

## **The limits of conditionality and Europeanization: Turkey's dilemmas in adopting the EU *acquis* on asylum**

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### **Introduction:**

Why do candidate countries for EU membership transform themselves? How do they achieve this? How far can the transformation be attributed to the EU as opposed to other factors? These are questions that have engendered a growing body of literature addressing especially the transformation of Central and East European countries (CEECs) that joined the EU in 2004. The literature makes extensive use of the concept of "Europeanization" generally defined as the adoption and implementation of EU rules and regulations. Conditionality is a concept that is placed very much at the center of the "Europeanization" of CEECs. The idea that membership, the ultimate goal/reward, is made conditional to the adoption and implementation of EU rules lies behind conditionality. The EU closely monitors candidate countries progress in respect to the adoption of its rules. This highly institutional and structured process of monitoring lends considerable visibility to conditionality and hence engulfs it with explanatory powers. Yet, what exactly lies behind the magic of conditionality is rarely studied in depth? How do candidate countries, their public policy makers, respond to conditionality? Why do some candidate countries adopt EU rules faster than others or why do they do it in respect to certain issues and not others? These questions are often left unanswered.

Writing in 2002, Grabbe offers a detailed analysis of the relationship between conditionality and the transformation of accession countries during the last round of enlargement.<sup>1</sup> She demonstrates the "levers" that the EU fields to ensure conditionality and highlights the "unequal" nature of the relationship emphasizing how ultimately accession would occur only when member states are actually ready for it. The focus is more on the supply side of conditionality and the problems associated with the manner conditionality is applied by the EU. These problems lead her to suggest that actual accession could take a long time and that in the case of Bulgaria and Romania negotiations could take as long as 10-15 years.<sup>2</sup> Yet, the transformation process worked much faster than expected as even latter two countries were able to join the EU by January 2007. This seems to highlight the need to look also at how conditionality is received by accession countries and what drives its reception and speedy implementation.

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<sup>1</sup> Heather Grabbe, "European Union Conditionality and the *Acquis Communautaire*" *International Political Science Review*, Vol. 23, No. 3 (249-268).

<sup>2</sup> *Ibid* p. 266.

Schimmelfening and Sedelmeier address the issue of the actual impact of conditionality on the decision makers of candidate countries.<sup>3</sup> They discuss three models. Their preference is for the “external incentive model” in which “size and speed of rewards”, “credibility of conditionality” accompanied with the “size of governmental adoption costs” are the most critical independent variables in explaining the dependent variable: “rule adoption”.<sup>4</sup> In other words the behavior of the candidate country will be a function of the interplay between these three factors. Schimmelfening *et al* especially in the context of political conditionality do also highlight that the “credibility of threats and rewards is a core prerequisite of any effective bargaining process” even if this can not on its own explain the success of conditionality.<sup>5</sup> They emphasize that conditionality will not work without credibility. The size of government adoption costs is also offered as a critical factor shaping rule adoption. It is possible that in spite of high credibility rule adoption may still not occur or be slow. In other words public policy makers of a candidate country may well calculate a governmental adoption cost matrix that may slow the adoption of EU rules in spite of a highly credible reward in the form of EU membership if the condition is indeed met.

It is also possible to envisage a situation where doubts about the ultimate reward (membership) may bring a limit to the credibility of conditionality and in turn influence cost-benefit matrix of those policy makers who are responsible for calculating governmental adoption costs. The aim of this paper is to explore the limits of conditionality from the perspective of decision makers who have to calculate the “size of the governmental adoption costs” in the face uncertainty over ultimate membership of their country. Current studies of Europeanization of candidate countries have been based implicitly or explicitly on the premises that these countries would one way or the other ultimately become members. In many ways the membership perspective of CEECs was never in question. The “European” credentials of these countries were never questioned. More often than not the accession of CEECs was framed in a discourse emphasizing their return into the European family of countries. Furthermore, the past record of the EU had been such that an accession process once it started was always completed with membership unless candidate countries themselves chose not to join the EU. Public policy makers when calculating the size of the adoption costs pretty much factored into their calculation that eventual membership was not in question. The worse that they could expect could be a delay or the threat of delay in accession. The case of Bulgaria and Romania clearly demonstrates this.

The purpose of this paper is to explore the impact of “uncertainty over ultimate membership” on Schimmelfening and Sedelmeier model of conditionality as a factor that explains Europeanization. It is with this in mind that this paper will examine the “limits of conditionality” with a particular emphasis on Turkish accession. Turkey constitutes a unique case. The prospect of Turkish membership has generated a debate in which a vocal group of actors in Europe resists eventual membership. This in turn is impacting on Turkish public policy makers cost-benefit analysis. At a time when academic interest in Turkish accession in general and Turkey’s “Europeanization” is increasing an effort to achieve a better understanding of the limits of conditionality is called for. The paper is divided into three sections.

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<sup>3</sup> Frank Schimmelfening and Ulrich Sedelmeier, “Introduction: Conceptualizing the Europeanization of Central and Eastern Europe” in Frank Schimmelfening and Ulrich Sedelmeier (eds.) *The Europeanization of Central and Eastern Europe* (Cornell University Press, Ithaca, 2005).

<sup>4</sup> *Ibid*, pp.10-17.

<sup>5</sup> Frank Schimmelfening, Stefen Eugert and Heiko Krobek, “The Impact of EU Political Conditionality” in Schimmelfening and Sedelmeier (eds.), p.33.

The first part offers a brief analysis of Turkey's "Europeanization" under the influence of the EU's political conditionality for starting accession negotiations. This was a period during which it is possible to argue that Schimmelfening and Sedelmeier "external incentive model" actually helps one to understand and explain the drastic transformation that Turkish domestic politics and foreign policy went through. The second section on the other hand focuses on how the model becomes inadequate to explain the manner in which policy makers in Turkey began to resist certain critical reforms once accession negotiations started. The paper looks in particular at the issue of asylum as a very specific area in which Turkey has to adopt EU rules and implement them. This section will offer a brief analysis of the evolution of the Turkish asylum system and show how Turkish decision makers have reached a point where they are ready to adopt EU rules and requirements but stop short of doing so. The final section attempts to demonstrate how in a very specific policy area the erosion of the EU's credibility in respect to Turkey's ultimate membership is actually weakening the capacity of "conditionality" to induce "rule adoption". The paper will conclude that the uncertainty over eventual EU membership and mistrust is keeping public policy makers' calculation of "governmental adoption costs" prohibitively high while at the same time the Turkish asylum system is itself going through a kind of "Europeanization"<sup>6</sup>.

### **Transformation of Turkey:**

Less than ten years ago it would have been difficult to imagine that Turkey would be starting its accession talks with the European Union. Buzan and Diez in an extensively cited article had noted that the very nature of politics in Turkey precluded any real prospects of the EU engaging Turkey for membership.<sup>7</sup> At the time Turkey was well short on "democracy", well short on "economic and political stability" and it was an abundant source of considerable tension in the region. Turkey had a reputation for being a country with a readiness to resort to "hard power" in its relations with many of its neighbors and hence referred to in some circles as a "regional coercive power" or a security "consumer" rather than a security "provider or exporter".<sup>8</sup> Its economy was characterized by high levels of inflation, interest rates and unpredictability. There were severe restrictions on basic freedoms such as freedom of expression and association. The country was embroiled in a violent conflict with the PKK and the then anti-terror laws fell well short of European standards. Worse Turkey had a very poor human rights record that adversely affected asylum seekers and refugees. Capital punishment though not in use was still in the books. This was also a period when Turkish foreign policy making was dominated by the security establishment and the ministry of foreign affairs. The world outlook of these decision makers at the time was very much formed by a narrow national security considerations and deep mistrust towards the external world. There was a general feeling that the external world very much wanted to destabilize, weaken and divide up

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<sup>6</sup> "Europeanization" in this particular context is used in broader sense of the word than just "rule adoption" or EU-ization but a recognition on the part of the policy makers that the principles of the 1951 Geneva Convention Relating to the Status of Refugees need to be better implemented, an approximation toward the EU *acquis* achieved and greater cooperation with civil society and the international community supported.

<sup>7</sup> Barry Buzan and Thomas Diez, "The European Union and Turkey" *Survival*, vol. 41, no. 1, Spring 1999, pp. 41-57.

