İnönü University International Journal of Social Sciences / İnönü Üniversitesi Uluslararası Sosyal Bilimler Dergisi

INIJOSS

http://dergipark.org.tr/tr/pub/inijoss

Volume/Cilt 14 Number/Sayı 1 (2025)

ARAŞTIRMA MAKALESİ | RESEARCH ARTICLE

RETHINKING TURKEY'S REFUGEE AND ASYLUM POLICY[1]

Mehmet KOCAOĞLU
Doç. Dr., Selçuk Üniversitesi,
Siyaset Bilimi ve Kamu Yönetimi Bölümü,
mehmet.kocaoglu@selcuk.edu.tr
0000 0002 1104 4223

Atıf / Citation: Kocaoğlu, M. (2025). Rethinking Turkey's refugee and asylum policy. *İnönü Üniversitesi Uluslararası Sosyal Bilimler Dergisi*, (INIJOSS), 14(1), 242-256.

https://doi.org/10.54282/inijoss.1649123

Abstract

The Syrian Civil War led to an explosion of asylum seekers, the largest seen in the 21st century. The number of persons fleeing, coupled with the rate at which they crossed international borders, have earned this outflow the title of a crisis. Although the current crisis is distinct from the one produced during the World War II, the international reaction to it is disturbingly familiar. In the wake of this crisis, many states introduced new or altered existing refugee or asylum policies. The pattern of policies, though seemingly outside the framework of international law on refugees and asylum seekers, falls well within it. In the context of the recent crisis, the uncaring reactions from governments not only stem from several self-interested policies but also from the international refugee and asylum legal system. This article explores how Turkey's refugee and asylum policy evolved. Turkey has recently introduced a new comprehensive policy that establishes an institutional framework for dealing with refugee and asylum seekers flows. The focus of the article is on laws and regulations that the Turkish government has passed in recent years. First, it explains how the international refugee and asylum system is based on national security concern. It suggests that the shortcomings within the current international refugee and asylum system pave the way for states to neglect human security. Second, it addresses the steps taken by the Turkish government regarding refugees and asylum seekers. It argues that the Turkish laws and regulations are in line with the current refugee and asylum system that gives priority to national security over human security.

Keywords: Refugee, Asylum Seeker, Human Security, National Security, Türkiye

[1] I am deeply grateful to Dr. Natasha Duncan for her invaluable insights, particularly regarding the dual lens of human security and national security in understanding refugee issues, which enriched this paper.

Received / Geliş Tarihi: 28.02.2025 Accepted / Kabul Tarihi: 12.06.2025

TÜRKİYE'NİN MÜLTECİ VE SIĞINMA POLİTİKASINI YENİDEN DÜŞÜNMEK

Öz

Suriye İç Savaşı, 21. yüzyılda görülen en büyük sığınmacı patlamasına yol açmıştır. Kaçan kişilerin sayısı ve bunların uluslararası sınırları geçme hızı birleştiğinde, bu durum bir krize evrilmiştir. Mevcut kriz, İkinci Dünya Savaşı sırasında ortaya çıkan krizden farklı olsa da buna yönelik uluslararası tepki büyük ölçüde tanıdıktır. Bu krizin ardından birçok devlet mülteci ve sığınma politikalarını değiştirmiştir. Bu politikalar, mülteci ve sığınmacılara ilişkin uluslararası hukuk çerçevesinin dışında görünse de aslında uluslararası hukuka uygun görünmektedir. Devletlerin bu tepkileri yalnızca kendi çıkarlarına yönelik politikalardan değil, aynı zamanda mültecilik ve sığınmaya ilişkin uluslararası hukuk mevzuatından kaynaklanmaktadır. Bu makale, Türkiye'nin mülteci ve sığınmacı politikasında yaşanan dönüşümü analiz etmektedir. Türkiye son yıllarda mülteci ve sığınmacı akınlarını düzenlemeye yönelik kurumsal bir çerçeve oluşturan yeni ve kapsamlı bir politika uygulamaya koymuştur. Türk hükümetinin son yıllarda çıkardığı yasalar ve düzenlemeler çalışmanın odak noktasını oluşturmaktadır. İlk olarak çalışma, uluslararası mülteci ve sığınmacı sisteminin ulusal güvenlik kaygısına dayandığını açıklamaktadır. Bu noktada çalışma, mevcut uluslararası mülteci ve sığınmacı sistemindeki eksikliklerin, devletlerin insan güvenliğini ihmal etmesinin önünü açtığı iddia etmektedir. İkinci olarak çalışma, Türk hükümetinin ulusal güvenliğe öncelik verirken mülteciler ve sığınmacılara yönelik attığı adımları analiz etmektedir. Bu çalışma, Türkiye'deki hukuki düzenlemelerin ulusal güvenliğe öncelik veren mevcut uluslararası mülteci ve sığınmacı sistemiyle uyumlu olduğunu savunmaktadır.

Anahtar Kelimeler: Mülteci, Sığınmacı, İnsan Güvenliği, Ulusal Güvenlik, Türkiye

INTRODUCTION

In the face of over 108.4 million refugees globally (UNCHR Global Trend Report, 2022) and a declared global responsibility to protect, governments continue to reject persons seeking asylum. The most glaring recently has been the difficulty Syrian refugee's encounter in their attempt to receive asylum. Governments' closed-door policies toward asylum seekers today are reminiscent of states' refusal to accept Jews fleeing Europe in the years of the war (Carens, 2013, p.193). The international community underperformed then and continues to do so in this current iteration. These crises demonstrate the national interest imperative of states that leaves little room for asylum seeking across borders despite the international legal framework to protect those whose governments cannot or will not protect as codified in the 1951 Convention on the Protection of Refugees. The whole international refugee and asylum system is based on the idea of controlling the refugee's right of movement (Behrman, 2018, p.44).

