combination with Turkey's aspirations to join the EU, the cooperation between EU and Turkey on asylum policy is more important now than ever before.

The Tampere Conclusion of 1999 set the start date for the development of a Common European Asylum System (CEAS) (Peshkopia 2005: 28-29). In the course of the years, the member states and the European Union have intensively cooperated on a harmonization of legislations and practices on asylum and migration. The Schengen Regulation and the Dublin Convention of the 1990s have played an influential role in formulating today's policy. The abolishment of the internal borders had a significant impact on the immigration policy within the European Community. With this development, the necessity to protect the external borders of the 'Schengen land' became highly prioritized among the signatory states. Stricter border controls and technological innovations such as the SIS

(Schengen Information System<sup>15</sup>) were introduced to restrict the access and limit illegal entry to the territory. With the ratification of the Dublin Convention in 1997, the country within the community to which the asylum seeker first had arrived, became responsible for assessing the claim. The underlying objective of the Dublin Convention was that the asylum seeker should obtain the same protection irrespective of where the asylum application would be submitted and the asylum evaluation should be based on the full implementation of the Geneva Convention with no geographical limitation (Dublin Convention article 2). This was intended to prevent so called ‘asylum shopping’ which made asylum seekers submit their applications in the country with the most favorable asylum policy and it aimed for a fair redistribution of asylum seekers within the community in accordance with the ‘burden sharing’ principle. The Amsterdam Treaty of 1999 introduced common directives<sup>16</sup> on the procedure, reception, and qualification of asylum and in the Lisbon Treaty those standards are considered ‘uniform standards’ of EU law.

With the Essen European Council Conclusions of 1994, asylum and immigration matters became officially part of EU’s relationship with candidate states. To facilitate the cooperation with third countries and candidate states on the policy field of asylum and immigration, EU has introduced measures such as: the *safe third country* principle and *readmission agreements*<sup>17</sup> (Guild 2006: 638-639). One of EU’s aims behind the implementation of these measures has been to assure that third countries and in particular candidate states, respect international law and standards (such as the Geneva Convention). Nevertheless, it also became a way for EU to limit the amount of asylum seekers that arrive to its territory (Peshkopia 2005: 29).

### 5.1.1 EU’s Preferences for Turkey’s Asylum Policy

Due to Turkey’s geographical proximity to the EU, with shared land and sea borders, Turkey has often been defined as a ‘source country’ from which many illegal migrants<sup>18</sup> and asylum seekers reach the Union (Icduygu (1) 2011: 2, 9, Baklacioglu 2010: 7, Widgren in Zeybekoglu and Johansson 2002: 53). Many examples of this have been recorded at the Aegean sea-border between Turkey and Greece<sup>19</sup>. In 2009, 146, 337 illegal migrants, which was a record, were arrested at the Greek border when trying to enter the Union from Turkey. The majority of these people aim to reach Germany, the UK, the Netherlands and other Western European countries. In 2009, only 7,834<sup>20</sup> persons applied

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<sup>15</sup> The SIS is a data system with an aim to combat illegal entries

<sup>16</sup> Directive 2003/9/EC on minimum standards on the reception of applicants for asylum in the member states

<sup>17</sup> Those measures will be elaborated on below

<sup>18</sup> Asylum seekers and illegal migrants are often used interchangeably in the western political discourse. However, asylum seekers cannot be illegal as everyone enjoys a recognised human right to seek asylum (Mannaert 2004: 1)

<sup>19</sup> See for instance <http://www.worldpress.org/Europe/3735.cfm> and “Sixteen people drowned when trying to cross the Evros river between Turkey and Greece”. 1 July 2010. available at <http://www.unhcr.org/4c2c8eb09.html>

<sup>20</sup> Statistics collected from Senior field assistant of UNHCR field office in Istanbul, October 2010

to the UNHCR in Turkey. These figures suggest that approximately 95 % of the people entering Turkey did not apply for refugee status in the country.

Many member states of the EU have expressed a concern towards Turkey's asylum procedures and its border and immigration policies. With the ratification of the Amsterdam Treaty of 1999, the member states are obligated to impose rules and restrictions to combat illegal immigration to the Union (article 73 k). The main objective of the Amsterdam Treaty to provide "justice, freedom and security" within the Union is threatened by the situation in Turkey as the country is considered as an obstacle towards the member states efforts to control illegal entry to the Union. In the Accession Partnership prepared by the European Council, it has repeatedly been stated that Turkey needs to develop effective border controls to prevent illegal immigration (AP 2001: L85/19, AP 2003: 13, AP 2006: L22/43, AP 2008: L51/17).

In one of the first key official documents covering Turkey-EU relations, dated in 2004, and entitled *Communication from the Commission to the Council and the European Parliament, Recommendation of the European Commission on Turkey's progress towards accession*, it is stated that this enlargement will differ from previous ones due to Turkey's population size and geographical position (Icduygu (1) 2011: 13). Moreover it is stated that:

"the management of EU's long new external borders would constitute an important policy challenge and require significant investment. Managing migration and asylum as well as fighting organised crime, terrorism, trafficking of human beings...would all be facilitated through closer cooperation both before and after accession" (COM/2004/0656 final)

According to Icduygu, this EU document had an influential role in shaping the pro- and anti- arguments towards a Turkish EU accession within the EU (Icduygu (1) 2011: 14). With this document and similar statements of the same character, the EU managed to establish migration issues as an integral part of the negotiation agenda before the accession negotiations even had opened. This "migration diplomacy", as Icduygu calls it, has only expanded during the accession process. From the EU side, the primary concern lays in whether Turkey is able to protect its external borders and manage migration inflows. It has been argued that Turkey has "allowed or even encouraged irregular migrants to use Turkish territory as a spring-board to reach Europe" (Mannaert 2003: 9). Greece has repeatedly filed complaints against the Turkish authorities for breaching the readmission agreement that was signed between the countries in 2003 and which requires Turkey to accept the return of irregular migrants that have passed its borders (worldpress.org April 2011). This has resulted in a more active presence of EU's task force Frontex at the Greek-Turkish border to assist with the repatriation of illegal entrants<sup>21</sup> (Center for Migration and Refugee Studies 2010: 48).

To stop the influx of illegal migrants, the EU's member states have increasingly restricted the access to their borders and offered financial and technical support to Turkey in order to secure its borders. According to the Turkish 2008 National Harmonization Program, the EU funded 75% of the border security implementation projects in Turkey (Baklacioglu

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<sup>21</sup> See for instance the Operation Poseidon project launched by Frontex, available at: [www.frontex.europa.eu/download/.../operational\\_activity\\_in\\_greece.doc](http://www.frontex.europa.eu/download/.../operational_activity_in_greece.doc)

2010: 11). Moreover, EU sponsored twinning projects have been established to provide institution building and to set up border security units and assist with training to border personnel (Baklacioglu 2010: 7, ec.europa.eu).

Due to the absence of a law on asylum in Turkey, asylum seekers and refugees cannot receive legal social rights (Baklacioglu 2010: 10). Consequently, these people are more than likely to become externalized and impoverished. By encouraging the country to adhere to EU's directives on asylum procedures and asylum reception, the EU aims to improve the standard of living. This in turn reduces the likelihood of transiting to an EU country and makes Turkey closer to the realization of becoming a safe third country. Due to Turkey's asylum policy only providing temporary protection to most of its asylum seekers, the country has not put much effort into establishing well-functioning institutions for reception. Many EU funded projects and twinning projects sponsored by the German government have been initiated to support the construction of reception centres in Turkey in order to prepare the country for more permanent refugee and asylum management<sup>22</sup>. Seven reception centres are still under construction but have had limited progress (Progress Report 2009, Baklacioglu 2010: 6).

With the safe third country principle<sup>23</sup>, the EU can return asylum seekers to neighboring transit countries that are considered as 'safe third countries'. As part of their accession process, the CEECs had to adhere to the standard of a safe third country. Hence, Turkey is expected to become a safe third country prior to a finalization of its accession process. According to Phuong, the safe third country principle transformed the CEECs into "buffer countries" and rather than 'sharing' the burden with those countries, the EU 'shifted' it to their territories (Phuong 2003: 2-3). When Turkey fulfills the criteria of a safe third country in accordance with the Asylum Procedures Directive of the EU, the EU would not have to consider any of the asylum claims originating from Turkey (i.e. asylum seekers which pass Turkey on their way to the EU). The criteria of what constitutes a 'safe third country' is regulated in EU's Asylum Procedures Directive 2005/85/EC article 36. It is stated that safe third countries must (a) have ratified and observed the provisions of the 1951 Geneva Convention without any geographical limitations; (b) have an established asylum procedure prescribed by law. Currently, Turkey does not meet either directive. Turkey has not fully ratified the Geneva Convention, nor does the country have an established asylum procedure defined by law. As a result, Turkey is requested to lift the geographical limitation to the Geneva Convention and to implement a domestic legislation for the asylum procedure which include all asylum seekers and refugees (i.e. not excluding asylum seekers from non-European countries) (Kirisci in Zeybekoglu and Johansson 2002: 56).

As previously stated, community readmission agreements have never before been negotiated with candidate states<sup>24</sup>. However, in the same year as the directive for community readmission was ratified (2002), EU started to request Turkey to sign it (Ozcan 2010). This has continuously been requested in every progress report since 2002. Turkey's hesitation towards signing the agreement has been based on this criticism; this is

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<sup>22</sup> See for instance twinning project TR 07 IB JH 03

<sup>23</sup> Originally introduced in the London Resolutions in 1992 but was incorporated into the Asylum Procedures directive in 2005 (2005/85/EC article 36).