<sup>8</sup> These "coercive" qualities of Turkey of the 1990s have been highlighted by Ziya Önis, "Turkey and the Middle East after September 11: The Importance of the EU Dimension" *Turkish Policy Quarterly*, Vol. 2, No. 4 (Winter 2003); Jed Snyder, "Turkey's Role in the Greater Middle East" *JFQ Forum*, (Autumn 1995) and Michael Robert Hickok. "Hegemon rising: The gap between Turkish strategy and military modernization" *Parameters*, 30, No: 2 (Summer 2000).

Turkey. Furthermore, civil society and the business world had little influence on policy making in general.

Today we are confronted with a different Turkey. The effort to meet the Copenhagen political criteria has changed Turkish politics deeply even if there remains a lot that still needs to be achieved. Diez and many others have studied this transformation in the area of both domestic politics as well as foreign policy in some detail.<sup>9</sup> In contrast to ten years ago the death penalty has been abolished for good, considerable ground has been covered in respect to improving minority rights. The freedom of expression and association rights has been significantly expanded. The state security courts have been closed down. The influence of the military on the political system has been reduced especially by redesigning the structure of the National Security Council. What is however much more significant is that in Turkey “hearts and minds” are being transformed. Turkish officials are learning to cooperate and work with civil society. The influence of business and economic considerations are growing over classic “national security” considerations. Most fascinatingly the notion of “win-win” thinking in Turkey’s relations with the external world is replacing the old “zero-sum” approach to international relations.<sup>10</sup> In this respect the military is learning to adjust itself to the new realities. Furthermore, and may be most importantly, the EU’s engagement of Turkey is seen increasingly by the military as a development that is contributing to Turkish security rather than eroding it.<sup>11</sup>

Against this background an area where the transformation of Turkish foreign policy became most conspicuous is reflected in the dramatic and major turn about when the government adopted a completely novel policy on Cyprus. In the 1990s Turkey’s approach to the problem of Cyprus was centered around the idea that “no solution is the solution”. Turkey had been party to 40 years of fruitless negotiations and had basically supported the status quo on the island created as a result of the events in the summer of 1974. Instead Turkey decided to lend its support for the Turkish-Cypriots’ decision to go along with the Annan Plan contemplating the reunification of the island. This plan was originally announced by UN Secretary-General Kofi Annan in November 2002.<sup>12</sup> This uniquely detailed and comprehensive plan envisaged the establishment of a reunited Cyprus, delicately striking a balance between the two sides on the island. The Plan went through a number of modifications before it took the form that was submitted to a referendum on both sides of the island in April 2004. The government’s ability against considerable resistance to ensure support for the Annan Plan brought about no less than a paradigmatic shift in Turkish foreign policy. This played a critical role in the Turkish-Cypriots support for the Annan Plan during the referendum without which it would have been

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<sup>9</sup> Thomas Diez, ‘Turkey, the European Union and Security Complexes Revisited’, *Mediterranean Politics*, Vol. 10, No. 2 (July 2005). For further literature see for example See, for example, Harun Arıkan, *Turkey and the EU* (Aldershot: Ashgate, 2006); Ersen Aydın, Nihat Ali Özcan and Doğan Akyaz, ‘The Turkish Military’s March Towards Europe’, *Foreign Affairs*, Vol. 85, No. 1 (Jan.–Feb. 2006); Kemal Derviş *et al.* (eds.), *The European Transformation of Modern Turkey* (Brussels: Centre for European Policy Studies, 2004); Atila Eralp, ‘The EU Accession Process and Europeanization in Turkey’ in Ingmar Karlsson and Annika Strom Melin (eds.), *Turkey, Sweden and the European Union Experiences and Expectations* (Stockholm: SIEPS, 2006); Kemal Kirişçi, *Turkey’s Foreign Policy in Turbulent Times* (Institute for Security Studies–EU, Chaillot Paper, No. 92, Sept. 2006, Paris); and Ziya Önis, ‘Turkey and the Middle East after September 11: The Importance of the EU Dimension’, *Turkish Policy Quarterly*, Vol. 2, No. 4 (Winter 2003).

<sup>10</sup> For an in depth analysis of Turkey’s foreign policy transformation and the role of the EU see Kemal Kirişçi, *Turkey’s foreign policy in turbulent times* (Institute for Security Studies–EU, Chaillot Paper, No. 92, September 2006, Paris).

<sup>11</sup> Ersen Aydın, Nihat Ali Özcan and Doğan Akyaz, ‘The Turkish Military’s March Towards Europe’ *Foreign Affairs*, Vol. 85, No. 1 (January–February 2006).

<sup>12</sup> See <http://www.cyprus-un-plan.org> for the Annan Plan.

pretty much impossible for Turkey to see the European Council take the decision to start negotiations.

Such a paradigmatic shift is also visible in respect to relations between officials and civil society. The notion of cooperating with the external world was relatively alien to the Turkish military and bureaucracy. The ‘Sèvres phobia’ together with the accompanying deep mistrust towards the West and the international community often constituted a major mental barrier for Turkish officials in developing cooperative projects with foreign officials. This too began to change as closer relations with the EU made it inevitable that officials had to develop contacts at all levels with their EU counterparts and with civil society as well as international organizations. Turkish officials from the Ministry of the Interior, Gendarmerie and Ministry of Foreign Affairs have cooperated very closely with the United Nations High Commissioner for Refugees, the International Organization for Migration and Turkish and international non-governmental organizations.<sup>13</sup> For example, the Interior Ministry officials subsequently joined by the Gendarmerie were able to make arrangements in September 2003 with a non-governmental organization, Human Resources Development Foundation (Insan Kaynaklarını Geliştirme Vakfı- HRDF) and the Directorate General of the Status of Woman to provide social assistance to victims of trafficking until their return to their countries of origin could be arranged.

The Turkish economy looks very different too. In comparison to the mid-1990s the Turkish economy has grown significantly in size and has continued to become diversified. The size of the Turkish economy in 1995 when the customs union was signed, stood at 166,5 billion USD. By 2005 it had more than doubled in size and grown to 353 billion USD. Most of that growth has actually taken place since EU membership prospects became more serious. No economy of the “old Europe” has come anywhere near such a level of growth. Actually, IMF reported that the Turkish economy had become the 19<sup>th</sup> largest economy in the world having surpassed Sweden and Switzerland over the last two years. The IMF also predicted that if Turkey remains on its path it is expected that in 2007 the size of the Turkish economy will reach 447 billion USD overtaking the Belgian economy.<sup>14</sup> Turkish foreign trade has grown significantly from 57.3 billion USD in 1995 close to 190 billion USD in 2005 and over 220 billion USD in 2006. Most dramatically Turkey’s infamous hyper-inflation has been brought under control and in 2005 was below 8 per cent compared to 106 per cent in 1995. Similarly, the budget deficit has been shrinking and there are already reports that Turkey could be meeting the Maastricht criteria much earlier than previously expected.<sup>15</sup> Confidence in the Turkish economy and society has been reflected in a conspicuous manner in two specific areas. Tourism has significantly increased and become a major source of income especially for financing Turkey’s current account deficit. Most fascinatingly visitors to Turkey went up to more than 20 millions in 2005 from just under 8 millions in 1995 suggesting a striking growth in Turkey’s attraction to visitors. A significant proportion in the increase came actually from countries neighboring Turkey partly due to Turkey’s growing attractiveness partly due to Turkey’s liberal visa policy. Foreign direct investment was another growth area.

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<sup>13</sup> For a detailed analysis of these issues see Joanna Apap, Sergio Carrera and Kemal Kirişçi, *Turkey in the European Area of Freedom, Security and Justice* (EU-Turkey Working Papers, No: 3, CEPS, Brussels, August 2004) Available at: [http://shop.ceps.be/BookDetail.php?item\\_id=1145](http://shop.ceps.be/BookDetail.php?item_id=1145).

<sup>14</sup> Reported by *Radikal*, 21 April 2006.

<sup>15</sup> Caner Bakır, ‘Turkey: en route to meet the challenging Maastricht criteria?’ *Studia Europaea*, Nos 2-3, (October 2005).

