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The American University in Cairo  
School of Global Affairs and Public Policy

MIGRATION AND SHIFTING BORDERS:  
RE-CONCEPTUALIZING NON-CITIZENS IN TURKEY

A Thesis Submitted to the

Center for Migration and Refugee Studies

in partial fulfillment of the requirements for the degree of  
Master of Arts in Migration and Refugee Studies

By

J. Zerrin Holle

September 2017

## Acknowledgements

This thesis developed out of years of interest in questions of borders, citizenship and population movements. It was during an M.A Sociology class with my advisor Dr. Ian Morrison that my ideas and questions on citizenship and migration came together, and I found myself deeply engaged in this topic. The time he has dedicated to discussing ideas and questions has been invaluable, as has his guidance, feedback and support throughout this process. This thesis would not have been possible without his continued effort for which I am grateful.

I would like to thank my professors, Dr. Ibrahim Awad, Dr. Usha Natarajan and Dr. Alexandra Parrs in the Migration and Refugee Studies Program at the American University in Cairo for tackling this complex and ever evolving field from a variety of perspectives and disciplines; the inter-disciplinary nature of this program has been incredibly eye-opening and informative on multiple levels. I would also like to extend my specific gratitude to Dr. Awad and Dr. Natarajan for their time and effort as members of my thesis committee.

I would also like to thank the researchers and coordinators working in the Center for Migration and Refugee Studies, specifically Maysa Ayoub, Eman Moursy and Naseem Hashim, who have facilitated short-course trainings, conferences, and lectures and provided endless logistical support throughout my two years.

Without the Ryoichi Sasakawa Young Leaders Fellowship Fund, this Master of Arts would not have been possible. I am grateful to have been awarded this opportunity to study and research such a critical field at the Center for Migration and Refugee Studies in Cairo.

Lastly, I would like to thank my family for being my sounding board as I worked through ideas and questions and for having an endless amount of moral support, and my partner for his patience, support and encouragement through my research and writing.

The American University in Cairo School of Global Affairs and Public Policy  
Center for Migration and Refugee Studies

Migration and Shifting Borders: Re-conceptualizing Non-Citizens in Turkey

J. Zerrin Holle Supervised by Dr. Ian Morrison

ABSTRACT

In an age of securitization, in which the movement of individuals across borders has become securitized, and in which borders themselves are being externalized in an attempt to curb migration flows, the conventional notion of a static citizen-state relationship within the nation-state system is increasingly becoming inapplicable. Central to this thesis is the question: In a climate of securitized migration, and against the backdrop of the refugee/migration “crisis,” has the externalization of EU borders through its migration management partnership with Turkey contributed to or brought about alternative conceptualizations of foreignness, citizenship, and non-citizenship in Turkey? Protection for asylum seekers in Turkey, and increasingly in other countries, is governed by the understanding that the presence of non-citizens and non-nationals will be temporary. By focusing on Turkey, and the recent shifts in its legal landscape on foreigners, it is possible to examine how different conceptions of citizenship and membership could be theorized against the backdrop of both the securitization of migration and the externalization of EU borders through the proliferation of the non-entrée and containment policies central to its migration management.

In order to understand more tangibly the impact of securitization and externalization, focusing on a particular country is necessary as the implications these ongoing processes become clearer. The thesis examines how borders shift and how non-citizens are conceptualized in Turkey, while considering the post-2001 global context. It argues that the recent formalization on how foreigners are legally governed in Turkey is connected to EU migration management, and more broadly, to the growing trend of non-entrée regimes and containment policies. Turkey’s recent shifting legal landscape on foreigners and protection is a platform to examine how alternative theoretical conceptions of citizenship might emerge in Turkey.

Keywords: borders, externalization, securitization, temporary protection, citizenship, Turkey

## TABLE OF CONTENTS

### CHAPTER ONE: INTRODUCTION

<i>Overview</i> .....	1
<i>Objectives and Research Question</i> .....	4
<i>Research Structure</i> .....	5
<i>Irregular Migration and Responses</i> .....	6
<i>Examining Turkey</i> .....	13
<i>State-hood and Sovereignty</i> .....	16
<i>Migration as a “Threat” and Changing Legal Frameworks for Non-Citizens</i> .....	17
<i>Aims and Objectives of Research</i> .....	21

### CHAPTER TWO: METHODOLOGY

<i>Overview</i> .....	24
<i>Research Time Frame</i> .....	27
<i>Country Focus</i> .....	28
<i>Materials and Tools of Analysis</i> .....	30
<i>Limitations and Challenges</i> .....	31

### CHAPTER THREE: LITERATURE REVIEW

<i>Overview</i> .....	33
<i>Borders and Bordering</i> .....	33
<i>Territory and Extensions of the State- Ongoing Externalization</i> .....	37
<i>Securitization of Migration</i> .....	41
<i>Non-entrée regimes and Temporary Protection within International Law</i> .....	46
<i>Citizenship and the State</i> .....	49
<i>Alternative Forms of Citizenship</i> .....	53
<i>Conclusion</i> .....	56

## **CHAPTER FOUR: EXAMINING THE EU-TURKEY PARTNERSHIP**

<i>Overview</i> .....	58
<i>'Migration Management' Structures</i> .....	61
<i>EU-Turkey Partnership</i> .....	65
<i>Architecture of Externalization</i> .....	69
<i>Why Turkey as a Migration Management Partner</i> .....	73
<i>Conclusion</i> .....	77

## **CHAPTER FIVE: CHANGES IN TURKEY'S LEGAL LANDSCAPE AND ITS BROADER IMPLICATIONS**

<i>Overview</i> .....	79
<i>Context of Temporary Protection – Europe</i> .....	80
<i>A More Formalized Regime for the Governance of Foreigners in Turkey</i> .....	83
<i>Changes in Legal Landscape and its Implications</i> .....	85
<i>Content of the Law</i> .....	88
<i>Broader Implications of Changing Legal Landscape</i> .....	93
<i>Conclusion</i> .....	96

## **CHAPTER SIX: CONCLUSION**

<i>Overview</i> .....	101
<i>Brief Review of Chapters</i> .....	103
<i>Implications on Citizenship</i> .....	106
<i>Concluding Thoughts</i> .....	109

<b>BIBLIOGRAPHY</b> .....	113
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# Chapter 1: Introduction

## Overview

Notions of citizenship are both fluid and in flux. Ideas surrounding citizenship as solely being territorially bounded are becoming less relevant in today's transnational and globalized world. However, deconstructing the citizen-state dynamic is becoming increasingly difficult as notions of citizenship and belonging are further complicated by migration and the shifting of borders. Examining citizenship not just as a legal category, but rather as various layers of membership in a community is perhaps a productive approach. This allows for a more in-depth discussion about the multitude of ways in which individuals associate or belong to a specific place but also how they are perceived, conceptualized and legally grouped and organized by the state.

In the past few years, commentators in the West have proclaimed that Europe, and to a lesser extent North America, are facing a refugee/migration "crisis." This "crisis" is seen as a threat to individual and national identity, and primarily revolves around issues of integration. This "threat" of migration in turn problematizes the notion of state-sovereignty, citizenship and nationality, which the nation-state system claims to be built upon. Responses to this "crisis" have mobilized around this very existential "threat" to the nation and to the integrity of the state itself. As such what has developed is a "need" for the state to protect itself from the incursion of migrants and asylum seekers through the implementation of numerous measures.

One of these responses has been the recent externalization of borders.<sup>1</sup> Consequently, the manner in which the "crisis" has been understood in terms of policy has led to the

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<sup>1</sup>The process of externalizing borders with regards to migration management is an act that is ongoing and present in many countries. The United States' preclearance procedures at airports, in which U.S. Customs and Border Protection officers prescreen individuals overseas at foreign airports, could be considered to be a form of

proliferation of migration management partnerships, with the EU as a key actor in changing the ways in which migration is addressed through policy and through political rhetoric, especially with its partnerships with third-countries, namely Turkey.

There are several critical questions that need to be addressed in relation to how the current political climate is impacting perceptions of migration: How does the refugee/migration “crisis” perpetuate the securitization of migration? In turn, how does the securitization of migration connect to the shifting of the EU’s geopolitical borders? Ultimately, how can these ongoing processes of securitization and externalization be understood on the ground? What are their impacts on how non-citizens are conceptualized in Turkey? How does the EU-Turkey migration management partnership speak to Turkey’s unprecedented changes in its legal landscape concerning foreigners? Ultimately, how is citizenship being re-conceptualized against this backdrop?

When researching the impacts of broad processes such as externalization and securitization, it is often easy to enter into more theoretically-oriented discussions that can sometimes remain intangible. By focusing on one country, the reverberating effects of the EU’s non-entrée regimes, externalized borders, as well as the ongoing securitization of migration, are made clearer. Turkey’s changing legal landscape, which occurs at a time of a renewed EU partnership to tackle migration, as well as renewed EU accession talks, speaks to a shift in how Turkey addresses foreigners, protection and asylum within its territory and more broadly, how non-citizens are conceptualized and perhaps how citizenship practices themselves might be changing in Turkey. Unprecedented changes in Turkey’s laws on

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externalizing territorial borders through control mechanisms. Australia’s Operation Sovereign Borders could also be seen as a form of externalization of its borders through preemptive border control at sea in which boats suspected of carrying migrants are intercepted and prohibited from docking at ports and re-directed to nearby islands for asylum processing. In an attempt to “take back” Britain’s borders, the Brexit campaign to leave the European Union has also brought to light discussions of border controls and forms of externalization. With Britain set to leave the EU, controlling immigration would require new measures such as shifting immigration control to Irish entry points such as checks in airports, so as to avoid constructing a “hard border” between Ireland and Northern Ireland.



asylum, protection, foreigners and perhaps in the long-term regarding citizenship, have accompanied recent mass immigration and its EU partnership.

