

TEMPORARY PROTECTION IN INTERNATIONAL LAW

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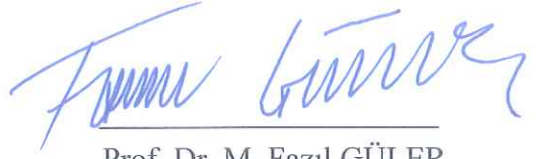
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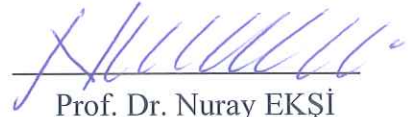
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ABSTRACT

In history, asylum movements originated from religious and ethnic intolerances, nowadays mostly due to wars among countries, civil wars, revolutions, foreigner state occupations, discriminating and repressive regimes with regards to race, religion, language and ethnic origin. Agreements, protocols, regulations and circulars have been developed nationally and internationally for creating a legal basis and giving legal descriptions of asylum and international protection. The basic convention related to asylum is the 1951 Geneva Convention and the basic protocol is the 1967 Protocol. Turkey accepted this convention and protocol with geographical limitation and put the 1994 Regulation into force. Then, as the first immigration law “Law on Foreigners and International Protection” entered into force. By taking as a basis of the Article 91 of this law, the 1994 Regulation lost its effect and was replaced by The Temporary Protection Regulation. There are three types of international protection in Turkish Law: refugees, conditional refugees, and secondary protection. Temporary protection, is not accounted among the types of international protection under the LFIP. Temporary Protection status is only provided when the Council of Ministers decides and provided to foreigners who were forced to leave their countries in mass influxes, who entered another country collectively, sought urgent protection and who are expected to return to their home countries when the life-threatening situations have passed. In its history, Turkey has hosted large numbers of protection seekers. Bosnians, Iraqis, and now Syrians are examples of temporarily protected people.

Key Words: International Protection, Temporary Protection, Temporary Protection Regulation, Syrians

ÖZET

Tarih boyunca iltica hareketleri, dini ve etnik hoşgörüsüzlüklerden kaynaklanmış, günümüzdeyse genellikle ülkeler arasındaki savaşlar, iç savaşlar, devrimler, yabancı devletlerin işgali ve ırk, din, dil ve etnik köken ayrımı gözeten ayrımcı ve baskıcı rejimler yüzünden yaşanmaktadır. Ulusal ve uluslararası düzeylerde anlaşmalar, protokoller, düzenlemeler ve genelgeler hazırlanarak iltica ve uluslararası korumaya yasal bir dayanak oluşturulmaya ve bu kavramlara yasal tanımlamalar getirilmeye çalışılmıştır. İlticayla ilgili temel sözleşme 1951 tarihli Cenevre Sözleşmesidir ve temel protokol de 1967 tarihli protokoldür. Türkiye bu sözleşme ve protokolü coğrafi kısıtlama şartıyla kabul etmiş, 1994 tarihli yönetmelik yürürlüğe konmuştur. Ardından Türkiye'nin ilticayla ilgili ilk kanunu olarak “Yabancılar ve Uluslararası Koruma Kanunu” yürürlüğe girmiştir. Bu kanunun Geçici Korumayı düzenleyen 91. maddesi temel alınarak 1994 Yönetmeliği yürürlükten kaldırılmış ve yerini Geçici Koruma Yönetmeliği almıştır. Türk Hukukuna göre üç çeşit uluslararası koruma türü vardır: mülteciler, şartlı mülteciler ve ikincil koruma. Geçici Koruma ise, YUKK'taki uluslararası koruma türleri arasında sayılmamaktadır. Geçici Koruma statüsü sadece Bakanlar Kurulu kararıyla verilebilir ve ülkelerini kitlesel akınlar halinde terk etmeye zorlanmış, topluca başka bir ülkeye giriş yaparak acil koruma talebinde bulunmuş ve hayati tehlike yaratan durumların ortadan kalkmasıyla ülkelerine dönmeleri beklenen yabancılara sağlanan koruma olarak tanımlanmaktadır. Türkiye, tarih boyunca koruma talep eden çok sayıda kişiyi ağırlamıştır. Boşnaklar, Iraklılar ve şimdi de Suriyeliler geçici koruma altına alınanlara örnektir.

Anahtar kelimeler: Uluslararası Koruma, Geçici Koruma, Geçici Koruma Yönetmeliği, Suriyeliler

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ABBREVIATIONS

ADF	: Anatolian Development Foundation
AFAD	: Afet ve Acil Durum Yönetimi Başkanlığı
AÜSBF	: Ankara Üniversitesi Sosyal Bilimler Fakültesi
CAT	: Convention against Torture
CBÜ	: Celal Bayar Üniversitesi
CEAS	: Common European Asylum System
DAFI	: Scholarship (Burs Programı)
DEMP	: Disaster and Emergency Management Presidency
DGMM	: Directorate General of Migration Management
DHS	: The Department of Homeland Security
EC	: European Council
ECRE	: European Council on Refugees and Exiles
ECtHR	: European Court of Human Rights
EMHRN	: The Euro-Mediterranean Human Rights Network
EU	: European Union
FOM	: Federal Office for Migration
HEKS	: Swiss Interchurch Aid
İBD	: İstanbul Barosu Dergisi
ICMC	: International Catholic Migration Commission
ICRC	: International Committee of the Red Cross
IFRC	: The International Federation of Red Cross and Red Crescent Societies
IMR	: International Migration Review

İMÜHFD	: İstanbul Medipol Üniversitesi Hukuk Fakültesi Dergisi
IOM	: International Organization for Migration
IRO	: International Refugee Organization
İŞKUR	: Turkish Employment Agency
LFIP	: Law on Foreigners and International Protection
LWPF	: Law for Work Permit for Foreigners
MEDA	: Mesures D’accompagnement
MİT	: Milli İstihbarat Teşkilatı
MOI	: Ministry of Interior
MSB	: Swedish Civil Contingencies Agency
NAP	: National Action Plan
NATO	: North Atlantic Treaty Organization
n.d.	: No Date
NGO	: Non-Governmental Organization
OAU	: Organisation of African Unity
OG	: Official Gazette
OSAR	: Swiss Organization for Aid to Refugees
RSD	: Refugee Status Determination
SAH	: Swiss Workers Relief Agency
SBED	: Sosyal Bilimler Enstitüsü Dergisi
SFH	: Schweizerische Flüchtlingshilfe
SÜHFD	: Selçuk Üniversitesi Hukuk Fakültesi Dergisi
TCL	: Turkish Citizenship Law
TDAD	: Türk Dünyası Araştırmaları Dergisi
UDHR	: Universal Declaration of Human Rights

UN	: United Nations
UNDP	: United Nations Development Program
UNHCR	: United Nations High Commissioner for Refugees
UNICEF	: United Nations International Children's Emergency Fund
UNRRA	: United Nations Relief and Rehabilitation Administration
UNRWA	: The United Nations Relief and Works Agency
USCIS	: U.S. Citizenship and Immigrant Services
VEDF	: Van and Environs Development Foundation
VSJF	: The Association of Swiss Jewish Welfare
WFP	: Work Food Program
WHO	: World Health Organization
YOS	: Yabancı Uyruklu Öğrenci Sınavı

INTRODUCTION

Changes in political systems and national frontiers, wide-spread violence, civil wars, human rights violations, country invasions, ecological imbalances, natural disasters and similar dynamics cause people to migrate from their home country to another country which offers socio-cultural alternatives. Nowadays, data and different sources about migration, show that human migration is becoming widespread and varied all around the world (Kartal & Başçı, 2014, p.275)

Migration has been the driving force behind the emergence and changes of tribes, clans, nations and other human communities in world history. Migration is categorized in a number of ways: internal migration and emigration, forced migration and voluntary migration, individual migration and mass migration, regular migration and irregular migration, continuous migration and restricted migration (Töre, 2016, p. 2). And, there are many different types of immigrants. But at the core of international migration lie the refugees whose numbers are expected to increase even more in the near future.

The idea of people having the opportunity to protect their rights and liberties emerged during the nation-state building process in the 20th century when there were so many wars and conflicts. The states realized the importance of providing protection to people who coming to their borders. This developed a kind of collective consciousness. Because of this consciousness, The League of Nations, established after the First World War, worked on providing international protection for groups who were victims of wars

and conflicts. In this way the idea of international protection entered into international law.

The Second World War increased the number and diversity of refugee groups. As such, the refugee concept was raised to a universal level. While the states forged ahead towards establishing laws for human rights protection, they included the right to asylum, into the human rights. As a result of the developments and needs an agreement was signed (1951 Geneva Convention) specific to refugees as well as asylum seekers, and the “refugee” concept gained basic recognition. More inclusive, objective and abstract arrangements on refugee protection were realized with the United Nations which was established after the Second World War.

Asylum movements originated from religious and ethnic intolerances in ancient history. Nowadays, however, asylum movements appear out of wars between countries, civil wars, revolutions, foreigner state occupations and regimes that discriminate and repress with regard to race, religion, language and ethnic origin. Asylum has always been and will be a problem for all countries. Today, we can easily see that states are unable to prevent global migration movements. The ongoing conflicts in many parts of the world and rapidly growing mass migration put states in difficult situations. The security oriented policy of states, which is based on threat perception and law making processes, fell behind the new generation of mass movements. While Turkey is dealing with mass asylum flows from Syria, is also realizing better the importance of international protection by taking the responsibility of Syrians besides their own citizens. In this regard, states must work together to find solutions to the causes of asylum and share the responsibility of protecting the asylum seekers.

In the field of law, firstly, the 1951 Geneva Convention is a basic convention related to asylum. Then the subsequent 1967 Protocol brought an international perspective to the asylum subject and defined and regulated refugee status. One of the most important elements of the Convention was the principle of non-refoulement or the duty of states providing international protection to not return refugees to their country if there is a risk of persecution. Other key elements of the Convention are permanent solutions: voluntary return of refugees to their countries, placement of the refugees in a third country or settlement of the refugees to the country in which they are living.

As time passed, regional resources of International Refugee Laws, as well as the definition of the term refugee have broadened. The dissolution of former Yugoslavia enabled the determination of minimum standards for temporary protection. With the Amsterdam Treaty, the EU adopted a directive in July 2001 (Council Directive 2001/55/EC), which established an EU mechanism and minimum standards for granting temporary protection. UNHCR also published an international document on temporary protection in 1994. And in Turkey, with the Law on Foreigners and International Protection (LFIP), refugees, conditional refugees, secondary protection and temporary protection terms are defined and Temporary Protection Regulation is published on the ground of this law.

Being signatory to the 1951 Geneva Convention with geographical limitation is the basis for Turkish refugee law. Besides this agreement, Turkey has developed its law through refugee law applications, various regulations and circulars. Turkey has changed its approach to Temporary Protection over time. Turkey ratified the 1951 Geneva Convention and the 1967 Protocol with geographical limitation. Additionally, a Regulation was drafted in 1994, the “1994 Regulation”, by taking the 1951 Geneva Convention and 1967 Protocol as a basis. Then the 1994 Regulation was amended in

2006. On 22 October 2014 the Regulation was replaced by The Temporary Protection Regulation. This new regulation includes specific provisions on registration and documentation procedures for the temporary protected people.

Turkey made a National Action Plan in the field of asylum and migration and started preparing the LFIP. The arrival of the Syrians was so sudden and they were so populous that the Turkish government was forced to change its current immigration policy. The legislation is still in the process of being restructured due to migration flows. The biggest indicator of this change is The LFIP, the first single immigration law. The Directorate General of Migration Management was created as a part of this law. LFIP was passed on 4 April 2013. The LFIP brought innovation to Temporary Protection in cases of mass influxes. Specifically, LFIP Article 91 regulates Temporary Protection. Temporary Protection issues continue to be important in Turkey as exemplified by the mass influxes of Bosnians, Iraqis and Syrians. Today, Turkey is facing one of the greatest immigrations in its history. Millions of Syrians entered Turkey in 2011 as temporary protected people because of the effects of the Arab Spring in Syria. Now, Turkey is the country which hosts the largest number of protection seekers. The Syrians are the latest example of temporary protected people and the first case that comes to mind today when someone talks about refugees.

The concerns about irregular migration and the threat of international terrorism prevent the debate about asylum and refugee protection and result in human rights negligence. Today, we have reached a point where the influx turned into a dilemma that affects many countries and mostly Turkey. And yet, there is no consensus on a crisis management that may balance the interests of all countries.

In sum, over the last century, globalization and countries' interactions have increased; therefore, shapes and concepts of international protection have diversified and become more detailed. These concepts have often been and are still mixed up. Turkey has gained experience about immigration throughout its history. Those who have demanded protection have always been in its history, but as I said, the definitions have been very restricted. Even when there was no definition of temporary protection, Turkey defined Bosnians and Iraqi peshmergas as guests and provided temporary protection to them. Turkey has now defined protection separately with the LFIP. Temporary protection is described in detail a separate regulation "temporary protection regulation". Due to Turkey's geographical location, the high number of neighbors, various problems of neighboring countries, the fact that Turkey is a transit country that receives a lot of migrants, and considering that most of these migrations are temporary, it is very reasonable that such a regulation has been prepared in addition to the LFIP .

After the arrival of the Syrians, the term temporary protection has become usual. Even though Syrians are supposed to return to their country at the end of the war, Turkey is trying to serve them as if they were going to stay in Turkey, primarily by protecting their life security, providing their basic human needs and to provide needs such as education, health care, social cohesion and vocational training. Turkey seems want to retain this legal and moral approach. However, this internal conflict in neighboring countries may lead to internal conflicts or other problems in Turkey as well. Unfortunately, Turkey is in a fragile period and presently is struggling with political, economic, and social problems as well as terrorism. If the majority of Syrians stay in Turkey, this may trigger other already existing problems such as struggling, minority problems and the intervention of great powers over Turkey. This may even go as far as efforts to divide of the country. We can also easily see that the terrorist attacks

can destroy social peace. Therefore, Turkish politics must be more democratic and transparent in this regard. Workshops and seminars should be developed and accelerated. Immigrants and immigration forms may change, and even new definitions may emerge, but it will never end, that's for sure. In the global world, manmade disasters have changed and now countries or communities are fighting directly or indirectly (using other ignorant groups and newly developed weapons to achieve their imperialist goals). We do not know what kind of changes will happen in the future but we all know that migration will not end entirely, only the forms can change, or the amount of migration can increase or decrease in terms of protecting the victims.

One more time, after the Syrian crisis, it is clear that the international system has to change its approach towards mass influxes. In the Syrian case, the international system has failed and does not know what to do. The mass influxes have reached the point that it threatens not only Syria and Syrians, but also surrounding countries as well as Europe. The civil war in Syria has resulted in political, economic and social instability and disturbance in the region. It is expected that the international system must play a role in the solution of the problem. Presently, Syrians have mostly migrated to Turkey, Jordan and Lebanon. Economic sharing, social problems, health problems like epidemic diseases and ethnic and sectarian imbalances cause reactions among the people in all those countries. Especially meeting economic needs and integration of Syrians in society is getting harder. It seems a political revolution could take place by way of a federal system in Syria. Then, this means, a new wave of migration could take place. For this reason, work in the international community must be more intense. This crisis in Syria should be terminated politically by forming an international association or by a burden sharing mechanism. Particularly new migration waves should be

prevented. I think at least one way to achieve this is in establishing a safe zone at the Syrian border.

In this study, I will first talk about the development of international migration, refugee law and international protection, and move on to temporary protection which I will specifically be describing by making the necessary definitions, with references to the historical developments basing them on legal documents and giving examples by taking the perception of the international community and Turkey into consideration. This thesis will also specifically address the rights and obligations of the Syrians as temporary protected people and Turkey's position with respect to this situation.

As a result, the main objective of this thesis is to analyze and understand the history and new developments of "Temporary Protection in International Law". This thesis offers a general historical background and explanation on international protection and temporary protection applications and examples in Turkey in the past and in present time, by discussing legal arrangements, definitions and classifications.

The thesis has two main chapters. The first Chapter is entitled International Protection (Protection in General and Protection in Turkey). The second Chapter deals with: Temporary Protection (Definitions and Characteristics of Temporary Protection, Regulation on Temporary Protection and Examples of the Temporary Protected People in Turkey).

CHAPTER ONE

INTERNATIONAL PROTECTION: AN OVERALL ASSESSMENT

1.1. The Concepts of “Foreigners”

“Foreigner” involves not only foreign state citizens, but also foreigners with a special status such as stateless persons, immigrants, refugees, NATO members, employees of international institutions and diplomatic representatives (Ekşi, 2013b, p. 2-4). International Law Institute defines a “foreigner” who has no right to claim citizenship of the state¹. The Law on Foreigners and International Protection No. 6458 also defines foreigners. According to Article 3 (ü) of the LFIP provides that foreigner is a person who does not have citizenship bond with the Republic of Turkey (Ekşi, 2015, p. 40).

Foreigner status is determined by citizenship criteria. When a citizen of a state leaves the land of that state and becomes subject to the jurisdiction of another state, that person gains the status of “foreigner” in respect to the state she or he entered and gains the status of “citizen abroad” in respect to the state she or he is subject to jurisdiction (Çelikel & Gelgel, 2014, p. 18).

A person seeking asylum is considered a foreigner in the country that he or she took asylum because he had left the country of his nationality and he was forced to escape his normal residence (Office of the United High Commissioner for Refugees, 1998, p. 21-22; Hathaway, 1991, p.29).

¹ Institute of International Law, congregates in Geneva in 1892 for adopting some rules for the deportation of undesirable aliens by using substantial English and American practice (Gregory & Van Dyne, n.d., p.126)

Many people all over the world leave their countries of origin for political, religious, racial or other reasons and seek asylum in other countries, usually in neighboring countries. Countries that have signed relevant international conventions are obliged to provide asylum seekers accommodations and other services from the very first moment they apply for asylum until a final decision is made (The Ministry of Interior of the Czech Republic, n.d., p. 1).

In spite of many migration movements throughout history, the term “refugee” only appeared at the end of the 19th century, when state borders became clearer and more protected. When national borders became more important, countries had to respond to the migration movements under more controlled conditions and refugee laws became more important. When migration movements became a worldwide problem, countries tried to get together and prepare international laws that all the countries can agree upon and obey (Kaynak, 1992, p. 24). According to Article 14 of the Universal Declaration of Human Rights, “*everyone has the right to seek and benefit from asylum in other countries from persecution*”.

1.2. The Concept of “International Protection”

The first priority and the most important duty of States are to protect its citizens. In case where the governments fail to protect their citizens or did not want to protect them, the individuals may, due to seriously violated personal rights, have to leave their houses, friends, some of their family members, traditions, past memories and look to stay in another safe country. If people become stripped of fundamental rights by their own governments due to non-protection, the international community undertakes the responsibility of governments, to ensure respect for fundamental rights. “International protection” means securing the safety of asylum seekers. States that have signed 1951

Convention are obliged to protect the asylum seekers. States are obliged to apply these provisions of fundamental protection principles irrespective of race, religion or country of origin. States should not repatriate and banish such applicants. Even those states not being party to the Convention are obliged to comply with the non-refoulement principle. In order to bring a solution to the problems that cause the asylum seekers flow and to share the responsibility of protecting them, States must work together. In general, once internal conflicts or sizable natural disasters have led to an international refugee issue, reconstruction of peace and safety in such countries are of the responsibility of all States, particularly neighboring countries (Künçek, 1997, p. 11, 16).

The concept of international protection is a general term which identifies different types of people seeking asylum. Initially it was mentioned only refugees. But there after new types of asylum seekers have been emerged. A person who has 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 to or unwilling to benefit from 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 to or, owing to such fear, is unwilling to return to it”* (United Nations Human Rights-Office of the High Commissioner, n.d, p.2), and demands asylum in another country and asylum demands are approved by the authorities of that country is called a refugee under 1951 Geneva Convention. The persons whose refugee status request are at the stage of evaluation by the authorities of the country she or he escaped to or took shelter in, for the reasons set out in the definition of “refugee”, are called asylum seekers. Basically, the terms “refugee” and “asylum seeker” are synonyms but they differ in practical use. The term “asylum

seeker” is used for people who make applications to gain legal status and whose applications are under evaluation (Buz, 2002, p. 7).

On the other hand, persons who voluntarily leave his or her country (the state of his or her nationality or domicile), go to another country with purpose of settling there within information and approval of that authority and become subject to a special legislation until she or he acquires nationality of that state are called immigrants (Çelikel & Gelgel, 2014, p. 23). If they are moving for financial reasons, for a better life than they had in their home country, they would be classified as “economic migrants”. Economic migrants normally leave their country voluntarily to seek a better life. Migration may also have personal reasons, based on a relationship such as a family reunification or transnational marriage (The Magazine of Refugee, 2007, p. 2; Wikipedia, n.d.)

By the end of 2015, the number of internationally displaced people, refugees and asylum seekers was the highest in the post-World War 2 era, when an estimated 65,3 million people were forcibly displaced worldwide as a result of various reasons such as persecution, conflict, and human rights violations. This massive increase was because of Syrian war. There were 21,3 million refugees worldwide at the end of 2015, 16,1 million was under the mandate of the United Nations High Commissioner for Refugees and 5.2 million Palestinian refugees registered by UNRWA. These numbers are the highest numbers as per UNHCR, since 2001. During the year of 2015, conflicts and persecutions forced an average of 24 people every minute of every day to leave their homes and seek protection, either within the borders of their countries or in other countries. In 2015, there were 1.8 million new refugees, compared to 1.2 million in 2014 and half of the refugee population were children below 18 years old. Some 63,9

million persons were of concern to UNHCR by end 2015. There were 40,8 million internally displaced people and UNHCR's officers estimate that there were over 10 million statelessness persons in the world, even though statelessness remains hard to quantify with precision in 2015 (UNHCR - The UN Refugee Agency, 2014; UNHCR, 2015b, p. 2,6). 12,4 million individuals were estimated to be newly displaced due to conflicts or persecutions (UNHCR, 2015b, p. 2,6).

In 2015 the country hosting the world's largest number of refugees was Turkey, with 2.5 million refugees. Turkey is followed by Pakistan, Lebanon, Islamic Republic of Iran, Ethiopia and Jordan. In 2015, developing regions hosted 86 percent of the world's refugees under UNHCR mandate. The least developed countries provided asylum to 26 percent of the global total. By the end of 2015 Syria had become the world's top source country of refugees (11,7 million). Till 2013 Afghanistan retained her position as the biggest source country, but now almost one out of every four refugees is Syrian. So, as a source country, Syria is followed by, Afghans, Colombians, Congolese, Iraqis, Nigerians, Somalis, Sudanese, South Sudanese and Yemenis (UNHCR, 2015b, p. 3, 6).

By the end of 2015, 3.2 million people who made an application for asylum were waiting for a result and 2.0 million people made new applications for asylum and Germany became the largest recipient of new individual applications followed by USA, Sweden and Russian Federation. Most of the refugees worldwide came from three countries: Syrian Arab Republic (4.9 million), Afghanistan (2.7 million) and Somalia (1.1 million) (UNHCR, 2015b, p. 3). A sharp increase occurred in the number of asylum-seekers applying to industrialized countries in 2014, mostly because of armed conflicts, deterioration in security or human rights concerns in several countries. Syrians

have been the largest group of asylum seekers in industrialized countries. An estimated 866,000 asylum applications were recorded in industrialized countries in 2014, a 45 % increase than that of the previous year. This is the second highest annual level since the early 1980s since when, UNHCR started collecting statistics on asylum seekers systematically. Almost 521,000 registered asylum claims were recorded in 2014, Germany, the United States of America, Turkey, Sweden and Italy being the top five receiving countries, accounting for six out of ten asylum claims submitted in 44 industrialized countries, as covered in UNHCR report. 570,800 new asylum applications were filed in 28 member states of the European Union (EU) in 2014, a 44% increase from 396,700 applications in 2013 (UNHCR, 2014, p. 7, 9). The number of Syrians under temporary protection in Turkey officially reached 3 million.

1.2.1. Right to asylum.

Right to asylum is a state's right and it is left to discretion of states to grant. The convention of 1951 does not oblige states to grant the right to asylum but it regulates rules upon receiving an application for asylum. Right to asylum items from human right norms that may be requested for protection, for right to live or to preserve physical integrity of persons under danger in the country they live in (Peker & Sancar, 2000, p. 8-9, 48).

Right to asylum determines the right of a state to allow foreigners escaping from pressures in the state of their nationality or domicile to come and stay in. Addressing an asylum request needs to be evaluated under international obligations and national legislations of states. A state may be obliged to grant asylum as a result of an agreement with another state (Pazarci, 2013, p. 206-207).

1.2.2. Protection responsibilities.

A person may seek asylum when he leaves the country of his or her state of nationality or domicile for discriminative reasons, adverse legal proceedings or pressures and enters another country, a country's diplomatic representation or consulate, warship or state aircraft of another state and seek protection from that state. Asylum may also take place in massive numbers when people escaping from various pressures, war or internal conflicts seek solace in other countries.

In order to bring a solution to flow of asylum seekers and to share the responsibility of protecting them, all involved state parties must work together with host countries that have heaviest load. Internal conflicts and large scale natural disasters generally lead to international refugee issues. Reconstruction of peace and safety in such countries are responsibility of all states, mostly neighboring countries (Kaya, 2008, p.14). Obviously other countries, United Nations, national and international Non-Governmental Organizations (NGOs) should also share such a grand responsibility. The heaviest load on the back of countries during a mass influx is asylum demands. It should be remembered that human rights lie on the basis of humanitarian relief activities and humanitarian relief should also make contribution in defense of these human rights. An effective protection can be strongly achieved when NGOs work together with state parties and international organizations fill in the gaps, in the areas where they are the strongest (BMMYK ve STK Ortakları, 2003, p.22).

1.2.3. Types of international protection.

1.2.3.1. Refugees.

Refugees are people who are under perception that they are under pressure for their race, religion, social or political opinions, lost trust in their states, and believe that their states do not treat them equally. So, they leave their country to seek asylum in another country. According to Article A-2, amended by 1967 Protocol of Article 1 of 1951 Geneva Convention on Legal Status of Refugees, refugee means “*a person who has 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*”. Geneva Convention has been brought into force for the protection of people who were displaced within Europe especially after Second World War. The Convention considers the people escaping from the Soviet Union as special target group (Beter, 2006, p. 13 ; Altınışik & Yıldırım, 2002, p. 31-33).

And Article 61 of the LFIP defines refugees similarly “*A person who as a result of events occurring in European countries and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his citizenship and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country; or who, not having a nationality and being outside the country of his former residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it, shall be granted refugee status upon completion of the refugee status determination process*”.

1.2.3.2. Conditional refugees.

The distinctive definitions of “refugee” and “asylum seeker” have undergone major changes with LFIP. Foreigners who are described as conditional refugees in LFIP were called asylum seekers before LFIP entered into force. The description of “asylum seeker” has been preserved and the term “conditional refugee” was introduced instead of the term “asylum seeker” (Ekşi, 2013b, p. 12). In international law, asylum seeker is a person who leaves his or her country for reasons that are specified for refugees and whose asylum demand is under evaluation by the relevant authorities of the country he or she escapes to take refuge in and has not gained refugee status yet. The concept ‘asylum seeker’ was initially used in Turkey for describing people coming from outside Europe and people who qualify as asylum seeker or refugee and has applied to gain legal status and whose applications are under evaluation (Buz, 2002, p.7; Ekşi, 2013b, p.12).

LFIP describes “conditional refugee” in Article 62 as *“a person who, as a result of events occurring outside European countries and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his or her nationality and is unable or, owing to such fear, is unwilling to benefit from the protection of that country, or who, not having a nationality and being outside the country of his or her former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it shall be recognized as a conditional refugee following the status determination procedures. A conditional refugee shall be allowed to reside in a country until he or she is resettled to a third country”*. So, the people with conditional

refugee status are settled in a safe third country, provided with temporary residence permits to stay in Turkey until settlement process has been finalized.

1.2.3.3. Complementary (secondary or subsidiary) protection.

Both in the history of Europe and in the international arena, complementary protection has long featured in the past. Persons who are not technically “refugees” but who are still in need of protection were allowed to remain in some countries. Some states may allow non-conventional refugees to stay in their territories if it would not be advisable or possible to return them to their countries of origin. Article 33 of the 1951 Convention asserts that an individual should not be returned to serious harm in their country of origin. Permission to remain may also be granted under circumstances such as inability to obtain travel documents, family connections outside of international protection needs or for reasons like age and health. Although this protection is humanitarian in nature, it is not bound by the legal concept of complementary protection since it is not based on an international protection obligation (McAdam, 2005, p. 1-2).

Protection originating from European Court for Human Rights (ECtHR) or standards stated in European Union (EU) Acquis is called secondary protection. This type of protection has facilitated transfer of ECtHR standards to member state legislations. Secondary protection has been considered as “complementary” to refugee protection. In practice, the fact that secondary protection is considered less binding and provides fewer rights than those entitled in the Geneva Convention, constitutes a weak link of EU Acquis (Ergül, 2013, p. 205).

If there is an international protection need, this may be granted by states under the legal form “Complementary protection” outside of the 1951 Convention framework based on general humanitarian principles or a human rights treaty and it may provide support to individuals running away from violence on a larger scale. Complementary protection simply operates as a form of human right or humanitarian protection triggered by states’ expanded non-refoulement obligations. Certain people may be excluded from protection in the same way exclusion clauses assert in the Refugee Convention in codified forms of “complementary protection” such as “subsidiary protection” in the EU, temporary protected status “withholding of removal”, Convention Against Torture (CAT) in the US and persons in need of protection in Canada where the rights and status they are entitled to are also specified. Complementary protection is more like a benefit for extra protection rather than a form of protection or an end status granted to an individual. Its main function is to provide an alternative basis for protection eligibility. Therefore it does not dictate a lower quality of status or a shorter duration but merely evaluates international protection needs more extensively than the 1951 Convention (McAdam, 2005, p. 1-2).

Turkey approved the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 10 February 1984². According to Article 3 of this convention, *“no signatory state shall send back, deport or repatriate any person to another state which gives the opinion to have essential reasons regarding danger of torture”*.

Subsidiary protection defined in LFIP may also be called as complementary protection. Subsidiary protection as described in Article 63 of LFIP would be granted to

² Official Gazette Dated: 10.8.1988 No: 19895

“a foreigner or a stateless person who could neither be qualified as a refugee nor a conditional refugee, yet who is unable or, due to the threat concerned, is unwilling to benefit from the protection of his or her country of origin or the country of habitual residence, shall be granted subsidiary protection status following the status determination procedures if he or she will face;

- The death penalty or execution,

- Torture or inhuman or degrading treatment or punishment,

- Serious threat to his or her person by reason of indiscriminate violence in situations of international or internal armed conflict, upon return to his or her country of origin or country of habitual residence” (Ekşi, 2015, p. 163).

1.2.3.4. Temporary protection.

Protection and asylum problems of seekers are in fact problems of people leaving their countries as a result of losing confidence in the authority of their country in every aspect. It is a problem of creating a legal and economically sufficient environment along with a social protection. There may be periods of temporary status called “temporary asylum” where a temporary asylum opportunity is provided by the authority of the country for people with no refugee status coming from difficult humane conditions (Sivil Toplum Örgütlerinden Beklenenler Sempozyumu, 2006, p.9).

Temporary protection is an exceptional measure to provide and protect displaced people who come mostly through a mass influx, and need immediate help and protection and who are not from European countries and unable to return to their country of origin (European Commission- Home Affairs, 23.6.2015). During a sudden and massive refugee influx cases if it is discovered that group members escaping from a country for

the same reason, their statutes are altogether defined as temporarily protected people (BMMYK ve STK Ortakları, 2003, p.44-45).

Refugee status, asylum-seeker status and secondary protection status are individual. Complementary protection (also mentioned as secondary protection) is different from temporary protection however, it is a norm of protection provided to foreigners who are left out of the scope of 1951 Geneva Convention and 1967 Protocol (McAdam, 2007, p. 1-2). Temporary protection is urgent protection granted for a limited period to foreigners who are forced to abnegate his rights, come in mass influx, cannot turn back to their countries and seek urgent temporary protection. Complementary protection, on the other hand, is not an urgent or temporary instrument but protection granted to individual foreigners who cannot be deported to the country for the risk of torture, inhuman or humiliating and derogatory treatments as per non-refoulement prohibition of international law (McAdam, 2007, p. 3).