In 2005 FDI entries was close to 10 billion USD more than the total of all FDI that had previously entered the country until 1999.<sup>16</sup>

Undoubtedly, the EU has played a very central role in this transformation. It is not at all surprising that the above changes started subsequent to the Helsinki European Council summit's decision to recognize Turkey as a candidate country. The condition in the form of having to meet the Copenhagen political criteria was central to the series of reforms that were adopted. Furthermore, the Helsinki summit conclusions had also made it clear that Greek-Turkish relations had to improve as well as progress be achieved on the question of Cyprus. As pointed out by Schimmelfening and Sedelmeier "external incentive model" suggests that the credibility of conditionality was critical to fueling Turkey's transformation. This credibility and the ability of leading EU players, ranging from Gunter Verheugen as the commissioner responsible for enlargement to Romano Prodi as the president of the European Commission to many other EU officials and politicians, to convince Turkish public policy makers that if the "conditions" are met accession talks would indeed start deeply marked the process of cost calculation in respect to "rule adoption". The credibility of the EU's sanctions and rewards also deeply marked the Turkish public opinion, parts of the civil society and the "market". This generated additional pressure on the government. On a number of occasions this pressure was critical to break the resistance to the adoption of certain reforms especially in respect to the lifting of the death penalty, broadcasting and education in minority languages, decriminalizing adultery etc... Similar remarks could be made on a number of foreign policy issues ranging from Cyprus to the decision not to be involved in the American intervention in Iraq.

### **Limits of conditionality and deadlock in rule adoption:**

Since then a massive reversal has taken place in EU-Turkish relations. Support for EU membership has taken an unprecedented and drastic fall.<sup>17</sup> The government too seemed to lose its will and drive in support of reforms. The Kurdish problem flared up again in Turkey as the PKK increased its attacks on military and civilian targets. Many in Turkey started to blame these developments on the EU as well as the United States.<sup>18</sup> A number of developments that are difficult to reconcile with the Copenhagen political criteria have occurred including the indictment and conviction of journalists and intellectuals for simply expressing their opinions on various issues. Little progress occurred in accession negotiation that formally started in October 2005. The general expectation was that the European Commission would be adopting a very critical progress report in October. There were also many who were actually talking about the possibility of a "train-crash" scenario leading to the

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<sup>16</sup> The total stock of FDI in Turkey in 1999 was just over 10 billions USD. See section entitled "Foreign Direct Investment" p. 2 at <http://www.deik.org/bultenler/businessguide/DEIK-BG-8-FDI.pdf> (visited 29 April 2006).

<sup>17</sup> In April 2006 a public opinion survey announced that 63.1% of the Turkish public still support membership and 58% considers membership useful, but that 50.3% believes that the EU aims to divide Turkey ('Türkiye Milliyetçilik Araştırması', *Tempo*, No. 957, 6 April 2006, pp. 26–27). More recent surveys show much lower levels of support for EU membership compared to 74–75% in 2002 and 2003. In October 2006 a public opinion survey reported that only 32.2% of those surveyed believed 'Turkey must join the European Union', while 78.1% said they did not trust the EU (*Milliyet*, 24 Oct. 2006). For an analysis of the rise of nationalism and Euro-skepticism in Turkey see Ioannis Grigoriadis, *Upsurge amidst Political Uncertainty: Nationalism in post-2004 Turkey* (Berlin: SWS Research Paper, October 2006).

<sup>18</sup> It is not surprising that in April 2006 after the wide spread disturbances in Diyarbakir and elsewhere in Kurdish populated southeastern Turkey the media was filled with analysis blaming these disturbances to the EU and the United States intentions to undermine Turkey's territorial integrity as the cause of the disturbances. See also Grigoriadis, 2006.

suspension of accession talks or even the “loss of Turkey”.<sup>19</sup> The “train-crash” scenario at the end did not occur and instead the European Council in December decided to suspend accession negotiations in eight chapters while promised that the rest of the accession process would advance as planned at least until 2009. Since then in March negotiations on one chapter was opened and three more are expected to be opened during the German presidency. The government also adopted a document in April 2007 that sets out in some detail the work and the timeline for completing Turkey’s harmonization process by 2013.<sup>20</sup> Yet, fascinatingly this document, in the section dealing with “justice, freedom and security, does not include any specific information on the harmonization work that needs to be done in respect to especially the lifting of the “geographical limitation” to the Geneva Convention. Similarly, no information is provided for in respect to the demands of the European Commission to negotiate and sign a readmission agreement. These two topics are among a handful of issues that have been deemed as too sensitive and left out of the document.

In spite of a limited improvement in EU-Turkish relations the general mood is one that is difficult to reconcile with a country that is actually in the pre-accession stage where “rule adoption” is critical. What has happened to Turkish public policy makers especially dealing with asylum and immigration issues? Has their cost-benefit calculus been altered? What has changed? Why is “conditionality” not working? There are of course a multitude of reasons that can be cited. However, here emphasis will be put on developments that have drastically undermined the EU’s credibility in Turkey. In other words one of the critical elements of the Schimmelfening and Sedelmeier “external incentive model” has been undermined. The model expects candidate country behavior to be partly determined by the “size and speed of rewards” that the EU is able to offer. The ultimate reward being membership the Turkish public and public policy makers have come to doubt that the EU is capable or for that matter willing to deliver this reward even if “conditions” are met. In other words the EU, possibly first time in the history of enlargement appears to be losing its credibility, severely limiting the traditional role of “conditionality” in ensuring “Europeanization”.

There are a number of reasons for this loss of trust in EU’s credibility. Foremost is the nature and content characterizing the discourse on Turkish membership in a number of EU member countries. It is widely known that a good proportion of the European public opinion is against Turkish membership. Surveys that are regularly run by Euro-stat and a number of other agencies saw this resistance. However, this resistance have been accompanied by a language adopted by politicians in countries such Austria, France, Holland and Denmark that many Turks have found not only discouraging but also offensive.<sup>21</sup> This discourse became particularly visible during the summer of 2005 in the run up to the Council decision opening accession talks in October and in June 2006 when the first chapter was opened and closed. The constant emphasis on “cultural difference” and that a “privileged partnership” instead of membership has reinforced the general belief that the EU is a “Christian Club” and will not admit Turkey whatever Turkey does.

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<sup>19</sup> Kirsty Hughes, *Turkey and the EU Four Scenarios: From Train Crash to Full Steam Ahead* (Chatham House, London, 2006) and Philip Gordon and Ömer Taşpınar, ‘Turkey on the Brink’, *Washington Quarterly*, summer 2006.

<sup>20</sup> *Türkiye’nin AB Müktesebatı’na Uyum Programı (2007-2013)* available from: <http://www.abgs.gov.tr/indextr.html>.

<sup>21</sup> Gordon and Taşpınar, 2006, p. 57, the authors have highlighted how the public in Turkey has been feeling frustrated with the European discourse on Turkey and attributed some of the rise in nationalism in Turkey to this phenomenon.

Turkish public is deeply convinced that the EU is not handling Turkish accession in a manner similar to the previous round of enlargement and other current candidate countries. This mistrust was also reflected in the manner in which the “Accession Negotiation Framework” was dissected by the Turkish media for evidence of wording suggesting double standards towards Turkey and reluctance on the part of the EU to eventually admit Turkey as a member.<sup>22</sup> Hence, it is no wonder that emphasis was put on the document’s reference to the “negotiations are an open-ended process, the outcome of which cannot be guaranteed beforehand” rather than to “the shared objectives of the negotiations is accession”.

The Framework also introduced a new mechanism meant to strengthen the “credibility of conditionality” called bench-marking. This new practice calls for the Commission to ensure that a certain degree of “rule adoption” and actually implementation does indeed take place before chapters are actually opened for negotiations by the Council. This new practice has been perceived by especially public policy makers involved in the negotiation process as another development that throws the EU’s credibility into question in their eyes. The fact that this practice was suggested together with a renewed emphasis put on the EU’s “absorption capacity” further aggravated the credibility problem. The “absorption capacity” had actually always been part of the Copenhagen criteria but had never been invoked until the question of Turkish membership came up. This of course did not go unnoticed by the Turkish public and policy makers.

One other important factor undermining the EU’s credibility has been the Cyprus problem. The EU played a central role in inducing a massive change in Turkey’s policy toward Cyprus. After the acceptance of the Annan Plan by the Turkish-Cypriots and its rejection by the Greek-Cypriots the EU, just before Cyprus’s accession, adopted decisions to alleviate the isolation of the Turkish-Cypriots community. The EU has had great difficulties in putting these decisions into action. In return the Turkish public has difficulties in comprehending why the side that said “yes” to the Annan Plan continues to be penalized while the other side became a member of the EU. This situation is extensively exploited by the opposition especially in the context of the EU mounting pressure to get Turkey to open its harbors and airports to Cypriots vessels. The fact that the government feels domestically weak and unable to meet these “conditions” related to Turkey’s custom union with the EU aggravates the domestic debate. The military became party to the debate too when the chief of staff publicly objected to a compromise deal entertained briefly by the government and the ministry of Foreign affairs. In this debate the EU is inevitably presented as the defector from the earlier deal leading the EU’s credibility to further weaken in the eyes of the public as well as policy makers. Hence, the debate during the Fall of 2006 about completely suspending accession talks with Turkey unless Turkey opens its harbors and airports to Cypriot vessels and then finally the decision to suspend talks on eight chapters did not help.