Most literature on externalization and migration, as well as on changes in legal frameworks and policies that pertains to migration, adopt a European perspective in that the focus is a Europe-centered approach rather than on the country partnered with the EU. As such, it is important to address the changes that have occurred in Turkey, which is seen as both a “borderland country” to the EU, as well as a “third-country” to which migrants and asylum seekers are sent back.

In this thesis, I examine the responses to this mass migration and argue that the ways in which borders shift in relation to migration management, the political context in which migration is continually securitized and the ways in which migration is managed from afar by the EU, have had wide-ranging implications on how non-citizens are governed in Turkey. I do so through tackling the questions of migration, shifting borders, and citizenship through a multi-disciplinary critical examination.

In this first chapter of the thesis, I provide an overview of researching migration against a backdrop of externalization and ongoing securitization dating back to the 1980s and 90s in Europe. This allows for a more in-depth conversation about the context in which misconceptions and fears over “security” have shaped temporary protection approaches and migration management partnerships between the EU and Turkey; thereby perpetuating the extension of the EU’s geopolitical borders, the impacts of which are unprecedented transformations in Turkey’s legal system.

The post-September 11<sup>th</sup> world, in which there is a global war on terror, is an important contextual frame to keep in mind as I argue that it has shaped, and continues to

shape, discussions on migration and citizenship and has wide-reaching implications on how states categorize citizens and non-citizens.

## **Objectives and Research Question**

Population movements, though often at the heart attempts to form or consolidate the nation-state, have increasingly come to be described as constituting a ‘security threat’ to the nation state. In order to contend with this ostensible threat, states have increased border control mechanisms. While at times restricting the regular movement of individuals across borders, it has also led to an increase in irregular migration. Despite there being a wealth of literature on the transnational lives of migrants and asylum seekers and emerging forms of citizenship in relation to migrant workers, there is much less literature dedicated to discussing the implications of border externalization and temporary protection measures on how non-citizens are conceptualized and re-conceptualized. This is in part as a result of the ongoing nature of both the externalization and securitization processes; it can be difficult to disentangle where one process begins and the other ends. Securitization perpetuates a sense of fear and fear-oriented policies, which in turn contribute to more restrictive external border control. Externalization, although not new, is occurring in different contexts. The emergence of temporary protection measures in Turkey is very recent, and the ambiguity surrounding it has made it difficult to analyze and write about. However, discussing its implications is necessary and crucial in order to have meaningful discussions about the broader societal ramifications such as altered or transformed citizenship practices.

With this in mind, the guiding research question for this thesis is: In a climate of securitized migration, and against the backdrop of the refugee/migration “crisis,” how does the externalization of EU borders, namely through its migration management partnership with

Turkey, contribute to or bring about alternative conceptualizations of foreigners and non-citizens in Turkey? Rather than seeking to make an argument of direct causality, this thesis understands externalization of EU borders as ongoing through its migration partnerships with third countries. Having entered into such a partnership with Turkey, this thesis examines the legal changes in Turkey while also considering the theoretical reverberating effects on citizenship and non-citizens. The multi-part approach is critical to the foundation of the thesis which aims to approach the question not solely through one disciplinary focus but a myriad of academic disciplines: anthropology, sociology, history, security studies within political science, and legal scholarship. After all, it is this interdisciplinary discussion that constitutes migration studies.

The purpose of this thesis question is twofold: 1) to examine the changing legal landscape in Turkey on foreigners as interconnected to the externalization of EU borders through its migration management “from afar” approach, which would halt the movement of asylum seekers and migrants migrating through Turkey en route to Europe, and 2) to critically examine the changes in legal landscape as indicative of broader re-conceptualization of the non-citizen foreigner in Turkey.

## **Research Structure**

This thesis is organized in the following manner: in Chapter 1 *Introduction*, I briefly discuss the broader picture of studying migration in today’s context of ongoing externalization and securitization, why focusing on Turkey is not only relevant but necessary to understand the broader implications of contemporary migration on understanding citizenship practices, and finally the conceptual frameworks I will make use of to support my research and reasoning behind my arguments. The next chapter, *Methodology*, delves further

into the conceptual frameworks and the tools of analysis that are central to this thesis, namely, the value of focusing on a specific country to examine externalization and securitization and the significance of a multi-disciplinary approach in critical analysis. Chapter 3 *Literature Review* provides the theoretical backbone for the research through examining literature on citizenship, borders, securitization as well as temporary protection and places my own work in conversation with what has been written while also situating my project within the wider discipline. Chapter 4 discusses *Migration and the shifting of borders –Examining EU Externalization and the EU-Turkey partnership*, with an emphasis on what the EU-Turkey partnership since 2012 consisted of. Chapter 5 examines *Changes in Turkey’s Legal Landscape and its Broader Implications* with a focus on exploring the changing legal landscape in Turkey, particularly the 2013 Law on Foreigners and International Protection and the introduction of 2014 Temporary Protection Regulation. Chapter 6 *Conclusion* lays out the implications of the changing legal landscape on the ways in which the state conceptualizes foreigners and non-citizens and speaks to the possible development of alternative forms of membership arising in Turkey.

### **Irregular Migration and Responses**

In the past few years, the topic of irregular migration across borders has brought to light many structural issues inherent to the nation-state system, in particular its often ‘static’ understanding of citizenship. Migration more generally poses a problem for this static understanding in that the movement of people and goods as well as ideas across national borders disrupts the notion of belonging to one particular place. Although neither migration nor the attempt of states to govern migration are new phenomena, a heightened concern with

the relationship between security and migration in the post-September 11<sup>th</sup> world has created a particular set of obstacles to international migration for those fleeing regionalized violence.

Recent population movements in the Euro-Mediterranean space have heightened the attention paid to migration and generated a plethora of scholarship concerned with this phenomenon. Regionalized conflicts have led to the displacement of millions of individuals in the Middle East and North Africa region. However, most displaced populations are relocated within the country of conflict, or in neighboring countries in the region. Despite this reality, there has been a reactive and visceral response to what has been labeled the refugee/migration “crisis.” In a world of states and nation-states, borders and citizenship, irregular movement that is considered “unauthorized” by the state can pose an inherent challenge or “threat” to the state. The state is faced with a challenge when it is unable to control or govern that irregular movement. Irregular migration, for the state, is problematic in that it puts into question the sovereignty of that state; the decision to control who enters and who exits its territory, despite its sovereignty, becomes regulated by international laws, creating an inherent tension between the state entity and the international legal regime. The threat to sovereignty emerges when states are in a position of wanting to decide the movement of citizens and non-citizens into and out of its territory, however are in a position to accept or allow non-citizens entering irregularly in times of conflict or “crisis.” The notion of national sovereignty being challenged with regards to migration stems partially from this idea of non-citizens as external claim-makers.

Arguably, it is only recently in a post-Cold War and post-September 11<sup>th</sup> world that the irregular movement of individuals has come under this level of scrutiny out of a statist-oriented fear for national security. As such, in this age of securitization, the ways in which people migrate has changed drastically with the increasing trend toward surveillance and pre-empting of migration. Heightened border control mechanisms have not only led to the

securitization of movement itself, but have had the opposite intended effect of increasing irregular movement. Securitization leads to increased and stricter border controls and restrictions of regular migration and the facilitation of visas. These restrictions in turn do not halt migration. Individuals continue to migrate, however they are forced to find alternative, and often more dangerous, routes.<sup>2</sup>

Of recent concern to the EU are the population movements occurring within the Euro-Mediterranean space as well as from “transit”<sup>3</sup> countries such as Turkey. In an attempt to manage migration flows to Europe, the EU has engaged in various practices<sup>4</sup> that have, in essence, allowed for the externalization, or the extension of its geopolitical borders beyond that of its territory.

The EU is not alone in its externalization practices with regards to migration management. With heightened concerns of recent irregular migration flows, efforts at “managing” migration are increasingly linked with externalization processes. For many countries, this phenomenon is growing in importance and practice. Stemming from the practice of externalization is the relationship that has formed between the EU and Turkey to curb irregular migration flows to Europe.

In a globalized world in which individuals increasingly lead transnational lives, ideas of the nation, citizenship and belonging, as well as how people become categorized as a either a citizen/non-citizen, are undergoing transformative changes. The citizen/non-citizen binary is not as clear cut as it once was. Instead, layers of citizenship, or membership are forming and consequently, varying layers of non-citizenship are also emerging.

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<sup>2</sup> This is made more visible with the opening and closing of certain irregular routes across the Mediterranean after various EU deals and border operations, which will be discussed at greater length throughout the thesis.

<sup>3</sup> The problematic usage of the word “transit,” and the power of labeling countries as such, is explored at greater length in Chapter 4.

<sup>4</sup> Such as the patrolling of the Mediterranean Sea with Frontex and engaging in border countries in North Africa, and Turkey, to “tackle” the flows.

A series of recent political and socio-economic events in the Middle East and North Africa that have greatly impacted current population movements. To reduce these events to one overarching variable would result in losing sight of the complexity surrounding the political and socio-economic challenges that individuals face, and ultimately which contribute to individuals' migrating.

In turn, there seems to be a conflation of individuals' reasons or motives for migrating from the Middle East and North Africa region. There are many different forms of migration, from international to internal, migration as displacement resulting from environmental factors, conflict or development projects, labor migration and the migration of asylum seekers. There are also different lens with which to view migration, whether it is regular/irregular, legal/illegal movement, each has specific connotations and subsequent policy agendas. I view migration as occurring in regular and irregular modes rather than through the language of illegality. The reasons why individuals migrate can change, and rarely is it possible to categorize their motives as fixed. I understand migration to be a series of complex decisions with mixed reasons and motives that influence an individual's decision, while also considering that often times migration is not solely a matter of choice. The line between an individual who migrates so as to be able to provide for themselves or family is blurred with an asylum seeker who migrates as a result of conflict that also disrupted their livelihood. Reasons and decisions are never simple, nor should they be conflated.

