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**Cooperation project on
the social integration of immigrants,
migration, and the movement of persons**

Kemal Kirişci

***Border Management and EU-Turkish Relations:
Convergence or Deadlock***

EUROPEAN UNIVERSITY INSTITUTE, FLORENCE
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CARIM

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Introduction

Relations between Turkey and the European Union (EU) entered a new stage in October 2005 when the decision to start accession negotiations was finally taken. The Helsinki European Council decision in December 1999 to declare Turkey as a candidate country for membership precipitated a massive process of political transformation in Turkey. This culminated in the European Commission's decision in October 2004 that Turkey had met the Copenhagen political criteria sufficiently. The Commission recommended to the Council to start negotiations with Turkey "without delay". The European Council in December subsequent to an acrimonious debate on Turkey concurred with the Commission's decision and selected October 2005 for the beginning of negotiations. During the summer of 2005 there was a bitter round of debate on Turkish membership in Europe. In spite of an extremely negative discourse and considerable public opinion resistance the EU succeeded in adopting a Negotiation Framework for Turkey in October. Subsequent to the decision a process of "screening" Turkish legislation in the area of 35 chapters to be negotiated began. In January 2006 a new Accession Partnership (AP) document was adopted by the EU laying out the tasks that Turkey had to complete for convergence to occur between Turkish legislation and the EU *acquis*.¹ The Commission completed the screening process in November 2006. However, so far only one chapter was opened and closed. The opening of a second chapter was blocked by Cyprus and Greece in October. At the 14-15 December 2007 summit of the European Council the decision to suspend negotiations on eight chapters with Turkey in response to the Turkish insistence not to open harbours and airports to Cypriot vessels was taken. The Finnish Presidency aspired to open four chapters to negotiations however this had not occurred by the time Germany took over the Presidency of the EU.

Among the remaining 34 chapters that Turkey has to negotiate is the chapter on "justice, freedom and security", previously referred to as "justice and home affairs". This is a chapter that deals with a wide range of issues that constituted the "third pillar" of the European Union set up by the Maastricht Treaty of 1991. The Amsterdam Treaty of 1997 brought some of these issues under the "first pillar" of the European Union enabling the Commission to play a greater role in the legislative process. In the meantime an impressive body of *acquis* has evolved addressing issues arising from the removal of internal frontiers within the European Union. The *acquis* covers issues ranging from the Schengen visa regime to the evolving common asylum and immigration policy as well as to efforts at enhancing police and judicial cooperation among EU member countries. In May 2005 these efforts reached a new threshold with the establishment of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX) in Warsaw.

The importance of these issues within the EU has steadily increased and has come to dominate the agendas of the European Council summits for the last couple of years. The rise of international terrorism and the attacks on Madrid and London have left their mark. Immigration related issues that had long become fodder for domestic politics in a number of EU member countries have now also become blended with issues of terrorism and security. Immigration is not any more simply about processing asylum applications, preventing illegal migration and managing the movement of people in and out of the European Union. It has become a hard core security issue involving efforts to ensure that potential acts of violence and terrorism are not perpetrated inside the EU. This is further complicated by the fact that terrorism and acts of violence have become associated with Islam and Muslims in general as well as Muslim immigrant communities in the EU. The Madrid and London bombings were perpetrated by Muslim immigrants or Muslim European citizens. This has also set

¹ Accession Partnership Strategy for Turkey, Council Decision, 23 January 2006. There were two earlier Accession Partnerships that were adopted on 8 March 2001 and 19 May 2003. These documents can be accessed from http://ec.europa.eu/enlargement/turkey/key_documents_en.htm

alarm bells, especially among conservative circles in Europe, in respect to soft security issues such as the definition of European identity and the place of immigrants and especially Muslims in Europe. The issue of integration of immigrants in the European Union has acquired increasingly a security dimension. The massive protests and rioting led by young French nationals of mostly North African origin in the fall of 2005 has aggravated this sense of insecurity. It is against this background that the physical control of the external borders of the European Union, the close supervision and management of the movement of people across these borders, combating illegal migration and developing a common asylum policy have acquired greater salience and urgency.

In this respect Turkey is very central to the EU's efforts to develop and implement a common immigration policy. Firstly, Turkey sits at a critical geographical location in terms of immigration related issues. Large numbers of people from regions east of Turkey are among those people who are trying to make it to the EU as asylum seekers and illegal migrants. The instability, violence and economic problems in the "broader" Middle East aggravate this situation. Furthermore, in the "broader" Middle East there are a number of governments that are often associated with support for terrorism or organizations linked to terrorism. This makes the movement of people from this region even more sensitive. Secondly, Turkey's borders with this region are very long and cross very difficult terrain to manage and control. This is further complicated by the fact that Turkey has its own concerns in respect to the defence and protection of these borders, especially the ones with Iraq and, to a lesser extent, Iran. In the past and more recently these borders are subject to infiltrations by the militants of the Kurdistan Workers' Party (Partia Karkaren Kürdistan – PKK) that perpetuate acts of violence and terrorism within Turkey. This often leads Turkey to give priority to border protection by the military rather than the management of the border by a civilian authority that the EU prefers. Thirdly, Turkey is a big Muslim country that is trying to enter the EU and at the same time has large number of its nationals that constitute immigrant communities in the European Union. In the EU there is apprehension about the potential arrival of large number of Turkish immigrants and growing concern about the integration of current Turkish immigrant stocks. These adversely affect attitudes towards Turkey's accession process to the EU and provoke resistance to Turkish membership.

The acrimonious and bitter debates that have preceded each critical decision concerning Turkish pre-accession has negatively marked Turkish public opinion as well as the government and public policy makers. An important consequence of this experience has been that support for eventual Turkish membership to the EU and trust in the credibility of the EU has significantly dropped. This has adversely influenced the transformation process of Turkey and significantly undermined the process of "rule adoption". Public policy makers have become reluctant to adopt and implement the *acquis* as perceived prospects of Turkish membership in their mind steadily fall. An area that has been influenced by this process concerns "justice, freedom and security" related issues and in particular border management. This is symbolized for example by the reluctance of the public policy makers to adopt the Schengen visa regime, the *acquis* on asylum and in particular support the "lifting of the geographical limitation" to the 1951 Geneva Convention Relating to Status of Refugees and put into place a fully fledged national status determination process for asylum seekers coming from outside Europe. Similarly, Turkish authorities have also been reluctant to negotiate and conclude a "readmission agreement" with the Commission as well as put into place a "border agency" that would replace the current institutional set-up in respect to controlling, securing and managing Turkey's borders.

This "bad-faith" and reluctance to cooperate with the EU is taking place surprisingly against a background of considerable reform in respect to developing a modern asylum system as well as efforts to combat illegal migration and trafficking in Turkey. The Turkish government also seems willing to improve and reform its border control system but is somewhat discouraged from taking extremely costly, in the monetary and political sense of the word, administrative and institutional changes. Similarly, Turkey is willing to overhaul and improve its visa system but remains reluctant to do so once again deterred by the administrative, economic and political costs involved. In turn this reluctance to demonstrate satisfactory signs of convergence is leading to criticism from the European

Commission as well as some member states. This naturally aggravates the resistance in Europe towards Turkish membership on the grounds that Turkey's is unwilling to adapt and change. Hence this creates a kind of a vicious circle that exacerbates mistrust between the two sides and undermines the securing of an area of "justice, freedom and security" in the EU.

This paper aims to assess the current state of affairs in Turkey in respect to four specific aspects of border management: management of asylum; management of Turkey's external borders; management of illegal migration and trafficking in human beings; and management of the Turkish national visa regime. The paper will describe Turkish policy in these four areas as well as assess, where appropriate, government efforts to reform these policy areas. There will also be an effort to offer an analysis of the "gap" that exists between Turkish practice and the current EU *acquis*. Finally, the paper will conclude by arguing that, by and large, the Turkish government is indeed willing to adopt reforms to bring about a convergence between Turkish and EU practice but that this is held up from taking place due to economic and political considerations. The paper will argue that the most important political consideration stems from a deep seated doubt about the EU's commitment to a fully fledged membership for Turkey. The EU's credibility has been a critical if not "the" factor that has induced past candidate countries to reform. This ought to be the case with Turkey too. The challenge is whether both sides will be able to work out a relationship that will overcome the current sense of mistrust and transform the current state of Turkish pre-accession from a state of "deadlock" to a process of "convergence" in a manner that benefits both sides and in particular the strengthening of the area of "justice, freedom and security" in the EU.

The paper is divided into three sections. The first part offers a brief analysis of Turkey's "transformation" under the influence of the EU's political conditionality for starting accession negotiations. The EU's credibility and the effectiveness of "conditionality" were two factors that helped Turkey to meet the Copenhagen political criteria. These two factors played a critical role in helping to bring about the drastic transformation that Turkish domestic politics and foreign policy over the last couple of years. The second section looks at four issue areas concerning border management in detail. The methodology of this section is based on an analysis of the annual progress reports prepared by the European Commission on Turkey, relevant final reports of Twinning Projects, reports of organizations such as the International Organisation for Migration (IOM), United Nations High Commissioner for Refugees (UNHCR), Amnesty International etc... Interviews and discussions were also held with officials from the Turkish National Police, especially the Foreigners Department of the General Directorate of Security of the Turkish Ministry of the Interior (MOI), the Turkish General Secretariat for EU Affairs and the Ministry of Foreign Affairs as well as representatives of the UNHCR and various Turkish non-governmental organizations dealing with especially asylum, irregular migration and visa related issues. The paper will conclude that the current uncertainty over eventual EU membership and mistrust will continue to keep public policy makers' calculation of "governmental adoption costs" prohibitively high while at the same time supporting modest reform in all the above areas even if the pace and scope of these reforms may vary from one issue area to another will benefit both Turkey and the EU. Yet, a breakdown in Turkey's accession process may well bring this reform process to an end and create a deadlock in respect to convergence. Such an outcome would be detrimental for Turkey as well as Europe.

Transformation of Turkey and Turkish pre-accession

Exactly ten years ago it would have been difficult to imagine that Turkey would be starting its accession talks with the European Union. At the time Turkey was well short on "democracy", well short on "economic and political stability" and it was an abundant source of considerable tension in the region. Turkey had a reputation for being a country with a readiness to resort to "hard power" in its relations with many of its neighbours and hence referred to in some circles as a "regional coercive

power” or a security “consumer” rather than a security “provider or exporter”.² Its economy was characterized by high levels of inflation, interest rates and unpredictability. There were severe restrictions on basic freedoms such as freedom of expression and association. The country was embroiled in a violent conflict with the PKK and the then anti-terror laws fell well short of European standards. Worse Turkey had a very poor human rights record that adversely affected asylum seekers and refugees. Capital punishment though not in use was still in the books. This was also a period when Turkish foreign policy making was dominated by the security establishment and the ministry of foreign affairs. The world outlook of these decision makers at the time was very much formed by a narrow national security considerations and deep mistrust towards the external world. There was a general feeling that the external world very much wanted to destabilize, weaken and divide up Turkey. Furthermore, civil society and the business world had little influence on policy making in general.

Today we are confronted with a different Turkey. The effort to meet the Copenhagen political criteria has changed Turkish politics deeply even if there remains a lot that still needs to be achieved. In contrast to ten years ago the death penalty has been abolished for good, considerable ground has been covered in respect to improving minority rights. The freedom of expression and association rights has been significantly expanded. The state security courts have been closed down. The influence of the military on the political system has been reduced especially by redesigning the structure of the National Security Council. What is however much more significant is that in Turkey “hearts and minds” are being transformed. Turkish officials are learning to cooperate and work with civil society. The influence of business and economic considerations are growing over classic “national security” considerations. Most fascinatingly the notion of “win-win” thinking in Turkey’s relations with the external world is replacing the old “zero-sum” approach to international relations.³ In this respect the military is learning to adjust itself to the new realities. Furthermore, and may be most importantly, the EU’s engagement of Turkey is seen increasingly by the military as a development that is contributing to Turkish security rather than eroding it.⁴

Against this background an area where the transformation of Turkish foreign policy became most conspicuous is reflected in the dramatic and major turn about when the government adopted a completely novel policy on Cyprus. In the 1990s Turkey’s approach to the problem of Cyprus was centered around the idea that “no solution is the solution”. Turkey had been party to 40 years of fruitless negotiations and had basically supported the status quo on the island created as a result of the events in the summer of 1974. Instead Turkey decided to lend its support for the Turkish-Cypriots’ decision to go along with the Annan Plan contemplating the reunification of the island. This plan was originally announced by UN Secretary-General Kofi Annan in November 2002.⁵ This uniquely detailed and comprehensive plan envisaged the establishment of a reunited Cyprus, delicately striking a balance between the two sides on the island. The Plan went through a number of modifications before it took the form that was submitted to a referendum on both sides of the island in April 2004.

During the course of especially the first few months of 2004 the Turkish public observed this new thinking unfolding itself on the question of Cyprus. The Turkish public had long become accustomed to the well established view that “no solution is actually the solution” in Cyprus. In May 1999 the then president Süleyman Demirel in reaction to arguments that a solution ought to be sought for Cyprus had

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

3 For an in depth analysis of Turkey’s foreign policy transformation and the role of the EU see Kemal Kirişci, *Turkey’s foreign policy in turbulent times* (Institute for Security Studies-EU, Chaillot Paper, No. 92, September 2006, Paris).

4 Ersen Aydınli, Nihat Ali Özcan and Doğan Akyaz, ‘The Turkish Military’s March Towards Europe’ *Foreign Affairs*, Vol. 85, No. 1 (January-February 2006).

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

responded with the remark that “trying to bring together the two communities who do not want to live together would provoke conflict”.⁶ For along time in Turkey advocating ideas challenging the status quo in Cyprus normally amounted to almost treason. The country experienced a long and detailed public debate on the Annan Plan. TV stations were filled with round tables and discussion programs in which a wide range of ideas and opinions on various aspects of the Plan were freely expressed. In the midst of this debate the Commander of the Aegean Army, General Hurşit Tolon, made a public statement that he believed those who advocated policies amounting to an abandonment of the Turkish Republic of Northern Cyprus (TRNC) (“*ver kurtul*” was a slogan used by the advocates of the status quo in Cyprus and critical of those who supported the Annan Plan) were simply “traitors.”⁷ His statements provoked a furor in the media as well as a public rebuke from the Minister of Foreign Affairs, Abdullah Gül. Interestingly, the Office of the General Staff distanced itself from the General’s remarks. Instead the Military associated itself with the position of the government as well as the Ministry of Foreign Affairs in support of the Annan Plan and the idea of an eventual referendum. During this period both the Prime Minister, Tayyip Erdoğan as well as Abdullah Gül frequently used references to achieving a “win-win” solution for Cyprus. This kind of discourse was a relatively new and novel one in Turkish foreign policy and undoubtedly the pressure created by the EU and the prospects of starting accession talks played a critical role. These developments are a reflection also a learning process accompanied with a change in “hearts and mind” or a paradigmatic shift.

Such a paradigmatic shift is also visible in respect to relations between officials and civil society. The notion of cooperating with the external world was relatively alien to the Turkish military and bureaucracy. The ‘Sèvres phobia’ together with the accompanying deep mistrust towards the West and the international community often constituted a major mental barrier for Turkish officials in developing cooperative projects with foreign officials. This too began to change as closer relations with the EU made it inevitable that officials had to develop contacts at all levels with their EU counterparts and with civil society as well as international organizations. Turkish officials from the Ministry of the Interior, Gendarmerie and Ministry of Foreign Affairs have cooperated very closely with the United Nations High Commissioner for Refugees, the International Organization for Migration and Turkish and international non-governmental organizations.⁸ For example, the MOI officials subsequently joined by the Gendarmerie were able to make arrangements in September 2003 with a non-governmental organization, Human Resources Development Foundation (Insan Kaynaklarını Geliştirme Vakfı- HRDF) and the Directorate General of the Status of Woman to provide social assistance to victims of trafficking until their return to their countries of origin could be arranged.

The Turkish economy looks very different too. In comparison to the mid-1990s the Turkish economy has grown significantly in size and has continued to become diversified. The size of the Turkish economy in 1995 when the customs union was signed, stood at 166,5 billion USD. In 2005 it had more than doubled in size and grown to 353 billion USD. Most of that growth has actually taken place since EU membership prospects became more serious. No economy of the “old Europe” has come any where near such a level of growth. Actually, IMF reported that the Turkish economy had become the 19th largest economy in the world having surpassed Sweden and Switzerland over the last two years. The IMF also predicted that if Turkey remains on its path it is expected that in 2007 the size of the Turkish economy will reach 447 billion USD overtaking the Belgian economy.⁹ Turkish foreign trade has grown significantly from 57.3 billion USD in 1995 close to 190 billion USD in 2005. Most dramatically Turkey’s infamous hyper-inflation has been brought under control and in 2005 was

6 “Birlikte yaşamaya zorlamak kavga çıkarır” reported in Milliyet, 20 July 1999.

7 “Ülke hain yetistiriyor,” Milliyet, 18 January 2004.

8 One such non-governmental organisation has been the International Catholic Migration Commission. The fact that an ngo with the word “Catholic” in it is has been running training seminars for the police as well as other Turkish officials is telling of the degree and nature of transformation taking place.

9 Reported by Radikal, 21 April 2006.

below 8 per cent compared to 106 per cent in 1995. Similarly, the budget deficit has been shrinking and there are already reports that Turkey could be meeting the Maastricht criteria much earlier than previously expected.¹⁰ Confidence in the Turkish economy and society has been reflected in a conspicuous manner in two specific areas. Tourism has significantly increased and become a major source of income especially for financing Turkey's current account deficit. Most fascinatingly visitors to Turkey went up to more than 20 millions in 2005 from just under 8 millions in 1995 suggesting a striking growth in Turkey's attraction to visitors. A significant proportion in the increase came actually from countries neighbouring Turkey partly due to Turkey's growing attractiveness partly due to Turkey's liberal visa policy. Foreign direct investment was another growth area. In 2005 FDI entries was close to 10 billion USD more than the total of all FDI that had previously entered the country until 1999.¹¹

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

Currently, the situation looks very different. The public opinion has become very sceptical of the EU's commitment to Turkish membership whatever Turkey does. Levels of public opinion support for EU membership have dropped significantly. Opposition to membership has become more vocal. Especially, the military has become much more critical of the EU. There are some who have even argued about the risk of "loosing" Turkey because of the manner the EU has been treating Turkey.¹² The problem of Cyprus has been a major stumbling bloc. The Turkish government that was fully supportive of the Annan Plan has been unwilling to ensure the full application of the Additional Protocol adopted during the summer of 2005. The government has extended the customs union to the all the new member countries except Cyprus. It refuses to open Turkey's harbours and airports to Cypriot vessels as long as the economic isolation of the Turkish Cypriots is not lifted. The government argues that the EU had promised to introduce policies in this respect after the referendum on the Annan Plan in April 2004 when the Turkish side overwhelmingly supported it and the Greek side rejected it.

At a time when the Turkish government is preparing to face national elections late in 2007 it has been reluctant to challenge the consensus in the country. Many had predicted that Turkey's unwillingness to compromise would lead to a train-crash and the complete suspension of accession

10 Caner Bakır, 'Turkey: en route to meet the challenging Maastricht criteria?' *Studia Europaea*, Nos 2-3, (October 2005).