This loss of trust towards the EU is severely undermining progress in EU-Turkish relations in general as well as in the process of opening the thirty-five odd chapters for negotiations. One area where the effects of the loss of trust in the EU and hence loss of the “credibility of conditionality” is in the chapter that deals with “justice, freedom and security in the EU”. Under this chapter among the *acquis* that Turkey is supposed to adopt is the current EU directives in the area of asylum. Like its predecessors, the most recent *Accession Partnership* (AP) document clearly lays out the tasks that Turkey has to fulfill to complete the “rule

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<sup>22</sup> This document can be accessed from [http://europa.eu.int/comm/enlargement/docs/pdf/negotiating\\_framework\\_turkey.pdf](http://europa.eu.int/comm/enlargement/docs/pdf/negotiating_framework_turkey.pdf)



adoption” process.<sup>23</sup> AP also lays out a rough time table for this process. Immigration issue in general is a highly contested issue within the EU. This leads the EU side, especially through the European Commission, to attribute a lot of importance and urgency to asylum and combating illegal migration. Hence, Turkey is under tremendous pressure to put into place a fully fledged national status determination process and develop the legislation and the institutional capacity to process asylum seekers and grant local protection for recognized refugees. This is also central to the full implementation of the current EU directives on asylum without which the “first country of asylum” and “safe third country of asylum” principles embedded in the EU *acquis* could not be implemented for Turkey.

As will be pointed out in the next section Turkey’s asylum regime went through considerable reform over the last decade. However, Turkey continues to share status determination with the UNHCR and expects recognized refugees to be resettled rather than be granted the possibility of local integration. Furthermore, occasional violation of the “non-refoulement” principle continues to be reported. Central to this policy is the “geographical limitation” with which Turkey accepted to implement the 1951 Geneva Convention Relating to the Status of Refugees.<sup>24</sup> This frees Turkey from the obligation of granting fully fledged refugee status to asylum seekers coming from outside Europe or more specifically to asylum seekers fleeing events outside Europe. The EU expects Turkey to lift this geographical limitation. Turkey has in its *National Program for the Adoption of the Acquis* accepted to do it but made it conditional to the introduction of “legislative and infra-structural measures” and “the attitudes of the EU Member States on the issue of burden-sharing.”<sup>25</sup> As it will be examined in the following section, various measures that the Turkish government has adopted over the last couple of years has brought the Turkish system very close to introducing a fully fledged national status determination system. Yet, public policy makers have technically pushed the lifting of the geographical limitation to a period after 2012 and as mentioned earlier they have persuaded the government not to include any commitments in the recently adopted harmonization program covering the period from 2007 to 2013. Why? The next section of this paper will briefly describe the Turkish asylum system and evaluate recent reforms. The role of the UNHCR in these reforms will be highlighted while the paper will try to demonstrate how the EU’s “conditionality” tool is failing to convince Turkish officials to put into place a national status determination process compatible with the EU *acquis* and lift the geographical limitation. The paper will conclude that the uncertainty over eventual EU membership and mistrust is keeping public policy makers’ calculation of “governmental adoption costs” prohibitively high while at the same time the Turkish asylum system is itself going through a kind of “Europeanization”. How can this be accounted for?

### **Turkish asylum system and challenges to its “Europeanization”:**

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<sup>23</sup> Council Decision of 23 January 2006 on the principles, priorities and conditions contained in the Accession Partnership with Turkey, *Official Journal of the EU*, L 22/34, 26.1.2006. The document can be accessed at: [http://www.abgs.gov.tr/dokumanlar/apd/Turkey\\_APD\\_2006.pdf](http://www.abgs.gov.tr/dokumanlar/apd/Turkey_APD_2006.pdf)

<sup>24</sup> For an analysis of Turkey’s asylum system before reform see Kemal Kirisci, "Is Turkey lifting the "geographical limitation"?: The November 1994 Regulation on Asylum in Turkey," *International Journal of Refugee Law* 8:3, (1996). For an assessment of these reforms see Kirisci (2001) and K. Kirişçi, “Turkish asylum policy and human rights: Adjusting to international norms and EU accession requirements” in Z. Kabasakal-Arat (ed.) *Human Rights Policies and Prospects in Turkey* (University of Pennsylvania Press, 2007).

<sup>25</sup> Secretariat General for the EU Affairs. *Turkey: National Programme for the adoption of the Acquis*. Section on “4.25.2 Asylum”. (Ankara, 2001).

In the West Turkey is traditionally known as a country of emigration. Yet, Turkey, like its predecessor the Ottoman Empire, has long been a country of immigration especially for Muslim ethnic groups, ranging from Bosnians to Pomaks and Tatars, as well as Turks from the Balkans and to a lesser extent from the Caucasus and Central Asia. Between 1923 and 1997, more than 1.6 million immigrants came and settled in Turkey.<sup>26</sup> Furthermore, after the Nazi takeover in Germany and then during the Second World War there were many Jews who fled to Turkey and then resettled in Palestine. There were also many who fled the German occupied Balkans for Turkey and returned to their homelands after the war had ended. Since the collapse of the Soviet Union, Turkey has also become a country receiving an increasing number of irregular workers and immigrants from Balkan countries and former Soviet republics as well as Iran, northern Iraq and Africa. These often include people that overstay their visa and work illegally. Turkey has also been a country of asylum, and is among the original signatories of the 1951 Geneva Convention. However, Turkey is today among a very small number of countries that still maintains a "geographical limitation" to the agreement's applicability as defined in Article 1.B(1)(a) of the Convention. Accordingly, Turkey does not grant refugee status to asylum seekers coming from outside Europe, and maintains a two-tiered asylum policy.

The first tier of this policy is centered on Europe and is deeply rooted in Turkey's role as a Western ally neighboring the Soviet Union during the Cold War. During that period, in close cooperation with the UNHCR, Turkey received refugees from the Communist Bloc countries in Europe, including the Soviet Union. Such refugees, during their stay in Turkey, enjoyed all the rights provided for in the 1951 Convention. However, only a very small number were allowed to stay on in Turkey, often as a result of marriages with Turkish nationals. Current Turkish legislation limits immigration and fully fledged refugee status with the integration option only to persons of "Turkish descent or culture".<sup>27</sup> Hence, the overwhelming majority of the refugees were resettled out of Turkey. Although it is very difficult to obtain accurate statistics on their numbers, the Ministry of Interior (MOI) has indicated that some 13,500 asylum seekers benefited from the protection of the 1951 Convention between 1970 and 1996. Statistics for previous years are not available. In addition, approximately 20,000 Bosnians were granted temporary asylum in Turkey during hostilities in the former Yugoslavia between 1992-1995. Some of the refugees were housed in a refugee camp near the Bulgarian border, while many went on to stay with relatives in large cities such as Istanbul and Bursa. Since the signing of the Dayton Peace Plan in 1995, many of these refugees have been steadily returning to Bosnia. In addition, in 1998 and 1999, approximately 17,000 Kosovars came to Turkey to seek protection from the strife in their ancestral homeland. The majority have returned. There are also an undetermined number of Chechens who reside in Turkey in some what a legally grey zone.

The second tier of Turkey's asylum policy deals with persons from outside Europe. The new policy emerged in 1980 in the wake of the Iranian Revolution, and subsequent instability in the Middle East, Africa, and Southeast Asia. Upheaval in these areas led to a steady increase in the number of asylum seekers coming from outside Europe. For a long time, the government allowed the UNHCR considerable leeway to temporarily shelter these asylum seekers with the tacit understanding that they would be resettled out of Turkey if the UNHCR recognized them as refugees, and that those whose claims were rejected would be deported. However, the growth in the number of illegal entries into Turkey and in the number of

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<sup>26</sup> For details see Kemal Kirişçi, 'Refugees of Turkish origin: 'Coerced immigrants' to Turkey since 1945', *International Migration*, 34 (3)1996.

<sup>27</sup> For details see below p. 16 xxxx.

rejected asylum seekers stranded in Turkey strained this practice. The situation was also aggravated by the 1988 and 1991 mass influxes of Kurdish refugees amounting to almost half a million. Officials were also concerned that among these asylum seekers were militants of the Kurdistan Workers' Party (Partia Karkaren Kürdistan – PKK) trying to enter Turkey from northern Iraq.

