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ARAŞTIRMA MAKALESİ / RESEARCH ARTICLE

## The Eu-Turkey “Refugee Deal”: A New Way of Responsibility-Sharing or the Collapse of the International System for the Protection of Refugees?

Ceren Elitez<sup>1</sup>

### Abstract

The Syrian displacement crisis is the most compelling humanitarian crisis of our times. The mass displacement of Syrians did not only cause challenges for Syria's neighboring countries -including Turkey as the largest host of displaced Syrians- but also the European Union Member States. It has also call into question the principle of “responsibility-sharing” in the context of the international protection of refugees, Human Rights Law and Refugee Law. As a result of a long negotiation process between Turkey and EU over the protection, and care of displaced Syrians, the parties agreed upon a text that is called the EU-Turkey “Refugee Deal”. The deal was met with a chorus of objection by scholars, legal experts and international NGOs who criticized it for contradicting the general principles of the international Human Rights Law, Refugee Law and the EU Asylum Law. This paper studies the pathway that lead EU and Turkey to sign the “Refugee Deal”, its content and clauses, implications and potential risks that are likely to occur in practice, with an emphasis on the contribution and/or detriment that the deal would bring to the notion of responsibility-sharing in international humanitarian system.

### Keywords

Syrian refugee crisis • EU-Turkey Refugee Deal • International asylum system • Burden-sharing • Readmission agreement

### AB-Türkiye “Mülteci Anlaşması”: Yeni Bir Sorumluluk Paylaşımı Yöntemi Mi Yoksa Uluslararası Mülteci Koruma Sisteminin Çöküşü Mü?

### Öz

Suriye krizi, çağımızın en zorlu insani krizidir. Suriyelilerin toplu halde yerinden edilmesi, yalnızca -Suriyeli sayısının en çok olduğu ülke olan Türkiye dahil olmak üzere- Suriye'nin komşularında değil, Avrupa Birliği'nin üye ülkelerinde de zorluklar yaratmıştır. Kriz aynı zamanda uluslararası iltica sistemi, İnsan Hakları Hukuku ve Mülteci Hukuku çerçevesinde karşımıza çıkan “sorumluluk paylaşımı” prensibini de gündeme getirmiştir. Yerinden edilen Suriyelilerin korunması ve bakımı üzerine Türkiye ile AB arasında yürütülen uzun müzakereler sonucunda, taraflar AB-Türkiye “Mülteci Anlaşması” olarak adlandırılan bir metin üzerinde mutabık olmuştur. Anlaşma, bunun uluslararası İnsan Hakları Hukuku'nun, Mülteci Hukuku'nun ve AB İltica Hukuku'nun genel ilkelerini ihlal etmesini eleştiren akademisyenler, yasal uzmanlar ve uluslararası STK'lar tarafından bir dizi itirazla karşılanmıştır. Bu çalışma, AB ve Türkiye'yi “Mülteci Anlaşması”nı imzalamaya götüren yolu, anlaşmanın içeriğini, maddelerini, sonuçlarını ve uygulamada ortaya çıkabilecek olası riskleri incelemektedir. Aynı zamanda anlaşmanın uluslararası insani mekanizmalar çerçevesinde ele alınan sorumluluk paylaşımı kavramına yapacağı katkıları ya da vereceği zararları vurgulamaktadır.

### Anahtar Kelimeler

Suriyeli mülteci krizi • AB-Türkiye Mülteci Anlaşması • Uluslararası iltica sistemi • Sorumluluk paylaşımı • Geri kabul anlaşması

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1 **Corresponding Author:** Ceren Elitez, NGO worker in the field of asylum, refugees and resettlement, Istanbul, Turkey.

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### **Abbreviations**

AFAD	: Disaster and Emergency Management Presidency
APD	: Asylum Procedures Directive
CoE	: Council of Europe
DGMM	: Directorate General for Migration Management
EC	: European Commission
ECHO	: European Commission Humanitarian Aid & Civil Protection
ECHR	: European Convention on Human Rights
ECOSOC	: UN Economic and Social Council
ECRE	: European Council on Refugees and Exiles
ECtHR	: European Court of Human Rights
EU	: European Union
EU Charter	: Charter of Fundamental Rights of the European Union
GoT	: Government of Turkey
HRP	: Humanitarian Response Plan
HRW	: Human Rights Watch
HUGO	: Hacettepe University Migration and Politics Research Center
ICCPR	: International Covenant on Civil and Political Rights
ILO	: International Labor Organization
IOM	: International Organization for Migration
LFIP	: Law on Foreigners and International Protection
MFA	: Ministry of Foreign Affairs of the Republic of Turkey
MSF	: Médecins Sans Frontières
NGO	: Non-governmental organization
PKK	: Kurdish Workers' Party

RRP	: Regional Response Plan
RRP6	: Syria Regional Response Plan 2014
SHARP	: Humanitarian Assistance Response Plan for Syria 2014
SRP	: Syria Response Plan 2015
TECs	: Temporary education centers
TİSK	: Turkish Confederation of Employer Associations
TPR	: Temporary Protection Regulation
UN	: United Nations
UNHCR	: United Nations High Commissioner for Refugees
UNOCHA	: United Nations Office for the Coordination of Humanitarian Affairs
1951 Convention	: 1951 Convention Relating to the Status of Refugees
1967 Protocol	: 1967 Protocol Relating to the Status of Refugees
1984 Convention	: UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984
3RP	: Syria Regional Refugee and Resilience Plan

## I. Introduction<sup>2</sup>

The ongoing armed conflict in Syria has triggered widespread displacement and a humanitarian crisis in and across the region. Today, the Syrian displacement crisis is called to be the world's largest humanitarian crisis since World War II.<sup>3</sup> Since the onset of the conflict in the spring of 2011, over 250,000 people have been killed and over one million injured.<sup>4</sup> As of March 2016, the estimated number of persons in need of humanitarian assistance inside Syria has reached approximately 13.5 million, including millions of children.<sup>5</sup> Over 6,600,000 people have been internally displaced by violence, and human rights violations and abuses forced 4,815,868 people to flee Syria.<sup>6</sup>

The tremendous impact of the Syrian displacement crisis on host countries is conspicuous and it is being globally discussed today. Especially the situation in the Republic of Turkey, the largest recipient of displaced Syrians in the world, is the subject of a heated debate. Other neighboring countries that are hosting large number of Syrians are the Lebanese Republic, the Hashemite Kingdom of Jordan, the Republic of Iraq, and the Arab Republic of Egypt. The United Nations (UN) estimates that some 4.7 million Syrian "refugees" will be registered in the region by the end of 2016.<sup>7</sup> It is important to note that, in this paper, the term "refugee" will not be used as a term referring to the legal status that is described under the 1951 Convention Relating to the Status of Refugees (1951 Convention)<sup>8</sup>, unless indicated otherwise. It will be used to broadly define displaced Syrians and members of other nationalities as well as stateless persons who fled their country of origin and sought refuge elsewhere. This usage of the term "refugee" is also accepted by the world's leading international refugee organizations such as UNHCR. Although the bulk of the refugees remain in Turkey, Jordan and Lebanon, a growing number of refugees are seeking safety outside the immediate neighborhood of Syria. Thus the Syrian displacement crisis is increasingly affecting the European countries too. Poor conditions in host countries and despair over a chance to return to their country of origin drive Syrians to seek safety in Europe. Growing numbers of Syrian refugees risk their lives in unsafe boats, endeavoring to reach Europe by sea. The world is witnessing a continuous and heartrending tragedy where desperate families are swallowed as a whole by Mediterranean Sea. Only in the first three months of

2 This thesis covers the incidents and developments that took place until 1 May 2016. It may not contain updates and developments that may have occurred later than 30 April 2016.

3 European Commission Humanitarian Aid and Civil Protection (ECHO), "Turkey: Refugee Crisis Factsheet", Brussels-Belgium, March 2016, p.1.

4 United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA), Syria: Key Figures, available at: <http://www.unocha.org/syria> (accessed on 30 April 2016).

5 *Ibid.*

6 *Ibid.*

7 UN, Regional Refugee & Resilience Plan (3RP) 2016-2017: Regional Strategic Overview, n.p., November 2015, p.6.

8 UN, 1951 Convention Relating to the Status of Refugees, UN General Assembly, 28 July 1951, "Mültecilerin Hukuki Durumuna İlişkin Sözleşme", Official Gazette no. 10898, 5 September 1961.

2016, 627 migrants died in the Mediterranean.<sup>9</sup> The number of migrant fatalities is expected to increase heavily towards the end of this year, given the fact that the death toll has reached 3,771 in 2015.<sup>10</sup> Same year, over 440,000 Syrians have arrived in Europe by sea.<sup>11</sup>

It can be argued that, between 2011 and 2016, the international community's response to the displacement crisis has not been as adequate as it should have been, given the magnitude of the crisis' destructive effects on the lives of millions of Syrian people, and its enormous social and economic impact on host countries. The international community has been unsuccessful in showing solidarity with host countries and failed to commit itself to two traditional ways of responsibility-sharing in the context of displacement crises, namely financial support to host countries and resettlement as a durable solution.<sup>12</sup> In spite of appeals made to the international community, UN's budget for funding its various strategic plans aiming to send humanitarian aid inside Syria and to support host countries for the protection of Syrian refugees remained more than 50 percent uncovered each year.<sup>13</sup> Furthermore, as of 18 March 2016, only 179,147 places have been made available for resettlement, an amount corresponding to 6.5 percent of the number of Syrian refugees registered in Turkey.<sup>14</sup>

Such a weak level of international solidarity has caused considerable resentment in hosting countries. In this international setting heated by discussions over the principle of responsibility-sharing, and following a long period of negotiations between the European Union (EU) and Turkey over a cooperation plan for tackling the so-called "Syrian refugee crisis", a deal has been agreed between two parties on 18 March 2016. This controversial EU-Turkey "Refugee Deal" (hereinafter the "Refugee Deal") proposes that all new irregular migrants entering Greece from Turkey be returned to Turkey; that in exchange, EU resettle one Syrian refugee who is already in Turkey; that Turkey receive €6 billion as financial aid to support refugees on Turkish soil; and that Turkey's accession process to the EU be re-energized, and the process of visa liberalization to the Schengen area for Turkish nationals be accelerated.

The deal was met with a chorus of protests from international non-governmental organizations (NGOs), legal experts and human rights activists who consider it to be a breach of international and European laws, particularly Human Rights Law, and argue

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9 UNHCR, Refugees/Migrants Emergency Response – Mediterranean, available at: <http://data.unhcr.org/mediterranean/regional.php> (accessed on 30 April 2016).

10 *Ibid.*

11 UN, 3RP - Regional Refugee & Resilience Plan 2016-2017 in Response to the Syria Crisis, available at: <http://www.3rpsyriacrisis.org/crisis/> (accessed on 30 April 2016).

12 In this paper, the term "responsibility-sharing" is preferred to the term "burden-sharing" since the latter suggests that refugees are a burden on the state where they reside.

13 Please see below for more details on this subject.

14 UNHCR, "Resettlement and Other Forms of Legal Admission for Syrian Refugees", 18 March 2016, available at: <https://data.unhcr.org/syrianrefugees/download.php?id=10772> (accessed on 30 April 2016).

that is “doomed to failure”.<sup>15</sup> Amnesty International called both parties of the deal to stop “trading away refugees” by emphasizing that Turkey should not be recognized as a “safe third country” where refugees could be returned to: “The breach of the right to seek asylum is not mitigated by the fiction that Turkey is a ‘safe’ country for refugees. [...] We recognize that those who fail after a fair process to demonstrate a legitimate case to stay can be returned. Our objection is to fast-track collective expulsions that fail to take individual circumstances into account”.<sup>16</sup> Mike Noyes, ActionAid’s head of humanitarian response, fears that the deal “will effectively turn the Greek islands, where thousands of refugees arrive every day, into prison camps where terrified people are held against their will before being deported back to Turkey”.<sup>17</sup> Kenneth Roth, executive director of Human Rights Watch (HRW), stated in his letter to European leaders that they “caution against any suggestion of conditionality between refugee resettlement and the forced return of asylum seekers. Resettlement can be a very helpful supplement to asylum but can never be a substitute for the right to seek asylum”.<sup>18</sup> Similarly, United Nations High Commissioner for Refugees (UNHCR) assumes that the deal complies with legal standards on paper however it is suspicious that asylum safeguards mentioned in the deal would prevail in implementation.<sup>19</sup>

This paper aims to study the pathway that lead EU and Turkey to sign the “Refugee Deal”, its content and clauses, implications and potential risks that are likely to occur in practice, with an emphasis on the contribution and/or detriment that the deal would bring to the notion of responsibility-sharing in international humanitarian system. Thus, the following questions need to be answered: Did the international community take necessary action on time for finding a durable solution to the Syrian displacement crisis by sharing the responsibility of protecting and caring for the Syrian refugees? Is the “Refugee Deal” the proper international response that would bring a durable solution to the Syrian displacement crisis? Or is it a band-aid approach that may lead to worrying repercussions in near future? Do the policies described within the Deal meet the requirements of Human Rights Law, international asylum system, refugee law and the principle of responsibility-sharing between international actors for tackling a humanitarian crisis that evokes major global challenges? Does the “Refugee Deal” contribute to the shared understanding of responsibility-sharing or is it likely to have a detrimental effect on this notion? Is the deal vulnerable to legal challenges with regards to principles governing the international

15 **Camino Mortera-Martinez**, “Doomed: Five Reasons Why the EU-Turkish Refugee Deal Will Not Work”, Centre for European Reform, 24 March 2016, available at: <http://www.cer.org.uk/insights/doomed-five-reasons-why-eu-turkish-refugee-deal-will-not-work> (accessed on 30 April 2016).

16 **Salil Shetty / Ken Roth / Catherine Woollard**, “Say No to a Bad Deal with Turkey”, Amnesty, International, 17 March 2016, available at: <https://www.amnesty.org/en/latest/news/2016/03/say-no-to-a-bad-deal-with-turkey/> (accessed on 30 April 2016).

17 “EU-Turkey deal ‘sends clear message to migrants’”, Belfast Telegraph, 18 March 2016, available at: <http://www.belfasttelegraph.co.uk/news/world-news/euturkey-deal-sends-clear-message-to-migrants-34551303.html> (accessed on 30 April 2016).

18 **Ken Roth**, “Human Rights Watch Letter to EU Leaders on Refugees”, HRW, 15 March 2016, available at: <https://www.hrw.org/news/2016/03/15/human-rights-watch-letter-eu-leaders-refugees> (accessed on 30 April 2016).

19 UNHCR, Press release “UNHCR on EU-Turkey Deal: Asylum Safeguards Must Prevail in Implementation”, 18 March 2016, available at: <http://www.unhcr.org/56ec533e9.html> (accessed on 30 April 2016).

and European Human Rights Law, such as *non-refoulement* and prohibition of collective expulsions? Does Turkey meet the requirements for being recognized as a “safe third country”? Are there any visible signs that the asylum safeguards mentioned in the deal will not materialize in implementation?

In pursuit of these questions, this paper is divided into two main sections: background and content of the “Refugee Deal”, and its legality and implications.

The first section will be presented in two sub-sections: the situation in Turkey and the international community’s response to the Syrian displacement crisis so far, with an emphasis on the EU. The first sub-section consists of an in-depth research of the economic impacts, and social and political consequences of the Syrian displacement crisis on Turkey and its society, and on the lives of Syrian refugees. The question of integration of Syrians in Turkey will be discussed throughout the sub-section. In the second sub-section, the repercussions of the Syrian displacement crisis in EU countries will be reviewed, and the level attained in international responsibility-sharing for protection of refugees in the fifth year of the protracted Syrian displacement crisis will be examined, with an emphasis on the cooperation between the EU and Turkey.

The second section consists of a review of the negotiation process and the content of the “Refugee Deal”, as well as a legal analysis of the “Refugee Deal” and a reflection upon its potential material outcomes, and is also divided into two sub-sections. Under the first sub-section, the period of negotiations between the EU and Turkey will be reviewed in detail and the ultimate content of the “Refugee Deal” will be presented. Under the second sub-section, the legal implications of the “Refugee Deal” will be analyzed with respect to the fundamental principles of the international Human Rights Law, Refugee Law and Humanitarian Law, such as *non-refoulement*, and the prohibition of collective expulsions. In this context, Turkey’s adequacy for its recognition as a “safe third country” will also be assessed. This sub-section will also aim to identify any potential shortcomings of the “Refugee Deal” that may arouse in practice, and to highlight the vulnerable areas that may cause any breach of international norms by disabling the safeguards mentioned in the “Refugee Deal”, during its implementation. To that end, the current problematic practices related to the admission, registration and deportation of refugees in Greece will be reviewed.

The research method that will be used in this paper consists mainly of a thorough review of existing legal and political analyses, socioeconomic statistics and case-law.

## **II. The Road to the Eu-Turkey “Refugee Deal”: the Question of Responsibility-Sharing for a Durable Solution to Syrian Displacement Crisis**

The ongoing Syrian humanitarian crisis has been deepened and worsened since the spring of 2011 by the death of over 250,000 people and the injury of more than one

million people.<sup>20</sup> It has become globally the largest displacement crisis that forced more than the half of all Syrians to flee their homes. In this rapid and massive displacement, over 6.6 million Syrians have been internally displaced and 4.8 million Syrians have crossed international borders in an attempt to save their lives.<sup>21</sup> This is considered to be the largest political, humanitarian and development challenge of our time.

### **A- Turkey: Lack of a Comprehensive Integration Policy for the Bulk of Syrian Refugees**

Turkey currently hosts the largest portion of Syrian refugees. As of March 2016, 2,715,789 Syrian refugees have been registered in Turkey.<sup>22</sup> Apart from Turkey, other neighboring countries that have been affected by the Syrian displacement crisis are Lebanon, Jordan, Iraq, and Egypt. It is projected that by the end of 2016 the total number of Syrian refugees registered in the region will be as high as 4.7 million.<sup>23</sup> The UN anticipates a total of 2.75 million Syrians registered in Turkey by the end of 2016.<sup>24</sup> Currently, in addition to over 2.7 million Syrian refugees, Turkey is also hosting 256,700 refugees from other nationalities (i.e. Iraqis, Iranians, Afghans, and Somalis) as of February 2016.<sup>25</sup>

Turkey declared in October 2011 an open door policy towards refugees fleeing Syria.<sup>26</sup> Currently 272,439 Syrian refugees<sup>27</sup> are hosted in 25 official refugee camps (the so-called “temporary protection centers”) distributed in 10 provinces<sup>28</sup> and managed by the Disaster and Emergency Management Presidency (AFAD), the leading governmental agency for assistance to camp refugees and for coordination of services to off-camp refugees. UN estimates that 300,000 Syrians will be hosted in the official refugee camps and 2.45 million will live within urban areas, by the end of 2016.<sup>29</sup> The Government of Turkey (GoT) holds that the cost of caring for and protecting Syrian refugees has already exceeded \$8 billion while the amount of assistance provided

20 UNOCHA, Syria: Key Figures, *op. cit.*

21 *Ibid.*

22 UNHCR, Syria Situation Map as of 9 March 2016, available at: <http://reliefweb.int/sites/reliefweb.int/files/resources/SyriaSituationMapasof09March2016.pdf> (accessed on 30 April 2016).