In the wake of this crisis, many states (neighboring or more distant destinations) introduced new or altered existing refugee or asylum policies. The popular reaction of rich, Northern governments and the Gulf States, geographically situated far away from the refugee and asylum seekers producing countries, has been largely restrictionist (Chatty, 2021, p.1285). For frontline countries, open borders began to close as domestic systems were overwhelmed (Berti, 2015, pp.47-48). The pattern of responses, though seemingly outside the framework of international law on refugees and asylum seekers, falls well within it. The 1951 Convention Relating to the Protection of Refugees sets minimum standards for state party's obligations to asylum seekers and refugees. The minimum standards, however, give way to grey areas that states willfully exploit in their national interest, defined in terms of national security and the security of their nationals (Edwards, 2009, p.783).

Refugees and asylum seekers straddle a thin security line with regard to states' security interests. They are non-nationals who themselves pose potential threats (real or perceived) to the receiving state. Yet, refugees or asylum seekers are products of an insecure environment, whose human security hang in the balance. This contradiction produces a tension between human and national security wherein states elevate the latter at the expense of the former. The subordination of human security takes place in an international legal environment on refugees and asylum seekers. In this paper, we examine state behavior in a climate of heightened human

security needs against a backdrop of law meant to address these needs. It can be asked to what degree does the 1951 Convention effectuate human security for asylum seekers or refugees. Moreover, it can be asked how does the legal framework of the 1951 Convention undermines aspirations for human security. It can be argued that states take an instrumentalist approach to compliance with refugee law. In doing so, they fulfill minimal obligations under the law. The absence of deeper commitments to rights provision and embedded national security claims in refugee and asylum law undermine human security provision. In other words, the inherent flaws of legal framework erode prospects for human security provision by states, which circumvent expectations through the loopholes pervasive in the law. In the context of the recent crisis, the uncaring reactions from governments not only stem from several self-interested policies but also from the international refugee and asylum legal system.

This studys also analyzes Turkey's response to the recent refugee and asylum seeker crisis to show how states give priority to national security over human security when it comes to rights of refugees and asylum seekers. It serves as an ample case study of state behavior in response to refugees and asylum seekers as Turkey is a frontline country to the current refugee and asylum seeker crisis and a party to the 1951 Convention Relating to the Protection of Refugees and its Protocol. Turkey is also party to the European Convention on Human Rights, the International Covenant on Civil and Political Rights, and the Convention against Torture. Since the advent of the crisis, Turkey has introduced a new, comprehensive immigration policy that, among other things, establishes an institutional framework for dealing with refugee and asylum seekers flows. It examines the development of Turkish refugee and asylum policy with close attention to the most recent policy reforms. It compares the policy approaches that the Turkish government enacted against the 1951 Convention to analyze compliance and the place of human security concerns. The paper is divided into three sections. Following the introduction, it examines the flaws of the 1951 Convention and international refugee and asylum system. Next, it discusses the Turkish case with a critical eye toward its compliance to the law and interests in security. It ends with a discussion and conclusion to study.

1.INTERNATIONAL REFUGEE AND ASYLUM SYSTEM: A COVER TO HIDE NATIONAL SECURITY CONCERNS

Over the course of fifty years, the international community's commitment to human security and the limits of the 1951 Convention have been tested. Human security is an unconventional understanding of the security referent—that is, what is to be protected—threats and the absence thereof. It is people-centered, as opposed to state-centric. It understands that threats to human life, dignity, and safety come from within and without and from state or non-state actors (Waisová, 2003). Importantly, as a concept rooted in liberal doctrine, the provision of human security is not only a national imperative but also a universal one. Human security is an umbrella term that includes several elements such as economic security, food security, health security, environmental security, personal security, community security, and political security (UNDP Human Development Report, 1994: 23,24).

Traditional conceptualizations of security narrowly define security in terms of national security, with the state and its sovereignty as the referent objects. Threats are external and originate in the behavior of other states and the structure of the international system. The means for confronting or deterring these threats is military force. Whereas, a national security framework subordinates the security of the individual to that of the state, human security stresses the security of the individual, whose protection is threatened by deleterious politico-economic or environmental conditions within states. A more encompassing view of security suggests a symbiosis between human and national security, in that the security of the state is contingent on the security of peoples, both internally and externally to the state (Waisová, 2003).

Conscientious efforts toward protecting human security are still wanting despite the institutionalization of human rights occurring since the end of the Second World War. The architecture for human security is embedded in the international human rights regime. Persons fleeing persecution are concerned, recognition of and commitments to a universal understanding of human security has long been established. The 1951 Convention Relating to the Protection of Refugees and particularly the 1967 Protocol reflect this obligation toward human security universally, though arguably in a limited sense.

The 1951 Convention is rights-based legal instrument that also defines the status of displaced persons as refugees. It establishes a set of minimum standards to which state parties are accountable. Based on the law, states are to practice "non-discrimination, non-penalization, and *non-refoulement*" toward persons fitting the definition of a refugee in the interest of universal principles of human security. Refugee rights cover extend to the areas of the practice of religion, non-discrimination on the basis of race, religion, and country of origin, employment, association in civic or labor groups, primary education, and movement. The level of provision of these rights vary—some to the extent as those afforded to citizens (the range in this category is limited), others (the majority) to the degree as those afforded asylum seekers. Going above and beyond these protections relies on non-instrumentalist compliance to the law.