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

12 Philip Gordon and Ömer Taşpınar, 'Turkey on the Brink', *Washington Quarterly*, Summer 2006.

negotiations.¹³ A number of member countries actively sought to bring about this “train-crash”. However, at the end the Finnish Presidency and the efforts of particularly Britain and Sweden culminated in the partial suspension of the accession talks. At the end, the commissioner responsible for enlargement, Olli Rehn, called this a “slowdown of the train”. The “train crash” scenario indeed appears to have been avoided. However, it is not clear how and whether negotiations on the other chapters will proceed as Cyprus and Greece continue to resist the opening of any chapter. The only positive development is that the Turkish government officials, both the prime minister, Tayyip Erdoğan, and the minister of foreign affairs, Abdullah Gül as well as the chief negotiator, Ali Babacan, have all repeatedly stated that they remain committed to EU membership as well as to the process of reforms. Their statements appear to have carried considerable credibility as the business world that supports membership has been satisfied. Furthermore, the “market” in Turkey does not appear to have been adversely affected by the decision leading to the partial suspension of negotiations. The economy is continuing to grow and confidence in the Turkish economy seems to remain in place. The government’s commitment to the accession process is likely to bore well for the reforms that will be needed for harmonising Turkish policy and practice in the above four “justice, freedom and security” related areas. However, this should not be taken for granted. The mistrust towards the EU is deep among Turkish officials. It is doubtful that the goodwill of the Turkish government on its own will be sufficient to sustain reform unilaterally. The EU’s policies towards Turkey in the coming months will remain to be a critical factor in determining relations in general and in the area of “justice, freedom and security”. This will very much determine whether convergence or drift into a deadlock occurs in the future.

Border management and “harmonization”

The background to Turkey’s current status in terms of pre-accession is a long and extensive one. Turkey’s current relationship with the EU extends back to 1959 when negotiations between the EEC at the time and the Turkish government had started with a view to signing an association agreement. It is not the purpose of this report to recount this relationship. The history of this relationship has been extensively studied in the literature. As mentioned earlier, the critical turning point came when the Helsinki European Council summit in December 1999 granted Turkey candidate status. Subsequently, the EU adopted its first Accession Partnership Strategy (AP) followed by the National Program for the Adoption of the Acquis (NPAA) accepted by the Turkish government.¹⁴ The APs were subsequently renewed in 2003 and 2006. The AP laid out the political reforms that Turkey needed to adopt to meet the Copenhagen political criteria to start accession negotiations as well as the harmonization that Turkey would need to achieve in a wide range of policy areas including “freedom, security and justice”. It is under this section that the EU lays out the task that Turkey has to complete in respect to aligning Turkish practice with the EU *acquis*. In return the second NPAA, in great detail with a timeline, listed the steps Turkey committed itself to taking in adjusting its policies to that of the EU.

The European Council at its meetings in Feira¹⁵ and Göteborg¹⁶ stressed the importance of any applicant countries’ capacity to implement and enforce the *acquis communautaire*. The Council

13 Many have used to term “train-crash” to describe the prospects of EU-Turkish relations. See especially Kirsty Hughes, *Turkey and the EU Four Scenarios: From Train Crash to Full Steam Ahead* (Chatham House, London, 2006).

14 National Program for the Adoption of the Acquis 2001. Avrupa Birliği Genel Sekreterliği Avrupa Müktesebatının Üstlenilmesine İlişkin Türkiye Ulusal Programı. Ankara: Ankara Üniversitesi Basımevi, 2001. Subsequently, another NPAA was prepared in 2003. This document can be reached from <http://www.abgs.gov.tr/indexen.html>.

15 See Santa Maria de Feira European Council 19 and 20 June 2000, Presidency Conclusions, point 16: “The European Council recalls that, in addition to finding solutions to the negotiating issues, progress in the negotiations depends on the incorporation by the candidate States of the *acquis* in their national legislation and especially on their capacity to effectively implement and enforce it. While progress has already been made, this calls for important efforts by the candidates to continue their domestic reforms, in particular strengthening their administrative and judicial structures. The

further emphasized that this goal involves fundamental efforts by every applicant in strengthening and reforming their administrative and judicial systems. Numerous Council summits have repeated this expectation. In Turkey, as for all the past and present candidate countries, the so-called twinning projects play a fundamental role in that respect towards pre-accession negotiations. The projects commonly named as ‘twinning’ are instruments for targeted administrative cooperation to assist candidate countries to strengthen their administrative and judicial capacity and to implement the EU framework in their national systems. They have been qualified as the cornerstone of the joint effort by the European Union (European Commission and member states) and the candidate countries to foster institution-building. These projects are in turn expected to lead to the adoption of Action Plans that lay out in detail the steps, administrative, infrastructural and legislative, that Turkey aims to take to adopt the EU *acquis*. Action Plans are also expected to offer a timeline for the implementation of the *acquis* in preparation for accession.

Since the coming into force of the Amsterdam Treaty in 1999, the EU has attributed special importance to border management related issues in an effort to ensure an area of “freedom, security and justice”. In this context since the Tampere European Council in November 1999 the EU has called on the need for candidate countries to adopt and implement the *acquis* concerning asylum, control and management of external borders, illegal migration and common visa policies. Special importance have been attributed to the candidate countries harmonization their law and practice with that of the Schengen Convention. The importance attributed to ensuring an area of “freedom, security and justice” was reflected in the manner in which accession countries had to have put into place and have to ensure the implementation of the *acquis* by membership while a transition period was imposed on the new member countries for joining the borderless Schengen area.

This situation has also been reflected in EU-Turkish relations. Since May 1998, the date in which the first twinning took place in Turkey, many of the projects envisaged for Turkey have dealt with Justice and Home Affairs policies or issues falling under the chapter “justice, freedom and security”. This fact reflects Turkey’s determination to reinforce its law enforcement capacity in these particular areas as well as the importance given to the issues at stake in the pre-accession period by the European Commission and the member states. By way of example, in the year 2003 alone, five out of a total of 18 twinning projects were prepared dealing with the following JHA issues: strengthening the police forensic capacity, strengthening institutions in the fight against trafficking in human beings, strengthening the struggle against money laundering, financial sources of crime and the financing of terrorism, visa policy and practice, etc. The programme presented for the 2004 period includes three additional projects dealing with asylum, border protection, law enforcement and migration issues.¹⁷

The adoption of the second NPAA had indeed highlighted a some what ambitious agenda and schedule for Turkey to harmonize its legislation and policy with that of the EU in the area of justice and home affairs. The NPAA aspired to achieve most of the harmonization by the end of 2005.¹⁸ However, the attention and emphasis put on meeting the Copenhagen political criteria for a while overshadowed the recognition of the amount of work that needed to be done in terms of achieving

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Union will closely monitor the performance of the candidates. To this end, the Commission is invited to report to the Council on its findings. The European Council at Nice will review progress on enlargement and consider how to take forward the accession processes”.

16 Göteborg European Council 15 and 16 June 2001, Presidency Conclusions, point 7: “This new momentum must be matched by continued progress in the candidate countries in transposing, implementing and enforcing the *acquis*. They will have to pay particular attention to putting in place adequate administrative structures, to reforming judicial systems and the civil service, as well as to the situation of minorities. Special efforts will be devoted to assisting Bulgaria and Romania”.

17 The total budget of JHA projects amounts to €13 million, which represents 5.5% of the total financial aid allocated to Turkey for the year 2004.

18 For example in the chapter dealing with justice and home affair issue (chapter 24) many of the deadlines were set for 2004 and 2005. A case in point is the adoption of the Schengen Negative List by the end of 2005.

harmonization. Subsequently, as Turkey became engaged in efforts of harmonization many of these deadlines were substantively revised. The first step towards harmonization was taken in June 2002 when the Turkish government formed the Task Force on Asylum, Migration and Border Protection composed of representatives from the Coast Guard, Gendarmerie, Military, Ministry of Interior, Ministry of Foreign Affairs, Undersecretary of Customs and the Secretariat General for European Union Affairs. Working groups within this Task Force were set up to start legislative scrutiny and arrange for studies as well as study visits with respect to border protection, illegal migration, the Schengen visa regime and asylum.¹⁹

The Task Force produced, in consultation with the Office of European Commission in Ankara, the *Strategy Paper on the Protection of the External Borders in Turkey* in April 2003. The Report drew the broad outlines of the harmonization process. Subsequently, the government developed a series of proposals for twinning projects. These twinning projects were on “Support for the development of an Action Plan to implement Turkey’s integrated border management strategy” (TR02-JH-02); Support to the development of an Action Plan to implement Turkey’s asylum and migration strategy” (TR02-JH-03); “Strengthening the Institutions in the Fight against Trafficking in Human Beings” (TR03-JH-03) and “Visa Policy and Practice” (TR03-JH-05). Three of these projects have been completed and the one on trafficking is nearing its completion. These projects, by and large, have dealt with the preparation of Action Plans for the implementation of the Strategy Paper. They have also offered training programs for Turkish officials on the EU *acquis* and best practices as well as assistance for administrative capacity building. They have also done a “gap” analysis between Turkish legislation and the EU *acquis* in their respective areas. These projects were financed from the assistance allocated by the Accession Partnership for Turkey. The Action Plan for the adoption of the Schengen Visa regime is in the process of being prepared while the ones on “Asylum and Migration” and “Border Management” have been adopted in 2005 and 2006.²⁰

A joint EU-Turkey consultative mechanism has also been put into place to oversee the harmonization process. Subsequent to the Helsinki European Council in December 1999, the EC-Turkey Association Council of 11 April 2000 set up eight subcommittees under the Association Committee.²¹ The last of the subcommittees deals with “freedom, security and justice” related issues. This subcommittee has met six times.²² The meetings have been forums during which views are exchanged and Commission officials raise questions concerning legislative screening and progress in respect to work on harmonization. The consultative mechanism has also been continued during the course of 2006 by the screening process. During the screening process, explanatory and bilateral meetings on Chapter 24 “justice, freedom and security” (Chapter 24) were held in Brussels on 23-25 January and 13-15 February 2006 respectively. The European Commission is in the process of preparing its final report on the screening process for the chapter dealing with “freedom, security and justice”. Currently, it is not very clear as to when accession negotiations on this chapter may be opened.

19 The European Commission provided considerable expert assistance to the working groups, through an existing ‘unallocated institution building’ project: Administrative Cooperation and study visits were organised for Turkish officials to Germany, Poland and Finland as best practice Member States with the assistance of the European Commission.

20 The Action Plan on “Asylum and Migration” was officially adopted by the Turkish government on 25 March 2005. It is available with a book entitled *Asylum and Migration Legislation* (MOI and UNHCR, Ankara, February 2006). The document can be accessed from www.unhcr.org.tr. The Border Management Action Plan was adopted 27 March 2006, National Action Plan towards the Implementation of Turkey’s Integrated Border Management Strategy (MOI, Ankara, March 2006).

21 Decision No 3/2000 of the EC-Turkey Association Council of 11 April 2000 on the establishment of Association Committee subcommittees (2000/378/EC).

22 These meetings were held on 6-7 March 2001, 2-3 July 2001, 20-21 March 2002, 19 June 2002, 15 December 2003, 30 April 2005 and 5 December 2006.

So far efforts towards harmonization have been a mixed one. The formation of the Task Force, the publication of the Strategy Paper and the subsequent twinning projects and the adoption of Action Plans have helped to focus the attention of bureaucracies and organizations dealing with various aspects of border management. This has put many officials in contact with their EU counterparts in an unprecedented manner. These officials have expanded their knowledge of the EU, the EU *acquis* and the work that is awaiting them. The socialization process may also account for the reason why the European Commission, by and large, has praised the professionalism and enthusiasm of their Turkish counterparts during the screening process. In contrast government and public attention had been mainly focused on the process of meeting the Copenhagen political criteria and their implementation. Little attention had been focused on the actual harmonization process whereas clearly greater governmental involvement, at the level of ministers if not the prime minister, seems to be needed. As will be detailed in the following sections the harmonization process has reached a point where difficult decisions are needed to actually start implementing Action Plans and also bring about breakthroughs in a number of areas. The recent developments in EU-Turkish relations have not facilitated the exercise of the harmonization process. The December 2006 European Council decision to suspend accession talks on eight chapters and the political difficulties that the EU is encountering in opening the other chapters is aggravating the situation. Many bureaucrats who have actually become socialized into the idea of EU membership and the tasks to be performed to meet the necessary criteria are losing their will and trust in the whole process. This is further increasing the need for high level governmental involvement to push along the harmonization process. The following sections will study the developments in respect to harmonization in four specific areas of asylum; border control; illegal migration and trafficking; as well as visa regime.

Asylum

In the West Turkey is traditionally known as a country of emigration. Yet, Turkey, like its predecessor the Ottoman Empire, has long been a country of immigration especially for Muslim ethnic groups, ranging from Bosnians to Pomaks and Tatars, as well as Turks from the Balkans and to a lesser extent from the Caucasus and Central Asia. Between 1923 and 1997, more than 1.6 million immigrants came and settled in Turkey.²³ The founders of the modern Turkish state were concerned to create a homogenous sense of national identity in an otherwise ethnically and culturally diverse country.²⁴ Exclusive priority was given to encouraging and accepting immigrants who were either Turkish-speaking Muslims to start with, or who were officially considered to belong to ethnic groups that would easily melt into a Turkish identity such as Albanians, Bosnians, Circassians, Pomaks and Tatars from the Balkans. Only a small number of immigrants came from outside the Balkans and the above ethnic and religious groups. The Gagauz Turks, for example, were not encouraged to immigrate to Turkey, largely due to their being Christian. These policies were based on the Settlement Law (No. 2510) of 1934 that restricted immigration and refugee to people who were of “Turkish descent or culture”.

Nevertheless, after the Nazi takeover in Germany and then during the Second World War there were many Jews who fled to Turkey and then resettled in Palestine. There were also many who fled the German occupied Balkans for Turkey and returned to their homelands after the war had ended. Since the collapse of the Soviet Union, Turkey has also become a country receiving an increasing number of irregular workers and immigrants from Balkan countries and former Soviet republics as well as Iran, northern Iraq and Africa. These often include people that overstay their visa and work illegally. Turkey has also been a country of asylum, and is among the original signatories of the 1951 Geneva Convention. However, Turkey is today among a very small number of countries that still

23 For details see Kemal Kirişci, ‘Refugees of Turkish origin: ‘Coerced immigrants’ to Turkey since 1945’, *International Migration*, 34 (3)1996.

24 K. Kirişci (2000), “Disaggregating Turkish citizenship and immigration practices”, *Middle Eastern Studies*, Vol. 36, No. 3, July.

maintains a “geographical limitation” to the agreement's applicability as defined in Article 1.B(1)(a) of the Convention. Accordingly, Turkey does not grant refugee status to asylum seekers coming from outside Europe, and maintains a two-tiered asylum policy.

The first tier of this policy is centred on Europe and is deeply rooted in Turkey's role as a Western ally neighbouring the Soviet Union during the Cold War. During that period, in close cooperation with the UNHCR, Turkey received refugees from the Communist Bloc countries in Europe, including the Soviet Union. Such refugees, during their stay in Turkey, enjoyed all the rights provided for in the 1951 Convention. However, only a very small number were allowed to stay on in Turkey, often as a result of marriages with Turkish nationals. Hence, the overwhelming majority of the refugees were resettled out of Turkey. Although it is very difficult to obtain accurate statistics on their numbers, the Ministry of Interior (MOI) has indicated that some 13,500 asylum seekers benefited from the protection of the 1951 Convention between 1970 and 1996. Statistics for previous years are not available. In addition, approximately 20,000 Bosnians were granted temporary asylum in Turkey during hostilities in the former Yugoslavia between 1992-1995. Some of the refugees were housed in a refugee camp near the Bulgarian border, while many went on to stay with relatives in large cities such as Istanbul and Bursa. Since the signing of the Dayton Peace Plan in 1995, an overwhelming majority of these refugees have returned to Bosnia. In addition, in 1998 and 1999, approximately 17,000 Kosovars came to Turkey to seek protection from the strife in their ancestral homeland. The majority have returned.²⁵ There are also Chechen refugees who reside in Turkey in some what a legally grey zone. These are a group of Chechens who arrived with the support of some Turkish humanitarian and Chechen immigrant associations after the second war in their homeland. The Turkish authorities seized extending their residence permits since 2002. The UNHCR estimates their numbers as of June 2006 to be around 300. They are housed under precarious circumstances in various private and public locations in Istanbul. They experience difficulties in accessing social services as well as schooling for the children. Their plight has received some media attention but their status remains unresolved.²⁶ As of early December 2006 there were 23 asylum seekers recognized as Convention refugees out 229 applications coming from nationals of European countries.²⁷

The second tier of Turkey's asylum policy deals with persons from outside Europe. The new policy emerged in 1980 in the wake of the Iranian Revolution, and subsequent instability in the Middle East, Africa, and Southeast Asia. Upheaval in these areas led to a steady increase in the number of asylum seekers coming from outside Europe. For a long time, the government allowed the UNHCR considerable leeway to temporarily shelter these asylum seekers with the tacit understanding that they would be resettled out of Turkey if the UNHCR recognized them as refugees, and that those whose claims were rejected would be deported. However, the growth in the number of illegal entries into Turkey and in the number of rejected asylum seekers stranded in Turkey strained this practice. The situation was also aggravated by the 1988 and 1991 mass influxes of Kurdish refugees amounting to almost half a million. Officials were also concerned that among these asylum seekers were militants of the PKK trying to enter Turkey from northern Iraq.

25 The UNHCR reports that there are approximately 30 Bosnian and Albanian families left behind. They are granted residence permits however experience difficulties in benefiting from social services and finding work, UNHCR Information Note obtained by facsimile 22 December 2006.

26 Ibid.

27 The “European” refugees came from Azerbaijan, Bulgaria, Russian Federation and Yugoslavia. The statistics were obtained from the Foreigners Department of the Police. Turkish authorities for the purposes of asylum consider the former Soviet Union Europe with the exception of Central Asian republics, (24) Justice, Freedom and Security Bilateral Screening with Turkey, 13-15 February 2006: Replies to Questions and Issues Posed to the Turkish Authorities by the European Commission (Undated document of the Secretariat of EU Affairs, Ankara).

It was against such a background that the government introduced a decree, the Asylum Regulation, in November 1994.²⁸ The Regulation aimed to bring status determination under the control of the Turkish government. This first national legislation on asylum was primarily drafted with national security concerns and hence introduced strict regulations governing access to asylum procedures with little regard for the rights of asylum seekers and refugees.²⁹ It is not surprising that the practice that evolved in the first few years of the application of the Regulation attracted serious and concerted criticism from western governments, as well as major international human rights advocacy groups.³⁰ Critics argued that Turkey was undermining the rights of asylum seekers and refugees by denying them access to asylum procedures or failing to provide them adequate protection by violating the principle of *non-refoulement*. The Regulation had introduced the requirement that asylum applications be filed within maximum five days of entry into Turkey. The rule was often interpreted strictly and applications were refused on the grounds of being late. Such refusals were often followed by deportations. There were also cases of *bona fide* refugees recognized by the UNHCR being deported on the grounds that these persons had never actually filed applications and were in violation of the Regulation. This led to frequent conflicts between Turkish authorities and the UNHCR that continued to receive applications and assess them on their merits independently of the provisions of the Asylum Regulation.