23 UN, Regional Refugee & Resilience Plan (3RP) 2016-2017, *op. cit.*, p.6.

24 UN, Regional Refugee & Resilience Plan (3RP) 2016-2017: Turkey, n.p., November 2015.

25 ECHO, “Turkey: Refugee Crisis Factsheet”, *op. cit.*, p.1.

26 In October 2015, Human Rights Watch reported that Turkey has closed its borders to Syrian refugees and started to push backs at the border (HRW, “Turkey: Syrians Pushed Back at the Border Closures Force Dangerous Crossings with Smugglers”, 23 November 2015, available at: <https://www.hrw.org/news/2015/11/23/turkey-syrians-pushed-back-border>, accessed on 30 April 2016). Turkish authorities denied the report and called it “misleading” while acknowledging that they “have had to temporarily restrict the free movement of refugees due to security concerns in the past” (Birc Bora, “Analysis: Is Turkey’s ‘open door policy’ an illusion?”, Aljazeera, 24 November 2015, available at: <http://www.aljazeera.com/news/2015/11/analysis-turkey-open-door-policy-illusion-151124084706365.html>, accessed on 30 April 2016).

27 AFAD, Current Status in AFAD Temporary Protection Centres, available at: <https://www.afad.gov.tr/EN/IcerikDetay1.aspx?ID=16&IcerikID=848> (accessed on 30 April 2016).

28 The “temporary protection centers” are located in the provinces of Hatay, Gaziantep, Şanlıurfa, Kilis, Mardin, Kahramanmaraş, Osmaniye, Adıyaman, Adana and Malatya.

29 UN, Regional Refugee & Resilience Plan (3RP) 2016-2017: Turkey, *op. cit.*, p.4.

by the international community still remains at \$455 million.<sup>30</sup> This sum has been mostly spent for offering basic health, education, food security and social and other services to Syrian refugees residing inside the camps. However, off-camp Syrian refugees (that constitute 90 percent of total number of Syrians in Turkey) are spread out through the country, and their access to information, registration and to public services, including education and healthcare, is gravely limited. Off-camp refugees are surviving under very challenging circumstances, as they lack much-needed support for housing, food, education and health services. While the number of off-camp refugees grows, the situation is worsening and vulnerabilities are increasing.<sup>31</sup> As Kemal Kirişçi and Elizabeth Ferris put it in their report, “the economic, social and political impact of the refugees is growing. Although Turkey has much more capacity to manage the situation than Jordan and Lebanon, it is difficult to see how Turkey will be able to cope without greater burden-sharing with the international community”.<sup>32</sup>

In the last few years, Turkey received wide-ranging praise not only for its monumental direct assistance to Syrian refugees (particularly to those inside the camps), but also for re-structuring its legislative tools for the management of humanitarian migration and asylum.<sup>33</sup> First of all, Law 6458 on Foreigners and International Protection (LFIP) was approved on 10 April 2013, and entered into force on 11 April 2013.<sup>34</sup> LFIP is the first law that Turkey adopted to address asylum, and as Rebecca Kilberg commentates, it reflects the fact that “Turkey’s migration identity has shifted from being principally a country of emigration and transit to becoming a destination for immigrants and people fleeing conflict”.<sup>35</sup> LFIP describes procedures relating to the entrance, stay and exit of foreigners, as well as the management of asylum, and legal, unauthorized and humanitarian migration. Furthermore, in compliance with the Article 103 of LFIP, the Directorate General for Migration Management (DGMM) has been established under the Ministry of Interior and organized in 81 provinces and 148 districts.<sup>36</sup> DGMM has a wide range of responsibilities, i.e. development

30 MFA, “Speech by H.E. Mevlüt Çavuşoğlu, Minister of Foreign Affairs of the Republic of Turkey at the Opening Session of the Eighth Annual Ambassadors Conference”, Ankara, 11 January 2016, available at: [http://www.mfa.gov.tr/speech-by-h\\_e\\_mevl%C3%BCt-%C3%A7avuu%C5%9Fo%C4%9Flu\\_-minister-of-foreign-affairs-of-the-republic-of-turkey-at-the-opening-session-of-the-eighth-annual-ambassadors-conference\\_-11-january-2016\\_-ankara.en.mfa](http://www.mfa.gov.tr/speech-by-h_e_mevl%C3%BCt-%C3%A7avuu%C5%9Fo%C4%9Flu_-minister-of-foreign-affairs-of-the-republic-of-turkey-at-the-opening-session-of-the-eighth-annual-ambassadors-conference_-11-january-2016_-ankara.en.mfa) (accessed on 30 April 2016). However, this number is not certain since the budget spent by the GoT for protecting and caring for displaced Syrians is not officially published.

31 **Kılıç Buğra Kanat / Kadir Üstün**, *Turkey’s Syrian Refugees Toward Integration*, SETA, Ankara, 2015, pp. 21-27.

32 **Kemal Kirişçi / Elizabeth Ferris**, *Not Likely to Go Home: Syrian Refugees and the Challenges to Turkey – and the International Community*, Turkey Project Policy Paper no. 7, Brookings Institute, Washington DC, September 2015, pp. 2-3.

33 UNHCR, UN High Commissioner for Refugees Antonio Guterres, “Written text of speech to the UN Security Council”, 26 February 2015, available at: <http://www.unhcr.org/54ef66796.html> (accessed on 30 April 2016). “High Commissioner welcomes Turkish work permits for Syrian refugees”, 18 January 2016, available at: <http://www.unhcr.org/569ea19c6.html>, (accessed on 30 April 2016).

34 LFIP: Law on Foreigners and International Protection (“Yabancılar ve Uluslararası Koruma Kanunu”), Official Gazette no. 28615, 11 April 2013. While the section of LFIP formally establishing the DGMM came into force in April 2013 immediately on the publication of the LFIP, all the remaining sections of the Law came into force after a year, in April 2014.

35 **Rebecca Kilberg**, “Turkey’s Evolving migration Identity”, Migration Information Source, 14 July 2014, available at: <http://www.migrationpolicy.org/article/turkeys-evolving-migration-identity> (accessed on 30 April 2016).

36 Although DGMM was established by the LFIP on 11 April 2013, the new agency did not fully take over the foreigners’ caseload from National Police, the agency previously in charge of foreigners, until May 2015. For further reading, please

and practice of new legislation and strategies for managing migration; facilitation of the coordination between agencies and institutes working in the field of migration; administration of visas, entrance, exit and deportation of foreigners; management of international protection and temporary protection; registration and documentation of temporary protection beneficiaries; refugee status determination procedures of asylum seekers; protection of the victims of human trafficking. With the adoption of LFIP, the legal concept of "temporary protection" was also introduced in Turkish law for the first time, although Turkey has been providing *de facto* protection to the victims of the Syrian conflict since 2011.<sup>37</sup> However the temporary protection regime has not been formalized until the adoption of the Temporary Protection Regulation (TPR) on 22 October 2014, in the framework of Article 91 of LFIP.<sup>38</sup> Turkey's "temporary protection" regime represents a *prima facie*, group-based approach: "The citizens of the Syrian Arab Republic, stateless persons and refugees who have arrived at or crossed our borders coming from Syrian Arab Republic as part of a mass influx or individually for temporary protection purposes due to the events that have taken place in Syrian Arab Republic since 28 April 2011 shall be covered under temporary protection",<sup>39</sup> and extends to "temporary protection" beneficiaries the right to legal stay, protection from *refoulement* and access to a set of basic rights and services, including free healthcare.<sup>40</sup> Lastly, the long-awaited Regulation on Work Permit of Foreigners Under Temporary Protection was adopted on 15 January 2016.<sup>41</sup> Under this brand-new regulation, Syrian refugees who have been registered in Turkey for at least six months will be allowed to apply for a working permit in the city where they first registered. The work permit will ensure that its holder be paid at least the minimum wage. A number of other rules have also been set out by the regulation, such as the procedure for self-employed workers to apply for work permits, and the 10 percent Syrian workforce quota in Turkish companies. On 26 April 2016, a similar regulation on working permits for persons under "international protection" (non-Syrian asylum seekers) and "secondary protection" statuses has been adopted.<sup>42</sup>

Nonetheless, Turkey continues to be rebuked by human rights activists, scholars and NGOs due to its failure to adopt a comprehensive integration policy for Syrian refugees.

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see Turkey: 2011-2014: Temporary Protection Based on Political Discretion and Improvisation, available at: <http://www.asylumineurope.org/reports/country/turkey/2011-2014-temporary-protection-based-political-discretion-and-improvisation> (accessed on 30 April 2016).

37 **Oktay Durukan / Veysel Eşsiz / Öykü Tümer**, *Country Report: Turkey*, Asylum Information Database (AIDA), December 2015, available at: [http://mhd.org.tr/assets/aida\\_tr\\_update.i.pdf](http://mhd.org.tr/assets/aida_tr_update.i.pdf) (accessed on 30 April 2016).

38 TPR: Temporary Protection Regulation ("Geçici Koruma Yönetmeliği"), Official Gazette no. 29153, 22 October 2014.

39 *Ibid.* Provisional Article 1 (1).

40 However, TPR does not prescribe a long-term legal integration for "temporary protection" beneficiaries. This matter will be discussed below.

41 Regulation on Work Permit of Foreigners Under Temporary Protection (Geçici Koruma Sağlanan Yabancıların Çalışma İzinlerine Dair Yönetmelik), Official Gazette no. 29594, 15 January 2016.

42 Regulation on Work Permit of Foreigners Under International Protection ("Uluslararası Koruma Başvuru Sahibi ve Uluslararası Koruma Statüsü Sahibi Kişilerin Çalışmasına Dair Yönetmelik"), Official Gazette no. 29695, 26 April 2016.

Although some reports note that integration started in an informal manner,<sup>43</sup> and that there is a broad consensus in Turkey (particularly in cities hosting large populations of Syrian refugees) “among academics, officials and civil society activists that the refugees are here to stay and that measures are urgently needed to help with their integration”,<sup>44</sup> there are legal, social and cultural barriers that hinder a successful integration of Syrians in Turkey. Many recently published articles, based on interviews with Syrian refugees, reveal that the lack of integration is the main reason why Syrian refugees clearly express their disquiet about their potential future in Turkey and are willing to leave for Europe.<sup>45</sup> The problematic areas surrounding integration may be analyzed under four main sections: “temporary protection” status, education, employment (economic hardship), and fear from political instability and social resentment.

### 1- Lack of Long-Term Legal Integration: Temporary Protection Regime

Since 2011, a real integration process has been prevented due to the “guest” policy that the GoT assumed towards displaced Syrians. As Ahmet İcduygu remarks “Turkish reception policies were at the outset predicated on the assumption that the conflict would come to a swift conclusion”.<sup>46</sup> Turkey “has not carried out a policy towards Syrians based on a discourse of rights, but rather one based on ‘generosity.’”<sup>47</sup> For this reason, the integration of Syrian refugees was not an item on the task list approximately until the fourth year of the crisis, either in government policies or public opinion.<sup>48</sup>

The lack of an official policy for the integration of foreigners in general may be observed through the legal framework set out in the LFIP: According to Article 96 of the Law, the responsibility of planning “for harmonization activities in order to facilitate mutual harmonization between foreigners, applicants and international protection beneficiaries and the society as well as to equip them with the knowledge

43 A report from January 2015 points out to the fact that 35,000 Syrians were born in Turkey, and that numerous marriages have been recorded between Turkish and Syrian nationals (ORSAM, Effects of the Syrian Refugees on Turkey, Report no: 195, Ankara, January 2015, p. 8). According to a report prepared by Theirworld organization in September 2015, more than 100 Syrian babies are born in Turkey everyday (**Maysa Jalbout**, Partnering for a Better Future: Ensuring Educational Opportunity for All Syrian Refugee Children and Youth in Turkey, Theirworld, 10 September 2015, available at: [http://www.aeworldschool.org/page/-/uploads/Reports/Theirworld%20-%20Educational%20Opportunity%20for%20Syrian%20Children%20and%20Youth%20in%20Turkey%202015\\_09\\_10%20Release.pdf?nocdn=1](http://www.aeworldschool.org/page/-/uploads/Reports/Theirworld%20-%20Educational%20Opportunity%20for%20Syrian%20Children%20and%20Youth%20in%20Turkey%202015_09_10%20Release.pdf?nocdn=1), p. 18 (accessed on 30 April 2016).

44 **Kirişçi / Ferris**, *op. cit.*, p. 11.

45 **Peter Kenyon**, “For Syrian Migrants, Many Reasons To Leave Turkey For Europe”, NPR, 17 September 2015, available at: <http://www.npr.org/sections/parallels/2015/09/17/441168633/for-syrian-migrants-many-reasons-to-leave-turkey-for-europe> (accessed on 30 April 2016). **Pınar Sevinçlidir**, “Why do Syrians want to leave Turkey?”, BBC, 22 September 2015, available at: <http://www.bbc.co.uk/monitoring/why-do-syrians-want-to-leave-turkey> (accessed on 30 April 2016). **Ghabra Omar**, “Why Syrian Refugees in Turkey Are Leaving for Europe”, the Nation, 29 September 2015, available at: <http://www.thenation.com/article/why-syrian-refugees-in-turkey-are-leaving-for-europe/> (accessed on 30 April 2016). **Peter Kenyon**, “Turkey’s Migrant Policy: They Can Come, But They Can’t Settle”, NPR, 22 October 2015, available at: <http://www.npr.org/sections/parallels/2015/10/22/450855100/turkeys-migrant-policy-they-can-come-but-they-cant-settle> (accessed on 30 April 2016). **İhsan Çetin**, “Why do Syrian refugees leave Turkey?”, Middle East Monitor, 18 January 2016, available at: <https://www.middleeastmonitor.com/articles/europe/23384-why-do-syrian-refugees-leave-turkey> (accessed on 30 April 2016).

46 **Ahmet İcduygu**, *Syrian Refugees in Turkey: the Long Road Ahead*, Migration Policy Institute, Washington DC, April 2015, p.1.

47 **Şenay Özden**, *Syrian Refugees in Turkey*, Migration Policy Centre, Italy, May 2013, p. 5.

48 **Kirişçi / Ferris**, *op. cit.*, pp. 11-16.

and skills to be independently active in all areas of social life without the assistance of third persons in Turkey” is delegated to DGMM.<sup>49</sup> Although many scholars such as Kilberg interpret the concept of “harmonization” to be a substitute for “integration”,<sup>50</sup> this concept is ambiguously described and “limited to the extent that Turkey’s economic and financial capacity deems possible” under the law.<sup>51</sup>

Turkey’s official reluctance to legally integrate Syrians in long-term is further observed in the “temporary protection” regime constituted by TPR. First of all, Article 16 of the TPR prohibits “temporary protection” beneficiaries from filing a separate individual “international protection” request in Turkey “during the period of the implementation of temporary protection”.<sup>52</sup> Provisional Article 1 of the TPR corroborates with this principle: Individual applications of “temporary protection” beneficiaries “for international protection shall not be processed during the implementation of temporary protection”.<sup>53</sup> TPR also avoids strictly guaranteeing access to the individual “international protection” procedure to former “temporary protection” beneficiaries in the event of a future termination of the “temporary protection” regime.<sup>54</sup> On the other hand, TPR does not preset the duration of the “temporary protection” regime. Articles 11 and 15 of TPR clearly states that the “temporary protection” regime can be “limited”, “suspended”<sup>55</sup> or “terminated”<sup>56</sup> any time based on the discretion of Turkey’s Board of Ministers. Furthermore, according to Article 25 of TPR, the “temporary protection” identification document grants solely the right to stay in Turkey and is not “equivalent to a residence permit”, and consequently “shall not grant the right for transition to long term residence permit”,<sup>57</sup> in accordance with Articles 42 and 43 LFIP.<sup>58</sup> Accordingly, time spent in Turkey as a beneficiary of “temporary protection” will not be taken into consideration when calculating the total term of uninterrupted legal residence as a precondition to apply for Turkish citizenship. Indeed, “temporary protection” regime

49 LFIP, *op. cit.*, Article 96.

50 Kilberg, *op.cit.*

51 LFIP, *op. cit.*, Article 96.

52 TPR, *op. cit.*, Article 16.

53 TPR, *op. cit.*, Provisional Article 1 (1).

54 Durukan, Eşsiz, Tümer, *op. cit.*, pp. 126-127.

55 TPR, *op. cit.*, Article 15.

56 TPR, *op. cit.*, Article 11.

57 TPR, *op. cit.*, Article 25.

58 LFIP, *op. cit.*, Article 42 – (1) A long-term residence permit shall be issued by the governorates, upon approval of the Ministry, to foreigners that have continuously resided in Turkey for at least eight years on a permit or, foreigners that meet the conditions set out by the Migration Policies Board.

(2) Refugees, conditional refugees and subsidiary protection beneficiaries as well as persons under temporary protection or humanitarian residence permit holders are not entitled to the right of transfer to a long-term residence permit.

ARTICLE 43 – (1) With regard to the issuing long-term residence permit the following conditions shall apply: a) having continues residence in Turkey for at least eight years; b) not having received social assistance in the past three years; c) having sufficient and stable income to maintain themselves or, if any, support their family; ç) to be covered with a valid medical insurance; d) not to be posing a public order or public security threat. (2) Subject to subparagraph (d), the conditions stipulated in the first paragraph shall not apply to foreigners who are considered appropriate for a long- term residence permit due to meeting the conditions determined by the Migration Policies Board.

in its current form is far from creating the legal framework for a long-term integration of Syrians in Turkey who understandably feel insecure under the unpredictable legal status of “temporary protection”.

Furthermore, even if “temporary protection” beneficiaries were to be granted access to “international protection” procedure as defined under LIFP in the event of a termination of the “temporary protection” regime, the geographical limitation that Turkey applies to the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees (1967 Protocol)<sup>59</sup>, would still deprive “international protection” beneficiaries from legal integration in long-term. The geographical limitation policy that Turkey applies to 1951 Convention precludes nationals of non-European countries from being granted “refugee” status in Turkey. In other terms, individuals from outside of Europe, such as Syrians, are expected to be resettled elsewhere or to return to their country of origin, deprived of any chance to settle in Turkey a foreseeable future. Moreover, beneficiaries of “temporary protection” do not enjoy the much broader rights that they would have under “refugee” status: According to 1951 Convention, persons under “refugee” status should receive at least the same rights and basic help as any other foreigner who is a legal resident, including economic and social rights. Refugees should have access to medical care, schooling and the right to work.<sup>60</sup> Thus the shortcomings of the “temporary protection” status compared to “refugee” status are amongst the fundamental reasons that have been preventing the integration of Syrian nationals in Turkey. As reported by many Syrians, the fact that they are not being granted “refugee” status implies unpredictability about their presence in Turkey.<sup>61</sup> This situation is spurring Syrians, who are unable to return home and unlikely to gain third-country resettlement, to travel to Europe by sea at the risk of losing their lives. Like many other scholars and human rights defenders, İçduygu recommends Turkey to lift its limitation to the 1951 Convention.<sup>62</sup>

## 2- Education: Key to integration

In the fifth year of the protracted displacement crisis, the right to education for Syrian children in Turkey is still problematic due to the lack of a comprehensive integration policy, and accordingly, this lack hinders a sustainable integration of Syrians in Turkey. According to a HRW report, prior to the conflict “the primary school enrollment rate in Syria was 99 percent and lower secondary school enrollment was 82 percent, with high gender parity. In Turkey’s 25 government-run refugee camps, approximately 90 percent of school-aged Syrian children regularly

59 UN, 1967 Protocol Relating to the Status of Refugees, UN General Assembly, 31 January 1967, “Mültecilerin Hukuki Durumuna İlişkin Protokol”, Official Gazette no. 12968, 5 August 1968.