Alongside these human security underpinnings of refugee law, there are inclusions, that is, exceptions to the provision of human security, for national security in the 1951 Convention. The duality of refugees—and security for that matter—is reflected in the law as expressed in Articles 9, 32.1, and 33.2. Even with the foundational principle of *non-refoulement* (Art.33.1), this protection is invalidated when it comes to national security threats. After all, the refugee protection framework was negotiated in the usual context of national interest and international relations (Edwards, 2009).

States' national security imperative is not only present in the law but also in the agencies tasked with implementing or monitoring compliance with these laws. For example, the United Nations High Commissioner for Refugees (UNHCR) was created as the principal body charged with aiding Europeans who were displaced because of the war. Its geographical purview expanded in tandem with the 1967 Protocol. While still preserving the principle of *non-refoulement*, the agency emphasizes repatriation (Adelman, 2001).

Moreover, the 1951 Convention is also problematic in its conceptual and normative framework to protect vulnerable people. It employs a very narrow definition of refugee, emphasizing only a person fleeing from his or her country for fear of persecution due to race, religion, social, or political membership qualifies as a refugee—a left over from the original intent of the designation after WWII (Singer & Singer, 1988, p.114). This definition makes it easy for governments to reject granting refugee status to persons running away from their country and seeking asylum for other non-included reasons. It impedes granting refugee status during complicated times when the state cannot protect the fundamental human rights of its own people (Shacknove, 1985, p.276). According to Carens (2013, pp.200-201), the definition of the Convention paves the way for granting refugee status for those fleeing their country because of their political views, but it makes it very difficult to get refugee status for those fleeing civil war. Furthermore, persons escaping political violence are not regarded as refugees unless they cross international borders (Matthew, 2013, p.650).

Although the 1951 Convention is legally binding, enforcement is weak, compliance is largely instrumentalist, and mechanisms for more expansive human security protections are absent. For instance, while the *non-refoulement* principle sets a strict standard against governments' removal or premature repatriation of refugees, the same stringent framework regarding the rights and freedoms governments should guarantee refugees and asylum seekers is weak. There is no enforcement mechanism to ensure the social and economic rights to refugees and asylum

seekers. In practice, there is substantial room for governments to deny refugees'and asylum seekers' rights and place them in camps (Ferracioli, 2014, p.130). Encampment itself is oxymoronic: a supposed place of safety, permissible under the refugee protections regime, is often a source of insecurity for refugees and asylum seekers (Berti, 2015, pp.47-48).

The *non-refoulement* principle results in unintended consequences for the population it meant to protect. Many asylum seekers end up resigned to the first country in which they arrive and the third countries are reluctant to resettle them (Carens, 2013, p.207). The 1951 Convention is a foundational legal instrument for many regional agreements. From it, the principle of *non-refoulement* has been adopted widely, such as in the case of the Dublin Regulation. The first country principle—derived from *non-refoulement*—produces an unfair distribution of refugees and asylum seekers among states since the first countries for the bulk of refugees are neighboring countries (Moore & Shellman, 2007). These receiving countries resemble the countries of origin of refugees and asylum seekers: developing states—refugees tend to come from poorer, less democratic states. It follows that the disparity among countries hosting refugees and asylum seekers is huge. Poor countries host more refugees and asylum seekers than rich countries (Dummet, 2001, p.35). No Western country is near the top of the list of countries that hosts refugees and asylum seekers (UNCHR Global Trend Report, 2022). The duty of helping refugees and asylum seekers is not only the preserve of neighboring countries but also a global responsibility. The first-country principle of the current refugee and asylum system creates a shield around the rich North (Gibney, 2015, p.449).

Altogether, these shortcomings within the current refugee and asylum system give states the leeway to neglect human security while keeping within the parameters of the law; thus ineffective (non-people-centered) responses to the refugee crisis. The policies and the practices engaged in by governments during the asylum seeker crisis demonstrate the loopholes of the refugee and asylum system that are all too often exploited to keep asylum seekers beyond frontiers or provide anemic protections (Agier, 2011, p.18).

States to prioritize national security have also enhanced some implementations in recent years. In the midst of refugee and asylum seeker crisis, the policy responses to the cross-border movement of displaced persons fall into five main categories (Hurwitz, 2009, pp.18-19). The first set aim to stop refugees and asylum seekers in the source or transit country: fining transportation agencies for transporting persons without proper entry documents, requiring visas, and interdicting vessels in territorial waters. The second category relate to the processing of refugee status: limiting application times, requiring the application process begin in the first safe country, and designating international zones at airports. The third type of policies weakened forms of refugee and asylum seeker protection by confining it to temporary or subsidiary protection. The fourth category of policies involved "trading protection" through deal-making: governments created safe heavens abroad in another country. The EU-Turkey negotiation is a case in point. Finally, some government policies related to refugee and asylum seeker reception: limiting welfare benefits for refugees/asylum seeker and/or retaining refugees/asylum seekers in detention centers or encampments for extended periods. Encampment, one of the solutions for dealing with a refugee and asylum seeker crisis, has become the de facto solution for any refugee and asylum seeker crisis. These policies are generally restrictionist, deemphasizing the security of persons in search of safety and a life of dignity. In other words, the human security of refugees and asylum seekers was met minimally or not at all.

The Convention and international refugee and asylum seeker system make it easy to prioritize national security concerns over human security. In the context of Turkey, it can be found evidence of a state that not only carries a large burden of refugees and asylum seekers but takes a state-centric approach to the crisis. Even when human security is privileged in policy, it is subordinated to national security concerns. Turkey's conflictual response to the current crisis, and its traditional responses to refugees and asylum seekers for that matter can be explained by

the purported antagonism between human and national security and the weakness of the international refugee regime that facilitates this ordering preference.