Rather than seen as individuals, the migration movements are often seen as an indefinable "mass" moving across regions and territory. This view risks not understanding individual agency and the complexity of decision-making when migrating while also perpetuating the idea of an impending "crisis." The responses of European states and political parties to these events reflect deep institutional concerns and fears regarding migration and security that have been present in Europe for decades. Beginning in the early 1980s, fears

over migration related to concerns regarding economic security became prevalent throughout Europe. As Jef Huysmans (2000) argues, migration to Europe during the 1980s and 1990s brought about questions of European identity against the backdrop of a strong desire to maintain the welfare state system. The construction of this threat<sup>5</sup> allowed for “the construction of a scapegoat in a political and socio-economic struggle for the transformation and conservation of the welfare state.”<sup>6</sup>

Today’s reactions are perhaps more pronounced, with regards to the restrictive policies of non-entrée and containment regimes, the preemptive measures to halt migration before it even occurs, made possible with the labeling of the current movements as a “crisis.” However it is important not to lose sight of the broader issue, which is that certain forms of migration (irregular, or regular, asylum or labor that is irregular) movements have been troubling to the state structure. These movements often question the “traditional” nation-state-citizenship dynamic, as well as the state’s conception of its own sovereignty.

Occupying a central role in this discussion of migration to Europe is a country like Turkey, considered by some to be a “transit” country for migrants and asylum seekers migrating towards Europe. Up until the 1990s, Turkey had in fact been mainly a country of emigration rather than immigration.<sup>7</sup> This is important to keep in mind when considering the institutional infrastructure that has developed just in the past three years in relation to this migration shift. Despite accepting asylum seekers and migrants since the 1990s, it is only recently against the backdrop of its EU partnership that Turkey has revisited its institutional and legal infrastructure.

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<sup>5</sup> Although Chapter 3 will go into a more in-depth discussion into the securitization of migration, it is worth mentioning here that reactions to, and fears of migration to Europe are not new, rather, they are indicative of long-term structural issues.

<sup>6</sup>Huysmans, Jef. 2000. "The European Union and the securitization of migration." *JCMS: Journal of Common Market Studies* 38, no. 5: 751-777: 770. Accessed November 5, 2016. doi: 10.1111/1468-5965.00263

<sup>7</sup>Kirsici, Kemal. 2003. “Turkey: A Transformation from Emigration to Immigration.” *Migration Policy Institute*. Accessed December 5, 2016 Available at: <http://www.migrationpolicy.org/article/turkey-transformation-emigration-immigration>



This “recent” transformation is important to consider, as is its historical relationship to immigration and citizenship practices during the early years of the Republic, namely the 1920s and ‘30s. Turkey is, to a degree, a country molded by specific notions of “Turkishness,” nationality and citizenship. Even though early laws<sup>8</sup> on citizenship during the transition from Empire to State are inherently contradictory to the practices of the new state, notions of what it meant *to be a Turk* guided how policy makers approached citizenship, both legally and culturally.

In the span of less than six years, since the arrival of Syrian asylum seekers in 2011<sup>9</sup>, Turkey has gone through an unprecedented shift in its legal landscape concerning foreigners. This shift signals a fundamental change in conceptualizing foreigners and non-citizens that has happened at the domestic level and is partly demonstrated with recent with talks of “giving” citizenship to certain Syrians and Iraqis in Turkey,<sup>10</sup> Consequently, what we see is a broader shift in the ways in which foreigners within the territory are conceptualized by the state.

Current population movements from the Middle East and North Africa region have had reverberating effects on the EU’s migration management partnerships with third-countries. These partnerships continue to “fortify” Europe and “contain” unwanted migration. Simultaneously, at a more micro-level there are changes occurring in Turkey, which has partnered with the EU to “tackle” this irregular migration. This partnership has seen the development of temporary protection in Turkey and the promoting of Turkey to be “seen” as a “safe third country.” Can Turkey be considered a “safe third country” given its ongoing

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<sup>8</sup>Yeğen, Mesut. 2004. "Citizenship and ethnicity in Turkey." *Middle Eastern Studies* 40, no. 6: 51-66. Accessed May 10, 2016. doi: 10.1080/0026320042000282874.

<sup>9</sup> Latest UNHCR figures place the number of registered Syrians in Turkey at over 2.9 million as of April 27, 2017. Available at: <http://data.unhcr.org/syrianrefugees/country.php?id=224>

<sup>10</sup>“Erdogan offers citizenship to Syrian and Iraqi refugees.” January 7, 2017. *Al Jazeera*. Available at: <http://www.aljazeera.com/news/2017/01/erdogan-offers-citizenship-syrian-iraqi-refugees-170106195134961.html> January 2017

domestic insecurities? The ambiguity surrounding the Temporary Protection Regulation<sup>11</sup> in Turkey itself is important to consider. With the development of temporary protection in Turkey as well as recent talk of granting citizenship to migrants and asylum seekers there are far-reaching impacts on the ways in which citizenship itself is being re-conceptualized in this moment in time.

These shifts and developments require us to think more broadly about their implications so as to better understand or examine what is happening in Turkey. What are the ramifications or effects of these simultaneous processes on conceptualizing citizenship and membership in an age of migration-related externalization and heightened securitization? With the change in the legal landscape of how foreigners and non-citizens are governed in Turkey, can such a thing as “partial citizenship” emerge? <sup>12</sup> What would this temporary/non-binding form of association look like? The ambiguity of temporary protection regulations in Turkey is perhaps indicative of the ambiguity that would surround the citizenship offered to those Syrians and Iraqis. How can we read these simultaneous processes as an evolving narrative without losing sight of the significance of each ongoing process? How far do we delve into citizenship studies and/or the politics of association in order to understand the current climate in which conceptualizations of citizenship and foreigners are changing in Turkey? These are critical and necessary questions to consider when focusing on Turkey in order to understand externalization and the implications of shifting borders and citizenship. Theorizing in this way allows us to view temporary protection from a different perspective. To what extent can temporary protection in this particular case be thought of as an informal method of temporarily integrating non-citizens into a population? This idea of a “partial citizenship,” that is perhaps bound by temporality, emerging in the midst of temporary

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<sup>11</sup> Temporary protection in Turkey will be discussed at greater length in Chapter 5.

<sup>12</sup>Here, I understand citizenship to be the concept of political subjectivity and alternative forms of membership rather than a purely legal conceptualization.

protection allows us to consider the multiplicity of ways in which individuals are grouped by the state and given some, but not full, rights to participate in society.

## **Examining Turkey**

Contemporary discussions of migration movements inevitably link the issues of mobility and borders. As states' physical territory became bounded in the concept of a citizen-state relationship, one bounded by a sense of mutual obligation, "loyalty" to the state entity and responsibility of rights towards citizens, the ways in which individuals could be mobile, or experience immobility was altered.

If we are to examine statehood and citizenship, borders and territory within the context of the EU-Turkey partnerships, it is imperative to understand the historical and legal contexts in which these concepts developed both in Turkey and in Europe. Turkey's geopolitical positioning has often placed it at the center of not only discussions on migration but with regards to European policy-making as well.

### *Post-Ottoman Empire citizenship and immigration practices*

The establishment of the Turkish Republic in 1923 brought to the surface many questions about how to address national citizenship rather than Ottoman subjecthood in a diverse population which had previously been mobile rather than bounded to national borders. As Icduygu et al. argue that "a new concept of citizenship in the national polity"<sup>13</sup> was foundational for the development of the Turkish State. This membership in a nation-state lead to the formation of what they, following Brubaker and Hammar, refer to as *levels of*

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<sup>13</sup>Icduygu, Ahmet, Yilmaz Çolak, and Nalan Soyarik.1999. "What is the matter with citizenship? A Turkish debate." *Middle Eastern Studies* 35, no. 4: 187-208: 187. Accessed May 15, 2016. doi:10.1080/00263209908701291

*citizenship*. Within the 1924 Constitution, Article 88 set out to define what citizenship was: “The people of Turkey regardless of their religion and race would, in terms of citizenship, be called Turkish.”<sup>14</sup> This however raises the question of whether or not multiple forms of citizenship or membership in the state were envisioned in the early Republic. The phrase, “in terms of citizenship,” I would argue, points to a conceptualization of different types of membership to the State. Perhaps this is one way in which the early Republic had set out to address the challenges of unifying a diverse population.

In the early years of the Turkish Republic, attempts were made to transform subjects into citizens. With an aim of building a “completely secular state and a secular socio-cultural structure,”<sup>15</sup> the modernizing elite attempted to politically establish links between citizenship, nationality and national identity. What resulted was the careful restructuring of individuals’ public and private lives to mold the ‘new’ Turk, which came to encompass a citizen bound by common language, culture and collective consciousness. The emerging Turkish citizen was an embodiment of what Turkishness was “supposed to be.” Although “Turkishness” differed in theory and practice, it remains a critical part of today’s legal system.<sup>16</sup> Throughout the 1920s and 1930s, state conceptualizations of Turkishness became central to immigration policies that to an extent continued until recently.

With massive population movements and the reconfiguration of newly emerging state territorial boundaries following the collapse of the Ottoman Empire, immigration policies became a tool to restructure the population according to the state ideology of Turkishness. In order to create a national identity the country had to adopt various techniques of ‘managing’ a multi-religious and multi-cultural population. The Exchange of Population included in the

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<sup>14</sup>Yegen 2004, 58

<sup>15</sup>Icduygu et al. 1999, 194

<sup>16</sup> Article 301 in the Turkish Penal Code makes insulting Turkishness a criminal offence.