<sup>24</sup> According to the criteria outlined in Council Doc 7999/02

the first time an accession state is requested to sign such an agreement and Turkey does not want 'special treatment'. Nevertheless, in February 2011 the negotiations on a readmission agreement finally opened under the condition that the EU would consider visa facilitation with Turkey (Council Conclusion EU-Turkey Feb 24th-25th 2011).

### 5.1.2 Conclusion – EU's Preferences

The Schengen Convention and the Dublin Regulation set the start of cooperation on border management, immigration and asylum within the EU. During the last couple of years the cooperation has come to include more common directives and it has also been noticeable that EU more frequently tries to impose its principles and agreements on third countries and candidate states. According to Boswell, the external dimension of the EU cooperation in Justice and Home Affairs can be divided into two approaches. Firstly, EU places a large effort in cooperating with countries of origin and transit countries on border management, to combat smuggling and trafficking into the Union and to stipulate readmission agreements to return illegal migrants to the countries they transited through. Secondly, the EU financially contributes to the establishment of asylum systems that can offer sufficient protection in transit countries and candidate states, in order for the migrants to stay there and avoid movements towards the EU (Peshkopia 2005: 29). These two approaches can be applied on the relationship between Turkey and the EU where the EU has been very committed in providing financial and technical assistance to Turkey to thwart an inflow of asylum seekers and illegal migrants to the EU. The negotiations on a readmission agreement recently opened between Turkey and the EU. If a readmission agreement will be negotiated, it will facilitate for the EU to send irregular transit migrants back to Turkey. If the EU manages to make Turkey a safe third country, Turkey will be fully responsible for all asylum seekers which pass its territory and the EU will be able to return asylum seekers to Turkey as well.

## 5.2 Turkey's Asylum System

In the past, Turkey has generally been regarded as a country of emigration with its nationals going to Western Europe (Kirisci 1988: 175). The labour migration from Turkey to Germany in the 1960s was followed by family reunification in the 1970s and in the 80s and 90s many Turks of Kurdish descent left the country as a consequence of the Coup d'état (Icduygu 2011: 6, Avci and Kirisci 2006). However, contrary to the general belief, many scholars also regard Turkey as an immigration country (Icduygu 2011: 4, Kaya 2009, Avci and Kirisci 2006: 125, Akbas 2005). As previously mentioned, this thesis is investigating Turkey as an immigration and transit country. In order to understand Turkey's hesitation towards a lifting of the geographical limitation, it is crucial to evaluate the country's state-centric and exclusionary policies on immigration and asylum (Kirisci 1988: 175). The foundations of Turkish asylum policy derive from three pieces of

legislation: the 1934 Settlement Law (amended in 2006), the 1951 Geneva Convention on Refugees and the 1994 Asylum Regulation<sup>25</sup>.

### 5.2.1 Restricting the Entry of Foreigners

As outlined in the chapter on EU's asylum policy above, the Union is taking many measures to restrict its borders and leave "unwanted" immigrants and asylum seekers outside the territory of the Union (Kirisci 2004: 10). A similar mentality is present in Turkey and many of its policies and practices are exclusionary towards foreigners. Although Turkey was one of the drafters and first signatories to the Geneva Convention relating to the status of Refugees of 1951 it was ratified with a geographical limitation (Soykan 2010: 9, Avci and Kirisci 2006: 151, Tarimci 2005: 27, Kirisci 2002: 14).

The Turkish government has stated security concerns; the proximity to unstable countries in the east, as well as the fear of becoming EU's dumping ground for asylum seekers and refugees as reasons to why it maintains the restriction (Kaya 2009:5, Tarimci 2005: 36, 100, Kirisci 2002: 14). The implication the geographical limitation to the Geneva Convention has on the Turkish asylum system is that the national institutions only grant refugee status to European asylum seekers. However, this restriction does not prevent non-European asylum seekers from applying for asylum in Turkey. On the contrary, non-Europeans constitute the main asylum seeking group in Turkey and they benefit from one of the largest resettlement programmes in the world, sponsored and managed by UNHCR and independent governments such as the US, Canada and Australia (Center for Migration and Refugee Studies 2010: 64, Akbas 2005: 46). The asylum seekers originating from the neighbouring countries such as Syria, Iran and Iraq can apply for refugee status from UNHCR and if they are recognized as a refugee in accordance with the Geneva Convention (see section 1.1 above) they are allowed to stay temporarily in Turkey before they are resettled to a third country.

Prior to signing the Geneva Convention, Turkey only granted refugee status to so called 'national refugees' in accordance with the Settlement Law of 1934. National refugee status was granted to individuals of "Turkish descent and culture" and the Council of Ministers was responsible for determining if the 'turkishness' criteria was fulfilled or not. By signing the Geneva Convention with a geographical limitation made it possible for Turkey to continuously restrict the entry to its territory for many people. The national refugee clause was abolished from the settlement law in 2006 due to pressure from the EU. Although the refugee clause was removed from the Settlement law in the amended version of 2006, the new law still includes a restrictive description of 'foreigners' that are not allowed to immigrate to Turkey. The law states that "foreigners who do *not* share Turkishness or the Turkish culture *cannot* immigrate to Turkey"<sup>26</sup> (Soykan 2010: 8). The

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<sup>25</sup> Full name of the regulation: "Regulation of the procedures and the principles related to mass influx and foreigners arriving in Turkey either as individuals or in groups wishing to seek asylum from a third country"(Mannaert 2004: 7)

<sup>26</sup> Emphasis added by the author

Turkish authorities are very restrictive in whom they consider to be enough “Turkish” to settle permanently in their country and still no law on the integration of immigrants or refugees exist there (Kaya 2009: 18).

For many years, Turkey did not have any national provisions governing non-European and non-national refugees and this was left in the hands of UNHCR (Kaya 2009). However, with the regime shift in Iran and the instability in the Middle East and in Africa and Southeast Asia in the 1980s, the number of non-European asylum seekers arriving in Turkey increased rapidly. The mass refugee crisis in the aftermath of the Gulf War in 1991, followed by the 1992-1993 influx of 20 000 Bosnian Muslims exhausted the Turkish asylum system (Soykan 2010: 10, Kaya 2009: 5, Tarimci 2005: 106). Between 1980 and 1991 more than 1.5 million Iranians sought temporary refuge in Turkey, the majority of those individuals had the intention to transit onwards to Europe and the US (Mannaert 2003: 2-3). The Turkish authorities made an attempt to stabilize the situation by refusing entry to half a million Kurds fleeing from the northern parts of Iraq (Keser 2006: 125, Akbas 2005: 39). They were accused of being PKK (Partiya Karkerên Kurdistan) rebellions and the Turkish authorities considered northern Iraq to be safe. These practices were spread to also include asylum seekers from other countries and Turkey was frequently accused of violating the *non-refoulement*<sup>27</sup> principle and applying its own definition of who to consider an asylum seeker (Akbas 2005: 46-47). This resulted in heavy criticism from western governments, Amnesty International and the UNHCR and as a defence, the Turkish authorities decided in 1994 to introduce its own asylum regulation (Kale 2005: 218). In article 8 of the 1994 regulation the following is stated:

“It is essential that population movements be stopped at the border, and that asylum seekers be prevented from crossing over into Turkey...provided that Turkey’s obligation under international law are maintained” (Kaya 2009: 5, 1994 asylum regulation article 8)

With the introduction of the 1994 Asylum Regulation, the Turkish authorities provided themselves with the right to conduct an asylum seeker status determination in parallel with UNHCR’s refugee status determination. This “two-tiered” asylum procedure is currently in practice in Turkey (Kirisçi in Zeybekoglu and Johansson 2002: 60).

In the regulation, a refugee is defined as a:

“...foreigner or stateless person of *European*<sup>28</sup> origin that has been recognized according to the Geneva Convention; whereas an *asylum seeker* is defined as a foreigner or stateless person of non-European origin whose status as an asylum-seeker has been recognized by a decision of the Ministry of Interior that s/he meets the same criteria” (Regulation No. 1994/6169)

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<sup>27</sup> Non-refoulement is a principle in international law, specifically refugee law, which concerns the protection of refugees from being returned to places where their lives or freedoms could be threatened. Unlike political asylum, which applies to those who can prove a well-grounded fear of persecution based on membership in a social group or class of persons, non-refoulement refers to the generic repatriation of people, generally refugees into war zones and other disaster areas. For more information see: [www.unhcr.org/](http://www.unhcr.org/)

<sup>28</sup> Emphasis added by the author



With this definition, the Turkish state does not grant refugee status to non-Europeans. Such individuals, if they meet the criteria of the Geneva Convention, are given the status of “asylum seekers” and can prevail in Turkey until their refugee application is recognized or rejected by the UNHCR (Balta 2010: 6, Kale 2005: 225). As a result of these unclear legal definitions in the Turkish asylum system, where no equivalent to the international definition of an ‘asylum seeker’ exists, the distinction between irregular migrants and asylum seekers were (and is still today) often diffuse for many Gendarme officials. According to international law, although asylum seekers are not recognized as refugees, they should not risk deportation that violates the principle of non-refoulement (Soykan 2010: 11). However, due to the very complex legal situation within Turkey many people are deported and the non-refoulement is still often violated as a result of the incompetence among Turkish border officials (Soykan 2010:12). This has been heavily contested by the EU and international organisations. Moreover, with Turkey’s parallel procedures it is possible that an applicant’s asylum claim is rejected by the Ministry of Interior (MoI)<sup>29</sup> but receives refugee status after going to the UNHCR. In this situation, it’s a breach of international law if Turkey deports the applicant that just received that status. Hence, with this system, a high level of coordination is crucial between the two institutions and as EU has suggested, the establishment of a single asylum authority would help the procedure (Kaya 2009: 23).