Temporary protection is provided to people who come in through a mass influx or individually during the period of mass influx. Determining the protection type is important in terms of determining Turkey's obligations and of determining the rights and liabilities of the ones granted international protection (Ekşi, 2012a, p. 4; Ekşi, 2013a, p. 51-52). For example, the terms "refugee", "asylum-seeker" or "guest" cannot be used for the Syrians in Turkey. Nevertheless, the Syrians who came with a mass influx and demand asylum are not asylum-seekers because of the fact that our country practices 1951 Geneva Convention and its annex of 1967 New York Protocol with geographical limitation. Thus, in order to grant refugee status to a foreigner who demands asylum from Turkey, this foreigner should be coming from Europe. But presently and in the past, like Syrians, people coming to Turkey escaping from Bosnia

Herzegovina war, Iraq war or violence in massive influx must be considered as “temporary asylum seeker” status. These people (Bosnians, Iraqis, and Syrians) are provided with temporary asylum and protection until violent environment is eliminated, state order is established and the state has the possibility to protect them (Sivil Toplum Örgütlerinden Beklenenler Sempozyumu, 2006, p. 9-10).

Escape from persecution inherits great individual risks. When faced with a mass influx of refugees, some states may seal their borders or use force to stop refugees seeking asylum. Some state authorities who do not accept refugees in their countries may intercept sea transportation of refugees, or may send them back. Such large influxes cause constraints for the refuge country with regards to economic, financial, environmental and social resources. When it becomes possible to safely return the people demanding temporary protection back to their country of origin, the protection must be lifted by the approval of UNHCR. Refugee status may be provided to people who do not wish to return to their homes after a reasonable time (BMMYK ve STK Ortakları, 2003, p.43-45). Protection problems of refugees can be solved when they voluntarily return to their countries, when they obtain citizenship of the country they took refuge in or when they are settled in other countries (Sivil Toplum Örgütlerinden Beklenenler Sempozyumu, 2006, p. 9-10).

The need for a special procedure to deal with mass influxes of displaced people, was seen during the 1990s, during conflicts in former Yugoslavia and Kosovo. At that time the EU accepted The 2001 Directive on Temporary Protection which is based on solidarity between EU states (European Commission- Home Affairs, 23.6.2015).

1.3. Historical Developments of International Protection

1.3.1. History of international protection: a general overview.

Asylum problems have always been important issues and always will be subjects requiring attention for all countries in the world. As long as the world exists, people will want to leave the lands they live in and go to other places or countries seeking a better and safer life as a result of natural or man-made disasters. Normally, states protect the rights and physical security of their citizens and the people in their country. The people seeking asylum from another country are the ones who cannot benefit from protection and citizenship rights of their country of citizenship as they leave their country with or without their will. When people are under vital danger, distrust, pressure or vagueness in the country they live in and if there are internal conflicts, political disputes, ecologic imbalances, ethnic and religious disputes or war in their country and these situations make their life conditions difficult or lower their life quality, people seek temporary or permanent solutions by searching for asylum and go to safe places or enter into countries they want to take refuge statue legally or illegally. The most typical characteristic of this situation is “despair”. In despair, people are forced to leave their families, friends, memories, homes, properties, graves of their ancestors and forced to spend most of their lives deprived of feeding, health, education and social services.

People live in societies to easily overcome various problems. However, from time to time, they may be subject to pressure, violence and persecution by their society they live in or by ones holding power as a result of living collectively. This tendency may create a group of people to escape and seek asylum. It is old as history of humanity, asylum seekers have been encountered in many traditions, scriptures and social or religious books of various old societies. We come across sets of rules

regarding asylum issue under various names or witness it causing problems in each era. As early as in 2000 B.C., in a period when borders of states are not clearly defined, we can see that a set of agreements exist for asylum seekers. This asylum issue also appears in Hittite and Aztec scriptures as an important article subject to agreements. For example, it was clearly stated in an agreement made between a Hittite king and that of another country that “*a refugee coming from the signatory country to his or her own country cannot be sent back*”. According to the King, it is not righteous to displace a refugee from Hittite lands. In 19th century B.C., another Hittite King was exiled by his uncle and sent to Egypt as refugee.

The principle of “not sending back” used today was also used by Aztecs as in script “*do not send back a captive seeking refuge in you for protection, she or he can live with you and you do not mistreat him/her*” (Odman, 1995, p. 6-8).

The first regulations similar to the modern asylum procedures were introduced by Justinian I (A.D. 527-565), who recompiled and regulated the Roman Law. The principle accepted by Justinian was that people who are not charged with serious crimes should be bestowed the right to asylum. In ancient times, acceptance of refugees was considered sacred since this was considered as respect to God or religion. Then the right to refuge was considered within the authorization of states. As the monarchs got stronger, the number of asylums seekers was increased, large migration and asylum movements started to occur upon threats to tradition and beliefs of minorities. The asylum phenomenon was also included in religious books of Abrahamic religions (Altınışik & Yıldırım, 2002, p. 5).

In the Islamic history, the first believers were accepted refugees from Ethiopia when pressure on them reached to a persecution level and then they migrated to Medina.

This fact constituted an important milestone in the Islamic history. Similarly, the fact that the Ottoman Empire granted right of asylum to Jewish refugees escaping from Spain constituted an outstanding example of humanity for the members of that religion. In ancient times, sacred places undertook the mission of being an asylum center however, as monarchs developed, granting asylum was considered as a state right to authorize (MAZLUMDER, 2005, p.7; Helsinki Yurttaşlar Derneği, n.d., p.1).

The first examples in modern era appeared in 30 Years' Wars (1618-1648) and in the massacre of 1685 in France which were based on religious reasons on the surface but were actually originated from conflict of political domination claims. In the first case, 150 thousand Protestants were forced to leave their homes in Austria and Bohemia; and in the second case, the number of Huguenots leaving their countries is assumed to be two times more than that. In fact, forced migration of Puritans and other religious groups who could not find safety and freedom in their countries constitutes the basic reason for establishment of the United States of America (Peker & Sancar, 2000, p.3).

Since 1648, the Peace of Westphalia, international legal system has been based on inviolability of the nation-state. The nation-state system continues to hold the power and authority in international relations. In the Grotian tradition of international law, Dutch Humanist Hugo Grotius (1583-1645) claims, that for a state to exist it needs to have a population, a territory and the ability to govern itself, only then it may be considered an independent state and assume sovereignty in legal terms. A sovereign state may enter into relations with other states but transnational activities such as trade, migration and cross-border investment may challenge the authority of the nation-state and the sovereignty. The principle of sovereignty and territorial boundaries may be

breached by the unauthorized movement of people across national boundaries in the form of migration. Almost everywhere in the world, except for some parts of Western Europe, national borders are highly respected and they are the representatives of a basic organizational element of the international system. The ethnic make-up of a society may change due to migration which may cause the “demographic boundary maintenance regime” to be disturbed, which would not be the case in trade of goods or international financial flows. It may become very difficult for a state to define its population if too many foreigners start living on its land. The local community may feel unsafe, and there may be a social or political resentment against immigrants. Because of all these causes, according to Huntington in 1996, *“migration can be seen as a threat to national security, and it can lead to conflicts within and between states. Therefore the liberal paradox: the economic logic of liberalism is one of openness, but the political and legal logic is one of closure”* (Hollifield, Fall 2004, p. 192).

Asylum movements, which mostly originated from religious and ethnic intolerances in ancient history, now appear mostly in the existence of wars, civil wars, revolutions, foreigner state occupations and discriminating and repressive regimes with regard to race, religion, language and ethnic origin (Pazarcı, 2013, p. 202-203). And, in ancient history, the procedures like passport and visas were not needed, the borders of countries were not being controlled tightly, and countries that received migrants were usually very hospitable to the people who escaped from the hard conditions in their own country. However in later days, while number of the refugees gradually increased, it became difficult for them to get acceptance (Kılıç, 1998, p. 1262). As 20th century approached, wars, revolutions, independence movements gave raise to nation-state models and eventually, migration and asylum movements also increased affecting thousands and even millions of people. The 20th century is generally considered to be

Grotian. If we look in the context of a historic perspective, it determined by the paradigm shift, the condemnation of the modern era as Hobbesian easily follows as an afterthought (Lesaffer, 2003, p.108-110).

While an ordinary foreigner with a foreign national passport and under the protection of his or her country can go back to his or her country any time, the ones demanding asylum are deprived of that right. For this reason, they need protection at international level. International regulations on asylum events were introduced in 20th century at legal level (Uluşan, 1993, p.1-2). The need for establishing an international institution and international legal system for regulating status and for taking care of refugees through international law was realized in early 20th century and it turned into an international issue to be solved.

In 1900s a huge migration wave occurred between Turkish and Hellene people during and after the Balkan war in 1912 moreover, the collapse of Austrian-Hungarian Monarch in the First World War between 1914 and 1918 caused migration of millions of people. Colonization and the back and forth movements between economic and demographic forces were the main drivers of international immigration until 1914. Unauthorized or illegal immigration was not seen as a big issue for policy makers and there were no regulations or provisions for political migration (Hollifield, Fall 2004, p.194). After the four-year civil war following the revolution of 1917, 1.5 million regime opponents had to escape from Russia and hundreds of thousands of people had to escape from their countries due to political pressure and persecution during second world war when fascists came into power in Italy, Germany and Spain (for example, hundreds of thousands of regime opponents escaped from Spain due to Franco regime following civil war in Spain between 1936 and 1939, the number of Jewish people

escaping from Germany between the years of 1933 and 1939 reached 350 thousand, the number of displaced Polish people became nearly 1.5 million) nearly 20 million people were displaced between the years of 1944 and 1951. Two million regime opponents escaped from China to seek asylum in other countries after the Chinese revolution in 1949. This century has become a time to experience sufferings of millions of massive asylum seekers as a result of various reasons such as Korean War between 1950 and 1953, Hungarian uprising in 1956, Cuban Revolution in 1959, occupation of Tibet in 1959, establishment of Pakistan in 1947 and Bangladesh in 1971, disintegration of Palestine in 1948, communist occupation of South Vietnam in 1975, Russian occupation of Afghanistan in 1980, slaughters in Iraq in 1990, civil war in Yugoslavia in 1992, Iraq war in 2003 and ongoing Syria war (Kılıç, 1998, p. 1262-1263; Peker & Sancar, 2000, p.4).

After the First World War irredentism grew which led to the national boundaries being redrawn in Europe and this resulted in new flows of migration. In the 20th century millions of people were displaced and were forced to become asylum seekers or refugees while fleeing from bloodshed in their own nations. These horrible events would mark the First World War a critical juncture in the history of international relations and migration leaving terrible memories behind (Hollifield, Fall 2004, p.197). Huge number of people leaving countries of their nationality for political views in connection with the events during and after the First World War those not wishing to return to their countries for fear of proceedings necessitated that the refugee problem must be seriously dealt with in an international area and so that, upon the decision of the League of Nations, the first example of protection and help mechanisms came out in the form of helping the people leaving a country collectively (Çelikel & Gelgel, 2014, p.19).

Norwegian explorer F. Nansen was appointed “High Commissioner of League of Nations for Refugees” to the League of Nations in 1921. The duty of the commissioner was to generally secure legal status of refugees. Following the death of Nansen, Nansen International Office for Refugees was founded in his name within the League of Nations in 1930. These institutions endeavored to provide travel certificates to replace identity cards and passports to Russians escaping from Soviet revolution and minorities escaping from Ottoman Empire and Germany during and after the First World War for temporary accommodation. Upon mass abandonment of the Nazi Germany starting from 1933 a high commissioner was appointed in London by the Council of League of Nations. Both the Nansen Office and the High Commissioner in London were closed in 1938 due to difficulties in solving the entriquet problems they encountered. The League of Nations established an Intergovernmental Committee on Refugees and a new High Commissioner to be administrated in London in 1938 (Pazarcı, 2013, p.203-204; Odman, 1995, p.17-18). An organ named United Nations Relief and Rehabilitation Administration (UNRRA) was founded. The International Refugee Organization (IRO) which was considered as a specialized institution was founded upon establishment of UN. UNRRA, Intergovernmental Committee on Refugee in London and High Commission came to an end on 31 December 1946 and their duties were transferred to International Refugee Organization. In the meantime, United Nations (UN) General Assembly accepted the status of UN High Commissioner for Refugees to deal with asylum problems. UN High Commissioner established in 14 November 1949 and come into activity in 1 January 1951. The High Commissioner aims at helping the asylum seekers and refugees return to their countries or to settle and adapt to a new country depending on their wishes. It does not deal with people migrating from disintegrated countries or with asylum situations covered by other specific institutions. United

Nations Relief and Works Agency (UNRWA) was founded for Palestinian refugees in Middle East upon the decision of 8 December 1949 by the UN General Assembly and replaced the previous organs. This organ still continues its duties (Pazarcı, 2013, p. 204-205).

The center of gravity of forced migration moved away from Europe to the third world countries and the concept of “human rights” developed institutionally. Just after the Universal Declaration of Human Rights (UDHR) 10 December 1948, various United Nations conventions formed with means and mechanisms for supervision and sanctions regarding the rights in the declaration. In this post-World War II period, UN Convention on Legal Status of Refugees regarding the “right of asylum” considered as a fundamental human right as per the Article 14 of UDHR was accepted in Geneva on 28 July 1951. This convention is accepted as a basic document and a basis or as the Magna Carta of today’s asylum/refugee laws and it has been in force since 22 April 1954. Turkey also approved the convention with Law No. 359 of 29 August 1961 and put it into force on 30 March 1962 (Helsinki Yurttaşlar Derneği, n.d., p. 1).

By the end of the 90s, asylum and migration matters were assembled under single roof of European Union through the Amsterdam Treaty³. European Union was able to make regulations that bind the states and harmonize the laws on migration and asylum. European Union countries approved a Qualification Directive, Temporary Protection Directive, Dublin Treatment and a regulation regarding migration and asylum subjects.

³ “Amsterdam treaty entered into force on 1 May 1999. With this treaty UNHCR urges EU member States to develop a consistent and coherent asylum policy of European level, ensuring protection to those who need it (UNHCR, n.d.b)

***1.3.1.1. The status of refugees and responsibilities of the state parties
according to 1951 convention.***

1.3.1.1.1. General framework of the 1951 geneva convention.

After the Second World War, the fact that the refugee problem has not been solved revealed the need for determining legal statuses of refugees. Geneva Convention was a document designed with the aim to meet the human need by determining legal framework of asylum and also to serve the objective of Cold War policies (Özdemir, 2001, p. 3). The important thing was to provide protection to the asylum seekers escaping from Iron Curtain Countries. UN Commission on Human Rights started preparatory works of the convention between 1947 and 1950. The Convention which is related to the status of refugees was accepted by UN in Geneva on 28 July 1951 with 24 unanimous votes. The Convention was opened for signature of states between 28 July 1951 and 3 August 1951 and was considered as a basis of International Refugee Law. The Convention relating to the Status of Refugees, is the first global document to have general qualification regarding refugees, has been in force since 22 April 1954 (Jaeger, 2003, p.14 ; Civelek, 2000-2001, p.101).

According to the Convention Relating to the Status of Refugees resolution consisting of 46 articles. The Convention limited the definition of refugee to a date order with the expression “the events that occurred before 1951” and allowed for the possibility of introducing a “geographic record” with a distinction of “the events occurring in Europe or in other places”. The relevant limitations put into practice in 1951 were lifted by the protocol that was put into force in 1967 allowing for the states that accepted the limitation to continue with this limitation (Peker & Sancar, 2000, p.13-14). Only Congo, Madagascar, Monaco and Turkey apply 1951 Geneva Convention

with geographical limitation. Other than these four states, the states (145 states) which accepted 1951 Geneva Convention with geographical limitation has lifted this limitation afterwards.

The Geneva Convention is of great importance as it brought an international perspective to the phenomenon of asylum and regulated minimal criteria for provision of refugee statuses. Convention of 1951 and Protocol of 1967, whose signatories are the states, are the documents which were signed by the members of United Nations; which regulate legal statuses of people who left their countries to avail themselves of minimum fundamental rights in presence of specific conditions and which address to refugees (Beter, 2006, p. 14).

Refugees need to benefit from international protection until they are subject to protection of a state and should not be sent back to a place with persecution risks. Permanent solutions are classified by the UNHCR into three categories: willing return of the refugee to their country, placement of the refugee to a third country or settlement of the refugee to the country he or she is in (Civelek, 2000-2001, p. 103).

Although the Convention of 1951 contains detailed regulations on legal statuses of refugees, it does not involve any specifications explaining whether asylum is a fundamental right or not. Therefore, the convention does not put the states under obligation to grant the right of asylum, however, it rules by regulating entitlement of the right of asylum. Also, UN Declaration on Territorial Asylum of 14 December 1967 does not mention the right of asylum as a fundamental or individual right and does not even give indication that states have an obligation to bestow refugee status. However, domestic laws of some countries involve some regulations considering asylum as an individual right. For example, the former Article 16 of the German Constitution adopted

in 1949, and before it was amended in 1993, this article guaranteed an absolute right to asylum and entitled an unconditional right of asylum with a brief, clear and plain statement: “*the ones who are subject to proceedings for political reasons shall avail themselves of the right of asylum*”. This article provided going beyond all valid human rights standards (Peker & Sancar, 2000, p.9).

The countries that provided Refugee Convention are obliged to protect the refugees entering to their lands as per the provisions of the convention. The provisions to be applied by the signatories of the Convention and the Protocol are as follows: As per the Article 35 of the refugee convention and the Article 2 of the Protocol of 1967, signatory states shall be in cooperation with UNHCR, to help UNHCR to fulfill its duties and to help implementation of the provisions in this agreement. The signatory states shall accept to provide information about their national legislation to the United Nations Secretary General (Birleşmiş Milletler Mülteciler Yüksek Komiserliği Ofisi – Parlamentolararası Birlik, n.d., p. 11).

1.3.1.1.2. Declarations and implementation of the 1951 convention and 1967 protocol in turkey.

Having accepted the Geneva Convention of 1951 with geographical limitation, Turkish Council of Ministers was adopted a Regulation, known as the 1994 Regulation, on 30 November 1994. Legislation takes into consideration latest events and human rights breaches caused by those events and rendered national regulations parallel with the stated convention. Turkey approved the Convention in a way that none of the provisions thereof can be interpreted as providing wider rights to the refugees in Turkey than the Turkish citizens. In the declaration document of the protocol states that the Turkish Government reserves the declaration provisions in Part B of Article 1 of the

Convention on the Legal Status of Refugees to be applied only for the persons who became refugees as a result of an event occurring in Europe (BMMYK, n.d.a, p. 100).

1.3.1.2. The developments on the refugee laws after 1951 convention.

Although there have been some serious changes in causes and ways of refugee movements since 1951, the Protocol of 1967 did not introduce any amendments in the context of refugee definition. Therefore; the situations of people being forced to leave their countries for reasons as civil war, economic downturn, political turmoil or natural disasters were kept outside the scope of the Convention. Following 1951, upon removal of limitations and owing to refugee phenomena outside Europe the Protocol of 1967 broadened its reach of effect and application. As a result, geographic limitations imposed by some of the signatory states on the refugees coming from outside Europe will apply as per the Protocol. The states that preserve this limitation, like Turkey, will be able to entertain their sovereignty rights, give refugee status to the persons coming from outside Europe when it is deemed necessary and not be subject to any legal obstacles. The protocol is an independent document and an inseparable part of the Convention (Uluslararası Af Örgütü Türkiye Şubesi Medya Brifingi, n.d.; Güner, 2005, p.23).

It draws attention that the regional variants of International Refugee Law have broader definitions for the term refugee. One of the most important resources is the Refugee Convention adopted by the Organization of African Unity in 1969 and it is an example text with regard to the asylum law. According to the convention, “refugee” covers any person who was forced to leave the place he or she lived to take refuge in a place other than his or her own country for reasons of external attack, occupation,

foreign domination or events that threaten public order in part or all of the country of his or her nationality (Peker & Sancar, 2000, p.14).

In the Cartagena Declaration of 1984, people leaving their countries for their lives, safety or freedom was threatened as a result of widespread violence, external attacks, internal conflicts, widespread breaches in human rights and events disrupting public order were considered as refugees, as it also was within the scope of 1951 Convention and 1967 Protocol. There is a comprehensive definition of refugee in the Declaration on Territorial Asylum of 1977 with the seal of European Council. The Declaration provides for entitlement of right of asylum for “humane” reasons aside from the criteria set out in the Convention of 1951 (Peker & Sancar, 2000, p.15).

1.3.1.3. The Leading organizations and eu for dealing with refugee problems and international protection.

1.3.1.3.1. United nations high commissioner for refugees.

Protection of the people demanding asylum at international level has been a topic of continuous effort from past to present. To address the issue, “International Refugee Organization” was founded temporarily with the decision of 15 December 1946 of the UN General Assembly in order to help people having difficulties in leaving their countries by being affected by the new political geography after the World War II. The above mentioned organization was repealed on 31 December 1951 and “United Nations High Commissioner for Refugees” was founded on 1 January 1951 upon the decision of 14 November 1950 by the UN General Assembly (Öztürk, 1991, p.38). There is also an organization related to UN, the United Nations Relief and Works Agency for Palestine Refugees (UNRWA), which was founded on 9 December 1948

and still continues its activities in certain regions of Middle East, providing services of accommodation and protection for refugees in cooperation with local governments (Karşlı, 2011, p.63).

United Nations High Commissioner for Refugees (UNHCR) is a humanitarian and nonpolitical organization. UNHCR is not (and does not want to be) a supranational organization. Therefore, it cannot undertake the protection duty that must be provided by states. The main duty of UNHCR is to ensure that the states are aware of their obligations to protect the refugees and the ones demanding asylum and that the states act in accordance with these obligations. International protection duty of UNHCR includes protection of the most fundamental human rights, protection of the ones seeking asylum and finding permanent solutions for their problems and to protect their rights of not being sent without their will to the country they escaped for fear of being subject to persecution (UNHCR, 11.1.2009). Today, UNHCR provides help and protection to those escaping in large groups and demanding asylum. In addition to its protection role, UNHCR also coordinates provision of shelter, water, food and medical care in emergencies (UNHCR Türkiye Temsilciliği, 2008, p. 9). By the end of 2015, the population under UNHCR's responsibility was 63.9 million persons in the world, taking account of new displacements, durable solutions, legal and demographic changes, improved availability of data, and revised estimates (UNHCR, 18.6.2015, p. 5; UNHCR, 2015b, p.2).

In mass refuge cases as encountered during Balkan crisis when millions of people escape from their homes and try to take refuge in another country, UNHCR offers a faster and simpler mechanism and defends that the asylum shall stay as a touchstone to provide temporary protection for the refugees (UNHCR, 2004).

UNHCR realizes that these aids go through individuals and in cooperation with governments/non-governmental organizations and are subject to the approval of governments. Employees of UN and NGOs must support and be aware of their duties with regard to supporting and implementing the policies of UNHCR. The most important organizations that UN is in cooperation with are United Nations Development Program (UNDP), Work Food Program (WFP), World Health Organization (WHO), United Nations International Children's Emergency Fund (UNICEF) and Humanistic Subjects Department. The organizations set out below are the most active organizations throughout the world working in cooperation with UNHCR:

- International Committee of the Red Cross: International Committee of the Red Cross (ICRC) endeavors to help victims of war and interior violence and to ensure implementation of humane rules limiting armed violence.
- The International Federation of Red Cross and Red Crescent Societies: The International Federation of Red Cross and Red Crescent Societies (IFRC) provides help for people affected from emergencies and encourages international humane law by means of National Red Crescent and Red Cross Societies.
- International Organization for Migration: International Organization for Migration (IOM) is an international organization helping transportation of refugees, displaced people and other people needing domestic and international migration services (UNHCR Türkiye Temsilciliği, 2008, p. 19-20; BMMYK ve STK Ortakları, 2003, p.22-25).

1.3.1.3.2. Responsibilities of NGOs concerning protection of refugees.

These voluntary organizations established solely by social persons and groups and they perform various activities regarding human rights. These types of voluntary organizations are comprised of professional organizations, associations, foundations, groups and communities which are directly or indirectly associated with human rights, as well as national and international human rights organizations (Atar, 1998, p. 1298).

To address fundamental needs of refugees and asylum seekers, it is important for UNHCR and non-governmental organizations to share information and experience in terms of facilitating access to legal and social support programs (IHAD, 2012, p.31).

Due to their independent status, NGOs are generally the first ones to reach to an emergency area and provide help. Local NGOs may give the first warnings regarding an upcoming emergency. Owing to their presences and their direct contacts with people, NGOs can help in such ways as introducing international standards; informing public and media about these concerns; reporting concerns that arise regarding protection to the government authorities, international corporations or other NGOs; providing legal and social consultation and education programs to asylum seekers; following human rights in both original and asylum countries in the presence of government or local authorities (BMMYK ve STK Ortakları, 2003, p.25-26).

Protection of asylum seekers is a shared responsibility. An effective protection that refugees deserve can only be provided if NGOs work in cooperation with states and international institutions and if they complement each other with the fields they are powerful at.

Here, it may be worth to mention as an example that in Turkey, Anatolian Development Foundation (ADF), has been the most important partner of UNHCR and the Turkish Government, especially when refugees from Bosnia, Kosovo and Iraq came in to Turkey. ADF has been the biggest implementing partner of UNHCR, proved effective in raising international funds and building international awareness in Europe.

1.3.1.3.3. European Union.

1.3.1.3.3.1. Asylum Policy in EU

Asylum is an important policy area that demands inter-state cooperation and the 1951 Geneva Convention is the basic instrument that provides for this. Within the EU, the imperative for deeper cooperation is present, given the right for the free movement of people within the Union. The EU member states engaged and have committed themselves to greater harmonization of their national laws on asylum, but observation and application of the European Commission legal instruments depend to a large extent on national judiciaries. So, this harmonization finalized with success, become a tool for international protection in the EU, and substantially depends on the development of common judicial understanding, principles and rules concerning refugee matters. The EU calling for fuller harmonization of other legislation issues and practice concerning asylum procedures, protection status and asylum decisions (Goodwin & Lambert, 2010, p. 3-10).

The EU asylum policy aimed a burden-sharing at equalizing particular dimensions of states' contributions to refugee protection. By doing so, in international protection, the opportunities can be raised for specialization and risk consolidating a sub-optimal provision (Thielemann & Dewan, n.d., p.1).

1.3.1.3.3.2. Temporary Protection in EU

As for the European States, migration and asylum policies take place high position on the public political agenda and European integration debate. The member states of the EU have different management of migration and asylum systems because they have different policies, cultures, societies and political systems. In 1990s the asylum system was abused and with the changes of economical circumstances the exploitation of the asylum system came to an end. When the conflict in the Balkans got worse, West European states placed visa requirements on citizens of Slovenia, Croatia and Bosnia Herzegovina (Newman & Selm, 2003, p. 81-82).

In the first decade of 2000s, Afghanistan has been the first country of origin which made the most application, and Syria made the most significant increase in application. In 2012 Syrians became the largest group of first-time applicants for international protection in the EU. Germany and Sweden were the main destination countries and the largest number of applicants were from the six Western Balkan countries. The other applicants were from the Russian Federation, Pakistan, Somalia, Iran and Georgia (European Asylum Support Office, 2012, p. 7).

In 1992-1993, a large scale influx to the European Union members like Germany, Netherlands, Austria, Sweden and Switzerland and European governments, sought temporary protection and burden sharing for adding in their protection portfolio. Anyway, temporary protection policies were not a new thing when it's appeared by European governments. Temporary stay in a country, had been practiced previously in Europe. As example; Hungarians in 1956 protected temporarily around nine months in Austria and Yugoslavia before moving to be regular immigrants to settle and work in an other western states. Also, after Vietnamese temporarily protected by Malaysia,

Thailand and other South-East Asian States, went to Europe as final destination (Newman & Selm, 2003, p.83).

In the EU, temporary protection generally refers to a procedure to provide, “*in the event of a mass influx or imminent mass influx*”, immediate and temporary protection to people who escaped from their country and are unable to return home (according to European Commission). Since 2001, the EU has had a regional temporary protection mechanism which is triggered by the adoption of a decision by the Council of the EU (Ostrand, 2015, p. 259). In 1990s Temporary protection understanding is changed. This type of understanding became an alternative to asylum and the exit strategy meant to be “return back” rather than resettlement and certainly longer term residence. This way, in the future the host countries will not refuse Bosnians who escaped from their home country temporarily. In the past, heavy burden was on the shoulder of developed states financially and for the durable solutions. But in the 1990s, European burden sharing distributed the protection responsibility among a group of developed states within one continent. In the late 1980s and early 1990s, because of the strict application and interpretation of the Geneva Convention definition, alternative protection types, like temporary protection, were created for those fleeing from a conflict. Large numbers of people fleeing from violence, large influx, were understood by government to be in fear of the consequences of war as a group. The UNHCR also, agreed that temporary protection was needed and in an adequate way (Newman & Selm, 2003, p.83-84).

European Union, since 1993, did not develop any common practice or policy of temporary protection. Each state had different approaches in their asylum system. The European Commission wanted to meet in the common approach in the 1990s, but it did

not work out, because it did not take on the “solidarity” issue the way that the big states desired (for sharing or not sharing the responsibility). In May 2000, the Commission prepared and submitted a proposal for a directive. This proposal deals only with mass influx cases which is suitable for conflict situations, not for individual applications (Commission of the European Communities, 5 March 1997; Commission of the European Communities, 22 November 2000).

So, the EU created a Common European Asylum System and improved the current legislative framework. EU moved in the direction of a common policy for making EU, as an area of “freedom, security and justice”. With articles 62 and 63 of Amsterdam treaty, Amsterdam precised the common norms and standards for the control of external borders, short term visas, co-operation in civil law matters and the safeguarding of the rights of third country nationals. By the treaty, finding the common standards for recognizing the refugee status and some form of temporary protection become necessary. Ultimately in 2001, the Temporary Protection Directive allowed an answer to common EU request to a mass influx of displaced people that are unable to return to their country of origin (European Commission, n.d.). The EU Council directive “*on minimum standards for giving temporary protection*” takes temporary protection as a procedure to use in situations of “*mass influx or imminent mass influx, particularly if the asylum system cannot process the influx without adverse effects for its efficient operation*”⁴.

⁴ European Union: Council of the European Union, “Council Directive 2001/55/ EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof.” 7 August 2001, Art 2(a).

1.3.2. History of international protection in Turkey

Starting with the Ottoman Empire, Republic of Turkey has been a country of emigration and immigration throughout its history. The immigration and asylum history of Turkey goes as far back as the Ottoman Empire period when the Jewish emigrated to the Ottoman Empire from different parts of Europe. But it was the migration of Muslims from different ethnic backgrounds and the immigration of Turks due to the retreat of the Ottoman Empire from the Balkans, Caucasus and the Middle East during the 19th and 20th centuries that specifically defined immigration in Turkey. Hundreds of thousands of Turks suffered during the process of nation state building with a sentiment of nationalism and immigration and asylum seeking continued well after the establishment of the new Republic of Turkey in 1923. Between 1923 and 1939 the number of people migrating to Turkey reached 823, 208 (Kirişci, 2000, p. 2-3; Daniş, 2006, p.10-11).

Turkey is a country which has 2,949 kilometers of land border with Greece, Syria, Iraq, Iran, Naxcivan, Armenia, Georgia and 7,816 kilometers of maritime boundaries, encircled in three sides, and having straits that represent unique exit doors connecting Black Sea to the oceans. Due to these characteristics, it has been a passageway to foreigners to seek asylum after reaching Turkey through legal and illegal paths or outgoing to third countries. Political and social events, economic crises, political instability, civil turmoil, insurgency or war among neighboring countries fueled temporary influx of people to Turkey, lots of time in masses. The hope of new comers is a life with better conditions to satisfy their desire of going to socially and economically developed countries. Along this line, Turkey accepted a number of people and provided them temporary protection that is well above her capacity. Since Turkey

faces this situation from time to time, it has to study past experiences carefully and protect its economic and political stability. LFIP was passed and accepted by the Turkish Parliament on 4 April 2013 as Law No. 6458, signed by the President and published in Official Gazette and entered into force on 11 April 2013. This Law and its related regulations of Turkey should be evaluated in the light of international obligations, further asylum related legislations should be developed and attention should be paid to protection of rights of living, housing, nutrition, education and culture of the internationally protected people as long as they live in Turkey. Vulnerable groups like women and children particularly need special arrangements. Also, Turkey is situated on a migration route extending from east and southwest to northwest of Europe. Among the refugee population in Europe, Turkey exhibits a feature of being a “resource country” for a great number of migrations.