1923 Lausanne Treaty is one such example of managing a diverse population through its re-configuration within Turkish borders.<sup>17</sup>

Although Article 88 of the Constitution stated that regardless of religion or ethnic background, people were Turkish because of citizenship, the 1934 Law of Settlement dealt with the *construction* of a “new Turk.” Ten years into the establishment of the Republic, non-Muslim minorities were not using the Turkish language, which prompted state-sponsored “massive social engineering projects.”<sup>18</sup>

The 1934 Law of Settlement included clear criteria regarding who was considered to be a citizen. As Kirisci stated, “examining a state’s immigration and refugee legislation and policies can be a revealing way of testing whether a state lives up to its formal definition of citizenship.”<sup>19</sup> Among the most revelatory aspects of the 1934 Law was the division of the country into various immigration zones. Originally planned as a project to “settle” nomadic Kurdish communities, the consequences were far reaching. The population was divided loosely into three categories: those who spoke Turkish and were considered to be of Turkish ethnicity, those who did not speak Turkish but were a part of the “Turkish culture,” and finally those who neither had the Turkish language nor the “culture.” By dividing the population into three distinct “zones” the Minister of Interior at the time, Şükrü Kaya, was essentially able to determine where certain immigrants should be settled so as to balance or counteract the “problematic” population.

Through what is known as the “Balkanization process,” immigrants from the Balkan region who had neither the cultural familiarity nor knowledge of the Turkish language were allowed to migrate and settle in Turkey during this period of resettlement. Groups with clear

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<sup>17</sup>The exchange of populations involved around 1.3 million Greeks along with half a million Turks, and is one of the earliest examples of state sponsored population movements. From: Aksin, Sina. 2007. “Turkey: From Empire to Revolutionary Republic. The Emergence of the Turkish Nation from 1789 to the Present.” New York University Press:187

<sup>18</sup>Kirisci, Kemal. 2000. “Disaggregating Turkish Citizenship and Immigration Practices.” *Middle Eastern Studies*, Vol. 36. No.3: 1-22:3. Accessed May 15, 2016. doi: 10.1080/00263200008701316.

<sup>19</sup>Kirisci 2000, 3

Turkish ethnic descent that were denied settlement included both the Christian Orthodox Gagauz Turks, and Shi'a Azeris. The terminology "Turkish descent and culture" became much more flexible for future governments as they made provisions to allow Albanians, Bosnians, Circassians, Pomaks and Tatars to immigrate.<sup>20</sup> During first two decades of the Turkish Republic "social engineering" and spatial reorganization of the State's immigration practices allowed it to define the 'foreigner' and the 'citizen' through the redrawing of internal and external borders.<sup>21</sup>

### **Statehood and sovereignty**

Many argue that the modern state system, is no longer applicable in today's world, and that many of the legal frameworks set up in the aftermath of two world wars are not applicable to the realities of today's conflicts and types of population movements.<sup>22</sup> In her book, *Limits of Citizenship*, Soysal asks us to:

Consider two institutionalized principles of the global system in regard to immigration: national sovereignty and universal human rights. Celebrated and codified in international conventions and treaties, these principles form pivotal components of postwar international migration regimes.<sup>23</sup>

These two principles, the idea of *national sovereignty*<sup>24</sup> as well as *universal human rights* have since been regarded as a natural part of the broader process of the global system.

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<sup>20</sup>Kirisci 2000, 7

<sup>21</sup>Icduygu, Ahmet, and Özlem Kaygusuz. 2004. "The politics of citizenship by drawing borders: Foreign policy and the construction of national citizenship identity in Turkey." *Middle Eastern Studies* 40, no. 6: 26-50:29. Accessed May 15, 2016. doi: 10.1080/0026320042000282865

<sup>22</sup>This is often the debate surrounding the 1951 Refugee Convention, which when created was meant to address specific population movements occurring in Europe after World War II.

<sup>23</sup>Soysal, Yasemin Nuhoglu. 1994. "Limits of citizenship: Migrants and postnational membership in Europe." University of Chicago Press:7

<sup>24</sup> Both the 1648 Treaty of Westphalia and the 1933 Montevideo Convention are critical pieces of law that outlined and shaped conceptions of statehood and sovereignty that eventually became connected to ideas of territory, movement and citizenship. Despite the existence of 'sovereignty,' as a legal concept, prior to 1648, it was the 1933 Montevideo Convention of the Rights and Duties of States that ventured into defining what a state

Existing simultaneously, these principles can often be in tension with one another, as we have seen with the contradictory rhetoric and practice of the EU in its migration policies and more specifically, its third country partnerships. This tension that exists for the EU between ideas of sovereignty and universal human rights is important to consider when examining the effects of these EU migration management partnerships. In an effort to uphold these universal principles, partnerships are forged and migration movements are controlled and prevented. Furthermore, the changes that occur at the third-country level, in this case, the changes in Turkey's legal landscape, have long-lasting effects which often go unexamined.

### **Migration as a “threat” and Changing legal frameworks for non-citizens**

Migration disrupts the notion of bounded and static territory and population and questions to what extent a sovereign state has full control over its territory and population. The way in which we conceptualize borders has undergone a massive shift in the past several decades with an increasing trend towards linking migration to issues of security and more specifically to irregular movement across borders. Irregular migration and the presence of unauthorized migrants have been regarded as an issue of national security for states for decades.

The end of the Cold War and the post-September 11<sup>th</sup> era have greatly impacted the movement of asylum seekers and migrants. The ways in which states conceptualize security threats as it has increasingly become linked with the movement of non-citizens have been forever altered. While the securitization of migration is far from being a new phenomenon,

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was under customary international law. Article 1 of the 1933 Montevideo Convention outline the requirements of a sovereign state and Article 8, the state's right to protect itself from other states intervening.

the measures, policies and partnerships that have arisen from recent securitization point to the use of extreme and extraordinary steps to “combat” the threat.<sup>25</sup>

More recently with the events of the Arab uprisings unfolding across the region in early 2011, the international community in expecting large flows of migrants and asylum seekers, perpetuated a conceptualization of irregular migration as a security threat. However, as many authors have pointed out,<sup>26</sup> this has not come to pass. During the early stages of these uprisings, population movements and displacement mostly occurred either within the country of conflict or within the region. It was not until the Syrian conflict began to intensify that the discourse surrounding the “flood” of asylum seekers and the “threat of terrorism” took hold. As Watson explains,

Individuals crossing an international border may represent a threat to the state or society in a variety of ways, not just to the current ethno-cultural composition of society. They may also represent a threat to the economic stability or physical integration of the state and its individual citizens.<sup>27</sup>

With the rise of self-declared Islamic State across Syria and Iraq and supporting factions across North Africa, the threat of terrorism became linked with the individuals fleeing conflict. Individuals migrating from the Middle East and North Africa region were joined by migrants and asylum seekers continuing to migrate from other parts of Sub-Saharan Africa and Central Asia using similar routes as the Syrian asylum seekers. The flows of individuals

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<sup>25</sup> As B.S. Chimni (1998) argues, the post Cold War era brought about new conceptualizations of the “other” or “new” asylum seeker migrating from the global south. He writes, “the rethinking translated into a series of restrictive measures which, together with those introduced earlier, constitute today what has been called the non-entre regime. (Chimni, Bhupinder S. 1998 "The geopolitics of refugee studies: A view from the South." *Journal of Refugee Studies* 11, no. 4: 350-374. Accessed December 9, 2016. doi: 10.1093/jrs/11.4.350-a.) In the post-September 11<sup>th</sup> era, such measures include prolonged arbitrary detention, the use of a ‘state of emergency’ to remove procedural safeguards, and the increase in use of biometrics for monitoring migration among others.

<sup>26</sup> See: De Haas, Hein, and Nando Sigona. 2012. "Migration and revolution." *Forced Migration Review* 39: 4.

<sup>27</sup> Watson, Scott D. 2007. "Manufacturing Threats: Asylum Seekers as Threats or Refugees." *J. Int'l L & Int'l Rel.* 3:99 Accessed November 5, 2016.



were mixed as were the reasons for migrating. It was in this context that migration to Europe, especially through the Mediterranean and through Turkey became further securitized.

To combat these “new” security threats, states have strengthened not only their borders but monitoring mechanisms as well. Monitoring and halting movement at sea is an ongoing form of externalized preemptive border control. In the case of the EU, ongoing FRONTEX<sup>28</sup> operations are indicative of such preemptive measures. This form of extraordinary security measures and monitoring of movement have had serious implications on an individual’s ability to exercise any form of agency with regards to movement or for seeking asylum.

The year 2001 witnessed not only the events of September 11<sup>th</sup> and subsequent “war on terror” unfold, but the end of the Yugoslav wars resulting in the dissolution of the Socialist Federal Republic of Yugoslavia into independent states. While these historical moments were codified in the development and proliferation of academic fields, such as security studies, Europe faced large-scale population movements as a result of the decade long war and new state construction. For Europe, the introduction of Temporary Protection in 2001<sup>29</sup> came at a time when massive displacement from the former Yugoslavia was ongoing. There was a need to address the immediate issue of state protection for non-citizens. Subsequently, temporary measures rather than long-lasting durable solutions were considered preferable and more manageable.<sup>30</sup> The movement of individuals, both in a post-conflict and state-construction setting required an alternative way to address protection of non-citizens. Since then, there has been significant criticism directed at the establishment of a Temporary

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<sup>28</sup>In 2004, Frontex, as the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union was established through the Council Regulation (EC) 2007/2004. In 2016, the regulation was repealed by Regulation (EU) 2016/1624 which established the European Border and Coast Guard Agency (Frontex). <http://frontex.europa.eu/about-frontex/origin/>

<sup>29</sup>Council Directive 2001/55/EC

<sup>30</sup>"Temporary Protection." European Commission Migration and Home Affairs. Accessed November 1, 2016. Available at: [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/temporary-protection/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/temporary-protection/index_en.htm).

Protection regime, which in contrast to the 1951 Refugee Convention, is informal and often without definitive forms of international oversight.

The contexts in which modern sovereignty, statehood and the legal protection regimes developed are relevant for a broader discussion on not only how people move but also how citizens v. non citizens are “dealt” with by the state. Although this thesis is not focused solely on Europe, understanding how, and under what circumstances, this legal framework formed is crucial to examining the externalization of EU borders through migration management in its partnership with Turkey. Most migration exists in sovereign spheres. The creation of irregular migration is intimately connected to the existing legal frameworks that make moving through regular channels often difficult, which in turn is interconnected to how states or institutions such as the EU externalize their borders in an effort to control this irregular movement. Each process feeds into one another, creating a cycle that seems difficult to move beyond.