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

Another indirect reform of the Turkish asylum policy came through the introduction of training seminars initially for MOI officials. The first of these took place in September 1998 and involved officials that directly dealt with asylum seekers and refugees. These early seminars organized by the UNHCR were often the first of their kind. A steady stream of officials went through these seminars assisting the gradual accumulation of expertise accompanied with a process of socialization. This process significantly improved the officials' understanding of the issues involved. They also contributed to a significant change in the attitudes of many of these officials towards asylum seekers and refugees. The training programs were gradually expanded to include other officials such as judges, prosecutors and gendarmes as well. Gendarmes are often the very first people that asylum seekers would encounter in border areas. Awareness programs to differentiate between illegal immigrants and

28 Official Gazette, No. 22127, 30 November 1994.

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

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

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

32 Official Gazette, No. 23582, (13 January 1999).

asylum seekers were introduced to the training of the Gendarmerie. Programs were also held with the Bar Associations for prosecutors and judges focusing on refugee law. The police and gendarmes normally have to report immigrants or foreigners illegally present in Turkey to the local courts. Hence, prosecutors and judges play a critical role over whether such persons are deported or not. The seminars in these respects were critical in raising awareness of a body of law and practice to help distinguish between illegal immigrants and asylum seekers and Turkey's legal obligations under international law.

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

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

* Includes Albania, Belgium, Bosnia, Bulgaria, Germany, Georgia, Greece, Italy, Macedonia, Romania, Switzerland, Ukraine and Yugoslavia; ** Includes Algeria, Bangladesh, Birmania (Myanmar), Burma, Burundi, China, Congo, Egypt, Eritrea, Ethiopia, Ghana, Guinea, India, Israel, Ivory Coast, Jordan, Kazakhstan, Kenya, Kuwait, Kyrgyzstan, Lebanon, Liberia, Libya, Malaysia, Moritania, Morocco, Nigeria, Pakistan, Palestine, Philippines, Rwanda, Sierra Leone, Sri Lanka, Somalia, Sudan, Syria, Tunisia, Tajikistan, Turkmenistan, Uganda, United States of America, Yemen, Zaire; *** Not appearing in the table but included in the total are 1,710 applications that were subsequently withdrawn.
Source: Data obtained from the Foreigners Department of MOI.

Data current as of 07.12.2006

Another very important development was the growing cooperation between non-governmental organizations and the government. An increasing number of non-governmental organizations ranging from the Turkish branch of Amnesty International to the International Catholic Migration Commission (ICMC) began to cooperate with the government in organizing and running some of the above training programs for officials but also seminars for lawyers and human rights activists. A growing number of non-governmental organizations began to take an interest in various ways of assisting asylum seekers and refugees. The UNHCR representation in Ankara holds regular annual meetings with non-governmental organizations interested in asylum seekers and refugees. Although this effort is at a limited scale, it constitutes an important beginning. There are a number of ongoing projects managed by ngos to provide various forms of support for asylum seekers and refugees. Bar Associations in big cities such as Ankara, İstanbul and İzmir, as well as some border towns, have developed various support programs geared to providing legal assistance for asylum seekers as well as training programs on asylum law and human rights of asylum seekers to their members. The UNHCR has also been successful in developing cooperative relations with local governments and civil society in cities where asylum seekers reside. The Turkish Parliament has also taken greater interest in the issue of asylum and the rights of refugees. A number of MPs have actually raised the issue of refugees at the plenary session of the parliament during the World Refugee Days. The presidents of various commissions such as the Human Rights Commission (HRC), the Foreign Relations Commission and the European Union Affairs Commission have all taken interest in asylum issues and been in touch with the UNHCR and

various ngos and have held hearings on refugees. In a historic development in December 2006 the MOI was invited to make a presentation on Turkey's asylum policy in front of the HRC.

A striking aspect of these developments is that they are primarily a function of the good relations that the UNHCR succeeded in developing with the Turkish authorities. During the Cold War the UNHCR for all intend and purposes was doing status determination and resettlement for the Turkish government. The system became strained during the late 1980s and early 1990s. It collapsed in 1994. However, the efforts of the UNHCR and personal initiatives taken by some senior Turkish officials culminated in the reconstruction of cooperation between these two sides. The introduction of the training programs and the opening of the way to judicial review were concrete examples of this revitalized cooperation. These developments helped to build mutual confidence but also an understanding that both sides could actually benefit from the cooperation. The UNHCR ensured that it could fulfill its mandate obligations. In turn Turkey's image in the international arena improved and even received the occasional praise.³³

Yet, much more importantly and in a most fascinating manner the close cooperation between the UNHCR and the Turkish authorities culminated in a situation where the UNHCR would be *de facto* doing the refugee status determination in Turkey on behalf of Turkey. Even though the Asylum Regulation identified the MOI as the body responsible for status determination, MOI officials came to rely increasingly on the judgment of the UNHCR. They were quite content to go along with UNHCR decisions as long as the asylum seekers were also registered with them and eventually those who were recognized as refugees do get resettled out of Turkey. The occasional differences were usually sorted out through informal consultations. Training seminars and close cooperation also enabled the UNHCR to gain access to groups of irregular migrants that get apprehended by the Turkish authorities, particularly in border regions of Turkey. As Table 1 suggests according to Turkish government statistics there were approximately 3,500 asylum applicants filed a year between 1995 and December 2006. During this period a total of almost 45,000 asylum applications were received and just under 22,300 of them were recognized as refugees and granted temporary asylum by the Turkish authorities. An overwhelming majority of the asylum seekers are from Iran and Iraq. The overwhelming majority of the recognized refugees were resettled out of Turkey as can be seen from Table 2. Almost 22,000 of these refugees were resettled to a range of countries led by United States and Canada but also a number of EU countries.³⁴

This relationship constituted a massive learning and socialization experience for Turkish officials. One important manifestation of this experience was the manner in which the government amended the 1994 Asylum Regulation on two occasions. The first amendment as mentioned earlier had come in 1999 when the five day limitation for filing in an application was raised to ten days. This amendment brought about an improvement in reducing cases of violations of the principle of *non-refoulement*. The improvement was acknowledged by numerous human rights reports including the one prepared by the United States Department of State and Amnesty International. This date could indeed be considered as a turning point in the "Europeanization" of Turkish asylum policy. What is particularly significant is that it occurred well before there were any indications that Turkey would be recognized as a candidate country for EU membership at the end of that year. The second occasion occurred in January 2006 when the time limit was completely lifted and instead the reference to "within a reasonable period of

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

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

time” was introduced.³⁵ This was a function of a process during which Turkish officials through the seminars, their interaction with UNHCR officials as well as representatives of non-governmental organizations and experts came to understand that one could not deny an asylum seeker access to status determination on the grounds of a violation of time limitations on application procedures. The principle that every application deserves an assessment on its merits gained recognition.

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

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

Africa: Congo, Eritrea, Ethiopia, Sierra Leone, Somalia, Sudan; **North Africa:** Morocco, Libya, Tunisia; **Asia:** Burma, China, Uzbekistan, Turkmenistan; **Middle East:** Palestine, Syria, Egypt; **Others*:** Burundi, Kyrgyzstan, Jordan, Yemen. **Oceania:** Australia, New Zealand; **Other Europe:** Austria, Britain, Belgium, France, Germany, Hungary, Ireland, Italy, Luxemburg, Netherlands, Poland, Spain, Switzerland, Ukraine; **Scandinavia:** Denmark, Finland, Norway, Sweden; **Others:** Azerbaijan, Bosnia Herzegovina, Dubai, Indonesia, Israel, Saudi Arabia, Syria, United Arab Emirates
Source: Data obtained from the Foreigners Department of MOI. Data current as of 07.12.2006

It is extremely difficult to judge the impact of the EU in this process of transformation. It might be possible that the EU’s impact has been more formalistic while the UNHCR had more of an impact on the attitudes of Turkish officials as well as the actual substance of Turkey’s refugee policy. The two together however did assist a sort of a “paradigmatic shift” to occur among Turkish officials. This was a shift from a paradigm that framed the issue of asylum policy from a primarily “national security” perspective to one that increasingly emphasized human rights and international refugee law. The role of the EU has been more visible in respect to the setting of a formal agenda and a time table for eventual “rule adoption”. In this respect the consecutive *Accession Partnership* documents of 2001 and then 2003 clearly induced Turkish officials to recognize that at some point the “lifting of the geographical limitation” would have to take place and that Turkey will have to adopt structural and institutional as well as legislative reforms. The NPAA acknowledged that the “geographical limitation” would indeed be lifted. However, noted that the issue would be “addressed during the progressing of EU accession negotiations of Turkey. The geographical limitation will be lifted in the accession process, on the condition that it should not encourage large scale refugee inflows to Turkey from the East, upon the completion of the necessary legislative and infra-structural measures and in line with the sensitivity of the EU Member States on the issue of burden-sharing”.³⁶

35 Official Gazette, No. 26062, (27 January 2006).

36 NPAA (English version) (2003), p. 655.

This broadened the scope of the ongoing informal debate between officials directly dealing with asylum on the one hand and academics, experts as well as representatives of non-governmental organizations and the UNHCR on the other. The EU's High Level Working Group on Turkey did also make funds and experts available for training seminars. These seminars were critical in the words of a UNHCR official in helping to develop a "common language" between Turkish officials and their EU counterparts.³⁷ Furthermore, the adoption of the NPAA was also critical given its acceptance to lift the geographical limitation despite the conditions set. This was almost a revolutionary development because until a few years earlier discussing the "geographical limitation" publicly was practically impossible as it was considered almost a taboo issue.³⁸ However, more important in this respect was the "twinning project" that the British and Danish governments supported. This project not only enabled Turkish officials possibly for the first time in their careers to work for months on a daily basis with their EU counterparts. This exercise helped Turkish authorities to prepare the *Action Plan on Asylum and Migration*. This document in great detail identifies both national legislation and the EU *acquis* on asylum and migration. It also lays out in broad outlines the tasks and time table that Turkey intends to follow to prepare Turkey for the development of a fully fledged national status determination system, lift the geographical limitation and adopt EU directives on asylum and migration in general. The Action Plan foresees the initiation of the legislative process for lifting the geographical limitation in 2012. Presumably, this is considered as date by which the Turkish government will indeed be able to tell whether prospects of accession are indeed real or not.

The renewed *Accession Partnership* that was adopted in January 2006 subsequent to the beginning of accession talks with Turkey in October 2005 sets medium period (the end of 2009) as the deadline for the completion of the "rule adoption" exercise and the lifting of the geographical limitation. The document also expects Turkey, in the area of asylum, to make visible progress in setting up reception centres for asylum seekers, to develop a country of origin information system, to introduce national asylum legislation and to set up a specialized administrative unit to deal with asylum. In the meantime the screening process concerning the chapter that deals with asylum has been completed. However, the final report of the Commission concerning the outcome of the screening process has not yet been released. There is a certain degree of apprehension among Turkish officials concerning the benchmarks that the European Commission will actually recommend for accession negotiations to start. There is the expectation that the Commission will seek clear signs that Turkey has indeed made concrete progress in respect to the establishment of reception centres and other requirements listed in the most recent AP before negotiation on this chapter could be opened. This is precisely what would further aggravate doubts about the EU's credibility and deeply influence Turkish public policy makers cost calculation. This could indeed provoke a "Catch-22" situation.

Turkish decision makers are fully aware that previous candidate countries had to go through a similar "rule adoption" process. They are also aware that there were a number of countries that had to lift their geographical limitations such as Hungary, Latvia and Malta and that the first two countries did so well before their accession negotiations started.³⁹ They realize that they have to follow suit. However, they face a major dilemma provoked by their mistrust of the EU's credibility in respect to the ultimate "reward" of membership. The greatest nightmare scenario for them is one in which they would find themselves lifting the 'geographical limitation' without Turkey's membership being taken seriously by the EU. They have also first hand knowledge of the experience of their counterparts in some of the new member countries against which they can compare their own dilemmas and "cost-benefit" calculation matrices. They are deeply aware that their counterparts when making critical

37 Exchange of email message with a UNHCR official in Ankara.

38 Reference to Terzioglu presentation at Ankara University 2000.

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

decisions they were pretty much confident that eventually membership would take place. A high level MOI official involved in asylum issues for almost a decade and an advocate of the reform of the Turkish asylum system put his deep concerns pretty bluntly. This official during a visit to Hungary to learn about the Hungarian experience of lifting their geographical limitation and putting into place a fully fledged asylum system had actually asked his Hungarian counterpart how they were able to take on financially and politically very costly decisions. The Turkish official reflected on how “his heart sank” when his Hungarian counterpart simply said that this was never a major concern for them because they were always sure that they would become a member of the EU at the end.⁴⁰

Another issue that marks the cost calculation of Turkish officials is burden sharing. Owing to its geographical location, Turkish officials are conscious that Turkey risks becoming a buffer zone or a dumping ground for the EU’s unwanted asylum seekers and refugees. The adoption of the current *acquis* would make Turkey a typical ‘first country of asylum’ responsible for status determination with membership and a “safe third country of first asylum” before then.⁴¹ This raises considerable concerns among officials in terms of the economic, social as well as political implications. Turkish officials will expect to see burden-sharing mechanisms that would go beyond what the current Refugee Fund can offer.⁴² Traditionally, refugees have been resettled out of Turkey. Turkish officials want to see an arrangement that would allow this practice to continue for some transitional period. However the current *acquis* does not allow for such a practice. This fear of becoming a buffer zone is also aggravated by Turkish officials perception of a growing EU tendency to externalize its asylum policies and its efforts to create a ‘fortress Europe’.⁴³ Ironically, these officials learn about the details of these policies from the very experts and representatives of non-governmental organizations that they encounter during training seminars and conferences. In other a Europe that tries to complicate if not deny access to asylum seekers to reach the EU is not setting a good example for Turkey in terms of harmonization and credibility.

Turkish officials that would have to take the ultimate decision to suggest the lifting of the geographical limitation face an additional challenge that in many ways goes well beyond them. One very important reason behind the current Turkish asylum policy that does not allow for the possibility of recognized refugees to be integrated has to do with Turkish state conception of national identity or “Turkishness”. The Turkish republic after its foundation in 1923 adopted an immigration practice very much reminiscent of the German policy that allowed until recently the *Aussiedler* the possibility of facilitated immigration to Germany. As it has been noted earlier on the major piece of legislation governing immigration into Turkey has been The Law on Settlement (No. 2510) of 1934. In a most conspicuous manner the Law limits the not only the right to immigrate but also to become a refugee (*mülteci*) to Turkey only to people of ‘Turkish descent and culture’. The lifting of the geographical limitation would require a substantial overhaul of the law on settlement. Recently, the Turkish parliament adopted a completely new Settlement Law that, as will be discussed below, may change this situation.⁴⁴

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

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

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

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

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

The impact of the transformation that has been going on in the area of asylum over the last decade is nudging Turkey towards a position that is closer to the one that the EU would like to see. In June 2006 the MOI Department, responsible for asylum matters, circulated an internal regulation⁴⁵ (Genelge) that according to a high ranking UNHCR official “pleasantly surprised them”.⁴⁶ The document basically sends instruction to the Police in general to speed and facilitate the implementation of tasks laid out in the *Action Plan*. In its introduction it recognizes that the regulation aims to meet the standards mentioned in the 1951 Geneva Convention and the EU *acquis*. It introduces very specific measures that aim to improve access to the asylum system and ensure continuity for the trained personnel in their current position rather than risk to being moved to other irrelevant task as part of the standard rotation system. It lays out for the first time very specific rules concerning the process of identity determination of asylum seekers as well as clearly states that asylum seekers may well enter the country without identity and that this can not be held against them.⁴⁷ Furthermore, this internal regulation also identifies the procedures to be followed to determine the outcome of an asylum application and appeal procedures for rejected cases. It also incorporates elements from current EU directives concerning country of origin information, provision of translation facilities and a positive interview environment. Lastly, it also underlines that refugees and asylum seekers who have a valid residence permit would be entitled to a work permit too and provides for the granting “secondary” or “subsidiary” protection short of full refugee status.

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

These developments is bringing Turkey much closer to providing the EU with evidence that progress is being made towards putting into place a fully fledged national status determination system. The UNHCR Representative in Ankara sees especially the adoption of the new “internal regulation” in June as unexpected and surprising and recognizes that it brings Turkey much closer to having its own status determination system. Although this development is a manifestation of the transformation that the Turkish asylum policy has gone there still remains a multitude of problems in respect to implementation. These problems range from occasional violations of the principle of *non-refoulement* and denial of access to asylum procedures to practical problems such as obtaining residence and work permits by asylum seekers and refugees. There are also problems reported in respect to receiving health and social services as well as schooling. These are problems typically arising from the absence of a fully fledged asylum system in Turkey. However, as long as the target date of 2012 as the date for initiating a legislative process for the lifting of the geographical limitation remains in tact this will be difficult to achieve. The mood of Turkish officials is that as long as there remains great uncertainty

45 Uygulama Talimatı, Genelge No. 57, 22 June 2006.

46 Interview with a high ranking UNHCR official.

47 This is extremely fascinating because the principle that asylum seekers can no be denied access to asylum procedures on ground of false papers or no identity papers was a point that would come up regularly in the context of discussion of the 1951 Geneva Convention.

over the prospects of Turkish accession, progress towards harmonization in areas that brings obvious financial costs and administrative burdens on Turkey will be very limited. In turn the absence of progress in putting a fully fledged asylum system is inevitably going to frustrate the pre-accession process as European Commission officials and member governments will complain of Turkish resistance towards adopting and implementing the *acquis*. This in turn might further aggravate the mistrust and doubts of Turkish officials towards the EU leading to a stalemate or deadlock between the two sides.

Border control

Turkey has 2,949 km of land borders and 8,330 km of sea coast. Much of the land borders in the East is characterised by mountainous terrain. Traditionally, the Iranian, Iraqi and Syrian borders were porous and particularly vulnerable to smuggling and banditry well into the 1970s. Subsequently, in the 1980s and 1990s these borders became conduits for PKK terrorists operating out of neighbouring countries. As a result they became heavily militarised, and a good part of the Syrian border is mined. However, a significant improvement in relations between Syria and Turkey over the last few years has culminated in a decision early in 2004 to start removing the mine fields. There is also a readmission agreement in operation between Syria and Turkey. It is now in particular the Iranian and Iraqi borders that are vulnerable to illegal migration. A large proportion of illegal transit migrants usually are smuggled into Turkey across these borders and especially the one with Iran. It is also via latter border that most of the asylum seekers arrive in Turkey. A large number of asylum applications in Turkey are lodged in the city of Van near the Iranian border. The Iraqi border on the other hand has seen two major mass influxes of refugees. In 1988 subsequent to the Halapja incidents, close to 60,000 Kurdish Iraqis sought refuge in Turkey followed by another almost 450,000 after the end of the first Gulf War. An overwhelming proportion of these refugees eventually returned to Iraq. Asylum seekers also lodge application in Hakkari a border town squeezed between Iran and Iraq.

On the other hand, the Soviet border was tightly sealed until the end of the Cold War, with minimal movement of people. Currently, the border with Georgia and Azerbaijan's Nahcivan province is open and lively while the one with Armenia that is separated by a river remains closed. During the Cold War, the Bulgarian border too was tightly controlled and heavily fortified on both sides. However, with the collapse of the communist regime in Bulgaria, relations between the two countries improved very quickly. By the mid-1990s, both countries had reached agreements for the demilitarisation of the border regions accompanied by efforts to de-mine the border. Currently, the Bulgarian border is extremely busy as Bulgaria constitutes the main transit path for a good proportion of Turkey's commercial relations as well as the seasonal movements of Turkish immigrants in Europe. Since the end of the Cold War there has also been a significant increase in regional commercial as well as private traffic. The border with Greece from the early 1960s too had become a tightly controlled and militarised with no-go zones on both sides as the relations between the two countries deteriorated. The two countries are separated by a river. However, since relations between the two countries entered a period of *rapprochement* in 1999, the border has started to be demilitarised and traffic, both commercial and private, has increased significantly. Considerable movement of illegal migrants take place across the Maritza river that constitutes the border.