60 UN, 1951 Convention, *op. cit.*

61 Özden, *op. cit.*, p. 5.

62 İçduygu, *op. cit.*, pp. 1-2.

attend school. However, these children represent just 13 percent of the Syrian refugee school-aged population in Turkey. The vast majority of Syrian children in Turkey live outside refugee camps in towns and cities, where their school enrollment rate is much lower—in 2014-2015, only 25 percent of them attended school”.<sup>63</sup> HRW observed that 415,000 out of 620,000 Syrian school aged children who have entered Turkey in the last four years are unable to access education.<sup>64</sup>

Turkey has taken significant steps for realizing Syrian refugee children’s right to education: On 23 September 2014, Turkey’s Ministry of National Education issued Circular No: 2014/21 on Education Services for Foreign Nationals, in line with LFIP.<sup>65</sup> The Circular did not only create provincial commissions in charge of issues related to education, but also introduced, for the first time, the concept of “temporary education centers” (TECs), in an attempt to regulate and accredit existing private schools run by Syrian charities. TECS are primary and secondary schools offering a modified Syrian curriculum in Arabic,<sup>66</sup> operating both inside and outside refugee camps.<sup>67</sup> Also, as per Article 4 of the Circular, a “foreigner identification document” is sufficient for registration in the Turkish public school system.<sup>68</sup> Consequently, there are two parallel systems of formal education for Syrian primary and secondary school-age children in Turkey: Turkish public schools and TECs.

According to Article 28 of the UN Convention on the Rights of the Child (that was adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, and entered into force on 2 September 1990), it is a duty of all State parties to provide compulsory free education to all children.<sup>69</sup> As a party to the Convention, Turkey has the obligation to provide free primary education to all Syrian refugee children in its territories. The main standards set under the Convention regarding the party States’ duties for the children’s right to education include (a) providing compulsory and free primary education; (b) making secondary and vocational education available to all children; (c) on the basis of the State’s capacity, making higher education accessible to all; (d) making “educational and vocational information and guidance available and accessible to all children”; and (e) taking “measures to encourage regular attendance at schools and the reduction of drop-out rates”.<sup>70</sup>

63 HRW, *When I Picture My Future, I See Nothing: Barriers to Education for Syrian Refugee Children in Turkey*, USA, November 2015, pp. 5-6.

64 *Ibid.*, pp. 5-11.

65 Circular No: 2014/21 on Education Services for Foreign Nationals (“Yabancılarla Yönelik Eğitim-Öğretim Hizmetleri”), No. 10230228/235/4145933, 23 September 2014.

66 **Jalbout**, *op. cit.*, p. 5.

67 HRW, *When I Picture My Future*, *op. cit.*, p. 19.

68 Circular No: 2014/21, *op. cit.*

69 UN, Convention on the Rights of the Child (“Çocuk Haklarına Dair Sözleşme”), UN General Assembly, 20 November 1989, Official Gazette no. 22184, 27 January 1995.

70 *Ibid.*, Article 28.

However, the GoT could not put in place an efficient educational system for Syrian refugee children as shown by recent research, and therefore it fails to comply with its obligations under the UN Convention on the Rights of the Child: Data from November 2015 shows that only 6 percent of the school-aged population among Syrian refugees attends Turkish public schools.<sup>71</sup> In other terms, the bulk of Syrian children who have right to access Turkish public schools without paying an enrollment fee, are not enjoying this right in practice. Such a low figure seems to be caused by the fact that public educational services in cities hosting the largest populations of Syrian refugees are “extremely strained” and the Syrian families living there typically do not have sufficient financial resources.<sup>72</sup> Similarly, attendance to school through TECs remains significantly low: During the 2014-2015 school year, there were 34 TECs in camps and 232 outside of camps with a total primary and secondary enrollment numbers of 74,097 in camps and 101,257 outside camps.<sup>73</sup> This figure is reported to be a result of most of TECs’ inaccessible locations that cause high transportation expenses for their students.<sup>74</sup> It is also observed that TECs are generally overcrowded and the tuition fees asked for enrollment in TECs are unaffordable for most of the Syrian refugee families.<sup>75</sup> The HRW identifies the main reasons preventing Syrian children from attending school in Turkey to be the lack of information on school admission procedures, language barriers, economic hardship, and difficulties with social integration.<sup>76</sup>

Among others, the assessment report on “Migration Trends & Patterns of Syrian Asylum Seekers Travelling to the European Union” published in September 2015 emphasizes the fact that one of the reasons driving Syrians to take the fatal sea route to Europe is the “inadequate access to services such as [...] education”.<sup>77</sup> Bill Frelick from HRW reports that according to testimonies of young Syrian refugees, the most common reason for their travel to Europe is “seeking education”.<sup>78</sup> Lack of education may have various dangerous consequences as acknowledged by a Turkish education official quoted in the report prepared by Kirişçi and Ferris: Syrian children and youth deprived of education in Turkey “risk falling victim to radical and terrorist groups. [...] Whether the refugees stay or return to Syria, we simply cannot afford to allow for a lost generation”.<sup>79</sup> A quote from a Syrian refugee mentioned in the HRW report lays bare the criticality of education as a tool of protection for the most vulnerable

71 HRW, *When I Picture My Future*, *op. cit.*, p. 19.

72 **Jalbout**, *op. cit.*, p. 11.

73 HRW, *When I Picture My Future*, *op. cit.*, p. 20.

74 **Jalbout**, *op. cit.*, p. 8.

75 HRW, *When I Picture My Future*, *op. cit.*, p. 20.

76 *Ibid.*, pp. 22-42.

77 REACH, *Migration Trends & Patterns of Syrian Asylum Seekers Travelling to the European Union*, 28 September 2015, available at: [data.unhcr.org/mediterranean/download.php?id=125](http://data.unhcr.org/mediterranean/download.php?id=125), p. 7 (accessed on 30 April 2016).

78 **Bill Frelick**, “Why Don’t Syrians Stay in Turkey”, HRW, 29 September 2015, available at: <https://www.hrw.org/news/2015/09/29/why-dont-syrians-stay-turkey> (accessed on 30 April 2016).

79 **Kirişçi / Ferris**, *op. cit.*, p. 11.

group of Syrian refugees, namely the children and youth: “If a person is sick, they can get treatment and get better. If a child doesn’t go to school, it will create big problems in the future—they will end up on the streets, or go back to Syria to die fighting, or be radicalized into extremists, or die in the ocean trying to reach Europe.”<sup>80</sup>

### 3- Employment and Economic Hardship

The problems related to employment and economic hardship constitute both a reason and a consequence of the lack of a comprehensive integration policy for Syrians in Turkey. As previously mentioned, Turkey extended work permits to Syrian refugees by the brand-new Regulation on Work Permit of Foreigners Under Temporary Protection on 15 January 2016, in line with Article 29 of TPR. However, the regulation itself is not presumed to immediately relieve the economic difficulties that have been forcing Syrian refugees to travel to Europe. Although the new regulation is welcomed as a tool to eliminate exploitation of unprotected Syrian workforce in Turkish labor market, and it is expected to create opportunities for Syrians in the formal labor economy, as the President of AFAD Fuat Oktay expressed, “work permits on their own will not create jobs”.<sup>81</sup>

In its report updated in February 2016, International Labor Organization (ILO) reveals the economic hardship endured by most of Syrian refugees: “over half of the refugees who live and work in Turkish communities earn less than \$250 a month, far less than the minimum wage in Turkey. Syrian workers tend to work in poor working conditions where core labor and social rights are not observed, in seasonal agricultural and low-skilled jobs. Local level consultations show that wages and fees have dropped to one-fifth of their previous levels, causing the working conditions of the most vulnerable groups from both communities to deteriorate, including children not in school”.<sup>82</sup> The lack of employment is threatening to push some refugees to extremes as noted by a Syrian activist: “Refugees who are left jobless and without means of survival can become the devil: They can turn into [pro-Assad militants] or join the likes of Jabhat al-Nusra and IS. Providing them with employment allows them to reintegrate into society and gives them hope for a better life”.<sup>83</sup> In addition to its security dimension, lack of employment also fuels the Syrian refugee crisis in Europe. According to German Minister for Economic Development Gerd Müller, “if people feel that they have a future and some opportunities in the region, they will not embark on the journey to Europe”.<sup>84</sup>

80 HRW, *When I Picture My Future*, *op. cit.*, p. 50.

81 **Kemal Kirişçi**, “Europe’s refugee/migrant crisis: Can “illiberal Turkey” save “liberal Europe” while helping Syrian refugees?”, Brookings Institute, 19 February 2016, available at: <http://www.brookings.edu/research/articles/2016/02/19-turkey-eu-syria-kirisici> (accessed on 30 April 2016).

82 ILO, *The ILO Response to the Syrian Refugee Crisis*, February 2016, available at: [http://www.ilo.org/wcmsp5/groups/public/---dgreports/---exrel/documents/publication/wcms\\_357159.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---exrel/documents/publication/wcms_357159.pdf), p. 18 (accessed on 30 April 2016).

83 **Mona Alami**, “NGO finds work for Syrian refugees in Turkey”, AlMonitor, 7 August 2015, available at: <http://www.al-monitor.com/pulse/originals/2015/08/syrian-refugees-turkey-ngo-employment.html> (accessed on 30 April 2016).

84 BMZ (German Federal Ministry for Economic Cooperation and Development), Newsletter “Special Edition: The BMZ’s response to the refugee crisis”, February 2016, available at: [https://www.bmz.de/en/service/nl/Newsletter\\_Februar\\_2016/index.html](https://www.bmz.de/en/service/nl/Newsletter_Februar_2016/index.html) (accessed on 30 April 2016).

As stressed out by analysts, new policies to create job opportunities for refugees need to be developed and implemented for coping with the detrimental effects of the Syrian displacement crisis on Turkish economy and on the lives of millions of Syrian refugees. Kirişçi argues that ensuring the integration of Syrian labor in the formal economy would be a “win-win” both for Syrian refugees and business sectors in Turkey: Refugees will become less dependent on financial aid from the GoT and international aid programs, and Turkish economy will be boosted.<sup>85</sup> Turkish Confederation of Employer Associations (TİSK) similarly reports that Turkish business sectors perceive Syrian refugees to be permanent in Turkey, and thus look forward to new policies to be developed for integration of Syrians in Turkish economy.<sup>86</sup> On the other hand, as a World Bank report recommends, the first step for achieving this goal is the collection and evaluation of data regarding the demographical characteristics and skill set of the Syrian refugee population.<sup>87</sup>

Lastly on this question, some recent developments may be interpreted as a signal of the industrialized countries’ intention to assume responsibility in helping host countries for reducing the economic hardship endured by Syrian refugees. During the “Supporting Syria and the Region 2016” Conference hosted by Germany, Kuwait, Norway, the United Kingdom (UK) and the UN in London on 4 February 2016, over 60 countries, international organizations, and business and civil society representatives came together to agree on a new approach on how to respond to the protracted Syrian displacement crisis. One of the main topics of the conference being “transforming opportunities for refugees from Syria and the region”, the participants recognized that the “lack of economic opportunity is damaging for refugees and their host communities”, and agreed to “increase their external support for public and private sector job creation”, and to “support employment creation programs” in host countries.<sup>88</sup> Co-hosts of the conference also declared that “leading private sector partners added their commitment to these efforts, and their willingness to help bring new investment that will create jobs and decent work” in countries hosting Syrian refugees.<sup>89</sup> According to the declaration, the ultimate goal is to create up to 1.1 million jobs for Syrian refugees and host country citizens in the region by 2018.<sup>90</sup>

85 Kirişçi, “Europe’s refugee/migrant crisis”, *op. cit.*

86 TİSK (Turkish Confederation of Employer Associations), *Perspectives, Expectations and Suggestions of the Turkish Business Sector on Syrians in Turkey*, Publication no: 354, Ankara, 30 December 2015, p. 76.

87 Ximena V. Del Carpio / Mathis Wagner, *The Impact of Syrians Refugees on the Turkish Labor Market*, Policy Research Working Paper 7402, World Bank – Boston College, August 2015, pp. 19-20.

88 “Co-Hosts Declaration of the Supporting Syria and the Region Conference”, London, 4 February 2016, available at: <https://2c8kkt1yko81j8k9p47oglb-wpengine.netdna-ssl.com/wp-content/uploads/2016/02/FINAL-Supporting-Syria-the-Region-London-2016-4-Feb.pdf> (accessed on 30 April 2016).

89 *Ibid.*

90 *Ibid.*

#### 4- Fear from Political Instability in Turkey

The question of political stability in Turkey is another avenue that prevents Syrian refugees from trusting in their likelihood to build a secure and predictable future for themselves and their families if they are to stay in Turkey.

To start with the ongoing civil conflict between the national army and Kurdish guerilla forces of Kurdish Workers' Party (PKK) in southeast Turkey, that escalated since the breakdown of the peace process in late 2015, it has caused insecurities within the Syrian Kurdish population in Turkey.<sup>91</sup> The armed conflict is violent and it transformed numerous Kurdish towns of Turkey into ruins that is reminiscent of the destruction in Syria, and killed many civilians.<sup>92</sup> Frelick argues that, "any Kurd living in the region is aware of the violence that has erupted [in 2015] in Turkey between government forces and Kurdish militants. [...] Beyond these tensions within the country is the Turkish government's well known antipathy to the armed Syrian Kurdish forces on its border. The Turkish authorities have become much stricter in limiting movement in and out of predominantly Kurdish refugee camps after a suicide bombing in southern Turkey".<sup>93</sup> Due to these developments, some scholars assert that Turkey is no longer safe for ethnic Kurds.<sup>94</sup> Furthermore, in January 2016, a resident of Diyarbakır province said to The Independent that, "even the Syrian refugees have packed up and left" due to intense clashes and civilian deaths taking place at the city center.<sup>95</sup> This testimony may be interpreted as an indicator of the fact that not only ethnic Kurds, but the Syrian refugee population as a whole is intended to flee provinces hit by armed conflict, and feels at risk due to current political instability in Turkey.

The GoT's eagerness and repetitive efforts to convince the international community for creating a "safe zone" on the Syrian side of the Turkish border, and returning millions of Syrian refugees to this area, is also causing anxiety within the Syrian population in Turkey. Kirişçi indicates that the idea of enforcing a "safe zone" (also called "no-fly zone", "buffer zone", or "safe haven") "appears to have been first raised in July 2012" after the GoT announced that a buffer zone would be planned if the number of Syrian

91 Due to absence of detailed statistics and publications related to the demographical characteristics of the Syrian refugee population in Turkey, this paper will not speculate on the total number of Syrian Kurds who sought refuge in Turkey. According to Güneş and Lowe, "a significant number of Kurds have [...] crossed the border, especially since the attack by ISIS on Kobane and its surrounding areas began in September 2014." (Cengiz Güneş / Robert Lowe, *The Impact of the Syrian War on Kurdish Politics Across the Middle East*, Chatham House, London, August 2015). Özden Zeynep Oktav reports that the number of Syrian Kurds who entered Turkey following the ISIS attack on Kobane was over 200,000 (Özden Zeynep Oktav, "Turkey's growing unease about the consequences of the Syrian crisis", Middle East Monitor, 30 June 2015, available at: <https://www.middleeastmonitor.com/articles/guest-writers/19564-turkeys-growing-unease-about-the-consequences-of-the-syrian-crisis>, accessed on 30 April 2016).

92 Kemal Kirişçi, "Turkey's Syria Challenge", Brookings Institute, 19 February 2016, available at: <http://www.brookings.edu/research/opinions/2016/02/19-turkey-syria-challenges-kirisci> (accessed on 30 April 2016).

93 Frelick, *op. cit.*

94 Mortera-Martinez, *op. cit.*

95 Laura Pitel, "Turkey in crisis: 'Ripple effect' from Syria and Iraq sees worst flare-up in Kurdish conflict in 20 years", Independent, 17 January 2016, available at: <http://www.independent.co.uk/news/world/middle-east/turkey-in-crisis-ripple-effect-from-syria-and-iraq-sees-worst-flare-up-in-kurdish-conflict-in-20-a6818331.html> (accessed on 30 April 2016).

refugees in Turkey exceeds 100,000 people.<sup>96</sup> Recently, in July 2015, various media agencies covered the allegations of a possible agreement between the United States (U.S.) and Turkey for creating a “safe zone” (“no-fly zone”) that would be “about 40 miles deep into Syria along the 68-mile stretch of border” with an ultimate goal to host around “2 million Syrian civilians who have fled to Turkey”.<sup>97</sup> However in August 2015 it became clear that the U.S. and Turkey did not reach such agreement since U.S. solely envisaged an “ISIS free zone” rather than a “safe zone” in Syria.<sup>98</sup> Later on, in September 2015, in his letter to EU leaders, Turkish Prime Minister Ahmet Davutoğlu resumed the discussion on “safe zones” and requested support from EU and U.S. “for a buffer and no-fly zone in northern Syria by the Turkish border, measuring 80km by 40km.”<sup>99</sup> Finally on 23 April 2016, the German Chancellor Angela Merkel, the president of the European Council, Donald Tusk and the first vice-president of the European Commission, Frans Timmermans visited the city of Gaziantep in Turkey together with Davutoğlu. During the conference that was held in Gaziantep, Merkel called for the creation of “zones [in Syria] where the ceasefire is particularly enforced and where a significant level of security can be guaranteed”.<sup>100</sup>

Scholars and human rights activists strictly object to such plans and argue that “safe zones” would rather be “unsafe” as evidenced by the genocidal killings of 8,000 Bosniacs in the UN-protected “safe area” of Srebrenica in July 1995.<sup>101</sup> Ferris argues that returning Syrian refugees in Turkey to a “safe zone” in Syria would be “a violation of the spirit—if not the letter—of international refugee law”.<sup>102</sup> Turkey is a signatory of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,<sup>103</sup> which prohibits any state from returning individuals to a place where they “would be in danger of being subjected to torture”.<sup>104</sup> Given the

<sup>96</sup> Kirişçi / Ferris, *op. cit.*, p.5.

<sup>97</sup> Karen DeYoung / Liz Sly, “U.S.-Turkey deal aims to create de facto ‘safe zone’ in northwest Syria”, Washington Post, 26 July 2015, available at: [https://www.washingtonpost.com/world/new-us-turkey-plan-amounts-to-a-safe-zone-in-northwest-syria/2015/07/26/0a533345-ff2e-4b40-858a-c1b36541e156\\_story.html](https://www.washingtonpost.com/world/new-us-turkey-plan-amounts-to-a-safe-zone-in-northwest-syria/2015/07/26/0a533345-ff2e-4b40-858a-c1b36541e156_story.html) (accessed on 30 April 2016).

<sup>98</sup> Barnard, Anne / Michael R. Gordon / Eric Schmitt, “Turkey and U.S. Plan to Create Syria ‘Safe Zone’ Free of ISIS”, The New York Times, 27 July 2015, available at: <http://www.nytimes.com/2015/07/28/world/middleeast/turkey-and-us-agree-on-plan-to-clear-isis-from-strip-of-northern-syria.html> (accessed on 30 April 2016).

<sup>99</sup> Ian Traynor, “EU refugee summit in disarray as Tusk warns ‘greatest tide yet to come’”, The Guardian, 24 September 2015, available at: <http://www.theguardian.com/world/2015/sep/24/eu-refugee-summit-in-disarray-as-donald-tusk-warns-greatest-tide-yet-to-come> (accessed on 30 April 2016).