In the case of Turkey, the introduction of Temporary Protection Regulation came much later in 2014 with the establishment of the Law on Foreigners and International Protection,<sup>31</sup> amidst large scale migration of mainly asylum seekers from Syria as well as other migrants from the Levant Region. <sup>32</sup>For this thesis, I focus on Turkey as it is both unique and illustrative of having gone through immigration policy changes as a “transit” country. Inherently linked to temporary protection are concepts such as informal integration, state sovereignty, citizenship and the state-citizen dynamic. If Turkey will grant temporary protection for incoming asylum seekers and if it is “seen” as a “safe” third country in the eyes of the EU, in which asylum seekers and migrants can be “sent back” and “contained,” before reaching other countries indefinitely, what type of membership or political subjectivity can they exercise? Without the protection that citizenship is supposed to provide, asylum seekers

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<sup>31</sup> These specific legal developments are explored at great length in Chapters 5 and 6.

<sup>32</sup> 2015 UNCHR Country Operations Profile Turkey

will exist in an indefinite vacuum of sorts in which their status and rights will be tied to a protection mechanism with arbitrary enforcement that is mostly unaccountable. Would an alternative type of temporary societal membership form in this process?

Will the tension stemming from exercising national sovereignty while adhering to human rights practices result in a breaking point for the modern state system? We have seen that increased securitization and externalization of borders are not compatible with this concept of universal human rights. If a territory's imagined borders as well as its jurisdictional frontiers are constantly pushing further so as to manage migration, and if alternative forms of partial citizenship in the sense of political subjectivity form, then rethinking the modern state system is already in process.

The modern nation state model is being altered in two distinct ways in this examination; through EU externalization of territory and through Temporary Protection and informal integration of asylum seekers in Turkey.

## **Aims and Objectives**

This research aims to contribute to the discipline of migration studies through a critical discussion on the changing conceptions of territory and informal protection mechanisms as well as to help rethink the nation-state-citizen model in an age of securitization and externalization. With this in mind, the thesis explores the changing conceptualizations of border and territory and its implications on non-citizens and citizenship. For this thesis, I focus on Turkey as it is both unique and illustrative of having gone through immigration policy changes as a “transit” country.

The aim of this thesis is twofold: to explore the ways in which current EU externalization practices with third country partnerships has influenced the revision of

Turkey's legal framework concerning non-citizens, as well as to question whether or not recent transformations in Turkey's approach to non-citizens are in fact indicators of a changing citizen-state dynamic. The second half of this thesis explores a more theoretical discussion about the state-citizen dynamic and whether citizenship practices will undergo changes. In a time in which the migration of individuals for reasons of regionalized conflicts as well as environmental change will only increase in the coming decades, perhaps out of necessity alternative forms of "citizenship" will emerge.<sup>33</sup>

In a country like Turkey, which is hosting nearly three million Syrian asylum seekers,<sup>34</sup> as well as asylum seekers and migrants from other parts of the region, with uncertain enforcement of protection mechanisms, will a type of 'partial citizenship' develop? By this, I mean to ask whether an ambiguous category of citizenship will develop and/or if new forms of political subjectivity will emerge as a result of different forms of membership practices.

There are many debates inherent within the disciplines of international law and migration studies, as well as conceptualizations of "solutions" to current population movements.<sup>34</sup> This thesis does not seek to provide a policy recommendation for durable solutions for refugees and asylum seekers in the context of current population movements. Instead, this thesis aims to act as a form of critical analysis and contribute to a wider discussion on the questionable emergence of temporary protection mechanisms and how the EU has externalized its borders with regards to migration management partnerships with Turkey, in order to understand how non-citizens are conceptualized differently and ultimately

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<sup>33</sup>Although there are different conceptualizations of what citizenship encompasses, whether one is examining the city-states and notions of citizenship of Ancient Greece, or the idea of the social contract that understands citizenship as a form of political rights as well as obligations, which emerged in Western Europe, the discussion surrounding citizenship is vast. For the purposes of this thesis, I examine citizenship as a form of political membership through which subjectivity is formed and reshaped.

<sup>34</sup> Figure is from UNHCR, updated as of April 27, 2017. Available at: <http://data.unhcr.org/syrianrefugees/country.php?id=224>

if alternative forms of citizenship might develop amid Turkey's changing legal landscape and its geopolitical positioning vis-à-vis the EU.

## Chapter 2: Methodology

### Overview

In order to analyze how alternative forms or levels of citizenship might be emerging in relation to recent population movements of asylum seekers and migrants, I have chosen to focus on two phenomena: the EU's externalization of borders through migration management schemes, and the changes in Turkey's legal landscape concerning foreigners and international protection and its implications on shifting or emerging notions of citizenship.

This thesis argues that the very process by which the EU is externalizing its borders and political influence through cooperation agreements with neighboring countries, such as Turkey, has led Turkey to revisit its migration policies and laws on "non-citizens." This, of course, is not the only factor that would influence Turkey to change its migration policies. The very fact that it is hosting nearly three million Syrian asylum seekers,<sup>35</sup> as well as asylum seekers and migrants from other parts of the region, is also an important factor to keep in mind. However, Turkey is not under obligation under international law to host or extend various Convention rights to these asylum seekers; however it continues to host asylum seekers and migrants within its territory.<sup>36</sup> Beginning with the early migration flows from Syria and Iraq in 2011, Turkey has entered into a strategic partnership with the EU to manage this migration from afar, although the state of this partnership is under question given recent ongoing political disputes. Nonetheless, the partnership and the changes in laws governing foreigners and international protection are indicative of a broader process of EU

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<sup>35</sup> Figure is according to UNHCR data source is Turkish government and last updated February 16<sup>th</sup> 2017. <https://data.unhcr.org/syrianrefugees/country.php?id=224>

<sup>36</sup> Although Turkey is a signatory to the 1951 Geneva Convention Relating to the Status of Refugees, it continues to cite the 'geographical limitation' clause, whereby it does not recognize individuals as refugees unless those who have fled events in Europe. As a result, Syrians and Iraqis crossing into Turkey due to recent regionalized conflicts are referred to as "guests" by the Turkish State, rather than as "refugees."

externalization in that the incentives offered to Turkey by the EU, including significant financial compensation, renewed EU accession talks and a possible lifting of visa restrictions for Turkish citizens to travel within the EU, can be viewed as a form of leverage to manage migration. This leverage can be utilized by both sides as the EU offers incentives for Turkey to contain the migration flows that are unwanted by the EU. This is to say that, despite current migration management being utilized as a tool by both the EU and Turkey, there is a process of EU externalization occurring which becomes clearer when examining the third country partnership.<sup>37</sup>

The externalization of the EU border, through the migration management partnership with Turkey, is connected to this notion of having Turkey seem more aligned to a “formal” asylum procedure. For the EU to be able to effectively promote Turkey as a safe third country of asylum, Turkey must first be *seen* as having clearly regulated asylum procedures.<sup>38</sup> As such, there is an inherent tension between internal and external aspects of EU migration governance. A gap exists between EU rhetoric and practice when it comes to migration governance in that while promoting principles of human rights in its projects abroad it encourages third countries to accept or, more often, to contain migrants and asylum seekers, despite unstable country conditions where the right to non-refoulement<sup>39</sup> cannot always be guaranteed.<sup>40</sup> It is against the backdrop of securitization, the idea that migration poses a

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<sup>37</sup> A similar third-country partnership to manage migration from afar was the EU partnership with Libya up until 2011.

<sup>38</sup> According to the Asylum Procedures Directive, Article 27, for a state to be considered a “safe-third country” it must meet four conditions, one of which is that the country extends protection in accordance with the 1951 Geneva Convention. As such, Turkey cannot be considered a “safe-third country.” Even though it is a signatory of the 1951 Convention, it cites geographic limitation, thereby not recognizing individuals as Convention refugees unless those fleeing events in Europe.

<sup>39</sup> The principle of non-refoulement is considered to be a fundamental principle of international law and can be found in Article 33(1) of the 1951 United Nations Convention relating to the Status of Refugees and states that: 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. The principle of non-refoulement is also found in Article 3 of the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

<sup>40</sup> This notion of a gap between rhetoric and practice is further explored in Chapter 4.

“security” threat to the state, as well as externalized border controls, that the EU is able to manage migration from afar while also promote human rights agendas that appear in conflict with their practice of outsourcing migrants and asylum seekers to other countries for processing. This highlights the tension that exists for the EU between internal and external components of migration governance such as the promoting of human rights at an international level while also engaging in a type of “push-back” of those migrating at or *near* its periphery. The development of Temporary Protection Regulation as a part of the Turkish State’s recent migration policies is connected not only to the EU’s externalization of borders, and the influx of asylum seekers, but is also indicative of shifting notions of citizenship amidst recent population movements in and through Turkey.

With this in mind, by focusing on the legal developments within Turkey’s migration policies, it is possible to branch off into broader questions of its implications on future state citizenship practices as well temporary integration. As Temporary Protection Regulation is relatively ambiguous and a form of domestic law, Turkey is left legally unaccountable for how it chooses to practice it on the ground as do other countries with temporary protection mechanisms. The temporariness and ambiguity associated with temporary protection makes assessing Turkey’s next steps in dealing with a large population of asylum seekers and migrants difficult to gauge. With recent talks of extending citizenship to some Syrian asylum seekers in Turkey, the ambiguity of the asylum seeker and migrant’s position in Turkey is further complicated. However, despite this ambiguity, the reality on the ground is that there is a new form of legal landscape that exists on paper, which arguably has wide-reaching implications on how membership into Turkish society will be organized. Is it possible that the introduction of new legal measures to govern foreigners in Turkey, both the 2013 Law and the 2014 Regulation, can lead to new or alternative forms and/or levels of citizenship in Turkey?