2. STEPS TAKING BY TURKEY ELEVATING HUMAN SECURITY OF REFUGEES AND ASYLUM SEEKERS

As of 2022, forcibly displaced people numbered 108.4 million globally, 35.3 million of whom were refugees. These people fled their countries for an array of reasons such as escaping totalitarian regimes, internal or interstate wars, poverty, racial-, gender- or religious-based violence, and environmental disasters. More than half of the refugees and asylum seekers came from Syria, Afghanistan and Ukraine (UNCHR Global Trend Report, 2022). The Syrian case is particularly egregious and gives rise to the largest flows of displaced persons moving internationally. According to the UNHCR (2023), over six million people were internally displaced; overall 15.3 million Syrians within the country are in need of humanitarian assistance. Externally, more than six million Syrians sought asylum in neighboring countries, with Turkey hosting the largest share of Syrians. Nearly one million have filed asylum applications in European countries. Besides Syrians, other populations settled within Syria became displaced including Palestinians and Lebanese (Berti, 2015, pp.47-48).

Several factors have an impact on the refugee and asylum policy of a country. Past experiences with asylum seekers are influential factors (Kleist, 2017; Gatrell, 2017). Turkey is a case for which the volume of refugees and asylum seekers is a major driver of policy preferences. Its past experience with refugees and asylum seekers—dating back hundreds of years—and the current crisis have had substantial impacts on its refugee and asylum policies.

Turkey was the one of the first signatories to the 1951 Convention Relating to the Protection of Refugees. Based on the geographic and temporal provisions of the 1951 Convention, Turkey only recognized persons coming from Europe due to the incidents occurring before January 1, 1951 as refugees. While Turkey lifted the time limitation in 1967, it kept the geographic limitation. Turkey's decision to impose geographic and time limitations on the convention demonstrates a prioritization of national security concerns over human security concerns.

At the close of the 20th century, Turkey's refugee and asylum policy became even more restrictive as the volume of non-Convention (that is, non-European) asylum seekers increased. Even European asylum seekers were denied refugee status but were given temporary protection instead (Kirişçi, 2013, p.173). In 1994, following an influx of Iraqi asylum seekers escaping the Gulf Crisis, Turkey took an important step that would affect its refugee and asylum policy (Kirişçi, 1996, pp.297-298). Driven by security concerns, Turkey passed the 1994 Regulation on Refugees (İçduygu & Keyman, 2000, p.386). This was Turkey's first legal framework to deal with designating refugee status.

The 1994 Regulation remained the framework for asylum and refugee matters for almost 20 years until it was replaced by the Law on Foreigners and International Protection in 2013. Before then, the flow of refugees and asylum seekers was low—between 1997 and 2007 Turkey received 31,000 applications for refugee status (İçduygu &Yükseker, 2012) This changed with the Syrian Civil War. Once again, large scale flows of non-Convention refugees and asylum seekers ushered in policy changes.

In 2011, thousands of Syrians crossed the border into Turkey, which shares a 911 km border with Syria. The border was relatively porous until fortifications increased in the wake of the heightened volume of border-crossings (discussed below). Besides the geographic proximity, family ties were a major draw for some Syrians to Turkey. For many Syrians, Turkey is home to their relatives. Numerous people in southern Turkey have Arab heritage and speak Arabic.

Moreover, Turkey is a Muslim majority country with cultural similarities with Syria—features that make it easier for Syrians to adjust to the host country and thus an attractive destination.

When the Syrian Civil War reached its peak and the number of Syrians fleeing into Turkey grew, the 1994 regulation became incapable of coping with the influx. In short order, when the number of Syrian asylum seekers climbed into the millions, Turkey enacted a new law and several regulations related to refugees and asylum seekers. In 11 April 2013, the 2013 Law on Foreigners and International Protection was introduced. The law is followed by the 2014 Temporary Protection Regulation, The 2016 Regulation of the Law on Foreigners and International Protection, The 2016 Regulation on Work Permits of Foreigners under Temporary Protection, The 2016 Regulation on Work Permit of International Protection Applicants and International Protection Status Holders and the 2016 Law on International Labor.

Hailed by observers as promising in many ways, the 2013 Law entails many positive changes that emphasize human security. It reinforces early sentiment expressed by the Turkish foreign minister, Davutoğlu (2012), that "it was Turkey's responsibility as a neighbor to help Syrians fleeing to Turkey. … 'This is our ethical and human responsibility to our brothers and sisters in Syria'". Fundamentally, the article 4 of the 2013 Law on Foreigners and International Protection confirms the *non-refoulement* principle. What elevates human security is the expanded scope of protections of asylum seekers—broader than the international refugee legal framework requires. According to the article 63 of the 2013 Law on Foreigners and International Protection, Non-Convention asylum seekers are still only afforded temporary protection but this now includes provisions for conditional refugee status and subsidiary protection.

The 2013 Law also reduces the ambiguities and complexities from the asylum application process. The 2013 law enhances human security when dealing with refugee influx. For instance, although applicants are supposed to present paperwork proving their identity, if such documents are missing, applicants' statements would be acknowledged as the truth by authorities. Also, it explicitly declares that asylum seekers would not be punished for illegal entry into Turkey and be subjected to the administrative detention procedures. Priority in the evaluation process of the applications is given to people who were tortured or experienced physical, psychological or sexual violence. Another new development is that applicants could apply for any status given in the 2013 Law on behalf of their family members. Finally, applicants receive detailed information about the application process, their rights, and provided with an interpreter, if necessary. Applicants can appeal decisions if applications are denied.