## 5.2.2 Turkey’s Response to EU’s Requests

Baklacioglu argues that the development of Turkey’s asylum and migration policy in the last years have been heavily influenced by its aspirations to join the EU. Since the Accession Partnership was first established in 2003, Turkey has in particular adopted two of EU’s central pathways of the asylum policy: the strengthening of the external borders and the establishing of internal ones. Influenced by EU’s policies and practices, he claims that Turkey seeks to implement “preventive pre-frontier measures” of stricter border and security policies, entrance procedures and even psychological deterrence. The post-entry measures are concerned with reducing the possibility to succeed in the asylum procedure. The already restrictive policies on asylum within Turkey (as envisaged by the geographical limitation) are according to Baklacioglu strengthened by EU’s directives and regulations of safe third country rules, readmission agreements and the encouragement of cooperation with transit countries (Baklacioglu 2010: 5).

Due to Turkey’s historical past and its rather restrictive asylum and immigration practices, it does not come as a surprise that Turkey prioritizes the EU criteria related to border security and fighting illegal migration (Baklacioglu 2010: 7). One of the first measures Turkey undertook in compliance with the EU acquis was indeed to set up the special task force on border management. The task force prepared strategy papers on protection of the external borders which came to occupy an integral part of the National Action Plan on Asylum and Migration which was launched by the MoI in 2005. This tendency has continued and in the latest National Program of 2008, great emphasis was placed on the

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<sup>29</sup> The General Directorate of Security under the MoI is the national institution responsible for processing the asylum claims (Kale 2005: 212)

alignment of Turkey's border and migration management with the Schengen system (NPAA 2008).

### 5.2.3 Conclusion – Turkey's Preferences

Turkey's asylum policy has been dominated by security concerns and the preservation of a national identity restricting the entry of foreigners. Although Turkey was one of the signatories to the Geneva Convention of Refugees, the country has continuously implemented national practices that circumvent international refugee law. The 'fear' of a mass influx of refugees and asylum seekers from its neighbouring states have commonly been held by the Turkish authorities as an argument for maintaining the country's restrictive policies and it has been used as a main argument for the opt-out of the Geneva Convention. Another important reason behind the maintenance of the geographical limitation has been for Turkey to keep its foreign relations with Iran, hence not offering protection to Iranians fleeing their regime. A similar logic is shown in Turkey's reluctance to grant refugee status to Azeris, Ahiska Turks, Chechens and Uzbeks. Granting them refugee status could offend their respective governments (Kirisci in Zeybekoglu and Johansson 2002: 60-61). Thirdly, by keeping the geographical limitation to the Geneva Convention, Turkey can avoid costs and practices related to the integration of refugees in the Turkish society. An underlying domestic assumption seems to be that it is more difficult to integrate people from other cultural, religious and historical backgrounds and this is reflected in the settlement law and in the categorization of refugees where the most privileged category, at least on paper, consists of "national-refugees".

## 5.3 The Geographical Limitation to the Geneva Convention

This subchapter will constitute the main body of analysis. It is divided into two sections where the underlying research questions outlined in the methodology chapter will be answered.

*Is Turkey regarding a lifting of the geographical limitation as interchangeable to a membership in the EU, if so, how can this be characterized?*

*Is Turkey preparing its asylum system for a lifting of the geographical limitation and if so, how can these actions be described and interpreted?*

### 5.3.1 Is Turkey regarding a lifting of the geographical limitation as interchangeable to a membership in the EU, if so, how can this be characterized?

As outlined in the chapter on Europeanization, membership conditionality has frequently been used as a ‘carrot and stick’ mechanism by the EU to enforce reforms in candidate states (Schimmelfenning and Engert et al 2003: 507). The 1999 decision of granting Turkey candidate status to the European Union; made it possible for the EU to start influencing Turkish Asylum policy (ibid, Kirisci 2002: 25). EU’s scepticism to Turkey’s asylum system and the maintenance of the geographical limitation, in particular, can be noticed in every progress report that the EC has prepared on the country. In the first progress report prepared already in 1998, the following is stated:

“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 the asylum machinery ineffective. The lifting of this reservation is essential for Turkey’s alignment on the rules in force in the European Union” (Regular Report 1998: 44)

Turkey does not have an option but to lift the geographical limitation to the Geneva Convention in order to become a member of the EU. In no other EU state does the limitation remain; and in respect to international law, the EU law does not contain it. Moreover, in accordance with EU’s demands for the CEECs during the former enlargement, Turkey is requested to lift it prior to obtaining membership status. The interviewees and the secondary literature frequently referred to the case of Hungary and stating that the Turkish government is fully aware that it needs to follow the same path and reform its asylum system (Sema Erder, Cengiz Aktar, Tarimci 2005: 55-66, Kirisci 2004: 10, Lavenex 2002: 710). All of the interviewees agree that the geographical limitation to the Geneva Convention is an important issue for Turkey’s EU accession (Didem Danis, Sema Erder, Cengiz Aktar, Rachel Levitan, EU official). According to Sema Erder “the EU is very reactive to this policy [of the geographical limitation]”. This opinion is shared with Cengiz Aktar who believes that it’s not only the geographical limitation *per se* that EU is interested in. He claims that it is about the overall EU principle for the new enlargement wave to forbid new members to go for opt-outs, “...and the reservation can be seen as an opt-out...in a borderless Europe (internal borders) cross-national or transnational problems cannot be dealt with national remedies” (Cengiz Aktar). Didem Danis also states that it is not possible to think about migration issues exclusively from a national perspective any more. These claims can directly be linked to the discussion of a policy misfit as outlined in the theoretical chapter; where the geographical limitation is considered a national misfit which generates adaptational pressures for Turkey.

The Accession Partnership adopted by the EC in 2001, sets out the reforms Turkey needs to undertake in order to obtain membership status. Under the title of ‘Justice and Home Affairs’, the following were identified as four main areas of concern and Turkey was requested to do the following:

1. To align its visa regime with that of EU
2. To adopt EU’s practices on migration including admission, readmission and expulsion to prevent illegal migration
3. To strengthen border management and prepare the country for implementation of Schengen

4. To lift the geographical limitation and develop accommodation facilities and support to refugees

As a response to the Accession Partnership, the Turkish government issued its first National Programme for the Adoption of the *Acquis Communautaire* later in 2001. Under section 4.25, Turkey agreed to take measures on many of the requested reforms. This National Programme is important for understanding the development of the debate of the geographical limitation to the Geneva Convention, as this is the first document where Turkey gives a formal response to EU's request of a lifting of the geographical limitation. Surprisingly to many refugee advocacy groups and the UNHCR, it is communicated that a lifting of the geographical limitation will be considered (Kirisci 2002: 25-26). Nevertheless, the document outlined three conditions under which a lifting of the geographical limitation would be considered; the following is stated:

“Lifting the geographical limitation to the 1951 United Nations Convention Relating to the Status of Refugees will be considered in a manner that would not encourage large scale refugee inflows from the East, when the necessary legislative and infra-structural measures are undertaken, and in the light of the attitudes of the EU Member States on the issue of burden-sharing.” (NPAA 2001: 23)

In the passage above, the National Programme of 2001 included a clause on a potential lifting of the geographical limitation. This was included although the Turkish military circles<sup>30</sup> previously had shown high scepticism towards a lifting of the geographical limitation and according to Kirisci this should be considered as “a revolutionary departure from previous practice” (Kirisci 2002: 26, Kirisci 2001: 9). Hence, in accordance with Featherstone's concept of ‘*vincolo esterno*’ the EU may have contributed to a change in power structure in Turkey, which resulted in an inclusion of a potential lifting of the geographical limitation in the National Programme (Yildirim 2010: 1, Schimmelfenning and Engert et al. 2001: 506). With an EU pressure, the military circles have started to lose their veto points on this issue and reforms were considered. Moreover, it should be acknowledged that the NPAA of 2001 was published in a time when the Turkish support for a membership in the EU was high<sup>31</sup>, therefore, responding to EU's requests could be motivated by the incentive of obtaining membership. Nevertheless, with this said it is not obvious that the process towards a lifting of the geographical limitation would be easy. Following the text extract above, the government had applied a cost-benefit analysis and as noted in the text, the geographical limitation will be lifted under certain conditions. Interestingly, Turkey has included the well-known EU concept of ‘burden-sharing’ in its response (Tokuzlu 2010: 2). This shows that Turkey is fully aware of the fact that it constitutes a transit country to the EU. It fears that if no burden-sharing mechanism will be implemented, it will become a “buffer zone” or “dumping ground” for asylum seekers (Kirisci 2007 (1): 96, Kirisci 2004: 7, Kirisci 2002: 25-26). This was also frequently expressed by the interviewees who stated:

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<sup>30</sup> The military has always had a particular influence over Turkish politics and its power has been contested in the EU membership process (Schimmelfenning and Engert et al. 2001: 506, Yildirim 2010: 1).