It is important to focus on Turkey not only because of its position in current EU policy-making with regards to migration management, but also the significance of its domestic developments regarding how it categorizes and organizes citizens and non-citizens both historically and in a contemporary context.

## **Research Time Frame**

This thesis focuses on the changes that took place between the years of 2011 and 2017. The year 2011<sup>41</sup> is significant as it marks the early arrivals of Syrian asylum seekers into Turkey. Subsequently, 2017 is an important year in which talks of citizenship being extended to Syrians entered into the public forum.<sup>42</sup>

This thesis engages with cooperation agreements and deals, as well as policy papers and academic literature which makes it possible to conceptualize shifting notions of territory, borders, outlying and imagined communities as well as emerging forms of citizenship that rethink the sovereign state–citizen model through a critical analysis approach. Examining the sources of law is fundamental; however do to so critically, it is also important to examine academic literature that touches upon Turkish citizenship and immigration from a contemporary and historical perspective. Engaging with a variety of sources allows for a deeper investigation into contemporary questions that revolve around migration, shifting borders and citizenship.

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<sup>41</sup> Waves of Syrian asylum seekers as well as Iraqis and Kurds most likely also contained migrants, as migration waves can be mixed.

<sup>42</sup> At the time of writing, these talks had not yet formulated into concrete legislation or law. The ambiguity surrounding this offer of citizenship resembles the ambiguity of temporary protection measures in Turkey. Although temporary protection measures in Turkey are an established legal regulation, there remains much uncertainty and ambiguity regarding its application. The ambiguity surrounding temporary protection in Turkey is discussed at greater length in Chapter 5.

This requires examining academic literature on Turkish citizenship and nationalism as well as the 1934 Law of Settlement. While many scholars working on Turkish citizenship have utilized a historical approach, I examine both the historical aspect as well as the recent legal developments in Turkey's laws on foreigners.

This thesis also explores the theoretical idea of emerging forms of citizenship developing as a result of temporary measures to protect asylum seekers fleeing conflicts that have no real time frame. In a world governed by international legal systems that continue to emphasize the need for 'temporary' measures, what is to say that forms of 'partial citizenship' will not emerge if they have not already? What would be the implications of 'partial citizenship?' What rights and privileges, if any, would partial citizenship guarantee an individual? What are the implications of the ways in which the state categorizes its citizen and non-citizen population? Are rights and accessibility of benefits for "non-citizens" tied to the state of the EU-Turkey partnership?

## **Country Focus**

When trying to investigate overarching questions relating to the ongoing processes of current migration movements, it is possible to unintentionally conflate or perhaps overlook the transformations occurring at a more micro-level. By this, I mean to say that researching processes of externalization and securitization vis-à-vis migration can direct one to regional responses, i.e. how the EU is responding to migration occurring through the Mediterranean. Although a rich and useful study on its own, it is important to examine simultaneously what is occurring at a domestic level. Going one level deeper than the domestic sphere, we enter into discussions on the impacts that these policy responses can have on how individuals are categorized and labeled by the state. What we have are a series of ongoing processes that are

occurring on a regional level, i.e. European policy responses, which in turn impact the domestic level, i.e. Turkey's transforming legal framework on foreigners and protection, and then on an additional level, the categorization of the individual by the state.

In an attempt not to lose sight of these multiple levels and the complex processes occurring within each level, using a country-specific study is perhaps imperative in critical analysis research. Turkey's geopolitical positioning vis-à-vis Europe and the irregular migration occurring from or through Turkey to reach Europe, has brought to surface many questions about protection, state obligations, as well as the categorization of citizens and non-citizens. Turkey, in one form or another, has become a key figure in migration management and has subsequently transformed certain aspects of its legal framework on foreigners and protection. Prior to changes in its legal system during the years of 2012-2014, Turkey's most recent laws pertaining to immigration arguably stem mainly from the 1934 Law of Settlement. There is little in the way of academic work that analyzes either the partnership dynamics between the EU and Turkey to manage migration or the impact that this partnership has at a domestic level on laws in Turkey and more specifically on the ways in which citizens and non-citizens are categorized by the State.

Through an examination of the literature on externalization, migration and borders in the following chapter, it is clear that there is a gap in how some of these questions are explored. Literature on migration and Turkey have tended to focus on either historical analyses, the emigration to immigration shift, or current issues such as the presence of Syrians and challenges that face Turkey, which have mostly occurred either in the form of policy-oriented reports, or are geared towards examining the evolution of Turkey's policies, with of course notable exceptions.<sup>43</sup> The gap that I identified was one that I found is best

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<sup>43</sup> There are numerous scholars whose work on migration, citizenship and nationality in Turkey are explored at great length in Chapter 3 Literature Review. There is however, a gap in the literature specifically on the implications of changing laws on foreigners and non-citizens and how discussions of citizenship might be undergoing changes in Turkey.

examined through a multi-disciplinary approach, that is not policy oriented, but rather poses theoretical questions with implications on future state practices. This can be used as a starting point for examining other countries that the EU has partnered with <sup>44</sup> to critically examine the impacts of this growing trend of non-entrée containment policies.

In entering into new partnerships with third countries and in expanding the sphere of EU influence in migration related policies, there will be reverberating implications on those third countries, whether in the form of legislation changes or practices of regional containment of migrants and asylum seekers; some form of “integration” will need to take place as individuals become contained in specific regions. This approach allows for honing in on what those implications would encompass, both theoretically and on the ground. Last but not least, examining a third-country sheds light on the non-EU side of the migration partnership.

## **Materials & Tools of Analysis**

This research makes use of a variety of written materials including both primary and secondary sources. For primary sources, I examine two primary sources of law: Law on Foreigners and International Protection (2013), and the Temporary Protection Regulation (2014), Turkish State AFAD<sup>45</sup> reports, press releases regarding EU-Turkey migration management deals, speeches as well as relevant news articles both in English and in Turkish. The primary sources are used not only to give context but also to provide a sound basis for

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<sup>44</sup>The EU is in the midst of expanding its migration management partnerships with countries all across the Middle East and North Africa Region, as well as in Sub-Saharan countries, namely Mali, Nigeria, Niger, Senegal and Ethiopia to address spaces of “origin” and “transit. The following are countries that the EU has initiated a partnership with: Mali, Nigeria, Niger, Senegal and Ethiopia under the heading of “compacts” which are political frameworks that address several different elements from development aid to mobility so as to create a “tailor-made” approach for each country and its context.

Available at:

[https://eeas.europa.eu/sites/eeas/files/factsheet\\_ec\\_format\\_migration\\_partnership\\_framework\\_update\\_2.pdf](https://eeas.europa.eu/sites/eeas/files/factsheet_ec_format_migration_partnership_framework_update_2.pdf)

June 2016

<sup>45</sup> AFAD is the Turkish State Ministry for Disaster and Emergency Management.

analyzing Turkey's shifting legal landscape as well as possible ramifications on the conceptualization of borders and citizenship. Secondary sources consist of academic literature from a spectrum of disciplines including security studies, analysis of law, anthropological work as well as socio-historical literature on the state, citizenship, borders and movement. In order to understand shifting theoretical notions of territory, borders and citizenship, a critical analysis of written documents is the most relevant approach.

Materials and resources for this thesis were not gathered through means of fieldwork. Instead, the approach to this thesis has been through the lens of critical analysis. A critical analysis approach has sought to understand the implications of not only certain word usages, i.e. when examining speeches, news articles as well as laws, but also of the broader processes occurring. Rather than taking a third-country partnership with Turkey at face value, the critical analysis seeks to understand the wide-reaching implications of the partnership as well as any ramifications or transformations it might lead to at the domestic level. The subject of this research is best approached through this critical analysis that aims to further develop and contribute to a field of migration studies from a multi-disciplinary theoretical approach. This thesis makes use of multiple theoretical frameworks from multiple disciplines in order to approach the complexity that is migration in an age of both ongoing securitization and externalization.

### **Limitations and Challenges**

As with any study or research endeavor, there will be certain limitations and challenges that the researcher faces and must address throughout their work. Often these limitations and challenges in research can be points that are deftly obscured in subsequent

reports so as not to draw criticism of the work at hand. In the field of migration and refugee studies, the methodology section is one that is garnering increased attention.<sup>46</sup>

Given that the research conducted for this thesis did not involve any interviews with human subjects or fieldwork, no ethical issues were experienced. A limitation and challenge to this work however revolves around the subject matter and the timeliness of it. The EU-Turkey partnership is one that is dependent on political relations and has been in flux throughout the data gathering. The topic of EU-Turkey migration management and the development of new frameworks in Turkey are ongoing and at times difficult to decipher since the laws themselves are very recent, an analysis of the repercussions are preliminary at this point in time.

Critical analysis research was conducted and materials were analyzed while based in Cairo, Egypt throughout the year 2016 and into 2017. Since there is little academic research on domestic transformations in Turkey with regards to the recent EU migration management partnership, the work for this thesis can be viewed as providing a possible base for future analytical work, whether policy oriented or for further sociological inquiries.

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<sup>46</sup> For more on the significance of detailing methodologies in migration and refugee studies, see: Colson, Elizabeth (2007), "Linkages Methodology: No Man is an Island." *Journal of Refugee Studies*. 20:2; Jacobsen, Karen, Landau, Loren (2003), "The Dual Imperative in Refugee Research." *Disasters*, 27:3, pp 185-206; Vigneswaran, Darshan (2012), "Representing 'Hidden' Populations: A Symposium on Sampling Techniques." *Journal of Refugee Studies*. Vol. 26:1, PP 110-116.

## Chapter 3: Literature Review and Theoretical Background

### Overview

Critical discussions of migration and citizenship have focused on the following themes: borders and bordering as well as the externalization of geopolitical borders, securitization, containment policies and non-entrée regimes as connected to securitization, the ways in which the state conceptualizes citizenship and the multiplicity of ways in which citizenship can, and has been, conceptualized.