It is stated in the article 68 of the 2013 law that a person who is under administrative detention because of the reasons in accordance with the law would be notified in writing about the reason why she is under administrative detention and she has the right to meet with her lawyer, legal representative, and officials from the UNCHR. The law rigorously declares that the time period of the administrative detention cannot exceed 30 days and the person under the administrative detention could appeal this administrative action in the penal court of peace and the court has to reach a decision regarding the appeal within 5 days. All of these improvements point out that Turkey's Refugee Policy have been moving away from the swirl based on security reasons and evolving to more human security.

Another sign for giving priority to human security is that opportunities for employment are extended to asylum seekers. As stated in article 4 of refugees or subsidiary protection status holders, a person with either status may start a business or find a job, except for some jobs and businesses that the 2013 Law specifies foreigners are disallowed to work. Persons who have been living in Turkey for three years and are married to Turkish citizens or have Turkish children are exempted from these restrictions, however, and have some added advantages (Art. 18). However, as stated in the article 6 of the Regulation on Work Permit of International Protection Applicants and International Protection Status Holders, applicants for international protection

and conditional refugee status may apply for work permits six months after they apply for international protection. Whereas international protection or conditional refugee status holders may be subject to restricted access to the labor market for persons due to changes in the labor market and the economy, refugees or conditional refugees with the aforementioned family ties are not.

Some rights of asylum seekers are ensured by the law (Ineli-Ciger, 2017). The Article 89 of the 2013 (Foreigners and International Protection Law, 2013) law emphasizes that asylum seekers would benefit from free education, health services and also that asylum seekers in need should receive public assistance services. Although all of these steps taken by Turkish government can be seen measures to elevate human security, there are some drawbacks causing a return to national security in Turkey's refugee and asylum policy.

3. THE RETURN TO NATIONAL SECURITY

Turkey ran its refugee and asylum regime with the 1994 Regulation for a long time. The percentage of asylum seekers wasn't a substantial part of people flow to Turkey until the Syrian Civil War. Turkey received 31,000 applications for refugee status from 1997 to 2007 (İçduygu &Yükseker, 2012, p.449). The Syrian Civil War caused Turkey to change its policy and laws dealing with the refugee and asylum crisis.

Turkey was the one of the first states that signed the Convention in 1951. While ratifying the Convention, Turkey held geographic and time limitations. As a result, Turkey, complying with the geographic limitation in the Convention, announced that a person coming from Europe would be regarded as a refugee in Turkey. Also, according to the time limitation in the Convention, people coming from Europe due to the incidents that happened before January 1, 1951 would be able to benefit from refugee status in Turkey. Having land and maritime borders with Europe, Turkey is an important temporary stop for refugees and asylum seekers to reach Europe. While Turkey lifted the time limitation in 1967, it kept the geographic limitation. The main purpose of this policy is to prevent Turkey from becoming a buffer zone between Europe and the rest of the world. Turkey's decision to impose geographic limitation on the 1951 Convention demonstrates a prioritization of national security over human security.

Having a look at some aspects of the legal statute of Turkey as to international protection, it is easy to realize how Turkey is prioritizing national security as a main incentive of its refugee and asylum policy. The general principles of international protection in the 2013 law indicate concerns about human rights; however, the protection of the nation-state before people (non-nationals in particular) remains. Put differently, although human security concerns are salient, national security concerns are still pervasive. This pattern is most apparent with the maintenance of the geographic limitation—the main barrier to the granting of refugee status to non-Convention asylum seekers in Turkey. Keeping the geographic limitation means that regardless of need, non-Europeans are not afforded refugee status in Turkey. Due to Turkey's geographical limitations, it has opted to grant temporary protection status to Syrians rather than refugee status. While Turkey might be denying refugee status with the geographical limitation, it is in line with the standards set out in the international law. The international legal framework allows for this and other limits on rights, if it is deemed necessary for national security.

Aspects of the 2013 Law exemplify this contradiction (and inherent flaws of the 1951 Convention) wherein features of the law limit rights and freedoms of asylum seekers. Take for instance, the confining of asylum seekers' mobility as stated in Articles 71 and 77 of the 2013 Law. Applicants for international protection have to live in the city, camp, or assigned asylum-seeker reception center. According to the article 91 of the 2016 Regulation of the Law on Foreigners and International Protection, if asylum seekers intend to leave the assigned place, even temporarily, they must obtain permission from the officials, without which a rejection of

the application would result. Article 31.2 of the 1951 Convention says, "The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. …" The interpretation of "which are necessary" can be so broad as to give room for the stipulations set out in the Turkish policy, and thus infringe on rights.

This restriction limits free movement for the purposes of maintaining national security. In this regard, asylum seekers are treated differently and framed as threats to public safety. Citizens in a democratic country have freedom of movement even though there is a possibility that they could commit a crime or undermine public safety using this freedom. If they do so, the security forces would get involved and the transgressor of the law would be tried and punished according to law. If the freedom of movement of all citizens is not restricted although there are some possibilities that any citizen poses some risks for national security, arguably the movement of asylum seekers should not be confined for the same reason.

Further still, the residential confinement of asylum seekers violates their freedom of association. It ignores the fact that asylum seekers are human beings and are embedded in a social environment. Asylum seekers exist in social relations and have family members, relatives and friends across the country. Forcing asylum seekers to live in a certain city restricts them from associating with their family members, relatives and friends. This restriction leads to a negative impact on refugees and asylum seekers. Rather, asylum seekers without any residency restriction would easily blend into local society and overcome the negative impacts that are caused by the horrible situation in their home country. In this case, human security protection could lend to national security provision.