Turkey also has an exceptionally long sea border. The Aegean Sea is particularly difficult to control because of the nature of the coast and the large numbers of islands that dot the sea. This provides an ideal environment for illegal migrants trying to make it to Europe. They attempt to use the multitude of little ports and isolated coves along the coast to catch a passage with the help of human smugglers to the Greek islands at short distances from Turkey. The Aegean is also a rough sea which

explains why occasionally boats overloaded with illegal migrants sink and tragedies occur.⁴⁸ The Mediterranean Sea itself is a major conduit between the Afro-Asian world and the European Union for the movement of illegal migrants. However, compared to the Aegean Sea, the Turkish coast along the Mediterranean Sea is relatively easier to control and incidents of human smuggling and accidents involving boats carrying illegal migrants are much less frequent. So far the Black Sea coast of Turkey does not appear to be used for human smuggling and illegal migration purposes.

The east and south-eastern land borders of Turkey to a depth of 50 kilometres is protected by the land forces of the Turkish military except for a short stretch near the city of Van, which is controlled by the Gendarmerie.⁴⁹ They are responsible for the actual patrolling and the physical protection of the borders against infringements. Their job does not involve law enforcement although when they do come across asylum seekers and illegal migrants they are instructed to turn them over to the police. The coastal guard on the other hand is responsible for patrolling the sea coast. It is the coastal guard that is responsible for detecting, tracking and interdicting boats carrying illegal migrants. The Interior Ministry's General Directorate of Security is responsible for managing more than one hundred border-crossings while the Undersecretary of Customs processes formalities with customs and goods as well as checks on persons.

The EU is expecting Turkey to adopt a string of measures to enhance the control and management of its borders. The Accession Partnerships of both 2001 and 2003 have highlighted the need to strengthen border management and prepare for full implementation of the Schengen Convention. Most importantly the EU wants to see the replacement of the current border control and management system with an integrated civilian-professional unit. This has been highlighted especially by the most recent AP of January 2006 that emphasizes the need to take steps, in the short term, to establish a "professional non-military border guard". There was no detailed strategy foreseen in the first NPAA of 2001. The NPAA did not promise any details beyond a general statement that border management would be strengthened and preparations made to implement the Schengen acquis. The 2003 NPAA was much bolder and promised "the fulfilment of the legislative, administrative and infra-structural needs for the establishment of a non-military and professional border guard institution" and identified the period of implementation as 2003-2005. This was very much in line with the work of the Task Force on Asylum, Immigration and External Borders set up in 2002. The Task Force was responsible for the preparation of the overall strategy for alignment with the EU *acquis* on border management finished its work in April 2003. It published the *Strategy Paper for the Protection of the External Borders in Turkey* in close cooperation with the European Commission. This document became a major source of reference point for future efforts at harmonization.

The *Strategy Paper* underlined that the EU *acquis* and the Tampere Council Summit decisions "foresees all border control to be conducted by a civilian and specialised organization under a single authority" and advocated for Turkey the creation of a new body within the Ministry of Interior for all border protection issues composed of non-military, professional law enforcement officials. The strategy equally identified the key legislative and institutional amendments, as well as the infrastructure and training programmes, considered to be the only conditions under which a proper alignment with the Schengen *acquis* would take place. The *Paper* also foresaw a twinning project that would culminate in an Action Plan and defined even gave a name for the specialised organization as the "Directorate General of Border Security" subject to the decision of the "political authority". Subsequently, the twinning project was put into place in July 2004 to provide support for the

48 For a detailed study of transit migration and smuggling of migrants with specific coverage of the personal experiences of irregular migrants and the special place of the Aegean Sea see A. İcduygu (2003), *Irregular Migration in Turkey*, IOM International Organization for Migration, Geneva.

49 The Turkish Ministry of Interior, the General Directorate of Security (police forces) carry out the passport controls as well as the entry-exit checks in the country. According to estimations provided by the Turkish Ministry of Interior, national police at the border gates (land border, sea and airport border gates) number some 10,000 officers.

development of an Action Plan to implement Turkey's integrated border management strategy.⁵⁰ The Project aimed at completing an Action plan setting out the legislative alignment, institutional reforms, training and physical infrastructure and equipment necessary to implement the border management strategy. The Project would also identify the investments that would be needed to put this strategy into place to improve the operational capacity for the management of borders as well as familiarize Turkish officials with the EU *acquis*.

The twinning project was completed in March 2006 and an Action Plan adopted by the Turkish government. However, the European partners of the twinning project found the Action Plan to fall well short of the envisaged objectives laid down by the twinning project. There appears to be a number of problems.⁵¹ The most important of them according to the European side is the absence in the Action Plan of a firm agreement among Turkish institutions concerning the form and the timeline for the creation of a new and centralized national border agency. This in turn has prevented the Turkish side from identifying the necessary legislative work for the establishment of such an agency as well as a timeline for the adoption and implementation of the relevant legislation. The problem seems to stem from confusion over the form and nature of the border agency. The EU in its consecutive APs calls for the need to have a civilian agency appears to be misunderstood. The Turkish side has been deeply concerned about how a "civilian" institution would actually be able to protect and control such difficult borders as the ones with Iran and Iraq. Furthermore, the problem also appears to be aggravated by the reluctance of the current institutions to see their role in actual border protection being curtailed and terminated. The fact that the military is involved is also an additional complicating factor. The absence of high level officials let alone ministerial participation in the twinning project may also have been a factor complicating the possibility to arrive at a consensus.

Another difference between the EU and Turkey arises from the emphasis that the Turkish side has put on the actual physical protection of the borders as opposed to the management of these borders. Here too the fact that Turkey's eastern borders are vulnerable to infiltration by terrorist groups, in particular the PKK, as well as the instability and violence reigning in Iraq has been a critical factor. Actually, the particular security challenges that Turkey faces in regard to these borders was actually highlighted by the *Strategy Paper*. It should be noted that the last two years saw an increase in PKK perpetrated violence in Turkey and more often than not PKK militants came from northern Iraq. Under these circumstances inevitability the priority becomes national defence in the narrowest sense of the word, such as preventing infiltration and militarily confronting such infiltration, rather than broader issues of public security and control, such as intercepting illegal migration, detecting forged documents and pre-empting smuggling, as well as enforcement of law, especially the Schengen *acquis*, that is of more immediate concern to the EU. One other difference stems from a disagreement over the cost of aligning Turkey's policy and practice with that of the European Union. The Turkish side has argued that if Turkey is expected to protect and manage its borders to benefit the European Union there should indeed be substantive financial support extended to Turkey. The EU on the other hand foresees only a limited amount of financial assistance and expects Turkey to meet the costs as part and parcel of Turkey's aspirations to join the EU.⁵²

50 TR 02 JH 02 Integrated Border Management Twinning Project.

51 This section is based on the Final Report of the Integrated Border Management Twinning Project and interviews with various Turkish officials during the course of December 2006.

52 This difference is best visible in the National Action Plan towards the Implementation of Turkey's Integrated Border Management Strategy. The Action Plan on p. 61 takes a critical view of the European Commission's Progress Report for 2004 that expects "The Turkish Government will have to make provisions in order to secure necessary financing, since only minor parts can be financed by EU funds" and instead refers to the Strategy Paper's reference to the transition to the border police system being gradual and "in line with the developments in the process of accession of Turkey and the financial assistance provided by the EU sources". The Action Plan goes on to assert that "the financial resources to be provided by the EU will directly affect the process in meeting the needs. The system, to some extent, will be established in line with the financial resources to be provided by the EU".

Among the four areas that are covered in this report under “border management” the issue of border control and the adoption of the pertinent EU *acquis* promises to be the most challenging one. The establishment and the form that the centralized border agency will take remains unresolved. Resolving this challenge will require a much closer coordination among Turkish institutions and also an assertion of a political will at the highest level of government. As is the case with all the other issue areas this one too is deeply affected by the current state of EU-Turkish relations. The fact that the military is an important stakeholder the uncertainty over Turkey’s prospects of membership has an even bigger impact in this area. The military had long been sceptical about Turkey’s membership. Nevertheless, the attitude of the military towards the EU and EU instigated reforms improved across time significantly.⁵³ Yet, the deterioration of EU-Turkish relations, the increase in PKK attacks during the course of 2005 and 2006 together with the arrival of a new chief of staff and high command appears to have revived the scepticism towards the EU. It is doubtful whether much progress can be achieved in harmonizing Turkish practice with that of the EU without the cooperation of the military.

There are also signs that gradually a better understanding is being achieved between the EU and Turkey over the composition of the border agency and what exactly is meant with “civilian”. A clarification from the European Commission that the protection and management of border control can indeed be performed by the military as long as professional rather than conscripted personnel is used may facilitate the task of shaping a national border agency.⁵⁴ Furthermore, in official circles harmonising Turkey’s border management with the EU is seen as a development that will benefit most importantly Turkey and its national security. There is a general recognition of the weaknesses and problems associated with the current system as well as a generally shared will to improve it. However, this is also accompanied by a realistic awareness of the immense nature of the task. This explains Turkey’s preference to spread the harmonisation task over the pre-accession process. This is also accompanied by an expectation that Turkey will indeed be able to receive substantial material support. The exercise of strengthening Turkey’s eastern borders, as much as it may seem to be a gigantic task, could become an exercise in ‘mutual confidence-building’ for the broader pre-accession process that would serve and benefit the two sides.

Illegal migration and trafficking in human beings

A critical aspect of border management and control for the EU is the fight against illegal migration and trafficking. The arrival of large numbers of illegal migrants on the shores of Italy and France especially in the late 1990s along with highly publicized incidents involving illegal migrants in Britain increased the urgency to act against irregular migration at the EU level. The terrorist attacks of September 11th, March 11th and July 7th in New York, Madrid and London have only heightened this concern. In this context Turkey attracted considerable attention as a transit country for illegal migrants as well as a point of departure for boats carrying these migrants. It is also striking to see how during the run-up to the Seville European Council summit in June 2002 Tony Blair and José María Aznar went as far as to threaten countries such as Turkey with sanctions if they did not cooperate with the EU against illegal migration.

53 Ersen Aydınli, Nihat Ali Özcan and Doğan Akyaz, ‘The Turkish Military’s March Towards Europe’ *Foreign Affairs*, vol. 85, no. 1, January-February 2006. The authors point out that the EU’s engagement of Turkey is seen by the military increasingly as a development that is contributing to Turkish security rather than eroding it. However, the authors also note that this transformation is far from being complete and will indeed be dependent on evidence of progress towards membership and EU commitment to this membership, p. 7.

54 This clarification arrived to late in February 2006 to be able to influence the drawing up of the Action Plan. Interview held with a Turkish official, 19 December 2006.

Table 3: Breakdown by nationality of illegal immigrants arrested by Turkish security forces, 1995-November 2006

Country of origin	Number of people
Afghanistan	37,194
Bangladesh	19,227
Pakistan	50,401
Iran	25,030
Iraq	113,309
Syria	7,885
Sub-total	253,046
North Africa*	11,964
Former Soviet Republics**	125,889
Central Asian Countries***	11,157
Albania	4,477
Bulgaria	10,165
Romania	22,348
Turkey	30,526
EU	20,817
Others	132,222
Total	622,611

* Algeria, Egypt, Libya, Morocco, and Tunisia; ** Russia, Ukraine, Moldova, Georgia, Azerbaijan, Armenia, Belarus, Lithuania, Latvia and Estonia; *** Kyrgyzstan, Kazakhstan, Turkmenistan, Uzbekistan and Tajikistan
Source: Data obtained from the Foreigners Department of the Turkish Ministry of the Interior (MOI)
Data current as of 01.11.2006

Turkey's geographical location between immigrant-producing areas and Europe, accompanied by a relative large informal economy, makes it an attractive country for illegal migrants. Turkey has long been known as a country of emigration. It has already been mentioned that Turkey has long been a country of immigration. However, over the last decade or so the nature of this immigration has changed significantly. Turkey has become both a country of transit as well as destination for immigration coming from especially the former Soviet Union and the Third World at large. Turkey allows nationals of Armenia, Azerbaijan, Georgia, Iran, Moldova, Ukraine, Russia, and the Central Asian republics to enter the country quite freely either without visas or with visas that can easily be obtained at airports and other entry points (See below section on visas for details). A large number of these people are involved in small-scale trade.⁵⁵ However, some overstay their visas and illegally work as household help, sex workers and labourers, especially on construction sites and in the tourism sector. It is very difficult to estimate the number of such irregular immigrants in Turkey. According to government statistics, there were 622,611 such persons apprehended between 1995 and November 2006, as presented in Table 3. More than 167,000 were nationals of the former Soviet republics and Balkan countries who were stopped for violating the terms of their visa. Few of these individuals actually attempted or aimed to go to Europe via Turkey. If anything, Turkish officials have argued that a liberal Turkish visa policy and the possibility that many nationals of these countries were able in the 1990s to engage in suitcase-trading relieved the pressure on EU countries that once had feared an influx of migrants from these countries. For such persons Turkey itself is the target country.

55 See İçduygu (2003) as well as S. Erder. (2003), "Global Flows of Huddles: The Case of Turkey", in Zeybekoğlu and Johansson (eds).

Starting from the mid-1990s, there was also a growth in the number of illegal migrants using Turkey as a transit route. These people were mostly nationals of neighbouring countries in the Middle East such as Iraq, Iran and Syria, as well as Afghanistan and Pakistan. The Turkish government came under massive pressure from a number of EU member countries such as France and Italy to curb this transit migration. In accordance with the APs of 2001 and 2003, Turkey is expected to introduce a series of measures to combat irregular migration including the construction of reception centres, signing of readmission treaties with countries of origin as well as negotiate and conclude a readmission treaty with the EU.⁵⁶ The AP adopted in January 2006 too stressed these tasks and called for continued efforts to implement the National Action Plan on Migration and Asylum, to combat illegal migration and to conclude urgently a readmission agreement with the EU.⁵⁷ In the meantime especially in 2003 and 2004 there were important legislative developments. The Citizenship Law was revised and a probation period of 3 years was introduced for female spouses when acquiring Turkish citizenship through marriage and a new Law on Working Permits for Foreigners entered into force in September 2003. This Law makes it easier the process of getting a work permit and is meant to discourage people from working illegally. In December 2000, Turkey signed the UN Convention against Transnational Organised Crime and of its two additional Protocols including the Protocol to Prevent, Suppress and Punish Trafficking. The Turkish Parliament ratified these instruments in March 2003.⁵⁸ More importantly as part of the August 2002 reform package, the government introduced new articles to the Penal Code criminalising human smuggling and trafficking.⁵⁹ Amendments were introduced to the Turkish Penal Code criminalizing human smuggling. This significantly facilitated the ability of the authorities to combat human smugglers as well as illegal migration in general. From 2001 there was a significant increase in the number of human smugglers apprehended. In total between 1998-November 2006 almost 7,000 smugglers, mostly from Turkey, were arrested (See Table 4). The overwhelming majority were engaged in assisting transit migrants through Turkey. The new Turkish Penal Code of June 2005 incorporated these amendments and reinforced the penalties designated for human smuggling.⁶⁰

Table 4: Arrests of human smugglers by Turkish authorities by nationality, 1998 –November 2006

Nationality	1998	1999	2000	2001	2002	2003	2004	2005	2006	Total
Turkey	75	139	701	1021	1019	825	844	713	668	6,005
South Asia(a)	3	17	35	11	20	30	25	42	6	189
Neighbouring Middle East(b)	15	31	72	92	93	50	36	31	33	453
Other Middle East(c)	2	0	0	4	0	0	9	7	5	27

56 The Accession Strategy for Turkey of under Co-operation in the field of Justice and Home Affairs notes “Continue to strengthen the fight against illegal immigration and negotiate a readmission agreement with the European Community”, p. 17. On the other hand the JHA Council meeting of 21-22 April 2002 that approved the criteria for readmission and new readmission treaties “asked the European Commission to submit separate draft negotiation mandates for readmission agreements with China, Turkey, Algeria and Albania”, see the Criteria for the identification of third countries with which new readmission agreements need to be negotiated – Draft Council Conclusions, Council of the European Union, 7990/02, Brussels, 16 April 2002, approved by the JHA Council on 25-26 April 2002.

57 The Accession Strategy for Turkey of January 2006 under Co-operation in the field of Justice, Freedom and Security in the Short Term, p. 43.

58 Official Gazette, 29 March 2003, No. 25052.

59 Official Gazette, 9 August 2002, No. 24841.

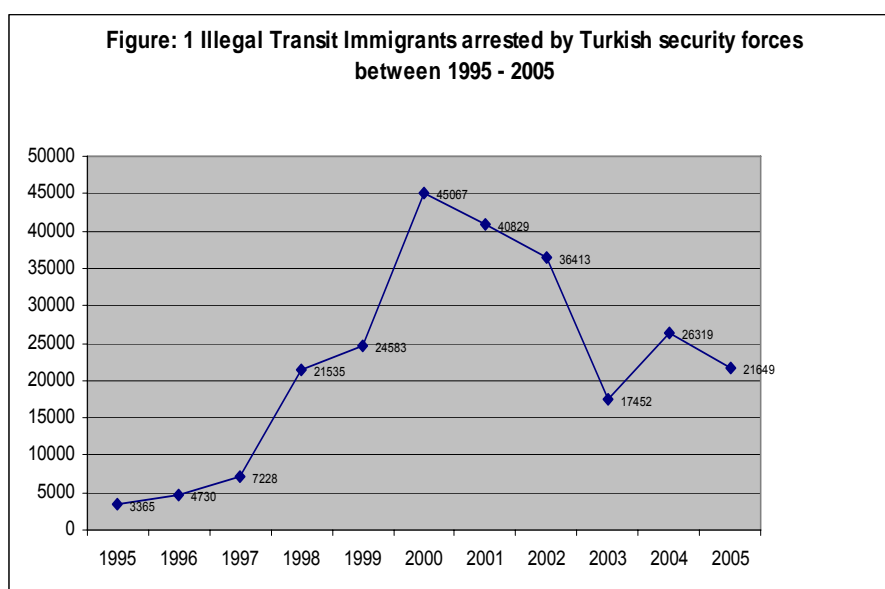
60 New Penal Code... articles 5237 sayılı yeni Ceza Kanununda karşılıkları: 79. madde de yer alan "Göçmen kaçakçılığı" ile 89.maddede yer alan "İnsan Ticareti" maddeleridir.

Nationality	1998	1999	2000	2001	2002	2003	2004	2005	2006	Total
European Union/Candidate Countries(d)	2	0	15	6	14	8	6	8	3	62
Former Soviet Union(e)	1	0	14	8	10	7	15	13	9	77
Others (incl. China)	0	0	13	13	1	17	21	20	11	96
Total	98	187	850	1,155	1,157	937	956	834	735	6,909

(a) Afghanistan, Bangladesh, Pakistan and India. (b) Iran, Iraq and Syria. (c) Egypt, Lebanon and Mauritania. (d) Greece, Romania, Poland and Bulgaria.e Russia, Ukraine, Moldavia, Georgia, Azerbaijan and Armenia.