Some of those who have migrated to Turkey are composed of economically induced immigrants. Others consist of asylum seekers, refugees, and temporarily protected people etc., who have escaped from vital hazards in the countries to the east and south of Turkey and subjected to induced imprisonment, torture or death penalty due to ethnic, ideological, and similar pressures. Turkey is in a unique situation with common borders to countries ranked highest in the list of countries producing illegal migration and asylum in the world. Due to this geographic position Turkey, has been exposed to regular and irregular migration and asylum activities as a consequence of economic problems, political and social events occurring in the neighboring countries with poor economic conditions.

In 1978, as well known, a revolution took place in Afghanistan, with the help of Russian airplanes and the army. In a short time they created great fear and killed many

people, and forced the Kirghiz community to leave their environment. They began to move towards Pakistan on 29 June 1978. 100 of these people were lost or died during the move. They arrived in Pakistan and they are temporarily protected by Pakistan about four years. Finally four years later they left their temporary camps to come to Turkey. In 1982, 3,815 Afghan immigrants from 860 families, living as non-status people in Pakistan, have been brought to Turkey. In addition to these numbers, 330 individuals arrived on 7 August 1983. Afghans were placed in 10 different settlement places in the country (the Anatolian Development Foundation⁵ was among the organizations to resettle these people) including Van, Malatya, Hatay, Tokat, Gaziantep, Kayseri, Sivas, Diyarbakır, Kırşehir and Urfa. In distributing and locating Afghans, efforts have been made not to divide the families and relatives (Akyürek, 1983, p.1, 3-5; VEDF, 1982, p.16; VEDF, 1983, p.15; VEDF, 1985, p.13). At the end of 1987, around 300 Afghan families, including some newcomers, moved to their permanent settlement place in Ulupamir (this name was given by the Kirghiz community), a village of Erciş county in the province of Van. Again, due to continuing war and internal turmoil in Afghanistan; between 1987 and 1992, 3,128 people of Afghan and Chinese nationality entered Turkey (Anatolian Development Foundation, 1987, p.6).

The 1988 chemical bombings by the Saddam regime in Iraq, resulted in about 90 thousand people mostly Kurdish, some Arabic and some people of Turkish ethnic origin to come to Turkey. In 1990s, Turkey has maintained its reputation of being subject to asylum in massive proportions again. One of the biggest mass movements of asylum crisis happened during Gulf War and turned Turkey into a country of asylum. Within one week, following the start of the Gulf War in 1991, the Kurdish rebels in Iraq were seriously and devastatingly punished by Saddam's forces, totally 460 thousand people

⁵ Anatolian Development Foundation (former name is; Van and Environs Development Foundation Annual Reports, starting from 1982 up to present time))

have come to Turkey seeking for asylum. United States led allied forces to provide support and a "safe zone" was established in Northern Iraq for these people. Initially, the humanitarian aid came from the Turkish Army and some families living in border villages. Approximately 15 days later, various aid organizations of Republic of Turkey, NGOs and other countries have started sending supplies. Anatolian Development Foundation (ADF) as an NGO was one of the first organizations to tackle this huge problem, springing into action in a matter of few days.

As a result of the developments in former Yugoslavia, approximately 26 thousand people seeking protection came to Turkey from Bosnia and Herzegovina between 1992 and 1997. They have been allowed to reside at the guest houses and 3,355 persons thereof were granted Turkish citizenship. Upon developments that took place within Kosovo Region of Federal Republic of Yugoslavia in 1999, 17,746 Kosovars have been taken under international protection by allowing them to reside in Turkey. ADF was working as an implementing partner for UNHCR during this crisis to resettle and take care of the new comers until most of these people returned back to their countries.

Economic and political instability in the Eastern European countries, disintegration of the Soviet Union have turned Turkey into a focus of the illegal immigration and irregular movement. As for 2010, due to the effects of the Arab Spring in Syria, millions of Syrians flocked to Turkey. According to DGMM as of 30 June 2016, 2,733,044 Syrians were registered in Turkey, 256,300 Syrians were hosted in refugee camps and 2,476,744 Syrians were residing in host communities (UNHCR, June 2016, p.1). Temporary protection status has been granted to these Syrians who are living in Turkey. ADF also helped the refugees in Karkamış, İslahiye and Nizip camps.

The transactions related to foreigners in Turkey have been carried out within the framework of the obligations arising from European Convention on Human Rights, 1951 Geneva Convention and 1967 Protocol along with other signed international treaties, domestic law and regulations.

According to UNHCR, there are 2,733,655 registered Syrians in the Government's Temporary Protection Regime in Turkey (UNHCR, January-June 2016). Turkey witnessed a sharp increase in the number of individual asylum applications registered with UNHCR in recent years. Turkey became the third largest recipient of individual asylum applications among the countries included in the report of UNHCR. It has mainly been Iraqi asylum seekers who caused this increase. Their numbers were 25,300 in 2013 and 50,500 in 2014. And, it is noted by UNHCR global appeal that, by September 2014, approximately 81 thousand Iraqis were in Turkey (UNHCR, 2015a, p.1). Other important source countries of asylum applicants were Afghanistan, Iran, Pakistan and Somali (approximately 110 thousand people) (UNHCR, 2014, p. 11; T24, n.d.).

1.4. The Arrangements of International Protection in Turkish Law and the Role of UNHCR in Turkey

1.4.1. International treaties.

1.4.1.1. The 1951 geneva convention.

Turkey approved and put the Geneva Convention of 1951 into force through Law No. 359 of 29 August 1961 by publishing it in the Official Gazette of 5 September 1961. On 30 March 1962, it became a signatory of the convention by submitting a

document of accession⁶ (Odman, 2004, p.2). Turkey has approved the Convention 1951 with a declaration and in concern about the opportunity provided by the Article 42 of the Convention⁷.

Turkey adopted the 1951 Refugee Convention and 1967 Protocol with a “geographical limitation” which makes Turkey obligated to only receive displaced people from European countries therefore this seriously limits Turkey’s obligations in international refugee law. The geographical limitation was introduced by Turkey after the challenging events in the region (because of the eastern and southeastern neighbors) which led to the mass influx of Iraqis and now the Syrians from their war-torn countries and it stands to have a fair cause (National Action Plan Paragraph 4.13; Uluslararası Af Örgütü, 20.6.2005).

Turkey only grants refugee status to persons applying from the European countries under the geographical limitation and the current legislation. Persons from the non-European countries are not categorized as refugees but as “asylum seekers” or as newly established LFIP law states, “conditional refugees”. The refugee definition is kept as is, in 1951 Geneva Convention in LFIP Article 61, by adding the statement “*the events had happened in European countries*”. In accordance with LFIP Article 3/1/b, the European countries meant; the member states of European council and other countries which were determined by the Council of Ministers (Ekşi, Mart-Nisan 2015, p. 197).

In Europe the status of “asylum seeker” starts with the application for asylum but this status is granted after the examination and assessment of the case in Turkey. But mainly, the rights arising from the Geneva Convention such as the non-refoulement

⁶ OG Dated: 5.9.1961 No: 10898

⁷ OG Dated: 5.8.1968 No: 12968.

principle, international protection, and other types of protection are granted to asylum seekers in Turkey (Kaya, 2009, p.6).

Turkey's LFIP provides a legitimate domestic law basis to protect the rights and status to be granted to people seeking international protection who are fleeing from widespread violence and other human rights violations. The Law provides numerous protection clauses ranging from appeals against negative asylum decisions to guaranteed access to UNHCR and legal representatives by immigration detainees and suspension of deportation orders. The Law applies the geographical limitation policy for non-Europeans and categorizes them as conditional refugees (Euro-Mediterranean Human Rights Network, 20.6.2013, p.9).

The official documents do not contain a lot of information about the reason for the geographical limitation but it looks like this is an extension of the hostility towards non-Turkish peoples inherited during the process of nation building. Turkey had previously granted "de jure refugee" status only to persons escaping from the communist oppression in the Soviet Union and Eastern Europe in the past (Kirişçi, 1996, p.296). According the Amnesty International Report, the Turkish government has not granted refugee status to anybody since 1994 (Amnesty International, 2009, p.9). The report of Commissioner for Human Rights of the Council of Europe mentions 43 cases of recognized refugees under the Geneva Convention (Hammarberg, 28 June-3 July 2009, p.6). The Turkish government did not even allow the people who come with mass influx to Turkey from conflict-stricken countries like Bulgaria, Chechnya, Kosovo and Bosnia and Herzegovina to apply for refugee status⁸. Although their countries are in the Council of Europe region, the Turkish government only allowed them to remain in

⁸ As of the beginning of 2012, there were only forty four European refugees known under the Convention status in Turkey. These refugees were from Greece, Bulgaria, Serbia, Azerbaijan and Albania (UNHCR).

Turkey as guests, which is an obscure status in legal terms. It may well be said that the geographical limitation is still being used by Turkey to keep non-Turkish persons outside of its borders in order to maintain its national integrity (Soykan, 5.6.2010, p. 9).

In conclusion, Turkey has a justified cause for not lifting geographic limitation. If the EU provides assurance to Turkey entering in EU, Turkey will be more serious in lifting the geographical limitation. Turkey would be open to lifting the geographical limitation provided that the EU also guarantees support in the form of financial and technical assistance and burden-sharing protocols (Kirişçi, Spring 2003, p.107-108).

1.4.1.2. The 1967 additional protocol.

Turkey accepted the 1967 Protocol on 1 July 1968 with Decree No. 6 by preserving its concerns about geographic limitation and it was put into effect through ratification⁹. Turkey stated in the signing document of the Protocol that it reserves provisions concerning that the Convention of 1951 shall be applied only for the persons who became refugees as a result of an event occurring in Europe. Turkey is one of the country that still has accepted the convention in this way (Sivil Toplum Örgütlerinden Beklenenler Sempozyumu, 1996, p. 20).

1.4.2. National legislation on international protection.

1.4.2.1. National legislation before the enactment of law on foreigners and international protection.

Before LFIP, there were not any laws specifically on asylum, although some rules and laws were applied for foreigners, including refugees, as examples of criminal

⁹ OG Dated: 1.7.1968 No: 6/10266).

law, labour law etc. And also in 1994, a well studied regulation on asylum practices concerning mass influx was established. As will be explained under, this regulation was regulated till temporary protection regulation was established. This regulation was also used as a base for the studies after this.

Among other topics, although it was abolished in 2014, for the future practices, the regulation of guest houses, and Turkey's National Action Plan have important place. Therefore these topics were taken under below titles.

1.4.2.1.1. 1994 Regulation and temporary protection in case of mass influx.

The 1994 Regulation lost its force through amended Article 61 of the Temporary Protection Regulation, which was published in the Official Journal on 22 October 2014. Over the last 20 years, while the 1994 Regulation was in force, it was applied repeatedly and became a base for future laws and regulations. Therefore, it is important to mention this regulation, to better understand the past, present and forthcoming laws and regulations. In 1994, the Council of Ministers issued Regulation 1994/6169 titled *“Legislation on Procedures and Principles to be Applied for: Individuals Granted Refugee Status in Turkey or Those Who Demand Residence Permit from Turkey to Seek Refuge in Another Country, or Foreigners who Seek Collective Refuge in Border areas or Any Potential Population Movements”*. The 1994 Regulation was drafted by the 1951 Geneva Convention and 1967 Protocol as its basis. In addition, the field of application of the 1994 Regulation is more comprehensive than the 1951 Geneva Convention because it defined refugee and asylum seeker and introduced provisions taking concerning not only refugees but also asylum seekers, foreigners and other population movements coming collectively to Turkish borders (Ekşi, 2012a, p.9).

The 1994 Regulation regulated the visits of representatives of foreign states and international organizations to camps, as well as freedom of religion in camps, health examinations, death and burial works, acceptance of help from abroad, maintaining discipline and camp administration (Ekşi, 2012b, p.119).

Until recently, the 1994 Regulation had been amended in 1999 and 2006. The main legal documents produced regarding the field of asylum were the 1999 and the 2006 Circulars. Foreseeing legal amendments on application of the “Refugee and Migration Plan”, the application came into force on 27 January 2006 following publication in Official Journal No. 2006-9938. The General Directorate of Security published an Implementation Circular in 2006 to oversee the asylum process and to clarify the rights and responsibilities of asylum seekers and refugees.¹⁰ It’s important to note that it was the administrative organs and not the Parliament that produced them (Kaya, 2009, p.5). In January 2006, Article 6 of the 1994 Regulation was revised in order to speed up procedures. According to the revised provision, *“an alien whose claim has not been accepted may appeal to the relevant provincial directorate within 15 days. Appeal date may be shortened by the Ministry of Interior, when necessary, in order to accelerate the decision making procedure”*. The 2006 Circular provided more comprehensive and explanatory provisions on this issue (Tokuzlu, 2007, p.17; Kaya, 2009, p.1). Turkey agreed to give “temporary asylum-seeker” status to non-European refugees in 2006 through the Circular which was supplemented by a Government directive in the same year through which those refugees were given permission to stay in Turkey until other feasible solutions could be found elsewhere through the UNHCR (The UN Refugee Agency, 8.2.2013).

¹⁰ Circular no: 57, 22 June 2006

The 1994 Regulation applied to any European or non-European asylum seekers who applied for asylum in Turkey. Under the Regulation, any foreigners seeking asylum had to register with the National Police when entering the country. The Regulation stipulated that foreigners entering Turkey irregularly had to register with the governorate of their point of entry. Anyone seeking asylum that entered with valid travel documents was permitted to register with the National Police in their governorate of residence. For non-Europeans, because Turkey maintained the geographical restriction, it was also necessary to register with the UNHCR. If an asylum seeker did not register with the authorities within the designated time, they would be required to justify their late registration with authorities (Soykan, 5.6.2010, p. 14). There was some leeway with late applications. Generally, late applications were accepted if they had submitted in a timely manner (2006 Circular, Section 2).

When the subsidiary circular letter on *“1994/6169 Regulation was brought into force by the Ministry of Interior, the Governors’ offices in 7 provinces were authorized to make decisions regarding status determination”* in 2011 and the Istanbul Governor’s Office became the decision maker for asylum applications at the Entry Point in Atatürk Airport. In this respect, pilot areas were determined for asylum applications in order to make effective, fair and fast decisions for the people coming from countries other than Europe and seeking asylum from Turkey so that they could go to a third country (IHAD, 2012, p.24).

Human rights and the non-refoulement principle had been taken as the basis for Clauses 26 and 28 of the Regulation; however, it had been stated that mass asylum is perceived to be a transient situation which could be managed through the utilization of EU directives and aforementioned policies. “Temporary protection” was not mentioned

in the Regulation during cross-border mass population movements. The protection to be provided to the massive numbers of foreigners coming across borders was regulated in Articles 8-26 of the 1994 Regulation by taking previous experiences into consideration and on the understanding of establishing a buffer zone in cases of mass influx. For example, in Article 8 of the previous regulation (1994), *“as long as there are no political decisions taken to the contrary, and provided that Turkey’s obligations under international law are maintained, and taking into account its territorial interests, it is essential that population movements be stopped at the border, and that asylum seekers be prevented from crossing over into Turkey. Necessary and effective measures shall be taken by the relevant bodies on this matter”*. According to Article 9 *“in the first instance, refugees and asylum seekers shall be disarmed by military authorities. Subsequently, at a suitable border point, belligerent foreign army members and civilians shall be separated. Civilians shall be submitted to either police organizations or gendarmerie for transportation to camps which are to be established. For belligerent foreign army members, law number 4104 on Belligerent Foreign Army Members Who Take Refuge in Turkey shall apply”*. Articles 10 and 11 provided that *“those who seek asylum from Turkey and take refuge in Turkey are under the protection and supervision of the state whilst they remain in Turkey. Establishment of Camps; front-line assembly areas to shelter asylum seekers and refugees as close as possible to the border shall be designated by the Ministry of Interior in conjunction with the Turkish Army General Staff and shall be established by the Governorates. Assembly areas shall be designated by the Ministry of Interior in conjunction with the Turkish Army General Staff and shall be established by the Governorates”*. And in Article 12 *“in order to prevent the accumulation inside our borders of aliens coming into Turkey by land, sea or air and to send them on to in-land areas safely, front-line assembly areas shall be established by*

the civilian authorities. Aliens assembled at these areas shall be sent on to in-land assembly areas. Aliens who are to be sent to in-land assembly areas shall be interviewed and their statements taken either in their own language or in a language that they can understand. During the interview, they shall be obliged to state their name, surname, place and date of birth, status in their country of origin, their reasons for coming to Turkey, and (if any) the names and addresses of relatives living either in Turkey or abroad. In addition, photographs and fingerprints shall be taken. While classifying them according to their nationalities, utmost care shall be taken to separate terrorists and those destructive to peace and security along with provocateurs, spies and saboteurs. As far as is possible, care shall be taken according to their common laws and customs. These people shall be issued identification papers and registered at the registry office. The documents related to those being traced by international organizations shall be made available to the Turkish Red Crescent Society on request” (Ekşi, 2012a, p.12-13; Regulation No. 1994/6169).

The provisions on mass influx in the 1994 Regulation reflected a reaction to the events following the mass influx of people from Iraq who sought asylum between 1988 and 1992. Turkey was left alone after the mass influx of Kurds in 1988, where its call for burden sharing was unanswered by the international community. As a reaction to this experience, Turkey closed its borders against the continuing mass influx of refugees in the same area in 1992. After that, Turkey was heavily criticized for violating the principle of non-refoulement until the war started again in Iraq in November 2002. The 1994 Regulation was prepared following these events in 1992. Therefore, the Regulation had the same restrictional approach towards mass influx of refugees. As I mentioned above, Article 8 regulated the measures to be taken in the event of a

population movement and arrival of foreigners at Turkish borders (Tokuzlu, 2007, p. 21).

With the newly enacted “Temporary Protection Regulation”, the base that has been set by the 1994 Regulation was preserved, but some new points were added or subtracted according to newly encountered and/or expected developments.

1.4.2.1.2. Regulation of guesthouse.

The aim of the Regulation on Refugee Guesthouses, which was in force from 1983 to 2014, was to determine the procedures and principles on covering expenses of temporary shelter, food, accommodation and other expenses within the period until completion of procedures for foreigners coming to Turkey escaped or left their countries with passport, wishing to be sent to another foreign country or to stay in Turkey and seek asylum. Refugee guesthouses are established where it would be necessary, upon proposal of the General Directorate of Security and approval of the Ministry of Interior (Article 7). Refugees and asylum seekers are accepted to the guesthouses upon approval by the Ministry (Article 15). Accommodation of the refugees and asylum seekers in guesthouses is a temporary process. When their transactions are completed and they are provided with visas, the refugees and asylum seekers would be removed from guesthouses to be sent to the country they wish to go or to be sent to the province they will reside in Turkey with permission (Article 17). Refugees cannot leave the guesthouse without permission. Provincial Security Directorate is authorized to give permission for their short trips, taking necessary measures (Article 21). Visa provisions and other transactions for the countries that refugees and asylum seekers wish to go are carried out by Ankara Representation of United Nations High Commissioner for Refugees and by authorities of Istanbul

International Catholic Migration Commission and by the Ministry of Foreign Affairs when deemed necessary. Travel documents for one year or two years are provided to refugees or asylum seekers according to instructions given by the Ministry as per the provisions of the Convention relating to the legal statuses of refugees (Articles 26 and 28)¹¹.

People who sought asylum were sent to live in guest houses as a form of detention or were permitted to reside in an assigned satellite city (1994 Regulation, Article 6). Those sent to guest houses were not given information about the conditions at the guest house prior to their going there. Those sent to satellite cities were often found outside their designated city or trying to exit the country without permission. These movements tended to occur despite routine controls and checks. Despite their obligation to remain in satellite cities, the majority of asylum seekers searched for informal and illegal work in larger cities as a means to cover daily expenses. There were satellite cities which were all provincial cities apart from the big cities of Istanbul, Izmir and Ankara. However, asylum seekers could be sent to cities where their relatives lived. After they were assigned to live in one of these cities, asylum seekers were obligated to periodically report to the local authorities during their stay in the city. Temporary travel was allowed provided a person obtained written permission from the local police. Each family member also had to pay a mandatory residence fee every six months and asylum seekers were not permitted to leave the country if this fee was not paid during their residence even if they had a third country settlement arranged by the UNHCR. After the payment of the fee, legal residency was required to use social benefits such as health care and education (Soykan, 5.6.2010, p. 16).

¹¹ Regulation on Refugee Guest House, OG Dated: 29.04.1983 No: 18032.

Camps which were established inland and at front line assembly areas are administered by provincial Governorates (Regulation of 1994, Articles 10, 12, 14). A large network of safe “guesthouses” is maintained by Turkey for administrative detention of irregular migrants and asylum seekers. The Ministry of Interior has authority over the facilities in guesthouses and the Tracing and Control Police Section of the Foreigners’ Department of each City Security Directorate manages and administers them. The Tracing and Control Police monitor foreign nationals who have entered or tried to leave Turkey illegally, those found to be in violation of visa regulations or who have allegedly committed illegal activities (Levitan, Kaytaz & Durukan, 2009, p.13-14). Turkish guesthouses are classified by The Global Detention Project as ad hoc detention centers since they do not operate in a clearly established legal framework that sets the rules for keeping people under administrative detention. People kept in those guesthouses cannot leave the houses freely. Numerous international judicial and human rights bodies criticize Turkey for these centers, including the UN Working Group on Arbitrary Detention, the European Court of Human Rights, and the Council of Europe’s Commissioner for Human Rights (*Abdolkhani and Karimnia v. Turkey* and *Z.N.S. v. Turkey*) (Global Detention Project, March 2010). Guesthouses are different from accommodation centers which are places used only “*for collective housing of applicants for asylum and their accompanying family members*” (Levitan, Kaytaz & Durukan, 2009, p. 13-14).

1.4.2.1.3. Turkey's national action plan within the adoption of the acquis communautaire in the field of asylum and migration and within the framework of this plan, a preparatory work on the law on foreigners and international protection.

Turkish Government signed Accession Partnership Document in 2001¹² and Turkey adopted the EU Acquis Communautaire with its National Program (NP) in full force in 2003¹³. A priority was given to asylum in the Accession Partnership Document of 2003 and it is expected that the capacity for administrative and technical facilities will be increased by social assistance activities and enhanced accommodation opportunities for refugees (BMMYK - Türk İçişleri Bakanlığı, İltica ve Göç Mevzuatı, 2005, p.7).

In order to become a full member of the EU, Turkey is obliged to adopt the EU Acquis in the field and Chapter 24 (Justice, Freedom and Security) covers immigration and asylum topics as part of the accession negotiations. The General Directorate of Security of the Ministry of Interior formulated a National Action Plan (NAP) for Asylum and Immigration for this purpose which the Prime Minister also advocated in 2005 (Emniyet Genel Müdürlüğü, n.d.). Thus, the EU and Turkey launched an “Action Plan for Asylum and Migration” in 2005 which included development projects and legislation in order to coordinate and improve Turkey’s asylum and migration system to be in line with the EU legislation. Other twinning projects such as establishing an integrated border management and asylum and migration strategy; and setting up facilities for border police (Global Detention Project, March 2010).

¹² OG Dated: 24.3.2001 No: 24352

¹³ OG Dated: 24.7.2003 No: 25178

As an EU member candidate, during the preparations for unification, Turkey's asylum system will be expected to be adapted to that of the EU standards as well as adopting the Acquis in this area. Turkey tried to establish a legal regulation for its current international developments during its candidacy process to the EU. As a result of this, a national action plan was published in 2006.

Turkey prepared a new draft national plan in 2008¹⁴. The draft national plan was discussed in the Turkish Parliament and was immediately put into force after it was published in the Official Gazette. It contains a priority objective which is the *“continuing efforts of Turkey to implement the National Action Plan on Asylum and Migration including the adoption of a roadmap and preparations for the adoption of a comprehensive asylum law in line with the EU Acquis with establishment of an asylum authority and increased capacity for combating illegal migration in line with international standards”*.

Being one of the objectives of the Asylum and Migration Action Plan in 2010, “the Expedited Procedure” did not seem to meet the expectations relating to establishment of a fast asylum procedure. In later studies on this matter, international asylum law was taken into consideration during determination of national rules on what kind of applications had to be directed to this procedure (İçişleri Bakanlığı Göç ve İltica Bürosu, n.d.a).

In addition, the “Foreigners and International Protection Law Draft” and its grounds were submitted on 3 May 2012 to the Presidency of the Grand National Assembly of Turkey and were accepted on 4 April 2013. As such, the applications in

¹⁴ OG Dated: 31.12.2008 No: 27097.

the field of Migration and Asylum were considered in line with human rights and their legal, administrative and physical infrastructures were improved.

1.4.2.2. Legislations since 11 April 2013 and legal basis of temporary protection in Turkish law.

1.4.2.2.1. Law on foreigners and international protection.

1.4.2.2.1.1. Turkish legal studies launched during adoption to european union legislation period.

Turkey was put under increasing pressure by the EU mainly through the twinning system of the European Commission which influenced the immigration policies of Turkey. Established in 1998 it was also a key instrument used to support the EU candidate states' efforts to overhaul their public institutions and integrate with the EU legislation (Global Detention Project, March 2010).

Turkey launched its National Program on the Adoption of the EU Acquis Communautaire while engaging in accession negotiations with the EU in 2003 and initiated the process of alignment with the EU legislation on asylum procedures which was considered a priority issue in the Accession Partnership Document of 2003. The administrative and technical capacities are expected to improve by the efforts to develop accommodation and social support activities for refugees (Kaya, 2008, p.15).

In the mid 1990's Turkey introduced its own mechanism of temporary protection under the 1994 Regulation which required all asylum seekers from European and non-European countries to apply for a permit of residence at the Department of Foreigners, Passport, Borders and Asylum under the General Directorate of Security of the Ministry

of Interior. In order to qualify for resettlement outside of Turkey through UNHCR, non-European applicants were required to register with the police and adhere to reporting obligations. Currently the asylum system in Turkey does not allow the long-term integration of this group into the country. Therefore, the temporary protection mechanism works alongside the UNHCR procedures and all applicants are required to obtain valid residence permits. Turkish authorities and the UNHCR both carry out Refugee Status Determination interviews for non-European applicants. If both institutions acknowledge applicants as refugees then they may qualify for third country resettlement. Only Australia, Canada, Finland, Norway and Sweden presently accept a small number of refugees from Turkey, and the USA established a resettlement program in 2007 especially for refugees from Iraq. The third country resettlement of each non-European refugee cannot be guaranteed and resettlement opportunities have become much harder to come by due to the increasing number of asylum applications in recent years (Güsten, 26.9.2012; Soykan, 2.11.2012, p.39).

Turkey's asylum reform is directly related to its EU membership process and in the Accession Partnership Document there are some objectives that need to be accomplished in the medium term. In addition to the problem of illegal migration that must be solved, there is work to do in terms of coordination of asylum legislation, elimination of geographical limitation, improvement of an evaluation and decision making system on asylum claims and provision of accommodation centers and social support to refugees and asylum seekers (BMMYK - Türk İçişleri Bakanlığı, 2005, p. 6; Kaya, 2009, p.17).

Since the execution of the Regulation, Turkey has been working together with many other European countries and international organizations on the topic of asylum.

The Ministry of Interior has backed activities such as workshops, seminars and joint programs organized with UNHCR since 1997 in order to implement the 1994 Asylum Regulation under the “Project for Developing an Asylum System in Turkey”. Training sessions have covered subjects such as the basis of refugee status assessment and international protection of refugees. Most of the personnel working at the Ministry of Interior in central and provincial institutions have attended those training sessions. It is worth mentioning that UNHCR has also trained judges, public prosecutors and district governors on international protection of people seeking asylum (Kaya, 2009, p. 21).

If the goals set in the continuing National Harmonisation Program of 2008 can be completed, an approach based on human rights may be developed. It is highly beneficial for the officials making the asylum policies to improve their expertise, proficiency and accuracy in order to provide better protection and human rights based treatment. Aggregation of expertise will not be possible if there is constant turnover of officials or if there is a lack of standardization and it may result in officials using their goodwill or their own judgement when it comes to practices or initiatives concerning the refugees. By doing so, the security of the refugees and asylum seekers is also at stake as well as the legitimacy of the official practices. Moreover the overall implementation of the EU asylum reforms will be hindered if the local people take it upon themselves to show mercy on the refugees (Baklacioğlu, 2009, p. 10; Şevkat-Der, 2008).

Turkey's asylum policy and its implementation need to be more transparent. This transparency requires working more closely with European Union employees and experts (Kirişçi, 2003, p. 89-90).

1.4.2.2.1.2. Drafting stage of law on foreigners and international protection.

The National Action Plan determined the ministries and institutions responsible for its implementation, and contains new regulations and amendments required in current laws. According to this, completion of “draft law on asylum” and “draft law on foreigners” had been planned (Ekşi, 2013b, p. 88-89).

“Ministry of Interior - Bureau of Immigration and Asylum” took the initiative in legal regulation works relating to the immigration and asylum system of Turkey. The Bureau of Immigration and Asylum was founded on 15 October 2008 with the approval of the Ministry of Internal Affairs. Through this Bureau, new legal regulation drafts were prepared and various matching projects were put into practice (Ekşi, 2012b, p. 9). The duties of the Bureau of Immigration and Asylum are to carry out works related to the establishment of legal hierarchy and structure to deal with asylum and immigration issues, to determine whether requirements set out in strategy documents and national documents concerning the adaptation process to EU are met also ensure that concrete steps are taken within this framework, to follow EU projects carried out with regard to asylum and immigration subjects and to provide coordination to inform the senior management of the Ministry about asylum and immigration issues. Legal regulation work started in 2009. Initially, four different drafts were prepared (Draft Law on Foreigners, Draft Law on Asylum, Draft Law on Amendments to the Law on Residences and Trips of Foreigners in Turkey, Draft Law on Organization and Duties of General Directorate of Asylum and Immigration Office). Then it was decided to continue work under a single draft law (İçişleri Bakanlığı Göç ve İltica Bürosu, n.d.b).

During the preparation process of LFIP various workshops, brain storming conferences and seminars were conducted with participation of academics,

intergovernmental organizations, international organizations, governmental agencies and non-governmental organizations. For example, the “Seminar about Academic Cooperation on Forced Migration and Statelessness (3-4 December 2009)” focused on the need to regulate Complementary protection in the draft law on foreigners. Final documents stated that there are not enough regulations relating to mass asylum, that mass asylum is considered as a temporary situation by basing on the principles on non-refoulement and on provision of human rights in Articles 26 and 28 of 1994 Regulation, that the EU directives may be useful in these subjects and that the permanent solutions in mass asylum can be obtained by agreements on refoulement, integration and re-admission. The evaluations made in the seminar effected preparation of LFIP and temporary protection in mass asylum was regulated by a separate article (Ekşi, 2012b, p. 9-10).

At the end of endeavors lasting for more than two years, a draft of Law on Foreigners and International Protection (LFIP) was prepared. The LFIP is basically comprised of three parts: foreigners, international protection and administrative organizations. It was stated in the meeting that international protection is a temporary status and that the permanent solutions are voluntary return, local integration, settlement to a third country and support for states. The LFIP brought innovations such as expedited procedures and temporary protection in cases of mass influxes. The LFIP was submitted to the Presidency of Grand National Assembly of Turkey in annex of the letter no. 1981 of 3 May 2012 of the Prime Ministry General Directorate of Laws and Decisions. The LFIP was adopted after negotiations at the Commission of Human Rights of Grand National Assembly of Turkey on 25 May 2012 and at Commission of Internal Affairs of Grand National Assembly of Turkey on 6 June 2012 (Ekşi, 2012b, p. 27, 29).

1.4.2.2.1.3. General framework of the law on foreigners and international protection.

It was emphasized that there has been an important increase in the number of foreigners demanding asylum, as well as the foreigners entering Turkey regularly or irregularly, and that this has caused problems. The General Justification, lead authority of Turkey on jurisdiction, stated that the legislation and the administrative structure fall short of dealing with these problems. The General Justification highlighted that the LFIP was prepared in a way to include provisions that are parallel to EU norms, ECtHR decisions and international law by determining the subjects for which the legislation is not enough and specified that, in practice, it brought permanent solutions to the problems encountered by the people demanding asylum or refuge such as legal assistance to those seeking asylum and refuge, the right to access an attorney, receive information about legal procedures to be apply for required transactions and accommodation (TBMM, n.d.).