<sup>100</sup> Ercan Gürses / Andreas Rinke, “Germany seeking ‘safe zones’ in Syria to shelter refugees”, Reuters, 23 April 2016, available at: <http://www.reuters.com/article/us-europe-migrants-turkey-germany-idUSKCN0XK0BS> (accessed on 30 April 2016).

<sup>101</sup> Please see UN Secretary-General’s report on Srebrenica dated 15 November 1999 for further reading on this subject. Available at: [http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/a\\_549\\_1999.pdf](http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/a_549_1999.pdf) (accessed on 30 April 2016).

<sup>102</sup> A. Matthew Hall / Elizabeth Ferris, “What Would the Turkish Buffer Zone Mean for Syria’s Displaced?”, Atlantic Council, 3 November 2014, available at: <http://www.atlanticcouncil.org/blogs/menasource/what-would-the-turkish-buffer-zone-mean-for-syria-s-displaced> (accessed on 30 April 2016).

<sup>103</sup> UN, A/RES/39/46, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UN General Assembly, 10 December 1984, “İşkenceye ve Diğer Zalimane, Gayriinsani veya Küçültücü Muamele veya Cezaya Karşı Birleşmiş Milletler Sözleşmesi”, Official Gazette no. 19895, 10 August 1988.

<sup>104</sup> *Ibid.*, Article 3.

reports of ISIS atrocities, GoT would be violating its international obligations by returning “Syrians to a situation where they are at risk of torture”.<sup>105</sup>

Kirişçi similarly reminds the principle of *non-refoulement* in the context of the international Human Rights Law, and also warns about a possible intention of the GoT to take advantage of a “safe zone” for attacking its opponents in Syria (such as ISIS and Syrian regime), and contemplates that such attack “would risk using refugees as some form of a shield or tool for a larger and riskier political objective”.<sup>106</sup> Thus, the spreading anxiety within the Syrian refugee population in Turkey over the likelihood of the creation of a “safe zone” inside Syria should be taken into serious consideration.

## 5- Social Resentment and Violence towards Syrian Refugees in Turkey

The perceived social discontent within the Turkish society regarding the presence of Syrian refugees, is another source of insecurity for the refugee population. As emphasized by Frelick, “when Turkey first opened its doors to Syrian refugees, it expected that Assad would fall quickly and the refugees would return home. The persistence of the Assad regime was unexpected in Ankara, and popular tolerance for the refugees appears to be waning”.<sup>107</sup> Some argue that at the origins of the growing discontent within the Turkish society is the fear of country’s “Arabization” due to the increasing number of Syrian refugees.<sup>108</sup> Similarly, according to a detailed survey conducted by M. Murat Erdoğan from Hacettepe University Migration and Politics Research Center (HUGO) in November 2015 (hereinafter “HUGO Survey”), 70.8% of the participants believe that there are deep cultural differences between Turkish and Syrian societies.<sup>109</sup>

Several incidents of violence towards Syrian refugees have been reported from around the country since the beginning of the mass influx.<sup>110</sup> Many reports show that the resentment towards Syrians is on the rise due to the economic burdens of hosting such a large number of refugees. TİSK research finds that, in general, unemployed Turkish citizens blame Syrian refugees for stealing their jobs by providing low-cost

<sup>105</sup>Hall / Ferris, *op. cit.*

<sup>106</sup>Kirişçi / Ferris, *op. cit.*, p. 16.

<sup>107</sup>Frelick, *op. cit.*

<sup>108</sup>Omar, *op. cit.*

<sup>109</sup>M. Murat Erdoğan, *Syrians in Turkey: Social Acceptance and Integration Research Executive and Summary Report*, HUGO, Ankara, November 2014, pp. 35-36.

<sup>110</sup>Among many other examples, an unprecedented incident of violence towards Syrian refugees was reported in December 2015. A gang of thieves that has killed several Syrian refugees by using sadistic methods such as emboweling and scalping, was arrested by Turkish authorities in Istanbul (Cumhuriyet, “Karıñ desip kafa derisi yuzen gasp cetesi yakalandı”, 6 December 2015, available at [http://www.cumhuriyet.com.tr/haber/turkiye/443766/Karin\\_desip\\_kafa\\_derisi\\_yuzen\\_gasp\\_cetesi\\_yakalandi.html](http://www.cumhuriyet.com.tr/haber/turkiye/443766/Karin_desip_kafa_derisi_yuzen_gasp_cetesi_yakalandi.html), accessed on 30 April 2016). In a recent incident that took place in March 2016, the employer of a 12-year-old Syrian child, refused to pay his weekly salary of 50 Turkish Liras (around 17 U.S. Dollars) and cut off his head as they boy insisted to be paid (Zete, “Suriyeli çocuk 50 lira haftaligini vermediği için öldürülmüş”, 27 March 2016, available at: <https://zete.com/suriyeli-cocuk-50-lira-haftaligini-vermediği-icin-oldurulmuş/>, accessed on 30 April 2016).

labor.<sup>111</sup> The increase in rent, housing and food prices, especially in provinces hosting large numbers of Syrian refugees, fuels these tensions.<sup>112</sup>

In fact, both TİSK and HUGO reports prove that the impact of Syrian refugees on Turkish economy is not exactly detrimental: There is a revival in the economy and exports,<sup>113</sup> and “in some cities with large Syrian population, unemployment decreased synchronously with increasing capacity. These surprising numbers indicate new economic development brought by Syrian refugees. Additionally, it is claimed that many Syrian businessmen transferred their capital to Turkey due to the crisis, which ensured a significant amount of foreign capital inflows”.<sup>114</sup>

Furthermore, the Syrian workforce is meeting the deficit for unskilled labor demanded by sectors such as agriculture and manufacture,<sup>115</sup> thus enabling locals to switch to high skill and high wage sectors.<sup>116</sup> However, 56.1% of HUGO Survey respondents remain inclined to believe that the Syrian refugees cause economic problems.<sup>117</sup> In addition, the 62.2% rate of HUGO Survey respondents who perceive Syrian refugees as “criminals” is worrying. HUGO Survey warns that, “many incidents took place, such as demonstrations demanding ‘Syrians Out’ and direct assaults on Syrian people. [...] An important reason behind the protests in some places is the issue of unjust competition in enterprise or employment. Unless the process is well-managed, xenophobia and enmity may rapidly spread among some groups within Turkish society”.<sup>118</sup> More concerning is the percentage (47.5%) of HUGO Survey respondents who support these violent reactions.<sup>119</sup> On account of statistics mentioned above, it is not surprising that almost half of the participants expressed their fear from Syrian refugees.

According to HUGO Survey, hate speech in the media is a triggering factor for such resentment and distrust towards Syrians. In Turkish media, “the refugees are depicted on the one hand as vulnerable, weak and poor people, and on the other hand as fugitives, criminals, thieves, murderers, rapists, susceptible to crime and a burden on the country”.<sup>120</sup> In the media, Syrian refugees are depicted as “a cause for high public expenditure”, “beggars”, “second-wives”, and individuals inclined to commit crime, and a “cause of epidemics”.<sup>121</sup>

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111 TİSK, *op. cit.*, p. 54.

112 *Ibid.*

113 *Ibid.*

114 Erdođan, *op. cit.*, p. 18.

115 TİSK, *op. cit.*, p. 54.

116 ORSAM, *op. cit.*, p. 34.

117 Erdođan, *op. cit.*, pp. 29-30.

118 *Ibid.*, p. 24.

119 *Ibid.*, p. 33.

120 *Ibid.*, pp. 41-42.

121 *Ibid.*, pp. 41-42.

Furthermore, according to a survey conducted in Turkey by the German Marshall Fund in July 2015, 81% of the participants think that the “immigrants” are not integrated well enough into Turkish society<sup>122</sup> and “73% said that the existing immigrants should be asked to go back home”.<sup>123</sup> Lastly, according to the HUGO Survey, 57.4% of the respondents are against the admission of more Syrian refugees in Turkey.<sup>124</sup> In a previous survey from November 2013, conducted by Centre for Economic and Foreign Policy Studies, 86% percent of the participants had expressed that “no further Syrian refugees should be allowed in the country”.<sup>125</sup>

## **B- Responsibility-Sharing So Far and the “Refugee Deal”: Protecting Refugees or Protecting Europe?**

The international community was not successful at stopping the armed conflict in Syria, and the regional actors’ political agendas have further aggravated the situation.<sup>126</sup> The widespread displacement did not only cause a humanitarian crisis in the region (and beyond the region) but has also reached an unprecedented level, exposing the failure of international humanitarian governance. The overlong debate on EU’s failure to demonstrate solidarity in responsibility-sharing with Turkey, the major host country for Syrian refugees, is now further heated by the “Refugee Deal”.

### **1- The Question of Responsibility-Sharing for a Durable Solution to the Syrian Displacement Crisis**

Introduced for the first time in the UN Economic and Social Council (ECOSOC)<sup>127</sup> and UN General Assembly resolutions<sup>128</sup> on the establishment of the UNHCR, the term “international protection of refugees” puts forward the aim of ensuring “refugees the widest possible exercise of [...] fundamental rights and freedoms” which all “human beings shall enjoy [...] without discrimination”.<sup>129</sup> Refugees do not enjoy the effective protection of their country of origin, therefore the international community as a whole has the responsibility to provide the international protection that the refugees need for being able to enjoy their fundamental rights.<sup>130</sup> There are two core legal elements at the center of the international system for the protection of refugees: the 1951 Convention and the 1967 Protocol. And other legal instruments such as

<sup>122</sup>GMF, *Turkish Perceptions Survey 2015*, Washington DC, 2015, p. 13.

<sup>123</sup>*Ibid.*, p. 13.

<sup>124</sup>Erdoğan, *op. cit.*, p. 34.

<sup>125</sup>EDAM, *Public Opinion Surveys of Turkish Foreign Policy 2014/1*, “Reaction mounting against Syrian refugees in Turkey”, n.p., 2014, p. 1.

<sup>126</sup>Kirişçi / Ferris, *op. cit.*, p. 2.

<sup>127</sup>UN ECOSOC E/RES/248(IX) A, 6 August 1949.

<sup>128</sup>UN General Assembly, A/RES/ 319(IV) A, 3 December 1949.

<sup>129</sup>UN, 1951 Convention, *op. cit.*, Preamble .

<sup>130</sup>UN General Assembly, Note on International Protection, A/AC.96/830, 7 September 1994, p. 8.

regional refugee conventions, national law relating to the admission, recognition and protection of refugees, as well as the international and regional human rights instruments, and the international humanitarian law complement the system.<sup>131</sup> If governments lack the means to protect refugees in their territories, “they need to receive the assistance of the international community to enable them to do so”.<sup>132</sup> In sum, the protection of refugees is an international responsibility and not merely the responsibility of the countries surrounding the conflict zone causing a refugee crisis. In this context, as parties to the 1951 Convention, EU Member States share the responsibility of providing international protection to Syrian refugees regardless of the fact that these persons are hosted by neighboring countries such as Turkey, Lebanon, Jordan, Iraq and Egypt.

The term “responsibility-sharing” was first introduced in relation to the need for sharing responsibility for protection of refugees in situations of mass influx.<sup>133</sup> The preamble to 1951 Convention declares that in mass influxes, “the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution [...] cannot therefore be achieved without international co-operation”.<sup>134</sup> Although there are no clear mechanisms of responsibility-sharing defined in the 1951 Convention, two traditional methods of responsibility-sharing have come into being: resettlement, and financial assistance for countries hosting large numbers of refugees to help them with their care and protection. During a series of expert roundtable meetings held in the context of UNHCR’s Global Consultations on International Protection initiative in 2001, UN Executive Committee has officially encouraged the international community to share the host States’ responsibility in case of mass influxes.<sup>135</sup> Later on, in its Conclusion on International Cooperation and Burden and Responsibility Sharing in Mass Influx Situations in 2004, the UN Executive Committee reiterated its recognition of the duty of the international community to share the responsibility of caring for refugees in cooperation with host countries in case of mass influxes, and especially if there is a protracted refugee situation in the host country, until a durable solution is found.<sup>136</sup> The Conclusion recommends that the resettlement be used more effectively as “a tool of burden and responsibility sharing”, and that the international community mobilize its resources for supporting the host countries.<sup>137</sup> Another valuable recommendation mentioned in the Conclusion is for the States,

<sup>131</sup> *Ibid.*, p. 10.

<sup>132</sup> *Ibid.*

<sup>133</sup> **Christina Boswell**, “Burden-sharing in the New Age of Immigration”, Migration Policy Institute, 1 November 2003, available at: <http://www.migrationpolicy.org/article/burden-sharing-new-age-immigration> (accessed on 30 April 2016).

<sup>134</sup> UN, 1951 Convention, *op. cit.*, Preamble.

<sup>135</sup> For further information on UNHCR’s Global Consultations on International Protection, please see: <http://www.unhcr.org/3b95cbce4.html> (accessed on 30 April 2016).

<sup>136</sup> UN ExCom No. 100 (LV) - 2004, General Conclusion on International Cooperation and Burden and Responsibility Sharing in Mass Influx Situations, contained in United Nations General Assembly document A/AC.96/1003.

<sup>137</sup> *Ibid.*

UNHCR and other relevant actors to develop and implement “as early on in a crisis as possible, a comprehensive plan of action”.<sup>138</sup>

## 2- Resettlement

Considered as “a vital instrument of international solidarity, and burden and responsibility sharing, particularly for large-scale and protracted refugee situations”, resettlement is the transfer of refugees from an asylum country to another State that has agreed to admit them as refugees with permanent residence status.<sup>139</sup> Through the UNHCR’s Agenda for Protection in 2002 and Convention Plus initiative in 2004, resettlement has reemerged as a core component of international responsibility-sharing,<sup>140</sup> and the Position Paper on the Strategic Use of Resettlement in 2010 made a global call to all States for developing effective “multi-year resettlement strategies”.<sup>141</sup>

Since the onset of the Syrian displacement crisis in 2011, resettlement reappeared as a major topic of discussion over the need for a durable solution and responsibility-sharing. In addition to UNHCR, various scholars and NGOs have been pointing out the need to enhance the level of protection of Syrian refugees. To this end, UNHCR has recommended that States increase refugee resettlement, and facilitate “humanitarian admission, and family reunification or other forms of admission for Syrian refugees”.<sup>142</sup> Other forms of admission may consist of “private sponsorship, medical evacuation, humanitarian visas, academic scholarships, and labor mobility schemes”.<sup>143</sup>

In 2014, UNHCR submitted 103,890 refugees to States for resettlement consideration and 21,154 of these individuals were refugees from Syria.<sup>144</sup> In 2014 Syrian refugees became the largest nationality group worldwide submitted by UNHCR for resettlement. Due to large-scale submission of Syrian refugees for resettlement by UNHCR, “submissions from MENA increased from 10,500 in 2012 to 23,200 in 2014, and submissions from Europe rose from 8,500 in 2012 to 16,400 in 2014”.<sup>145</sup> “UNHCR Turkey submitted the highest number of refugees globally, with 15,700

<sup>138</sup> *Ibid.*

<sup>139</sup> UNHCR, Multilateral Framework of Understandings on Resettlement, FORUM/2004/6, 16 September 2004, available at: <http://www.refworld.org/docid/41597d0a4.html>, p. 1 (accessed on 30 April 2016).

<sup>140</sup> UNHCR, Resettlement Handbook, July 2011, available at: <http://www.refworld.org/docid/4ecb973c2.html>, pp. 53-54 (accessed on 30 April 2016).

<sup>141</sup> UNHCR, Position Paper on the Strategic Use of Resettlement, 4 June 2010, available at: <http://www.refworld.org/docid/4c0d10ac2.html> (accessed on 30 April 2016).

<sup>142</sup> UNHCR, Finding Solutions for Syrian Refugees: Resettlement, Humanitarian Admission, and Family Reunification, 18 October 2013, available at: <http://www.refworld.org/docid/53ad36614.html> (accessed on 30 April 2016).

<sup>143</sup> **Nicole Ostrand**, “The Syrian Refugee Crisis: A Comparison of Responses by Germany, Sweden, the United Kingdom, and the United States”, *Journal on Migration and Human Security*, vol. 3 no. 3, 2015.

<sup>144</sup> UNHCR, Projected Global Resettlement Needs for 2016, July 2015, available at: <http://www.unhcr.org/protection/resettlement/558019729/unhcr-projected-global-resettlement-needs-2016.html>, p. 11 (accessed on 30 April 2016).

<sup>145</sup> UNHCR, Refugee Resettlement Trends 2015, June 2015, available at: <http://www.refworld.org/docid/55aca1864.html>, p. 16 (accessed on 30 April 2016). Lebanon, Jordan, Egypt and Iraq fall in Middle East and North Africa (MENA), whereas Turkey is considered to be in Europe in accordance with UNHCR’s regional boundaries.

submissions in 2014”.<sup>146</sup> In spite of the UN’s struggle in urging the international community to resettle larger numbers of Syrian refugees for a sustainable solution to the displacement crisis in solidarity with the host countries, these calls did not receive a sufficient response. “In order to reach the milestone of 130,000 places for Syrian refugees by the end of 2016, approximately 27,000 places are still required”.<sup>147</sup>

Furthermore, UNHCR estimates that 369,334 refugees need resettlement from MENA and 214,972 individuals need resettlement from Europe in 2016. Considering the fact that the majority of the individuals in need of resettlement in MENA and Europe are Syrian nationals, and in light of the numbers shown in Figure 8 above, it can be assessed that the gap between the resettlement needs of Syrian refugees and UNHCR’s capacity to meet them is enormous: At best, only 47,785 individuals out of 584,306 individuals would be referred to States for resettlement from MENA and Europe in 2016.

These figures show that the resettlement system in place is considerably slow and the huge resettlement backlog is alerting the international community to create and implement new resettlement solutions. Unless new mechanisms are established, the concept of resettlement may cease to be an efficient tool of responsibility-sharing and consequently it cannot provide a durable solution to the protracted Syrian displacement crisis. UNHCR’s actual capacity and strategic mission imply that this office should not undertake the role of the only entity responsible for resettlement: the States -and especially the industrialized States of the EU- should raise their quotas for Syrian resettlement. However, even higher pledges may not meet the Syrians’ needs for resettlement. As a solution, the international community may discuss the possibility of sending State-governed resettlement missions to Turkey where the resettlement needs of Syrian refugees may be processed by each State in coordination with the UNHCR.

Despite UN’s acknowledgement of resettlement as a indispensable tool of international responsibility-sharing and its encouragement to all States, and particularly to industrialized States of Europe, for establishing sustained, multi-year resettlement commitments, in the 1990s and onward, “western European countries became increasingly concerned about the political and socio-economic costs of asylum and temporary protection systems”.<sup>148</sup> The so-called notion of “reception in the region”, based on the argument that Europe should reduce refugee flows to its territories by “ensuring a higher standard of protection and assistance in refugee camps nearer to places of origin”, has gained weight in European migration policies.<sup>149</sup> The most frequent criticism to this notion asserts that making it more difficult for refugees to reach Europe would result with “shifting” Europe’s

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<sup>146</sup> *Ibid.*, p. 16.

<sup>147</sup> UNHCR Projected Global Resettlement Needs for 2016, *op. cit.*, p. 9.