Compliance with international refugee law, while simultaneously promoting the national interest, is evident in the 2013 Law on Foreigners and International Protection. It serves to allay public fears and reassert the centrality of citizens as the state's interest. It also functions to assert the bounds of the asylum seekers' rights claims—asylum seekers are entitled to no more than what the state grants its own citizens in rights and services. Article 88 of the 2013 Law on Foreigners and International Protection declares "that the rights of asylum seekers and the services that are provided by the government cannot be interpreted more broadly than the rights of citizens and the services that the citizens get. The 1951 Convention acknowledges that states will at times unevenly afford privileges or rights based on citizenship status. From a human rights perspective, there is no moral ground that justifies why citizens should get priority over asylum seekers in this regard. From an instrumentalist perspective, protections (though minimum standards) are met; so are concerns for the national interest.

Article 91 in the 2013 Law on Foreigners and International Protection entitles people who have fled their country and arrived in Turkey in large numbers, temporary protection status to those who aren't regarded as refugees but can be considered conditional refugees and beneficiaries of subsidiary protection. According to this article "the entry process into the country and the rights and obligations of these persons will be determined in a regulation that will be passed by the cabinet of ministers."

The 2014 Temporary Protection Regulation that arranges the temporary protection was published in the Official Gazette of Turkey in October 22th 2014 and came into force. The regulation was enacted after the influx of people from Syria to Turkey in order to respond to the influx and to show the procedures of temporary protection and the rights and obligations of the people that are the beneficiaries of the temporary protection status. But it isn't explicit what sort of differences there are between the temporary protection status and other types of international protection status. One of the differences is that the people who want to benefit from the temporary protection status are supposed to have fled from the country in mass.

Another difference is that according to article 14 of the Temporary Protection Regulation, the individual application of international protection of people benefiting from this status wouldn't be put in process. However, the UNCHR is getting applications from people with the temporary protection status and are resettling them in a third country.

People with the temporary protection status may benefit from the same procedures and rights as other international protection status provide. Article 6 of the 2014 Regulation categorically declares that people with this status cannot be returned to their home country and fined because they have entered the country via illegal methods.

The most important drawback of this regulation is that it is not evident when this status would end or persons with this status may benefit from another sort of international protection status. Therefore, people won't have any idea how long they would be hosted in the country and cannot plan their life. People who are forced to be in this position and this state of precariousness are inflicted with some serious emotional damage.

Article 14 of the 2014 regulation emphasizes that repatriation is inevitable after the temporary protection ends. But, because there is no time limit for this status, a person with this status could stay in the country providing the problems in their home country still exist. If it is taken into consideration that it would take a long time to solve the problems caused by a complicated trouble such as civil war, international war etc., the repatriation of people with the temporary protection status would lead to some serious problems for them. People during their stay in the host country build a new social environment. They start a new life that includes getting married and getting a job, having kids and acquiring property. Thus, not setting a time limit for the temporary protection status in the regulation points out an understanding that is in line with the international protection system and is based on a concern of dispositioning asylum seekers as soon as possible.

Article 29 of the 2014 regulation states that people with the temporary protection status may apply to the ministry of Labor and Social Security for work permits that are valid in certain regions of the country and fields. Though this article declares that getting a work permit for people with that status is possible, a new regulation that was enacted in January 15th 2016 made getting a work permit very difficult (Regulation on Work Permits of Foreigners under Temporary Protection, 2016).

Article 4 of the 2016 Regulation on Regulation on Work Permits of Foreigners under Temporary Protection states that people with this status aren't allowed to start a business and be employed without the necessary permission. In the 2016 Law on International Labor that was enacted in the later date, Article 23 states that anyone or any company that employs a foreigner without a work permit would be fined 6,000 Turkish Lira for each foreigner without the work permit and any foreigner who works without a work permit would be fined 2400 Turkish lira. Also, any person with this status and starts a business would be fined 4800 Turkish Lira.

There is another method called the quota system in the 2016 Regulation on Work Permits of Foreigners under Temporary Protection that makes it difficult to get a job for people with this status. Article 8 in the regulation sets a condition that the number of people with the temporary protection status cannot exceed 10 percent of the total employees.

The restriction on work permits for people with temporary protection status violates their right to labor. In fact, these restrictions hurt people with this status in many ways because they have left everything they had in their home country. Poverty and preclusion from getting a job leads to negative impacts on their psychological and physical health as well as their social life.

The drawbacks of these restrictions on work permits for people with the temporary protection status violate not only their right to labor and freedom of trade but also damage

people who would trade or employ these people. Thus, these restrictions violate the rights of both the people with temporary protection status and citizens with ordinary rights and freedoms. Without these restrictions both citizens and people with the temporary protection status would be better off.

The most troublesome aspect of the 1951 Convention relates to the room given states to take precautions because of threats to national security. Article 9 of the 1951 states, "Nothing in this Convention shall prevent a Contracting State, in time of war or other grave and exceptional circumstances, from taking provisionally measures which it considers to be essential to the national security in the case of a particular person…." Amorally, the preservation of the nation-state is the utmost purview of leaders. Where human security is concerned, this approach is problematic when persons are in search of protections for their lives. In the age of transnational terrorism, Islamophobia, and rising populism, the already meager space for asylum seekers is further narrowed as states "close borders" in the name of national security, exploiting the loop holes of international refugee and asylum system.