<sup>31</sup> In 2001, 71 % of the Turkish population felt that Turkey would benefit from a membership. This can be compared with 42 % in 2010 (Eurobarometer 2002.1: 4, Eurobarometer 2010: 35)

“All the topics related with migration in EU are mostly related to stop migration more than solve. They [EU] are mostly interested in stopping migration, they think that Turkish policy should be on behalf of (based on) a burden buffer country” (Sema Erder)

“EU is very eager to view Turkey as a place to where one can return all the ‘unwanted’ migrants and asylum seekers in the EU. It is another buffer country for Sweden etc. although Sweden takes their share” (Rachel Levitan)

In the National Programme of 2003 (NPAA 2003), the conditions outlined in the 2001 programme are repeated and it is stated that those have to be fulfilled before a lifting of the geographical limitation would be considered. Additionally, in the renewed National Programme, Turkey makes a more direct link to membership conditionality. It is stated that the “issue of the geographical limitation will be addressed during the progression of EU accession negotiations of Turkey” (NPAA 2003: 655). This indicates that Turkey would not be willing to lift the geographical limitation before accession negotiations would open. In a report from 2007, Kirisci who considers this from a rational point of view, states that when the geographical limitation will be lifted is a matter of EU’s response to Turkey’s reforms as well as if Turkey will be provided a date for accession negotiations (Kirisci 2007: 17-19). In the report published by the Centre for Migration and Refugee Studies (2010) it is also stated that the lifting of the geographical limitation is conditioned on ‘burden-sharing’ and the success of the EU Accession negotiations” (Centre for Migration and refugee studies 2010: 50). However, how burden sharing would be practically and financially managed is not taken into consideration in the NPAA of 2001 or 2003.

Despite Turkey’s commitment to address the geographical limitation once the membership negotiations would open, the progress report prepared by the Commission in the end of 2005 reports no progress on the issue of the lifting of the geographical limitation (Progress Report 2005: 111). In the National Action Plan on Asylum and Migration, prepared by the Turkish government in 2005, the membership conditionality is further emphasised. Here it is stated that a proposal to lift the geographical limitation will be submitted to the TGNA in 2012 “in line with *the completion of Turkey’s negotiations for accession to the EU*” (NAP 2005: 52). Moreover, it is stated that this will only occur if the conditions that were outlined in the NPAA of 2003 have been met. When asking the interviewees to comment on how the ‘burden sharing’ would be carried out in practice, they stated that this is very unclear and that “the government does not even know how this will be handled” (Cengiz Aktar). The NAP includes a somewhat more comprehensive section on what the Turkish government means with ‘burden sharing’ (NAP 2005: 4.12). Nevertheless, this is still very vaguely outlined and it is stated that:

“Within the framework of burden sharing and in addition to the financial assistance to be provided to Turkey, policies should be developed for sharing of the following by the EU countries: some of the asylum seekers...some of the refugees...some of the aliens arriving during mass populations...a portion of the food, accommodation and travel expenses” (NAP 2005: 4.12)

In the Accession Partnership prepared by the EU in 2006 there is no formal response to Turkey’s request of burden sharing. In this document, the lifting of the geographical limitation is considered a ‘medium term priority’ (i.e. within 3 years - in 2009) (AP 2006: 3.2). In the same year, the Commission published the report on the outcome of the

screening process of Chapter 24 and the results presented under the title of ‘asylum’ were disappointing:

“Turkey’s current system is not compliant with the EU *acquis* in the field. Substantial amendments of the Turkish legislation are necessary in order to achieve full compliance with EU requirements. The analysis presented by the Turkish authorities includes an identification of remaining gaps and the need for further amendments” (Commission’s screening report 2006: III.b. pg. 18)

In the most recent National Programme, published by the Turkish government in 2008, it is stated that a reform of the Turkish legislation on asylum, immigration and foreigners will be performed “while maintaining the existing geographical restrictions<sup>32</sup>” (NPAA 2008 24.2.1). This, again, shows the controversy of the lifting of the geographical limitation and Turkey’s reluctance to lift it. There is no new National Programme prepared by Turkey after 2008, however, the progress reports prepared by the Commission in 2008-2010 report a limited progress by Turkey on the lifting of the geographical limitation. In Turkey’s National Action Plan of 2010-2011, the objective of the NPAA of 2008 is repeated (i.e. it is stated that a harmonization of Turkey’s legislation on asylum will be undertaken while maintaining the geographical restrictions) (NAP 2010-2011: 109). The 2010 progress report makes a more straight forward linkage between Turkey’s overall progress on the chapter on asylum and the geographical limitation. The following is reported on the area of asylum: “progress continues to be limited by the fact that Turkey maintains the geographical limitations on the 1951 Convention related to the status of refugees” (Progress Report 2010: 82).

When analysing the official documents prepared by the Turkish government and the Commission as outlined above, it is indicated that the Turkish position on the issue of the geographical limitation has changed direction; the development has taken one step forward but two steps back. In 2001 and 2003, Turkey showed a willingness to open up for a debate about the geographical limitation and it was stated that the geographical limitation would be considered after the membership negotiations would open. After the negotiations opened in 2005, the Commission reported no progress on the geographical limitation, and in the NAP of 2005 Turkey added that the geographical limitation would not be lifted before obtaining membership status and a first proposal of a lifting would be submitted in 2012. In the latest National Programme it is communicated that the reforms currently undertaken will not take a lifting of the geographical limitation into consideration.

In the NAP it is stated that the geographical limitation was placed “due to challenging experiences in the region” (NAP 2005: 50). The geographical limitation has been used as a measure to control the otherwise large refugee inflows which would affect Turkey due to its geographical position in between refugee producing countries in the east and refugee accepting countries in the west (Icduygu (1) 2011: 18, Kaya 2009: 9, 15, NAP 2005, NPAA 2001, NPAA 2003, Kirisci in Zeybekoglu and Johansson 2002: 65). However; Didem Danis states that this is the official discourse of the government to why the geographical limitation should be maintained and although it is part of the story, she does not believe that it represents the “full story”. Instead, and more importantly, the

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<sup>32</sup> Legal and infrastructural reforms related to the lifting of the geographical limitation will be discussed in the next subchapter

government wishes to use it as a “diplomatic instrument for the entrance of Turkey to the EU” (Didem Danis). She claims that: “there are other tactics the government can apply to prevent refugees from entering the country” (ibid). If Turkey does not improve the integration practices or if the country will implement very low recognition rates, a lifting of the geographical limitation will not be a major problem for the government. She is basing this argument on the development in Greece and EU’s overall policies on asylum<sup>33</sup>:

“... the recognition rate will not be better than in Greece, EU’s dissuasive politics will block them [the asylum seekers] and push them back out of the country...right now the recognition rate is quite high because it concerns resettlement in 3<sup>rd</sup> countries... I think the recognition rate will decrease drastically and this will be a challenge for the asylum seeker and not the government” (ibid)

A reason behind Turkey’s high recognition rate, indicated by the interviewees, is the geographical limitation and the resettlement procedure which comes with it. Turkey does not have to, financially or practically, manage the refugees it recognizes; instead those individuals are resettled to a third country. It seems quite unlikely that Turkey would maintain this high recognition rate if it would have to be fully responsible for all asylum applicants and refugees residing in the country. Sema Erder argues that if the geographical limitation will be lifted, the asylum routes will change and asylum seekers will not go to Turkey any more. She claims that asylum seekers are very aware of the policies of the countries. If the Turkish future policies will not offer resettlement to a western country or if refugees will risk being deported back to Turkey due to EU’s safe third country principle, they will choose another route of escape. Rachel Levitan is also emphasising the awareness of refugees towards migration policies and their rights and possibilities in different countries. She stated, “Turkey does not have a multicultural past, it is a homogenous country and the European idea of taking care of human rights is not part of this tradition” (Rachel Levitan).

The interviewees are over and over again stating that there is a very low probability that Turkey will lift the geographical limitation before being assured EU membership. They consider membership conditionality and a lifting of the geographical limitation as interlinked, and so does the Turkish authorities. As Kirisci phrases it: “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” (Kirisci 2004: 10). Hence, there is a rational incentive for Turkey to keep the geographical limitation: namely to use it as a “bargaining chip” to obtain membership in the EU. If Turkey lifts the geographical limitation and becomes a safe third country before acceding to the EU, all asylum seekers passing Turkey on their way to the EU can be returned to Turkey from EU’s member states. Moreover, if Turkey becomes a member of the EU and

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<sup>33</sup> The total rate of refugee recognition in Turkey is considered as much higher compared to most European Countries. According to Icduyugu and Kirisci, out of the 50 000 non-Europeans that applied for asylum between 1997-2007, 25 000 were granted refugee status by the UNHCR i.e. a recognition rate of 50 % (Mixed Center for Migration and Refugee Studies 2010:64). Between 2008-2010, 100% of the Iraqi applicants were granted refugee status by UNHCR in Turkey, this can be compared to 24 % in Norway (UNHCR statistics Iraqi asylum seekers). Greece has the lowest recognition rate for asylum seekers in EU and according to Eurostat the country grants asylum to less than 1 % of its applicants (Eurostat newsrelease, June 2010).

consequently adopts the Dublin Convention, the refugees and asylum seekers will also be returned to the first country of entry (i.e. Turkey). Turkey is fully aware of the benefits a lifting of the geographical limitation would mean for the EU in terms of burden shifting (Tokuzlu 2010: 4). This can be interpreted from the NPAA of 2001 and 2003 and the NAP of 2005 analysed above. Turkey understands how important this issue is for the EU<sup>34</sup> and due to this, they can use it as a bargaining chip for membership. According to Cengiz Aktar: “if Turkey takes it away [the geographical limitation] depends on the accession date...the sooner Turkey joins [the EU] the sooner it will be lifted...Turkey might impose the geographical limitation as an opening benchmark for the accession”.