1.4.2.2.1.4. Temporary Protection in LFIP.

The temporary protection regulated by Article 91 of the LFIP was obtained from the EU legislation. However, Article 91 of the LFIP determines the general framework, and the Law tasks the Council of Ministers to prepare a detailed regulation relating to temporary protection.

Prior to the LFIP, protection of refugees was monitored mostly by administrative circulars or secondary legislation in Turkey. This caused misinterpretations by the police in different cities in addressing issues of asylum seekers. LFIP is the first domestic law regulating asylum practices in Turkey. In many aspects this new law is a

huge step towards governance and improvement in the field of asylum and migration since Turkey endorsed the 1951 Refugee Convention. With the LFIP, the management of the Turkish asylum system is handed over to a civil authority under the Ministry of Interior and a more standardized practice across the country is ensured. Currently in every city police officers working for the local “Foreigners, Passport, Borders and Asylum” departments handle asylum applications. The Law covers both the status and rights of foreigners and their international protection in Turkey. Article 1 asserts that the principle objective of the law is the regulation of foreigners’ entry, exit and stay in the country as well as providing protection guidelines and procedures for those seeking protection in Turkey. What’s new about the law is that for the first time it describes and combines all legal definitions under the same legal framework and thus it not only defines who is eligible for subsidiary protection, humanitarian leave to remain and refugee status, it also clarifies terminology such as stateless person, human trafficking victim, unaccompanied minor and special needs persons seeking international protection (such as single women, disabled persons, single mothers and the victims of torture or sexual harassment). With this law the officials would be able to determine the special needs that different group of persons require. The law, however, retains the geographical limitation therefore the term “conditional refugee” is applied to non-European refugees (Soykan, 2.11.2012, p. 41).

Under Article 63 “types of international protection”, LFIP further elaborates Turkey’s role in protection for migrants with a “subsidiary protection” provision which provides protection to persons who cannot be identified as “refugees” or “conditional refugees” but who cannot return to their countries because there is ongoing armed conflict or widespread violence where they might face torture, death penalty, inhuman or degrading treatment or punishment. This practice is in alignment with the

complementary protection mechanism of the Refugee Law. The supervisory organs of the human rights institutions have prohibited refoulement to circumstances where persons would be exposed to torture, cruel, inhuman or degrading treatment or punishment. Article 3 of the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and of the European Convention on Human Rights both mention the obligation of non-refoulement of an individual to a country where a person would be exposed to torture. LFIP may be considered as a benchmark since it is the first of its kind in Turkey to cover the legal cracks in the present asylum system. With the LFIP, the residence permit fee is also eliminated and a country of origin database is established. For all of these reasons we can conclude that the LFIP brings significant improvements to the asylum system in Turkey (Soykan, 2.11.2012, p. 42).

1.4.2.2.2. Regulation on temporary protection.

As stated before, the recent Temporary Protection Regulation was published in the Official Gazette on 22 October 2014 through an interim provision that can immediately be applicable to Syrians. In the regulation there are 11 sections and 63 articles. The base of this regulation is article 91 of LFIP. Stating that, it is also known that the 1994 Regulation is also kept as a base for most of the articles of temporary protection regulation.

The objective and the scope of the Temporary Protection Regulations are stated in Article 1, by mentioning to supply temporary settlement for the foreigners who are forced to leave their own countries in mass influxes and come or passed the Turkish border, and not expected to go back in the near future. In more details; Article 1 of the regulation “*the objective of this Regulation is to determine the procedures and*

principles pertaining to temporary protection proceedings that may be provided to foreigners, who were forced to leave their countries and are unable to return to the countries they left and arrived at or crossed our borders in masses to seek urgent and temporary protection and whose international protection requests cannot be taken under individual assessment; to determine proceedings to be carried out related to their reception to Turkey, their stay in Turkey, their rights and obligations and their exits from Turkey, to regulate the measures to be taken against mass movements, and the provisions related to the cooperation between national and international organizations under Article 91 of the Law No. 6458 on LFIP of 4/4/2013”.

The Regulation includes specific provisions on registration and documentation procedures for the temporarily protected people. In general, it allows a legal stay in the country, creates a temporary protection identification document containing an identification number for foreigners and grants access to social benefits and services such as health, education and labor market. People who are holding the temporary protection identification document can apply for a work permit in certain sectors, professions or geographical areas. Regulation also provides psychosocial support, emergency health care, medication and rehabilitation services for the groups with special needs like unaccompanied children and people who need care taking and special treatments. Child care and protection is of special emphasis in the Regulation. Regulation also includes protection on refoulement and replacement of the identification cards (when needed) provided by Turkey’s Disaster and Emergency Management Presidency (AFAD) with temporary protection identification documents. Regulation recognizes the right of education for children aged 36 months and above. There are also temporary articles with specific regulations that regard stateless people from Syria (Malkin & Danfoth, 24.10.2014; UNHCR, 26-31 October 2014).

1.4.2.2.3. Regulation on reception and return centers.

Regulation on Reception and Return Centers which was activated according to LFIP (58th and 95th articles) will be adequate to eliminate the argument that there is no legal arrangement on the administrative observation of Turkey, in the decisions of ECtHR. However, the problems for the locations where administrative observations are applied will carry the potential of contradictions to constitution and human rights laws (Özbek, Mayıs-Haziran 2015, p.45).

The regulation on Reception and Return Centers deals with the procedures and principles for “*establishment, management, operation, outsourcing the operation of and auditing the reception, accommodation and removal centers affiliated to Directorate General for Migration Management, type and nature and auditing of the services to be provided in the mentioned centers, cooperation among the institutions and duties and responsibilities of the personnel, principles and procedures related to financial issues*” (Republic of Turkey Ministry of Interior Directorate Generale of Migration Management, n.d.). This regulation was prepared on the ground of article 58 and 59 of LFIP and then, it was published in 22 April 2014 in the official gazette and came into force¹⁵.

The regulation includes some arrangements about the important principles in operation of the centers. These are; “*Protecting right to life; human-oriented approach; considering high benefit of unaccompanied children; giving priority to those with special needs; keeping confidential personal information; giving information to the relevant persons during the procedures; strengthening those benefiting from accommodation facilities both socially and psychologically; respecting freedom of*

¹⁵ OG Dated: 22.4.2014 No: 28980

belief and worship of those benefiting from accommodation facilities; serving to those benefiting from accommodation facilities with no discrimination due to their language, race, colour, gender, political view, philosophical belief, religion, sect and similar reasons” (Republic of Turkey Ministry of Interior Directorate Generale of Migration Management, n.d.)

1.4.2.2.4. Regulation on working permits of temporary protected foreigners.

This regulation¹⁶ based on Article 91 of LFIP and Article 29 of Temporary Protection Regulation. This regulation which is published on January 15, 2016 in the official gazette, is based on the following procedures and principles:

- The necessity of obtaining a work permission
- Granting a work permit
- Exemption of work permit application
- Obligation for notification
- Vocational training

1.4.2.2.5. Readmission agreements.

Readmission agreement promotes the placement of irregular migrants back in their home countries (repatriation) and strives to reinforce the international customary law responsibilities of states such as the readmission obligation. EU and various states have been extensively using these agreements in order to fight irregular migrant flows (Euro-Mediterranean Human Rights Network, 20.6.2013, p.9).

¹⁶ OG Dated: 15.1.2016 No: 29594

A common European readmission policy took an important position in 1994. Member states concluded that it was the right time to adopt a standardized readmission procedure in order to manage the deportation process of irregular migrants. When the Treaty of Amsterdam came into force in 1999, the EU Commission started negotiations with third countries to sign EU readmission agreements on behalf of all member states. The Dublin Convention impacts each Member State's protection obligations as well as individual asylum seekers. According to the Dublin Convention, the "Member State of first entry" is obligated to address a particular asylum application. Irregular migrants moving to another Member State as a secondary migration point can be sent back to the "state of first entry" (Thielemann, 2003, p.9).

Turkey has recently made several bilateral readmission agreements with various countries of origin and transit for refugees and migrants. Turkey has readmission agreement with Greece¹⁷, Romania¹⁸, Ukraine¹⁹, Kyrgyzstan²⁰, Russia²¹, Bosnia Herzegovina²², Nigeria²³, Yemen²⁴, Moldova²⁵, Pakistan²⁶, Montenegro²⁷ and Syria²⁸ (T.C. Dışişleri Bakanlığı, n.d.; Thielemann, 2003, p. 1).

And finally, the readmission agreement which was signed between Turkey and European Union in Ankara in 16.12.2013, approved by Law no: 6547 on 25.6.2014²⁹ (Ekşi, 2016, p.28), and by the council of ministers on 21.7.2014 and came

¹⁷ OG Dated: 24.4.2002 No: 25148

¹⁸ OG Dated: 24.11.2009 No: 15564

¹⁹ OG Dated: 4.7.2008 No: 26926

²⁰ OG Dated: 18.10.2009 No:15471

²¹ OG Dated: 15.3.2011 No: 27875

²² signed in 2012

²³ OG Dated: 3.5.2012 No: 1950

²⁴ signed in 11.1.2011

²⁵ signed in 1.11.2012

²⁶ signed in 7.12.2010

²⁷ Signed in 2013

²⁸ OG Dated: 12.4.2007 No: 26491

²⁹ OG Dated: 29.6.2014 No: 29044

into force on 2.8.2014³⁰ (Ekşi, 2016, p.28). After the first day of the second month of the publication of the agreement in the official gazette, the obligations of EU and Turkey began for readmission of their nationals. But, it is envisaged three years transition period for the third country nationals and stateless readmission. Normally, this period will be completed in 2017, but it is decided by European Commission to pull back the date to June first, 2016 by preparing a draft resolution (Ekşi, 2016, p.III-IV, 123; European Commission Brussels, 10.2.2016 COM(2016)). For the time being, the agreement is frozen for various debated reasons.

The agreement allows returning foreign nationals irregularly entering and/or residing, back to Turkey in order to be processed before they are set to their territories. In exchange for signing the readmission agreement, the EU has opened up the way for visa liberalizations for Turkish nationals (Euro-Mediterranean Human Rights Network, 20.6.2013, p.9). This agreement covers irregular migrants who will be sent to Turkey from 26 European Union countries except Ireland and Denmark. Turkey will be left to its own devices, alone, while hosting all the irregular immigrants (Ekşi, 2016, p. 32). Moreover, this agreement will give right to the European member states to send back the irregular immigrants who go to a European Country, via Turkey, or from there to other countries, in other words, according to the agreement, it will be possible to send the immigrants back to Turkey from their last destination (Ekşi, 2016, p. 61).

As I mentioned before, Turkey signed this agreement to obtain visa liberalization and being the full member of European Union. But, so far, there is no clear clause that provides visa liberalization for Turkish Citizenship by the European Union (Ekşi, 2016, p. 61).

³⁰ OG Dated: 2.8.2014 No: 29076

Contrary to Turkish EU Minister Volkan Bozkır's disclosure, who says that this agreement does not include Syrian and Iraqi illegal migrants, according to Nuray Ekşi, in European States, the Syrians who demanded the temporary protection but got rejected, became irregular immigrants. This is also included in the agreement. Besides this, for each irregular immigrants sent to Turkey by the EU, the EU will accept a person from Turkey under international temporary protection. This so-called solution, will cause violation of Syrians' legal rights after five years staying in Turkey and becoming integrated. Currently it is debated whether or not to send the Syrians who are already in Europe back to Turkey according to the agreement, starting with the ones in Greece (Ekşi, 2016, p. 117, 137).

Beside that, as Ekşi mentioned, for accepting persons claiming to be Turkey, their Turkish citizenship must first be proved with irrefutable or prima facie evidences. For instance; according to the present readmission agreement which was signed between Turkey and Greece, people who are Syrians, Iranians and Iraqi citizens were being sent to Turkey just because they could speak Turkish (Ekşi, 2016, p. 134).

14.2.3. The Role of UNHCR in Turkey.

The registration, refugee status determination of non-European asylum seekers as well as advisory on who should be granted temporary asylum and the identification of refugees for resettlement are carried out by UNHCR in Turkey. Registration is required at both Turkish migration directorates and the UNHCR offices. UNHCR is notified about the applications of third country citizens by the Turkish authorities and they make sure that they are also registered with UNHCR. The Ministry of Interior takes into account the opinions of UNHCR while taking a decision on the applications (The UN Refugee Agency, 8.2.2013, p. 15).

The Government of Turkey has been working on establishing a system for the asylum process based on international standards in accordance with the National Action Plan on Asylum and Migration of 2005. UNHCR has helped formulate the first ever asylum law which was proposed to the Parliament for enactment. The law will strengthen the country's commitment to humanitarian values and serve as a framework for cooperation with key international partners on asylum and migration issues (The UN Refugee Agency, 2014). Statistics for 2015 (AIDA, n.d.b):

Table 1

Applications and granting of protection at UNHCR instance: 2015 (January-October)

	Applicants in 2015	Pending applications in 2015	Refugee status	Rejection	Refugee rate	Rejection rate
Total	114,127	200,720	5,707	735	88.6%	11.4%

Breakdown by countries of origin of the total numbers

Afghanistan	52,167	79,438	125	14	89.9%	10.1%
Iraq	50,236	93,705	3,632	7	99.8%	0.2%
Iran	9,108	17,908	1,724	601	74.1%	25.9%
Somalia	550	1,692	47	6	88.7%	11.3%

Source: UNHCR Turkey, Statistics October 2015, <http://bit.ly/1TRz1R6>

Table 2

Gender/age breakdown of UNHCR registered caseload (asylum seekers and refugees): 2015 (January-October)

	Number	Percentage
Total number of persons	235,901	100%
Men	145,065	61.4%
Women	90,836	38.6%
Children	79,337	33.6%
Unaccompanied children	Not available	Not available

Source: UNHCR Turkey, Statistics October 2015, <http://bit.ly/1TRz1R6>.

Source: UNHCR Turkey, Statistics October 2015, <http://bit.ly/1TRz1R6>

Table 3

Temporary protection beneficiaries registered: 2015 (1 January-7 December)

	Temporary protection beneficiaries	Percentage
Total number	2,291,900	100%
Outside camps	2,028,220	88.5%
In camps	263,680	11.5%

Breakdown per camp

Province	Number of camps	Population
Şanlıurfa	5	106,267
Gaziantep	5	41,783
Kilis	2	33,546
Kahramanmaraş	1	17,870
Hatay	5	15,092
Mardin	3	11,635
Adana	1	10,698
Adıyaman	1	9,759
Osmaniye	1	9,222
Malatya	1	7,808
Total	25	263,680

Source: DGMM, Temporary Protection, <http://bit.ly/1Np6Zdd>.

Table 4

UNHCR-mediated resettlement from Turkey: 2015 (January-October)

Number of submissions (persons)	Number of departures (persons)
15,292	6,432

Source: UNHCR Turkey

CHAPTER TWO

TEMPORARY PROTECTION

2.1. Definition of Temporary Protection

In the international arena temporary protection has been utilized during huge refugee movements whenever it is not feasible to determine individual refugee status in a short period of time and when temporary group based protection is suitable. In Europe, temporary protection has commonly been used to meet immediate asylum requirements in cases of catastrophic refugee events, such as the rapid movements of Bosnian and Kosovar refugees in the 1990's. If we want to make an overview of the status of temporary protection under international law, legal experts argue that temporary protection has a legitimate role in case of short term group based protection particularly for those who cannot satisfy the Geneva Convention standards but who may fairly be considered at risk. Under the agreed norms of European Union, temporary protection is regarded as an "exceptional mechanism", which allows for immediate protection in case of sudden and massive flows. EU regulations emphasize that temporary protection does not prejudice recognition of refugee status under the Geneva Convention the directive establishes to access the normal asylum procedure if persons concerned to apply. For international legal commentators, an important principle of temporary protection remains one of time limitation. Where danger persists in the country of origin, long term forms of protection should be offered, as people under temporary protection should not be maintained in conditions of ongoing uncertainty. The recent EU Council directive reinforces this position, supporting a three year maximum on temporary protection (Leach & Mansouri, 2004, p.7-8).

Various countries introduced temporary protection practices in order to deal with sudden refugee movements. Temporary protection is a protection provided for a period until a permanent solution is provided. In this way, the governments relieve themselves from the obligation to carry out individual research on the displaced people for reasons of civil war or other forms of mass violence (BMMYK, n.d.b, p. 13). According to the international refugee law, the refugees are expected to return to their homes after the situation in their country recovers. Probably the biggest benefit of the temporary protection is that it provides safety for thousands of people whose lives and freedoms are under threat and that it saves them from the stress caused by the long and complicated determination process of refugee statuses. Temporary protection relieves the states from the burden to research tens of thousands of individual refugee applications. It also helped with approval of the principle of division of responsibility at international level (UNHCR, 1997, p. 208-210).

The most basic convention at international level relating to asylum practices is the Geneva Convention Protocol of 1951 however, although the Geneva Protocol include regulations relating to mass population movements to the borders, it does not clearly cover temporary protection policies. For this reason, it may be logical to think that the temporary protection policy fills the gaps in the Protocol. Temporary protection policy was applied by some European states in order to protect people escaping from former Yugoslavia during 1990s. Some European countries put forward objective indicators of their commitment to the international protection principle and constituted a positive example for the countries in other places in world to host future. The events occurred in former Yugoslavia and Kosovo during 1990s revealed the need to create a new policy in order to deal with mass population movements to the borders of European Union. The events that occurred during the dissolution of former Yugoslavia enabled

determination of minimum standards for temporary protection to be provided to those displaced coming from third countries of EU and not able to return to the country they came from and to those needing international protection. It also enabled putting EU into agenda with the Amsterdam Treaty. A directive was adopted in the Union on 20 July 2001. Therefore, EU introduced a legal regulation in relation to the subject. The directive specifies the rights such as residence, work permits, health and education services for persons in need. It states possible duration of temporary protection and aims at sharing of responsibilities, strengthening of solidarity among member states and harmonization of temporary protection policies. Another international document related to temporary protection policies is the report published by UNHCR in 1994 (UNHCR, 1.1.1994). Basic characteristics of the temporary protection policy defined in the report were based on the former Yugoslavian example in order to include cases of:

- Admission to the country of asylum,
- Non-refoulement applications,
- Treatment respecting fundamental human rights in compliance with humanitarian standards adopted at international level and as set out in the Decision No. 22 of 1981 by the UNHCR Executive Board,
- Refoulement to the original country when conditions recover (Dizman, Aġustos 2012, p. 2-3).

On granting temporary protection status, the states hope that this situation will not last long however, as in the example of former Yugoslavia, sometimes the situation may last longer than it was expected. For example, it is hard to anticipate when things would get back to normal. It is reasonable to estimate that as the process gets longer and refugee numbers increase, demands of the ‘guests’ will also increase (Dizman, Aġustos

2012, p. 4). In addition, some of the rights granted to refugees to benefit temporary protection may not be always completely bestowed; however, people must be treated in accordance with the principles of international humanitarian standards. In the long-run, other options must be researched for the people not returning to their countries. Some of these options may be willingly returning to a safe region of the country where the refugee came from, integration within the country of asylum and resettlement in a third country. Safe return of the people under temporary protection must be facilitated, return options must be carefully encouraged and must be carried out voluntarily (UNHCR, 1997, p. 210-212).

2.2. Characteristics of Temporary Protection

Temporary protection is the kind of protection provided to the foreigners who were forced to leave their countries due to natural or man-made disasters, cannot return to their country and collectively enter into a country with aim of finding urgent and temporary protection.

The heaviest load during a mass influx is on the back of countries of asylum. Of course, other countries, United Nations, national and international NGOs are also required to share such a responsibility. It should be remembered that the human rights lie on the basis of humanitarian relief activities and the humanitarian relief should also make contribution in defense of these rights. An effective protection can only be achieved by NGOs working together with the states and international organizations and filling the gaps in the areas where they are the strongest.

Regardless of its reason, escapes can be classified in two groups as “emergency” and “after emergency” periods, based on timing. In the emergency period, the

population affected from the extraordinary situation acts swiftly. This period among other risks carries risk of violence and requires social and medical care in temporary settlements. The emergency period may be accepted as the period until the end of first year, carrying very high risks of death and injury depending on the cause of the extraordinary situation. In the period after emergency, the population affected from the extraordinary situation settles in a region mostly for temporary period and it is here that we encounter more common and social basic needs as education, activity, job opportunities. During this period, fatal risks for refugees and asylum seekers decrease. Duration of this period differs depending on the characteristics of the response to the emergency period, to the human rights approaches of guest countries, to political decisions and to qualitative and quantitative supports of the national and international help programs (Toplum ve Hekim, Temmuz Ağustos 2001, p.347-349; Beter, 2006, p.13-14 ; Altınışık & Yıldırım, 2002, p.28). Here the attitude of the local and nationwide people of the host country is also very important to tackle this unexpected over flow of the victimized population.

The Convention of 1951 did not introduce any specific provision concerning the people forced to leave their countries collectively as a result of war or violent acts. The people who became subject to war and violence environments should not be under fear or risk of being subject to pressure or persecution. These people benefit from the protection provided by the international regulations. Country practices progress to provide temporary protection instead of granting refugee status to these people (Odman, 1995, p.119-120).

2.2.1. Collective Escape and Some Arised Problems.

2.2.1.1. Collective escape and reasoning.

Refugee influxes do not occur without any reason. Generally, there are indicators of violations of human rights or potential violations to occur in near future. People are forced to leave behind their homes, friends and families in search for a safe place when faced with various forms of human rights violations, torture, sexual harassment, oppression, custody, fear of life and freedom threatening acts of cruelty. Escape from persecution brings great personal risks. The refuge seekers live in fear of being subject to heavy penalties as they are trying to escape even as they seek refuge. These people usually have to make arrangements for illegal transportation. The refuge seekers usually are subject to threats by bandits, pirates and bribe-taker border officers during their escape. The refuge seekers usually leave their families behind and hope that their families will join them in the asylum country. They are usually lonely, scared and doubtful concerning their future. Even though the people collectively escaping from war or conflicts are safer in larger numbers, they may encounter more dangers from people escaping from persecution alone. Rule of law is usually not in question during times of war or conflict; generalized violence jeopardizes escape of people in large numbers (BMMYK ve STK Ortakları, 2003, p.32-24).

2.2.1.2. Cases of sexual violence in the asylum country before and during escape.

Men, women and children may have been treated badly by the police, army or other authorities in their countries. Sexual violence may occur among irregular forces during conflicts. The asylum seekers may be subject to sexual assaults by the people

like them, pirates, bandits, security forces or smugglers. The asylum seekers may be subject to sexual assaults by the people wishing to take advantage of their authority or sensitive situations in camps or urban settlements (BMMYK, 1995, p.1-3, 30).

It becomes impossible for asylum seekers to report such crimes because of their risky legal status, language barriers, other obstacles such as social obstacles and absence of traditional systems. During legal, psychosocial or other kinds of aid processes, the persons who are helping this group of people must comprehend international standards, relevant legislations and practices relating to sexual violence (Bölgesel BMMYK Projesi, 2005, p. 47).

2.2.1.3. Psychological processes before and during escape in the asylum country.

Before their escape, the asylum seekers become subject to traumatic events to cause them to escape. Then, they decide to leave their homelands and the action begins. Various cognitive problems such as mistrust, loneliness and mourning are triggered during this process. There are researches demonstrating that psychopathology frequency increases in people undergoing these three processes when they reach to the asylum country (Kurban, Yüksek, Çelik, Ünal & Aker, 2006, p. 60-61).

2.2.2. Collective Arrival.

Escape from persecution entails great personal risks. Civil war, armed conflict and collective pressure usually cause great population movements. The countries facing with collective refugee influx sometimes seal their borders or use force against the asylum seekers. Some state authorities who does not accept asylum in their countries may intercept sea transportation of refugees or may send them back. Such a large influx

may cause hardships for the asylum country with regards to financial, environmental and social resources. It becomes necessary to establish camps and settlements and to provide care, food and fuel. Environment may be damaged and the local communities may be intolerant to share their perhaps scarce resources with the newcomers in the regions where refugees in large numbers are accommodated. Urgent aid is required in sudden and collective refugee influx. In such emergency cases, namely sudden refugee influx, the asylum seekers are provided with temporary protection and this temporary protection is lifted upon acceptance of the UNHCR when safe and dignified return to the original country is possible (BMMYK ve STK Ortakları, 2003, p. 43-45).

The asylum seekers in camps believe that one day they will return to their home and they need to make the best use of the situation they are in, since this situation may last much longer than expected. Heavy burden generally is on the shoulders of the women escaping from war and coming to the asylum country. They are responsible for their children when men are at war. If there is a boy in the family, he starts working to make a living to bring income to the family. These camps contain wide society including people of many religions, wealthy people, poor people, peasants, urbanites, Sunnis, Shias, Christians, workers, farmers, business men, public servants and soldiers. However, their only common ground is the hatred as they are pulled apart from their origins and forced to escape (Mcpherson, Ekim 1985, p.137).

2.2.3. Basic Principles Applicable in Case of Temporary Protection.

2.2.3.1. Mass influx and non-refoulement.

The principle of non-refoulement asserts that a refugee or an asylum-seeker cannot be returned to a country or a territory where his or her life and freedom would be

at risk or in danger due to reasons of religion, race, nationality, political views or membership in a specific social group. Even though the non-refoulement principle is applied on an individual basis, it should also be maintained and implemented during mass influx. However, in the 1951 Convention states that the principle does not apply to such cases and does not hold any merit and it is not supported by the practices or by the text as adopted (Lauterbacht, n.d., p.10-20).

Below are the main points of the customary international law principles of the Non-refoulement principle in the context of refugees:

- The principle applies to all States, their sub-divisions and organs and persons holding governmental authority and all states are responsible for implementing this principle regardless of geographical location wherever it may be relevant;
- Any form of refoulement including non-admittance at the border exposing the refugee or asylum seeker to the below conditions is prohibited;
 - A threat of persecution;
 - A real risk of torture, cruel, inhuman or degrading treatment or punishment;
 - or
 - A threat to life, physical integrity or freedom.
- The refoulement of an asylum seeker or a refugee to any area where he or she would be in danger, including an area which does not pose a direct risk

but carries the risk of the person being transferred to another area where they would later be in danger, is prohibited;

- Exceptions are valid only under circumstances concerning the public safety or national security but not under situations where the risk of maltreatment would at least be dangerous as being exposed to cruelty, torture, degrading or inhuman treatment or punishment or other inviolable human rights abuses³¹ (Ball, 21 July 2011, p.2; Feller, Türk & Nicholson, 2003, p.150);
- When there are situations where exceptions apply, they must be handled carefully and diligently and they should comply with the principles of due process of law. It should be ensured that all necessary steps were taken first in order to transfer the person in question to a safe third country (Lauterbacht, n.d., p.35; Feller, Türk & Nicholson, p.150).

There is no certain information in applying or not applying the non-refoulement principle policy during mass influx case including temporary protection, but it is expressed that because the principle of non-refoulement is estimated for humanitarian purposes and because it is an important and main principle, it is given to the people who are coming after the mass influx and temporarily protected people. For example, according to the UN Executive Committee's "Protection of Asylum Seekers in Situations of Large Scale Influx", *"persons seeking asylum should be allowed in the State where they first seek protection in large scale influx circumstances and if that State is not in a position to accommodate them on a continuing basis, it should always let them in on a temporary basis and offer them protection in line with the principles."*

³¹ "Derogation, is used to enable a state to respond a serious public emergency which threatens the life of the nation, any right that is absolute is also non-derogable, meaning that it can not be suspended even in a declared state of emergency".

These people should be accepted regardless of the religion, nationality, race they belong to or regardless of their political views, country of origin or physical incapacity. The non-refoulement principle including non-rejection at the border should be strictly and carefully applied in all such situations” (UNHCR-The Executive Committee, 21.10.1981).

The same view was expressed by The Executive Committee as a response to the humanitarian crisis in the former Yugoslavian Conclusion No. 74 (XLV) 1994. It has been shown by other developments in the refugee protection field that the states view the non-refoulement principle as valid in mass influx situations. It is a fact that there are some practical difficulties in the implementation of the non-refoulement principle during temporary protection. The opening sentence of the Commission’s Explanatory Memorandum to the “*Proposal for a Council Directive on minimum standards for giving temporary protection in the event of a mass influx of displaced persons*” supports the non-refoulement principle in mass influx situations and as the Presidency at the Tampere European Council concluded in October 1999, it asserts that a common European system for asylum process should be based on the full and inclusive implementation of the Geneva Convention including the non-refoulement principle (Lauterpacht & Bethlehem, 2003, p.119-120).

In 2001 while commenting on the protection of refugees in mass influx circumstances and practices of States, UNHCR commented that the purpose of the protection is to provide protection from refoulement, admission to safety and providing basic humanitarian treatment to persons who overtly require it. Africa and Latin America have been applying it, especially the Southern African countries with large-scale flows where there is no legal framework for handling refugees. However the

refugee protection process under mass influx conditions still faces difficulties including the application of non-refoulement principle (Lauterpacht & Bethlehem, 2003, p.121).

2.2.3.2. Mass influx and burden sharing.

When a country provides refugee protection both in the private and public areas, there will also be other benefits accumulating in that country. During the Kosovo conflict since Greece was particularly sensitive about the Macedonian minorities in its territory, they have received fewer Kosovar refugees than expected based on geographical proximity. Based on other studies, states are more willing to share burdens of protection if they are more committed to a standard of solidarity with people in need, and countries receiving disproportionate numbers of refugees are those that have strong domestic redistribution and above average foreign aid contributions (Thielemann & Dewan, n.d., p. 13).

EU policy makers have been focusing on burden sharing of refugees since the Bosnian war. This issue was first highlighted when Germany accepted more than 438 thousand asylum applications in 1992. Since then the EU has looked into establishing a more fair burden-sharing system; this was explicitly stated in the Amsterdam Treaty of October 1997. Member States maintained a balance while accepting refugees and dealing with the repercussions of receiving them. EU documents mention more tangible propositions for justice and solidarity in this area. A recent Commission document states that “*the implementation of such an EU asylum policy should be based on solidarity between member States and requires mechanisms for balancing the efforts made by the Member States*”. Consequently many burden sharing initiatives have been established in Europe (Thielemann & Dewan, n.d., p.13-14).

The disproportionate distribution of refugees may be addressed in three ways: physical, financial and legislative burden-sharing where States share people, money and asylum policy respectively. How much each of these initiatives has been effective in maintaining a more equitable distribution of burden-sharing is debated here. The European Refugee Fund, which was jointly financed by the member states, has been explicitly supporting financial burden-sharing in the EU since its establishment. This Fund originated from the Council meeting of Justice and Home Affairs ministers in Tampere in October 1999, where it was suggested to set up a financial reserve in order to provide temporary protection to asylum seekers in the event of a mass influx. The Fund is being used to receive, integrate and repatriate refugees through special projects (Thielemann & Dewan, n.d., p.15-18).

The first Balkan crisis in the early 1990's which uprooted a huge number of people raised many questions on burden-sharing and resulted in various initiatives and proposals to be set up in order to address and develop a comprehensive system and an EU policy on burden-sharing. Financial and physical burden-sharing regarding people seeking temporary protection and asylum are mentioned here (Thielemann, 2003, p.7).

Although burden-sharing initiatives in the 1990's did not have a huge impact, there were some other innovative EU projects with some inconsistent results regarding the redistribution of burdens between Member States. One of them is the Dublin Convention, frequently referred to as the flagship of the EU's asylum acquis. It impacts both the protection obligations of Member States and individual asylum-seekers. The "Member State of first entry" rule is established with the Dublin Convention which makes that particular State responsible for handling asylum claims. If asylum seekers move to a secondary Member State, they may be returned to the state of first entry

(readmission). Secondly, intricate mechanisms were developed between Member States and the EU institutions to avert migration in the EU area such as carrier sanctions, technical aid to third country exit controls and post-entry measures like regulations for transferring asylum seekers to safe third countries. Although both the Dublin Convention and its successor are called burden-sharing initiatives, they cannot be considered practical mechanisms since they only transfer the obligation to the member states which are geographically more vulnerable (Thielemann, 2003, p. 9; Thielemann & Dewan, n.d., p. 19).