<sup>148</sup> *Boswell, op. cit.*

<sup>149</sup> *Ibid.*

responsibilities towards host countries, rather than “sharing” these responsibilities for the international protection of refugees.<sup>150</sup>

Regarding 28 EU Member States’ contribution to the resettlement of Syrian refugees, UNHCR reports that as of 18 March 2016 only a total of 75,326 places have been made available by Austria (1,900), Belgium (475), Czech Republic (70), Denmark (390), Finland (1,900), France (1,000), Germany (41,899), Hungary (30), Ireland (610), Italy (1,400), Luxembourg (60), Netherlands (850), Poland (900), Portugal (118), Romania (40), Spain (984), Sweden (2,700) and UK (20,000).<sup>151</sup> This figure consists of confirmed pledges for resettlement and other forms of legal admission (including humanitarian admission, private sponsorship, emergency scholarship for higher education, and vulnerable persons relocation scheme) for Syrian refugees since 2013, and the due date for these places to be allocated has not been determined. For instance, the United Kingdom pledged to accept up to 20,000 Syrian refugees by 2020. In conclusion, compared to 2,715,789 Syrian refugees currently registered in Turkey, the number of places pledged by EU countries for the resettlement of Syrian refugees shows that EU has been significantly reluctant to share the responsibility of finding a durable solution for Syrian refugees.<sup>152</sup> EU’s reluctance to accept Syrian refugees through resettlement is pushing Syrian refugees to search for ways to “self-resettle” themselves into the EU, as it will be discussed below.

### 3- Financial Assistance

Another traditional tool of international responsibility-sharing is financial assistance to countries hosting large numbers of refugees. Since the beginning of the Syrian displacement crisis in 2011, the UN made numerous calls to the international community and requested their financial contribution for funding its response plans such as Humanitarian Response Plan (HRP) to provide humanitarian assistance into Syria, and Regional Response Plan (RRP) to assist countries hosting refugees.

HRPs are annual plans that aim to ensure the timely delivery of much-needed humanitarian aid inside Syria, in cooperation with the Government of Syria, humanitarian actors (i.e. UN agencies, International Organization for Migration (IOM), and international NGOs registered in Syria) by responding to urgent humanitarian needs in a wide range of sectors (i.e. protection, shelter, food, nutrition, health, education, livelihood, and water, sanitation, hygiene).<sup>153</sup> However, in 2014, only 51 percent (\$1,144,764,7351 out of \$2,256,199,013) of the budget for Humanitarian

<sup>150</sup>*Ibid.*

<sup>151</sup> UNHCR, “Resettlement and Other Forms of Legal Admission for Syrian Refugees”, *op. cit.*

<sup>152</sup> See the first sub-section.

<sup>153</sup> UN, Syrian Arab Republic Humanitarian Assistance Response Plan (SHARP) 2014, n.p., 15 December 2013. UN, Overview: 2015 Syria Response Plan (SRP) and 2015-2016 Regional Refugee and Resilience Plan (3RP), Berlin, 18 December 2015. UN, Syrian Arab Republic Humanitarian Response Plan (HRP) 2016, n.p., December 2015.

Assistance Response Plan for Syria (SHARP) has been met.<sup>154</sup> The Syria Response Plan 2015 (SRP) also remained 57 percent (\$1,636,166,119) unfunded.<sup>155</sup> As of March 2016, only 6 percent (\$176,990,492 out of \$3,182,409,473) of the funding requested for HRP for Syria in 2016 has been received.<sup>156</sup>

On the other hand, UN's annual regional response plans aim to funnel financial resources into the countries hosting the refugees from Syria, and to respond to the immediate humanitarian needs of refugees in these countries, including protection and essential services (i.e. food, health, education, and material assistance in support of the most vulnerable).<sup>157</sup> The host countries covered by UN's regional response plans in 2014, 2015 and 2016 are Turkey, Lebanon, Jordan, Egypt and Iraq.<sup>158</sup> It is observed that the international community's financial contribution to UN plans for sharing the cost of caring and protecting refugees in host countries has been disappointingly limited. The Syria Regional Response Plan 2014 (RRP6) remained only 63 percent covered (with the collection of \$2,352,833,419 out of \$3,740,654,701 required).<sup>159</sup> The Syria Regional Refugee and Resilience Plan 2015 (3RP) has received only 65 percent (\$2,811,274,851 out of \$4,319,944,557) of its required funding.<sup>160</sup> Lastly, as of 31 March 2016, only 9 percent (\$408,817,705 out of \$4,552,032,036) of the required funding has been collected for 3RP 2016.<sup>161</sup>

The figures above show the international community's failure to financially support the international agencies and host countries in responding to the urgent humanitarian needs of Syrians who have been internally displaced and those who fled to neighboring countries. And particularly EU Member States' contribution to the funding of HRPs and RRP6s for Syria has been very limited in 2014 and 2015.

In 2014, 27 out of 65 donors were EU Member States (Latvia did not pledge to make any financial contributions). However these states' total contribution remained at around one billion USD within the grand total of \$5.2 billion that has been collected. Similarly, 26 EU Member States (except for Greece and Croatia) participated in the funding of HRP and 3RP for Syria in 2015. The total financial contribution made by these 26 countries remained at around \$1.7 billion within the total amount of approximately \$5.9 billion that has been collected from 58 donors.<sup>162</sup>

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<sup>154</sup> UNOCHA, FTS, *op. cit.*

<sup>155</sup> *Ibid.*

<sup>156</sup> *Ibid.*

<sup>157</sup> UN, 2014 Syria Regional Response Plan (RRP6) Strategic Overview, n.p., December 2013, p. 10.

<sup>158</sup> *Ibid.* UN, Regional Refugee & Resilience Plan (3RP) 2015-2016: Regional Strategic Overview, n.p., December 2014. UN, Regional Refugee & Resilience Plan (3RP) 2016-2017, *op. cit.*

<sup>159</sup> UNOCHA, FTS, *op. cit.*

<sup>160</sup> *Ibid.*

<sup>161</sup> *Ibid.*

<sup>162</sup> UNOCHA, FTS, *op. cit.*

As of April 2016, EU Member States' participation in UN's efforts for funding its HRP and 3RP plans for 2016 seems to be more limited in comparison to previous years (see Figure 11 below). The list of donors includes 22 countries, the half of which consists of 11 EU Member States. However, as of 07 April 2016, only around \$44 million of the total funding so far (\$181,946,192) has been donated by EU Member States.

#### 4- The Consequences of the EU's Reluctance to Share Responsibility

Due to dire conditions in Turkey, lack of integration policies, and despair over prospects for a return to their country of origin as discussed in the first sub-section of this paper, "this depressing picture is compelling Syrian refugees to take the ultimate risk of trusting their self-resettlement to the hands of human smugglers, rather than the EU, the United States, and international agencies".<sup>163</sup> Increasing numbers of Syrian refugees are "self-resettling themselves to EU" by risking their lives for reaching Europe through Mediterranean Sea via unsafe boats. Thus, the victims of the Syrian displacement crisis who were forced to flee violence, human rights abuses and civil war, has become the subjects of another humanitarian crisis.

The death toll in the Mediterranean Sea is tragic. According to UNHCR, the number of migrant fatalities recorded in the Mediterranean Sea increased from 3,500 in 2014 to 3,771 in 2015.<sup>164</sup> IOM reports that 805 of the fatalities in 2015 occurred in the "Eastern Mediterranean", which stands for the Aegean Sea.<sup>165</sup> Located between Greece and Turkey, the Aegean is the main sea route used by Syrian refugees to reach Europe. According to figures shared by UNHCR Greece, 272 migrants died and 152 people went missing in the Aegean Sea in 2015.<sup>166</sup> The number of fatalities that occurred in the first three months of 2016 is alerting, and is indicative of the fact that the death toll in the Mediterranean is going to increase this year. Only in the first three months of 2016, 627 migrants died in the Mediterranean Sea.<sup>167</sup> As of 20 March 2016, the number of casualties has reached 127 and 20 persons have gone missing in the Aegean Sea.<sup>168</sup>

Despite the lack of safe and legal pathways to Europe for refugees, the number of arrivals in Europe through Mediterranean has also been increasing since 2014: it escalated from 216,054 in 2014 to 1,015,078 in 2015.<sup>169</sup> UNHCR data shows that 856,723 people departed from Turkey and arrived in Greece by Aegean Sea in 2015,<sup>170</sup>

163 Kemal Kirişçi, "Why 100,000s of Syrian refugees are fleeing to Europe", Brookings Institute, 3 September 2015, available at: <http://www.brookings.edu/blogs/order-from-chaos/posts/2015/09/03-eu-refugee-crisis-kirischi> (accessed on 30 April 2016).

164 UNHCR, Refugees/Migrants Emergency Response – Mediterranean, *op. cit.*

165 IOM, Migration Flows – Europe, available at: <http://migration.iom.int/europe/> (accessed on 30 April 2016).

166 UNHCR, "Greece Data Snapshot", 27 April 2016, available at: <https://data.unhcr.org/mediterranean/download.php?id=1106> (accessed on 30 April 2016).

167 UNHCR, Refugees/Migrants Emergency Response – Mediterranean, *op. cit.*

168 UNHCR, "Greece Data Snapshot", *op. cit.*

169 UNHCR, Refugees/Migrants Emergency Response – Mediterranean, *op. cit.*

170 *Ibid.*

and according to the European Commission Humanitarian Aid & Civil Protection (ECHO), this number mainly consists of Syrian and Iraqi refugees.<sup>171</sup> The number of Syrians in this sum is reported to be over 440,000.<sup>172</sup> UNHCR also reports that in the first three months of 2016, a total of 170,125 migrants arrived in Europe by sea and that 46 percent of them are Syrian refugees.<sup>173</sup> Data from UNHCR Greece shows that 150,703 of these people traveled to Europe by Aegean Sea, and 49 percent of this figure consists of Syrian refugees.<sup>174</sup> ECHO gives a slightly different account, stating that approximately 100,000 refugees from various nationalities arrived in Greece from Turkey by sea as of March 2016.<sup>175</sup>

According to the EU's statistical office Eurostat, the number of Syrian nationals who applied for asylum in 28 EU Member States increased between 2011 and 2014, and tripled from 2014 to 2015. Although the EU Member States were reluctant to resettle large numbers of Syrian refugees in solidarity with host countries, the number of Syrian nationals who managed to reach Europe and seek asylum was recorded as 122,065 and 368,400 respectively in 2014 and 2015. However, out of these asylum applications only 2,870 in 2014 and 5,800 in 2015 have received a positive final decision.<sup>176</sup> The positive decisions include the recognition of "Geneva convention status", "humanitarian status", "subsidiary protection status", and "temporary protection status".<sup>177</sup> It should be noted that although "temporary protection status" is listed as one of the positive decisions, no Syrian citizen has been granted this status yet.

Eurostat's data reflects that in spite of the reluctance of EU Member States to operate an efficient mechanism for resettling a larger portion of Syrian refugees hosted by neighboring countries, the number of Syrian refugees who reached Europe and applied for asylum has been increasing since the onset of the conflict in 2011. However, the rate of positive decisions regarding Syrian applicants' asylum requests remains significantly low with a recognition rate of 2% in 2014, and 1.5% in 2015.

It is possible that, in the future, the recent judgment of the European Court of Human Rights (ECtHR) on the Case of L.M. and Others v. Russia<sup>178</sup> creates a positive impact for an increase in the recognition rate of Syrian nationals in the EU. In the Case of L.M. and Others v. Russia, that stands as the first ECtHR decision regarding the issue of returns to Syria since the beginning of the displacement crisis, the Court found that the applicants' fundamental rights would be violated upon their forcible

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<sup>171</sup> ECHO, Turkey: Refugee Crisis Factsheet, *op. cit.*

<sup>172</sup> UN, 3RP, *op. cit.*

<sup>173</sup> UNHCR, Refugees/Migrants Emergency Response – Mediterranean, *op. cit.*

<sup>174</sup> *Ibid.*

<sup>175</sup> ECHO, Turkey: Refugee Crisis Factsheet, *op. cit.*

<sup>176</sup> *Ibid.*

<sup>177</sup> *Ibid.*

<sup>178</sup> CoE: ECtHR, L.M. and Others v. Russia, Applications nos. 40081/14, 40088/14 and 40127/14, 15 October 2015.

return to Syria by Russian authorities. The Court therefore found that Russia would violate Article 2 (“right to life”) and/or Article 3 (“prohibition of torture and of inhuman or degrading treatment”) of the European Convention on Human Rights (ECHR)<sup>179</sup> if the applicants were to be deported back to Syria.

### III. EU-Turkey “Refugee Deal” and its Implications

Under this section, firstly, the negotiation process between the EU and GoT, and the final text of the “Refugee Deal” will be reviewed. In the second sub-section, the legality of the “Refugee Deal” will be discussed in terms of the principles of international Human Rights Law and European asylum law. Possible challenges that are likely to arise in the implementation of the “Refugee Deal” will also be studied with an emphasis on the safeguards set out in the “Refugee Deal”.

#### A- Negotiations and the Content of the “Refugee Deal”

Since the beginning of the displacement crisis, the GoT made numerous appeals to the international community, especially to EU Member States, for financial support to its budget for the protection of Syrian refugees, and also demanded for the resettlement of Syrian refugees as a traditional method of responsibility-sharing. UNHCR as well as various scholars and human rights activists backed Turkey’s calls for greater responsibility-sharing and cooperation.<sup>180</sup>

The 16<sup>th</sup> of December 2013 marks the beginning of the road that took EU and GoT to the “Refugee Deal”: the EU-Turkey Readmission Agreement has been signed in Ankara, and the EU-Turkey Visa liberalization dialogue has also been initiated.<sup>181</sup> According to the agreement, Turkey will readmit Turkish citizens and the nationals of the third countries and stateless persons who are proven to have reached the EU territory through Turkey by irregular means.<sup>182</sup> Although the agreement entered into force on 1 October 2014, according to the Article 24, the provisions regarding the readmission of third country nationals and stateless persons shall enter into force at the end of a three-year period (on 1 October 2017).<sup>183</sup> In fact, Turkey had previously

179 CoE, ECHR : European Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocols Nos. 11 and 14 (“Avrupa İnsan Hakları Sözleşmesi”), 4 November 1950, Official Gazette no. 8662, 19 March 1954.

180 UNHCR, “Guterres, Jolie in Turkey to show solidarity with Syrian refugees”, 13 September 2012, available at: <http://www.unhcr.org/5051ef1c9.html> (accessed on 30 April 2016). UNHCR, “UNHCR’s Guterres: Syria refugees reach one million”, 6 March 2016, available at: <http://www.unhcr.org/513623756.html> (accessed on 30 April 2016). UNHCR, “Statement by UN High Commissioner for Refugees, António Guterres on refugee crisis in Europe”, 4 September 2015, available at: <http://www.unhcr.org/55e9459f6.html> (accessed on 30 April 2016). UNHCR, “Grandi calls for action to end war in Syria, misery for refugees”, 22 January 2016, available at: <http://www.unhcr.org/56a24d5a6.html> (accessed on 30 April 2016).

181 OJ L 134, Agreement between the European Union and the Republic of Turkey on the Readmission of Persons Residing Without Authorization, 7 May 2014, “Türkiye Cumhuriyeti ile Avrupa Birliği Arasında İzinsiz İkamet Eden Kişilerin Geri Kabulüne İlişkin Anlaşmanın Onaylanmasının Uygun Bulduğuna Dair Kanun” No. 6547, 25 June 2014, Official Gazette no. 29044, 29 June 2014, Article 3 and Article 4.

182 *Ibid.*

183 *Ibid.*, Article 24.

signed a Readmission Protocol with Greece (signed on 8 November 2001)<sup>184</sup>, and similar bilateral agreements have been signed with Syria (10 September 2001)<sup>185</sup>, Kyrgyzstan (6 May 2003)<sup>186</sup>, Romania (19 January 2004)<sup>187</sup>, Ukraine (7 June 2005)<sup>188</sup>, Vietnam (22 August 2007)<sup>189</sup>, Pakistan (7 December 2010)<sup>190</sup>, Russia (18 January 2011)<sup>191</sup>, Moldova (1 November 2012)<sup>192</sup> and Belarus (29 March 2013)<sup>193</sup>. However GoT abstained from signing an agreement with the EU until 2013.<sup>194</sup>

Later on, in the official statement following the special meeting of the European Council on 23 April 2015, the EU expressed its commitment to strengthening their presence at the Mediterranean Sea, fighting human trafficking, stopping illegal migration flows to Europe, and reinforcing international solidarity and responsibility for preventing more deaths in the Mediterranean Sea.<sup>195</sup> The need to “step up cooperation with Turkey in view of the situation in Syria and Iraq” for “preventing illegal migration flows to Europe” was also mentioned in the statement.<sup>196</sup>

On 13 May 2015, the European Commission (EC) adopted a European agenda on

<sup>184</sup> Readmission Agreement, Türkiye Cumhuriyeti ile Yunanistan Cumhuriyeti Arasında Türkiye Cumhuriyeti İçişleri Bakanlığı ile Yunanistan Cumhuriyeti Kamu Bakanlığı Suç ile Özellikle Terörizm, Örgütlü Suçlar, Uyuşturucu Madde Kaçakçılığı ve Yasadışı Göç ile Mücadelede İşbirliği Antlaşmasının Onaylanmasının Uygun Bulunduğuna Dair Kanun, No. 4654, 26 April 2001, Official Gazette no. 24397, 9 May 2001.

<sup>185</sup> Readmission Agreement, Türkiye Cumhuriyeti Hükümeti ile Suriye Arap Cumhuriyeti Hükümeti Arasında Yasadışı Göçmenlerin Geri Kabulüne Sair Antlaşmanın Onaylanmasının Uygun Bulunduğuna İlişkin Kanun, No. 4901, 17 June 2003, Official Gazette no. 26491, 12 April 2007.

<sup>186</sup> Readmission Agreement, Türkiye Cumhuriyeti Hükümeti ile Kırgız Cumhuriyeti Hükümeti Arasında Kendi Vatandaşlarının Geri Kabulüne İlişkin Antlaşmanın Onaylanmasının Uygun Bulunduğuna Dair Kanun, No. 5097, 12 February 2004, Official Gazette no. 25376, 17 February 2006.

<sup>187</sup> Readmission Agreement, Türkiye Cumhuriyeti Hükümeti ile Romanya Hükümeti Arasında Kendi Vatandaşlarının ve Ülkelerinde Yasadışı Konumda Bulunan Yabancıların Geri Kabulüne İlişkin Antlaşmanın Onaylanmasının Uygun Bulunduğuna Dair Kanun, No. 5249, 21 January 2004, Official Gazette no. 25626, 27 April 2004.

<sup>188</sup> Readmission Agreement, Türkiye Cumhuriyeti Hükümeti ile Ukrayna Bakanlar Kurulu Arasında Kişilerin Geri Kabulüne İlişkin Antlaşmanın Onaylanmasının Uygun Bulunduğuna Dair Kanun, No. 5778, 24 June 2008, Official Gazette no. 26926, 4 July 2008.

<sup>189</sup> Readmission Agreement, Türkiye Cumhuriyeti Hükümeti ile Vietnam Sosyalist Cumhuriyeti Hükümeti Arasında Terörizm, Organize Suçlar, Uyuşturucu ve Psikotrop Maddeler ile Bunların Katkı Maddeleri ve Benzerlerinin Kaçakçılığı ve Diğer Tiplerdeki Suçlarla Mücadelede İşbirliği Antlaşması, adopted by Cabinet Decree no. 2008/13364, 10 March 2008, Official Gazette no. 26825, 23 March 2008.