None of the interviewees believe that the government’s deadline of submitting a proposal of the lifting of the geographical limitation to the TGNA in 2012 will be reached. Rachel Levitan claims that in the same way as the EU has promised an integrated European Asylum System (CEAS) by 2012, the lifting of the geographical limitation will not occur in 2012. She stated, “these are just dates”. Cengiz Aktar emphasises that without the EU, Turkey will never lift the geographical limitation and according to him the deadline of 2012 is very unrealistic “to say this would be like saying it happened ‘yesterday’”. According to him, Turkey may become more “knowledgeable and less clumsy” in the management of mass movement coming from abroad, “more humanitarian and more efficient”, but a lifting of the geographical limitation as such he does not think will happen without EU membership. Sema Erder believes that: “they will lift it [Turkey] if relations with EU come to a point which they desire...it is truly a bargaining chip from both sides”. Didem Danis thinks 2012 should only be interpreted as a promise of the Turkish government to start thinking about opening a discussion of a lifting of the geographical limitation. She continues by stating, “that date has been and will continue to be postponed until Turkey is promised a membership in the EU”. She concluded that she does not think it will be lifted within the next 10 years.

The interviewee from the EC, also states that the Turkish government is frequently positioning that it will not lift the geographical limitation until the day it is promised a membership. However, according to the EU these things should be separated and Turkey will have to lift the geographical restriction before obtaining membership status. He thinks that the lifting of the geographical limitation should be considered as a process with an end result, however, he does not think that the limitation will be abolished any time soon. The drafting of an asylum law<sup>35</sup> and the institutionalization between the UNHCR and the Turkish state should be considered as steps in the direction towards the lifting of the geographical limitation. The interviewee thinks that it is better the earlier Turkey lifts it, however, he understands Turkey’s stance and argues that as a candidate state Turkey is bound by the *acquis* by the time of accession and not before, therefore it is up to Turkey when it will be lifted. This interviewee frequently referred to the readmission agreement which currently is negotiated between Turkey and EU. He drew parallels between the negotiation process on this issue and the negotiations on the geographical limitation. In the same manner as with the readmission agreement, Turkey wants something in return if it abides by EU’s requests. In the readmission agreement debate “visa facilitation has been on the table and with the geographical limitation it is membership”.

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<sup>34</sup> It is emphasised in every progress report and regular report prepared by the commission on Turkey’s progress towards accession from 1998 to today

<sup>35</sup> This will be further discussed below



According to all the interviewees as well as the Turkish policy documents, it is unlikely that Turkey will lift the geographical limitation in the short term because it is not assured a membership in the EU. Instead the interviewees view the outlined process as a bargaining chip (i.e. where two rational actors are keeping on to their own interests and not giving in before the costs are lower to adopt a change rather than to keep the status quo of the geographical limitation). The interviewees and Turkey's policy documents truly indicate that when and whether the geographical limitation will be lifted is a question of membership conditionality. In the national programmes prepared before the accession negotiations opened in 2005, it was suggested that a lifting of the geographical limitation would come closer after the accession negotiations would open. However, the National Action Plan of 2005 gives a new deadline but bases it on the completion of accession negotiations. Following the logic of consequences, Turkey does not see any other benefits of lifting the geographical limitation than an EU membership and therefore it is not willing to lift it before it is assured membership. As the EU negotiations have extended, Turkey's preferences have changed and instead of lifting it during the accession process it is now based on the finalization of the accession.

### 5.3.2 Is Turkey preparing its asylum system for a lifting of the geographical limitation and if so, how can these actions be described and interpreted?

The lifting of the geographical limitation to the Geneva Convention should not be considered as an isolated variable in the reform of the Turkish asylum system. Although frequently pointed out as one of the main issues in the Turkish asylum reform, it has been emphasised by the interviewees as well as in the policy documents prepared by the EC and the Turkish government, that other fundamental measures need to be considered in combination with (or as a preparation for) the lifting of the geographical limitation. As seen in the National Programmes of 2001 and 2003, the Turkish government has stated that a lifting of the geographical limitation will depend on legal and infrastructural reforms of the Turkish asylum system. A lifting implies that the Turkish state would be fully responsible for conducting the asylum assessments and granting refugee status, therefore, the parallel procedure currently carried out in cooperation with the UNHCR will be abolished. This indicates that a new institution that can process *all* asylum claims, filed by non-European as well as European asylum seekers must be established. Moreover, the Turkish asylum system currently lacks statutory legislation, and the EU requests the country to implement a fully-fledged asylum law that is aligned with the EU acquis (Kaya 2009: 10, Kale 2005: 236, Kirisci 2004).

Didem Danis, who holds a doctoral degree in sociology, states that if the geographical limitation is lifted, a domestic institution must be established to handle the refugee status determination. The interviewee further argues that from a sovereignty perspective this can be considered as positive for Turkey. The same argument was held when the authorities decided to introduce the 1994 regulation on asylum in order to gain national control of the inflow of Iraqis. Hence, an introduction of a domestic body fully responsible for the alignment with the EU acquis on asylum could be considered as positive for the country's sovereignty. However, due to Turkey's candidature status, the practices and policies of the national institution will be highly influenced by the EU. Therefore, this 'rule adoption'

may not provide the Turkish authorities with more control over the asylum procedure than earlier when the non-European refugee status determination has been handled by the UNHCR. Moreover, as Didem Danis claims, Turkey has been dependent on UNHCR's assistance for many years and it will therefore be difficult and take time for Turkey to set up a new procedure where a national institution is fully responsible. Nevertheless, in many of the progress reports prepared by the Commission it has been acknowledged that the MoI and UNHCR have been increasingly cooperative on trainings in asylum law and refugee status determination:

“...since 1998, the Ministry of Interior has been engaged in training activities in co-operation with the UNHCR. A cooperation framework was adopted in April 2001 on issues related to asylum and refugee law” (Regular Report 2001: 83)

Additionally, as pointed out by Kirisci and supported by the interviewees from the Commission and from the HCA, the high level working group of the EU has increasingly been cooperating with the Turkish government to enhance the awareness of asylum protection, the importance of the establishment of an asylum unit and a new asylum law in Turkey (Kirsici 2004: 10, 15, Rachel Levitan).

As indicated in the National Programme of 2001, the lifting of the geographical limitation will be determined by a direct reform of legal and political amendments in Turkey. However, in order for such reforms to take place, Kirisci, argues that a “whole transformation of mind-sets” is needed (ibid). Lavenex has also emphasised that Europeanization should not be limited to policy transformations but should also include adoption of new values and norms<sup>36</sup> (Lavenex 2001). Kirisci refers to the state-centric notion of asylum and refugee exclusion which is inherited in Turkey's law on settlement from 1934 (still in practice). It is said that the cultural and ideological background present in that law has a profound impact on how the country regards asylum and immigration. Military and security circles continue to be very pessimistic towards an abolition of the geographical limitation, due to their fear of a mass influx of asylum seekers from the neighbouring Middle Eastern countries. Rachel Levitan agrees with Kirisci, emphasising the reforms in mind sets. She states that the restrictive approach towards foreigners are deeply rooted in Turkey and it will take time before the country is prepared for taking full and permanent responsibility for integration of asylum seekers and refugees. This notion could be seen in the NAP of 2005 as outlined above, where Turkey is requesting the UNHCR to assist with integration practices.

“if the geographical limitation will be lifted it will mean that non-European asylum seekers will be entitled to international protection and long term stay in Turkey. UNHCR will stop doing the refugee status determination or there will be a transition. MoI will do the status determination, they need the expertise. Resources need to be allocated so that Turkey is ready for integration of refugees however this will be problematic...we are not at a level of understanding multi-culturalism in Turkey” (Rachel Levitan)

Cengiz Aktar, the Chairman of the Department of EU Relations in Istanbul, considers EU to have a strong influential role in assisting Turkey in the institutional building of its

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<sup>36</sup> See section 3.2 above

asylum system. Cengiz Aktar draws parallels to the development in the CEECs, where he was highly involved in the establishment of new asylum institutions. He states that the governments of the CEECs would never have adopted new laws or signed the Geneva Convention if it was not for the positive prospect of an EU membership (ibid). The EU perspective helped national administration and it was an excellent cooperation between the EU Commission and the UNHCR. He continues that “it was positive conditionality there”. Furthermore, he hopes that a similar development will be noticeable in Turkey, however, he argues that without conditionality it will never happen. He states that one important reason for the Turkish government’s reluctance to lift the geographical limitation is due to the lack of institutional capacity and proper management techniques to permanently handle refugees and asylum seekers. Migration movements should be managed and “the reservation [the geographical limitation] has been a way to get rid of the problem” (ibid). According to Cengiz Aktar, the geographical limitation has left the Turkish administration with structural difficulties to understand the modern reality of the asylum and refugee phenomena. With the present system, it has been possible for the authorities to shut their eyes to those who are crossing the borders as they fall under the clauses of the reservation, however, if abolishing the geographical limitation, a genuine and modern asylum system could be established in Turkey (ibid). Sema Erder has the same belief. She states that:

“...it is necessary to change the overall policies on foreigners... when the Turkish institutions were established in the 1920s-1930s, the policy makers thought that Turkey would not get any migrants. All institutions and ideology is based on this mentality that foreigners will not stay in Turkey permanently and set up a life here”

As indicated in the statements above, the interviewees are agreeing that Turkey needs to reform its institutions and establish a new domestic system that will take over from the UNHCR. Now the government’s response to these requests will be outlined.