After the Kosovo War, the willingness of European states to share uprooted refugees was put to the test. Macedonia was already overwhelmed with people seeking protection, and UNHCR called upon Western European countries and asked them to let refugees in under its Humanitarian Evacuation Programme (HEP) whereby UNHCR would transfer a specific number of Kosovo refugees to states agreeing to accept them. So in this case refugee acceptance rates were not directly related to the country of destination preferences of protection seekers. For this reason the Kosovo case may be considered a “controlled experiment” to test the willingness of states to accept protection seekers (Thielemann, 2003, p. 11).

Despite the first attempts to establish a burden-sharing system in the EU after the Bosnian refugee crisis in the early 1990's, it holds true today that only a few smaller states carry the burden of accepting refugees in disproportionate amounts. The burden-sharing projects initiated by the EU in the 1990's have not been highly effective in equitably distributing the refugees among Member States. Despite frequent references in the official EU documents and communications, the standards of equity and solidarity do not seem to have been adopted by Member States in the application of a burden-

sharing system. Member States have only agreed on initiatives shifting the burden to other states so far, inside and outside of the EU (Thielemann, 2003, p. 14-15).

2.2.4. Problems Experienced During Mass Influxes.

2.2.4.1. Problems caused by country of origin.

The authorities or other groups in the country of origin may carry out cross-border attack to the refugee settlements. For this reason, refugee settlements must always be deployed far from borders. The authorities of the asylum country must increase the number of soldiers at the borders. The country of origin may sometimes try to increase conflict among local people by infiltrating refugee settlements and to turn public in the asylum country against the refugees. In addition, authorities of the country of origin may force the asylum country to expel or return some refugees. For this reason, it is necessary to support social structure of the asylum seeking society, to keep an eye on the people to infiltrate, and to be aware of the problems (BMMYK ve STK Ortakları, 2003, p.49).

2.2.4.2. Problems that may rise due to the country of refuge.

Among the expectations of the refugee there is an entrance to the process of taking refuge, that is leaving a place where the oppression and cruelty were experienced for any reason, and this place being the home country of the person, the experiences on the way to the country of refuge and problems faced in the country of refuge may affect the psychological and physical condition of the person in a negative way.

The asylum seekers are exposed to the various physical and psychological traumas during process of taking refuge and they are the groups that may suffer the risk,

threat, danger, breaches of human rights and attacks towards physical security (like sexual abuse, being scared, being forced to attend irregular armies, kidnapping). Far from their own homes, usually in the crowded camps they usually have lost their individual and moral values, their privacy and decision right about their lives (Toplum ve Hekim, Temmuz-Ağustos 2001, p. 347; Kılıçaslan, 2001, p .4). Since especially the women asylum seekers are more at risk, the planning of the camps and settlements and integration of the aid activities have to include provision of the professional and culturally appropriate gender counseling to the victims of the harassment; indication and prosecution of perpetrators of such crimes and protection from the retaliation of the victims (Bölgesel BMMYK Projesi, 2005, p.29).

Main problems rising in the country of refuge can be expressed as: forced return to the country of origin, custody or excessive use of force or sexual violence. Furthermore, discriminatory applications in distribution of food and other aid materiel or corruption in the distribution system of food and other supplies could damage the welfare of the asylum seekers (BMMYK ve STK Ortakları, 2003, p.50).

More problems may rise from limited resources of the host country administering current law rather than from unwillingness of the host country to ensure effective protection. In a case like these, countries providing financial contribution to the aid programs, UNHCR and NGOs must support the related country's authorities by providing support in money, equipment and education (UNHCR, 1997, p. 82).

Almost all the problems faced by the asylum seekers are based on the economic shortcomings. Moreover, the asylum seekers also face health problems, problems related to their work life, social problems that are educational, sheltering, language, adaptation, family, health or psychological problems (Beter, 2006, p. 30-34). In order to

solve the problems faced by the asylum seekers, institutions and organizations providing services related to the asylum seekers must work in cooperation.

2.2.4.3. The difficulties encountered in the refugee camps.

Variety of culture, religion and language of people in refugee camps bring forth a great variety of problems. For example, danger of politicization and militarization bring the risk of camps being attacked by the rebel groups or military forces of the country of refuge, pressure on the people in the camp to recruit to armed groups, harassment and attacks to the girls and women in the camp, unfortunately international community is not delivering sufficient aid, therefore forced involuntary return of the asylum seekers or health and environmental problems rising in the camps that do not receive proper aid are to name few problems (Kılıç, 1998, p.1266).

In ensuring the protection of asylum seekers it is important to address both humanitarian and civil aspects of asylum needs. When the camps are militarized and publicly politicized and when the events are being used as base to destabilize the government of the country of origin, the cross-border attacks aiming retaliation inevitably take place. One of the problems created by the acceptance of everyone as asylum seekers without discrimination in the mass immigration is the possibility that some of the people taken under the international protection do not in fact deserve this protection. According to the Bylaws of UNHCR, 1951 UN Refugee Convention and in 1969 OAU Refugee Convention there are no provisions providing the possibility of granting of the refugee status for the persons of certain clans like war criminals, persons that have acted against the aim and principles of UN, persons having conducted aggravated offenses outside the politics (UNHCR, 1997, p. 83-84).

2.2.4.4. Problems caused by the protected community.

Considering the difficult conditions in camps or settlements, large conflicts as well as smaller disputes may be encountered. Ethnic conflicts may arise as a vulnerable ethnic mix is formed due to connections caused by camp conditions or as a continuation of the conflict resulting in escape of the asylum seekers. Especially some minority or majority groups may bear a grudge against other minority or majority groups in the asylum country. Presence of armed people in asylum camps may threaten asylum seekers and the whole protection system. Absence of traditional law and order may encourage some refugees to commit crimes. On the other hand, leaders of asylum seekers may apply excessive pressure on the community (BMMYK ve STK Ortakları, 2003, p.51-52).

2.2.4.5. Problems caused by local people.

Local people play an important role on meeting the needs of refugees during refugee crises. Food and accommodation promptly provided to the border regions by the locals save many lives. They also contribute mostly to bring temporary solutions to refugee problems. However, in the event that refugees arrive in large numbers, the local people may display severe hostility to their new neighbors. Sudden emergence of strangers in great numbers may increase social tensions (BMMYK ve STK Ortakları, 2003, p.53).

Asylum seekers may grow crops in the regions they settled in and thus increase agricultural production. However; there would be adverse effects such as scarce job opportunities and income-generating opportunities, medical care, food, fuel, potable water or construction materials for the local people. Sometimes, the government

authorities may have to use all their resources for management of an asylum camp or other problems regarding asylum seekers, instead of meeting needs of the local society. This, as a result, may cause a feeling of grudge and hatred among local people since scarce resources are used, the environment is damaged and polluted, and job opportunities are exploited by asylum seekers. Such feelings may lead to daily prejudice, discrimination and attacks on asylum seekers (especially if the local public and the asylum seekers are of separate and/or opposed ethnic groups) (UNHCR, 1997, p. 203).

In addition, there are thoughts concerning that long presence of asylum seekers in a region with scarce resources may have serious damages on physical environment. The adverse effects of these kinds of problems on the local public become more severe when combined with the thought that the asylum seekers are favored by international communities. Such cases may result in disturbance, exaggerated tensions and conflict between asylum seekers and local population. Violence and other extra-societal ways of behavior occur inevitably in the asylum camps hosting many young men subject to deprivation from education, social events, job opportunities and the right to self-determination. Also, the hosting countries generally do not have the opportunity to establish law and order in the remote and underdeveloped regions where crowded asylum seeking societies live (UNHCR, 1997, p. 71-73).

2.2.4.6. Problems caused by bandits and clashing groups.

The refugees reaching to remote regions are open to attacks from bandits and criminals. They are in danger especially when traveling unarmed in the regions lacking effective law protection. They may be exposed to physical attacks such as theft, abduction, rape or murder. Their aid materials and vehicles may be taken or captured,

moreover, aid workers may be attacked and some of them may be killed by bandits. Therefore, serious crimes must be carefully investigated and judged by local authorities (BMMYK ve STK Ortakları, 2003, p.54).

2.2.4.7. Problems caused by lack of protection and insufficient aiding.

Improper or insufficient protection and aid measures taken by well-intentioned aid workers may cause protection problems. Protection is an important aspect of the aid that must be kept in mind when programs are conducted and services are provided. In order to minimize these problems, appropriate camp designs and places must be provided; food and service must be delivered without discrimination; basic treatment standards must be complied with; and sufficient aid must be given to the refugees with special needs (women, children, old and sick) (BMMYK ve STK Ortakları, 2003, p.55).

2.3. Legal Basis of Temporary Protection in Comparative Law

2.3.1. Reviews of UNHCR on temporary protection.

Temporary protection was suggested in order to enable urgent refugee influx to carious countries. This is a temporary protection form to lead permanent solution. By applying this, the governments relieve themselves from the time-wasting and expensive responsibility to individually research misplaced persons as a result of internal war and other generalized violence. Most of the temporary protection plans provide for entitlement of right of asylum for the people escaping from regions with generalized conflicts and human right violations. This protection covers the people who are considered refugees as per the Convention of 1951. Temporary process of the protection shall not be extended. Temporary protection of the people escaping from generalized

violence can be lifted upon approval of the UNHCR when returning becomes safe (UNHCR, n.d.a).

As a result of the interviews conducted in asylum camps, the UNHCR indicates that the people under temporary protection are not provided with all the social rights (for example financial aids, education, right to work) provided to refugees; and recommends development of these standards of treatment in time.

In cases of temporary protection, the UNHCR strongly urges states to gradually improve treatment as the length of stay is prolonged. The UNHCR advocates that rights to education, employment and freedom of movement should be granted without discrimination. UNHCR give particular importance on family reunion, especially with regard to vulnerable beneficiaries of temporary protection such as those who have already suffered physical or psychological injury (Leach & Mansouri, 2004, p. 9).

As I mentioned before, for the example of former Yugoslavia, UNHCR published an international document about temporary protection policy in 1994 (Poyraz, 2012, p. 60). *“In this report the basic elements of temporary protection are defined as: Admission to the country of refuge, respect for the principle of non-refoulement and basic human rights, treatment in accordance with internationally recognized humanitarian standards such as those outlined in Conclusion 22 (XXXII) of the Executive Committee, and repatriation when conditions in the country of origin allows”* (UNHCR, 1.1.1994).

There is a UNHCR guideline about Temporary Protection or Stay Arrangements. The guidelines’s purpose is *“to provide guidance and help the governments, by setting out the elements, during their work on temporary protection stay arrangements for*

finding solutions and answers to the humanitarian crises and complex and mass influx population movements, especially in situations where existing responses are not appropriate or sufficient. These guidelines mention the lessons learned from existing regional protection instruments and arrangements. The complex type of population movements can pose challenges to States and regions. So that, as past practice, multilateral responses in the form of cooperative arrangements lead to improved burden sharing and protection of concerned populations and individuals. At the national level, states may need to adopt or amend their laws, policies or practices to implement these guidelines to strengthen appropriate institutions and build their capacity. According to these guidelines, when the situation causing the displacement has ended, temporary protection stay ends too, by voluntary return, by replacing another form of protection, by giving an alternative status like residency status or work visa or by resettlement to a third country” (UNHCR, February 2014, p. 1, 4-5, 7).

2.3.2. The european union council directives 2001/55/ec on temporary protection.

During and after the Yugoslavia civil war and since 1992 the concept of Temporary Protection to be granted to asylum seekers has gained significance and was also incorporated in the EU agenda. Temporary asylum once again became a focus issue in the EU during the 1999 Kosovo massacre. In the 1999 EU Council meeting held in Tampere, 15 member states agreed on incorporating asylum in the areas of freedom, safety and justice issues and it was uniformly decided that the practices on temporary protection should be standardized among Member States. After the Council meeting in Tampere, the Amsterdam Treaty was signed where member states agreed to work together to create Common European Asylum System (CEAS). Consequently, four draft

regulations and two draft rules have been approved in order to establish the Common European Asylum System. One of those regulations is the “Temporary Protection Regulation numbered 2001/55/EC³² prepared in 2001. According to this regulation, *“the member states also provide temporary protection to fulfill their liabilities emanating from the human rights and respect to freedom and non-refoulement principle”* (Ekşi, 2012b, p. 93).

For the member States of the European Union, the Dublin Convention (authoritative instrument) is currently the only recognized instrument determining the responsibility of examining applications for asylum and an authoritative instrument for the member states of the European Community. Dublin Convention was, and is, a first step in initiating the *“movement which liberates energy inducing the change”* and sets the European Union on the path to creating a common asylum system (Marinho, 2000, p.8, 310).

“The Directive establishes an EU mechanism and minimum standards for granting temporary protection. Temporary Protection is defined as a procedure of exceptional character to provide, in the event of a mass influx or imminent mass influx of displaced persons from third countries who are unable to return to their country of origin, immediate and temporary protection to such persons, in particular if there is also a risk that the asylum system will be unable to process this influx without adverse effects for its efficient operation, in the interests of the persons concerned and other persons requesting protection” (Article 2/a).

³² Council Directive 2001/55/EC of July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between member states in receiving such persons and bearing the consequences thereof.

“A Temporary Protection regime, according to Directive, is established by an EU Council decision adopted by a qualified majority on a proposal from the Commission” (Article 5). “Member States shall then, if necessary, provide persons to be admitted to their territory with every facility for obtaining the necessary visas, including transit visas. Formalities must be reduced to a minimum and visas should be free of charge or their cost reduced to a minimum” (Article 8/3).

“Directive, specifically underlines the exceptional character of Temporary Protection and ensures access to the asylum determination procedure. The Directive has the following positive aspects (ECRE, October 2002, p.3).

- *A reasonable standard of rights to be conferred (with the exception of access to health care which establishes a minimum of emergency care and essential treatment)*
- *Provisions for especially vulnerable groups*
- *Temporary Protection is granted for a limited time only*
- *Establishment of a solidarity mechanism between Member States”.*

2.4. Rights and Duties in Granting Temporary Protection

2.4.1. Persons who are eligible for temporary protection.

Firstly, *“the 2001 EU Directive provides for a responsibility sharing mechanism among Member States who shall receive persons eligible for temporary protection in a spirit of community solidarity” (Article 25/1/1). “Member States must indicate their reception capacity before the Council takes its decision and may indicate additional*

capacity afterwards” (Article 25/1-2-3). *“If there is higher demand than what can be received in terms of capacity, the Council may suggest additional support for Member States affected”* (Article 25/3). *“The European Refugee Fund applies to Temporary Protection regimes”* (Article 24).

EU Directive decreases discrepancies between the policies of EU States on the reception and treatment of displaced persons in a situation of mass influx. The Directive provides harmonized rights for the temporary protected people. For example; a residence permit for the entire duration of the protection (1 to 3), appropriate information on temporary protection, access to asylum procedure, medical treatment and employment, housing, social welfare, education for children, opportunities for families to reunite in certain circumstances. The Directive contains provisions for the return of displaced people to their home country and for excluding people who have committed serious crime or posed a threat to security from the benefit of temporary protection. There are also special provisions for unaccompanied children and the persons who had traumatic (rape, physical or psychological violence) experiences (European Commission-Home Affairs, 23.6.2015).

In Turkey temporary protection firstly mentioned in 1994 regulation and according to the regulation temporary protection provided in the event of mass influx. This regulation ensures the foreigners in massive numbers who came to Turkey’s borders in the articles. And, temporary protection is regulated for the first time in a law through the LFIP in article 91. The actions and the measures are arranged for the asylum seekers and refugees who came to Turkey’s borders.

According to the Article 91 of LFIP, *“Temporary protection may be provided to foreigners who, having been forced to leave their country and cannot return to the*

country they left, have arrived at or crossed the borders of Turkey in masses seeking immediate and temporary protection. And, proceedings to be followed on reception into, stay in, rights and obligations in, exit from Turkey of such persons, along with measures to be taken against mass movements as well as cooperation and coordination among national and international institutions and organizations, designation of powers and duties of institutions and organizations that will function at the central or provincial level, shall be governed by a regulation to be issued by the Council of Ministers". All in all, for providing the temporary protection, foreigners:

- Must be forced to leave their country massively,
- Can not go back to their country,
- Must be in need of emergency and temporary protection.

LFIP establishes a general framework and a regulation for temporary protection and it also foresaw an arrangement for the future regulation.

Also, in the Temporary Protection Regulation, duties and rights, such as “*right to live in a province (Article 24), right to stay in the country (Article 25), general obligations (Article 33), to obey the invitations (Article 34) etc.*” are arranged.

2.4.2. Duration of temporary protection.

According to the EU Council Directive, “*the normal duration of Temporary Protection is one year, with an automatic extension of two six monthly periods for a maximum of one year (Article 4/1). Where the reasons for Temporary Protection persist, the Council may then decide (again, by qualified majority and on a proposal by the Commission) to extend the regime for another year (Article 4/2). The maximum*

possible duration of Temporary Protection is therefore three years” (ECRE, October 2002, p.2).

In brief, when a large number of displaced people arrive in the EU, member states may provide temporary refuge for a maximum of three years. During this time, those under temporary protection may make individual applications for permanent protection and gain a hearing within the three-year temporary visa period. Minimum rights and standards attached to temporary protection status include accommodation the right to work, housing, emergency health care, maintenance support and education for those under eighteen. The EU Council Directive has determined that “close family members” may have the right to reunite in the host country. When making decisions on family reunions, EU member states must take into consideration “the best interests of the child” and any extreme difficulty that a persons under temporary protection would face if reunification did not take place (Leach & Mansouri, 2004, p.10).

2.4.3. Duties of states granting temporary protection.

The responsibility to protect the asylum seekers lies on the States. When internal conflicts cause international refugee problems, establishment of peace and safety in the country of conflict belongs to all states, especially the neighboring states. The heaviest burden of mass asylum events is on the shoulders of the asylum countries. The states call UN organizations and nongovernmental organizations for uniting their opinions in all sorts of subjects, from provision of support services to planning of settlements and to protection of asylum seeking women as soon as possible in order to prevent physical and sexual abuse and included similar events. States call UNHCR and other organizations, approved by the Governments, to take all necessary measures. These measures enables establishment of asylum camps in safe places, ensuring safety of

groups that may avail themselves of it, organization of camps and settlements and participation of both women and men of the society to management (BMMYK ve STK Ortakları, 2003, p.22-23; BMMYK, 1995, p.11-12).

The government authorities must be informed about their responsibilities and measures required to be taken for protection of rights of the asylum seekers; especially international laws, documents of universal declaration of human rights approved by the country and documents relating to the protection of refugees of the UNHCR must be overemphasized. Security guards must be trained on relevant code of conduct aiming at preventing and correcting misuse of power and they must be educated on interview techniques (BMMYK, 1995, p.25-26).

Asylum problem concerns all states; therefore, approaches within common understanding framework and offers of common solutions by the states will provide benefit with regard to both ensuring safety of the states and eliminating or minimizing asylum problems (Güner, 2005, p. 11-12).

According to EU Council Directive, *“Persons under Temporary Protection are granted by the following rights: “residence permit and appropriate documentation” (Article 8); “right to work, both employed and self-employed, subject to prevailing rights of other EU nationals or third country residents at the discretion of Member States” (Article 12); “suitable accommodation” (Article 13/1); “necessary assistance in terms of social welfare, means of subsistence and emergency medical care and essential treatment of illness” (Article 13/2); “education for minors on roughly the same terms as for nationals” (Article 14/1); and for adults (at discretion of Member States); “family reunification” (Article 15); “special provisions for vulnerable groups” (Article 13/4); and “unaccompanied minors” (Article 16)”* (ECRE, October 2002, p.2).

“The granting of Temporary Protection does not prejudice recognition of refugee status under the Geneva Convention” (Article 3/1), “and the Directive stipulates that persons under Temporary Protection must be able to lodge an application for asylum at any time” (Article 17/1) “and that the examination of any asylum application not processed before the end of the period of temporary protection shall be completed after the end of that period” (Article 17/2). However, “Member States may provide that temporary protection may not be enjoyed concurrently with the status of asylum seeker while applications are under consideration” (Article 19), and, “the criteria and mechanisms for deciding which Member State is responsible for considering an asylum application shall apply”(Article 18). “This is specified by the provision that in particular, the Member State responsible for examining an asylum application submitted by a person under Temporary Protection shall be the Member State which has accepted his transfer onto its territory” (Article 18/2) (ECRE, October 2002, p.2).

2.4.4. Termination of temporary protection.

According to the Executive Committee document, *“Asylum seekers forming part of such large-scale influx situations are often confronted with difficulties in finding durable solutions by way of voluntary repatriation, local settlement or resettlement in a third country. A large-scale influx frequently creates serious problems for States, although committed to obtaining durable solutions, states have only found it possible to accept asylum seekers without undertaking at the time of admission to provide permanent settlement of such people within their borders. It is therefore inevitable to ensure that asylum seekers are fully protected in large-scale influx situations, to reaffirm the basic minimum standards for their treatment pending arrangements for a durable solution, and to establish effective arrangements (for example international*

solidarity and burden-sharing) for assisting countries which receive large numbers of asylum seekers” (UNHCR-The Executive Committee, 21.10.1981).

2.4.4.1. Voluntary return.

According to Council Directive, “when temporary protection is finished, State shall take the necessary actions to ensure the voluntary return of people under temporary protection or whose temporary protection has ended. The States shall ensure that the provisions governing voluntary return of persons enjoying temporary protection has to facilitate their return with respect for human dignity” (Article 21/1).

Temporary protected people prefer returning to their homes when the conflict ends, persecution risks are eliminated, stability is established and basic infrastructure is built in their country; so that, “voluntary return”, which is the best solution, comes true. The UNHCR supports voluntary return of misplaced people back to their countries. But, some people do not return or do not wish to return to their home in fear of being subject to continuing persecution. In such cases, UNHCR tries to enable them to permanently settle in the asylum country that they took refuge or in a third country (UNCHR, 16.7.2007, p. 6,8,13).

It is obligatory for some people to return due to political or family reasons, even though the situation in the country of origin did not change. Safe returns means returning of the people within conditions of legal safety, physical safety and material pecuniary safety. Voluntary return is classified in two: organized and spontaneous. Organized return is the one encouraged by the UNHCR (BMMYK ve STK Ortakları, 2003, p.60-63). The UNHCR must be satisfied with the fact that voluntary return request is actually a voluntary request and there is no force. The UNHCR must analyze

all statuses of asylum seekers forced to return being subject to danger of life and freedom and must ensure protection continuity of temporary asylum seekers in the country they took refuge or in another country (UNHCR, 1997, p. 92).

If the political conditions are favorably changed in the home country, voluntary repatriation can be taken into consideration. In such a case, final judgment can be applied. That means, the temporary settlement status has ended because of the change in the home country of the refugee, therefore the obligations for the host country are obsolete. In case nothing changes, UNHCR may try to place them to the countries which are willing to accept them or even to accommodate them in a third country to provide a new and more pleasant life.

2.4.4.2. Integration.

National and international institutions and NGOs such as UNHCR, ICMC, Anatolian Development Foundation, IOM and Turkish Red Crescent are involved in the integration activities of refugees and asylum seekers in Turkey. There is currently no such system in place to integrate aliens other than asylum seekers and refugees. The state has supervisory and regulative authority in general but integration activities are delegated to institutions by law designating where and how they can cooperate and coordinate various aspects of the process between themselves and other agencies. Therefore local governments, NGOs and employers should be endorsed (Doukoure & Oger, June 2007, p. 30).

2.4.4.3. Resettlement.

Voluntary return and integration is not the only possible goal or end result of a period and policy of temporary protection. The condition upon which the temporary protection rests is sustained for a period of time which can no longer be considered as short-term then other non-temporary solutions need to be considered. While, the voluntary component of the refugees return was seen to be a desirable element and return can be seen as a duty, resettlement should be kept alive as less desirable options (Thorburn, 1998, p.166). Resettlement should also be considered as legitimate outcomes of a period of temporary protection (Thorburn, 1998, p.155).

So, temporary protection has come to involve a concept of the requirement of return, offering temporary protection in a spirit of humanitarianism, can involve with the idea of three possible durable solutions; voluntary return, integration and resettlement (Thorburn, 1998, p. 149).

Resettlement is for people whose lives and freedom, safety, health or other basic human rights are in danger, a protection that defined by UNHCR as “*the selection and transfer of refugees from a state in which they have sought protection to a third country that admits the refugees with a permanent residence status*” (European Resettlement Network, n.d.).

Resettlement was used as the main or partial solution for various refugee situations between the First and the Second World Wars. The League of Nations was replaced with The International Refugee Organization (IRO) by the United Nations in 1945. The primary aim of the IRO was repatriation, but the political events leading up to the Cold War shifted the equilibrium towards resettlement of people who were unable

to return home. IRO was later replaced by the Office of the United Nations High Commissioner for Refugees. After the Second World War, UNHCR used resettlement extensively to find solutions for European refugees. Depending on the situation, all three solutions were equally contemplated for the next three decades, including resettlement. The concept of resettlement also evolved in the Cold War framework. After the turn of the century resettlement has been in use particularly for groups. UNHCR Field Offices became responsible for examining possible resettlement needs and the introduction of a methodology for group resettlement. Resettlement has become a significant demonstration of international solidarity, burden-sharing and permanent solutions (UNHCR, July 2011, p. 47, 54). Despite those three solutions, however, the protected persons still encounter various issues such as racism (Thorburn, 1998, p. 167-168).

Refugees should be offered opportunities and assistance by the resettlement activities in order to help them settle into their new communities with ease. Those integration activities require collaboration, coordination and cooperation. Communities must be welcoming towards resettled persons and must support them through opportunities and activities that will bring the new members and community members together at the local level to build relationships and address the issues in order for the activities to succeed (UNHCR, July 2011, p. 7).

2.4.4.4. Another form of protection.

After the termination of temporary protection, other than voluntary return, integration and resettlement, one of the effective arrangements for a solution, is giving another form of protection to temporary protected people. According to this, the statue that they carry can be given temporary protected people collectively or their international protection demand can be assessed individually (Topal, Bahar 2015, p. 18).

2.5. Current Example on Temporary Protected Syrians in Some Countries

2.5.1. In the United States.

Temporary Protected Status started to be given to Syrian nationals in the United States in March 2012 and has twice extended the designation for 18 months. The United States Citizenship and Immigration Service, which examines Temporary Protected Status applications, reported that 3,124 Syrians have re-registered and another 1,835 have signed up for the first time (Messick & Bergeron, 2.7.2014). The United States received the fewest requests over a three-year period, with an estimated 5,280 claims submitted by Syrians from 2012 through 2014. In December 2014, the assistant secretary for the US Bureau of Population, Refugees, and Migration announced that the United States plans to take the lead in resettling Syrians worldwide. The US Bureau of Population, Refugees and Migration anticipates that US resettlement of Syrians will increase (Ostrand, 2015, p. 268). Many of those Syrians who could have been eligible for temporary protection status are applying for asylum, because lots of people believe that the crisis in their country will never be end (Beaty, 5.7.2015, p. 1, 2). The humanitarian response has fallen hardest on Syria's neighboring countries, as example

Turkey, although US has begun accepting some Syrians for resettlement (Messick & Bergeron, 2.7.2014). United States is geographically much further from Syria than European countries, which may be one reason for the small number of individuals seeking asylum there (Ostrand, 2015, p. 272).

2.5.2. In Australia.

In Australia, Temporary Protected Visa was introduced by Howard Government in October 1999 by allowing temporarily protected people to live permanently in Australia but abolished by the Government in August 2008. Approximately 11 thousand Temporary Protected Visas (TPV) were issued between 1999-2007 and again approximately 90 percent of Temporary Protected Visa holders eventually gained permanent visas. Then, on 18 October 2013, the Abbott Government reintroduced Temporary Protected Visas under a policy similar to that which operated under the Howard Government. And, on 5 December 2014 the Abbott Government passed the Migration and Maritime Powers Legislation Amendment Act 2014. Under this act, Temporary protection Visa can be granted for up to three years but the duration can be determined on a case by case basis and TPV holders are entitled to work. But, there is no right to family reunification and temporary protection visa holders will not have access to various welfare support mechanisms (UNSW, 1.4.2015).

The number of Syrians being offered resettlement in Australia has been increasing over the last several years. According to the Government Minister of Australia, Abbott, *“Australia has taken 4,500 Syrians and would continue its generous response to the ongoing Syrian crisis”* (Bourke, 7.9.2015). As the crisis has escalated, the Australian Greens, the Opposition and some Government members calling for more resettlement places for Syrians. The Prime Minister announced on September that how

it could further assist Syrians including through resettlement within the existing humanitarian quota of 13,750 places per year. More resettlement places will be made available for Syrians through a redistribution of places from within the existing allocation (Spinks, 8.9.2015).

2.5.3. In the EU.

The EU countries were not able to come to an agreement regarding Syrians fleeing the conflict. Based on a Human Rights Watch research, the track record of European Union Member States is not so 'squeaky clean'. The majority of Syrians come to Greece as their first entry point to the EU but they are either unwilling or unable to apply for protection. Most asylum claims from Syria have been made to Sweden and Germany. Access to European territory should be made easier by solid actions taken by EU member states. Although deportations of Syrians have been frozen by most EU states, Greece has deported them and the UK has attempted to deport them. The EU states are also transferring Syrians between themselves under the Dublin II Regulation which allows them to send these people to the EU state they first entered. Since the number of Syrians seeking protection in the EU has been growing, EU member states should start considering to implement a temporary protection system across the EU (Human Rights Watch, 23.12.2012). Those who are eligible to be granted temporary protection under the directive, would be given permission to work, access to healthcare, education for minors, and could receive assistance with housing and social services if needed (Orchard & Chatty, 2.10.2014). According to the EU, approximately 150 thousand Syrians have declared political asylum in the EU from the start of the current conflict in Syria to 2014, the majority of them being in Germany and Sweden (Syrian Refugees, 2014). According to UNHCR, the number of Syrians who came in

EU and made an application have decreased previously and totally Syrians number were 1,151,865 in August 2016 (UNHCR, 7.11.2016).

2.5.4. In Sweden.

During the Syrian conflict, the heavy burden is on neighboring countries (Turkey, Lebanon, Jordan, Iraq, and Egypt) as we know. But, in the meantime, Syrians were able to find protection in states outside the region. For example, Germany and Sweden, by the end of 2014, had provided to the largest number of Syrians outside to the region. During the protection, Germany, Sweden, the United Kingdom, and the United States have different protection level. All four states have increased protection to Syrians via resettlement and asylum since 2012. Despite this, the protection which is provided by the four states is modest in relation and it is known that, far more could be done (Ostrand, 2015, p.255). Germany and Sweden have admitted the largest number of Syrians among industrialized states outside the region and received the greatest number of asylum applications by Syrians out of the four states over a three year period starting in 2012. Sweden received 55,210 Syrian asylum claims between 2012-2014 (Ostrand, 2015, p.269). Germany and Sweden have likewise provided financial assistance. Sweden contributed USD 169 million in humanitarian and other assistance from March 2011 through 28 October 2014 (Sweden Ministry for Foreigner Affairs, 2014, p.7; Ostrand, 2015, p. 268). Like Germany (Germany announced the initiation a program for admitting Syrians, primarily from Lebanon and through this program Syrians receive a two year temporary residence permit which can be extended consecutively. Germany's national government has vowed to receive 20 thousand Syrians through this program and have initiated their own sponsorship program, adding another 10 thousand) Sweden has also agreed to resettle more Syrians; as of 9 January 2015, it had committed to

2,700 resettlement spots. Resettled Syrians in Sweden receive a permanent residence permit (Ostrand, 2015, p. 267-268). Germany and Sweden have provided notable protection space for Syrians and represent positive models which can encourage other industrialized states throughout Europe, North America, and the Asia Pacific region to increase their efforts (Ostrand, 2015, p. 272).

For reducing the strain on neighboring countries, the solutions are, increasing the level of burden sharing by the international community as a whole and distribute the burden among industrialized states in Europe, North America and the Asia Pacific. For the protection of Syrians, three recommendations is proposed for states; increase refugee resettlement, facilitate family reunification and other forms of legal admission, and allow refugees to seek protection through embassies in the region (Ostrand, 2015, p. 255-256).

2.5.5. In Switzerland.

In 4 September 2013, the Federal Department of Justice and Police ordered visa requirements for Syrians and their relatives in Switzerland. This was for facilitating temporary stay for temporarily protected people and war-afflicted relatives of Syrians who are living temporarily in Switzerland. The visa applications which work slowly will be rapidly according to the directive of 4 September 2013. All the situations are also written in the explanatory note in 12 November 2013. Because of the dramatic situation in Syria continues, Swiss authorities decided to make the visa requirements easier, and bring the temporary visa facilitation. This way is a fast and non-bureaucratic way to facilitate the temporary and lawful stay for Syrians in Switzerland. Addition to visa facilitation, Switzerland also makes humanitarian aid on the ground (State Secretary for Migration, 29.11.2003).