Each of these themes is examined in a way that builds into the overarching ideas about the implications of two ongoing simultaneous processes: externalization of borders and the securitization of migration. From what may seem like unrelated themes arises a more tangible understanding of their connection to one another as well as a more tangible narrative of the implications of externalization and securitization at a micro-level, i.e. the domestic level.

### Borders and Bordering

The concept of borders and bordering is central to a discussion on migration studies. Both territorial and geopolitical borders play a central role in how migration is perceived and politicized. The border is a complex social institution; constantly at work whether demarcating the physical spaces between states, ideas, spaces of inclusion or exclusion in receiving states or cementing international migration policies.

In Etienne Balibar and Erin Williams' (2002) piece, *World Borders, Political Borders*, the idea that borders are always "changing in meaning"<sup>47</sup> is an incredibly poignant point to keep in mind when examining migration-related challenges such as mobility and citizenship. They write, "In this sense, border areas – zones, countries and, cities – are not marginal to the constitution of public sphere but rather are at the center."<sup>48</sup> What are the implications of this idea if we were consider Turkey a "borderland" for the EU? What becomes more apparent in this 'new spatiality' is a clear change in landscape. Significant changes and transformations are occurring at the societal level regarding citizenship and the ways in which citizens and non-citizens are categorized. In response to specific changes occurring within the EU, talks of unification post 1990s, the post Kosovo/Yugoslav wars, the ways in which borders have become everywhere and are always changing, Balibar and Williams state, "In reality what is at stake here is the definition of the modes of *inclusion* and *exclusion* in the European sphere, as a 'public sphere' of bureaucracy and of relations of force but also of communication and cooperation between peoples."<sup>49</sup>

Sections of Balibar's (2009) book, *We the people of Europe?* has further explored this notion of European identity being conceptualized in relation to migration. It is here that questions of the roots of the EU externalization process take form and have led to broader questions concerning EU territoriality, and its impacts on neighboring countries in changing national immigration policies. Balibar's approaches to EU identity through an examination of transnational citizenship, as well as the changing meanings behind borders provide an important theoretical backdrop for this discussion on Turkey.

Chris Rumford's critical work on border studies, alongside Balibar's work, has greatly influenced my own research and how I conceptualize the malleability of borders. Both

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<sup>47</sup>Balibar, Etienne, and Erin M. Williams. 2002. "World borders, political borders." *Publications of the Modern Language Association*.71-78: 71. Accessed March 31, 2017. doi10.1632/003081202X63519

<sup>48</sup>Balibar and William 2002, 72

<sup>49</sup>Ibid.



scholars' approach have contributed to the way in which I understand the EU as perpetuating both its invisible and visible border through migration management. In *Towards a Multiperspectival Study of Borders* (2012), Rumford argues that Etienne Balibar's theory that "borders are everywhere" is essential and that in fact, "very different types of borders are also emerging."<sup>50</sup> He sees the EU as "active in establishing and shifting borders in Europe," and that the

Frontex border is a new sort of flexible border deployed whenever and wherever it is needed and works to constitute the EU border as a world-defining frontier – the Great Wall of Europe, in Balibar's formulation – projected some distance from the borders of EU member states.<sup>51</sup>

Along these lines, Rumford questions the assumption that borders have to be visible if they are to function. In fact, it is the very invisibility of some borders that make them incredibly powerful and difficult to navigate especially with regards to migration. The liquid topography of the Mediterranean Sea for example, makes delineating these "patrol" borders not only a significant challenge, but also allows us to re-think the purpose of the "border" as well as the terrain that is being "bordered." At the heart of Rumford's 'multiperspectival' approach is the belief that "contemporary transformations cannot be properly understood from a single privileged vantage point and that events, processes, and actors can be interpreted differently from different perspectives."<sup>52</sup> More specifically in the case of studying borders, Rumford argues:

A multiperspectival border studies builds upon Balibar's innovations in studying borders, particularly the idea that borders exist at multiple sites within and between polities, that they mean different things to different people, and work differently on different groups...goes further though by drawing attention to the fact that some borders remain invisible, not usually those on the outside but those living within, and that some borders exist for some people and not others.<sup>53</sup>

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<sup>50</sup>Rumford, Chris.2012. "Towards a multiperspectival study of borders." *Geopolitics* 17, no. 4.887-902 (888).Accessed April 2, 2017.doi: 10.1080/14650045.2012.660584

<sup>51</sup> Rumford 2012, 891

<sup>52</sup> Rumford 2012, 893

<sup>53</sup> Rumford 2012, 894

From this perspective, we see the transformation of the actors involved in bordering and delineating territory to encompass non-state institutions, such as the EU and Frontex.

In another paper, *Theorizing Borders*, Rumford explores the increasing attention being paid to “networks and mobilities” in the backdrop of globalization and the impacts that has on the “changing nature of borders.”<sup>54</sup> In this understanding, borders take on many different forms. For Balibar, countries themselves become borderlands, as Rumford writes in reference to Baliabar’s work, “for example, those at the margins of the EU’s project of integration: once countries had borders, now they *are* borders.”<sup>55</sup> Countries, such as Turkey, that exist at the “edge” of the EU, also sometimes referred to as the “periphery” become a border for the EU itself, as does the Mediterranean Sea. This form of exterior bordering is indicative of externalization processes where there is ‘remote control’, “where border control takes place at different points in society not simply at the territorial limits.”<sup>56</sup> What makes the EU a provocative example is its form of “supra-national governance” which for Rumford, comes with a “new spatiality of politics”<sup>57</sup> that goes beyond territoriality. What makes the EU not only a provocative but also relevant study is its close partnership with Turkey, in which Turkey becomes intimately connected in the EU’s externalization and in which Turkey becomes a border process itself.<sup>58</sup>

Lastly, I found Peter Nyers’ (2013) chapter, *Liberating Irregularity: No borders, temporality, citizenship*, incredibly thought-provoking and productive for this thesis. He argues that the “border is not a thing – a noun; rather it is a verb, a doing – a practice. It does

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<sup>54</sup> Rumford, Chris. 2006. “Theorizing Borders.” *European Journal of Social Theory*. 9 no.2:155-169 (155). Accessed April 2, 2017. doi: 10.1177/1368431006063330

<sup>55</sup> Rumford 2006,156

<sup>56</sup> Rumford 2006, 158

<sup>57</sup> Rumford 2006, 160

<sup>58</sup> This form of exterior bordering is made clearer through a more in-depth examination into migration policies and deals that have surfaced between Turkey and the EU, and which will be further explored in the coming chapters.

things; it works.”<sup>59</sup> His work on re-conceptualizing the border as a practice that is actively *doing something* has been key for my own understanding of the EU-Turkey partnership and the ways in which borders constantly shift with migration management. If we are to conceptualize the border as a verb, something that is *doing* something, we need to investigate what these shifting borders both in the Mediterranean as well as Turkey as a border for the EU are actually doing. As these borders become “unbundled, disconnected and de-linked from national boundaries,”<sup>60</sup> how are these effects felt more tangibly on the ground in relation to current migration movements, restrictive policies and changing laws on protection and membership? Examining Turkey more closely allows for a more in-depth conversation about all of these simultaneous ongoing processes that are, without a doubt, having reverberating effects across the domestic and international sphere.

### **Territory and Extensions of the State – Ongoing Externalization**

As I argued in previous chapters, one of the simultaneous ongoing processes with regards to migration today, and more specifically in connection to Turkey, is this process of EU externalization. Through its migration partnership with Turkey, the EU has engaged in a series of practices that have essentially made its geopolitical border portable. This process of pushing the EU border through migration management deals has impacted the ways in which Turkey has revisited its domestic law and practices within its own territories. Therefore, in order to understand the border as something that is ‘portable’ and something that is both a ‘practice’ and ‘a doing,’ it is necessary to examine the border in “action,” that is, as it is being pushed metaphorically beyond the territory through externalization processes.

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<sup>59</sup>Nyers, Peter. 2013. “Liberating Irregularity – No borders, temporality, citizenship.” In *Citizenship and security: the constitution of the political being*, edited by Xavier Guillaume and Jef Huysmans, 37-52. London: Routledge: 40

<sup>60</sup>Nyers 2013, 42

When examining the vast literature available on borders and migration, it is important to consider the following questions as it will help guide the research at hand. What does the externalization of borders mean, and what does it encompass? How do we understand the concepts of territory and borders when considering (im)mobility vis-à-vis EU practices of border control? How does the process of externalizing one's borders play into discussions of transnational identity vs. bounded identity, and the "preservation" of that identity, and what does state-sovereignty look like in a globalized world where the nation-state model's structure is not only becoming increasingly fragile but perhaps irrelevant?

When discussing mobility in the case of borders, one must also examine its counterpart, immobility. The concept of immobility becomes another lens with which to examine the multi-faceted role of borders in the migration process. The two concepts require rethinking what being mobile or immobile encompasses. Literature on immobility is often approached from an intersectional perspective with a focus on examining gender and socio-economic class. Most notable pieces of literature on this subject are Deirdre Conlon(2011) "Waiting: feminist perspectives on the spacings/timings of migrant (im)mobility," Geraldine Pratt & Brenda Yeoh (2003) "Transnational (Counter) Topographies," Jennifer Hyndman & Malathi De Alwis (2004) "Bodies, Shrines, and Roads: violence, (im)mobility and displacement in Sri Lanka," and Susan Hanson (2010) "Gender and mobility: new approaches to informing sustainability." Whether through critiquing the nation, borders and national belonging in a post-structuralist frame of theoretical reference, or through examining times of conflict, or periods of 'waiting' in protracted displacement, the authors have argued for an analysis without constricting binaries and without a conflation of the complexities that exist within the research.