Source: Data obtained from the Foreigners Department of the Turkish Ministry of the Interior (MOI)
Data current as of 01.12.2006

There are no reliable figures available to bear out Turkey's success or failure in combating human smuggling. Among the approximately 620,000 illegal migrants apprehended in Turkey it is the illegal migrants from Asian and North African countries that have been a primary concern for the EU. Figure 1 shows how the numbers of such irregular migrants stopped by the authorities have steadily increased until their numbers peaked in 2000 with almost 45,000 arrests. Since then the trend has turned steadily downwards. Turkish authorities have argued that this is product of an intensive effort on their part to stem the flow of illegal transit migration. The 2003 Progress Report does indeed acknowledge that the trend in illegal migration via Turkey has shown a decrease and international migration flows have been diverted away from Turkey to other routes.⁶¹ This effort also appears to be borne out by the steady increase in the number of human smugglers apprehended as indicated in Table 4. Furthermore, according to Turkish government sources, the number of illegal migrants apprehended by the Italian authorities and alleged to have reached the Italian coast via Turkey fell from 6,093 in 2001 to 2,117 in 2002 and 177 in 2003. These statistics also indicate that between 2000 and 2003, 157 ships were intercepted carrying irregular migrants, 118 of which were stopped by the Turkish authorities. The increase in 2004 is mostly accounted by a surge in the number of arrested Afghans and Iraqis. This invariably stems from the unstable situation in Iraq and the upsurge of violence in Afghanistan.



Countries covered are Afghanistan, Algeria, Bangladesh, Egypt, Iran, Iraq, Morocco, Libya, Pakistan, Syria and Tunisia.
Source: Data obtained from the Foreigners Department of the Turkish Ministry of the Interior (MOI).

61 See http://europa.eu.int/comm/enlargement/report_2003/pdf/rr_tk_final.pdf.

Over the last few years Turkey has also participated in numerous international and regional efforts to combat illegal migration and human smuggling. In 2001 Turkey joined the Centre for Information, Discussion and Exchange on the Crossing of Borders and Immigration (CIREFI). Since then it has been sharing data with this Centre and participates in bi-annual meetings of the Centre. It also cooperates with the Early Warning System with respect to sudden surges in illegal migration movements and forged or stolen documents. Turkey attended and contributed to the activities of the Global Commission on International Migration as well as the International Migration Policy Dialogue of IOM. Turkey in January 2006 took over the chairmanship of the Budapest Group and has also been participating in forums such as the Berne Initiative, the Mediterranean Transit Migration Dialogue and the Bali Process. It has also hosted the meetings of some of the groups in Turkey. In 2004 Turkey granted full diplomatic status to the offices of IOM in Ankara and became a full member.

In the context of EU-Turkish relations two twinning projects, one on asylum and immigration and another on combating trafficking in human beings have been signed involving Austria, Denmark, Germany and the United Kingdom. These projects among other tasks have aimed to help to build up Turkey's institutional capacity and develop training programmes to combat illegal migration with EU *acquis* in mind. Furthermore, with the financial support of Germany and Sweden and in coordination with the High Level Working Group of the EU, a series of seminars were organised for Turkish officials on EU practice in the area of combating illegal migration. The issue of combating illegal migration is also raised through formal channels such as the 8th Subcommittee of the Associational Committee as well as during bilateral meetings between European Commission and Turkish government officials at the highest level. The twinning project on asylum and immigration was successfully completed and the Action Plan on Asylum and Migration was adopted in March 2005. Various aspects of the Action Plan have started to be applied however the issue of negotiating and signing a readmission agreement remains a major stumbling bloc in EU-Turkish relations.

In the context of the fight against illegal migration, Turkey has also been expected to sign readmission agreements with third countries of origin as well as with neighbouring countries. So far Turkey has been able to agreements only with Greece in November 2001, Syria in September 2001, Kyrgyzstan in May 2003, Romania in January 2004 and Ukraine June 2005.⁶² Turkish authorities have noted that they have proposed to negotiate readmission agreements with more than 14 countries, but they have failed to get any response. They have been particularly keen to negotiate with Bangladesh, China and Pakistan. However, in spite of a number of official visits to these countries not much success has been achieved. Turkey is, on the other hand, in the process of negotiating agreements with Byelorussia, Egypt, Hungary, Iran, Libya, Lebanon, Macedonia, Russia, and Uzbekistan. The negotiation of so many agreements simultaneously is a taxing exercise, particularly considering that progress is often extremely slow and third governments often have little incentive to cooperate. The EU itself has had difficulties in negotiating and concluding such agreements. The European Commission has been able to negotiate and conclude agreements with five out of 11 countries. Two out of the five include relatively small countries such as Hong Kong and Macao. The others are Albania, Sri Lanka and Russia. The one with Russia has not yet come into force. Considering the resources that would be available to the European Commission compared to Turkey this is not a particularly impressive performance. This also may partly account for an increasing effort on the part of the EU and many EU member countries to reach deals on a bi-lateral level often on the basis of informal arrangements.⁶³

62 These agreements were published, subsequent to ratification, in the Official Gazette: Syria, Law 4901, Official Gazette, 17 June 2003, No. 25148; Greece, Cabinet Decree 3914, Official Gazette, 24 April 2002, No. 24735; and Kyrgyzstan, Law 5097, Official Gazette, 12 February 2004, No. 25376; Romania, Law 5279, Official Gazette, 27 October 2004, No. 25626. The agreement with Ukraine was signed on 7 June 2005. The agreement is, as of early January 2007, at the Turkish parliament awaiting ratification.

63 J-P. Cassarino, "(In)formalising Readmission Agreements" (paper submitted to The International Spectator).

Turkey itself has been required to start negotiating a readmission agreement with the EU. Turkey had long resisted the signing of such an agreement and instead expressed a readiness to receive back any third country irregular migrants as long as they were returned to Turkey promptly and without delay. Turkey also argued that constitutionally it was required to accept back its own nationals in any event. In March 2004 Turkey, reluctantly, agreed to start negotiations with the EU on such an agreement subsequent to the Turkish Foreign Minister and the former Commissioner for Enlargement Gunter Verheugen exchanged letters on the subject. However, progress has been slow and very limited. The European Commission shared a draft of the agreement with the Turkish side in May 2005. A series of meetings, the most recent being in December 2006, has so far failed to produce a jointly agreed text.

There are numerous reasons for the lack of progress. Most important one is the uncertainty over Turkey's prospects EU membership. This is deeply impacting on the motivation of Turkish officials as well as their cost-benefit calculations. In many ways they are unable to discount the costs of a readmission agreement against the benefits that would accrue from membership. This is also complicated by the issue of burden sharing and financial aspects of implementing a readmission agreement reminiscent of similar problem in respect to border control and asylum issues. Furthermore, European Commission people who are engaged in the negotiations may inadvertently be aggravating the problem by proposing the possibility of visa facilitation in return for speeding the drawing of an agreement. Turkish officials are very aware that visa facilitation was important to the negotiations between the EU and Russia as well as Ukraine. However similar offers make Turkish officials wonder about Turkey's status. These officials feel that the issue of visas for Turkish nationals should be kept apart from a readmission agreement and should be addressed in the context of Turkish accession. Turkish officials have also been dismayed by the Commission's occasional efforts to lobby support for the idea of visa facilitation among especially Turkish business interest groups. This leads to aggravate another problem that stems from what the Turkish side considers to be a denial to the Turkish business people to do their business in Europe without the frustration and obstacles created by strict visa requirements imposed on them. This problem will be dealt with in greater detail in the section on the visa regime.

The main problem behind the drawing up a readmission agreement with the EU stems from the very fact that it involves third country nationals. The problem is not Turkish citizens at all. Turkey has a well established record of accepting its own nationals who are illegally present in EU countries. In the light of the difficulties that the Turkish government has faced in negotiating and signing readmission agreements with third countries there is the fear that Turkey could easily become a kind of a dumping ground for the unwanted in the EU. This concern and fear is repeatedly highlighted by Turkish officials and becomes particularly aggravated when accompanied by the uncertainty over Turkish membership. This frustration experienced from the absence of progress in negotiating agreements with third countries remind Turkish officials of another similar problem in EU-Turkish relations that has long been a source of distrust. In accordance with Turkey's Customs Union agreement with the EU, Turkey is obliged to accept the entry of goods without custom duties from third countries with which the EU signs free trade agreements. Yet, these free trade agreements do not oblige these countries to grant similar exemptions for Turkish goods. The Turkish government has long had difficulties in signing agreements with such third countries to enable fairer trade. Turkish officials express frustration with the EU for failing to ensure that free trade agreements signed with third countries do also include provisions to protect the rights and interest of Turkey. Turkish officials have drawn parallels between this particular problem and the one stemming from readmission agreements. They have argued that the EU's disinterest in pressurizing third countries with which they sign readmission countries to negotiate and sign agreements with Turkey aggravates the problem of distrust between the EU and Turkey. They also argue that such disinterest for them becomes yet another factor that reinforces the uncertainty over Turkey's prospects of membership and shows that the EU does not see Turkey as a country that is one the way to joining the Union.

One additional problem is the distrust that results from the experience of dealing with Greece in the domain of combating illegal migrants. Turkey had signed in November 2001 a bilateral readmission protocol with Greece. This is the longest-standing readmission agreement that Turkey has had with a current EU country. In spite of dramatic improvements in Greek-Turkish relations in recent years and the presence of an otherwise positive cooperative climate, the implementation of the agreement has encountered difficulties. Since the agreement came into force, Greece has provided Turkey with a list of more than 21,000 illegal migrants that they would have liked to send back to Turkey. Turkey has agreed to admit more than 3,700 from this list, but Greece was only able to hand over to the Turkish authorities approximately 1,380 persons from this list. In turn Turkey has sought the return of approximately 1,000 migrants but only 19 Somali nationals were ever accepted back.⁶⁴ This performance is in stark contrast with the readmission agreement between Syria and Turkey. During the course of 2002 to 2006 Turkey accepted 55 persons from Syria while Syria accepted 1,317 persons from Turkey.⁶⁵ Turkish officials consider this agreement as a functioning one. However, it is very difficult to tell what exactly the problems are in respect to the implementation of the protocol between Greece and Turkey. Both sides have frequently held responsible each other for stalling the implementation of the protocol. They also have accused each other of forcing illegal migrants into each others territories. Turkish officials regularly complain that Greek authorities are increasingly resorting to the practice of forcing especially small boats carrying illegal migrants in the Aegean Sea into Turkish territorial waters. This practice at times causes human tragedies when these small vessels sink and some of the victims of these accidents drown or are seriously injured.

These incidents are frequently reported in the media. A case in point was when late in September 2006 when a group of 31 nationals of Iraq, Lebanon, Palestine and Tunisia were barely rescued while 6 persons died. It was the Amnesty International branch office in İzmir that actually interviewed the survivors and recorded their story. They claimed that they had been brought to the Turkish coast by Greek officials in a high speed boat and literally dumped in the sea just before the coast.⁶⁶ The matter was taken up by Amnesty International as well as UNHCR with the Greek government. The fact that this incident was actually recorded by the international community led it to receive considerable attention but otherwise the practice seems to be quite regular. The event came on the heels of a video recording of a Greek coast guard boat towing and releasing a small fishing vessel packed with illegal migrants into Turkish waters appearing on Greek and Turkish TV channels. This was a recording that a Turkish coast guard helicopter had made back in July 2004. The publicity that this recording generated let the practice of forced returns to be taken up by the Greek media too. For example the Greek newspaper Kathimerini listed in detail different methods used by the Greek coast guard in forcing illegal migrants into Turkey and Turkish territorial waters. It made references to more than 8,000 illegal migrants being forced into Turkey since 2002.⁶⁷ However, one important consequence of this is that not only the practice has aggravated the trust problem between Greek and Turkish officials working in combating illegal migration but it has also led many Turkish officials to question the reliability of the EU in general. They have argued that if an EU member country can resort to such practice in spite of an existing protocol would it not be possible that other EU countries might be tempted to follow suit or employ similar methods in their relations with Turkey.

The problem with readmission agreements is clearly “trust” and ability to develop a working relationship. The Syrian and Turkish experience shows that this is possible. That experience is in stark

64 These figures cover the period from 2002 to November 2006. The statistics were obtained from the Foreigners Department of the Turkish Ministry of the Interior (MOI)

65 The statistics were obtained from the Foreigners Department of the Turkish Ministry of the Interior (MOI).

66 “Ege’de Utanç Verici İnsanlık Krizi”, Press Statements, 29 September 2006 (reference no: vifois2909200601), available from www.amnesty.org.tr under “Basın Açıklamaları Listesi”.

67 The story was reported in Yorgo Kirbaki, “Komşu mülteci kovma uzmanı” Radikal 16 October 2006. The number of illegal migrants forced into Turkey was also reported in detail in Radikal, 29 September 2006.

contrast with the Greek-Turkish experience. In the case of the other agreements not enough time has lapsed to be able to pass any judgement. Turkish authorities do display a determination to combat illegal migration. Numerous seminars have been run within the context of EU-Turkish projects as well as other projects. These seminars also emphasized the need to respect the rights of asylum seekers and refugees when combating illegal migration. Turkish authorities have acquired greater awareness of the issue to the extent that in their negotiation with the European Commission they do raise the issue of accepting rejected asylum seekers only if they can be convinced that the application of the asylum seeker has indeed received proper attention. Hence Turkish officials have become much more aware of standards and best practise and seem to be willing to apply them. This is good news in terms of harmonization and adoption of the *acquis*. However, the financial and burden-sharing aspects of harmonization and the signing of a readmission agreement will remain very high on the agenda of the Turkish side. Turkish officials are likely to continuously test their European counterparts on whether they approach Turkey as simply any other third country or a country that is due to become a member of the EU and hence demonstrate solidarity. The difference will be critical to whether progress towards convergence occurs or whether these issues become marred in a deadlock.

Trafficking

Part of the wider problem of illegal migration in Turkey has also been that of trafficked persons – especially women. Turkey has become both a transit and destination country for prostitution by foreign nationals. Some of the women involved in this trade are actually trafficked.⁶⁸ In 2002 amendments to the Penal Code criminalised trafficking in human beings. This was a very significant development because until then the Turkish penal code did not have any provisions defining trafficking and subjecting it to penalties. This also accounted for why the US State Department in its first annual Victims of Trafficking and Violence Protection Act of 2000: Trafficking in Persons Reports criticized the Turkish government and even threatened it with sanctions with all the other countries that it grouped in “tier-three”.⁶⁹ These were countries that were criticized for not combating trafficking and introducing measures to prevent trafficking, to prosecute traffickers and protect victims of trafficking. They were also threatened with sanctions. Furthermore, the Accession Partnership for Turkey also demanded reforms in these areas and the issue was included in Turkey’s NPAA.

Table 5: Distribution of Apprehended Traffickers by the region between the years of 2004- 18 December 2006

Region	2004	2005	2006	Total
Balkans*	6	10	4	20
Caucases**	15	12	8	35
Central Asia***	3	10	11	24
Former Soviet Union****	19	14	21	54
Turkey	184	333	367	884
Total	227	379	411	1017

*Includes Greece, Romania, Ukraine; **Includes Armenia, Azerbaijan, Georgia; ***Includes Kazakhstan, Kyrgyzstan, Uzbekistan, Turkmenistan; ****Includes Belarus, Russian Federation, Moldova
 Source: Data obtained from the Foreigners Department of the Turkish Ministry of the Interior (MOI)

68 For an extensive and thorough study of this problem, see S. Erder and S. Kaska (2003), *Irregular Migration and Trafficking in Women: The Case of Turkey*, IOM International Organisation for Migration, Geneva. See also 2005 *Turkey, Trafficking and Trends* (IOM, Ankara, January 2005) and Ç. Arslan et al., *Combating Trafficking in Turkey: a Strategic Approach to Law Enforcement* (IOM, Ankara, 2006).

69 These reports are available at www.state.gov/g/tip/rls/tiprpt/.

The adoption of the law enabled Turkish judicial authorities to act more effectively but also both the police and the gendarmerie increased its efforts to combat trafficking. Stricter controls at borders and ports were instituted and were accompanied by training programmes for the Gendarmerie, Police and Judiciary.⁷⁰ As Tables 5-6 show the manner in which both the numbers of traffickers that were stopped increased significantly over the last few years as well as the number of victims who were saved and taken under protection. There were more than 1,000 traffickers who were arrested by the authorities between 2004 and November 2006. A majority were Turkish nationals even though there were also many coming from neighbouring countries. During the same period there were more than 730 victims that were saved and brought under protection. An overwhelming majority of the victims came from the former Soviet Union.

Clearly, the number of victims that were saved only shows the tip of the iceberg. However, as is the case with illegal migration it is very difficult to determine the actual size of trafficking that is taking place in Turkey and the actual number of victims. This is a problem that afflicts the whole region as there are no reliable figures. The 2004 Victims of Trafficking and Violence Protection Act of 2000: Trafficking in Persons Report estimated that there 600 to 800,000 people in the world were trafficked the overwhelming majority being women and girls. The same report also estimates that trafficking generates revenues totalling 9,5 billion USD. Turkey is in a region particularly touched by trafficking and is primarily a destination country to where victims are trafficked. A report prepared by the IOM office in Ankara estimated the number of victims to be just under 5,000 in 2005 and calculated the revenue generated to be about 3,6 billion USD.⁷¹ This figure seems particularly high considering that the US Reports puts the estimated business around the world at 9,5 billion USD and seems to have been reached in a rather casual manner. This has unfortunately seriously undermined the credibility of the figures the IOM report offers.

Table 6: Victims of Trafficking by region between the years 2004-18 December 2006

Region	2004	2005	2006	Total
Balkans*	37	90	37	164
Caucuses**	39	21	29	89
Central Asia***	36	46	51	133
Former Soviet Union****	126	98	120	344
Others*****	1	1	2	4
Total	239	256	239	734

*Includes Bulgaria, Romania, Ukraine; **Includes Armenia, Azerbaijan, Georgia; ***Includes Kazakhstan, Kyrgyzstan, Uzbekistan, Turkmenistan; ****Includes Belarus, Russian Federation, Moldova; ***** Includes Iran and Uganda

Source: Data obtained from the Foreigners Department of the Turkish Ministry of the Interior (MOI)

The government in 2002 convened a National Task Force on Combating Trafficking in Human Beings with the purpose of developing a more comprehensive approach. This led to the development of projects aimed at an improved protection of victims. Most strikingly the Interior Ministry officials subsequently joined by the Gendarmerie were able to make arrangements in September 2003 with a non-governmental organisation, Human Resources Development Foundation (Insan Kaynaklarını Geliştirme Vakfı- HRDF) and the Directorate General of the Status of Woman to provide social assistance to victims of trafficking until their safe return to their countries of origin could be arranged. This was accompanied by a decision to grant the victims of trafficking temporary residence permits and allow them access to free health services. In June 2004 during the NATO summit in Istanbul the Turkish minister of foreign affairs, Abdullah Gül and the US Secretary of State Colin Powell actually

70 Detailed information available from Turkey on Trafficking in Human Beings (last updated 25 June 2004) available at www.mfa.gov.tr.

71 2005 Turkey, Trafficking and Trends (IOM, Ankara, January 2005), p. 6.

inaugurated a shelter for victims of trafficking in Istanbul. Similar centres are being opened in other major cities of Turkey with the support of local municipalities. Agreements were signed with a number of countries of the region including Belarus, Georgia and Moldova to combat trafficking. The MOI has also been in close contact with their counterparts in neighbouring countries in an effort to protect victims and ensure their safe return. These projects and cooperative schemes have led to more than 470 victims, see Table 7, being safely returned to their respective countries of origin.