In Switzerland the relatives of Syrians have made an extensive use of visa facilitation. A total of 719 Syrians (475 women and children), who entered Switzerland since 4 September 2013 (measure is started), 385 have supplied an asylum application in Switzerland. Approximately 1,600 visas, and 5 thousand people effectively could have an appointment for supplying submitting a visa application at Swiss foreign mission. But in certain Swiss missions, especially in Istanbul, the large volume of visa applications delayed, which is not consistent with the temporary nature of directive. The directive is lifted but Syrians who are protected by Switzerland will still be able to bring the family members in. And the people who are under threat and are under the danger of attack on their lives can be granted a humanitarian visa in Switzerland through existing legislative framework (State Secretary for Migration, 29.11.2003).

In Switzerland, the Syrian community is small and the asylum rules are not as generous as Germany and Sweden. So, as migration office, Switzerland is not a preferred destination for Syrians. The new figures show that there are just 401 Syrians who applied for asylum in August 2015 (The Local, 8.9.2015). So, from 2013 till 2015 only 15 more Syrians were granted asylum. If we look at the rate, Switzerland's acceptance rate for Syrians is around %35 and Sweden's is %100, which is not satisfactory for Switzerland (Le News, 9.9.2015).

Syrians have been put in a former boarding school in the village of Thal in eastern Switzerland, where they will live for six months preparing to be integrated into Swiss society. Priority is given to German language courses. Psychological counseling is also providing (SWI, 29.9.2015).

2.6. Temporary Protection Regulation and Examples of the Temporary Protected People in Turkey

2.6.1. Temporary protection regulation-under the explanation of nuray ekşi's article.

2.6.1.1. Background and Legal Basis.

Legislations in Turkey are hugely influenced by the EU Temporary Protection Directive. But the legislations and practices of other countries are also taken into consideration when European Court of Human Rights (ECtHR) gives its judgments. Syrians who started coming after 28 April 2011 in mass influx also have had a huge impact in the legislative environment (Ekşi, 2014, p.68).

The legal framework for granting temporary protection status has shifted throughout the Syrian crises. Until the operation of the LFIP, the 1994 Regulation on Asylum had been the only valid legal administrative tool to offer some elements of temporary protection. In March 2012 the Turkish Government issued a circular³³ on the treatment of the Syrians, though this was never published (Kirişçi, 2014; International Crisis Group, 30.4.2013, p.2).

A parallel provision to the definition of EU Temporary Protection Directive is set forth in the Article 91 of LFIP. Article 91 of LFIP sets the conditions of temporary protection but procedures and principles regarding temporary protection are provisioned to be arranged by a regulation to be made by the Council of Ministers. In reference to

³³ “Türkiye’ye Toplu Sığınma Amacıyla Gelen Suriye Arap Cumhuriyetinde İkamet Eden Vatansız Kişilerin Kabulüne ve Barındırılmasına Dair Yönerge [Regulation on Reception and Accommodation of Syrian Arab Republic Nationals and Stateless Persons who reside in Syrian Arab Republic, who arrive to Turkish Borders in Mass Influx to Seek Asylum]” was issued as Regulation No. 62 on March 30, 2012; Zaman Gazetesi, 4.5.2012).

this article, Temporary Protection Regulation came into force following publication in the Official Gazette in 22 October 2014³⁴. Whenever the term “temporarily protected” is used in the Temporary Protection Regulation, those that are under temporary protection is meant (Ekşi, 2014, p. 69).

2.6.1.2. The individual beneficiaries of temporary protection during a period of mass influx.

In Turkey, according to Temporary Protection Regulation, the decisions on temporary protection are made by the Council of Ministers. It is not enough to meet the conditions of Article 7 to be granted temporary protection in mass influx situations. Basically, Article 9 maintains that Council of Ministers must make the temporary protection decision (Ekşi, 2014, p. 73-74).

In accordance with the Article 91 of LFIP, temporary protection may be granted to the foreigners who are forced to leave their countries, who cannot go back to their countries, who come to or pass through Turkish borders with mass influx in order to seek urgent and temporary protection. This article in LFIP envisions the possibility of the implementation of a temporary protection regime, in situations of “mass influx” for internationally protected people. However it does not directly provide any elaboration regarding principles, content and procedures to be applied to people concerned (Asylum Information Database, n.d.).

In Article 91 of LFIP only mentions persons coming with a mass influx. Temporary protection is defined generally, however it is not clear whether individual

³⁴ Decision Number: 2014/6883: Enforcement of Annexed “Temporary Protection Regulation”; decided by the Council of Ministers in 13 October 2014 according to the Article 91 of Foreigners and International Protection Law dated 4 April 2013 and numbered 6458 upon the act of Ministry of Internal Affairs dated 13 October 2014 and Numbered (OG Dated: 22.10.2014 No: 29153).

migrants coming during a mass influx will be granted temporary protection, refugee or conditional refugee status. Article 7 of the regulation states that “*individual persons who come during a mass influx*” will be granted temporary protection. So, according to this article, those coming with a mass influx and the ones coming as a result of the circumstances causing a mass influx should only be granted the same temporary protection status.³⁵ So, while the refugee or conditional refugee status will be granted on an “individual basis”, temporary protection can be given to individual persons who come during a mass influx (Ekşi, 2014, p. 72). Article 7/2 of the Regulation stipulates that the persons who have arrived in Turkey before the temporary protection decision was made by the Council of Ministers cannot benefit from temporary protection, so they are not in scope of the Regulation on Temporary Protection and Article 91 of LFIP. Therefore those persons will be subject to other provisions of the LFIP (Ekşi, 2014, p. 73-74).

Article 3/1/j of the Regulation defines mass influx as a mass movement of people from the same territory or state in a short period of time and the provision applies when it is not feasible to officially and quickly determine the international protection status of a high number of people. When a country’s ability to determine international protection status on an individual basis is hindered because the system is overwhelmed by a large number of migrants coming in, then we can talk about a mass influx (Ekşi, 2014, p. 72-73).

³⁵ Mass influx is defined at clause (j) of Regulation’s article 3(1). According to this clause, mass influx expresses the situations where individually determining international protection status is not formally applicable because of the influx from the same country or geographical region in a short period of time and with substantial quantities and the greatness of the number of people. The most important factor in the definition of mass influx is the arrival of foreigners with a great number preventing a country’s international individual protection status procedures.

Article 18 of the Regulation states that persons who previously served in their country's armies but who unilaterally terminated their military service and non-military armed units shall be granted temporary protection after they have been disarmed by the Turkish Land Forces Command if they have arrived from land and by the Turkish Coast Guard Command if they have arrived from the sea (Ekşi, 2014, p.70).

2.6.1.3. Exclusion from individual international protection.

Even though definitions “individual persons arriving during a mass influx” and “persons arriving with a mass influx” both correspond to the definitions of refugee or conditional refugee, these persons will not be granted refugee or conditional refugee status as per Article 61 and 62 of LFIP. Article 7 of the Regulation also mentioned this issue by including the phrase: “*foreigners on whom the process of international protection status identification cannot be applied individually*”. According to Article 7/3 of the Regulation, temporarily protected persons will not be considered to have been granted any international protection status listed in the LFIP. Article 16 of the Regulation suggests that international protection applications of foreigners will not be processed while they are under temporary protection status in order to execute temporary protection measures efficiently (Ekşi, 2014, p.73). Because, it is not feasible to determine individual refugee status in an emergency situation due to the time and documentation needed to carry out a proper and just assessment of protection requirements. In those circumstances a generalized form of protection such as temporary protection may be implemented until their refugee status can be considered within normal determination process (ECRE, n.d.).

Article 14, paragraph 3 makes an exception for foreigners defined in Article 8/ç who are under temporary protection but who cannot apply for individual international

protection during the temporary protection period. The Article concludes that if the persons who previously took place in armed conflicts in their countries but have stopped armed activities permanently, they may apply for individual international protection. Persons covered under this Article may be eligible for individual protection status instead of than temporary protection. If persons who have left Syrian army or opposition forces and permanently stopped active combat request international protection because of events taking place outside of Europe, they will be granted either "conditional refugee" or "subsidiary protection" status (Ekşi, 2014, p.73).

2.6.1.4. The Scope of application.

2.6.1.4.1. Admission requirements to Turkey.

Article 17 of the Regulation does not specify any geographical restrictions from which migrants seeking temporary protection may enter Turkey. This article maintains that all foreigners entering Turkey's land and sea territories seeking urgent and temporary protection are treated within the scope of the Regulation (Ekşi, 2014, p.71).

Although Article 17 covers foreigners arriving in Turkey by land and by the sea, those arriving individually by air will also be granted temporary protection since airports are also considered land as part of national territory (Ekşi, 2014, p. 71).

2.6.1.4.2. Conditions of exclusion.

Article 8 of the Regulation lists the situations in which persons shall not be granted temporary protection: "Those who committed crimes against peace or humanity, those who committed war crimes, a non-political serious crime before being accepted by the member country, crimes that are in conflict with the UN's basic

principles or those who collaborate with those who committed these crimes; those who engaged in armed conflicts and have not stopped those activities permanently; those who took part in terrorist activities or contributed to those activities; those who have been condemned for a serious crime and whose status pose danger against public order; those who committed a crime in their country which requires prison sentence but fled their country to avoid serving for this crime; those who committed offenses against state security” (Ekşi, 2014, p. 71; Ekşi, 2012a, p.12; Ekşi, 2013a, p.59-60).

2.6.1.5. The Geographical scope.

There is no geographical restriction for temporary protection therefore persons coming to Turkey from European and non-European countries during a mass influx may both be granted temporary protection (Ekşi, 2014, p.71). The main thing and the main obligation of states, is, to provide humanitarian necessities and amenities in accordance with the temporary nature of the stay of protection seekers who ultimately wish to return to their homes when the displacing conflict reaches an end (Bidingir, 14.1.2015, p.229).

The Regulation does not cover Syrians only and applies to all foreigners coming to Turkey during a mass influx regardless of their country of origin. The only reference to Syrians is under the temporary Article 1 which states that Syrians and stateless people who entered Turkey after 28 April 2011, either during a mass influx or individually due to the Syrian conflict shall be granted temporary protection. The individual international protection requests of these people will not be processed while they are under temporary protection status. But if a person requesting individual protection came from Syria before 28 April 2011, whether or not this person shall be granted temporary protection depends on his/her request of international protection. If

those who have arrived before this date do not request temporary protection but file for an asylum application, it will be assessed whether they may be assigned conditional refugee status instead of refugee status since their country of origin is non-European. And, Temporary Article 1/5 states that the exit processes of third country citizens who entered to Turkey from Syria will be handled according to the general provisions (Ekşi, 2014, p.71-72).

2.6.1.6. The application process.

When authorities catch foreigners who came to Turkey with a mass influx or who came individually, no administrative fines will be imposed on them during the period of mass influx but persons entering Turkey illegally are obligated to notify the authorities and register themselves as soon as they can. Article 5 states that administrative fines may be imposed if the reason given for reporting and registering in a reasonable time is not legitimate. Temporary protection seekers first wait at the dispatchers and then they are taken to temporary sheltering centers or sent to the cities where they were assigned to stay other than shelters. Article 36 states that the dispatchers are organized and administered by the governorates and, in these places the identification and registration processes are done. Articles 19 and 21 state that persons who are granted temporary protection are also recorded in the address registration system. As per Article 20 the dispatchers provide emergency health services and medical examinations for persons who pose a risk for the public health. Article 22 states that governorates provide persons with temporary protection identification cards and foreigner identification numbers³⁶ after their registration processes have been completed. This identification card can be obtained without a fee or tax payment but it

³⁶ Foreigners who are as part of Temporary Protection Regulation, an identity number will be designated as part of the Law of Population Service (Date:25 April 2016, Number: 5490).

cannot be used as a resident permit or alternative documents of residence permit as outlined in Law no. 6458. With the foreigner identification number foreigners may carry out their legal and social obligations (İçişleri Bakanlığı Göç İdaresi Genel Müdürlüğü, n.d., p.1). Article 25 maintains that although persons gain the right to remain in Turkey with this document, it may not be used as a residence permit, it does not contain a provision to switch to a long-term residence permit, its duration does not count towards a period for a residence permit and it does not give a person to become a Turkish citizen. A foreigner can only be eligible for Turkish citizenship if he/she has resided in Turkey for 5 continuous years. The important point is that, the period of the Temporary Protection Identification Card shall not be taken into account at the counting of 5 years (Ekşi, 2014, p.74). According to the Article 29 of the Temporary Protection Regulation, the foreigners holding temporary protection identification card may apply to Ministry of Labour and Social Security in order to obtain work permit to work at the sectors, business branches and geographical areas to be determined by the Council of Ministers. According to the Article 26 of the Temporary Protection Regulation, however, the possibility to contract subscription agreements including the electronic communication service is provided for the foreigners who are allocated foreigner identification number and fall within the scope of this regulation (İçişleri Bakanlığı Göç İdaresi Genel Müdürlüğü, n.d., p.1).

The Ministry of Interior and Disaster and Emergency Management Presidency (DEMP/AFAD) reports that Syrians in Turkey have been given biometric IDs and their fingerprints and personal data have been taken in order for them to benefit from job offers, social benefits, education and various aid packages. The database will also be used to monitor people who were previously involved in criminal activities (Kızılkoyun, 12.1.2015).

Article 23 states that those who have been granted temporary protection will then be transferred to temporary shelter centers or cities when they have been given the right to reside in cities. Article 37 maintains that temporary sheltering centers are set up and closed by the Governorates based on a consensus decision with DEMP (AFAD), Ministry of Internal Affairs and other relevant public bodies. Article 38 states that services such as shelter, food, health checks, social aid, education, etc. will be provided based on availability. General law enforcement officers provide the security of the dispatchers and temporary sheltering centers, however, as per Article 40 if the relevant governorates approve, the protection of these areas may be outsourced to private security companies. According to the Article 24 of the Regulation, temporarily protected persons are primarily sheltered in temporary sheltering centers, but they may be allowed to live in the cities identified by DGMM (Directorate General of Migration Management) if they are not found to be at risk to public safety, health or order (Ekşi, 2014, p.74-75).

2.6.1.7. Services Offered to the beneficiaries.

2.6.1.7.1. The Right to work, health, education and social aid services.

Articles 26 and 32 of Temporary Protection Regulation, outline the services to be provided for the temporarily protected, such as, health and education services and they can also work at the specific businesses, sectors and geographical areas defined by the Council of Ministers by applying to the Ministry of Labor and Social Security if they have temporary protection identification documents. Maximum period of the work permits cannot be longer than the duration of temporary protection. Article 10 states that, the period can be determined in the temporary protection decision by the Council

of Ministers. As per Article 29 they are not allowed to work in occupations that are prohibited to foreigners with various laws (Ekşi, 2014, p.75).

According to the temporary Article 1 of the Regulation regarding the Procedures and Principles of Occupation for Foreigner Health Care Professionals in Private Health Organizations in Turkey³⁷ titled as *“exemption status of health care professionals who are citizens of Syria: Syrian citizen health care professionals who want to work in sheltering centers established by the Disaster and Emergency Management Presidency for those who are granted temporary protection because of the events in Syria are exempt from the conditions in the clauses (a) and (b) of first paragraph of the Article 5, on condition that they submit the document proving they are authorized to exercise their profession”*. According to the Article 5 of the Regulation in question: *“Foreign health care professionals within the scope of this Regulation may exercise their professions in private health organizations on condition that they meet the following conditions:*

- *Have equivalence of their diplomas and/or certificates of expertise approved and registered by the Ministry.*
- *Have no legal obstacles to exercise the profession.*
- *Speak Turkish language.*
- *Obtain work and residence permit according to the relevant legislation.*
- *Have compulsory occupational liability insurance for medical doctors”*.

³⁷ OG Dated: 22.2.2012 No: 28212

Law on Work Permits of Foreigners (Law no: 4817) is repealed and the Law of International Labor Force³⁸ has entered into force on 13.8.2016. According to Article 12/1 of this law, work permit or permit exemption which is granted, can be replaced by the residence permit pursuant to Article 27 of Law 6458. However except for the refugee or secondary protection status as described in the Law No 6458, foreigners are not entitled to have right to work in Turkey if they are allowed to reside for any reason. In Article 17/1, according to Law No 6458, it is stated that, temporary protected people can apply for work permit or exemption for work permit after six month from the date on which the temporary protection identity document was issued and according to article 17/2, the positive opinion of Ministry of Interior is necessary while giving a work permit or an exemption of work permit. And, according to Article 17/3, having a valid permit or work permit exemption will not give the right to an absolute stay in Turkey. In article 17/5 (b) in the case of termination of temporary protection by the decision of the council of Ministers or individually or in case of cancellation, the work permit and work permit exemption that is given by decision of the Council of Ministers or declaration of Ministry of Interior can be abolished by the Ministry. As I mentioned before, in addition to this Law on work permit and the conditions, Regulation on Working Permits of Temporary Protected Foreigners, applies to the people who are under temporary protection.

Ministry of Labour and Social Security has taken a decision for granting work permit without being subjected to assessment criteria, to Syrians that have been granted residence permit for at least 6 months by law enforcement authorities, provided that residence permit term is not exceeded³⁹. According to the Prime Ministry's circular

³⁸ OG Dated: 13.8.2016 No: 29800

³⁹ *"It was deemed suitable to grant work permit to foreigners holding Syrian citizenship, who has come to Turkey due to civil disorder in their country and to whom residence permit has been given by law*

which regulates permission for working conditions of temporary protected Syrians; they may get the working permission under the conditions that only in the provinces where they are settled and not more than 10 percent of the workers at the working places. For Syrians who will be working in temporary farming jobs, there is no quota, but they need to take permission from the Governorate. For the Syrian health officer and educators, application will be made to Ministry of Health, Higher Education Council and Ministry of Education for their approval. The Syrians who will receive the work permission will also be able to use all the workers security rights of the Turkish citizens (Hürriyet, 12.2.2016). When granting work permits to Syrians, domestic employment condition will not be asked within the framework of this decision. As per Article 30 of Temporary Protection Regulation, temporarily protected persons may also benefit from social aids as per Law of Encouraging Social Help and Solidarity No 3294. Article 31 states that translation services will be provided free of charge to foreigners during legal processes and proceedings on temporary protection (Ekşi, 2014, p.76-77).

2.6.1.7.2. Services for special needs persons.

Article 3/1 of the Regulation defines a person with special needs as a pregnant, disabled, elderly person, an unaccompanied minor, a mother/father accompanied by children or someone who has been exposed sexual assault, torture or other severe physical, psychological or sexual violence. These persons may benefit from all rights and services indicated in the Regulation. Some additional services are also offered to persons with special needs. Article 48 of the Regulation states that special needs person

enforcement authorities, without subjecting them to assessment criteria, provided that their residence permit term is not exceeded. As such, in the event that employers, who want to employ Syrian citizens that hold residence permit for at least 6 months obtained from law enforcement authorities, submit an application in accordance with procedures and principles specified in the internet site of Ministry of Labor and Social Security, their requests would be taken into consideration by the Ministry”; Çalışma ve Sosyal Güvenlik Bakanlığı, n.d.)

can benefit from social aids such as, health care services, psycho-social support, and rehabilitation with priority and free of charge based on availability. In legal proceedings where children are involved, their best interests are pursued in decisions to be made. Law No 6284 on Protection of Family and Prevention of Violence against Women applies to persons who are identified as victims of violence and the necessary actions are taken accordingly. If the temporarily protected persons are considered to be victims of human trafficking, the necessary proceedings take place under the relevant legislation (Ekşi, 2014, p.77).

2.6.1.7.3. Family reunification program.

As per the Article 49 of the Regulation persons under temporary protection have the right to unite with their families if they file a request to be reunited in Turkey with their minor children, spouses, and dependent adult children living in another country (Ekşi, 2014, p.77).

With this article DGMM may evaluate such requests and may cooperate with relevant international and non-governmental organizations. But that wording and specifics of this provision do not indicate strictly a right to family reunification on the part of beneficiaries. It rather can be seen as a possibility subject to the discretion of DGMM (AIDA, n.d.a).

Anyone who wishes to lodge an application for family reunification outside of Turkey should be in direct contact with the relevant embassy. UNHCR Turkey has used its offices to facilitate a speedy family reunification for unaccompanied children who have parents residing in a third country by liaising with relevant embassies and has

ensured appropriate care arrangements while the children are in Turkey (UNHCR, January 2015b, p.9).

2.6.1.7.4. Access to legal services.

It has been debated whether or not persons applying for temporary or other international protection statuses should use the legal services. Article 53 of the Regulation has a provision which clearly states that foreigners can also represent themselves with lawyers during the administrative procedures of the temporary protection as long as the costs are covered by them personally. However, legal assistance of the Legal Profession Act No. 1136 provisions will be reserved (Ekşi, 2014, p. 77-78).

2.6.1.8. Termination of temporary protection.

2.6.1.8.1. Reasons for termination.

The EU Temporary Protection Directive clearly states that temporary protection is "temporary" and it shall be given for certain periods⁴⁰. Articles 11 and 12 of the Regulation state the reasons for which temporary protection is terminated. Temporary protection can be terminated either by an administrative decision or on the request of temporarily protected person (Ekşi, 2014, p.78).

2.6.1.8.2. Termination based on the council of ministers decision.

Article 11 of the Regulation states that the Ministry of Interior can suggest the termination of temporary protection to the Council of Ministers and The Council of

⁴⁰ "Given the exceptional character of the provisions established by this Directive in order to deal with a mass influx or imminent mass influx of displaced persons from third countries who are unable to return to their country of origin, the protection offered should be of limited duration".

Ministers can then decide to terminate the temporary protection. Article 11 specifies proceedings to be made on the termination of temporary protection by the decision of the Council of Ministers (Ekşi, 2014, p.78).

If the Council of Ministers decides the temporary protection statuses to be terminated, the below decisions may be taken on those foreigners (Ekşi, 2014, p.78):

- “To make them leave Turkey and to return to their countries;
- To give their current status collectively;
- To evaluate the individual international protection applications;
- To stay in Turkey on the conditions stated in LFIP” (Art.11).

If temporary protection is terminated by a Council of Ministers decision, general rule is to take the temporarily protected persons out of Turkey. However, Article 11 of the Regulation clearly infers that foreigners with terminated temporary protection statuses have other options other than returning to their countries. Unless a mandatory return decision was given for them, those persons may apply for other relevant individual international protection statuses or they may continue staying in Turkey based on the LFIP and an appropriate status can be granted to them collectively. In fact as per the non-refoulement principle mentioned in Article 6 of the Regulation, foreigners cannot be sent back to their countries when their temporary protection period ends. Inclusion of the non-refoulement principle in the Regulation proves to be a challenging and bold move when there are more than one and a half million Syrians living within Turkish borders (Ekşi, 2014, p.79).

2.6.1.8.3. Termination based on personal circumstances.

Article 12 of the Regulation lists the reasons when temporary protection can be terminated based on the personal circumstances of the temporarily protected persons (Ekşi, 2014, p.79):

- “Temporarily protected person leaves Turkey voluntarily;
- Temporarily protected person takes advantage of the protection of a third country;
- Temporarily protected person leaves due to humanitarian reason or within relocation;
- Temporarily protected person dies”.

2.6.1.8.4. Cancellation of temporary protection.

Article 8/1 of the Regulation regulates foreigners who cannot be considered in the scope of temporary protection. Related to that article, as per Article 12/2, the General Directorate of Migration of governorates may revoke temporary protection statuses if any of the situations mentioned in this article apply to the persons in question. If the person previously had been granted temporary protection status when he/she shouldn't have, his/her temporary protection status is cancelled (Ekşi, 2014, p.79).

2.6.1.8.5. Voluntary return.

Article 42 of the Regulation states that if the person under temporary protection returns to his/her country, the temporary protection ends. Article 12/1/a of the

Regulation, also indicates that if the temporarily protected person voluntarily leaves Turkey, this is considered as a situation which terminates the temporary protection, which makes one wonder why there is a separate Article 42 describing exactly the same situation. However, there are some differences between Article 12/1/a of the Regulation and Article 42. Directorate Generale of Migration Movement (DGMM) coordinates and executes voluntary repatriation with the partnership of NGOs and international organizations. Foreigners returning voluntarily to their countries can also benefit from various social assistance programs such as financial support or occupational training to help them set up a business or find a job when they are back in their countries (Ekşi, 2014, p.79-80).

2.6.1.9. Termination procedures.

2.6.1.9.1. Persons with terminated status.

Persons whose temporary protection statuses were terminated cannot leave Turkey without holding documents or passports equivalent to a passport. Article 43 authorizes DGMM to assess the situation of persons not having these documents as per Passport Law Number 5682 and decide whether or not to give them a “foreigners’ passport” to safely exit Turkey as per Article 18 of Passport Law (Ekşi, 2014, p.80).

2.6.1.9.2. Entrance and exit after termination of status.

Article 44 of the Regulation states that persons whose temporary protection have ended may only pass through or permanently exit Turkey with a permission from DGMM. DGMM may also cooperate with the NGOs or international organizations in other countries or may develop and execute programs and projects in order to ensure the exit and resettlement of foreigners in a third country (Ekşi, 2014, p. 80).

If persons have terminated or expired temporary protection statuses and want to re-enter Turkey, in these cases the LFIP is the main legislation as Article 45 of the Regulation does not mention these situations. The provisions on the prohibition of foreigners from entering Turkey under the LFIP will address this issue (Ekşi, 2014, p.80).

Article 13 of the Regulation outlines the return of foreigners with expired temporary protection to Turkey and DGMM or other governing bodies (if DGMM delegates this authority) decide whether or not temporary protection measures will be applied. Syrians in Turkey go back and forth between Syria and Turkey for various reasons. Based on the media coverage, they leave Turkey temporarily for reasons such as irrigating their fields and orchards, feeding their animals or to join a fight (Ekşi, 2014, p. 80-81). As per Article 12 of the Regulation, the temporary protection statuses of these persons are terminated and Article 13 indicates that if they want to benefit from the temporary protection status again, the decision is up to DGMM. DGMM may not grant temporary protection status for the second time to Syrians who are leaving Turkey voluntarily. Our view is that if Syrians are leaving Turkey in order to join a fight, DGMM should not be granting them temporary protection status. Article 44 of the Regulation indicates that, transition or permanent placement of the temporarily protected persons to a third country will be dependent on the permission of DGMM and DGMM may choose to cooperate with other countries, civil society institutions or international organizations before making a placement in third countries. Of course, when persons are placed in third countries either permanently or temporarily, their temporary protection statuses are terminated (Ekşi, 2014, p. 80-81).

2.6.1.10. The Non-refoulement principle.

The non-refoulement principle asserts that a person cannot be expelled or returned to a country or territory where his or her life or freedom would be in danger because of his political views, race, religion, nationality or membership to a specific social group (Lauterpacht & Bethlehem, 2003, p. 89; UNHCR, 20.7.2011; Odman, 1995, p.155-157).

Whether or not the non-refoulement principle can be applied during mass influxes and also in temporary protection should be evaluated. It should be determined whether the principle of non-refoulement principle is applied during mass influxes and thus in temporary protection. Although there are divided views on whether the non-refoulement principle can be applied during mass influxes or not, some claim that it should be applied to temporarily protected persons since it is a basic and humanitarian principle. Non-refoulement principle is applied by Turkey to all persons regardless of their country of origin and geographic considerations. This principle is observed as an international customary rule as well as being the cornerstone of the 1951 Geneva Convention. Turkey has endorsed many international conventions which adopts this principle. So it would violate both international customary rules and the conventions endorsed by Turkey if persons arriving from outside Europe would not be subject to the non-refoulement principle (Ekşi, Yabancılar ve Uluslararası Koruma Hukuku, 2015, p.138-139).

The fact that the Regulation endorses the non-refoulement principle is a crucial point. As per Article 6 of the Regulation, a person cannot be sent back to a country where he or she would be in danger or would be exposed to inhumane or degrading treatment, punishment or torture based on his nationality, religion, race, political views

or membership to a social. Syrians may have their temporary protection status revoked by Turkey and they may be deported if they are considered a risk to the public safety and order. If they end up being deported because of violating public order or safety, the deportees are treated under the non-refoulement principle (Ekşi, 2014, p. 82).

2.6.1.11. Exclusion of certain issues.

2.6.1.11.1. Exclusion of deportation conditions.

The Regulation, which is based on the Article 91/2 of the LFIP, does not contain a particular provision on the deportation of temporarily protected persons. Sometimes there have been requests to deport Syrians if they were involved in petty crimes or theft. Since Article 16 of the Constitution indicates that basic rights and liberties of foreigners are regulated in compliance with international law, their deportation from Turkey is also subject to law (Ekşi, 2014, p. 82).

The reason why the Regulation does not include any provisions on the deportation of temporarily protected persons is because the LFIP treats deportation of foreigners in general and deportation of international protection seekers or persons who were granted international protection differently. According to Article 3/1/r of the LFIP “refugee”, “conditional refugee” and “subsidiary protection” are considered international protection statuses but “temporary protection” is not one of them. While the reasons for deportation of foreigners in general are listed in Article 54/1 of the LFIP, Article 54/2 indicates that the reasons for deportation of persons who are either seeking or who have been granted international protection are only limited to cases where it was determined that they pose a risk to national security or if they have been convicted of a crime which is a threat against the public order. Therefore, whether or not temporarily

protected persons could be deported under conditions listed in Articles 54/1 and 54/2 should be clarified in the Regulation keeping 3/1 of the LFIP in mind (Ekşi, 2014, p. 82-83).

2.6.1.11.2. The Unpredictability of the duration.

The fact that the duration of the temporary protection is unforeseeable in the Regulation on Temporary Protection is criticized to be an imperfection (Çorabatır, 8.11.2014, p.1).

The duration of temporary protection has been identified as one year with a possibility to extend it for another year in Article 4 of the EU Temporary Protection Directive, therefore, the total duration is maximum two years but the Council has the authority to extend it for another year. However, Article 10 of the Regulation does not specify a duration for temporary protection but it adds that the Council of Ministers may determine the duration in its decree on temporary protection. The Regulation is well-directed in our view, considering Article 10 and Article 6 together which mentions the non-refoulement principle. Furthermore, Article 11 states that the beneficiaries of temporary protection are allowed to seek asylum individually to remain in Turkey as per the LFIP even when temporary protection ends and if they meet the requirements, they may be eligible to gain the relevant status (Ekşi, 2014, p.83).

2.6.1.11.3. The Restriction to individual protection.

The means to individual international protection is closed as Articles 7/3 and 16 of the Regulation, therefore the Regulation diverges from the EU Temporary Protection Directive. Article 16 of the Regulation states that individual international protection requests made by the beneficiaries of temporarily protection will not be accepted until

the temporary protection period ends, the beneficiaries however may apply for individual international protection after this period ends (Ekşi, 2014, p. 83-84).

The LFIP defines three types of international protection; Article 61 defines “refugee”, Article 62 “conditional refugee” and Article 63 defines “subsidiary protection” while the Article 91 of the LFIP separately regulates “temporary protection”. Only one type of international protection status can be granted at a time to a foreigner but a person under international protection status may also be eligible for other types of international protection. The LFIP has no provisions about status change therefore once the Council of Ministers issues a decree on temporary protection, there are no regulations to assist foreigners who may want to switch to another international status. Switching from temporary protection to another international protection status is also not allowed as per the Regulation. It is, however, possible for beneficiaries of temporarily protection to apply for individual international protection once their temporary protection status ends (Ekşi, 2014, p.84).

2.6.1.11.4. Exclusion of integration.

One of the criticisms against the Regulation on Temporary Protection is that it does not include provisions concerning integration. It is considered to be failing to respond to the expectations that the Regulation would bring some policies and especially some provisions concerning the Syrians' integration, foreseeing that they would stay in Turkey for a prolonged period of time (Çorabatır, 8.11.2014, p.1). However, integration is not one of the goals of temporary protection. Its main purpose is to provide immediate and temporary protection to persons who require it with the expectation that these persons will return to their countries once their need for immediate and temporary protection has ceased to exist. Integration is not mentioned in

The EU Temporary Protection Directive, either. Article 14 of the Regulation indicates that the beneficiaries of temporarily protection may individually apply for asylum or obtain a group-based status or residence permit in Turkey although the main priority is the departure of temporarily protected person once the temporary protection status ends. The LFIP will be the main legislation of reference when temporary protection ends as the Regulation will no longer apply to persons seeking asylum or residence permit. The LFIP specifically regulates integration, therefore persons benefiting from Article 14 will also be benefiting from integration (Ekşi, 2014, p. 85).