<sup>190</sup> Readmission Agreement, Türkiye Cumhuriyeti Hükümeti ile Pakistan İslam Cumhuriyeti Hükümeti Arasında İzinsiz İkamet Eden Şahısların Geri Kabulüne Dair Antlaşmanın Onaylanmasının Uygun Bulunduğuna Dair Kanun, No. 6703, 7 April 2016, Official Gazette no. 29690, 20 April 2016.

<sup>191</sup> Readmission Agreement, Türkiye Cumhuriyeti Hükümeti ile Rusya Federasyonu Hükümeti Arasında Geri Kabul Antlaşmasının Onaylanmasının Uygun Bulunduğuna İlişkin Kanun, No. 6188, 9 March 2011, Official Gazette no. 27872, 12 March 2011.

<sup>192</sup> Readmission Agreement, Türkiye Cumhuriyeti Hükümeti ile Moldova Cumhuriyeti Hükümeti Arasında Geri Kabul Antlaşması ile Notaların Onaylanmasının Uygun Bulunduğuna Dair Kanun, No. 65174, 15 January 2014, Official Gazette no. 28892, 24 January 2014.

<sup>193</sup> Readmission Agreement, Türkiye Cumhuriyeti Hükümeti ile Belarus Cumhuriyeti Hükümeti Arasında Geri Kabul Antlaşmasının Onaylanmasının Uygun Bulunduğuna Dair Kanun, No. 6505, 27 November 2013, Official Gazette no. 28842, 5 December 2013.

<sup>194</sup> Please see **Ahmet İcduygu**, *The Irregular Migration Corridor between the EU and Turkey: Is it Possible to Block it with a Readmission Agreement?*, EU-US Immigration Systems 2011/14, Robert Schuman Centre for Advanced Studies, San Domenico di Fiesole (FI): European University Institute, 2011. Also see **Nuray Eksi**, *Türkiye Avrupa Birliği Geri Kabul Antlaşması*, Beta, Istanbul, March 2016, pp. 28-32.

<sup>195</sup> European Council Statement, Special meeting of the European Council, 23 April 2015, available at: <http://www.consilium.europa.eu/en/press/press-releases/2015/04/23-special-euco-statement/> (accessed on 30 April 2016).

<sup>196</sup> *Ibid.*

migration whereby it announced that a scheme covering all Member States and “a single European pledge of 20,000 resettlement places” for refugees in North Africa, the Middle East and the Horn of Africa would soon be prepared.<sup>197</sup> Subsequently, on 27 May 2015, the EC put forward the first package of proposals that included a recommendation (adopted on 8 June 2015)<sup>198</sup> requesting Member States to resettle 20,000 refugees from outside of the EU.<sup>199</sup> The European leaders once again expressed their commitment to resettle 20,000 refugees during the European Council meetings of 25-26 June 2015.<sup>200</sup> During the EC Justice and Home Affairs Council meeting on 20 July 2015, the EU Member States officially announced that EU Member States would resettle “through multilateral and national schemes 22,504 displaced persons in clear need of international protection” over a two-year period.<sup>201</sup>

Following the European Agenda on Migration, on 9 September 2015, the EC put forward a second package of proposals that included a proposal for establishing a common European list of “safe countries of origin” which would “support the swift processing of asylum applications from persons originating from countries designated as safe”.<sup>202</sup> The list of safe countries of origin proposed by the EC consisted of Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Kosovo, Montenegro, Serbia and Turkey.<sup>203</sup> The package also addressed the external dimension of the refugee crisis under a joint communication which proposed that the funding allocated to Turkey be raised from €130 million for the period 2007-2013 to €245 million for the period 2014-2016.<sup>204</sup>

On 15 October 2015, a Joint Action Plan has been agreed between the EU and GoT for addressing “the crisis” created by the situation in Syria “together in a spirit

197EC, COM(2015) 240 final, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: a European Agenda On Migration, 13 May 2015, available at: [http://ec.europa.eu/lietuva/documents/power\\_pointai/communication\\_on\\_the\\_european\\_agenda\\_on\\_migration\\_en.pdf](http://ec.europa.eu/lietuva/documents/power_pointai/communication_on_the_european_agenda_on_migration_en.pdf) (accessed on 30 April 2016).

198EC, C(2015) 3560 final, Commission Recommendation on a European resettlement scheme, 8 June 2015, available at: [http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/asylum/general/docs/recommendation\\_on\\_a\\_european\\_resettlement\\_scheme\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/asylum/general/docs/recommendation_on_a_european_resettlement_scheme_en.pdf) (accessed on 30 April 2016).

199EC, Press release “European Commission makes progress on Agenda on Migration”, 27 May 2015, available at: [http://europa.eu/rapid/press-release\\_IP-15-5039\\_en.htm](http://europa.eu/rapid/press-release_IP-15-5039_en.htm) (accessed on 30 April 2016).

200European Council, EUCO 22/15, CO EUR 8, CONCL 3, Meeting conclusions, 26 June 2015, <http://www.consilium.europa.eu/en/meetings/european-council/2015/06/EUCO-conclusions-pdf/> (accessed on 30 April 2016).

201European Council, “Justice and Home Affairs Council”, 20 July 2015, available at: <http://www.consilium.europa.eu/en/meetings/jha/2015/07/20/> (accessed on 30 April 2016).

202EC, COM(2015) 452 final, Proposal for a Regulation of the European Parliament and of the Council Establishing an EU Common List of Safe Countries of Origin, 9 September 2015, available at: [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/proposal\\_for\\_regulation\\_of\\_the\\_ep\\_and\\_council\\_establishing\\_an\\_eu\\_common\\_list\\_of\\_safe\\_countries\\_of\\_origin\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/proposal_for_regulation_of_the_ep_and_council_establishing_an_eu_common_list_of_safe_countries_of_origin_en.pdf), p. 2 (accessed on 30 April 2016).

203*Ibid.*

204EC, JOIN(2015) 40 final, Joint Communication To The European Parliament And The Council Addressing the Refugee Crisis in Europe: The Role of EU External Action, 9 September 2015, available at: [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/communication\\_on\\_addressing\\_the\\_external\\_dimension\\_of\\_the\\_refugee\\_crisis\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/communication_on_addressing_the_external_dimension_of_the_refugee_crisis_en.pdf), p.6 (accessed on 30 April 2016).

of burden sharing”.<sup>205</sup> Aiming to strengthen the cooperation between Turkey and EU for addressing the root causes of the Syrian displacement crisis and mass influx, for supporting Syrians in Turkey as well as the host communities in the country, and for “preventing irregular migration flows to the EU”, the Joint Action Plan indicated the EU’s intention to allocate further financial assistance to Turkey, and GoT’s intention to accelerate procedures for readmitting “irregular migrants who are not in need of international protection and were intercepted coming from the Turkish territory in line with the established bilateral readmission provisions”.<sup>206</sup> Later, during the EC Justice and Home Affairs Council meeting on 9 November 2015, EU Member States decided to accelerate the process of Turkey’s fulfillment of the visa liberalization and to enhance cooperation with Turkey for fully implementing the Readmission Agreement.<sup>207</sup> The need for a stronger cooperation and coordination with Turkey regarding border security and migration management has been discussed repeatedly during the informal meeting of EU heads of State or government on 12 November 2015 and the EC Foreign Affairs Council meeting on 16 November 2015. And on 24 November 2015, the EC announced that it was setting up the legal framework for a €3 billion Refugee Facility for Turkey.<sup>208</sup>

The meeting of the EU heads of State or government with Turkey on 29 November 2015 has been a significant step in the negotiations: the Joint Action Plan of October 2015 has been activated and the process of Turkey’s accession to the EU has been re-energized.<sup>209</sup> According to the Joint Action Plan the EU-Turkey Readmission Agreement’s provisions regarding the nationals of third countries and stateless persons will enter in force in 1 June 2016 (instead of October 2017 as previously foreseen in Article 24 of the Agreement); Turkey will improve the implementation of the Turkey-Greece Readmission Protocol of 2001; the visa liberalization process for Turkish citizens will be completed by October 2016; and the EU will provide a funding of €3 billion to Turkey for providing assistance to Syrian refugees in the country.<sup>210</sup>

Furthermore, on 15 December 2015, the EC put forward a third package of proposals in line with the European Agenda on Migration, including a Commission Recommendation

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205 EC, Factsheet “EU-Turkey joint action plan”, 15 October 2015, available at: [http://europa.eu/rapid/press-release\\_MEMO-15-5860\\_en.htm](http://europa.eu/rapid/press-release_MEMO-15-5860_en.htm) (accessed on 30 April 2016).

206 *Ibid.*

207 European Council, Press release “Council Conclusions on Measures to handle the refugee and migration crisis”, 9 November 2015, available at: <http://www.consilium.europa.eu/en/press/press-releases/2015/11/09-jha-council-conclusions-on-measures-to-handle-refugee-and-migration-crisis/> (accessed on 30 April 2016).

208 EC, Press release “EU-Turkey Cooperation: A €3 billion Refugee Facility for Turkey”, 24 November 2015, available at: [http://europa.eu/rapid/press-release\\_IP-15-6162\\_en.htm](http://europa.eu/rapid/press-release_IP-15-6162_en.htm) (accessed on 30 April 2016).

209 European Council, “Meeting of heads of state or government with Turkey - EU-Turkey statement”, 29 November 2015, available at: <http://www.consilium.europa.eu/en/press/press-releases/2015/11/29-eu-turkey-meeting-statement/> (accessed on 30 April 2016).

210 EC, “Managing the Refugee Crisis - EU-Turkey Joint Action Plan: Implementation Report”, n.d., available at: [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/managing\\_the\\_refugee\\_crisis\\_-\\_eu-turkey\\_join\\_action\\_plan\\_implementation\\_report\\_20160210\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/managing_the_refugee_crisis_-_eu-turkey_join_action_plan_implementation_report_20160210_en.pdf) (accessed on 30 April 2016).

for a Voluntary Humanitarian Admission Scheme with Turkey.<sup>211</sup> According to the recommendation, “humanitarian admission should mean an expedited process” whereby EU Member States participating in the scheme would admit persons in need of international protection upon Turkey’s referral and UNHCR’s recommendation. These persons should “have been registered by the Turkish authorities prior to 29 November 2015”.<sup>212</sup> And subsequently on 3 February 2016, EU Member States discussed the details of financing the previously accepted €3 billion Refugee Facility for Turkey.<sup>213</sup>

In this context, the notion of “safe third country” had been introduced for the first time in the EC Communication on the State of Play of Implementation of the Priority Actions under the European Agenda on Migration, on 10 February 2016. Welcomed by the European Council during its meetings of 18-19 February 2016,<sup>214</sup> the communication revisited the definition of “safe third country” under the Asylum Procedures Directive (APD)<sup>215</sup>; encouraged all Member States to make necessary changes in their national legislation regarding the notion of “safe third countries”, inviting them to set up required legal framework for returning asylum-seekers to “safe third countries” without examining their applications for refugee status; and underlined that “the concept of safe third country as defined in the Asylum Procedures Directive [...] does not require that the safe third country has ratified that Convention without geographical reservation”,<sup>216</sup> a reference that can be interpreted as the prospective recognition of Turkey as a “safe third country”.

On 7 March 2016, the EU and GoT held a meeting during which they discussed new proposals for addressing the “refugee crisis” and for an accelerated full implementation of the Joint Action Plan.<sup>217</sup> The list of proposals included the return of all new irregular migrants crossing to Greece from Turkey; the resettlement of a Syrian from Turkey to the EU for every Syrian readmitted by Turkey from Greece; the acceleration of the implementation of the visa liberalization roadmap and the €3 billion Refugee Facility for Turkey; the opening of new chapters in the negotiation for Turkey’s accession to the

211 EC, C(2015) 9490, Commission Recommendation for a voluntary humanitarian admission scheme with Turkey, 15 December 2015, available at: [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/securing-eu-borders/legal-documents/docs/commission\\_recommendation\\_for\\_a\\_voluntary\\_humanitarian\\_admission\\_scheme\\_with\\_turkey\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/securing-eu-borders/legal-documents/docs/commission_recommendation_for_a_voluntary_humanitarian_admission_scheme_with_turkey_en.pdf) (accessed on 30 April 2016).

212 *Ibid.*, p. 4.

213 European Council, Press release “Refugee facility for Turkey: Member states agree on details of financing”, 3 February 2016, available at: <http://www.consilium.europa.eu/en/press/press-releases/2016/02/03-refugee-facility-for-turkey/> (accessed on 30 April 2016).

214 European Council, Press release “European Council Conclusions on migration”, 18 February 2016, available at: <http://www.consilium.europa.eu/en/press/press-releases/2016/02/18-euco-conclusions-migration/> (accessed on 30 April 2016).

215 EU: Council of the EU, Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on Common Procedures for Granting and Withdrawing International Protection (Recast), 26 June 2013, OJ L. 180/60 -180/95, 29 June 2013.

216 EC, COM(2016) 85 final, Communication from the Commission to the European Parliament and the Council on the State of Play of Implementation of the Priority Actions under the European Agenda on Migration, 10 February 2016, available at: [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/managing\\_the\\_refugee\\_crisis\\_state\\_of\\_play\\_20160210\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/managing_the_refugee_crisis_state_of_play_20160210_en.pdf), p.18 (accessed on 30 April 2016).

217 European Council, “Statement of the EU Heads of State or Government”, 8 March 2016, available at: <http://www.consilium.europa.eu/en/press/press-releases/2016/03/07-eu-turkey-meeting-statement/> (accessed on 30 April 2016).

EU; and better cooperation between Turkey and EU for improving the humanitarian situation in Syria.<sup>218</sup> Subsequently on 10 March 2016, the EC Justice and Home Affairs Council welcomed the statement agreed between the EU and GoT.<sup>219</sup>

Finally on 18 March 2016, EU leaders met with the Turkish Prime Minister Davutoğlu, and they agreed on the proposals previously discussed on 7 March.<sup>220</sup> The parties agreed that (1) “all new irregular migrants crossing from Turkey into Greek islands as from 20 March 2016 [...] who did not apply for asylum or whose application has been found unfounded or inadmissible” in accordance with the Asylum Procedures Directive “will be returned to Turkey” and the costs for the return operations will be covered by the EU; (2) “for every Syrian being returned to Turkey from Greek islands, another Syrian will be resettled from Turkey to the EU” and “migrants who have not previously entered or tried to enter the EU irregularly” will be prioritized for resettlement; (3) “Turkey will take any necessary measures to prevent new sea or land routes for illegal migration opening from Turkey to the EU;” (4) EU Member States will resettle 18,000 Syrian refugees, in accordance with the resettlement scheme adopted in July 2015, and “any further need for resettlement will be carried out through a similar voluntary arrangement up to a limit of an additional 54.000 persons;” (5) when irregular crossings between Turkey and the EU are stopped completely or kept at a reasonable level, “a Voluntary Humanitarian Admission Scheme will be activated” and EU Member States will contribute to the scheme on a voluntary basis; (6) “the fulfilment of the visa liberalisation roadmap will be accelerated vis-à-vis all participating Member States with a view to lifting the visa requirements for Turkish citizens at the latest by the end of June 2016;” (7) the EU “will further speed up the disbursement of the initially allocated €3 billion under the Facility for Refugees in Turkey”, and will mobilize “an additional funding for the Facility of an additional €3 billion up to the end of 2018;” (8) the process of Turkey’s accession to the EU will be re-energized; (9) and Turkey and the EU will cooperate for “any joint endeavour to improve humanitarian conditions inside Syria”.<sup>221</sup> Thus, the “Refugee Deal” was completely shaped during the meeting of 18 March and it was announced on the same day in the EU-Turkey Statement. According to the latter, the “Refugee Deal” would be implemented as of 20 March 2016 and the return of “all new irregular migrants” would start on 4 April 2016.<sup>222</sup>

On 3 April 2016, the Government of Greece adopted a new law for allowing the implementation of the “Refugee Deal” as of 20 April 2016. The new law established

218 European Council, “Meeting of the EU heads of state or government with Turkey”, 7 March 2016, available at: <http://www.consilium.europa.eu/en/meetings/international-summit/2016/03/07/> (accessed on 30 April 2016).

219 European Council, “Justice and Home Affairs Council”, 10-11 March 2016, available at: <http://www.consilium.europa.eu/en/meetings/jha/2016/03/10-11/> (accessed on 30 April 2016).

220 European Council, “European Council Meeting”, 17-18 March 2016, available at: <http://www.consilium.europa.eu/en/meetings/european-council/2016/03/17-18/> (accessed on 30 April 2016).

221 European Council, Press release “EU-Turkey statement”, 18 March 2016, available at: <http://www.consilium.europa.eu/en/press/press-releases/2016/03/18-eu-turkey-statement/> (accessed on 30 April 2016).

222 *Ibid.*

an Appeals’ Authority, the Reception and Identification Service, new Regional Asylum Offices, and also introduced the possibility to grant humanitarian status to asylum seekers with appeals pending for a long time. The law also restructured the Asylum Service.<sup>223</sup>

Similarly, the Circular No: 2016/8 adopted by the Turkish Prime Ministry on 5 April 2016 requested that “all state institutions and organizations, and local authorities” cooperate with DGMM for making necessary preparations for the readmission of “irregular migrants” from Greece as of 4 April, in line with the Readmission Agreement of 16 December 2013 and the statement (“Refugee Deal”) of 18 March 2016.<sup>224</sup>

The first two rounds of deportations of refugees from Greece to Turkey took place on 4 and 8 April 2016. So far, a total of 324 refugees (202 deportees on 4 April and 124 deportees on 8 April 2016) have been readmitted by Turkey.<sup>225</sup> On 5 April 2016, it was announced that “the expulsion of migrants from Greece to Turkey has been suspended as authorities admitted that it could take months to process the thousands of asylum seekers stranded on the Aegean islands”.<sup>226</sup>

## **B- Legality and Implications of the “Refugee Deal”**

From the moment of its announcement, the “Refugee Deal” has been widely criticized by scholars, legal experts, human rights activists and international NGOs, and is still regarded to fall short of a number of principles and rules set under the international Human Rights Law and the European asylum law. International organizations such as the UNHCR have also been warning that the safeguards described in the statement must be strictly implemented to avoid any possible human rights breaches in the practice of the “Refugee Deal” both on Greek and Turkish soils.<sup>227</sup>

It is important to note that, although it will not be discussed and analyzed in this paper, the legality of the “Refugee Deal” in the context of Turkish national law and its Constitution is the subject of a complicated debate. The questions of whether and how the “Refugee Deal” could be legally binding for both parties (GoT and the EU) is a topic that is currently being discussed among scholars and legal experts.<sup>228</sup>

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223 UNHCR, “Operations Cell Daily Report”, Regional Bureau Europe, 15 April 2016, available at: <https://data.unhcr.org/mediterranean/download.php?id=1055>, p. 1 (accessed on 30 April 2016).

224 Circular No. 2016/8 from Prime Ministry on Irregular Migration (“Düzensiz Göçle Mücadele ile İlgili Başbakanlık Genelgesi”), Official Gazette no. 29675, 5 April 2016

225 Mülteci-Der, “Readmissions from Greece to Turkey: What Happens After Readmission?”, available at: <http://mülteci.org.tr/haberdetay.aspx?Id=140> (accessed on 30 April 2016).