Important steps were also taken in respect to prevention and awareness. Most importantly the Turkish government together with the IOM and financial assistance of the US government started a telephone helpline for victims. The line became operational in 2005 and since then more than 100 victims have been assisted. A publicity campaign was also launched at airports and border crossing to increase awareness of the helpline as well as of trafficking. Efforts were also made to ensure media attention to the problem.⁷² Beside training seminars, non-governmental organizations such as HRDF as well as International Blue Crescent and Medecins du Monde-Greece have organized regional seminars involving the participation of governmental and non-governmental stakeholders from Turkey as well as the region. There is also a EU twinning project “Strengthening the Institutions in the Fight against Trafficking in Human Beings” aiming at expanding Turkey’s public as well as civil society capacity to combat trafficking. The European Union in its most recent Progress Report on Turkey has noted that “Turkey’s legislation is well aligned with the EU legislation on fighting trafficking in human beings”. The report however does not of the need to enhance Turkey’s administrative capacity in order to prevent and repress trafficking.⁷³

Table 7: Safely returned victims of trafficking by region between years of 2004 - 18 December 2006

Region	2004	2005	2006	Total
Balkans*	18	78	35	131
Caucuses**	3	5	11	19
Central Asia***	3	39	44	86
Former Soviet Union****	37	97	100	234
Others*****	-	1	2	3
Total	61	220	192	473

*Includes Bulgaria, Romania, Ukraine; **Includes Armenia, Azerbaijan, Georgia; ***Includes Kazakhstan, Kyrgyzstan, Uzbekistan, Turkmenistan; ****Includes Belarus, Russian Federation, Moldova; ***** Includes Iran and Uganda

Source: Data obtained from the Foreigners Department of the Turkish Ministry of the Interior (MOI)

Turkey has come along way during the course of only a few years in combating trafficking in human beings. This is best acknowledged by the US State Department reports on trafficking. Turkey’s legislative efforts in 2002 and 2003 accompanied by increased law enforcement and measures taken to assist victims played a critical role in the US administration’s decision in September 2003 to upgrade Turkey from a category of countries threatened with sanctions (tier-three) to tier-two countries. The tier-three category of countries is defined by the US Department as countries that pay inadequate attention to combating trafficking in human beings and women in particular. The second group of countries is countries who have introduced legislation and making efforts toward enhancing

72 Information about these campaigns can be obtained from www.countertrafficking.org.

73 Turkey 2006 Progress Report, (Commission of the European Communities, Brussels, 8 November 2006), p. 61.

prevention and prosecution. In this group there are a number of EU member countries. It is in the area of prosecution and convictions that Turkey is considered to be in need of improvement. The 2006 Report of the US State Department finds Turkey still lacking especially because of the large number of acquittals. This is a problem actually recognized by Turkish officials as well as representatives of non-governmental organizations. The EU twinning project and other projects have been supporting training seminars for the judiciary precisely with a view to addressing this problem. The IOM office in Ankara has recently completed a detailed study of Turkish legislation and judicial practice in this area, identifying weaknesses and making recommendations for improvement.⁷⁴ Among the four border management related issues (asylum, border control, illegal migration and visas) combating trafficking is likely to be the one area where harmonization with the EU *acquis* and practice is likely to take place more smoothly.

As of March 2004, there were 42 cases opened for violations under the terms of Article 201, and 21 of these cases were concluded with convictions while the others are pending.⁷⁵

Turkish visa regime

One of the areas that will have to experience drastic change if Turkish law and practice are to be harmonised with the Schengen *acquis* is Turkey's visa policy. The current visa policy of Turkey is a very flexible but also complex system that falls well short of meeting EU standards. It is possible to speak of three categories of entry from the nationals of third countries into Turkey. The first one is the category of countries whose nationals can enter and remain in the country for a pre-determined length of time, usually three months, without visas. A second group is a category of countries whose nationals must obtain visas prior to arriving in Turkey. Lastly, and most interestingly, is the practice of issuing visas at the frontier in return for a fee that varies from country to country. This practice is known as 'sticker visa' (*'bandrol'* in Turkish) and is a practice particularly objected to by the EU.

A number of factors have driven Turkey's current visa policy. Reciprocity is a leading factor. In principle Turkey requires visas from the nationals of countries that require a visa for Turkish citizens. Turkey is a signatory to the European Agreement on Regulations Governing the Movement of Persons between Member States of the Council of Europe of December 1957. In accordance with this agreement, Turkish nationals and nationals of member countries of the Council of Europe, in general, enjoyed the possibility to travel freely without visas to each other's countries. However, subsequent to the military intervention in Turkey in September 1980, a number of countries started the practice of demanding visas from Turkish nationals. This coincided with an increase in asylum demands from Turkish citizens. The decision to stop the policy of recruitment of *guest workers* from Turkey in the mid-1970s encouraged illegal migration and subsequently also led to the abuse of asylum.⁷⁶ The expectation on the part of the Turkish authorities that members of the Council of Europe would revert to the practice of visa-free travel for Turkish nationals once the military in Turkey returned power to civilian authority in 1983 did not occur. Yet, economic considerations – especially Turkey's dependence on tourism income from Western European countries – prevented Turkey from reciprocating with a visa requirement for a long time. However, by the time the 'sticker visa' policy developed in the early 1990s, Turkey imposed this practice on the nationals of some European Union countries as well as the United States. Nevertheless a number of countries such as Germany, France and Switzerland were excluded from this practice partly to facilitate the travel of Turkish bi-nationals.

74 Ç. Arslan et al., *Combating Trafficking in Turkey: a Strategic Approach to Law Enforcement* (IOM, Ankara, 2006).

75 Data obtained from www.cte.adalet.gov.tr/istatistik/suc_turu.htm (on 2 July 2004).

76 See A. Böcker (1996), "Refugee and Asylum-Seeking Migration from Turkey to Europe", *Boğaziçi Journal* Vol. 10, Nos. 1-2.

In the case of Eastern Europe and the Soviet Union, Turkey signed a series of bilateral agreements enabling travel between Turkey and these countries on the basis of visa arrangements in the 1960s. In the case of Bulgaria and Yugoslavia, there were facilitated visa arrangements for transit travel. The exception to this practice was Romania with which Turkey had signed a visa-free travel agreement in 1968, which remained in force until 2004, when Romania was forced to discontinue this practice and impose visa requirements on Turkish nationals as a result of pre-accession obligations to the EU. Similarly, political considerations, such as the tension between Turkey and Pan-Arab regimes in the Middle East, led to restricted visa-based travel between Turkey and Middle Eastern countries, especially with Egypt, Iraq and Syria. In the case of Iran, the two countries reached an agreement on visa-free travel in October 1964. This practice was not influenced by the change of regime in Iran and continues to be in place. After the regime change in Iran large numbers of regime opponents throughout the 1980s and 1990s have benefited from this visa-free regime by using Turkey as a staging post to immigrate to third countries or seek asylum. Many Iranians especially in border regions have used this regime for border trade purposes while some became illegal immigrants in Turkey by overstaying the visa-free time limit and seeking employment. Until the arrival of the Mahmud Ahmedinejad regime in Iran, the gradual liberalisation of the regime had also led to an increase in the number of tourists entering Turkey from Iran. The fact that travel for Iranian nationals to European countries is complicated by visa requirements had made Turkey become an attractive tourism destination for Iranian middle-class.

The current Turkish visa policy is a heavily modified version of the system from the Cold War years and is very much the legacy of the late Turgut Özal, a former Prime Minister and President of Turkey. Özal was not only a leader who left a deep imprint on the liberalisation of Turkey's economy but also on Turkish foreign policy.⁷⁷ He was a pragmatic leader who very much believed in the virtues of functionalism and interdependence in international relations. It is against this background that he had the visa requirement for Greek nationals lifted in 1988. On the basis of a treaty from 1930, Greek nationals were able to travel and even reside in Turkey freely until 1964.⁷⁸ Subsequent to the conflict over Cyprus, Greek-Turkish relations deteriorated in the early 1960s and the visa-free travel privileges had been rescinded. Özal believed that this would encourage Greeks to travel to Turkey boosting commerce but also improving understanding between the people of the two countries at a time when the countries were locked in stalemate over a wide range of conflicts.

As the Cold War started to come to an end in the late 1980s, he advocated the idea of the Black Sea Economic Cooperation Area (BSEC). Here too his idea was to encourage greater contact among countries on the Black Sea as well as in its immediate vicinity. The Cold War had prevented many of these countries from interacting with each other. His vision of the region was one where these countries would cooperate with each other on a number of issues ranging from commerce to tourism as well as the protection of the environment and cultural exchanges. The countries of the region adopted the idea formally in June 1992 and set up a secretariat in Istanbul. The 'sticker visa' practice evolved against this background to facilitate the movement of nationals of countries coming mostly from members of the BSEC into Turkey. With the collapse of the Soviet Union there also emerged a group of new states in the Caucasus and Central Asia with close linguistic and cultural ties to Turkey. This visa practice also would serve the purpose of enabling the nationals of these new Turkic republics as well as Russia to travel to Turkey with greater ease than had been the case during the Cold War.

77 For a comparative analysis of Turgut Özal's foreign policy and traditional Turkish foreign policy, see S. Özel (1995), "Of Not Being a Lone Wolf: Geography, Domestic Plays, and Turkish Foreign Policy in the Middle East", in G. Kemp and J.G. Stein (eds), *Powder Keg in the Middle East: The Struggle for Gulf Security*, Lanham, MD: Rowman and Littlefield. See also W. Hale (2000), *Turkish Foreign Policy, 1774-2000*, London: Frank Cass, pp. 164-5 and p. 205.

78 This was based on a treaty of friendship that the two countries signed on 30 October 1930. The treaty pretty much gave the nationals of both countries the right to 'free movement'. See M. Fırat (2001), "Yunanistan'la İlişkiler", in O. Baskın (ed.), *Türk Dış Politikası (1919-1980) (Volume I)*, İstanbul: İletişim, pp. 347-350 and pp. 720-723 for the abrogation of these rights by Turkey.

During the Cold War, contacts between Turkey and Central Asia as well as many Turkic communities in distant parts of the Soviet Union were basically non-existent. There were not only major restrictions for Soviet nationals to travel abroad but often people would also have had to travel long distances to obtain visa from Turkish representations in Moscow.

Turgut Özal's foreign policy was also marked by his determination to expand Turkey's relations with the Middle East. He wanted to see a greater role for Turkey and, in line with his functionalist outlook on international relations, advocated in 1986 the idea of a 'peace pipeline' to carry water from Turkey across the Middle East. He was not particularly successful in seeing through his political ideas, but in the 1980s trade between Turkey and the Middle East expanded and Arab investments in Turkey were encouraged. In an effort to draw tourism and investment, especially from Gulf countries and Saudi Arabia, visa requirements were relaxed. Subsequently, the practice was expanded to include Jordan, Tunisia and Morocco. The nationals of the latter two countries enjoy visa-free travel rights, while Jordanians benefit from the 'sticker visa' practice. On the other hand, in July 1995, the Turkish government ratified an agreement of the Economic Cooperation Organisation (ECO) enabling the business people of member countries to obtain facilitated visas.⁷⁹

The gradual 'liberalisation' of the Turkish visa system combined with the introduction of especially the 'sticker visa' practice had a number of consequences. During the course of the 1990s, they encouraged the development of an informal import and export activity known as 'suitcase trade'. This 'trade' took the form of large numbers of nationals of mostly Russia but also from the Ukraine, Georgia, Azerbaijan, Romania, Moldova and Central Asian republics to travel to Turkey by chartered planes or ships, sell their 'suitcase' full of products and in return purchase a wide range of consumer goods mostly in Istanbul, the Black Sea port city of Trabzon and Van near the border with Iran. It is estimated that this trade amounted to approximately \$4-5 billion a year during the early 1990s. It peaked in 1995 with an estimated trade volume of \$10 billion.⁸⁰ The economic recession in Russia in 1998 adversely affected this trade while the trade involving East European countries fell to a trickle with EU pre-accession. Trade involving Ukraine and Russia has begun to revive since 2001, but it has not returned to the levels in the mid-1990s.⁸¹ The volume of suitcase trade has roughly levelled at \$3 billion a year. On the other hand, 'suitcase' trade involving Libya and Tunisia has been expanding.

This trade provided a "cushion" to a large number of people in Central and Eastern Europe and ex-Soviet countries who suffered economic difficulties subsequent to the collapse of communism. This was a period when there were great concern and speculation in Western Europe that large numbers of East Europeans and Russians were going to migrate to the West for jobs. Turkish officials frequently argue that this visa policy has kept people from having to join the flow of irregular migration to Europe. Clearly, this is very difficult to prove, but there may be an element of truth in this argument. As can be observed from Table 3, there are two types of illegal immigrants apprehended in Turkey. The first category in large part encompasses those coming from former-Soviet republics and Balkan countries. These individuals have been apprehended for over-stays or for violations of Turkish law, especially labour laws. They are deported back to their country of origin. It is very unusual for such persons to try to use Turkey as a point of transit to Europe. The second group of people, more often than not, is composed of individuals who have in the first place entered the country illegally and have the objective of transiting the country on their way to the EU. They are nationals of countries for which Turkey requires visas obtained prior to travel and does not apply the 'sticker visa' facility. This explains to a large extent the trend among nationals of Afghanistan, Bangladesh, Iraq and Pakistan to

79 The member countries of ECO are Afghanistan, Azerbaijan, Iran, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkey, Turkmenistan and Uzbekistan.

80 Figures obtained from M. Eder et al., *Redefining Contagion: The Political Economy of the Suitcase Trade between Turkey and Russia*, IREX (International Research Exchange, Black and Caspian Sea Research Program, final report, July 2002).

81 Radikal, 17 July 2001.

resort to the services of human smugglers. It is possible that had Iranian nationals not been exempted from any visa requirement when travelling to Turkey, there would have been a much higher number of Iranians apprehended as illegal migrants than the figure cited in Table 3.

Nevertheless, there has also been a down side to this flexible visa policy. During the 1990s there was an explosion in prostitution involving nationals of the former Soviet Union. The problem continues today even if at a relatively lower level, although in the meantime the problem has become aggravated by the growth in trafficking as examined in the previous section of this report. Another questionable aspect of this 'flexible' visa policy has been illegal employment. Nationals of Iran, Romania, Moldova, Bulgaria, Georgia and even Armenia have been working in various sectors of the economy, but in particular in the area of household help. This led to complaints from labour unions as well as the Ministry of Labour about the increase in the number of illegal workers in Turkey and the need to prevent this.⁸² In an effort to combat this situation, the government introduced legal and administrative measures. The new Law on Working Permits for Foreigners that entered into force in September 2003, has facilitated the conditions and procedures for obtaining work permits while introducing serious fines against illegal employment.⁸³ Furthermore, there was also an attempt to introduce the practice of demanding evidence of means of subsistence for the intended duration of the stay in Turkey from the nationals of countries where illegal immigrants came from. However, these practices attracted considerable criticism and were subsequently discontinued. One last negative aspect of the 'flexible' visa policy has been security. The two deadly terrorist attacks in Istanbul in November 2003 came as a cold reminder of the consequences of flexible border control arrangements. Subsequent police investigations revealed that the perpetrators of these attacks and those providing them with logistical support had frequently travelled to Afghanistan, Iran, Pakistan and the Russian Federation and had also made contact with nationals of these countries in Turkey.

The Accession Partnership for Turkey in 2001 and 2003, under the title of "justice and home affairs" called on Turkey to start and pursue the alignment of its visa policy to the standards of the Schengen visa regime and including the adoption of the Schengen negative list. The NPAA of 2003, in turn, provided a schedule for the adoption of the relevant EU *acquis* by the end of 2005. In this respect, Turkey aimed to abolish visa-free travel for those countries that are on the EU's negative list by the end of 2004. Turkey went ahead and began to align its practice with the EU in September 2002 and was short of matching the negative list with six countries by the end of 2004 (Bosnia-Herzegovina, Iran, Kyrgyzstan, Macedonia, Morocco and Tunisia). Turkish officials had announced that they were committed to complete the process for all these countries except Bosnia and Macedonia by the end that year. There was a reluctance to terminate the visa-free arrangements with these two countries because of close historical and cultural ties with these two countries, including the presence of Turkish minorities.

Turkey was also expected to end the 'sticker visa' practice. Currently, Turkey allows for the nationals of 35 countries to benefit from this practice (See Appendix 1). The EU considers this practice as one that seriously undermines effective border control. Instead the EU requires Turkey either to adopt a visa-free regime for those countries that are not on the negative list of the EU or alternatively introduce the practice of obtaining visas from Turkish representations in the country of origin. Furthermore, Turkey is also expected to introduce airport transit visa practice too. Lastly, Turkey is also expected to renew its passports and introduce features to Turkish passports to prevent them from being forged. Currently, Turkish passports are considered to be particularly easy to forge.

82 Radikal reports that in Istanbul alone the number of illegal workers was 750,000 (9 February 2001). Under pressure from the unions and the public, the then Minister of Labour Affairs and Social Security, Yaşar Okutan, argued that illegal workers were taking away jobs from Turkish citizens and announced that legislation was being drafted to introduce fines (Radikal, 30 December 2001). A year later, Radikal reported that a new law was being drafted that would institute fines and put the number of illegal foreign workers close to one million. It should be noted, however, that these figures are purely speculative (21 December 2002).

83 Law 4817, Official Gazette, 6 March 2003, No. 25040.

The government submitted to the Turkish Parliament a draft law in January 2004 that aimed to amend the Passport Law No. 5682 of 15 July 1950 to be able to meet Turkey's commitments arising from the NPAA and align it with the requirements of the EU *acquis*. The Law was still pending for adoption as of December 2006.

Once these changes are put into place, Turkey will have closely harmonised its legislation and practices with that of the EU. There are many officials who see the introduction of the new measures required by the EU as positive and consider them as measures that will improve border control and security. In the words of one official, the adoption of the EU negative list and abolishment of the 'sticker visa' arrangement will make Turkey a more "serious" state capable of truly regulating the flow of people in and out of the country. However, there are also less positive aspects to the adoption of the Schengen visa regime. Foremost, unless the EU changes its policy, Turkey will become the only country that will be implementing the negative list while being on the list itself. In Turkey there are considerable complaints as well as resentment and discomfort with the Schengen visa regime as implemented vis-à-vis the Turkish nationals.⁸⁴

Turkish officials and politicians recognise that close cooperation with the EU in this area may open the possibility of easing EU visa restrictions on Turkish nationals. It is particularly Turkish business people and students who have bitterly complained about these restrictions that they argue leave them at a disadvantage in relation to their counterparts in the EU or other candidate countries. This also seems to run against the spirit if not the letter of the "civil society dialogue" program of the EU for candidate countries.⁸⁵ Students and student organisations complain about the inconsistency in the processing of visa applications among EU consulates and the administrative difficulties and obstacles raised.⁸⁶ Business people complain that they face unfair competition from their EU counterparts who are able to travel to Turkey freely while they face the curious situation of seeing their 'goods' circulating freely within the internal market while they face restrictions. Many legal experts and businessmen in Turkey argue that the 1963 Association Agreement as well as the 1970 Additional Protocol signed between Turkey and the European Community does indeed give Turkish businessmen, employers, service providers, etc... the possibility to enjoy the right to free movement.⁸⁷

Some of them argue in particular that a recent ruling of the European Court of Justice acknowledges this situation, i.e. the *Abatay* judgement.⁸⁸ In the *Abatay* case, the Court was asked whether the new requirement imposed by the German federal labour office (the *Bundesanstalt*) that Turkish drivers must hold a work permit in Germany in order to carry out international road haulage was against the provisions of the Additional Protocol and the Decision 1/80. The ECJ first reiterated

84 A prominent international judge and professor of international law Rona Aybay reported complaints about a practice by the British and German consulates of stamping the note "visa rejected" in some passports of Turkish nationals and argued that this could constitute a violation of international law and human rights (Cumhuriyet, 7 June 2004).