In the National Programme of 2003, Turkey has committed itself to establish a new refugee institution, positioned as such:

“...a single and centralized institution under the MoI specialized in the determination of refugee status and fulfilment of the legislative, administrative and infrastructural needs for developing its operational capacity” (NPAA 2003: 24.1.2)

In the National Programme for the Adoption of the *Acquis communautaire* (NPAA 2003) it is stated that this institution will be established in 2004-2005. An interesting observation that can be drawn from the text extract above is how it refers to ‘refugee status’. As previously mentioned and in accordance with current practices and the 1994 asylum regulation, the Turkish MoI is barely granting *refugee status* to anyone. As the MoI already is responsible for assessing claims submitted by Europeans, it is difficult to understand why a new institution should be established to assess such claims. Therefore, this clause may indirectly refer to a reform of the refugee/asylum definition, presumably, in the direction towards the implementation of a unitary refugee definition in accordance with the EU *acquis* and the Geneva Convention. As pointed out by the interviewee from HCA and in the secondary literature, the term ‘refugee’ has different meanings in both Turkish and international contexts (Rachel Levitan, Soykan 2010: 10). This not only confuses the legal framework and the institutional setting where different terms are applied by the Turkish state and the UNHCR, but it also shadows the general perception in the country where “no one knows who is a refugee” (Rachel Levitan). It is possible to talk

about a conceptual misfit (in accordance with the Europeanization literature) which needs to be solved if Turkey wishes to become a member of the EU.

It is stated in the National Programme of 2003, that a new asylum law will be implemented before 2005. The Turkish authorities have included an extensive list of many EU regulations, directives and conclusions which are set out to be included in the new asylum law. Among other things, Turkey committed itself to implement EU provisions such as the Dublin Treaty, the Dublin II Regulation and the EURODAC (NPAA 2003 table 24.1.1). This can be regarded as a willingness to adapt EU regulations and practices, hence, showing signs of Europeanization. However, as Tokuzlu rightfully points out, Turkey cannot adopt a national legislation that would include those provisions without mutual consent from the EU. "Establishing the criteria for determining the State responsible for asylum applications would only be meaningful if the state was part of the Dublin regime" (Tokuzlu 2010: 13). The same can be said about the EURODAC regulation. In addition, the Commission is requesting Turkey to improve its reception conditions for asylum seekers (Regular Report 2000: 64, 2001: 85). Due to the temporary attribute of Turkey's protection system, no major effort has been placed on offering high quality reception conditions. Nevertheless, as a response to EU's critique, the NPAA of 2003 undertakes to reform the reception conditions in accordance with EU's reception directive<sup>37</sup> and it was outlined that reception centres would be set up before 2004-2005.

In 2005, the National Action Plan for the adoption of the EU *acquis* in the field of Asylum and Migration (NAP 2005) was adopted by the government (Kirisici 2007: 96). The medium- and long-term amendments of the NPAA of 2003 had seemed very hopeful on paper. However, when comparing the NPAA of 2003 with the NAP of 2005 it is obvious that the period of implementation of all amendments previously outlined were too ambitious and none of the deadlines were met. The NAP 2005 does not present new deadlines but it introduced measures and practices of how the reform process should proceed. It developed and discussed the tasks and a timeframe that Turkey aims to undertake to prepare a domestic status determination system, to lift the geographical limitation and to adopt EU directives in asylum and migration in general. Seminars on asylum law were planned and an asylum-migration twinning project in cooperation with experts from various member states was set up (NAP 2005 3.1.5.4). The aim of the twinning project has been to analyze loopholes in the Turkish asylum legislation and to assist Turkey in the establishment of its own national asylum authority (NAP 2005 3.1.6).

Moreover, a list of financial assistance Turkey requests from the EU during its pre-accession phase is outlined in the NAP 2005. Among other things, Turkey requests financial support for the construction of a new asylum unit. This can be interpreted from the perspective of Turkey showing a will to prepare its system for a reform. However, it is also outlined that Turkey wants UNHCR to proceed with the resettlement of refugees to EU's member states and other countries during its transition phase. It is requested that UNHCR will be partly responsible for integration practices of refugees after a lifting of the geographical limitation. Lastly it is suggested that a task force on asylum consisting of Turkish and EU authorities should be established.

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<sup>37</sup> Council Directive 2003/9/EC

Even if the Turkish government frequently made commitments to introduce new laws and institutions to reform its asylum system in accordance with EU's requests, not much was done in practice before 2008. The term 'policy without politics' initiated by Geddes among others seem to be well suited for explaining the development within Turkish asylum reform (Geddes 2011: 4). Many amendments have been put on paper; however, not much action outside the policy documents could be noticed before 2008. The first genuine step towards the creation of an independent institution that would be responsible for the implementation of a new asylum law as well as the set-up of a new institution was finally taken in 2008. The bureau responsible for the development and implementation of legislation and administrative capacity on Asylum and Migration (the Asylum and Migration Bureau) was established under the MoI. It formed the Inter-Ministerial Task Force on asylum and migration which consist of experts from ministers and other state institutions. Personnel from the MoI, UNHCR, NGOs and the EC started to meet on a regular basis to exchange knowledge on the policy field and further develop a draft law on asylum (Balta 2010: 8, 15). The HCA is one of the NGOs which have been invited to those meetings to present their comments on the law. According to the interviewee from HCA, the asylum bureau consists of experienced staff and they have started to understand the real issues within the policy field such as the geographical limitation to the Geneva Convention. Cengiz Aktar adds that lately there has been a reshuffle of staff within the bureau and the radicals who were completely irrespective to any call from the UNHCR have been replaced by new staff-members that are much more willing to listen to the claims and recommendations from the UNHCR and other NGOs.

The following has been stated in the most recent progress report prepared by the Commission:

“...the task force on asylum and migration is preparing a law on asylum and a law on the establishment of an asylum unit, in close consultation with the UNHCR” (Progress Report 2010: 82)

Although the Commission is realizing Turkey's efforts to align its asylum system with EU's, Turkey has not yet (2011) taken sufficient measures. As seen in the passage below, EU is over and over again requesting an establishment of a national institution that will be responsible for refugee status determination:

“Overall, the landmark reforms to provide Turkey with a modern, efficient and fair management system in line with core international and European standards are still at an early stage. The finalization of a roadmap on asylum and migration is key. The Turkish institutions have only limited capacity and, most importantly, no ownership of the refugee status determination process for non-European asylum seekers. Thus the UNHCR, despite not having formal status in Turkey, is virtually the sole authority capable of carrying out and managing asylum procedures” (Progress Report 2010: 82-83)

Although the Turkish government has moved rather slowly on the implementation of an overall law on asylum, it should not be neglected that other legal amendments have been introduced to improve the Turkish asylum system. For instance, a law that criminalizes human trafficking (2002), a law granting work permits for foreigners (2003) and a circular improving the rights of temporary asylum seekers (2006) have been adopted. Nevertheless, the preparation of a draft law on asylum has repeatedly been postponed and it was not until January 2011 that the draft law was finally completed (interview with EU

official January 2011). The finalization of the draft law was performed in secrecy and until recently it could not be accessed by the public<sup>38</sup>. Therefore, it has been difficult to collect any detailed information on what the new law will include. However, Rachel Levitan states that the new law includes changes on the identification of asylum seekers, the interview process, the rights and standards within reception centres and improvements of the appeals procedure. She also states that in the justification of the draft law, the need for legal, administrative and infrastructural amendments in the Turkish asylum system were pointed out and the new law “looks more like the asylum law in Sweden or another EU country”. This is supported by Bürgin and Ainer (2011), who claim that in the justification of the draft law it is stated that:

“With this Law, an efficient and operable migration system shall be established in accordance with international norms and the EU *acquis*, taking into consideration the legal, administrative and physical infrastructure we are in need of and with respect to the protection of the fragile balance between freedom and security on the basis of human rights” (Bürgin and Ainer 2011: 17).

The Interviewee from the EC stated that the new law was accepted by the MoI and presented to the prime minister in January 2011. As of August 2011 it has not yet been approved by the parliament<sup>39</sup>, however once it will be adopted it will generate a reform of the asylum system. The interviewees from the EC, the HCA and the department of EU Studies at Bahçeşehir University all state that the new law foresees a lifting of the geographical limitation although no clear guidelines of how and when is outlined. Another important reform that is envisaged in this law is that a Directorate General of Migration Management will be established. The directorate will be responsible for further policy formulation within the asylum and migration field and it will consist of departments which eventually will take all responsibility of asylum and migration issues from the Directorate General of Security (the national police under the MoI) where it is handled now. Hence, with an establishment of this directorate, Turkey seems to reach one step closer to introduce a national asylum unit for refugee status determination. However, the deadline of when this directorate will be operational is still vague and drawing on previous practices this may take many years.