It was against such a background that the government introduced a decree, the Asylum Regulation, in November 1994.<sup>28</sup> The Regulation aimed to bring status determination under the control of the Turkish government. It was primarily drafted with national security concerns and hence introduced strict regulations governing access to asylum procedures with little regard for the rights of asylum seekers and refugees.<sup>29</sup> It is not surprising that the practice that evolved in the first few years of the application of the Regulation attracted serious and concerted criticism from western governments, as well as major international human rights advocacy groups.<sup>30</sup> Critics argued that Turkey was undermining the rights of asylum seekers and refugees by denying them access to asylum procedures or failing to provide them adequate protection by violating the principle of *non-refoulement*. The Regulation had introduced the requirement that asylum applications be filed within maximum five days of entry into Turkey. The rule was often interpreted strictly and applications were refused on the grounds of being late. Such refusals were often followed by deportations. There were also cases of *bona fide* refugees recognized by the UNHCR being deported on the grounds that these persons had never actually filed applications and were in violation of the Regulation. This led to frequent conflicts between Turkish authorities and the UNHCR that continued to receive applications and assess them on their merits independently of the provisions of the Asylum Regulation.

However, the situation began to improve by the late 1990s. Interestingly a good part of these improvements began to occur before the EU actually engaged Turkey as candidate country for membership and where encouraged by the UNHCR. There were a number of reforms. Most importantly, in 1997 the way to judicial appeal was opened when two local administrative courts ruled against the deportation orders of two Iranian refugees recognized by the UNHCR. These refugees had originally entered the country illegally and had not filed in their applications with the Turkish authorities in time. The MOI had ruled for their deportation under the provisions of the 1994 Asylum Regulation. The MOI's appeal to a higher court against the decision of the lower courts was struck out too. This was also accompanied by an EHRC ruling (*Jabari v Turkey*)<sup>31</sup> against the deportation of an asylum seeker on the grounds of the provisions of the 1994 Regulation and that if this order was carried out this would constitute a violation of the EHRC. These judicial developments played a central role in getting the government to amend the Regulation in 1999 by initially extending the time limit to ten days.<sup>32</sup>

<sup>28</sup> *Official Gazette*, No. 22127, 30 November 1994.

<sup>29</sup> Kemal Kirisci, "Is Turkey lifting the "geographical limitation"?: The November 1994 Regulation on Asylum in Turkey," *International Journal of Refugee Law* 8:3, (1996) and Kirisci (2007) for an assessment of this Regulation.

<sup>30</sup> See for example the following reports U.S. Department of State: *Turkey Country Report on Human Rights for 1996*. (Released on January 1997 obtained from [www.state.gov] (28 Dec. 2000); Bill Frelick, *Barriers to Protection: Turkey's Asylum Regulations*. (Washington D.C.: Report issued by the U.S. Committee for Refugees) and *Turkey: Refoulement of non-European refugees – a protection crisis*. (London: Amnesty International Secretariat, Document EUR 44/031/1997).

<sup>31</sup> European Human Rights Court (Fourth Section) *Case of Jabari v. Turkey* (Application no. 40035/98), Judgment, Strasbourg, (11 July 2000)

<sup>32</sup> *Official Gazette*, No. 23582, (13 January 1999).

Another indirect reform of the Turkish asylum policy came through the introduction of training seminars initially for MOI officials. The first of these took place in September 1998 and involved officials that directly dealt with asylum seekers and refugees. These early seminars organized by the UNHCR were often the first of their kind. A steady stream of officials went through these seminars assisting the gradual accumulation of expertise accompanied with a process of socialization. This process significantly improved the officials' understanding of the issues involved. They also contributed to a significant change in the attitudes of many of these officials towards asylum seekers and refugees. The training programs were gradually expanded to include other officials such as judges, prosecutors and gendarmes as well. Gendarmes are often the very first people that asylum seekers would encounter in border areas. Awareness programs to differentiate between illegal immigrants and asylum seekers were introduced to the training of the Gendarmerie. Programs were also held with the Bar Associations for prosecutors and judges focusing on refugee law. The police and gendarmes normally have to report immigrants or foreigners illegally present in Turkey to the local courts. Hence, prosecutors and judges play a critical role over whether such persons are deported or not. The seminars in these respects were critical in raising awareness of a body of law and practice to help distinguish between illegal immigrants and asylum seekers and Turkey's legal obligations under international law.

Another very important development was the growing cooperation between non-governmental organizations and the government. An increasing number of non-governmental organizations ranging from the Turkish branch of Amnesty International to the International Catholic Migration Commission (ICMC) began to cooperate with the government in organizing and running some of the above training programs for officials but also seminars for lawyers and human rights activists. A growing number of non-governmental organizations began to take an interest in various ways of assisting asylum seekers and refugees.<sup>33</sup> Although this effort is at a limited scale, it constitutes an important beginning. Bar Associations in big cities such as Ankara, İstanbul and İzmir, as well as some border towns, have developed various support programs geared to providing legal assistance for asylum seekers as well as training programs on asylum law and human rights of asylum seekers to their members.

A striking aspect of these developments is that they are primarily a function of the good relations that the UNHCR succeeded in developing with the Turkish authorities. During the Cold War the UNHCR for all intend and purposes was doing status determination and resettlement for the Turkish government. The system became strained during the late 1980s and early 1990s. It eventually collapsed in 1994 with the adoption and implementation of the Asylum Regulation. However, subsequently the efforts of the UNHCR and personal initiatives taken by some senior Turkish officials culminated in the reconstruction of cooperation between these two sides. The introduction of the training programs and the opening of the way to judicial review were concrete examples of this revitalized cooperation. These developments helped to build mutual confidence but also an understanding that both sides could actually benefit from the cooperation. The UNHCR ensured that it could fulfill its

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<sup>33</sup> On the 28-29 December 2004 the Ankara Branch Office of the UNHCR held the third of its annual consultation meetings with Turkish non-governmental organizations. There were more than 65 participants from these organizations as well as government agencies and universities. Subsequently, there have many other public occasions when government officials and representatives of non-governmental organizations met and discussed policy issues. A similar meeting had taken place in 2003 and was repeated in 2005 too. There were also numerous conferences and occasions organized by Boğaziçi University and Middle East Technical University that enabled government officials to debate, informally, policy options with representatives of international as well as non-governmental organizations.

mandate obligations. In turn Turkey's image in the international arena improved and even received the occasional praise.<sup>34</sup>

Yet, much more importantly and in a most fascinating manner the close cooperation between the UNHCR and the Turkish authorities culminated in a situation where the UNHCR would be *de facto* doing the refugee status determination in Turkey on behalf of Turkey. Even though the Asylum Regulation identified the MOI as the body responsible for status determination, MOI officials came to rely increasingly on the judgment of the UNHCR. They were quite content to go along with UNHCR decisions as long as the asylum seekers were also registered with them and eventually those who were recognized as refugees do get resettled out of Turkey. The occasional differences were usually sorted out through informal consultations. Training seminars and close cooperation also enabled the UNHCR to gain access to groups of irregular migrants that get apprehended by the Turkish authorities, particularly in border regions of Turkey. As Appendix I suggests according to Turkish government statistics there were approximately 3,500 to 4,000 asylum applicants filed a year between 1995 and December 2006. During this period a total of almost 44,400 asylum applications were received and just under 22,300 of them were recognized as refugees. An overwhelming majority of the asylum seekers are from Iran and Iraq. The overwhelming majority of the recognized refugees were resettled out of Turkey as can be seen from Appendix II. More than 22,000 of these refugees were resettled to a range of countries led by United States and Canada but also a number of EU countries.<sup>35</sup>

This relationship constituted a massive learning and socialization experience for Turkish officials. One important manifestation of this experience was the manner in which the government amended the 1994 Asylum Regulation on two occasions. The first amendment as mentioned earlier had come in 1999 when the five day limitation for filing in an application was raised to ten days. This amendment brought about an improvement in reducing cases of violations of the principle of *non-refoulement*. The improvement was acknowledged by numerous human rights reports including the one prepared by the United States Department of State and Amnesty International. This date could indeed be considered as a turning point in the "Europeanization" of Turkish asylum policy. What is particularly significant is that it occurred well before there were any indications that Turkey would be recognized as a candidate country for EU membership at the end of that year. The second occasion occurred in January 2006 when the time limit was completely lifted and instead the reference to "within a reasonable period of time" was introduced.<sup>36</sup> This was a function of a process during which Turkish officials through the seminars, their interaction with UNHCR officials as well as representatives of non-governmental organizations and experts came to understand that one could not deny an asylum seeker access to status determination on the grounds of a violation of time limitations on application procedures. The principle that every application deserves an assessment on its merits gained recognition.