Turkey invoked national security claims and closed its borders in times of acts of terror, whether or not the terror attacks were related to the asylum seekers. The most significant problem is that it is sometimes difficult for people fleeing to Turkey to cross the border. Amnesty International reported that people were stopped at the borders in some cases because they did not possess a passport or did not need any emergency medical attention. Indeed, there were some shooting incidents at people that were trying to cross the border. In 2014, there were 17 fatalities (www.amnesty.org, 2024). On multiple occasions, Turkey temporarily shut down its borders in the wake of attacks in Turkey or when the intelligence community gave warnings about a possible terror attack or entry of ISIS members among refugees (Al Khatieb, 2015; www.hrw.org.tr, 2014). Take the terror attack in Reyhanlı, Hatay in 2013 for instance. Forty-nine people were killed. After this attack the borders were closed temporarily. Similarly, in 2015, another terror attack was carried out in Suruç, Şanlıurfa in which 31 people died. Consequently, the borders were completely shut down again (www.bbc.com, 2013; www.hurriyet.com.tr, 2015). After these attacks Turkey decided to build a wall along its border with Syria to prevent terrorists from infiltrating the country (Babacan, 2017). Undoubtedly, this wall would also make it difficult to reach Turkey for people fleeing for their life. Persons will be funneled through check points which may mean traveling longer distances to reach the check points before reaching safety.

After 34 soldiers were killed in attack in Idlip in February of 2020, the Turkish Government opened its western borders and announced that people with different types of international protection status could travel towards Europe. This decision represents the mindset that regards refugees and asylum seekers as a weapon that can be used at the international politics.

At times, states make tradeoffs between national and human security. When this occurs, as discussed in the case of Turkey, it gives priority to security concerns over refugee's and asylum seeker's rights in the implementation of the refugee policy. The decision of closing borders to asylum seekers violates their (human) right to seek asylum and the right to life. The decision of shutting down the borders brings about irrevocable damages for people that are in need of protection. Turkey becomes morally responsible for this damage. Ironically, at the same time, closing the border because of a threat to national security skirts the spirit and stretches the boundaries of international refugee and asylum system but does not outright violate the law.

CONCLUSION

The universalism demanded by human security is theoretically the bedrock of the international refugee and asylum regime. Moreover, the Declaration of Human Rights, Article 14.1 enshrines the right to "seek and enjoy" asylum in other countries to all. Alas, although

codified in international law, praxis, especially in times of crisis, suggests an antagonism between the national security and human security of a state's and its citizens and the human security of the other. In practice, self-preservation dominates despite commitments to human security articulated in the international refugee and asylum law. The legal framework itself makes room for subordination of human security. It would be a mistake to blame individual states and accuse them of flouting the rules and principles of the international refugee and asylum regime without considering the flaws of the protections system. Turkey's refugee and asylum policy, in line with the international refugee and asylum system, is a proof of how human security is subordinated to national security. Even when human security is privileged in Turkey's refugee and asylum policy, it is subordinated to national security concerns. Turkey's conflictual response to the current crisis, and its traditional responses to refugees and asylum seekers for that matter can be explained by the purported antagonism between human and national security and the weakness of the international refugee and asylum system that facilitates this ordering preference.

The framework of the 1951 Convention is incapable of solving this crisis since its design is state-centric—placing the interests and sovereign rights of state parties before their moral obligations to persons seeking refuge or human security. States have real security concerns with large inflows of refugees and asylum seekers—social services are stressed, labor markets are stretched, housing costs rise, overall politico-economic pressures aggravated—. The weak enforcement of international protections incentivizes non-compliance or reluctance to comply. Avoidance of protections is made possible through national security claims accommodated by refugee law. Movement toward greater protections and an elevation of human security is possible with stronger mechanisms for global burden-sharing.

Çıkar Çatışması Bildirimi/ Conflict of Interest Statement:

Yazar, bu makalenin araştırılması, yazarlığı ve yayımlanmasına ilişkin herhangi bir potansiyel çıkar çatışması beyan etmemiştir. / The authors declared no potential conflict of interest regarding the research, authorship, and publication of this article.

Destek/Finansman Bilgileri/ Support Financing Information:

Yazar, bu makalenin araştırılması, yazarlığı ve yayımlanması için herhangi bir finansal destek almamıştır. / The authors have received no financial support for the research, authorship, and publication of this article.

Etik Kurul Kararı/ Ethics Committee Decision: Etik kurul gerektiren bir çalışma değildir. / Ethics committee pieces are not a study.

Yazar Katkı Oranı: / Author Contribution Rate: Yazarların katkı oranı eşittir. / The contribution rates of all authors are equal.

REFERENCES

Adelman, H. (2001). From Refugees to Forced Migration: The UNHCR and Human Security. *International Migration Review* 35(1), 7-32.

Agier, M. (2011). *Managing The Undesirables*. Translated by David Fernbach, Polity Press.

Al Khatieb, M. (2015). *Turkey Suriye Sınırındaki Kapıları Niçin Kapattı?[Why did Turkey shut down its border check-points?]* (Almonitor, 18 March 2015), http://www.al-monitor.com/pulse/tr/originals/2015/03/syria-turkey-close-border-bab-al-salam-security-measures.html.

Behrman, S. (2018). Refugee Law as a Means of Control. *Journal of Refugee Studies*, 32(1), 42-62.

Berti, B. (2015). The Syrian Refugee Crisis: Regional and Human Security Implications. *Strategic Assessment* 17(4), 41-53.

Carens, J. (2013). *The Ethics of Immigration*. Oxford University Press.

Chatty, D. (2021). Introduction to Special Issue: Displaced Syrians. *The Journal of Refugee Studies* 34(2), 1284-1290.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987), https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading

Convention for the Protection of Human Rights and Fundamental Freedoms' (adopted 4 November 1950, entered into force 3 September 1953) https://www.eods.eu/library/CoE_European%20Convention%20for%20the%20Protection%20of%20Human%20Rights%20and%20Fundamental%20Freedoms_1950_EN.pdf

Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-relating-status-refugees

Davutoğlu, A. (2012). Minister of Foreign Affairs of the Republic of Turkey, http://www.mfa.gov.tr/speech-delivered-by-mr_-ahmet-davuto%C4%9Flu_-minister-of-foreign-affairs-of
-the-republic-of-turkey-at-the-un-security-council_30-august-2012_-new-york.en.mfa

Dummet, M. (2001). *On Immigration and Refugees*. Routledge.