As the interviewees all have hinted at, there is a lot that still needs to be done in Turkey prior to a full compliance with the EU asylum *acquis*. The pressure to adapt EU’s policies is high due to the low compatibility with them, however, it seems like the pace of the reforms have intensified since the last NPAA of 2008. Although the interviewees are critical towards a submission of a formal proposal of a lifting of the geographical limitation in 2012 (as outlined in section 5.3.1), the adoption of a new law on asylum in the same year may seem like a more attainable goal. The interviewees regard the new asylum law as a positive development for the reform of the Turkish asylum system and as a necessity for the lifting of the geographical limitation. The interviewee from the EC states that although the Turkish asylum reform has not been progressing in a desired speed, the current reforms should be considered as necessary for the lifting of the

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<sup>38</sup> As of August 2011, the draft law is accessible (only in Turkish) on the webpage of the Migration and Asylum Bureau: [http://gib.icisleri.gov.tr/default\\_B0.aspx?content=1035](http://gib.icisleri.gov.tr/default_B0.aspx?content=1035)

<sup>39</sup> Confirmed in email with interviewee from EC

geographical limitation. In all member states of the EU, national institutions such as the Migration Board in Sweden are responsible for refugee status determination. The parallel procedure of the Turkish MoI and the UNHCR therefore constitute an institutional misfit (in accordance with the Europeanization theory) which will get solved by the establishment of the new Directorate General under the MoI. As one of the interviewees stated, the institutional reform requested by the EU actually increases the influential power of the Turkish authorities in the asylum procedure, hence, their willingness to reform the current system can be considered from rational incentives. Although the lifting of the geographical limitation *per se* may not be supported by the domestic policy makers, the incentive of changing the status quo which leaves the MoI with more power can be seen as a motivation for change. This may again be an example of an indirect Europeanization or a 'vincolo esterno' as Featherstone calls it (Sandrin 2010: 4-5).

## 6 Conclusion

The purpose of this chapter is to combine the information and findings from the previous chapters in order to establish *the importance of the geographical limitation to the Geneva Convention in Turkey's EU accession process*. The analysis was divided into three parts. In the first section, the preferences and interests of EU and Turkey on Turkey's asylum policy was outlined. Drawing on the theoretical approach of Europeanization and the findings in the secondary literature, the analysis of the geographical limitation to the Geneva Convention was then divided into the following two questions:

*Is Turkey regarding a lifting of the geographical limitation as interchangeable to a membership in the EU, if so, how can this be characterized?*

*Is Turkey preparing its asylum system for a lifting of the geographical limitation and if so, how can these actions be described and interpreted?*

Drawing on the frequent referral to the geographical limitation in all of the progress reports prepared by the EC on Turkey and the general controversy of EU's asylum policy, Turkey is fully aware of how important a lifting of the geographical limitation is for the EU. If EU manages to make Turkey a safe third country, this will increase the number of asylum seekers in Turkey and limit the number of asylum seekers arriving to the EU. At least this is the general perception communicated by the Turkish policy makers. However, according to some of the interviewees in this thesis, it is questionable whether this actually will be the outcome. Rather they speculate in the development of new transit routes. The respondents and the secondary literature refer to the use of the geographical limitation to the Geneva Convention as migration diplomacy between Turkey and the EU and that the geographical limitation *per se* can be regarded as a bargaining chip in the negotiations. According to the EU, membership and a lifting of the geographical limitation should be considered as separate issues and the geographical limitation must be lifted before Turkey can obtain membership status. The interviewees have stated that Turkey will not lift the geographical limitation if it is not assured a membership in the Union and therefore it has been considered a bargaining chip from both sides, Turkish and EU.

As noticed in the theoretical chapter on Europeanization, candidate states are prone to undertake reforms of their national systems if there is positive EU-membership conditionality. Countries are rational actors that conduct cost-benefit analyses where membership status in the EU has been considered as a benefit in regards to the costs of for instance reforming the asylum system. The secondary sources as well as the interviewees have frequently referred to the positive conditionality which was inherent in the accession process of the CEECs. On the other hand, a lack of positive conditionality has made the Europeanization of the country's asylum policy a slow-moving process in the case of Turkey. In the National Programmes for the Adoption of the EU Acquis of



2001 and 2003, a lifting of the geographical limitation to the Geneva Convention was conditioned on burden sharing with the EU as well as the opening of accession negotiations. However, after the membership negotiations opened in 2005, a lifting became conditional on the finalization of membership negotiations.

The negotiations on the geographical limitation follow the same pattern as with the general reform process in Turkey. The motivations behind reforms were high during the first years of Turkey's candidature to the EU but were halted due to the development of 'negative conditionality'. According to the interviewees as well as the policy documents there is a profound uncertainty of whether Turkey will be granted membership status. Influential member states such as France and Germany have increasingly showed their scepticism towards a Turkish membership in the EU and instead of full membership it has been suggested that Turkey should be granted a 'privileged partnership'. However, Turkey does not want "special treatment" and this has frequently been communicated by Prime Minister Erdogan<sup>40</sup>. This argument was often held in the negotiations on a readmission agreement between Turkey and the EU, where Turkey for many years opposed such an agreement since it had never been stipulated between the EU and a candidate state before. Turkey persistently stated that if EU would not agree to open a visa free regime with the country, no readmission agreement would be signed. Finally, the EU agreed to open a visa dialogue in return for a readmission agreement. Although this is not a guarantee for a visa free regime, as Turkey initially requested, it can be regarded as a step forward in that direction. The outcome of the negotiations on the readmission agreement will have a crucial impact on further reforms of the Turkish asylum system and in particular on the forthcoming debate of a lifting of the geographical limitation. With a readmission agreement, Turkey will most probably be placed in a situation with an increased number of readmitted irregular migrants from the EU. Depending on EU's response to such development within Turkey, the country may show more or less commitment to EU's continuous requests. If Turkey will manage to convince EU to open a visa free regime with the country and the Union will start appreciating Turkey's efforts of alignment with the EU *acquis* on asylum, Turkey will be more likely to respond to EU's requests. Positive conditionality will improve future cooperation between the two actors on asylum and migration, which will benefit the Turkish accession process in general.

The geographical limitation to the Geneva Convention has been deeply inherited in the Turkish asylum policy and the reason for its continuous presence can partly be explained by the country's historically state-centric and exclusive practices towards foreigners. Nevertheless, the interviewees have stated that this is only part of the story and today the geographical limitation can rather be considered as a bargaining chip in the accession negotiations with the EU. Turkey has committed itself to lift the geographical limitation once it is granted EU membership. Some reforms have been undertaken to the Turkish asylum system, however, drawing on the theoretical stance of this thesis, those reforms can be supported by rational incentives. For instance, the strengthening of border controls

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<sup>40</sup> See for instance: [turkishpress.com](http://turkishpress.com) 2011-01-03, *the Economist* 2011-03-01, *Sydsvenskan* 2011-06-12

which are heavily promoted by the EU, has been welcomed by Turkish officials as these reforms are aligned with Turkey's historical practices of keeping foreigners and migrants out from the territory. Other measures have been taken to improve the living standards for asylum seekers such as the establishment of an appeals board, this can be interpreted as actions to avoid being taken to ECtHR and refrain from breaching the non-refoulement principle. However, reforms that directly will facilitate a lifting of the geographical limitation, such as the implementation of a new asylum law and the establishment of a national asylum institution which will handle *all* asylum claims, have been slow. Although a new law on asylum was presented for the Turkish Parliament in the spring of 2011 and that this law refers to the establishment of a new Directorate General under the MoI, there is no evident sign of a lifting of the geographical limitation in the new law. Moreover, in the latest National Action Plan of 2010-2011 it is stated that the geographical restriction will remain despite legal and infrastructural reforms of the Turkish asylum system.

Although this thesis has come to the conclusion that positive membership conditionality is of foremost importance for the future development of EU-Turkey relations on asylum and migration, one cannot be assured that Turkey actually is interested in obtaining EU membership. This aspect should not be neglected because as the interviewees have claimed that the lifting of the geographical limitation is directly linked to membership conditionality which indicates that if Turkey has no incentive of obtaining membership status then perhaps the geographical limitation will never be lifted. In accordance with the rational choice Europeanization, states are willing to adopt EU's policies as long as the benefits of doing so are exceeding the national adaptation costs. Turkey does not see any benefits of lifting the geographical limitation if it will not become a member of the EU. Other reforms may still be undertaken due to other rational incentives, such as the implementation of a new asylum unit under the Ministry of Interior. However, how this will work in practice is still unclear. Will the UNHCR keep its role or will a national institution be fully responsible although the geographical limitation will still be in practice? If the latter will be the outcome, then it could be considered from a sovereignty perspective, leaving Turkey with extended domestic influence over its asylum process. Other reasons for the reforms already undertaken, held by the interviewee from the EC and in the secondary literature, are the many court cases that have been raised against Turkey in ECtHR (Levitan 2009, Kaya 2009).

Icduygu refers to three possible scenarios of the Turkey-EU migration-related debate on Turkey's EU accession as a whole: "a win-win scenario towards accession, a so-called win-win scenario towards non-accession and a no-win scenario towards non-accession" (Icduygu (1) 2011: 19). The first scenario, he argues, will occur if Turkey continues to develop policies and practices that are aligned with the EU *acquis* and if EU appreciates this development and accepts the reforms. However, in return, Turkey demands mutual cooperation and full membership status. Kirisci adds that Turkey needs to be more transparent in its asylum policy and practices and work closer to EU officials and experts. Nevertheless, he also states that EU officials must become more sensitive to the unique geographical location of Turkey and consider the Turkish officials' requests of burden-sharing (Kirisci in Zeybekoglu and Johansson 2002: 68). The win-win scenario towards non-accession will take place if both actors continue to bargain with a clear stance on burden sharing versus burden shifting approach. With this approach, there is a risk that

mistrust from both sides will continue to be apparent, hence, rendering full membership impossible. The last scenario would be the least beneficial for both parties. If the EU continuously signals that Turkey will not obtain full membership status, Turkey will become more hesitant to undertake measures that harmonize its asylum policies with the EU's policies. Consequently there is a risk that irregular migrants and asylum seekers continue to use Turkey as a transit route to reach the EU (Icduygu (1) 2011: 20). Although, Icduygu cannot provide an answer to which scenario is the most favoured, he is constantly emphasising the importance of the asylum and migration debate for both actors. It is clear that it will be difficult for only one player to leave the negotiations as a winner.