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<sup>34</sup> At a seminar on asylum law ran by Amnesty International in the city of Van near the Iranian border the AI representative noted that Turkey had recently progressed significantly in the implementation of international standards at a time when many EU member countries performance was slipping backwards. See Denise Graf, "İşviçre Örneğinde Mülteci Hukuku Avrupa Uygulaması" presentation made at *Mülteci Hukuku Eğitim Çalışması*, organized by Amnesty International, 19-20 October 2002, Van.

<sup>35</sup> The figure of resettled refugees is larger than the figure for the period between 1995 and 2006 because they include refugees recognized from an earlier period too.

<sup>36</sup> *Official Gazette*, No. 26062, (27 January 2006).

It is extremely difficult to judge the impact of the EU in this process of transformation. It might be possible that the EU's impact has been more formalistic while the UNHCR had more of an impact on the attitudes of Turkish officials as well as the actual substance of Turkey's refugee policy. The two together however did assist a sort of a "paradigmatic shift" to occur among Turkish officials. This was a shift from a paradigm that framed the issue of asylum policy from a primarily "national security" perspective to one that increasingly emphasized human rights and international refugee law. The role of the EU has been more visible in respect to the setting of a formal agenda and a time table for eventual "rule adoption". In this respect the consecutive *Accession Partnership* documents of 2001 and then 2003 clearly induced Turkish officials to recognize that at some point the "lifting of the geographical limitation" would have to take place and that Turkey will have to adopt structural and institutional as well as legislative reforms. In 2002 the government formed a Task Force that brought together officials from very agencies possibly for the first time to actually discuss what needed to be done. This broadened the scope of the ongoing informal debate between officials directly dealing with asylum on the one hand and academics, experts as well as representatives of non-governmental organizations and the UNHCR on the other. The EU's High Level Working Group on Turkey did also make funds and experts available for training seminars.<sup>37</sup> These seminars were critical in the words of a UNHCR official in helping to develop a "common language" between Turkish officials and their EU counterparts.<sup>38</sup> Furthermore, the adoption of the NAAP was also critical given its acceptance to lift the geographical limitation despite the conditions set. However, more important in this respect was the "twinning project" that the British and Danish governments supported. This project not only enabled Turkish officials possibly for the first time in their careers to work for months on a daily basis with their EU counterparts but the exercise also helped Turkish authorities to prepare the *Action Plan on Asylum and Migration* that was subsequently adopted by the government in March 2005.<sup>39</sup> This document in great detail identifies both national legislation and the EU *acquis* on asylum and migration. It also lays out in broad outlines the tasks and time table that Turkey intends to follow to prepare Turkey for the development of a fully fledged national status determination system, lift the geographical limitation and adopt EU directives on asylum and migration in general.

The renewed *Accession Partnership* that was adopted in January 2006 subsequent to the beginning of accession talks with Turkey in October 2005 sets medium period (the end of 2009) as the deadline for the completion of the "rule adoption" exercise and the lifting of the geographical limitation. The document also expects Turkey, in the area of asylum, to make visible progress in setting up reception centers for asylum seekers, to develop a country of origin information system, to introduce national asylum legislation and to set up a specialized administrative unit to deal with asylum. In the meantime the screening process concerning the chapter that deals with asylum has been completed. The report of the Commission concerning the outcome of the screening process concerning the chapter on "justice, freedom and security" clearly highlight the gaps in the area of asylum and considers Turkey not to be compliant with the EU *acquis*.<sup>40</sup> The report has not yet been formally adopted and Turkey has not yet been asked to submit a "position paper". Turkish officials fear that the European

<sup>37</sup> For a detailed analysis of the HLWG of the EU see Joanne van Selm "Immigration and Asylum or Foreign Policy: The EU's Approach to Migrants and Their Countries of Origin" in Sandra Lavanex and Emek Uçarer (eds.) *Migration and the Externalities of European Integration* (Lanham: Lexington Books, 2002).

<sup>38</sup> Exchange of email message with a UNHCR official in Ankara.

<sup>39</sup> The Action Plan on "Asylum and Migration" was officially adopted by the Turkish government on 25 March 2005. The English and Turkish versions of the Plan can be reached from the following web pages: [www.unhcr.org.tr](http://www.unhcr.org.tr), [www.deltur.cec.eu.int](http://www.deltur.cec.eu.int), [www.egm.gov.tr](http://www.egm.gov.tr) and [www.abgs.gov.tr](http://www.abgs.gov.tr).

<sup>40</sup> The report can be accessed from: [http://ec.europa.eu/enlargement/turkey/screening\\_reports\\_en.htm](http://ec.europa.eu/enlargement/turkey/screening_reports_en.htm)

Commission will actually recommend that the EU demand certain bench marks for the negotiations to start. This could indeed provoke a “Catch-22” situation. There is the expectation that the Commission will seek clear signs that Turkey has indeed made concrete progress in respect to the establishment of an “asylum and migration authority”, reception centers and other requirements listed in the most recent AP before negotiation on this chapter could be opened not to mention the lifting of the “geographical limitation”. Furthermore, Turkish officials are already dismayed that the formal submission of the screening report is being delayed. They consider this delay as part and parcel of a larger exercise involving the slowing down of the negotiation process. Naturally, these developments further aggravate doubts about the EU’s credibility and deeply influence Turkish public policy makers cost calculation.

Turkish decision makers are fully aware that previous candidate countries had to go through a similar “rule adoption” process. They are also aware that there were a number of countries that had to lift their geographical limitations such as Hungary, Latvia and Malta and that the first two countries did so well before their accession negotiations started.<sup>41</sup> They realize that they have to follow suit. However, they face a major dilemma provoked by their mistrust of the EU’s credibility in respect to the ultimate “reward” of membership. The greatest nightmare scenario for them is one in which they would find themselves lifting the ‘geographical limitation’ without Turkey’s membership being taken seriously by the EU. Turkish officials are also conscious and deeply affected by the European public resistance to Turkish membership. They have also first hand knowledge of the experience of their counterparts in some of the new member countries against which they can compare their own dilemmas and “cost-benefit” calculation matrices. They are deeply aware that their counterparts when making critical decision they were pretty much confident that eventually membership would take place. A high level MOI official involved in asylum issues for almost a decade and an advocate of the reform of the Turkish asylum system put his deep concerns pretty bluntly. This official during a visit to Hungary to learn about the Hungarian experience of lifting their geographical limitation and putting into place a fully fledged asylum system had actually asked his Hungarian counterpart how they were able to take on financially and politically very costly decisions. The Turkish official reflected on how “his heart sank” when his Hungarian counterpart simply said that this was never a major concern for them because they were always sure that they would become a member of the EU at the end.<sup>42</sup>

Another issue that marks the cost calculation of Turkish officials is burden sharing.<sup>43</sup> Owing to its geographical location, Turkish officials are conscious that Turkey risks becoming a buffer zone or a dumping ground for the EU’s unwanted asylum seekers and refugees. The adoption of the current *acquis* would make Turkey a typical ‘first country of asylum’

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<sup>41</sup>These countries maintained their “geographical limitation” until 1998, 1997 and 2002 respectively. Turkey together with Monaco, Congo and Madagascar are the only remaining countries signatory to the Convention that continues to maintain a “geographical limitation”, Joanne van Selm, “European Refugee Policy: is there such a thing?” (New Issues in Refugee Research, Working Paper No. 115, Evaluation and Policy Analysis Unit, May 2005) p. 4.

<sup>42</sup> The visit took place between 22-26 May 2006 as a part of a project supported by the British government and the International Catholic Migration Commission.