Edwards, A. (2009). Human Security and the Rights of Refugees: Transcending Territorial and Disciplinary Borders'. *Michigan Journal of International Law*,30(3), 763-807.

Ferracioli, L. (2014). The Appeal and Danger of a New Refugee Convention. *Social Theory and Practice* 40(1), 123-144.

Gatrell, P. (2017). Refugees-What's Wrong with History. *The Journal of Refugee Studies* 30(2), 170-189.

Gibney, M. J. (2015). Refugees And Justice Between States. *European Journal of Political Theory* 14(4), 464-480.

Hurwitz, A. (2009). *The Collective Responsibility of States to Protect Refugees*. Oxford University Press.

İçduygu, A. & Deniz Yükseker (2012). Rethinking Transit Migration in Turkey: Reality and Re-presentation in the Creation of a Migratory Phenomenon. *Population, Space and Place*, 18, 441-456.

İçduygu, A. & Keyman, F. (2000). Globalization, Security, and Migration: The Case of Turkey. *Global Governance* 6(3), 383-398.

Ineli-Ciger, M. (2017). Protecting Syrians in Turkey: A Legal Analysis. *International Journal of Refugee Law,* 29(4), 555-579.

International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights

Kirişçi, K. (1996). Is Turkey Lifting the Geographical Limitation? The November 1994 Regulation on Asylum in Turkey. *International Journal of Refugee Law* 8(3), 297-298.

Kirişçi, K. (2013). Turkish Asylum Policy and Human Rights. In Z. F K. Arat (Eds.), *Human Rights in Turkey*, (pp.170-184). University of Pennsylvania Press.

Kleist, J. O. (2017). History of Refugee Protection: Conceptual and Methodological Challenges. *The Journal of Refugee Studies* 30(2), 161-169.

Matthew, L. (2013). Who are Refugees?. *Law and Philosophy* 32(5), 645-671.

Moore, W. H. & Shellman S. M. (2007). Whither Will They Go? A Global Study of Refugees' Destinations, 1965–1995. *International Studies Quarterly* 51(4), 811-834.

Nuray Babacan, *Turkey builds 700 kilometers long wall on Syrian Border* (hurriyetdailynews 15 June 2017) http://www.hurriyetdailynews.com/turkey-builds-700-kilometer-long-wall-on-syrian-border-114336

Protocol Relating to Status of Refugees (adopted 16 December 1966, entered into force 4 October1967). https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-relating-status-refugees

Regulation of the Law on Foreigners and International Protection (17 March 2016), <https://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=5747fb7a4&skip=0&query=Regulation%20of%20the%20Law%20on%20Foreigners%20and%20International%20Protection

Regulation on Work Permit of International Protection Applicants and International Protection Status Holders (26 April 2016), https://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=582c6ff54&skip=0&query=Law%20on%20International%20Labor%20&coi=TUR

Regulation on Work Permits of Foreigners under Temporary Protection (15 January 2016), https://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=582c71464&skip=0&query=Work%20Permits%20for%20Persons%20with%20the%20Temporary%20Protection%20Status&coi=TUR

Regulation on Work Permits of Foreigners under Temporary Protection (15 January 2016), https://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=582c71464&skip=0

&query=Work%20Permits%20for%20Persons%20with%20the%20Temporary%20Protection%20Status&coi=TUR

Reyhanlı Saldırıları [Attacks in Reyhanlı] (BBC, 13 May 2013), http://www.bbc.com/turkce/haberler/2013/05/130513_reyhanlida_ne_oldu.

Şanlıurfa Suruçta Büyük Patlama [A Big Explosion in Suruç, Şanlıurfa] (Hürriyet, 20 July 2015), http://www.hurriyet.com.tr/sanliurfa-suructa-buyuk-patlama-29591017

Shacknove, A. E. (1985). Who Is a Refugee?. *Ethics,* 95(2), 274-284.

Singer, P. & Singer, R. (1988). The Ethics of Refuge Policy'. In M. Gibney (Eds.), *Open Borders? Closed Societies? The Ethical and Political Issues*, (pp.111-130), Greenwood Press.

Struggling to Survive: Refugees from Syria in Turkey (Amnesty International, 20 November 2014), https://www.amnesty.org/en/documents/EUR44/017/2014/en/

Temporary Protection Regulation (22 October 2014), https://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=56572fd74&skip=0&query=Temporary%20Protection%20Regulation

Türkiye: Suriyeliler Sınırda Geri İtiliyor [Turkey: Syrians pushed back at the border] (HRW, 23 November 2015), https://www.hrw.org/tr/news/2015/11/23/283650.

UNCHR Global Trend Report (2022), https://www.unhcr.org/global-trends-report-2022.

UNCHR Operational Update-Syria (2023), https://www.unhcr.org/sy/wp-content/uploads/sites/3/2023/09/UNHCR-Syria-Operational-update-August-2023-1.pdf

UNDP Human Development Report (Oxford University Press 1994) 23, 24 https://hdr.undp.org/content/human-development-report-1994

Waisová, Š. (2003). Human Security: The Contemporary Paradigm?. *Perspectives*, 20, 58-72.

6458 Numbered Law on Foreigners and International Protection (2013) https://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=5a1d828f4

6735 Numbered Law on International Labor [Uluslararası İş Gücü Kanunu] (28 July 2016) https://www.mevzuat.gov.tr/MevzuatMetin/1.5.6735.pdf