85 European Commission, Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: Civil Society Dialogue between the EU and Candidate Countries, COM(2005) 290 final, Brussels, 29.6.2005.

86 The media frequently reports these complaints see for example a long report in the widely circulated Turkish daily *Hürriyet*, 19 November 2006. The report details the complaints as well as the inconsistencies between EU consulates application requirements. The report also covers personal experiences of business persons, students and even prominent writers such as Aylin Kulin.

87 See C. Uzunoğlu (2004), "Vizesiz Avrupa hakkımız, alacağız!", *iş Yönetim* (Sunday supplement of the Turkish daily *Hürriyet*), 27 June. H. Gümrükçü, "ATP'nin Temel Dayanakları Nedir ve Ne Olmalıdır?", *DEM*, No. 31, 1 June 2004, see www.dem-ajans.de/modules.php?name=Sections&op=viewarticle&artid=376. H. Gümrükçü, "Türk İşadamlarına AB Üyesi Ülkeler Tarafından Mevcut Haklarına Koruma ve Vize Uygulamasının Avrupa Toplulukları Hukuku Çerçevesinde Analizi", paper prepared for the Institute for Turkish Studies, Essen.

88 European Court of Justice Ruling on Eran Abatay and Others (C-317/01) and Nadi Şahin, Joined Cases C-317/01 and C-369/01, 21 October 2003.

the direct effect of the so-called ‘Standstill Clause’ that exists within these two instruments.⁸⁹ It also held that these articles preclude the introduction into the national legislation of a member state of a more restrictive requirement (such as a work permit) treating Turkish workers less favourably than they were treated at the time of the entry into force of the Additional Protocol.⁹⁰ The Young Businessmen Association of Turkey (TUGIAD) has initiated a study group to examine the case law of the Court and to solicit legal advice in an effort to mobilise support in achieving recognition for businessmen of the possibility to travel visa-free within the EU.⁹¹ Indeed, the Ankara Agreement as well as the Additional Protocol, the Decision No 1/80 and the Decision No 30/80 on social security need to be studied with respect to possibilities of openness that they could provide to Turkish workers and their families.⁹² Urgent analysis is called for in this respect, particularly with regard to the possibilities of such workers after the four-year provision of Decision 1/80 is satisfied.⁹³ The influential Istanbul Chamber of Commerce too has taken an interest in the problems that its membership is having in applying and obtaining EU visas. The Chamber too is looking into the possibilities of legal action.⁹⁴

The EU practice of lifting or easing visa requirements for the nationals of candidate countries that have adopted the EU *acquis* and practice with respect to visas has not gone unnoticed by Turkish officials and politicians. Most striking for them has been the way in which Bulgarian Turks who had fled to Turkey during the mass exodus in 1989 have returned to Bulgaria to reclaim their citizenships. Clearly, the EU decision to lift visa requirements for Bulgarian citizens was a major motive for this behaviour.⁹⁵ In turn, the Turkish government decided to lift the visa requirement for Bulgarian nationals in June 2001. In 1989, more than 310,000 Bulgarian Turks had fled to Turkey. The crisis played an important role in the eventual downfall of the Communist regime in Bulgaria. Subsequently, a more democratic and Western-oriented regime emerged. As a result, thousands of Turks returned to Bulgaria while almost 236,000 of them acquired Turkish citizenship.⁹⁶ Many of them became dual citizens. Yet, the economic difficulties in Bulgaria and the severe recession that hit the rural Turkish communities meant that many of the Bulgarian Turks preferred to stay in Turkey. In an effort to stop economically motivated migration of Turks from Bulgaria into Turkey, the Turkish government introduced strict visa requirements. This led to an increase in illegal entries often using smuggling networks. Hence, the decision to end the visa requirement for Bulgarian nationals is a good example of the extent to which EU policies can affect the policies of a third country. This brought the human

89 The direct effect of Article 41.1 of the Additional Protocol and Article 13 of Decision No. 1/8 has been made clear from previous ECJ’ rulings such as, Joined Cases C-37/98 Savas [2000] ECR I-2927 and Case C-192/89 Sevince [1990] ECR I-3461. Article 41.1 of the Additional Protocol provides that “The Contracting Parties shall refrain from introducing between themselves any new restrictions on the freedom of establishment and the freedom to provide services”. In addition to that, Article 13 of the Decision No 1/80 stipulates that “the Member States of the Community and Turkey may not introduce new restrictions on the conditions of access to employment applicable to workers and members of their families legally resident and employed in their respective territories”.

90 See Abatay and Others, C-317/98, point 117.

91 Telephone interview with the president of TUGIAD, 2 July 2004. For the study group see www.tusiad.org.tr.

92 For a brief analysis on these issues see S. Peers (2001), *Aliens, Workers, Citizens or Humans? Models for Community Immigration Law*, in E. Guild and C. Harlow (eds), *Implementing Amsterdam: Immigration and Asylum Rights in EC Law*, Hart Publishing.

93 Article 6.1 of Decision No. 1/80 provides that “The Turkish worker who has been in regular, legal employment in one of the Member States, after four years, can have free access to any paid employment of his choice in that Member State”. See the case of S.Z. Sevince v. Staatssecretaris, C-192/89, [1990] ECR I-3461 at Para. 4. It would also be interesting to look at the situations that may be consequence of Article 6 for those Turkish workers who have been living permanently in Cyprus before it acceded to the EU.

94 “AB Ülkelerinin Türk Vatandaşlarına Uyguladığı Vize Prosedürü”, Bilgi Notu (Istanbul Ticaret Odası, Avrupa Birliği ve Uluslararası İşbirliği Şubesi, May 2006.

95 Reported in *Radikal*, 10 March 2001.

96 Statistics obtained from the Foreigners Department.

smuggling business to an immediate halt. It is highly doubtful that the Turkish government would have adopted this new policy if it had not been for the EU decision to remove Bulgaria from the list of countries requiring visas to enter the EU. The lifting of the visa requirement led to an almost tripling of entries from Bulgaria from about 380,000 in 1996 to over a million in 2009. (See Table 8)

However, in the meantime Turkish officials have lost their enthusiasm for a precipitous harmonization of Turkey's visa policies with that of the EU. Actually, a number of countries, mostly Gulf states including Saudi Arabia, in May 2005, was moved out of the negative list and included in the list of countries that can benefit from the "sticker visa" arrangements.⁹⁷ There are a number of reasons for the change of policy away from the targets that were stated in the NPAA of 2003. Firstly, there was a gradual recognition that the AP's of 2001 and 2003 did not actually call for an immediate fully fledged adoption of the Schengen *acquis* concerning visas. Instead they simply called to start and pursue the process of alignment. Actually, one Turkish official even reminisced that European Commission officials reminded them that the harmonization did not need to be immediate and that it could be spread out until closer to the accession date.⁹⁸ Turkish officials also came to realize that most of the new member countries did not actually start implementing the Schengen *acquis* fully until closer to their date of accession in May 2004.

A second reason had to do with a gradual recognition of the immense costs would be attached with the adoption of the Schengen visa regime. The introduction of visa requirements would be bringing on Turkey a major administrative and financial burden. As can be observed from Tables 8 and 9, approximately 1.8 million Russian and almost a million Iranian nationals entered Turkey in the course of 2006 alone. Issuing visas for such a large number of people would pose a major burden on Turkey's representations abroad as both countries are currently on the Schengen negative list. However, the greatest consequence of the new visa system would be that it might lead to a significant fall in the number of people coming to Turkey. Hence, there was a realization that it is the economic and trans-societal relations that might be most adversely affected from a strict application of the Schengen visa regime.

The politics of the Cold War had reduced economic and human contacts between Turkey and Eastern bloc countries to a minimum. Furthermore, during the Cold War, Turkey basically had lost contact with communities, especially in the Soviet Union, with which it had close historical and cultural ties, such as Turkish-speaking communities, Tatars, Azeris, Circasians, etc... The infamous Iron Curtain was not simply an ideological one. It separated these countries and communities from each other physically too. Table 8 reveals the manner in which the Soviet world was separated from Turkey. In 1964, there were only 414 entries from the Soviet Union out of a total of almost 230,000 overall entries into Turkey. In 1970, the figure increased to a modest 4,800 and 40,015 in 1980. The unwinding of the Cold War helped to increase contacts and 1990 saw more than 220,000 entries. After the introduction of the 'sticker visa' system in early 1990s, the number of entries from the ex-Soviet world began to increase each year and reached its peak in December 2006 with more than 3.5 million entries out of a total of approximately 18 million overall entries. When to this figure the entries from ex-communist Balkan countries and Greece, see Table 9, are added there were a totals of 5.5 million entries from a world with which Turkey hardly interacted less than two decades ago. Clearly, the regime change in the Soviet Union and the collapse of communist regimes played a critical role in this massive change, but it is doubtful whether the figures would have been this high had Turkey had in place a Schengen-like strict visa policy.

One of the most fascinating consequences of the end of the Cold War and the subsequent collapse of the Soviet Union is that it opened up a vast world for Turkey from the Adriatic Sea to the Chinese Wall – economically, socially and culturally. The composition of the airlines and passengers arriving to Istanbul's international airport changed dramatically and became much more culturally diverse. All

97 They had been moved to the "negative list" in September 2002.

98 Interview with a member of the Turkish Ministry of Foreign Affairs, 19 December 2006.

these people who once had been isolated from each other were able to develop contacts. It would not be wrong to argue that Özal's policies did actually pay off and relations between the countries, especially for those around the Black Sea, improved significantly. A fascinating aspect of this transformation of the political climate is that marriages between Turkish nationals and nationals of former Soviet republics increased too. In 1980 for 1152 inter-marriages with nationals of West European countries there were only 42 with nationals of the Soviet Union and Balkan countries. In 2003 the respective figures were 9684 for West European countries and 6172 for former Soviet republics and Balkan countries.⁹⁹ These may be considered to be relatively small numbers. However, the trend is very significant and should also be indicative of the size of the more informal social contacts. A Turkish expert on Balkan politics at a conference in this respect made the remark that the explosion of social contacts between Turkey and the Slavic world is leading to a kind of re-Slavization of the Turkish people.¹⁰⁰ The earlier having taken place in the Ottoman times. Another social dimension of this experience is that references to Russian and Slav women as "Nathasha", a thinly coded reference for being a prostitute, that was extremely wide spread until a few years ago has for all intend and purposes disappeared from public parlance. It is much less common to hear such references and this has been attributed by many officials to the massive contacts between Turkey and the Slavic world that is dismantling prejudices. In 2004 a Turkish Police Chief during a regional conference of the Council of Europe dealing with irregular migration complained bitterly that it was wrong and unfair for the public to associate prostitution with Russian women.¹⁰¹ In 2003 and 2004 there were respectively 135 and 259 Russian women arrested and deported for prostitution. The total number of foreign nationals arrested for prostitution for 2003 and 2004 was 1990 and 1775. The same Police Chief today acknowledges that associating Russian women with prostitution is much less.¹⁰²

In terms of the "peace-building" effect of the Turkish visa policy another striking example is the case of Greece which has already been referred to briefly. Table 9 shows the manner in which the numbers of Greek nationals entering Turkey has steadily been increasingly especially since 1999.¹⁰³ This is the year that is generally considered to be when the rapprochement between the two countries started. Turkey's liberal visa policy has enabled an ever growing number of Greek individuals but more importantly civil society activists, academics, students etc... to visit Turkey. It is becoming generally accepted that growing inter-societal relations and especially relations between civil society is important to sustaining the rapprochement and further consolidating it.¹⁰⁴ Armenia is one country with which Turkey has serious difficulties. However, in the context of the work pursued by the Turkish-Armenian Reconciliation Commission (TARC) the Turkish government in January 2003 extended the "sticker visa" arrangement to nationals of Armenia.¹⁰⁵ Even if for the time being the land border

99 These figures were obtained from the Department of Population and Citizenship (Nüfus ve Vatandaşlık İşleri Genel Müdürlüğü) of the Interior Ministry and compiled in G. Çatır, "Encounters in Turkey" term paper prepared for a course in 2004 Fall at the Department of Political Science, Boğaziçi University.

100 These remarks were made during the discussion of Ş. Kut, "Turkey, Greece and the Balkans" paper presented at the Workshop on Turkey's World in the Early Twenty-First Century, 17 August 2004, University of Otago, Dunedin, New Zealand.

101 Presentation by Mehmet Terzioğlu at the Council of Europe Regional Conference on Migrants in transit countries: sharing responsibility for management and protection, Istanbul, 30 September – 1 October 2004.

102 Interview with Mehmet Terzioğlu, 18 December 2006.

103 A Turkish commentator who follows Greek-Turkish relations noted the importance of movement of people between the two countries in consolidating peace and added that currently because of the Schengen visa requirements the number of Turks visiting Greece was only a tenth of the number of Greeks visiting Turkey. He expects that there would be an explosion in the number of Turks visiting Greece if a more flexible system could be introduced, S. Alpay, "Türk-Yunan yakınlaşmasının neresindeyiz?" Zaman, 22 February 2005.

104 In this regard see T. Belge (ed.) *Voices For The Future: Civic Dialogue Between Turks and Greeks* (Istanbul: Istanbul Bilgi University Press, 2004).

105 Remark made by David Phillips, former president of TARC, during the presentation "Unsilencing the Past", Bilgi University, 18 March 2005, Istanbul.

between the two countries still remain closed there were nevertheless an increase in the number of Armenian nationals entering Turkey from approximately 17,000 in 2000 to 38,000 in 2006, before the year was even completed. This is also allowing for a modest level of civil society contacts to take place, a development that will be critical if a climate of reconciliation can be engendered between Armenians and Turks. It is also interesting to note how the number of entries from Georgia has increased in the course of the last few years reaching almost half million entries in 2006 from a total population of just over five million.

Table 8: Entry of persons from the Soviet Union and former Soviet republics between 1964 and December 2006

	1964	1970	1980	1990	1996	2000	2005	2006
Soviet Union	414	4,824	40,015	222,537	-	-	-	-
Russia	-	-	-	-	1,235,290	677,152	1,855,900	1,790,041
Central Asian States								
Kazakhstan	-	-	-	-	31,373	38,939	106,167	127,924
Kyrgyzstan	-	-	-	-	8,052	8,789	31,017	37,260
Tajikistan	-	-	-	-	3,087	952	6,811	10,544
Turkmenistan	-	-	-	-	5,035	10,987	34,292	45,206
Uzbekistan	-	-	-	-	13,558	21,062	24,634	26,374
Subtotal	0	0	0	0	1,296,395	757,881	2,058,821	2,037,349
South Caucasus								
Armenia	-	-	-	-	5,345	17,549	36,633	38,173
Azerbaijan	-	-	-	-	100,249	179,878	411,111	347,906
Georgia	-	-	-	-	116,709	179,563	367,148	498,163
Subtotal	-	-	-	-	222,303	376,990	814,892	884,242
Western(NIS)								
Belarus	-	-	-	-	474	9,622	77,029	83,433
Moldova	-	-	-	-	8,290	62,687	89,849	100,529
Ukraine	-	-	-	-	93,794	173,551	367,103	451,266
Subtotal	-	-	-	-	102,558	245,860	533,981	635,228
TOTAL	414	4,824	40,015	222,537	1,621,256	1,380,731	3,407,694	3,556,819
General TOTAL	229,347	724,754	1,057,364	2,301,250	8,538,864	10,428,153	20,275,213	17,994,940

Source: Compiled from data obtained from the Foreigners Department of MOI and State Statistical Institute Annual Reports
Data current as of 01.12.2006

There is also the other side of the pure and simple economic dimension of the visa issue. An ever growing proportion of these people entering Turkey are tourists, who constitute a very important source of income for Turkey. Russians are a particular case in point. Over the last few years, Russians have been the second largest group of tourists entering Turkey. They are also recognized as high-spenders. Income from tourism is a very important source of foreign currency for Turkey. Turkey in its trade with the external world runs a major deficit. In 2003, 2004 and 2005 Turkey's foreign trade deficits were 22, 33.4 billions and 43.3 billions USD while the income from tourism was 9.1, 12.3 and

18.1 billions USD respectively.¹⁰⁶ Hence revenue from tourism is one very critical source of foreign currency for closing some of the deficit generated from foreign trade. In 2006, up to December, there were more than 16 million foreign nationals who entered Turkey, mostly as tourists. Out of this total 6.2 million came from neighbouring countries (former Soviet republics, Balkan and Middle Eastern countries) mostly on the sticker visa arrangement constituting a major source of income for the Turkish economy. It is also generally accepted that Turkey's flexible visa policy has encouraged business contacts and reciprocal business investments. The replacement of the 'sticker visa' policy with the Schengen visa regime is likely to have an adverse affect on these positive developments.

The Middle East is the only neighbouring region of Turkey where the implementation of a flexible visa system did not appear to have made a big difference with the exception of Iran. The visa-free regime that was instituted for the Gulf states did not attract a great number of entries from these countries. After an initial increase in the early 1990s, numbers steadily fell. The only exception to the rule is the way in which the numbers of Syrian entries have by and large remained relatively high in spite of the requirement to hold a visa for travel to Turkey. However, both countries have long had a policy of allowing nationals from the border region a degree of flexible access to the other's territory. Syrian and Turkish nationals living in the border region are able to travel within a 50-kilometre zone to visit family relatives, attend to family business and pursue judicial issues with just an 'administrative letter' issued by local authorities. However, it is interesting to note that the Turkish government decision to include Gulf States on the list of countries whose nationals can benefit from the "sticker visa" regime did lead to a significant increase especially from Saudi Arabia. Once more suggesting how this particular visa policy does encourage interaction and benefit Turkey.

Furthermore, citizens of the Russian Federation (Russians as well as individuals belonging to the many different ethnic groups, such as Tatars, Circassians, etc., with close family and cultural affiliations to Turkey) may well be the hardest hit since reaching Turkish representations within Russia will be hindered by the vastness of the country. The same applies to Central Asian countries as well as those in the South Caucasus. These are countries with strong cultural and historical ties to Turkey that were interrupted by the Cold War. The 'sticker visa' arrangement vastly and conspicuously increased the contact between Turkey and these countries, as can be seen from Table 3. Furthermore, such a visa arrangement also facilitated movement in the border regions. During the Cold War, the land border between Turkey and Bulgaria and the one with the Soviet Union (Georgia and Armenia today) were not only mined but there were zones into which no unauthorised person could enter. Today, these borders are much more porous, except that the Armenian border remains closed, and important levels of cross-border economic and social interaction take place. Armenians are able to enter Turkey with a 'sticker visa' via the Istanbul airport or other border crossings.