<sup>43</sup> The issue of burden sharing has been one of the difficult challenges that member states faced in developing a common asylum policy see Eiko Thielemann, “Between Interests and Norms: Explaining Burden-Sharing in the European Union” *Journal of Refugee Studies*, Vol. 16, No. 3 (2003), pp. 253-273 and Eiko Thielemann, “Symbolic Politics or Effective Burden-Sharing? Redistribution, Side-payments and the European Refugee Fund” *Journal of Common Market Studies* Vol. 43, No. 4, pp. 807-824. This challenge has been greater in the case of candidate countries see Rosemary Byrne, “Harmonization and Burden Redistribution in the Two Europes” *Journal of Refugee Studies* Vol.16, No. 3, (2003), pp. 336-358.

responsible for status determination with membership and a “safe third country of first asylum” before then.<sup>44</sup> This raises considerable concerns among officials in terms of the economic, social as well as political implications. Turkish officials will expect to see burden-sharing mechanisms that would go beyond what the current Refugee Fund can offer.<sup>45</sup> Traditionally, refugees have been resettled out of Turkey. Turkish officials want to see an arrangement that would allow this practice to continue for some transitional period. However the current *acquis* does not allow for such a practice. This fear of becoming a buffer zone is also aggravated by Turkish officials perception of a growing EU tendency to externalize its asylum policies and its efforts to create a ‘fortress Europe’.<sup>46</sup> Ironically, these officials learn about the details of these policies from the very experts and representatives of non-governmental organizations that they encounter during training seminars and conferences. In other words a Europe that tries to complicate if not deny access to asylum seekers to reach the EU is not setting a good example for Turkey in terms of harmonization and credibility.

Turkish officials that would have to take the ultimate decision to suggest the lifting of the geographical limitation face an additional challenge that in many ways goes well beyond their power. One very important reason behind the current Turkish asylum policy that does not allow for the possibility of recognized refugees to be integrated has to do with Turkish state conception of national identity or “Turkishness”. The Turkish republic after its foundation in 1923 adopted an immigration practice very much reminiscent of the German policy that allowed until recently the *Aussiedler* the possibility of facilitated immigration to Germany. The major piece of legislation governing immigration into Turkey is The Law on Settlement (No. 2510) of 1934. In a most conspicuous manner the Law limits the right to immigrate to Turkey only to people of ‘Turkish descent and culture’. The identifying features of “Turkishness” was not solely Turkish ethnicity but the ability and willingness to adopt the Turkish language and to be members of Muslim Sunni ethnic groups often closely associated with past Ottoman rule. Hence, Bosnians, Circassians, Pomaks, Tatars etc... were very much included into this definition while Gagauz Turks, who are Christian, and members of other Christian minorities, Alevis and unassimilated Kurds were excluded. The immigration trends into Turkey very much support this.<sup>47</sup> The lifting of the geographical limitation would require a substantial overhaul of the law on settlement. Recently, the Turkish parliament adopted a completely new Settlement Law that, as will be discussed below, may change this situation.<sup>48</sup> Inevitably the immigration issue is also closely associated with national identity.<sup>49</sup> The political reforms adopted in Turkey have led to a certain degree of a redefinition of the Turkish national identity. However, the process is far from complete and is closely linked to

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<sup>44</sup> Council Regulation (EC) No. 343/2003 of 18.2.2003 published in *Official Journal of the European Union*, 25.2.2003, L 50/1.

<sup>45</sup> Commission Proposal for a Council Decision on the European Refugee Fund COM(1999) 686, 14.12.1999. Council Decision 2000/596/EC on 28<sup>th</sup> September 2000 adopting a proposal establishing the European Refugee Fund.

<sup>46</sup> On EU’s externalization policy and the notion of using candidate countries and neighbors as a “buffer zone” see Sandra Lavanex and Emek Uçarer (eds.) *Migration and the externalities of European Integration*. (Lanham, Maryland: Lexington Books, 2002). See also Andrew Geddes, *Immigration and European Integration: Towards fortress Europe?* (Manchester: Manchester Univ. Press, 2000).

<sup>47</sup> For details of this policy see Kemal Kirişçi, “Disaggregating Turkish citizenship and immigration practices” *Middle Eastern Studies* 36, No. 3, July 2000.

<sup>48</sup> The Turkish Grand National Assembly was due to debate a new draft law on settlement on 19 September 2006 as part of the efforts to adopt the ninth package of EU reforms. The Law was published in the *Official Gazette*, No. 26301, (26 September 2006) as Law No. 5543.

<sup>49</sup> Kemal Kirişçi, “National Identity, Asylum and Immigration: EU as a vehicle of “post-national” transformation in Turkey” in Hans-Lukas Kieser (ed.) *Turkey: Nationalism, Post-Nationalism and the European Community* (I.B. Taurus, 2006).



the progress of Turkey's EU membership. Hence, it is no wonder that Turkish officials dealing with asylum have not yet so far suggested any legislation that could open the way to granting full refugee status with the possibility of integration.

These are challenges that aggravate the "Catch-22" situation that characterizes EU-Turkish relations. A typical manifestation of this situation arises in the use of pre-accession funds. Turkish authorities have prepared a project proposal for the construction of reception centers. However, in the meantime the European Commission had sent a clear signal that this would not be a good time to submit such a proposal on the grounds that the Commission could not release funds without actually seeing progress towards "rule adoption" in the area of asylum. This policy of flagging out a "sanction" is reinforcing the officials' mistrust in the EU. The situation is paradoxically further aggravated because the Commission did support an earlier project to improve reception conditions but under the AENEAS program.<sup>50</sup> The granting to Turkey of EU financial and technical assistance that is typically offered to 'third countries' in the areas of migration and asylum fuels the mistrust of the Turkish side in respect to their status as a candidate state for membership. When this is combined with European Commission officials' frustration with the little progress being made in the actual adoption of the EU *acquis* and development of the accompanying institutional, legislative and physical infrastructure, mistrust becomes mutual, creating a vicious spiral endangering the ability of "conditionality" to deliver "rule adoption" and eventual membership.

Nevertheless, the impact of the transformation that has been going on in the area of asylum over the last decade is nudging Turkey towards a position that is closer to the one that the EU would like to see. In June 2006 the MOI Department, responsible for asylum matters, circulated an internal regulation<sup>51</sup> (Genelge) that according to a high ranking UNHCR official "pleasantly surprised them".<sup>52</sup> The document basically sends instruction to the Police in general to speed and facilitate the implementation of tasks laid out in the *Action Plan*. In its introduction it recognizes that the regulation aims to meet the standards mentioned in the 1951 Geneva Convention and the EU *acquis*. It introduces very specific measures that aim to improve access to the asylum system and ensure continuity for the trained personnel in their current position rather than risk to being moved to other irrelevant tasks as part of the standard rotation system. It lays out for the first time very specific rules concerning the process of identity determination of asylum seekers as well as clearly states that asylum seekers may well enter the country without identity and that this can not be held against them.<sup>53</sup> Furthermore, this internal regulation also identifies the procedures to be followed to determine the outcome of an asylum application and appeal procedures for rejected cases. It also incorporates elements from current EU directives concerning country of origin information, provision of translation facilities and a positive interview environment. Lastly, it also underlines that refugees and asylum seekers who have a valid residence permit would be entitled to a work permit too and provides for the granting "secondary" or "subsidiary" protection short of full refugee status.

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<sup>50</sup> Regulation (EC) No. 491/2004 of the European Parliament and of the Council establishing a programme for financial and technical assistance to third countries in the areas of migration and asylum (AENEAS), of 10.3.2004, OJ L80/1, 18.3.2004

<sup>51</sup> *Uygulama Talimatı*, Genelge No. 57, 22 June 2006.

<sup>52</sup> Interview with a high ranking UNHCR official.

<sup>53</sup> This is extremely fascinating because the principle that asylum seekers can not be denied access to asylum procedures on ground of false papers or no identity papers was a point that would come up regularly in the context of discussion of the 1951 Geneva Convention.

Another development that is likely to have significant implication in terms of Turkey's asylum policy is that in September 2006 a new Settlement Law to replace the one from 1934 was adopted by the Turkish Parliament. This took place as part and parcel of the government's effort to adopt what is referred to as the "Ninth Reform Package" to bring Turkey closer to meeting its promises to the EU. The new Settlement Law continues to limit immigration to Turkey to individuals and groups of "Turkish descent and culture". However, unlike its predecessor it is silent on what happens to refugees. The previous Law in Article 4 used language limiting full refugee status to individuals of "Turkish descent and culture" and called for the application of Nationality Law for other refugees. It is difficult to tell how this recent development will impact on Turkish asylum law and policy. This will also depend a lot on the kind of regulations that are adopted for the actual implementation of the new Law. Nevertheless it might still be possible that the new wording might well facilitate the eventual adoption of an Asylum Law that can indeed open the way for recognized refugees to stay on in Turkey rather than be resettled. Furthermore, this new Law may also facilitate the lifting of the geographical limitation.