226 Nick Squires, Oscar Webb, “Greece suspends expulsion of migrants to Turkey”, The Telegraph, 5 April 2016, available at: <http://www.telegraph.co.uk/news/2016/04/05/pic-n-pub-greece-suspends-expulsion-of-migrants-to-turkey/> (accessed on 30 April 2016).

227 UNHCR, “Legal considerations on the return of asylum-seekers and refugees from Greece to Turkey as part of the EU-Turkey Cooperation in Tackling the Migration Crisis under the safe third country and first country of asylum concept”, available at: [www.unhcr.org/56f3ec5a9.pdf](http://www.unhcr.org/56f3ec5a9.pdf) (accessed on 30 April 2016).

228 For further reading, **Nuray Ekşi**, “Türkiye-Avrupa Birliği Geri Kabul Anlaşması: Bir Hatalar Zinciri”, *Legal Hukuk Dergisi*, Volume: 14, Issue:163, 2016.

## 1- Legality as per the International Human Rights Law and EU Asylum Law

Firstly, according to the principle of *non-refoulement*, one of the core elements of the international Human Rights law, all States are prohibited from sending a person who seeks asylum in their territory, to a country where this person's life or freedom would be at risk. For the first time, the principle of *non-refoulement* was officially enshrined in Article 33 of the 1951 Convention entitled the "prohibition of expulsion or return (*refoulement*)": "No Contracting State shall expel or return (*refouler*) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion".<sup>229</sup> This principle is also contained in the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984 (1984 Convention), under Article 3: "No State Party shall expel, return (*refouler*) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture".<sup>230</sup>

The concept of *non-refoulement* also constitutes one of the core principles of the European asylum law. Article 19 of the Charter of Fundamental Rights of the European Union (EU Charter) contains this principle: "No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment".<sup>231</sup> EU Member States are therefore obliged to comply with the principle of *non-refoulement* which is also consolidated in several European Council and European Parliament directives regulating asylum and migration, i.e. Directive 2005/85/EC,<sup>232</sup> Directive 2008/115/EC,<sup>233</sup> Directive 2013/32/EU (also known as the Asylum Procedures Directive -APD-),<sup>234</sup> and Directive 2013/33/EU.<sup>235</sup> For instance, according to the APD, all Member States have the obligation of separately assessing each individual application for international protection, and all asylum seekers have the right to "remain in the Member State pending the examination of the application".<sup>236</sup>

The principle of *non-refoulement* incorporated in Article 14 of the EU-Turkey Readmission Agreement ("Transit Principles").<sup>237</sup> According to the "transit

<sup>229</sup> UN, 1951 Convention, *op. cit.*, Article 33.

<sup>230</sup> UN, A/RES/39/46, *op. cit.*, Article 3.

<sup>231</sup> EU, 2012/C 326/02, Charter of Fundamental Rights of the European Union, 26 October 2012, Official Journal no. 2000/C 364/01, 18 December 2000, Article 19.

<sup>232</sup> EU, Council of the EU, Council Directive 2005/85/EC of 1 December 2005 on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status, 13 December 2005, OJ L 326, 2 January 2006, pp. 1, 11, 13, 14, 21.

<sup>233</sup> EU: Council of the EU, Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on Common Standards and Procedures in Member States for Returning Illegally Staying Third-Country Nationals, 16 December 2008, OJ L. 348/98-348/107, 24 December 2008, pp. 1, 5-6.

<sup>234</sup> EU: Council of the EU, Directive 2013/32/EU, *op. cit.*, pp. 60, 68, 77, 80-81, 87.

<sup>235</sup> EU: Council of the EU, Directive 2013/33/EU of the European Parliament and Council of 26 June 2013 Laying Down Standards for the Reception of Applicants for International Protection (Recast), 26 June 2013, OJ L. 180/96 -105/32, 29 June 2013, p. 96.

<sup>236</sup> EU: Council of the EU, Directive 2013/32/EU, *op. cit.*, Article 9.

<sup>237</sup> OJ L 134, *op. cit.*, Article 14.

readmission” described in the Readmission Agreement, third country nationals and stateless persons may be readmitted by Turkey with an aim to be returned to their countries of origin if there are no direct means of transportation to these countries from the EU Member State that requests these persons’ readmission. Paragraph 3 of Article 14 states that “if the third-country national or the stateless person runs the real risk of being subjected to torture or to inhuman or degrading treatment or punishment or the death penalty or of persecution because of his race, religion, nationality, membership of a particular social group or political conviction in the State of destination or another State of transit”, transit can be refused by Turkey or an EU Member State.<sup>238</sup> However, the Readmission Agreement does not contain any explicit clause that prohibits Turkey from sending third country nationals and stateless persons to their countries of origin where they may be at risk of torture and mistreatment. In other words, the Readmission Agreement does not explicitly prohibit readmissions that would directly or indirectly violate the principle of *non-refoulement*. Nuray Ekşi argues that in compliance with the Preamble and Article 18 (“Non-affection clause”)<sup>239</sup> stating that the Readmission Agreement “shall be without prejudice to the rights, obligations and responsibilities of the Union, its Member States and Turkey arising from international law including from international conventions to which they are party”, no readmission request that would violate the principle of *non-refoulement* shall be accepted in the implementation of the Readmission Agreement<sup>240</sup>, thus in the implementation of the Refugee Deal.

According to a recent statement of the Turkish Minister of the Interior Efan Ala, except for Syrian nationals, “persons from other nationalities” readmitted by Turkey will be “deported back to their country of origin” in the implementation of the “Refugee Deal”.<sup>241</sup> This would imply a major breach of the principle of *non-refoulement* if any persons at risk of persecution, torture or execution in their country of origin, are to be sent back to Turkey -in other words, if there is a case of “indirect” (or “chain”) *refoulement*.<sup>242</sup> As mentioned above, in the EU-Turkey Readmission Agreement, there is no explicit clause that prohibits Turkey from sending readmitted third country nationals and stateless persons to their countries of origin where they would be at risk of persecution. And the likelihood of such a breach of the principle of (direct or indirect) *non-refoulement* cannot be underestimated given the statement of Ala, and in that case, not only the letter but also the spirit of the international system for the protection of refugees would be greatly harmed. If through the implementation of the “Refugee Deal”, persons in need of international protection are deported to

238 *Ibid.*, Article 14.

239 *Ibid.* Preamble and Article 18.

240 Ekşi, *op. cit.*, pp. 110-112.

241 BBC Türkçe, “Türkiye-AB anlaşması kapsamında ilk göçmen kaflesi Dikili’de”, 4 April 2016, available at: [http://www.bbc.com/turkce/haberler/2016/04/160403\\_yunanistan\\_turkiye\\_gocmen](http://www.bbc.com/turkce/haberler/2016/04/160403_yunanistan_turkiye_gocmen) (accessed on 30 April 2016).

242 EU: Council of the EU, Directive 2013/32/EU, *op. cit.*, Article 9.

Turkey and if the latter fails to guarantee these persons' rights recognized under the ECHR, the 1951 Convention and the 1984 Convention, the deal could be considered as "illegal" with regards to the international Human Rights Law and EU asylum law.

In February 2012, the Grand Chamber of the ECtHR delivered its decision on a leading case regarding this matter, namely the case of *Hirsi Jamaa and others v. Italy*.<sup>243</sup> The applicants, who are from Somalia and Eritrea, were caught outside of the Italian maritime borders by Italian Customs and Coastguard vessels after leaving Libya by sea with the aim of reaching the Italian coast.<sup>244</sup> And an Italian military ship then returned them to Libya, and the applicants were forcibly delivered to Libyan authorities.<sup>245</sup> The ECtHR reiterated that "in accordance with the principle of *pacta sunt servanda*" Italy, as a party to the ECHR, cannot evade its responsibilities under the ECHR by relying on commitments arising from its bilateral readmission agreement with Libya.<sup>246</sup> According to Article 3 of the ECHR ("prohibition of torture and of inhuman or degrading treatment") "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."<sup>247</sup> The Court found that Article 3 has been violated twice in the case of *Hirsi Jamaa and Others v. Italy*: Firstly when Italy sent the applicants back to Libya where they would face torture and mistreatment; and secondly when the applicants have been forcibly returned to their countries of origin (Eritrea and Somalia) by Libyan authorities.<sup>248</sup> In the light of this decision, it can be argued that any violations of the ECHR articles prohibiting direct or indirect *refoulement*, could be brought to the ECtHR. And in the context of the implementation of the "Refugee Deal", both an EU Member State's decision to return a person in need of international protection to Turkey, and Turkey's decision to deport that person to their country of origin where they would be at risk of mistreatment and torture, could be challenged at the ECtHR.

The second question is whether the "Refugee Deal" complies with the principle of "prohibition of mass expulsion" as indirectly contained in Article 13 of the International Covenant on Civil and Political Rights (ICCPR).<sup>249</sup> Adopted by the UN General Assembly on 16 December 1966, the ICCPR states that "an alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall [...] be allowed to submit the reasons against his expulsion and to have his case reviewed by [...] the competent authority".<sup>250</sup> Although

243 CoE: ECtHR, *Hirsi Jamaa and Others v. Italy*, Application no. 27765/09, 23 February 2012.

244 *Ibid.*, p. 3.

245 *Ibid.*

246 *Ibid.*, pp. 33-38.

247 CoE : ECHR, *op. cit.*, Article 3.

248 CoE: ECtHR, *Hirsi Jamaa and Others v. Italy*, *op. cit.*, pp. 27-41.

249 **Jean-Marie Henckaerts**, *Mass Expulsion in Modern International Law and Practice*, Martinus Nijhoff Publishers, The Hague, 1995, p.48.

250 UN, International Covenant on Civil and Political Rights, 16 December 1966, "Medeni ve Siyasî Haklara İlişkin Uluslararası Sözleşmenin Onaylanmasının Uygun Bulduğuna Dair Kanun No. 4868", Official Gazette no. 25142, 18 June 2003, Article 13.

this article does not explicitly prohibit the collective expulsions, it is interpreted that mass expulsions would violate this article, which foresees the right of each alien to have their own case and to appeal the decision of their expulsion.

The blanket return of foreigners to a third country is also not consistent with the EU asylum law. Protocol No. 4 to the ECHR prohibits the “collective expulsion of aliens” in its Article 4.<sup>251</sup> Furthermore, according to Article 19 of the EU Charter, “collective expulsions are prohibited”.<sup>252</sup> Through several judgments, the ECtHR established the implementation standards for the rule of prohibition of “collective expulsion of aliens”. For instance, in the case of *Khlaifia and Others v. Italy*<sup>253</sup>, the Court found that Italy has violated Article 4 of the ECHR by deporting clandestine Tunisian migrants who had arrived on the Italian coast during the events of Arab Spring.<sup>254</sup> Also in the case of *Čonka v. Belgium*, in which the Slovakian applicants were expelled to Slovakia by Belgian authorities, the Court decided that Belgium violated Article 4.<sup>255</sup> In both cases, the ECtHR argued that although each applicant in both cases had been issued individual expulsion orders, the Court was not persuaded that the personal circumstances of each of those concerned had been genuinely and individually taken into account prior to their deportation by Italian and Belgian authorities.<sup>256</sup>

However, the “Refugee Deal” does not describe any specific mechanisms for the Greek authorities to fulfill the arduous task of assessing and deciding on the asylum applications of each and every individual prior to readmission by Turkey. As stated in the previous section, the number of refugees from Syria and other countries (i.e. Pakistan, Iraq and Afghanistan) crossing the Aegean Sea and reaching Greece has been escalating since 2014. UNHCR Greece reports that, as of 16 April 2016, since the beginning of the year 153,602 refugees have arrived in Greece by sea, with an average of 870 people per day.<sup>257</sup> It seems almost impossible for the Greek authorities to receive, assess and lawfully decide on the individual asylum applications from all the “irregular migrants” in a short period of time. Therefore, another breach of the core principles of the international Human Rights Law and European asylum law is likely to occur during the implementation of the “Refugee Deal”. Refugees on Greek soil risk deportation to Turkey as subjects of a blanket policy without their individual claims being properly assessed in compliance with the 1951 Convention and the APD. As argued by UN High Commissioner for Human Rights Zeid Ra’ad Al Hussein, the forced return of individuals, who are willing to apply for asylum or

251 CoE: ECHR, *op. cit.*, Article 4 “Prohibition of collective expulsion of aliens”.

252 EU, 2012/C 326/02, *op. cit.*, Article 19.

253 CoE: ECtHR, *Khlaifia and Others v. Italy*, Application no 16483/12, 1 September 2015

254 *Ibid.*

255 CoE: ECtHR, *Čonka v. Belgium*, 51564/99, 5 February 2002.

256 *Ibid.* CoE: ECtHR, *Khlaifia*, *op. cit.*

257 “Greece Data Snapshot”, UNHCR, 16 April 2016, available at: <https://data.unhcr.org/mediterranean/country.php?id=83#> (accessed on 30 April 2016).

who are awaiting a decision on their request for asylum or who are willing to appeal the decision of rejection of their request for asylum, would “qualify as a collective expulsion”.<sup>258</sup> In sum, the expulsion *en masse* would constitute another illegal aspect of the “Refugee Deal” if refugees are to be readmitted by Turkey without being able to apply for asylum in Greece and receiving a fair decision on their request.

Moreover, Ekşi states that since “asylum seekers” shall not be convicted for travelling to, entering and staying in the country of asylum through illegal ways, they also should not be identified as “irregular migrants” and they should be left out of the scope of the EU-Turkey Readmission Agreement. However, Ekşi argues that if the individuals whose asylum requests are denied by the EU Member States are accepted to fall within the scope of the Readmission Agreement (and thus, the “Refugee Deal”), it could be misused by the EU as a way to return persons in need of international protection to Turkey, and it would be a violation of the international Human Rights Law.<sup>259</sup> Ekşi puts that the Syrian asylum seekers whose asylum requests are rejected by the EU authorities would also fall under the scope of the Readmission Agreement, and that the same risks of legal violation would exist for Syrians in the implementation of the deal.<sup>260</sup>

Thirdly, the “Refugee Deal” mainly focuses on “irregular migrants crossing from Turkey into Greek islands” however it does not mention refugees who may encounter European or Turkish authorities *en route* to the Greek islands, in other words, in the territorial waters. According to Article 3 of the APD, an international protection request may be made in the territorial waters of a Member State,<sup>261</sup> and “officials who first come into contact with persons seeking international protection, in particular officials carrying out the surveillance of land or maritime borders or conducting border checks, [...] should be able to provide third-country nationals or stateless persons who are present in the territory, including at the border, in the territorial waters or in the transit zones of the Member States, and who make an application for international protection, with relevant information as to where and how applications for international protection may be lodged. Where those persons are present in the territorial waters of a Member State, they should be disembarked on land and have their applications examined”.<sup>262</sup>

In the case of *Hirsi Jamaa and Others v. Italy*, the ECtHR has found that the Italian authorities had violated the Article 4 of the Protocol No. 4 to the ECHR (“prohibition of collective expulsion of aliens”). Thus, for the first time, the ECtHR has ascertained

258 UN Human Rights Office of the High Commissioner, “UN rights chief expresses serious concerns over EU-Turkey agreement”, 24 March 2016, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=18531&LangID=E> (accessed on 30 April 2016).

259 Ekşi, *op. cit.*, pp. 113-114.

260 *Ibid.*, pp. 117-118.

261 EU: Council of the EU, Directive 2013/32/EU, *op. cit.*, Article 3.

262 EU: Council of the EU, Directive 2013/32/EU, *op. cit.*, Preamble paragraph 26.

that the Article 4 of Protocol No. 4 “applies to a case involving the removal of aliens to a third State carried out outside national territory”.<sup>263</sup> The ECtHR has found that the Italian authorities failed to assess the applicants’ personal circumstances before forcibly returning them to Libyan authorities, and it has reiterated the responsibility of all State authorities to inform any individual who is subject to a removal measure, and to provide these individuals with effective access to adequate procedures for appealing the decision of their removal.<sup>264</sup> In light of this judgment by the Grand Chamber of the ECtHR, it can be assumed that any EU Member State may be found guilty of violating the Article 4 of the Protocol No. 4 to the ECHR, if any refugee who comes in contact with European authorities outside of their maritime territories is returned back to Turkey without being given access to the European asylum procedure.

The fourth question regarding the legal and moral merits of the “Refugee Deal” is its aspect that is criticized as being “Kafkaesque” by European Council on Refugees and Exiles (ECRE):<sup>265</sup> The “one in, one out” policy contained in the deal makes the number of resettlement places available in EU countries “dependent on the number of Syrians who risk their lives in the Aegean”, however resettlement should not be linked to the number of persons readmitted by Turkey.<sup>266</sup> ECRE argues that this policy may also have other consequences: with an aim to refer as many refugees for resettlement in the EU out of Turkish territories, the GoT may tolerate and turn a blind eye on the increasing numbers of Syrians who risk their lives for crossing to Greek islands.<sup>267</sup> ECRE emphasizes the fact that Turkey has recently started to impose visas to several nationalities that previously did not require one, and GoT is preparing to sign readmission agreements with 14 countries of origin; and it criticizes the “Refugee Deal” by calling it a “a policy of containment in Turkey on behalf of the EU” that can result in “chain refoulement”.<sup>268</sup> As mentioned in the previous section, Turkey has signed bilateral readmission agreements with Syria, Kyrgyzstan, Romania, Ukraine, Vietnam, Pakistan, Russia, Moldova, and Belarus. According to Hürriyet Daily News, as of 24 April 2016, the list of countries that Turkey seeks to conclude readmission agreements with in near future includes Iran, Iraq, Afghanistan, Algeria, Bangladesh, Cameroon, Eritrea, Morocco, Ghana, Myanmar, the Republic of Congo, Somali, Sudan and Tunisia.<sup>269</sup>

Lastly, the “Refugee Deal” is focusing only on Syrians in terms of providing international protection, and seems to be based on the argument that Syrians deserve

<sup>263</sup> CoE: ECtHR: Hirsi Jamaa and Others v. Italy, *op. cit.*, pp. 45-47.

<sup>264</sup> *Ibid.*, pp. 53-54.

<sup>265</sup> ECRE, “Memorandum to the European Council Meeting 17 – 18 March 2016: Time to Save the Right to Asylum”, Brussels, 11 March 2016, available at: [www.ecre.org/component/downloads/downloads/1081.html](http://www.ecre.org/component/downloads/downloads/1081.html), p. 2 (accessed on 30 April 2016).

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

<sup>267</sup> *Ibid.*

<sup>268</sup> *Ibid.*

<sup>269</sup> **Emine Kart**, “Turkey seeks readmission deals with Iraq, Iran”, Hürriyet Daily News, 12 April 2016, available at: <http://www.hurriyetaidailynews.com/Default.aspx?pageID=238&nrID=97699&NewsCatID=510> (accessed on 30 April 2016).

better treatment than refugees from other nationalities who have also fled similar warzones, dictatorships and even ISIS presence, i.e. Afghans, Pakistanis and Iraqis.<sup>270</sup> Such an argument bears the risk of creating a non-equitable, unfair asylum system that favors a particular nationality over the others. Given the fact that, as of April 2016, Syrian nationals constitute only half (53%) of the arrivals in Greece and that the rest is composed of Afghans (23%), Iraqis (9%), Pakistanis (7%) and Iranians (3%),<sup>271</sup> the “Refugee Deal” would be discriminatory as per the international Human Rights Law if it fails to equally consider the need of international protection of non-Syrian refugees. Besides, it is worth mentioning that except for Syrians, refugees from non-European countries are not eligible for temporary protection in Turkey, and they may only enjoy the status of “conditional refugee”.<sup>272</sup> As clearly stated in the Article 62 of the LFIP, “conditional refugees shall be allowed to reside in Turkey temporarily until they are resettled to a third country”.<sup>273</sup> Thus, by making no allowance for the resettlement of non-Syrian refugees, the “Refugee Deal” may be considered to be ignoring the protection needs and rights of non-Syrian refugees in Turkey.