106 Trade statistics for 2003 and 2004 are from: <http://www.die.gov.tr/ieyd/distic/page6.html> and for 2005 from http://www.tuik.gov.tr/PreIstatistikTablo.do?istab_id=508. Tourism income statistics for 2003 and 2004 respectively have been obtained online from: <http://www.die.gov.tr/TURKISH/SONIST/TURIZM/220104yab/hb220104.html> and <http://www.die.gov.tr/TURKISH/SONIST/TURIZM/hb26012005t2.gif>. Tourism statistics for 2005 are from http://www.tuik.gov.tr/PreIstatistikTablo.do?istab_id=77.

Table 9: Entry of persons from the neighbouring Balkan and Middle Eastern neighbouring states, 1964-December 2006

	1964	1970	1980	1990	1996	2000	2005	2006
Middle East								
Iran	12,796	14,247	42,082	219,958	379,003	380,819	957,244	811,825
Iraq	3,919	6,518	14,046	13,372	14,137	20,776	107,972	114,569
Syria	9,996	13,184	26,384	113,959	92,033	122,417	287,343	256,675
Gulf States*	-	-	-	43,088	40,029	19,537	62,648	66,799
Pakistan	1,961	7,383	4,800	7,347	12,410	7,908	11,698	13,618
Subtotal	28,672	41,332	87,312	397,724	537,612	551,457	1,426,905	1,263,476
Balkans								
Albania	-	-	-	1,924	20,971	29,748	50,513	46,610
Bosnia	-	-	-	-	12,115	28,631	44,716	37,016
Bulgaria	693	18,214	26,523	-	139,648	381,545	1,620,939	1,083,249
Greece	3,042	11,313	19,477	203,720	147,553	218,092	548,268	341,841
Macedonia	-	-	-	-	41,269	108,928	119,157	107,327
Romania	-	-	-	352,034	191,203	265,128	201,807	225,944
Serbia-Montenegro	-	-	-	-	44,600	128,383	175,294	155,229
Yugoslavia	5,661	28,352	13,817	296,843	-	-	-	-
Subtotal	9396	57,879	59,817	854,521	597,359	1,160,455	2,760,694	1,997,216
TOTAL	38,068	99,211	147,129	1,252,245	1,134,971	1,711,912	4,187,599	3,260,692
GENERAL TOTAL	229,347	724,754	1,057,364	2,301,250	8,538,864	10,428,153	20,275,213	17,994,940

* Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and United Arab Emirates.

Data current as of 01.12.2006

Lastly, the adoption by Turkey of the Schengen *acquis* on visa requirements may well aggravate the problem of irregular migration into Turkey as well as through it. Entry into Turkey will become much more difficult and will adversely affect 'suitcase' trade that is benefiting both Turks as well as traders from countries of the region who continue to experience economic difficulties. It is possible that some of them could try to make it to Europe by illegal means or try to abuse the asylum system in Europe. This may well be the case for example for Chechens who currently are able to enter Turkey without difficulty but who face economic hardship back at home as well as widespread human rights violations and violence because of the disturbances in their homeland. A similar case could be made for Iranian nationals, who constitute the largest number of asylum applicants in Turkey. Introducing a visa requirement, however, may lead to an increase in these applications. Currently, many Iranians enjoy informal protection in Turkey by the mere fact that they can enter, exit and re-enter the country unhindered. Furthermore, some of the Iranians who were benefiting economically from the visa-free policy may well start to join the ever-increasing number of irregular migrants entering Turkey from the Middle East in an attempt to make it to Europe.

These factors, especially in the light of the uncertainty over Turkish accession to the EU, have culminated in a reluctance to replace the Turkish visa system with the Schengen one. Instead, a tacit agreement appears to have been reached with the European Commission in spreading the adoption of the negative list through to a date closer to accession, if that is ever going to take place. This reflected in the Accession Partnership adopted for Turkey in January 2006 that leaves the issue of alignment with the Schengen related *acquis* to the midterm rather than the short term. However, in the meantime the government is continuing to align its practice at least as far as the positive list goes. A number of

Latin American countries have actually been moved from the list of countries whose nationals require visas to Turkey's positive list. Yet, a number of EU countries continue to remain on the "sticker visa" list instead. More importantly, the "Visa Policy and Practice" twinning project was successfully completed in September 2006. The project ran numerous training seminars that have increased the familiarity of Turkish officials with the Schengen *acquis* as well as Schengen best practices. Considerable effort was also put into enhancing Turkish police's ability and capacity to detect false and forged travel documents. Turkey has also started to keep statistics on entry denials. There were just under 83,000 foreigners who were refused entry to Turkey between 1999-2005 due to irregularities with their documentation.¹⁰⁷ Furthermore, in an attempt to fight forgery Turkey will early in 2007 introducing a new visa sticker more difficult to forge than the current practice. Turkey is also preparing to introduce the practice of airport transit visas. Lastly, Turkey further to the completion of the twinning project will be preparing an Action Plan on visa policy and practice. This should lay down much more concretely a timeline for the adoption of relevant legislative measures as well as developments to expand administrative and institutional capacity such as for example expanding and improving the capacity of Turkish representations abroad to receive visa applications, process them and issue visas. In 2004 and 2005 Turkish representations abroad received about 1.7 million applications out of which just over 1.1 million were granted. Considering that approximately 25 million "sticker visas" were issued the scale and nature of the administrative capacity that will need to be developed is no less than daunting.¹⁰⁸

Nevertheless, it looks like Turkey will indeed proceed with the harmonization process in the area of the Schengen visa *acquis* and practice. The understanding that Turkey will not actually need to discontinue its "sticker visa" practice until accession or just before then has significantly improved the climate. This has helped to make up or overcome the nervousness among Turkish officials of having to forgo an otherwise very successful policy in terms of Turkish interests when Turkey's ultimate membership prospect is unclear. Furthermore, there is also a growing realization that the Schengen regime is very much a dynamic and evolving regime.¹⁰⁹ The Commission's proposal for the adoption of a directive allowing freer movement of people between EU member countries on the external border and neighbouring countries is a case in point. Furthermore, the EU in the context of its European Neighbourhood Policy (ENP) is advocating facilitated access to the EU for the nationals of states that would be party to ENP and meet certain conditions.¹¹⁰ Turkey's geographical location and its close relationship with countries covered by ENP would make it ideal for putting into practice some of the promises embedded in ENP.

Even if Article 8 of the Protocol integrating the Schengen *acquis* into the Framework of the EU with the Amsterdam Treaty requires the *acquis* to be adopted in full as a general principle by candidate countries. However, in practise there are already considerable examples of flexibility in its implementation. The EU and Schengen *acquis* on border controls and management is not as rigid as it may appear at a first sight, or as it is sometimes presented at official levels. The EU introduced for the 10 new member states a two-step implementation procedure in which some provisions of the Schengen *acquis* were binding and applicable from May 1st, 2004, while others, mainly those linked to the lifting of internal border controls, were applicable only after a further

107 Action Plan, p. 27 and (24) Justice, Freedom and Security, Bilateral Screening with Turkey (13-15 February 2006): Replies to Issues and Questions posed to the Turkish Authorities by the European Commission, (Document of the Secretariat General for EU Affairs, Ankara), p. 71.

108 These figures from (24) Justice, Freedom and Security, Bilateral Screening with Turkey (13-15 February 2006): Replies to Issues and Questions posed to the Turkish Authorities by the European Commission, (Document of the Secretariat General for EU Affairs, Ankara), p. 71.

109 The following section on flexibility of the Schengen regime draws on J. Apap, S. Carrera and K. Kirişçi, Turkey in the European Area of Freedom, Security and Justice (EU-Turkey Working Papers, No: 3, CEPS, Brussels, August 2004), pp. 36-39.

110 See the Commission Communication Paving the Way for a New Neighbourhood Instrument, COM(2003) 393 final, 1.7.2003.

Council Decision (Article 3 of the Act of Accession).¹¹¹ In particular border controls between current and new member states, as well as those in place at the common borders between the new member states (the so-called ‘Temporary external borders’) were maintained until January 2007. This practice had meant that the Schengen area was secured by a double-border control regime, in which the full Schengen member states retained control of their external border. Thus the Ukrainian citizen heading for Germany by road went through a first visa check at the Ukrainian-Polish frontier, and a second one at the Polish-German frontier. It is highly likely that Turkey would be subjected to a similar practice possibly of a longer duration. In turn Turkey may also be able to enjoy greater flexibility in terms of extended facilitated entry for the nationals of especially the former Soviet Union and especially Russia. Turkish officials have repeatedly stated that they attribute considerable importance to good Russian-Turkish relations and to visitors from Russia.

The EU *acquis* does not allow the kind of opt-outs that Ireland and the United Kingdom enjoy for new member countries. However, there is within the EU *acquis* practices that allow a certain degree of flexibility that might also come up in the context of EU-Turkish relations. Spain secured the agreement of its Schengen partners of a further two-step regime for its North African enclaves in Morocco, Ceuta and Melilla. For these two districts it is possible for Moroccans from the neighbouring provinces of Tetuan and Nador¹¹² to enter visa-free, thus maintaining traditionally open regional movements of people and small trade. However these Moroccan citizens would have to have a regular Schengen visa in order to move on from these two districts into mainland Spain, with frontier controls at the ports or airports.¹¹³ Another example is that of Portugal, which provided an assurance to the other Schengen members with respect to its Visa Waiver Agreement with Brazil. A Declaration attached to its Accession Treaty to Schengen provides that Portugal would readmit any Brazilian national entering the territories of the contracting parties via Portugal under the Visa Waiver Agreement between Portugal and Brazil of 9 August 1960, and intercepted after the maximum period of three months provided by Article 20.1 of the Convention Implementing the Schengen Agreement.¹¹⁴

Conclusion

Turkey has experienced massive transformation since the EU decision in December 1999 to declare Turkey a candidate country for membership. Since then the relationship between the EU and Turkey has come a long way. However, the record in respect to harmonization of Turkish policy and practice in the area of “justice, freedom and security” is a mixed one. In respect to asylum, combating illegal migration and trafficking it is possible to argue that varying degrees of progress have been achieved. Twinning projects have been completed and Action Plans have been adopted. In respect to the fight against trafficking the European Commission considers Turkey to be in line with the *acquis* even if

111 Articles 9-18 (Chapter III, Visas) of the Schengen Convention, the related implementing decisions as well as the Common Consular Instructions.

112 Except Article 5.1.d, which deals with the consultation of the Schengen Information System. It is also striking, however, to read in the Final Act of the Agreement on the Accession of Spain: “Pursuant to its national law and in order to verify whether passengers still satisfy the conditions laid down in Article 5 of the 1990 Convention on the basis which they were authorised to enter national territory upon passport control at the external border, Spain shall maintain checks (on identity and documents) on sea and air connections departing from Ceuta and Melilla and having as their sole destination any other place on Spanish territory...To the same end, Spain shall maintain checks on internal flights and on regular ferry connections departing from the towns of Ceuta and Melilla to a destination in another State party to the convention”.

113 Final Act of the Agreement on the Accession of the Kingdom of Spain, signed in Bonn on 25 June 1991, Declaration on the towns of Ceuta and Melilla: “The specific arrangements for visa exemptions for local border traffic between Ceuta and Melilla and the Moroccan provinces of Tetuan and Nador shall continue to apply”. “Moroccan nationals who are not resident in the provinces of Tetuan or Nador and who wish to enter the territory of the towns of Ceuta and Melilla exclusively shall remain subject to the visa requirement”.

114 Final Act of the Agreement on the Accession of the Portuguese Republic, Declaration on Brazilian nationals entering Portugal under the Visa Waiver Agreement between Portugal and Brazil of 9 August 1960.

Turkey needs to improve its record of prosecutions. Similarly, in respect to asylum considerable ground has been covered and the Turkish government has a long established cooperation with the UNHCR and civil society. This cooperation played a critical role in the reform of Turkey's asylum policy. In the meantime Turkish officials appear to be quite willing and ready to adopt the necessary legislation to take over full status determination from the UNHCR. However, there is considerable reticence to take that last step that would require Turkey to lift the "geographical limitation" and ensure the full application of the 1951 Geneva Convention. This is clearly a function of deep doubts that Turkish officials have in respect to the EU's commitment to Turkish membership. The concern and fear that the EU is not serious about Turkish membership drastically influences these officials' "cost-benefit" analysis and their readiness to take risks with reform. Similar remarks can be made in respect to the establishment of a non-military professional border agency. This is the area where harmonization is the least advanced. It is not surprising that in both areas, the lifting of the geographical limitation and the establishment of a border agency in line with the EU *acquis* have been deferred to 2012 and 2014 respectively. These dates are very much in line the Negotiation Framework adopted by the EU in October 2005 that does not envisage membership for Turkey before 2014, if at all.

Another area where progress has been frustrated is in respect to the negotiation and signing of a readmission agreement between the EU and Turkey. This exercise too is very symptomatic of the nature of current EU-Turkish relations. In the absence of serious prospect of membership and a perceived absence of EU solidarity with Turkey, Turkish officials fear that signing such an agreement would very much transform Turkey into a buffer-zone or "dumping ground" for the EU's illegal migrants and rejected asylum seekers. Officials are clearly concerned about facing the financial, political and social costs of signing and implementing such an agreement and find Turkey have to face problems on its own without the confidence and solidarity that comes with EU membership. Similar concerns afflict harmonization with the Schengen *acquis* governing border management and visas. Turkish officials are very conscious of the advantages and benefits of this *acquis*. However, they also recognize the cultural, economic and political advantages of the current Turkish visa system. Paradoxically, the Turkish visa system can be said to be much closer to the spirit and philosophy behind European integration's peace-building ambitions across societies and countries. This mood of Turkish officials was captured in a very telling manner by a high ranking Turkish diplomat at a meeting in September 2006 with UNHCR officials. He pointed to the Negotiation Framework's reference to how negotiations by their very nature would be "open-ended" and added that "if the EU aims to keep the negotiations open-ended so we shall also keep developments open-ended". He noted the importance that Turkey attributes to "reciprocity". On that basis he argued that during the pre-accession period Turkey would adopt those rules and regulations that are deemed to benefit Turkey. Turkey on the other hand would keep an "open-ended" approach to the adoption of policies that do not offer mutual benefit. He gave the replacement of the liberal Turkish visa policy with the Schengen visa regime and the lifting of the geographical limitation as examples of two areas where Turkey would be reluctant to adopt EU *acquis* as long as uncertainty over Turkish membership prevails.¹¹⁵

Yet, the good will among many Turkish officials is actually there. These officials do also recognize and acknowledge the advantages associated with harmonization independent of membership. It is possible to observe this from the details surrounding Turkey's asylum policies, its efforts to combat illegal migration and trafficking and border management. These policies reflect an important process of ongoing reform accompanied with a willingness and readiness to work more and more closely with civil society as well as the international community and neighbouring countries. Similarly, considerable efforts are being made at a technical level to increase the security of border management. This might partly be attributed to the sheer reality of the complexity that surrounds the management of the problems associated with the management of movement of people. At the same time it is also a function of a Turkey that is being transformed and a product of officials whose "hearts and minds" are

115 Information obtained from the diplomat and third parties present at the meeting.

being socialized into cooperation that can actually produce “win-win” outcomes for all stakeholders. Hence in respect to harmonization in the area of “justice, freedom and security” issues clearly Turkey and the EU do have a common interest to cooperate. For Turkey implementing the EU *acquis* is indeed recognised, in the word of a Turkish official, to make Turkey a more “serious” state: a state that is bound by the rule of law and international commitments. There is also a recognition that harmonization would make Turkey, paradoxically, more sovereign by helping it to achieve better border management and control. The EU has also an interest in encouraging Turkey to harmonize. A Turkey that proceeds towards accession would be a Turkey that would benefit the securing of an area of “justice, freedom and security” for the citizens of the EU but also contribute to stability, prosperity and peace in Turkey neighbourhood.

The potential for seeing harmonization through in these four important areas concerning “justice, freedom and security” is possible. Turkey through harmonization can reform itself and benefit from it. This can also have the added advantage of also winning “hearts and minds” in Europe. This would be critical in weakening the public resistance against Turkish membership. In turn the EU ought to rise to the challenge and actually treat Turkey like it treated all previous candidates by reassuring Turkey, the Turkish public and officials, that if Turkey does indeed get its homework right it will indeed become a member. So far the Turkish economy has been doing remarkably well. Hence, such assurances would further improve the performance of the Turkish economy. Such an economy might then be able to generate the kind of resources that might alleviate some of the pressure on the EU to provide pre-accession financial funds. Nevertheless, it is in the very nature of European integration that there ought to be an expression of solidarity and burden-sharing. Turkish officials are likely to continuously test their European counterparts on whether they approach and relate to Turkey as simply any other third country or a country that is due to become a member of the EU and hence demonstrate solidarity. The EU ought to show this solidarity. After all, a Turkey that is able to put into place a border management that is in line with the EU *acquis* the EU, member states and the EU public will benefit from it too. This would ensure growing convergence between Turkey and the EU whereas throwing the prospects of Turkish membership would become a recipe for a deadlock that would surely leave everybody at a disadvantage.

Appendix I: Turkey's Visa Exemption and Sticker Visa List

Countries whose Nationals Do Not Require a Visa to Enter Turkey		
<u>EU States</u>	<u>Balkan & Middle Eastern States</u>	<u>Former Soviet Union</u>
Bulgaria (3 months)	Bosnia-Herzegovina (2 months)	Kazakhstan (1 month)
Denmark "	Croatia "	Kyrgyzstan (1 month)
Finland "	Israel (3 months)	
France "	Iran (3 months)	
Germany "	Macedonia (2 months)	
Greece "	Morocco (3 months)	
Luxembourg "	Tunisia "	
Sweden "		
<u>Latin America States</u>	<u>Others</u>	
Andorra (3 months)	Hong-Kong (SAR) (3 months)	
Argentina (3 months)	Iceland "	
Bolivia "	Japan "	
Brazil "	Korean Republic "	
Chile "	Liechtenstein "	
Costa Rica (1 month)	Macau-China (1 month)	
El Salvador (3 months)	Malaysia (3 months)	
Guatemala (3 months)	Monaco "	
Honduras (3 months)	New Zealand "	
Venezuela (3 months)	Nicaragua "	
	San Marino "	
	Singapore "	
	Switzerland "	
	Uruguay "	
Countries Whose Nationals Can Enter Turkey with a Visa Issued at the Border – ‘Sticker Type Visa’ (Bandrol)		
<u>EU (and other European) states</u>	<u>Balkan and Middle Eastern States</u>	
Austria (3 months)	Albania (2 months)	
Belgium "	Bahrain (1 month)	
Cyprus (Greek Cypriot Administration) (1 month)	Jordan (1 month)	
Estonia (1 month)	Kuwait (3 months)	
Hungary "	Oman "	
Ireland (3 months)	Qatar "	
Italy "	Saudi Arabia (3 months)	
Latvia (1 month)	Serbia and Montenegro (1 month)	
Lithuania "	Slovenia (3 months)	
Malta* (3 months)	United Arab Emirates (3 months)	
Netherlands "		
Norway (1 month)	<u>Former Soviet Union</u>	
Poland "	Armenia (1 month)	
Portugal (3 months)	Azerbaijan (1 month)	
Romania (1 month)	Belarus (2 months)	
Slovakia (1 month)	Georgia (15 days)	
Spain (3 months)	Moldavia (1 month)	
United Kingdom "	Russia (2 months)	
<u>Others</u>	Tajikistan (1 month)	
Australia (3 months)	Turkmenistan (1 month)	
Canada (3 months)	Ukraine (2 months)	
Hong-Kong - China (3 months)		
USA (3 months)		