2.6.1.12. A Comparison between temporary protection regulation and the eu temporary protection directive.

A comparison between the EU Temporary Protection Directive and the Regulation on Temporary Protection shows us that (Ekşi, 2014, p. 85-87):

- “Definition of “temporary protection” in Articles 1 and 2/a of the Directive, and Articles 1 and 3/f of the Regulation are identical.
- There are some differences between definitions of “mass influx” in Article 3/1/j of the Regulation and Article 2/d of the Directive. On one hand, Article 3/1/j of the Regulation states that a mass influx is the case where individual international protection status cannot be properly determined because of high numbers of protection seekers coming from the same country or region in a short period of time. On the other hand, Article 2/d of the Directive indicates that mass influxes are high number of unexpected or supported (e.g. via evacuation programmes) entries into the EU by people coming from the same country or region in a short period of time.

- Third article of the Regulation is reserved for definitions, whereas the EU Directive reserves Article 2 for definitions and the latter covers less information.
- According to Articles 3/1 and 17-19 of the Directive, temporary protection shall not hinder the right to apply for refugee status. Nevertheless, for an efficient implementation of temporary protection, in compliance with Articles 7/3 and 16, individual protection demands are not put into process.
- Contrary to the EU Temporary Protection Directive, the Regulation does not envisage a certain duration for temporary protection. However, the Council of Ministers in Turkey may determine a duration for temporary protection in the decree. Hence, the Council of Ministers is authorized but not obligated to determine the duration of temporary protection according to the characteristics of each concrete case. Because Article 10/1/b states that the starting and (if necessary) ending dates of temporary protection shall be determined by the Council of Ministers.
- Articles 9-10 of the Regulation authorizing the Council of Ministers to issue the decree of temporary protection and regulating the required aspects of this decree have parallel contents with Article 5 of the Directive authorizing the Council of the European Union to issue a decree and give details to this decree.
- Article 6 of the Directive envisages the termination of temporary protection either via an end date or by decree of the Council. The Regulation, on the other hand, in Articles 11-12, agrees to the termination of temporary

protection by decree of the Council of Ministers or due to reasons related to the person under protection, but it does not mention an end date determined by the Council of Ministers.

- Articles 19-22 of the Regulation are parallel with Articles 9-10 of the Directive, regulating the provisions concerning registration process of the temporarily protected and issuance of ID's for them.
- Article 29 of the Regulation and Article 12 of the Directive, regulating the temporarily protected's right to work, are similarly worded. However, our Regulation offers extra convenience for temporarily protected Syrians. By decree of Ministry of Labour and Social Security, Syrians are exempt from the condition of domestic employment, and Syrian doctors are exempt from certain requirements for foreign doctors to work in Turkey as long as they want to work in the shelters.
- Article 13 of the Directive concerning benefiting from health care services and Article 27 of the Regulation bear similarities. In fact, Article 27 of the Regulation is more comprehensive than Article 13 of the Directive. Article 27 covers many areas such as vaccination of children and reproductive health.
- Article 28 of the Regulation is not limited to compulsory education, but it includes regulations concerning higher education degrees up to PhD. Article 14 of the Directive only guarantees the basic education rights of the temporarily protected who are under 18, but leaves the education rights of those who are 18 or over to the discretion of member states.

- The definition of family reunion in Article 49 of the Regulation includes only spouse, minor child, and major but dependent child. Nevertheless, Article 15 of the Directive covers a larger definition of family. Family reunion may be demanded in member states accepting regulated relationships. Additionally, the Directive accepts the relatives who had been living with the family prior to the event provoking the mass influx as part of the family.
- Article 42 of the Regulation is parallel to Article 21 of the Directive regulating voluntary repatriation of the temporarily protected.
- Article 8 of the Regulation is parallel to the Article 28 of the Directive regulating those who may not benefit from temporary protection.
- According to Article 29 of the Directive, people whose family reunion applications are rejected or who are not eligible to benefit from temporary protection may take legal action. Although the Regulation does not have a provision in this context, Article 125 of the Constitution points the way to administrative procedure against administrative decisions regarding temporary protection”.

2.6.1.13. Summary.

The Regulation on Temporary Protection, which was formulated in accordance with Article 91 of the LFIP and was put into effect on 22 October 2014, regulates international protection in a mass influx situation. It does not only apply to Syrians but to anyone coming to Turkey during a mass influx regardless of their country of origin. Syrians, started coming to Turkey from 28 April 2011 in a mass movement. The

Provisional Clause 1 clarifies whether or not the Regulation can be applied to Syrians who entered Turkey before the law was put into effect. The Clause treats all Syrians who have entered Turkey as of 28 April 2011 within the scope of the Regulation, gives them temporary protection status and uses the term “the temporarily protected” for those granted temporary protection. For that reason it is important to make a distinction when referring to people who came with a mass influx including Syrians who are under temporary protection and call them “temporarily protected” rather than referring to them as “refugees”, “asylum seekers” or “guests” (Ekşi, 2014, p. 87).

There are many similar provisions between The Regulation and the EU Temporary Protection Directive. The fact that the Turkish Regulation does not permit temporarily protected persons to apply for individual international protection during the temporary protection period is the most crucial distinction but there is an exception to this rule in the case of persons previously involved in armed conflict in their home countries. If they can prove that they have stopped participating in armed combat permanently, they are given the right to apply for individual international protection. Only those who took part in armed conflict in their home countries but permanently ceased their armed activities will be eligible for requesting individual international protection among people who came in with or during a mass influx. It may sound strange why persons previously involved in armed combat are offered this opportunity only and not women, children or the elderly. The explanation is that when the Syrian army soldiers escaping the war or the rebels fighting against the Syrian army return to their country after the war has ended, they will be faced with serious risks. This is the only exception to the rule and everyone else coming with or during a mass influx can only benefit from temporary protection. Despite this, temporarily protected persons are free to remain in Turkey and request individual international protection when their

temporary protection status ends. The other distinction between the two regulations is that the Turkish Regulation does not specify a duration for temporary protection and gives the Council of Ministers the authorization to decide on the duration (Ekşi, 2014, p.87-88).

Other provisions of the Regulation providing some flexibilities are the recognition of the non-refoulement policy which raises practical issues in implementation during temporary protection, granting temporary protection to persons arriving in Turkey both via land and the sea, granting temporary protection to non-military armed units and to those who previously served in the army of their home country but ended their military service, allowing the temporarily protected to remain in cities other than shelters and stay in other provinces outside of shelters in some cases and allowing family reunions while under temporary protection (Ekşi, 2014, p. 88).

The never-ending Syrian crisis and the repercussions of the Arab Spring have led to the creation of provisions that seek to find an equilibrium between temporary protection and national interests. Article 15 of the Regulation gives authority to the Council of Ministers to limit or suspend temporarily or indefinitely the current temporary protection where it is deemed necessary because of a threat to public order, safety or health or national security and this can be regarded as a safety-oriented approach. Articles 46-47 of the Regulation also encourages cooperation with public institutions, NGOs in Turkey as well as international organizations like UNHCR and other countries (Ekşi, 2014, p. 88).

Turkey provided a “temporary protection” for foreigners from Syrian origin by accomplishing the three basic elements of temporary protection within the framework of international law and practice. These basic elements are:

- Unconditioned acceptance into country borders with an open border policy;
- Adoption of non-refoulement policy without any exceptions
- Satisfaction of incoming people's basic needs. With the Regulation, “Temporary Protection” to be offered to foreigners coming from Syria due to the internal disorder in their country has been placed on a legal basis (İçişleri Bakanlığı Göç İdaresi Genel Müdürlüğü, n.d., p. 1, 2).

The draft of the Regulation on Temporary Protection, which was prepared following a transparent and participatory process, was presented to 53 public institutions and agencies on 8 April 2014. After collecting insights from those, it was submitted to the Prime Minister's Office on 14 August 2014. Moreover, it was intended with this regulation to create a secondary and more comprehensive legislation in compliance with international standards regarding temporary protection which entered into our jurisprudence via Law No. 6458 (İçişleri Bakanlığı Göç İdaresi Genel Müdürlüğü, n.d., p. 1).

Information about temporary protected people in Turkey would present a better study about implementation of legislations. Among these, Bosnians, Iraqis and Syrians are of relevance to cover a variety of lesser known temporary protection implementations.

2.6.2. Examples of the temporary protected people in Turkey.

2.6.2.1. Actions taken by Turkey for temporary protected bosnians.

I included Bosnians as temporary protected people in my study because when Bosnians came in Turkey, there was not a definition on temporary protection but

Turkish government gave them right for temporary protection and sheltering. As it is said at present for Syrians, during Bosnians' stay, they were also referred as "guests" rather than as refugees or asylum seekers. And, when the civil war was over, majority of them went back to their country. As a result, although there was no term of temporary protection at that time, in practice temporary protection was provided for the Bosnians.

2.6.2.1.1. The Organizations involved and their contributions.

An influx has been confronted soon after war began in former Yugoslavia, when the international community has witnessed unspeakable atrocities in a land that has been ravaged by civil strife. This war has resulted in the loss of over 200 thousand human lives in addition to a countless amount of material and infrastructural damage that will take years to replace.

After June 1992, approximately 26 thousand Bosnians have fled from Bosnia Herzegovina because of the trauma of civil war in Yugoslavia and Serbian assault, entered the northwestern part of Turkey. Many of them sought protection in Turkey and were able to sustain themselves by their own means or with the assistance of relatives. The majority were women with children and elderly. They all came overland mainly by bus, fleeing combat, with few belongings and money. During the summer of 1992, however, in response to the increasing number of Bosnians without relatives in Turkey, UNHCR, the Turkish Ministry of State, and Governorates of Kırklareli worked together to establish a long term camp consisting of prefabricated buildings. The Turkish authorities set up reception facilities, mainly in boarding schools and government buildings located in Tekirdağ and Sakarya Provinces, providing shelter to 2 thousand people. Turkish Government decided to set up a new site near Kırklareli Province. So, these people moved to a camp in Kırklareli, with two main buildings and one small

building with a total of 100 rooms for 400 persons. These were later joined to include schools, eating rooms, stores, health centers, and a post office. By the end of 1994, these camps were consolidated into one large camp, which the Bosnians are referred to as temporary protected people, and the facility which accommodates these Bosnians had been named Gazi Osman Paşa Guesthouse. This camp is referred to as guesthouse in order not to remind its residents of the suffering they experienced in Serbian camps (Anatolian Development Foundation 1992, p.20).

According to the Protocol which was signed in 1992 between the Turkish Ministry of State, UNHCR, and the Anatolian Development Foundation (ADF), ADF became the implementing partner for UNHCR, EU and other NGOs that wish to assist the Bosnians in Turkey and given the responsibility of administering humanitarian assistance to the guesthouse.

The Minister of State was in charge of the supervision of the camps and individual cases. The Minister, through the General Directorate of Village Affairs thus appointed a camp director who became legally responsible for the camp. Thirty temporary workers were appointed to work in the camp as secretaries, drivers janitors, technicians etc. and the camp was administrated with the help of elected Bosnian representatives (7 men 7 women) with one woman and one man heading the representatives. All of the distributions and activities were done by the Bosnians through these elected representatives (Anatolian Development Foundation, 1993, p.15).

The organizations involved in humanitarian aid and their contributions are (Anatolian Development Foundation, 1993, p.15-16):

- UNHCR supplied 400 prefabricated houses beside main buildings, buy beds, bed frames, blankets, kitchen utensils, clothing and shoes, waste water treatment system, a new well for drinking water, toilets and showers, hot water units, educational materials and part of the medicine and hospital equipment with the financial aid of UNHCR, a small health unit was established in the camp. Many patients treated and medicine was given by the doctors in the camp.
- Swiss HEKS bought floor covering, bed frames, pillows, a television, vacuum cleaner, sewing machines, labor for the Bosnians for various work they do in the camp, clothing materials, various needs for training and education, blankets, kitchen utensils and other small urgent needs.
- German CARITAS bought a midi bus for the students jointly with British Embassy.
- Mr. François Régis Hutin, President Director General of QUEST-FRANCE bought clothing, some kitchen utensils, shoes etc.
- EU funded the drinking water and a septic tank system for the camp.
- In the later stages the Turkish Red Crescent sent some cooks and cooking items to cook hot meal in the camp, but the Bosnians wanted to cook their meal themselves therefore ADF asked Red Crescent cook team to leave the camp.
- UN World Food Program supplied aid in goods rather than in cash. The supplies provided for six months consisted of flour, legumes (beans, chick peas, lentils), vegetables, sugar.

- Government of Turkey improved existing facilities, upgraded housing units, rehabilitated the kitchen/dining rooms, upgraded the WC, showers, further developed road construction, sewage canal system, drinking water, supply of medicine etc. Beside this, security, administration and other routine work was handled by the Government. Health and sanitation assistance is provided to the refugees by the Government (doctors, nurses, most part of drugs etc.).
- Anatolian Development Foundation is an organization which is experienced in the field of emergency assistance and rehabilitation. Foundation, signed a protocol with the Turkish Ministry of State and UNHCR, agreeing to act as the implementing partner of the project. Foundation helped in various ways with the urgent needs of the Bosnians by obtaining and using donations from various source. All of the above efforts were coordinated by ADF as an implementing partner. As the implementing partner for UNHCR, ADF were also engaged in the distribution of food to the Bosnian families residing in Istanbul and who are unable to meet their needs.

ADF involved in humanitarian assistance in Bosnia-Herzegovina and to assess the needs of the Bosnian population, scheduled an exploratory mission to Bosnia-Herzegovina and Croatia. As an NGO, ADF felt that its assistance would be most valuable in education (kindergartens, elementary schools, high schools and schools for the mentally handicapped), elderly, rape victim women, and also in agricultural sector and the industrial sector for rehabilitation of Bosnians.

ADF, on behalf of Turkey was appointed as responsible for the country and local elections held in Bosnia Herzegovina, this is a rarely seen activity around the world,

organizing voting in a foreign country, for the citizens of Bosnia-Herzegovina citizens who were eligible to vote.

2.6.2.1.2. Management of camps and centers under the regulations.

2.6.2.1.2.1. Official management.

Legally the Minister of State was in charge of the supervision of individual Bosnians in Turkey and the camps which accommodate them. Gaziosmanpaşa Guesthouse was under the management of the Provincial Directorate of Rural Services. The Anatolian Development Foundation played an important role, in the administration of the camp. The ADF, employed assistant directors, a secretary, construction manager, drivers and various course instructors (Anatolian Development Foundation, 1994, p.15).

2.6.2.1.2.2. Internal (unofficial) management.

The most basic needs of Bosnians were managed by democratically elected Bosnian representatives called “Prestavniks”. They consisted of 7 men and 7 women, with one man and one woman serving as the heads of all Prestavniks. The Prestavniks were responsible for the distribution of certain items such as cleaning materials, milk and biscuits for 1-5 year old children, baby meal for infants, cigarettes and clothing. All goods which were distributed were recorded in each family’s social relief cards and distributed to the seven groups by their managers (Anatolian Development Foundation, 1994, p.16).

Certain jobs in the camp were allocated by the managers who prepare a duty list which includes cleaning the camp grounds, WC’s, baths, social facilities, school cafeteria, and dining rooms. Additionally, on a rotating basis, each day 12 women were

assigned kitchen duty to help with food preparation and dish washing (Anatolian Development Foundation, 1994, p. 16).

2.6.2.1.2.3. Camp security.

The outside camp security of the guesthouse was provided by a Turkish Gendarmerie which is stationed away from the houses, with 1 sergeant, 1 corporal and 5 privates. The inside camp security is administrated by 26 Bosnian male security guards who were selected by the Bosnians (Anatolian Development Foundation, 1994, p.16).

2.6.2.1.2.4. Supply of food.

Meals were provided 3 times a day. All meals were prepared in the kitchens of the camp which were located in easily accessible areas. Baby meal is provided daily for infants. Fresh milk and sweet biscuits were provided to children aged 1-5. Fresh milk was also given to patients, upon doctor's instructions. Milk powder is given to the elderly. Food items were supplied by the Turkish Government (meat, vegetables and fruits), the WFP through UNHCR (oil, dry food, cheese) and other NGOs or private individuals (coffee, sweets etc.) (Anatolian Development Foundation, 1994, p.17).

Each kitchen had a cook who served in the Turkish Red Crescent (in the beginning but later they left). Each kitchen staff was headed by a Bosnian woman and a Bosnian man who supervised the other assistant cooks which were selected among the camp residents on a rotating basis.

2.6.2.1.2.5. Supply of clothing.

Clothing for the camp residents (including underwear, socks, shoes, coats, sweaters, pants, sweat suits, etc.) was supplied by ADF, which procured funds from UNHCR and the European NGO's.

2.6.2.1.2.6. Health Services.

The camp health unit provides health services to the camp residents 24 hours a day. An ambulance allocated to the health unit is also available 24 hours a day. A dental unit was established by ADF in the guest house and was administrated by a dentist who is also an employee of the Provincial Directorate of Health Services. Additionally, a gynecological unit was established in the camp for women who have problems that have not been treated during the past few years. A Bosnian specialist from the Bosnian hospital in Istanbul came to the camp periodically to give the women check-ups and necessary treatment. Medicine, eye glasses and other health needs were supplied by the ADF with UNHCR funds and by the Turkish Government (Anatolian Development Foundation, 1995, p.16).

The most common illnesses found in the camp were, respiratory infections, diarrhea and illnesses related to personal hygiene. The camp also had many cases of heart disease. Due to the vaccinations which were constantly being administrated to the children, they were not experiencing measles, and other extremely infectious diseases. One of main concerns in the camp is psychological problems. A female Bosnian psychologist from outside the camp, visited the camp twice a week to help the people (Anatolian Development Foundation, 1995, p.16).

2.6.2.1.2.7. Education activities.

As for education, in 1992, two classroom prefabricated school was constructed for Turkish Language course which was opened for anyone who wished to learn Turkish. In 1993, 178 students were placed in the Turkish primary, secondary and high schools of Kırklareli and Kavaklı towns. However, a majority of these students quit due to lack of knowledge of the Turkish language. After being informed that integration in Turkish schools was very difficult, the Ministry of Foreign Affairs sent instructions stating that preparations should be made for the education of all children at the guesthouse, by Bosnian teachers, and in accordance with their educational standards. Two more school buildings have been set up, and necessary requirements such as desks and blackboards have been provided by ADF on behalf of the UNHCR. Education and training is conducted in two shifts, one in the morning and one in the afternoon. A high school was also opened in the camp. The needs of the high school were supplied by EC and UNHCR through ADF (Anatolian Development Foundation, 1995, p.17).

The library, which was opened in 1994, continued to serve the refugees with books in Turkish, English and the Bosnian language. Anyone who wishes is welcome to borrow books (Anatolian Development Foundation, 1996, p.26).

In the summer of 1996, two summer schools were opened for the young people to make use of their free time in a most valuable way. These schools were (Anatolian Development Foundation, 1996, p.26):

- Sport school for 179 young people
- Turkish language course for 85 people who wanted to learn Turkish.

2.6.2.1.2.8. Training, social and cultural activities.

Along with these, two folk dancing groups were set up for boys and girls; one with 20 children aged from 6-8 years, and another for eight teen age girls and eight teen age boys.

Sewing-embroidery, macramé, dyed batik and rug weaving courses were opened through the trainers of Public Education Center, with 75 women attending and successfully completing it. For rug weaving, ADF paid salary to students attending course based on the number of knots they do per day. The completed rugs were eventually sold, and money earned from their sale was used to purchase more materials (Anatolian Development Foundation, 1995, p.18).

Every morning physical exercises are conducted by a trainer appointed by the Governor. Also a men's football, men's basketball and women's volleyball teams have been established. These teams participated in competitions with school and agency teams of Kırklareli Province.

2.6.2.1.3. Activities for bosnian guests living in Istanbul.

Some of the guests who live in Istanbul had good jobs and therefore did not need financial aid, but the others who are in more difficult situations still needed help. UNHCR staff in Istanbul did the listing and screening in order to determine which families were in need of food aid. Then ADF designated a system for the refugees to receive a certain amount of their desired food items from various supermarkets.

In conclusion, the Dayton Agreement was signed after Bosnia Herzegovina was almost destructed following the negotiations which endorsed the Serbian side. Bosnians

were able to return to their homes and this was considered to be the most crucial aspect of the Dayton Agreement in civil terms (Akyürek, 22 April 1997, p. A5).

In Turkey, as seen by the above explanations, the capacity of Kırklareli Camp had systematically been enlarged and the standards of the entire population of the camp was increased in years to meet the increasing needs by the financial support of the Turkish and international communities. The camp administration, as well as the ADF, relied on the continuous support of international organizations to operate a camp with such high standards.

As of June 2000, a total of 10,016 Bosnians had been hosted at the GOP guesthouse. Among these, 9,911 have left the camp, leaving behind 150 people. All the repatriation has been done by the International Organization of Migration (IOM) and the Consulate of Bosnia Herzegovina in Istanbul.

The GOP guesthouse was later used in the accommodation of Kosovars who came to Turkey by the thousands in the March of 1999. Kosovars who came to Turkey alongside the existent Bosnians, were assisted in their most urgent needs of food and clothing.

2.6.2.2. Actions taken by turkey for temporary protected iraqis and the gulf wars.

Temporary protection was not defined in this period either, but in 1988, 1990 and 1991, Iraqis flocked to Turkey and demanded protection temporarily. Moreover, in 1991, a safe zone was established on the Iraqi side of the border, as is now the case and discussed among main actors for Syrians. I also think that it is the most logical way to create a safe zone in this type of big influxes.

Turkish-Iraq relations in the economic and political area developed rapidly from the middle of 1970s till the end of 1980s. After 1977, Kirkuk-Yumurtalık oil pipeline was opened and economic relations developed more and more and it even continued during the ten year war of Iran-Iraq. The second Kirkuk-Yumurtalık pipeline was opened in 1986. During this period Iraq's relation with Iran and Syria got worse.

Iraq (Saddam Hüseyin regime) attacked Iran in 22 September 1980 and this war continued for 8 years. Turkey was neutral during this war. But at the end of the war on 17 March 1988, Iraq used chemical weapon on the city of Halepçe to its own citizens because it accused Kurdish people with helping Iran. After the use of chemical weapons, around 5 thousand people, including children, women and old people lost their lives, and, a large number of people who learned about the massacre of Halepçe, left their houses and country and flocked to Turkey (51,543 in the first party and totaling near 90 thousand in later stages) Turkish Government and Turkish people showed their hospitality and helped these displaced people. The Turkish Government built temporary shelters including health clinics. Turkish Government also addressed the world nations to supply physical help and accept these people as asylum seekers (Karadağ, 2007, p.4). Unfortunately there was no significant response from any country, especially from European or other developed countries. Turkey had to deal with huge problems. By the 29 October 1991, majority of Iraqis had returned to their country. About 20 thousand asylum seekers stayed in Turkey. Some western countries accepted only 1,018 of this people and sent minor symbolic aid.

2.6.2.2.1. First gulf war.

Saddam Hussein regime and Iraq army entered in Kuwait on 2 August 1990 and occupied it in 7 hours, and like other countries Turkey also condemned this attack and

occupation of Iraq. Between 2 August 1990 and 17 January 1991 large number of people fled from Iraq to Turkey. Interestingly, one group of fleeing people originated from 65 different countries and 62,922 of these were mostly workers and they were sheltered in Turkey in a short time. After their urgent needs were met, they were sent back to their own countries. Like in Iran-Iraq war, Kurdish groups started a revolt after the first gulf war in 1991 in Northern Iraq, but could not stand against Iraqi forces (Karadağ, 2007, p.63-65). As a result of a military onslaught launched by the Iraqi Government against Kurdish rebels, close to half a million (460 thousand) people fled to Turkey to seek temporary protection. The second part of the fleeing people were soldiers and civilians who fled because of the danger they were faced. In a matter of months 5,274 people were settled in some residential centers and some refugee guest houses. In Kızıltepe, Silopi Kangal and Diyarbakır refugee camps were established for these people by the Turkish government (Kaynak, 1992, p. 26-27: Anatolian Development Foundation, 2001, p. 59).

During and after the mass influx of 460 thousand people, the Turkish Government faced a significant Kurdish insurrection in southeastern Anatolia, expecting a big problem, closed its border with Iraq to prevent the Iraqi Kurds from entering, arguing that they would destabilize the country. But continued to help the remaining displaced people in Iraq, as they were just on the border but in Iraqi side. As a result, only the Iraqis who are sheltered in Turkey were temporary protected people. We can call them as *“people who are accepted for humanitarian causes”*. So, Turkey received 3 big flows of emigrations from Iraq in 1988, 1990, 1991 and had huge amount of financial loses along with flourishing terrorist activities afterwards, and still suffering from this.

2.6.2.2.2. Second gulf war.

Second Gulf War started during the period of reconstruction and rehabilitation of Iraq which was on 20 March 2003. The cause of the war for USA was to destroy mass destruction weapons (never found) disarm and bring democracy in the Middle East especially concerning Iraq. Since then, UNHCR estimates that some 4 million Iraqis in total have fled their homes, fearing generalized violence and targeted persecution. Approximately 2 million Iraqis have fled the country and sought refuge in the neighboring countries such as Syria, Jordan, Egypt, Lebanon and Turkey. Two countries caring for the biggest proportion of Iraqi refugees together were Syria and Jordan. These countries had a very heavy burden. Beside these, somewhere between 500 thousand and 1,000,000 innocent Iraqi's were killed. And, the Iraqis who returned to Iraq, many found their property occupied and therefore suffered with secondary displacement (UNHCR, 13.3.2007; Shakiry Charity / UNHCR, 26.2.2008).

2.6.2.3. Preparation and actions taken by turkey for temporary protected Syrians.

Because of the chaos and internal disputes in Syria, many Syrians left their country seeking temporary protection. The number of Syrians arrived in Turkey is unlike any other mass influx in the history of Turkey. In the beginning, it was planned that maximum 200 thousand displaced Syrians would come to Turkey and the camps were designed according to this number in order to give high quality services to the victims. There was no action plan for thousands of unregistered and spontaneous new comers who were spreading all over to the Turkish cities (Töre, 2016, p.106). The western countries especially the EU member states supported Turkey's open-door policy but at the same time, they were very reluctant to accept them or provide at least

part of their urgent needs. Turkey spent 7,6 billion dollars between April 2011 and October 2015 (Töre, 2016, p.109-255). This spending is affecting not only the urban cities, but almost all of Turkey. According to the estimated figures, Syrians spread into 72 provinces of Turkey, and only 57 percent of them could be taken under official records. There is no clear information on the remaining 43 percent (Töre, 2016, p. 106).

Firstly, as a fact, protection seeking Syrians, are a very important issue and we should not really look at the temporary protected Syrians problem only from the political or economic stand point. If we do, we may fall in a trap of short thinking or wrong assumptions. The Syrians who come to the Turkish borders mostly after losing their relatives, neighbors, properties and even lives are in desperate fear, of hungry, sickness or being wounded. Therefore any evaluation on this matter first must be based on humanitarian reasons and human right values⁴¹ (TBMM İnsan Haklarını İnceleme Komisyonu, 2012, p. 16-17).

Turkey has faced mass influxes since 1980s. Today, millions of Syrians have arrived in Turkey because of the effects of the Arab Spring on Syria. So, Turkey is faced with one of the biggest migration flows in its history because of the unexpectedly high number of refugees and the uncertainty of the whole process.

Because of the turmoil in Arabic Republic of Syria, anti-regime demonstrations in Syria have increased since the first months (around March) of 2011 and Syrians of more than thousands of people forced to leave their own country and escape the attacks of security forces that surrounded Jisr al-Shughur, 20 km from borders of Turkey constituted the first migration wave. According to UNHCR's 28 August 2012 report, because of the human rights violations and other events in Syria, the Syrians escaped to

⁴¹ The Report is accepted during the meeting of commission on 15.2.2012.

the neighboring countries in mass movements, in Turkey and to the countries which had “open border policy” Jordan, Lebanon and Iraq (Dizman, Ağustos 2012, p.1; Çetin, February 2012, p.16). The first influx to Turkey from Syria was on 28 April 2011 with 300-400 people from Cilvegözü Hatay border. And, in late June, thousands of refugees crossed the border near the Altınözü district of Hatay province. From that date till now the influxes are increasingly continuing from various border points. And, refuge centers were established in Yayladağı, Reyhanlı and Altınözü by the Turkish Red Crescent. The extraordinary endeavors of Turkish authorities to ensure life safety and meet basic needs of the Syrians have been noteworthy (IHAD, n.d.; Çetin, February 2012, p.16).

In some cases the people who came to Turkey and wanted to go back for various reasons, these were sent back. Beside this some other Syrians which have passport and wanted to go to other countries were also permitted to leave. The organization mainly kept responsible from the influx of the Syrians in Turkey is, Prime Ministry Disaster and Emergency Management Presidency (DEMI- AFAD) (Dizman, Ağustos 2012, p.1).

Some Interesting research results obtained by AFAD for the Syrian Citizens Presently Living in Turkey (AFAD, 10.4.2015, p.1):

- 81 % of the Syrians living outside of the Government organized settlement facilities (camps Government buildings etc.) in Turkey, came to Turkey only for the security reasons.
- 50% of the houses belonging Syrians in Turkey are heavily or completely damaged.
- 35% of the Syrians in Turkey lost some of their family members or they are heavily wounded.

- 90% of the Syrians staying at Government facilities and 50% of Syrians staying outside of the Government facilities using the Government health services.
- Beside the health services, 15% of the Syrians staying outside of the Government facilities, benefit from various humanitarian aids.
- 83% of the children of the Syrians staying at Government facilities are able to attend schools, while 14% of the children who are living outside of the Government facilities can attend schools.

DGMM , announced that the total number of Syrians registered and assisted in the 26 camps located in 10 provinces and who have sought shelter and assistance in these camps were 269,150 in 2.12.2016 . Thousands of Syrians received help and protection in camps which the Government manages directly and all Syrians in Turkey enjoy a temporary protection status while UNHCR has positioned staff to provide technical assistance and support to the authorities (İçişleri Bakanlığı Göç İdaresi Genel Müdürlüğü, 2.12.2016; The UN Refugee Agency, 2015). In 2015 UNHCR will continue to support the authorities in basic needs and core protection areas. In addition to that 2,313,450 million Syrians are living outside of the camps in different provinces, in urban locations in Turkey. So, since the beginning of the Syrian crises, the total number of Syrians living in the camps and non-camp settings has reached around 3 million (İçişleri Bakanlığı Göç İdaresi Genel Müdürlüğü, 2.12.2016).

It is noted by UNHCR's report that, as Syrians hosted by surrounding countries, the total number registered or awaiting registration in Egypt, Iraq, Jordan, Lebanon, and Turkey had surpassed 3.9 million (UNHCR, 2014, p. 11).

When the crises first started, the general expectation was that the Syrians would stay in Turkey temporarily and they would be able to return home within a few months. But, today, because of the chaos, the increasing involvement of radical groups, the complexity of the conflict in Syria and the absence of an imminent solution, most of the Syrians think that, Syria is not the country that they want to go back to. So, we can say that, Turkey will continue to receive Syrians and Syrians are likely to remain in Turkey for the foreseeable future (Kirişçi, 2014, p.18).

2.6.2.3.1. Access, registration and residence issues of temporary protected Syrians.

The access of Syrian citizens to Turkey is conducted by Turkish authorities. The rapid increase in the number of new refugees and the challenges in developing camp site conditions have obliged Turkish authorities to adopt a gradual arrival system throughout the borders. Those who have Syrian passports have the right to access Turkey through opened official border gates without visa and do not encounter any other restrictions. Those who do not have passport should only enter to the country under the control of Passport Control Police. The entrances through other border crossing points under the control of Gendarmerie and Turkish Land Forces are generally restricted with only urgent medical conditions. Many Syrian citizens who do not have passports attempt to enter Turkey without permissions and sometimes with the help of smugglers due to such restrictions throughout the borders. UNHCR continues its effort to negotiate with the government for a non-restricted access and call the attention of related authorities to the risks Syrian citizens encounter when they are obliged irregular entrances. According to Article 5 of Temporary Protection Regulation, Syrian citizens

are not fined due to illegal entrances providing that they conduct their registration through related authorities within a reasonable time (UNHCR, January 2015a, p.2).