## 2- Turkey as a “Safe Third Country”

The “Refugee Deal” relies on two notions for returning asylum applicants to Turkey: “safe third country” and “first country of asylum” as defined in the APD. According to Article 33 of the APD, “Member States may consider an application for international protection as inadmissible” (in other words, Member States may reject the application without examining the substance of the application), if “a country which is not a Member State is considered as a safe third country for the applicant, pursuant to Article 38” or “a country which is not a Member State is considered as a first country of asylum for the applicant, pursuant to Article 35”.<sup>274</sup>

To start with the notion of “safe third country”, as mentioned in the previous subsection, the EC Communication on the State of Play of Implementation of the Priority Actions under the European Agenda on Migration of 10 February 2016 underlines that “the concept of safe third country as defined in the Asylum Procedures Directive [...] does not require that the safe third country has ratified that Convention without geographical

<sup>270</sup> ISIS is reported to be extremely active and to target non-Muslim minorities, academics, journalists, etc. in Asian countries such as Afghanistan, Bangladesh, and Pakistan. Arif Rafiq, “What Happened to ISIS’s Afghanistan-Pakistan Province?”, *The Diplomat*, 2 February 2016, available at: <http://thediplomat.com/2016/02/what-happened-to-isis-afghanistan-pakistan-province/> (accessed on 30 April 2016). Agence France Press, “Islamic State claims it killed Bangladeshi academic”, *The Guardian*, 23 April 2016, available at: <http://www.theguardian.com/world/2016/apr/23/bangladeshi-professor-hacked-to-death-rajshahi-islamists> (accessed on 30 April 2016). Associated Press, “Isis claims deadly attack on Pakistani consulate in Afghanistan”, *The Guardian*, 13 January 2016, available at: <http://www.theguardian.com/world/2016/jan/13/suicide-bomber-kills-people-eastern-afghanistan-jalalabad> (accessed on 30 April 2016).

<sup>271</sup> “Greece Data Snapshot”, UNHCR, 16 April 2016, *op. cit.*

<sup>272</sup> LFIP, *op. cit.*, Article 62.

<sup>273</sup> *Ibid.*

<sup>274</sup> EU: Council of the EU, Directive 2013/32/EU, *op. cit.*, Article 33.

reservation”,<sup>275</sup> a reference that can be interpreted as the prospective recognition of Turkey as a “safe third country”. Subsequently, the “Refugee Deal” was announced on 18 March 2016 based on the argument that sending “all new irregular migrants crossing from Turkey into Greek islands” back to Turkey would not constitute a violation of the principle of *non-refoulement*, through the recognition of Turkey as a “safe third country”. But does this recognition legally comply with the international Refugee Law and EU asylum law?

Article 38 of the APD defines the concept of “safe third country” as a country where (a) the asylum seeker’s “life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion;” (b) “there is no risk of serious harm;” (c) “the principle of non-refoulement in accordance with the Geneva Convention is respected;” (d) “the prohibition of removal, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law, is respected;” (e) “the possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Geneva Convention”.<sup>276</sup> It is clear that Turkey does not fulfill the criteria listed in Article 38, especially points (c) and (e): As mentioned above, Turkey plans to return non-Syrian refugees readmitted from Greece to their countries of origin which would constitute an act of *refoulement*. Also, as discussed in the previous section, as a result of the geographical limitation that Turkey applies to the 1951 Convention and its 1967 Protocol, asylum seekers from non-European countries do not enjoy the right to obtain “refugee status”. The status “conditional refugee” for non-Syrians only allows temporal residence in Turkey while waiting for resettlement. Therefore it is hard to accept the “conditional refugee” status as equivalent to “refugee status” as defined by 1951 Convention.

Furthermore, an HRW analysis on the implementation of the “Refugee Deal”, published on 19 April 2016, argues that Turkey cannot be accepted as a “safe third country” since the GoT has violated the principle of non-refoulement by not accepting Syrian asylum seekers at its border: “As of April 18, Turkey was denying entry to up to 100,000 people from Syria, and even shooting at some who were trying to flee fighting”.<sup>277</sup> Moreover, on 23 March 2016 Amnesty International reported “the ink wasn’t even dry on the EU-Turkey deal when several dozen Afghans were forced back to a country where their lives could be in danger.”<sup>278</sup> According to this report, Turkey forcibly returned 30 Afghan asylum seekers a few hours after the “Refugee Deal” has come into force. Thus, in light of the above, it can be argued that the “Refugee Deal” is based on the inaccurate presumption that Turkey is a “safe third country”.

<sup>275</sup> EC, COM(2016) 85 final, *op. cit.*, p.18.

<sup>276</sup> EU: Council of the EU, Directive 2013/32/EU, *op. cit.*, Article 36.

<sup>277</sup> HRW, “EU/Greece: First Turkey Deportations Riddled With Abuse”, Athens, 19 April 2016, available at: <https://www.hrw.org/news/2016/04/19/eu/greece-first-turkey-deportations-riddled-abuse> (accessed on 30 April 2016).

<sup>278</sup> Amnesty International, “Turkey ‘Safe Country’ Sham Revealed as Dozens of Afghans Forcibly Returned Hours After EU Refugee Deal”, 23 March 2016, available at: <https://www.amnesty.org/en/press-releases/2016/03/turkey-safe-country-sham-revealed-dozens-of-afghans-returned/> (accessed on 30 April 2016).

The second notion that may be utilized by the EU for sending refugees back to Turkey without assessing their applications for asylum is the concept of “first country of asylum”. According to Article 35 of the APD, a country can be considered to be a “first country of asylum” if (a) the applicant has already been recognized in that country as a “refugee” or (b) the applicant “otherwise enjoys sufficient protection in that country, including benefiting from the principle of non-refoulement”.<sup>279</sup> As discussed above, Turkey does not fulfill the criteria (a); but does it comply with the criteria (b)?

According to ECRE, the Turkish international protection system in place is “largely dysfunctional” and the fundamental rights of non-Syrian refugees are not guaranteed.<sup>280</sup> According to Steve Peers from Essex University, “Turkey also has over five times the number of breaches of the EU Convention on Human Rights as other Balkan states” which further raises questions as to its designation as a “safe third country”.<sup>281</sup> Another academic puts that the Turkish asylum and migration system is “still in its infancy” and that the refugees are waiting in a “legal limbo” where they cannot foresee a bright future, which is mainly caused by the lack of experience, training and equipment in the Turkish asylum system.<sup>282</sup> Moreover, as mentioned above, Turkey has already signed bilateral readmission agreements with countries that most of the refugees on Turkish soil originate from, and GoT is planning to significantly enlarge this list of countries. On top of that, as stated above, high-level Turkish authorities confirm that all non-Syrian refugees will be returned to their countries of origin upon readmission from Greece. Thus, Turkey is very likely to violate the principle of *non-refoulement* in the implementation of the “Refugee Deal”. And it is, at best, questionable whether Turkey can be recognized as a “first country of asylum”.

For these reasons, it can be argued that although the “Refugee Deal” seems to be in keeping with the letter of the law, it does not comply with the spirit of law.

### 3- The Situation in Greece

ECRE is concerned that the safeguards mentioned in the “Refugee Deal” may not be implemented in practice, given the “limited capacity of the registration system in Greece”.<sup>283</sup>

UNHCR reports that the Greek asylum system lacks adequate mechanisms and/or needs to broadly ameliorate existing mechanisms for receiving persons in need

<sup>279</sup> EU: Council of the EU, Directive 2013/32/EU, *op. cit.*, Article 35.

<sup>280</sup> ECRE, Memorandum, *op. cit.*, pp. 1-2.

<sup>281</sup> **Matthew Holehouse**, “EU-Turkey deal on refugees ‘would contravene international law’”, The Telegraph, 8 March 2016, available at: <http://www.telegraph.co.uk/news/worldnews/europe/turkey/12187576/EU-Turkey-deal-on-refugees-would-contravene-international-law.html> (accessed on 30 April 2016).

<sup>282</sup> **Orçun Ulusoy**, “Turkey as a Safe Third Country?”, University of Oxford - Faculty of Law, 29 March 2016, available at: <https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2016/03/turkey-safe-third> (accessed on 30 April 2016).

<sup>283</sup> ECRE, Memorandum, *op. cit.*, p. 1.

of international protection and for processing asylum requests.<sup>284</sup> The conditions in the facilities or “hotspots” -that have been closed and turned into detention centers where refugees are kept until readmission by Turkey- in Lesvos (Moria hotspot), Samos (Vathy hotspot), Chios (VIAL hotspot) and the Greek mainland (30 different locations) are deteriorating in terms of sanitation, food, capacity and quality of accommodation, care for persons with special needs, etc.<sup>285</sup> As noted by UNHCR, the EU should urgently support Greece since there is a high probability that “the Greek asylum service to register and process asylum claims” will soon create problems.<sup>286</sup> According to ECRE, shortly after the “Refugee Deal” came into force and as the hotspots were being transformed into closed detention facilities, several international organizations and NGOs “including UNHCR, MSF, the Norwegian Refugee Council, Save the Children, the International Rescue Committee and OXFAM” suspended some of their activities in the hotspots.<sup>287</sup> Marie Elisabeth Ingres from Médecins Sans Frontières (MSF) explains that they pulled out of Moria camp “because continuing to work inside would make [MSF] complicit in a system [they] consider to be both unfair and inhumane. We will not allow our assistance to be instrumentalized for a mass expulsion operation, and we refuse to be part of a system that has no regard for the humanitarian or protection needs of asylum seekers and migrants”.<sup>288</sup>

According to the report on the Situation of Refugees and Migrants under the EU-Turkey Agreement of 18 March 2016 presented in the Parliamentary Assembly of the Council of Europe (CoE) on 19 April 2016, “the Greek national asylum system has for many years been seriously deficient”.<sup>289</sup> The report also expresses CoE’s concerns about whether the rights of asylum seekers under APD would be effectively respected in practice during the implementation of the “Refugee Deal” on Greek soil.<sup>290</sup> On that note, it is worth mentioning the judgment of the Grand Chamber of the ECtHR in the case of *M.S.S. v. Belgium and Greece* of 2011.<sup>291</sup> The ECtHR found that in practice, Greek national legislation on asylum and migration is not applied, and consequently the Greek authorities do not seriously examine asylum applications and appeals.<sup>292</sup> The Court therefore argued that the asylum seekers in Greece “are not

284 UNHCR, “UNHCR urges immediate safeguards to be in place before any returns begin under EU-Turkey deal”, 1 April 2016, available at: <http://www.unhcr.org/56fe31ca9.html?platform=hootsuite> (accessed on 30 April 2016).

285 *Ibid.*

286 *Ibid.*

287 ECRE, Weekly Bulletin, 25 March 2016, available at: <http://eepurl.com/bVfPY5> (accessed on 30 April 2016).

288 MSF, Press release “Greece: MSF Ends Activities at Primary Lesvos Transit Camp”, 22 March 2016, available at: <http://www.doctorswithoutborders.org/article/greece-msf-ends-activities-primary-lesvos-transit-camp> (accessed on 30 April 2016).

289 CoE: Parliamentary Assembly, “The situation of refugees and migrants under the EU-Turkey Agreement of 18 March 2016: Explanatory memorandum by rapporteur Ms. Tineke Strik”, Reference to committee: Reference 4189 of 18 April 2016 (debate under urgent procedure), 2016 - Second part-session, Report Doc. 14028, available at: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=22612&lang=en> (accessed on 30 April 2016).

290 *Ibid.*

291 CoE: ECtHR, *M.S.S. v. Belgium and Greece*, Application no. 30696/09, 21 January 2011.

292 *Ibid.*, pp. 60-63.

protected against arbitrary removal back to their countries of origin.”<sup>293</sup> The ECtHR emphasized that when compared to other EU Member States, the rate of grant of asylum or subsidiary protection remains extremely low.<sup>294</sup> The ECtHR also noted that “because of the deficiencies in the Greek authorities’ examination of the applicant’s asylum request” the applicant faces the risk “of being returned directly or indirectly to his country of origin without any serious examination of the merits of his asylum application and without having access to an effective remedy”.<sup>295</sup>

Moreover, HRW documented the failure of Greek authorities to implement the safeguards described in the “Refugee Deal” through a detailed report regarding the first two rounds of deportations from Greece to Turkey on 4 and 8 April 2016.<sup>296</sup> The irregularities and violations documented by the HRW are worrying: The deportees were not told that they were going to be sent back to Turkey and were called “on the false pretext that they were to be registered, including asylum”.<sup>297</sup> The deportees were not given any information about where they were being sent to, and they were not permitted to take their personal belongings with them.<sup>298</sup> An unknown number of the deportees “had expressed a desire to seek asylum in Greece” however this was not taken into consideration.<sup>299</sup> UNHCR Europe similarly reported that, on the first day of the implementation of the “Refugee Deal”, the Greek authorities “forgot” to process the asylum claims of 13 of the 202 asylum seekers who have been sent back to Turkey.<sup>300</sup>

#### IV. Conclusion

As discussed in the first section of this paper, the sheer scale of the Syrian displacement crisis and its impact on host countries as well as on the EU Member States oblige the international community to cooperate for a durable solution. According to numerous legal tools and frameworks set under the international Human Rights Law, and particularly Refugee Law, refugees fleeing conflict areas *en masse* are not only the responsibility of the host countries receiving them, but the responsibility of the whole international community. The traditional ways of responsibility-sharing include resettlement, financial aid to host countries and other kinds of assistance for the well-being and protection of the refugees. In fact, the only durable solution to

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293 *Ibid.*, pp. 60-63.

294 *Ibid.*, pp. 60-63.

295 *Ibid.*, p. 64.

296 HRW, EU/Greece, *op. cit.*

297 *Ibid.*

298 *Ibid.*

299 *Ibid.*

300 **Patrick Kingsley**, “Greece may have deported asylum seekers by mistake, says UN”, *The Guardian*, 5 April 2016, available at: <http://www.theguardian.com/world/2016/apr/05/greece-deport-migrants-turkey-united-nations-european-union> (accessed on 30 April 2016).

the Syrian displacement crisis is a political one that would stop the armed conflict inside Syria for a safe return of the refugees to their homeland. However, for the time being, in the absence of such a political solution, it is the international community’s common responsibility to protect Syrians in need of international protection.

Host countries, including Turkey -the largest host of country for Syrian refugees-, do not possess enough financial, humanitarian and social resources nor the necessary legal framework and practical experience for the care and protection of all Syrian refugees who have been seeking asylum in their territories since the beginning of the armed conflict in 2011. The lack of a comprehensive integration policy in host countries coupled with the lack of any tangible chance for being resettled in the EU through legal ways, are pushing Syrian refugees in Turkey to take the dangerous Mediterranean route to Greece. As a result of the failure of the international community in taking timely action and sharing the responsibility over Syrian refugees, the death toll in the Mediterranean has been accelerating since 2014.

At the end of a long negotiation process, the EU and GoT agreed on the “Refugee Deal”. As it has been analyzed in this paper however, the policies described in the “Refugee Deal” are far from creating a tool of responsibility-sharing for the protection and care of the Syrian and non-Syrian refugees in Turkey and on Greek soil. The “Refugee Deal” rather functions as a tool of “responsibility-shifting” that would allow the EU to implement its policies aiming at closing its borders to asylum seekers and other persons in need of international protection. Therefore, it does not seem accurate to accept the “Refugee Deal” as the proper international response for finding a durable solution to the Syrian displacement crisis. The “Refugee Deal” may be assessed to be a band-aid approach that would probably lead to undesirable repercussions in near future.

As shown in detail throughout the second section of this paper, the “Refugee Deal” does not comply with the concepts of *non-refoulement* and “prohibition of collective expulsions” that are the core principles of the international Human Rights Law and EU asylum law. The “Refugee Deal” interprets the notion of responsibility-sharing in a way that would breach these fundamental principles, and it consequently risks to seriously harm the international system for the protection of refugees.

A major legal challenge that is contained in the “Refugee Deal” is the fact that it is built on the assumption that Turkey may be accepted as a “safe third country” or “first country of asylum” in the context of the international Human Rights Law and EU asylum law. However, as discussed in the second section of this paper, although the first step for establishing an effective national system of asylum and migration is to adopt a comprehensive legislation, without adequate training, personnel, policies, infrastructure, practical measures and a sincere commitment to the core principles of the international protection system for refugees (such as *non-refoulement* and

prohibition of collective expulsions) a country cannot be accepted as a safe haven for refugees. As argued by the UN High Commissioner for Human Rights, “even if Turkey does expand its refugee definition to include non-Europeans, or passes laws qualifying certain nationalities for ‘temporary protection,’ it may not be considered fully safe for all returns in the near future.”<sup>301</sup>

In sum, this paper concludes that the “Refugee Deal” is vulnerable to legal challenges with regards to principles governing the international and European Human Rights Law. Several legal experts share this opinion, including Peers who believes that there is a high possibility that “the scheme would be challenged by a migrant in the European courts in Strasbourg and Luxembourg”.<sup>302</sup>

Furthermore, as put forth in the CoE report, the “Refugee Deal” seems to have a further detrimental effect on the notion of responsibility-sharing if it is accepted to set a precedent for the solution to other displacement crises: “the Italian Minister of the Interior, referring to the EU-Turkey Agreement, has called for the European Union to reach agreement with African States to provide economic aid in return for taking back their citizens ‘and preventing new flows’.”<sup>303</sup>

Moreover, there are visible signs that the asylum safeguards mentioned in the “Refugee Deal” may not materialize in practice: as shown in the second section of this paper, Greek authorities lack resources, capacity, training, and personnel that is needed for the implementation of the “Refugee Deal” without committing any serious breaches of the Human Rights Law and EU asylum law.

In sum, the argument that the “Refugee Deal” is a sign of the potential collapse of the international system for the protection of refugees, rather than a new way of responsibility-sharing does not seem to be unfounded.

Overall, the “Refugee Deal” cannot be considered as a new way of responsibility-sharing, and if necessary precautions are not effectively implemented, it may harm the notion of responsibility-sharing in the context of displacement crises. The next question is whether the EU and GoT would take into consideration the warnings and recommendations from the legal experts, human rights activists, international organizations and NGOs for ameliorating the mechanisms and policies set under the “Refugee Deal”. The international community’s future commitment to the notion of responsibility-sharing, and more broadly, the worldwide trust in the international system for human rights may depend on the fate of Syrian (and also non-Syrian) refugees at the hands of the EU and GoT.

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301 UN Human Rights Office of the High Commissioner, *op. cit.*

302 **Holehouse**, *op. cit.*

303 CoE: Parliamentary Assembly, *op. cit.*

For bringing a durable solution to the Syrian displacement crisis and -more broadly- to the question of "irregular migration", without violating the core principles of the international Human Rights Law, the international community should focus on resolving the root causes of these phenomenon (i.e. civil war, political instability, economic crisis, terrorism, climate change, etc.) rather than concluding controversial readmission agreements and similar "deals".

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