This may well bring Turkey much closer to providing the EU with evidence that progress is being made towards putting into place a fully fledged national status determination system. The UNHCR Representative in Ankara sees this development as unexpected and surprising but recognizes that it brings Turkey much closer to having its own status determination system. Is Turkey then giving in to what Schimmelfening and Sedelmeier call the "logic of consequence"?<sup>54</sup> Are Turkish decision makers typical rational actors "who seek to maximize their own power and welfare" and engage in bargaining about conditions and rewards? This may be difficult to substantiate for a number of reasons. The MOI Department has been working on a draft asylum law and also a regulation based on the EU directive dealing with "accelerated procedures" for asylum applications that seem manifestly unfounded. However, these drafts are far from taking their final form. Furthermore, so far not much progress had been made in respect to amending or replacing the Settlement Law and the target date of 2012 as the date for imitating a legislative process for the lifting of the geographical limitation remains in tact. Also the mood of Turkish officials, in respect to "conditionality", who deal with asylum and related issues that fall under the chapter heading "justice, freedom and security" was captured in a very telling manner by a high ranking Turkish diplomat at a meeting in September with UNHCR officials. He made references to the Negotiation Framework and noted that "if the EU aims to keep the negotiations open-ended so we shall also keep developments open-ended". He added the importance that Turkey attributes to "reciprocity". On that basis he noted that during the pre-accession period Turkey would adopt those rules and regulations that are deemed to benefit Turkey. Turkey on the other hand would keep an "open-ended" approach to the adoption of policies that do not offer mutual benefit. He gave the replacement of the liberal Turkish visa policy with the Schengen visa regime and the lifting of the geographical limitation as examples of two areas where Turkey would be reluctant to adopt EU *acquis* as long as uncertainty over Turkish membership prevails.<sup>55</sup> Similar reactions can also be observed in other areas related to migration issues. For example the European Commission is also failing to induce much progress in the area of negotiating and concluding a readmission agreement with Turkey. There too progress is being limited by the very same concerns of the Turkish officials' doubts about the EU's

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<sup>54</sup> Schimmelfening and Sedelmeier, *op cit*, p. 9.

<sup>55</sup> Information obtained from the diplomat and third parties present at the meeting. For an analysis of the Turkish visa policy and the massive dilemmas that the adoption of the Schengen visa regime generates for Turkish officials see Kemal Kirişçi, 'A friendlier Schengen visa asylum system as a tool of "soft power": the experience of Turkey', *European Journal of Migration and Law*, vol.7, no.4, 2005.

commitment to Turkish membership. Actually, the very fact that no previous candidate country negotiated such an agreement with the EU and that such agreements have only been signed and are sought with third countries reinforces Turkish public officials doubts. It is not also surprising that the document adopted by the government in April 2007 laying down an harmonization schedule does not include these three issues.

### **Conclusion:**

Considerable improvement has been achieved in respect to the Turkish asylum during the course of the last decade. The current system is much closer to the EU one than what prevailed in the mid-1990s. It is difficult to tell whether the Turkish asylum system has become “Europeanized”. However, it is possible to argue that the Turkish asylum system has indeed been transformed and is much more in tune with at least international standards if not the EU one too. The paper tried to demonstrate that it is difficult to explain this improvement on the basis of the “external incentive model” of Schimmelfening and Sedelmeier and the importance they attribute to conditionality. Turkish decision makers are well aware of the “sanctions and rewards” that the EU can yield in respect to “rule adoption”.<sup>56</sup> They are deeply conscious of the importance of the lifting of the geographical limitation to the 1951 Geneva Convention. However, the fact that these policy makers like the rest of the country doubt the EU’s credibility in respect to granting full membership to Turkey if Turkey does indeed meet all the membership conditions, remain caught in a dilemma over whether to “lift” or “not to lift” the limitation. It seems that they will remain reluctant to lift it as long as the doubt remains. Hence this severely seems to limit the explanatory power of “conditionality” as an engine of “Europeanization”.

Yet, how can one explain the transformation of Turkey’s asylum system so far. This may best be accounted for by the “social learning” and “lesson drawing” models that Schimmelfening and Sedelmeier briefly dwell upon. They note that the former model is driven by what they call “logic of appropriateness”. This is when actors act not out of coercion or bargaining concerns but when they believe that what needs to be done is legitimate and because they support the norms and values associated with the decision to be taken. The latter model on the other hand argues that “rule adoption” takes place because it is seen as a remedy to inherently domestic needs and policy challenges. The Turkish case seem to be best accounted for by these two models. A decade long socialization into the norms and standards advocated by the UNHCR and then subsequently various non-governmental organizations including the EU has transformed “hearts and minds” among officials. This has made them much more receptive to improvements. Furthermore these officials have also come to realize that improving the Turkish asylum system is also about, in an ironic manner, improving national sovereignty. In other words more than fifty years after having helped to draft the Geneva Convention and more than forty years after having ratified it Turkish officials are conscious that they are only beginning to reach the point where they will be able to fully implement and honor the Convention. These considerations seem to suggest that at least in the case of Turkey the “social learning” and “lesson drawing” models of Schimmelfening and Sedelmeier may offer a more parsimonious explaining for the transformation of Turkey’s asylum system and the Turkish officials dilemma “to lift or not to lift” the geographical limitation rather than the model that emphasizes the role of “conditionality” in “rule adoption”.

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<sup>56</sup> It is no wonder that the Turkish Grand National Assembly was in mid-September in extraordinary session in an effort to adopt a reform package in an effort to positively influence the Progress Report that the European Commission was due to conclude in October 2006.

## APPENDIX I

**Table 1: Applications under the 1994 Asylum Regulation, 1995 - December 2006**

Country	Applications	Accepted cases	Rejected cases	Pending cases
Iraq	14,619	4,784	5,054	4,054
Iran	27,194	16,871	2,063	7,176
Afghanistan	938	284	275	370
Russia	77	15	38	18
Uzbekistan	187	69	70	38
Azerbaijan	36	3	24	1
Other Europe*	117	51	54	3
Other**	1,226	213	304	660
Total***	44,394	22,290	7,882	12,320

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

\*\* Includes Algeria, Bangladesh, Birmania (Myanmar), Burma, Burundi, China, Congo, Egypt, Eritrea, Ethiopia, Ghana, Guinea, India, Israel, Ivory Coast, Jordan, Kazakhstan, Kenya, Kuwait, Kyrgyzstan, Lebanon, Liberia, Libya, Malaysia, Moritania, Morocco, Nigeria, Pakistan, Palestine, Philippines, Rwanda, Sierra Leone, Sri Lanka, Somalia, Sudan, Syria, Tunisia, Tajikistan, Turkmenistan, Uganda, United States of America, Yemen, Zaire.

\*\*\* Not appearing in the table but included in the total are 1,710 applications that were subsequently withdrawn.

Source: Data obtained from the Foreigners Department of MOI.

Data current as of 07.12.2006

## APPENDIX II

**Table 2: Resettlement out of Turkey by country of origin and country of settlement between 1995 and December 2006**

Country of Origin	Country of Settlement						TOTAL
	Canada	USA	Oceania	Other Europe	Scandinavia	Others	
Afghanistan	71	89	3	17	79	-	259
Iran	3,910	6,895	2,414	221	3,295	11	16,746
Iraq	865	630	1,036	664	1,478	33	4,706
Africa	64	66	-	4	9	-	143
North Afr.	3	-	-	-	1	-	4
Asia	55	26	1	-	7	-	89
Middle East	16	-	5	7	6	1	35
Bosnia-Her.	-	45	-	1	-	-	46
Others*	9	-	-	-	-	-	9
<b>TOTAL</b>	<b>4,993</b>	<b>7,751</b>	<b>3,459</b>	<b>914</b>	<b>4,875</b>	<b>45</b>	<b>22,037</b>

Africa: Congo, Eritrea, Ethiopia, Sierra Leone, Somalia, Sudan

North Africa: Morocco, Libya, Tunisia

Asia: Burma, China, Uzbekistan, Turkmenistan

Middle East: Palestine, Syria, Egypt

Others\*: Burundi, Kyrgyzstan, Jordan, Yemen.

Oceania: Australia, New Zealand

Other Europe: Austria, Britain, Belgium, France, Germany, Hungary, Ireland, Italy, Luxemburg, Netherlands,

Poland, Spain, Switzerland, Ukraine

Scandinavia: Denmark, Finland, Norway, Sweden

Others: Azerbaijan, Bosnia Herzegovina, Dubai, Indonesia, Israel, Saudi Arabia, Syria, United Arab Emirates Source: Data obtained from the Foreigners Department of MOI.

Data current as of 07.12.2006