Syrians can be registered in 81 cities of Turkey. The authorized office to conduct registrations may change from region to region. For instance, the registration may be conducted by Aliens Police Offices or Registry Coordination Centers that are operated by AFAD over which the authorities have some liabilities under national legislation. All Syrians in Turkey are protected against deportation. In other words, no one can be sent back to Syria without his or her own consent. However, unregistered protected people may encounter obstacles accessing services and aids. Waiting periods for the registration process may change according to the condition of refugee and the work load of related authorities. Turkish AFAD is responsible for the management of refugee camps, while Ministry of Interior is in charge for the registrations of protected people dwell in those camp sites. Registration offices set up in all camps. After the registration process, the camp site dwellers may receive their registry cards that can be used as identity cards or biometric ID cards and provide access to a number of services including medical care from Aliens Police. The current demand for the camp sites has already exceeded the capacities. It is at the discretion of Turkish Government to determine the status of temporary protected people in terms of approval, residence site and registration. Placements are determined by the coordination of governorates and DGMM. DGMM or governorates may give priority to those in need. Syrian citizens who are already in Turkey and demand residence in camp sites may apply to Provincial Directorates of AFAD and Governorates (UNHCR, January 2015a, p. 2-3).

Registry certificates give a right to Syrian citizens for staying in Turkey but this permission is not equal to the residence permission that is stated in Article 25 of

Temporary Protection Regulation. Those who do not wish for a temporary protection provided through LFIP and Temporary Protection Regulation may apply for permission of residence. However, this kind of applications will only be evaluated in case all requirements under LFIP are fulfilled (UNHCR, January 2015a, p. 3).

2.6.2.3.1.1. Registration of new born infants.

Births in Turkey should be reported by the protection seekers to the Register Office of Refugee's residence within thirty days after the birth date. The notice should be done by the father, mother or the legal guardian of the infant. In case the infant does not have parents or a legal guardian, his or her grandfather, grandmother, adult siblings or an accompanier may report to the Register Office. This registration is free of charge. The notice may be completed through submitting required official documents or an oral statement of the notifier. Syrian citizens should submit the original document of the birth report obtained from hospitals or healthcare organizations and their personal documents/identity cards (issued by Syrian or Turkish authorities) to the Register Office of their residence. In case that they do not have identity cards and the birth was not happened in a hospital/healthcare organization, authorized Register Office should conduct the procedure upon the request of refugee and prepare a birth certificate. The birth certificate does not confer citizenship for the infants of foreigners born in Turkey (UNHCR, January 2015a, p. 3-4).

2.6.2.3.1.2. Temporary refuge centers for Syrians.

Initially a body search is conducted for the Syrian citizens entering the country and they are registered in company with an interpreter in the light of their statements or identity cards if available. A "tekel" building in the center of Yayladag has been

determined as the first tent city and the first transfers were made after the facility had been built with its tents, functioning kitchen, bathroom etc. Because of the continuing entrances, Altinozu and Boynuyogun Tent Cities were built too on 9 June 2011 and 12 June 2011 respectively (TBMM İnsan Haklarını İnceleme Komisyonu, 2012, p. 2).

Under the coordination of AFAD Ministries of Domestic Affairs, Foreign Affairs, Ministry of Health, Ministries of Education, Agriculture and Rural Affairs, Transport and Finance, Presidency of General Staff, Governorate of Hatay, Directorate of Religious Affairs, Secretariat of Customs and Red Crescent, relevant public institutions and organizations and NGOs carry on joint projects and make successful coordination and offers higher living standards to temporarily protected Syrians. The camp sites funded by AFAD include schools, mosques, trade, police and health centers, press briefing units, playgrounds, TV units, water tanks, water purification units, power distribution units and generators (İçişleri Bakanlığı Göç İdaresi Genel Müdürlüğü, 22.12.2015).

In addition to housing, there are many amenities for food, health, education, security, translation, communications, banking, worship, social activities and other services. There are 25 thousand Syrian students in classrooms. There are about 900 teachers in the camps and also about 25 thousand adults participate in vocational training courses. 500 thousand polyclinic services have taken place in field hospitals within the camps. Syrians with more complex medical state are shipped the nearest state hospital with ambulances (AFAD, 2013, p. 36-38).

Turkey does not only provide a temporary shelter for Syrian citizens, but also prepare them for the post-crisis period. The foundation and operation of temporary refuge centers have been standardized by written guides and the same conditions have

been provided in all those centers (İçişleri Bakanlığı Göç İdaresi Genel Müdürlüğü, 2.12.2016).

The number of the Syrians that came to Turkey and stayed outside of the camps (outside of the Government facilities) increased highly after 2013. There are some allegations that more Syrians are living outside of the Government facilities. In some researches it is seen that, these Syrians are named “the unnoticed (Göç Der ve ESHID Raporu, 2013, p.1) or the unaccounted (IHAD Raporu, 2013, p.1). Therefore it is important that beside the Government, NGOs must also have to take the burden by sharing and using their resources for these victims (Seydi, Nisan 2014, p. 269).

I also have to mention that, there is also freedom of action for registered temporary Syrians in an out of the camps. Directors give permission in regular intervals to the Syrians for leaving the camp site temporarily in the daytime. Syrians living out of camp sites do not need to have a special permission for their whereabouts when travelling to another city, however they should report authorities about their moves in order to keep their status (UNHCR, January 2015a, p. 7).

2.6.2.3.1.3. Removing or not providing temporary protection status.

Syrians’ temporary protection status may be terminated if:

- There are the legal reasons. People who are provided temporary protection need to return to their countries in order to mention temporary protection in the comparative law including EU Law. Therefore, the Syrians who wish to go to Syria to fight and then return may not be provided with temporary protection statuses or their temporary protection status may be terminated in case they leave Turkey at their will,

- In case the conditions that provide them temporary protection status is no more valid,
- In case they jeopardize security of Turkey,
- In case they are involved in human rights breaches or violent events in Syria (for example, the Syrians involved in a violent event or used violence in Syria must justify with right to self-determination and political views. This situation must be evaluated privately) (Ekşi, 2012a, p.14).

It is worth mentioning that people who escape from Syria and come to Turkey are not at war with a third country but in armed conflict with their own people and they may avail themselves of temporary protection (Ekşi, 2012a, p.16-17).

2.6.2.3.2. Rights and obligations of the Syrians in Turkey with temporary protected status

When the Syrians fluxed in Turkey, the 1994 Regulation was in force, therefore the Citizens of Arab Republic of Syria coming to Turkey in a mass refugee influx and as stateless persons had to be resided in the centers (camps) set up by the Turkish Ministry of Internal Affairs. The Syrians could stay outside the specified camps in exceptional conditions. The Syrians entering Turkey by availing themselves of the visa exemption since 28 April 2011 could as well stay outside the centers with their own means. Because, as per the “Agreement Relating to Mutual Abolishment of Visa Requirements” between the Government of Republic of Turkey and Syrian Arab

Republic, the Syrians with official and public passports are exempted from visa for a period of 90 days⁴².

In such cases, Syrians entering Turkey with passport may stay outside the camps for 90 days, however, they are obliged to obtain residence permits and stay in the province to be set out after the 90-day period. In Turkey the main provinces where Syrians demanding asylum are sent to: Adana, Afyon, Ağrı, Aksaray, Amasya Bilecik, Burdur, Çankırı, Çorum, Erzurum, Eskişehir, Gaziantep, Hakkari, Hatay, Isparta, Kahramanmaraş, Kayseri, Kırıkkale, Kırşehir, Konya, Kütahya, Mersin, Nevşehir, Niğde, Sivas, Şırnak, Tokat, Van, Yozgat, Çanakkale, Bolu, Uşak, Denizli, Yalova, Siirt, Balıkesir, Batman, Urfa, Kilis, Ardahan, Malatya, Kars, Iğdır, Düzce, Sakarya, Erzincan, Gümüşhane, Mardin ve Bayburt. In addition, Syrians living in camps with temporary protection status was provided with free food in the beginning, later it was decided to make a payment for each person to buy their own food items and prepare the meals in their shelter. Other than that health and education services are still providing in the camps for Syrians (Ekşi, 2012a, p.15-16).

2.6.2.3.3. The Status of Syrian children and youth in Turkey.

2.6.2.3.3.1. Accessibility of Syrian children to education.

According to Turkish Law, all children in Turkey, including foreigners, have the right to receive primary and secondary education for free. According to the memorandum of Ministry of National Education related to foreigners' access to education (No:2014/21) issued on September 2014, foreigners under temporary protection have the right to access to the educational services provided by public

⁴² (Quorum (Karar sayısı): 2009/15684. OG Dated: 23.12.2009 No: 27441).

schools and temporary education centers supervised by provincial directorates of national education. Syrians may enrol into public schools and temporary education centers in Turkey. Enrolment procedures are determined by Provincial Education Commissions under Provincial Directorates of National Education and may have small changes according to the conditions. Foreign students should apply to the Directorate of National Education in the province they dwell in. Provincial Education Commissions are in charge for the placement. Preferences are made according to documents indicating the student's educational level reached in his or her state of origin. In the absence of such documents, placements are determined through interviews or placement evaluations. Temporary education centers have been founded for Syrians. These centers are available in camp sites and other related regions and provide an education with a revised version of Syrian curriculum in Arabic language. At the end of school periods, children obtain certificate indicating their attendance and success in these institutions. Parents dwelling in refugee camp sites should directly apply to the camp schools and those living in societies should apply to Provincial Directorate of National Education in order for their children to enrol in temporary education centers if available. Provincial Directorates of National Education are liable for the placement among temporary education centers and class preferences mentioned above. There may not be temporary education centers in all provinces or they may not have sufficient capacities. In such cases parents can enrol their children in a public state school (UNHCR, January 2015a, p.4)

In order to enrol in a Turkish school or a temporary education center, students should apply to Turkish authorities with residence permit, temporary protection identity card or foreign credentials. In case that the student has already applied for a temporary protection identity card but he/she has not received the document yet, the student may

be registered as a ‘guest’ student. Once his or her identity card is prepared, the status would be changed. If parents do not have a document related to the previous education of their children (e.g. school reports), the placement will be conducted by Provincial Education Commission through interviews with parents; students may be requested to be tested through an interview and a brief written exam (UNHCR, January 2015a, p. 4-5).

2.6.2.3.3.2. University education of Syrian youth in Turkey

Syrian youth may also apply to Turkish universities provided that they have the required language competency and academical requirements. Council of Ministers declared the exemption of Syrians from educational fees which is requested by state universities in 2014/2015 academic year. Students who wish for furthering their education in Turkey should submit a document indicating their success in YOS (Foreign Student Exam). Universities may charge a fee for YOS applications. Scholarships for the students who want to study in Turkish universities are limited and not guaranteed. UNHCR also provides a limited amount of DAFI scholarships for studying in Turkey (UNHCR, January 2015a, p. 5).

2.6.2.3.3.3. Opportunities for Syrian citizens living in Turkey in terms of talent education

Syrians can attend language, talent, hobby and vocational courses conducted by Public Training Centers for free. They should submit their temporary protection identity cards in order to apply for the courses opened by Public Training Centers. Each Training Center will determine the course to be opened under their bodies and may open new courses upon request. It is also declared by the Ministry of Labour and Social

Security that refugees under temporary protection may attend vocational training programs conducted by ISKUR (Turkish Employment Agency) (UNHCR, January 2015a, p.5).

2.6.2.3.4. Support mechanisms for Syrian citizens.

2.6.2.3.4.1. Support Mechanisms for Unaccompanied Syrian Children

The protection for all children regardless of nationality is provided with the legal framework of Children's Protection Law no. 5395. It means that the national legal system principally has a capacity to provide protection for all Syrian children including unaccompanied and separated. Due the impacts of increasing number of Syrians on the capacity of government organizations to meet the increased needs of unaccompanied children, Ministry of Family and Social Policies currently seeks for additional regulations under the legal framework. According the Article 23/4 of Temporary Protection Regulation, unaccompanied children should be sheltered by the Ministry of Family and Social Policies. However, if required conditions are provided, unaccompanied children may also be sheltered by AFAD in temporary refuge centers (camps) in separated divisions under the control of Ministry. All procedures related to children should be conducted in favour of children. According to the current legal framework, Syrian children should be provided with fundamental education and health care (especially if unaccompanied or separated) depending on their registers in related authorized institutions. UNHCR will extend its guidance for the institutions in order to determine optimum regulations in terms of services provided due to special conditions of children. Unaccompanied and separated Syrian children should be reported to the related authorities and UNHCR in order for an appropriate action and support and the control respectively (UNHCR, January 2015a, p. 5-6).

2.6.2.3.4.2. Support mechanisms for Syrians who have medical needs or handicaps.

Free access to medical treatment is facilitated for all Syrians inside and outside the camp areas. Emergency services are accessible for everyone. And other health care services only require a registration. Temporary Protection Regulation (Article 27) reveals the situation about the access of people under temporary protection to health care services through indicating the details of the leadership of the Ministry of Health in terms of the coordination and supervision processes about medical services. In addition to these, 80% of the drugs bought from pharmacies in some provisions are paid by AFAD. However, in some other provisions the costs should be paid by the patient. For the general health security beneficiaries, the cost of medical treatment is funded by AFAD to an extent determined by Health Implementation Declare. Registration is a prerequisite for the access to medical treatment (UNHCR, January 2015a, p. 6).

The provision of psychosocial services is projected to be conducted by the Ministry of Family and Social Policies. Registration is a prerequisite for the access to medical treatment. Article 48 of Temporary Protection Regulations states that medical services including psychosocial aids and supports, rehabilitation services and all other aids for the people with special needs should be prioritized and be free of charge. In addition to this statement the regulations emphasise the need for giving priority to the benefit of children, implementation of precautionary and preventive measures under related laws on towards victims of violence and the aids and protection to be provided for victims of trafficking (UNHCR, January 2015a, p.6).

2.6.2.3.5. The Role of UNHCR Turkey office in the protection of Syrians.

The total number of Syrians who were assisted by UNHCR was 4,799,042 in 7 November 2016. This includes 2.1 million Syrians registered in Egypt, Iraq, Jordan and Lebanon, and 2.7 million Syrians registered by the government of Turkey (UNHCR, 7.11.2016). There are also a high number of refugees and asylum seekers from Iran, Afghanistan and Somalia. Syrians are getting temporary protection in the camps near the borders. This de facto protection is separate from UNHCR's resettlement programs and it offers an open border policy which does not force into return or limit the duration of stay and provides assistance if required in Hatay province (Soykan, 2.11.2012, p. 40).

UNHCR supports the temporary protection regime, pays regular visits to all refugee camps with its staff teams (the presence of UNHCR in the southeast of Turkey, in Gaziantep, Sanliurfa and Hatay is already known) and provides technical support for some technical issues such as registrations, camp management, determination of sensitive situations, voluntary repatriation, education, health, nourishment, water purification and area planning. UNHCR has multifunctional mobile teams that always visit the regions hosting a number of Syrian citizens. The presence of UNHCR contributes to the delivery of social aids for Syrians and through this presence it is aimed to make contacts with local authorities, shareholders, institutions and technical units of various ministries and their provisional directorates that are all working with Syrians separately. UNHCR also spreads the news about successful implementations observed by its staff in order to develop protection standards and find practical solutions (UNHCR, January 2015a, p. 7).

UNHCR provides policies and technical recommendations for Turkish Government in terms of registration, access to the national land, documentation, legal

counselling and the management of work load. UNHCR Turkey attempts to support camp site staff and local authorities for finding practical solutions about protection and other technical issues arising in regions with a number of Syrians. As for the material support, UNHCR has provided little support with non-food materials such as tents and sheltering materials, blankets, raincoats, kitchen appliances, vocational education materials, infants' wear etc. UNHCR has supported Turkish Government with mobile registry centers for registration of refugees out of camp sites, prefabricated mobile health clinics that can serve both inside and outside the camp areas and water containers to develop cleaning methods and wheel chairs for disabled refugees. UNHCR supports foundation of society centers/multifunctional service centers to provide aid for Syrians living outside camp sites in a wide range and obtaining finance for such foundations. UNHCR Turkey does not operate any registration or determination process about Syrians in Turkey. However, UNHCR helps Turkish Government for determining the Syrians who have special protection needs and may need for additional actions (UNHCR, January 2015a, p. 7-8).

And, during the process of placement of Syrians by UNHCR into a third country, certain governments have reported to UNHCR about their attitudes towards the placement of Syrians in the region. In the current situation, the facilities are not sufficient for hosting refugees who are in need of sensitive care. Not all sufferers can be evaluated as potential refugees. Placement is not a right but only a last resort for the most sufferers. Refugees cannot choose the country they will be placed and the last decisions about the placements should be made by related countries rather than UNHCR. For the basis of family reunification, all Syrians accepted by a third country should register in related authorities before leaving Turkey; otherwise, they will not be allowed to leave the country (UNHCR, January 2015a, p. 8-9).

2.6.2.3.6. *Turkish citizenship for Syrians.*

Currently Syrians cannot use the identification documentation and residence permits as Turkish Republic citizenship birth certificate. The rules stated in Turkish Citizenship Law (TCL) number 5901 have to be taken into consideration for Syrians to adopt Turkish citizenship. Syrians may obtain Turkish citizenship through a legal decision by the authorities if they have resided continuously in Turkey for at least five years, if they have the intention to settle in Turkey and if they also meet all of the other legal requirements stated in TCL Article 11. The National Intelligence Agency (MİT) and Police Security departments also carry out security and background investigations. The five-year period during the international protection process is not taken into consideration to obtain the Turkish citizenship (Ekşi, Mart-Nisan 2015, p. 199-200).

It is expected that even if the civil war in Syria ends, most Syrians will not have the desire to return to Syria because of the current uncertain environment. If this happens to be the case, will it be possible to grant Syrians citizenship in masses? According to TCL Article 12, Syrians could benefit from, “the foreigners who had to be given citizenship” on condition that they will not cause any national security and public security issues. Syrians may be entitled to Turkish citizenship after their request to the Ministry of Interior and approval of the Council of Ministers. Here there will not be any need for the application of Article 11 conditions, therefore this is an exceptional situation (Ekşi, Mart-Nisan 2015, p. 200-201).

The citizenship can also be obtained in some other cases. For example if a Syrian child is born in Turkey to stateless parents, the child may be eligible for citizenship or if a Syrian citizen applies to marry a Turkish citizen, he or she may obtain citizenship provided that at least three years have passed following the marriage, he or

she has lodged an application to the related authorities and if all conditions stated in TCL Article 16 have been met. These conditions are; not being a prisoner or detainee or have a court case on criminal issues, solidarity and unity in the family and continuation of the real marriage. After the Ministry of Interior investigates and assesses if the conditions were met, Syrian citizens fulfilling the requirements can be granted Turkish citizenship by the Council of Ministries of Turkey (TCL Article 19) (Ekşi, Mart-Nisan 2015, p. 199-200).

2.6.2.3.7. Safe Zone for Syrians.

Why is the safe zone important for Turkey in the case of Syrians and why are big players of the world trying to escape this burden sharing responsibility? Before explaining, I would like to give some basic definitions. “Safe zone” may be used in various ways, but it is mostly used in the International arena as a protected safe area for the victims or potential victims. Various terminologies were developed for ‘safe zone’ which may be slightly different in application than security zones, neutral zones, safe haven, protected areas, humanitarian corridors, etc. Some examples may be given from recent wars like the First Gulf War during which a safe zone in Northern Iraq was established, or similar efforts after conflicts in the former Yugoslavia in Bosnia Herzegovina, etc.

Since the beginning of the influx from Syria to Turkey, responsible Turkish authorities including the President of Turkey and the Ministry of Defense of Turkey, etc. have kept saying that they want a safe zone on the Syrian side of the border to settle the Syrian people seeking temporary protection. There are several reasons for this:

- Similar to Northern Iraq after the first Gulf war, these places will be in their own country.
- Because these places will be protected by the international or designated countries, both from air and from ground, the terrorist activities of concern to Turkey will be minimum in the area.
- The aid trucks should be able to go and come without any or minimum security problems.
- International countries or organizations will take part in the responsibilities concerning financial needs. This way only one country, such as Turkey will not take all load. Another words the burden sharing will relieve Turkey from very expensive care taking of temporarily settled people.
- Problems that may arise in the safe zone will be solved by actors involved, not only by Turkey.
- The responsible Turkish authorities will be relieved of the increasing complaints of Turkish citizens about the Syrians living in Turkey.
- Many Syrians settled in Turkey seeking any opportunity to find a way to stay in Turkey permanently will also bring some more problems to tackle in the country.
- Now many international actors especially the secret services staff of other countries are staying in Turkey under various organizations, where Syrians are in camps or houses. For example, UNHCR appointed 65 international new personnel to Gaziantep to work for them (now this number may be increased). All Turkish citizens in the region as well as the authorities are

aware this. They do not do anything but show a flag and collect information for their countries and obviously cause a lot of problems to Turkey in various ways. Unfortunately, the Turkish Government knows this but if the Government expels them, they make big noise in the international arena. As such these people are sent to Turkey to create disturbances anyway.

The main actors of the world, starting with the US, so far do not agree on implementing a safe zone. The excuses given are only to protect the right of their country and people, not really end the war or save suffering people. Recently it seems, after Trump became president in US this “safe zone” idea again began to be discussed. But we do not know in which direction the talks will go or the reasons that international actors such as US do not want a safe zone;

- If safe zones are established, these places will need continuous checks from ground and air so outside terrorists or other groups will not enter into the zone. This means a lot of money.
- In case of any disturbance or entrance into the zone by enemies or terrorists, the responsible countries should be ready to act, even to fight.
- When the temporarily settled people return to their own country, at least until a peace is reached, these people will need living items, therefore the responsible countries have to take the responsibility to supply these items. This also requires a lot of money.
- If they found a country like Turkey that is doing almost all of the spending (all you have to do is say that you are a great country and doing a

humanitarian job), why should they spend their tax payers' money on Syrians? This is already being done by Turkey.

- As long as these people seeking protection are settled in Turkey, the main actors will always have excuses to also control Turkey, with their agents staying nearby and also playing a provocative role whenever they want to create problems.

2.6.2.3.8. A Tragic observation by a sociologist.

Here, I would like to mention an interesting and tragic observation made by one of my sociologist friend, Ms. Dilvin Zeynep Özen, on the Fikirtepe neighborhood in Istanbul. In her own words: "Fikirtepe is not a slum neighborhood of Istanbul, but it does not have an aesthetic appearance in the city silhouette either. In 2010, Fikirtepe was selected as one of the pilot project neighborhoods in Istanbul for urban transformation by the Ministry of Environment and Urban Planning. Therefore all of the houses in this neighborhood were vacated by the owners or tenants. These empty houses were started to be pulled down to build the new houses. But because of some official reasons (maybe there were not enough Government investment money or other reasons) the constructions were stopped in 2013. Those newly and partly built houses did not have any electricity, water, natural gas, doors, windows, etc. but were occupied by the Syrians after 2014, although especially hard winter conditions made life very difficult for them. The local people were expecting luxurious houses to be built for them, this is why they vacated their houses, but nothing happened so far and their partly built houses were being used by the Syrians. Obviously this is not what they had bargained for. What do you expect what you get? One good thing that happened was that Fikirtepe had turned into a ghost town after the construction had stopped, but now there are new

residents, and people and especially children moving around. Now the former owners of the houses were thinking or feeling that they were kicked out to be replaced with the new unexpected and unwanted residents. Isn't this tragic?"



CONCLUSIONS

Unfortunately, there are thousands of conflicts awaiting solution all over the world. The reasons of the conflicts can be historical, cultural, ethnic or religious, economic, political, regional, ideological, environmental, military-related, as well as reasons arising from news and media (many people believe that media is one of the agents that is the most influential in the creation of conflicts), the threat of potential dangers, humanitarian values (human rights, equality, freedom, justice, democracy), human nature, etc. Nowadays it is a trending topic to talk about artificially created (man-made) conflicts or divided civilizations. In other words, if there is desire and intention to create and engineer conflicts, a large number of reasons can be found one way or other.

After the conflicts move into the red zone, one could argue that the world is in need of a super power to react promptly to prevent such unwanted developments. Since a single nation in the world cannot do this it may be hoped and expected that UN should be doing this. However, until now the United Nations has not been strong enough to be such a super power as to uphold justice and peace. Instead, the UN invested its time into solving conflicts which were created mostly for the interest of many of the industrialized and economically well-off countries and especially those who have veto power. This means that the UN will be a tool serving the interests of these countries. It is well known that, more or less, all of the countries may have some political and economic interests in other countries. But all the nations of the world are, at the same time, against imperialism and injustice (this is what they claim). Generally speaking, the developed countries harbor imperialist ideologies more than the poorer ones. In such a reality, a developed country has to find a way to sustain its power while stopping or

slowing down the economic improvement of other countries. The easiest way to do this is obviously to create conflicts in or between the poor countries. This has to be done in a very skillful and innocent way so that all of the ignorant people and organizations can be deceived and trapped. The best way of course, is to use some of the internationally popular, respected and accepted values as tools, such as democracy, human rights, freedom, cultural, religious and ethnic identity, etc. Such conflicts then galvanize the internal battles among different factions in societies, resulting in a daily influx of people who are seeking international protection more and more. For example, democracy is set up and supported by the strongest group within a given country that believes in democracy from their perspective. These groups might be the capitalists, the armed forces, religious leaders, intellectuals, the aristocracy, other countries or even international organizations, such as NATO.

The richer industrialized countries will gain benefit from these conflicts and fights until eventually it begins to hit them. These countries, sell their old weapons, which in turn makes money for the development of new weapons of greater destruction. This way they can keep their economies stable and become even richer and more powerful. Conflicts and fights stop the capital accumulation in the poor countries so that they can never become competitors and this situation delays their industrialization. Under such conditions there is no change but import of goods produced by the more developed nations; let us not forget that exploitation hates competition. Finally, one can say that an attempt is often made to divide the poorer countries into smaller pieces, according to the “divide and rule” principle. This is applied so as not to create potential danger for rich countries, while at the same time the rich countries are trying to find a way to enlarge their own territory by reunification or agreements among themselves. These corrupt policies often result in more disasters, more refugee overflow, more

misery and generally more difficult living conditions. This is where our world appears to be going now. There is no doubt that developed countries will also get their share of the misery, but this will not bring a solution and is not a desired end. What is the result? Millions of displaced people internally or internationally.

As has often been emphasized in this study, temporary protection, i.e., a version of International Protection is a very important topic in Turkey, as well as in most of other countries of the world. Turkey, on one hand, is a transit country and, on the other hand, a destination country. Especially in 2011, because of the internal unrest, millions of Syrians came in and sought temporary protection in Turkey to save their lives and their families' lives. This event once more showed the importance of temporary protection. After this, as also indicated in this study, a serious attempt was made by the Turkish Government to develop new laws and rules to tackle this issue. In 2013, LFIP was passed by the Turkish Parliament. In this law "Temporary Protection" has a special place. Following the Law, a Regulation for Temporary Protection (22 October 2014) was developed. LFIP defined temporary protection and stated conditions for this status. In the regulation for temporary protection, the areas of application for temporary protection, ending of temporary protection status and other rules are stated.

Under certain conditions, to be able to become a refugee is one of the basic human rights. It would not be right to claim that awareness on this topic in Turkey is at a high level, however, recent years have witnessed a more realistic approach. Increased public awareness and novel legislation efforts have been important developments and added to the prestige of Turkey in the international arena. Obviously, meeting legislation requirements is never sufficient. Turkey needs to work more on better awareness building programs for Turkish citizens and be ready to accept those people

forced to come to Turkey without major problems. Rising problems have to be solved quietly and peacefully. Especially, along with well-trained Government employees, NGO's, lawyers, academics and all other related organization staff must be more educated and trained to be helpful in various stages of resettlement process.

Undoubtedly, it is a very nice and humanistic approach to open the borders and accept all the victims trying to save their lives. But in some cases, this temporary protection status gets longer and the number of people granted permanent protection goes beyond the capacity of a country to handle. This is exactly what Turkey is facing now by carrying the entire heavy load. There is an increased number of asylum applications by Syrians (they are more than the Afghans, Iraqis and Iranians in 2015 and 2016). Now in Turkey, there are more than 3 million registered Syrians who have been granted temporary protection.

The number of protection seekers in Turkey is expected to rise. According to UNHCR figures in 2014, Turkey is the third country where asylum claims were submitted after Germany and United States in the top ranking 15 receiver countries. Unfortunately, there is almost no sharing of the burden offered by other countries, and especially by the developed ones. All they ever do is praise Turkey in words for making humanitarian efforts. Then preaching that Turkey must open its borders to the needy and must lift the geographical limitation is pointless and lacking empathy without addressing Turkey's hesitations.

UNHCR is recognized as the most important international organization for disasters that address cross-border movements of Syrians. But when it comes to burden sharing and sharing the cost, UNHCR is actually there only to make an appearance (called flag showing) and Turkey is left to its own devices in its efforts to meet the

needs of these people. Many of these people live in the camps, but because of capacity limitations of the camps and poor living conditions, many of these temporarily protected people are pushed up to live outside of the camps. Because of harsh semi-settled living conditions for some poor families, these people are becoming more and more problematic for the local people. Therefore, the once welcomed Syrians have now become unwanted people and are perceived as trouble makers that have to be dealt with by the Turkish Government or other appropriate organizations before it is too late.

As I stated before, Turkey's, and other main actors of the world countries' benefits do not match regarding Syrians. Therefore, so far, Turkey has been left alone and only received some flattering words, how great we are and we must spend some more billion dollars to be even greater(!). As a result, in my opinion, it will certainly be very helpful to Turkey if a safe zone could be established for Syrians. It will not be very easy to convince the coalition countries, especially the US. Let's hope that such a zone (as was done for the Kurdish people in Iraq after the first Gulf war) could be established quickly.

The developed countries have sympathetic feelings for the asylum seekers, but unfortunately representatives say that they are very sorry but that they cannot accept any or only very few people who need protection into their country. Then they keep lecturing about what other countries should do. These nations, especially the wealthy ones, and the international organizations need to understand and share the burden by contributing both economically and socially instead of giving advice as to what to do. They too have to make some sacrifices; it will not hurt to give a helping hand to victims. We all must learn not only to teach but also to sincerely act. At this point I would like to repeat the saying of Ziya Ul-Hak who was the president of Pakistan

between 1978-1988: “We are a poor country but we are prepared and willing to share with our neighbors and friends who are perhaps less fortunate than us”.

I personally believe that the imperialist western countries have an interest in obstructing the development of a politically and economically strong Turkey. Because a strong Turkey, would clearly be against their strategic, economic, cultural, political and religious interests. On the other hand, it is also true that they do not want to see a very weak Turkey, which might otherwise lead to the creation of new problems in the Middle East. Because of that, terrorism and migration flows to Turkey are always supported directly or indirectly by the western countries to help them keep the strings in their hands.

In summary, the developed countries should stop intervening in other countries' internal problems. As mentioned before, the rich do not want to give more to the poor but rather want to get even richer. To reach this goal, the rich exploit the poor and the poor exploit the poorer. To find an excuse for exploitation there are always many reasons. If we look at it from this perspective, in a globalized capitalist system there is not much hope for a peaceful world where there are fewer refugees.

All one can hope is that justice will overcome injustice somehow in the near future in this hectic world. The UN has to change its policy and needs to start developing new policies on how to stop the conflicts. This may be possible in the countries first by integrating them in the wider regions and the world. The integration of the world may only stay as an ideal which can never be attained, but I believe that we may succeed in greater integration and stabilization in the countries if a good policy is followed. This policy must be exactly the opposite of what was done before; instead of creating divisions in the countries, based on people's ethnic, and religious backgrounds

these groups should be united as a whole. Otherwise we should be ready for a much more miserable world and more refugee overflows.

Even with such hopelessness, to contribute to solving at least part of the problem; a country-wide and international campaign has to be started out of RESPECT for others with various slogans, emphasizing the true meaning of the word. Tolerance and dialogue among various groups have to be sought afterwards. I believe the notion of respect is a much more objective, justifiable, simple, understandable and acceptable solution than dialogue or tolerance alone. Only after we have learned to respect each other, we will be able to accomplish serious and productive results. This will be one simple way to reduce the refugee overflows to Turkey or to other countries.

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