## 7 Executive Summary

The migration diplomacy between Turkey and the European Union (EU) has expanded in the course of the years. Turkey's geographical location in between refugee sending countries in the east and refugee receiving countries in the west makes it a special case in EU's enlargement history. Due to Turkey's geographical location, migration issues have become an integral part of the membership negotiations. Concerns of illegal migrants reaching the EU through Turkey have spurred negative opinions towards a Turkish EU membership within many of the member states. The EU has frequently requested Turkey to secure its borders and to start taking a larger responsibility for asylum seekers and refugees that enter the country. As part of this, is the debate of Turkey's geographical limitation to the Geneva Convention. The Geneva Convention relating to the status of refugees is inherited in the EU treaties and plays an integral part in EU's asylum policy. However, Turkey has signed the Convention with a geographical limitation which restricts the country to grant refugee status only to asylum seekers from Europe. Non-European asylum seekers may apply for refugee status by the United Nations High Commissioner for Refugees (UNHCR) in Turkey and if they are recognized as refugees in accordance with the Geneva Convention, they are resettled out of the country.

The thesis analyses the EU-Turkey relations on asylum. More specifically it assesses the importance of Turkey's geographical limitation to the Geneva Convention in the country's EU accession process. To respond to the overall research objective, the thesis is answering the following two questions:

*Is Turkey regarding a lifting of the geographical limitation as interchangeable to a membership in the EU, if so, how can this be characterized?*

*Is Turkey preparing its asylum system for a lifting of the geographical limitation and if so, how can these actions be described and interpreted?*

The research is of a qualitative nature based on the multi-method approach of triangulation. The following three elements constitute the methodological framework: case study, interviews and qualitative text analysis. Official documents such as annual Progress Reports, National Action Plans/Programmes and Accession Partnership documents prepared by the EC and the Turkish government have been analyzed in order to assess the relevance of the geographical limitation for Turkey's EU accession. To increase the understanding of the meaning of the documents and which words have turned into action and how, information gathered from five interviews conducted with experts on the Turkish asylum system in Istanbul and Brussels comprise an integral part

of the analysis. Moreover, the information gathered in the primary sources has been supplemented by secondary sources published by academics within the research field.

All of the interviewees that participated in this study agree that the geographical limitation to the Geneva Convention is an important issue for Turkey's EU accession. According to the interviewees as well as the policy documents, it is not possible to think about migration policy exclusively from a national perspective anymore. Hence, Turkey needs to adjust its system to international standards and take a permanent responsibility for all asylum seekers and refugees. This argument is also embedded in the theoretical framework of Europeanization which guides the analysis of the thesis. In accordance with the Europeanization theory, the geographical limitation is considered as a national misfit that generates adaptational pressures for Turkey. According to the rational angle of the Europeanization theory, states behave as rational actors when designing their protection systems on asylum and migration. Drawing on a cost-benefit analysis, some reforms are more favorable than others and some states are more willing to adjust to EU's requests than others. Moreover, positive membership conditionality has facilitated the Europeanization process in many candidate states. The secondary sources as well as the interviewees frequently refer to the positive membership conditionality which was inherent in the accession process of the Central Eastern European Countries (CEECs). However, a lack of positive conditionality has made the Europeanization of the country's asylum policy a slow-moving process in the case of Turkey.

A lifting of the geographical limitation is not only requested by the EU due to its humanitarian nature which is to include protection of *all* asylum seekers in Turkey in accordance with the EU acquis on asylum, but also for the purpose of 'burden sharing' with the rest of the EU. The EU requests Turkey to take its 'share' of the burden of non-European asylum seekers and refugees that today are resettled to third countries or escaping illegally to the EU. In the same manner as with the CEECs, the EU wants Turkey to become a safe third country before obtaining membership status. With improved reception conditions of asylum seekers, a lifting of the geographical limitation and an introduction of a new law on asylum, the realization of becoming a safe third country to where the EU can return asylum seekers and refugees gets closer. However, Turkey fears that such reforms will make the country a 'buffer' zone to the EU. Hence, Turkey requests burden sharing in return from the EU if it will lift the geographical limitation. In Turkish policy documents of 2001 and 2003, a lifting of the geographical limitation was conditioned on 'burden sharing' of asylum seekers and refugees with the EU in addition to the opening of accession negotiations. Nevertheless, since the negotiations opened in 2005, a lifting has become conditioned on the finalization of the membership negotiations. With this said, one can easily understand the complexity of the debate of the lifting of the geographical limitation to the Geneva Convention.

The findings of this thesis show that a hesitation towards a lifting of the geographical limitation to the Geneva Convention is deeply inherited in the Turkish asylum policy. This can be seen in the country's historically state-centric and exclusive policies towards foreigners. However, this is only part of the story and today the geographical limitation is rather considered as a 'bargaining chip' in the accession negotiations with the EU.

Turkey is fully aware of the importance a lifting of the regulation has for the EU and therefore, the experts claim; the country can use it as a bargaining chip in the membership negotiations. Turkey has undertaken some reforms to align its asylum policy with the EU acquis, however, it is unlikely that a lifting of the geographical limitation will take place before the country is assured a membership in the Union. Building on the theoretical stance of the thesis, the reforms Turkey has undertaken to its asylum system have been guided by rational incentives. This can for instance be seen in the strengthening of border controls which have been heavily promoted by the EU. This request has been welcomed by Turkey as such reforms are aligned with Turkey's historical practices of keeping foreigners and migrants out of the territory.

Although some measures have been taken to align the Turkish asylum system with the EU system, reforms that directly facilitate a lifting of the geographical limitation, such as the implementation of a new asylum law and the establishment of a national asylum institution which will handle all asylum claims have been slow. In the spring of 2011 a new law on asylum was presented for the Turkish Parliament, however, this law has not yet been approved by the Parliament. Moreover, the new law does not present any clear guidelines of how and when a lifting of the geographical limitation will take place. The thesis concludes by stating that positive membership conditionality is of uttermost importance for the future development of EU-Turkey relations on asylum and migration and a lifting of the geographical limitation will ultimately be conditioned on this development.

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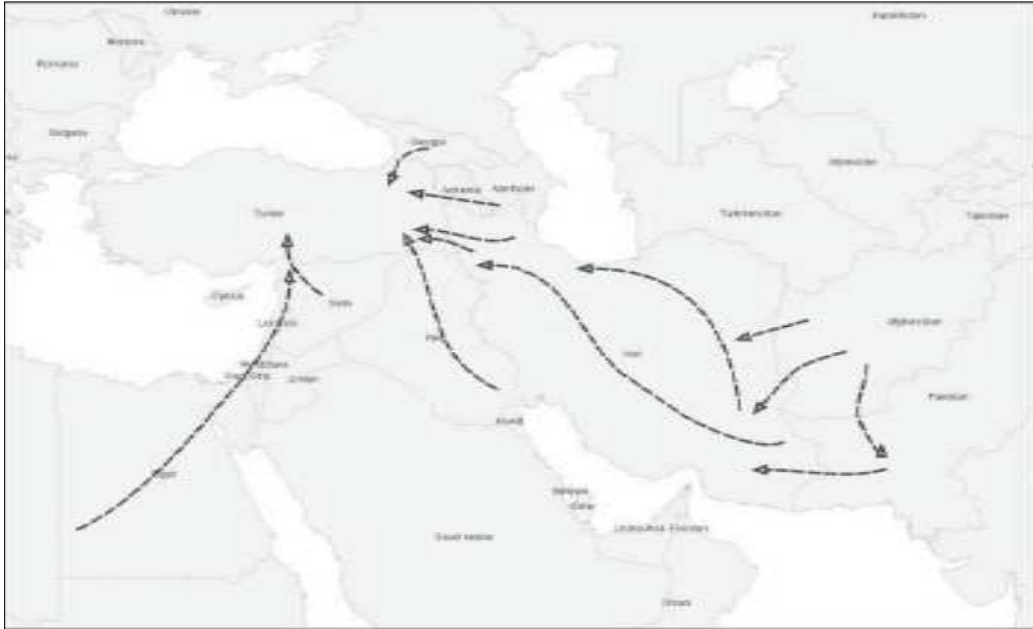
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## 9 Interview Guide

1. Please tell me shortly about yourself and your profession/research?
2. How would you describe the process of lifting the geographical limitation to the Geneva Convention? What is your overall view of the geographical limitation?
3. Are there challenges of the geographical limitation on Turkey's asylum and refugee policies, if so, which are those?
4. Why do you believe that Turkey is maintaining the geographical limitation?
5. What is the role of EU in the process of the lifting of the geographical limitation?
6. How do you believe that a lifting of the geographical limitation will affect the Turkish asylum system?
7. Do you believe that a lifting of the geographical limitation will increase/decrease the number of asylum seekers coming to Turkey?
8. Is the Turkish government currently taking any measures to prepare its asylum policy for a lifting of the geographical limitation?
9. How will the 'burden sharing' mechanism of the asylum claims work in practice?
10. What is your view on the future development of the geographical limitation in the Turkish EU accession process?
11. Which changes are made in the new draft law on asylum?
12. What is stated about the geographical limitation in the new law? Will it remain?

# 10 Maps of Transit Routes



Map 1: Irregular Migration to Turkey, IOM 2003: 11



Map 2: Irregular Migration from Turkey to the EU, IOM, 2003: 11