Although this paper does not focus on an in-depth analysis of the complexities of (im)mobility, it is to an extent at the center of EU externalization as well as EU partnerships

with Turkey which involve the possible lifting of visa restrictions for Turkish citizens – a form of mobility– for the exchange of asylum seekers from Greece to be sent to Turkey – a form of immobility. Here, the concept of immobility is found in the process of being returned, waiting in government facilities and institutions for processing and waiting for some type of legal status. Conlon’s ‘geopolitics of waiting,’ while highlighting the immobility argues that in periods of waiting, are also moments of individual struggle, survival and action.

It is possible to examine the role of migration management partnerships in institutionalizing containment and non-entrée regimes, which in themselves represent a form of immobility. “Mobility partnerships” which aim to facilitate certain migration, inherently also lead to a form of institutionalizing immobility of unwanted movement through a security-threat lens. In *The EU Migration-Security Nexus: The Reinforcement and Externalization of Borders from the Center*, Harlan Koff (2014) uses the EU’s partnerships with border countries in North Africa and the use of Frontex as an institutionalized form of EU border control to examine externalization processes. Koff also addresses the role that securitization has played in bolstering externalization efforts. Similarly, Lavenex and Ucarer examine the external dimension of EU policies to understand the nuances behind its interactions with other non-member states for example. They argue:

These various webs of external relations and policy transfer in the area of migration policies point to the various dimensions in which European integration impacts on the outside world and in which common European policies may exert an external impact.<sup>61</sup>

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<sup>61</sup>Lavenex, Sandra, and Emek M. Uçarer. 2004. "The external dimension of Europeanization: The case of immigration policies." *Cooperation and Conflict* 39, no. 4: 417-443: 436. Accessed May 10, 2016. doi:10.1177/0010836704047582

I argue that it is through examining specific policies and partnerships that it becomes easier to understand the scope with which the EU engages in externalization of its geopolitical borders with regards to migration management.

In *Stretching borders beyond sovereign territories? Mapping EU and Spain's border externalization policies*, Casas et al. (2010) examine the EU's assertion of externalization of its borders through its interactions with Spain. The EU's externalization, according to Casas et al. is an example of a different political formation than what has previously researched; "the current EU's border is a domain where a process of de- and re-centering European identity, territory and sovereignty is occurring."<sup>62</sup> Building off of Mezzadra and Neilson (2008), Casas et al. examine the border as a method of analysis in that it is an ever changing institution which constantly questions social relationships. For Casas et al, the epistemological starting point for discussions surrounding mobility, and I would argue immobility, is the "de-colonial notion of border."<sup>63</sup>

Lastly, it is important to briefly examine Cecilia Menjivar's (2014), *Immigration Law Beyond Borders: Externalizing and Internalizing Border Controls in an Era of Securitization*. This paper addresses more broadly issues of the nation-state model in relation to changing conceptions of territory and borders. Menjivar does so through an analysis of securitization measures such as outsourcing of migrants, increased detention centers as well as the patrolling of other territories. Menjivar argues that in the current climate of securitization, stemming more recently from anti-terrorism measures that the border is in the process of outsourcing as well as insourcing. By this Menjivar means:

Outsourcing and insourcing mean the expansion of border controls beyond the physical border to the exterior, with the assistance of third countries, as well as

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<sup>62</sup>Casas, Maribel, Sebastian Cobarrubias, and John Pickles. 2010."Stretching borders beyond sovereign territories? Mapping EU and Spain's border externalization policies." *Geopolitica (s)* 2, no. 1: 71-90: 73 Accessed May 10, 2016. doi: 10.5209/rev\_GEOP.2011.v2.n1.37898

<sup>63</sup> Casas et al. 2010, 74

toward the interior of the territory, through the strengthening of controls accompanied by the proliferation of expulsions and/or deportations.<sup>64</sup>

Menjívar sees the root of the “twin processes” of outsourcing and insourcing, the “multidirectional border” to be securitization. In order for the externalization of borders to occur, it requires a certain type of interaction between “receiving” and “transit”<sup>65</sup> countries. Menjívar argues that an “imbalance of power”<sup>66</sup> forms between the two countries, that even though the “transit” country can exercise some control over the way it controls its borders, the imbalanced dynamic often results in transformations in the “transit” country. This is a significant point to make note of as the thesis argues that simultaneous processes of externalization and securitization occurring at a much broader level do have impacts on the domestic level, and in the case of Turkey, have contributed to the shift in legal landscape that has brought to surface theoretical questions about the ways in which citizens and non-citizens are categorized.

### **Securitization of Migration**

Alongside the concept of borders and bordering, migration is also often addressed through the lens of securitization. Whether it is in the form of policy papers, recommendations or academic literature on security studies, the idea of migration being viewed and understood through a security-oriented perspective has made it necessary to address in the context of this thesis. Ongoing securitization is one of the main themes within the study of migration today as migration movements, both regular and irregular, but in particular irregular, have been scrutinized under this heading of a “crisis.”

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<sup>64</sup>Menjívar, Cecilia.2014. "Immigration law beyond borders: Externalizing and internalizing border controls in an era of securitization." *Annual Review of Law and Social Science* 10: 353-369: 355. Accessed May 10, 2016. doi: 10.1146/annurev-lawsocsci-110413-030842

<sup>65</sup> For more on the problematic usage of “transit” and the labeling of countries as such, please refer to Chapter Four.

<sup>66</sup>Menjívar 2014, 359

The securitization of recent migration movements from the Middle East and North Africa region to Europe that has contributed to a ripple effect of recent political partnerships and policies. The conceptual framework for this discussion revolves around the Copenhagen School theory of Securitization put forward by Buzan and Waever in which securitizing speech acts are made by individuals in a position of authority, whether politicians or members of the media. To aid me in this discussion I have selected Holger Stritzel's *Towards a theory of securitization: Copenhagen and beyond* (2007), Scott Watson's *Manufacturing Threats: Asylum Seekers as Threats or Refugees* (2007), Jef Huysmans' *The European Union and the securitization of migration* (2000), as well as Jef Huysmans and Xavier Guillaume's *Citizenship and Security* (2013).

Securitization is understood to occur when a "successful speech act"<sup>67</sup> takes place. Waever states that the mere utterance of *security* allows for a type of malleability of agendas in which extraordinary measures can take place.<sup>68</sup> In the case of EU discourse, the treaties, bilateral agreements and partnerships in which migration is deemed to be a security issue is considered to be a successful speech act that was "constructed within a political community" so as to "call for urgent and exceptional measures." It is in this capacity that the social construction of threats through speech results in the securitization of migration. Declaring something as a threat is interconnected to the construction of the threat itself. Stritzel (2007) notes in his analysis of the Copenhagen School theory that securitization is composed of three elements: the speech act, the securitizing actor and the audience.<sup>69</sup> Although Stritzel is critical

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<sup>67</sup>Stritzel, Holger. 2007 "Towards a theory of securitization: Copenhagen and beyond." *European journal of international relations* 13, no. 3: 358 Accessed November 5, 2016.doi: 10.1177/1354066107080128

Stritzel, quoting Buzan and Waever, (2003) on a speech act "through which an intersubjective understanding is constructed within a political community to treat something as an existential threat to a valued referent object, and to enable a call for urgent and exceptional measures to deal with the threat." Stritzel 2007, 358

<sup>68</sup>"With the help of language theory we can regard 'security' as a speech act. In this usage, security is not of interest as a sign that refers to something more real; the utterance itself is the act. By saying , something is done (as in betting, giving a promise naming a ship) By uttering 'security,' a state representative moves a particular development into a specific area, and thereby claims a special right to use whatever means necessary to block it."Stritzel 2007, 360

<sup>69</sup>Stritzel 2007, 362



of the Copenhagen School theory and specifically the vagueness of the actor/audience relationship and dynamic, I find it is a productive starting point to examine the EU as an actor involved in the perpetuation of the securitization of migration through its migration management partnerships with Turkey.

Increasingly, there are an abundance of themes concerning migration and security. Most notably, the “urgency” that is associated with security issues, especially with regards to migration and irregular movement, is often characterized as a threat to the structure of the state itself. Herein lies the tension between state sovereignty over its territory and international obligations.<sup>70</sup> Intimately connected to notions of security and recent migration movements, is the idea of the “crisis.” The labeling of something as a security threat allows for “extraordinary” measures of controlling and policing borders, as we have seen more recently with the patrolling of the Mediterranean Sea and the emergence of new deals and partnerships with border countries along the Mediterranean Sea, namely, Turkey.

In *Manufacturing Threats: Asylum Seekers as Threats or Refugees* (2007), Watson “examine[s] two asylum seeker events in detail, revealing how the issue of asylum seeking has been constructed as a national crisis requiring an emergency response, and revealing what actors played a critical role in that process.”<sup>71</sup> Watson examines the two particular migration events, which occurred one year apart from each other in Canada, and through paying close attention to how newspapers and the media covered these events, as well as the various actors involved, Watson was able to point to specific moments in which those migration events became securitized. The first migration event was in 1986 with the arrival of 152 Tamil asylum seekers. This group was presented by the media and various political actors as having

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<sup>70</sup> This in and of itself is a much broader topic that could in fact be the foundation for an entirely separate thesis, however, for the purposes for this research, it is important to note that this tension surfaces and resurfaces often in the face of migration and more specifically, irregular migration.

<sup>71</sup> Watson, Scott D. 2007. “Manufacturing Threats: Asylum Seekers as Threats or Refugees.” *J. Int'l L & Int'l Rel.* 3: 97. Accessed November 5, 2016

a “legitimate claim” since they were fleeing persecution as a minority group, and were thus not viewed as a security threat. However in the following year in 1987, the arrival of 174 Sikh asylum seekers were not met with the same humanitarian approach. The public became more hostile, and a bill was in the process of being passed in the parliament that would be more exclusionary in the refugee determination process. Watson analyses newspaper articles and specific terminology used to describe both sets of asylum seekers and found that the Tamils were referred to as “asylum seekers” whereas the Sikh’s were referred to as “migrants.” He argues:

Through the examination of two episodes of asylum seeker arrivals to Canada in the mid-1980's, this article shows how the discursive practices of political and media elites construct the identity of asylum seekers and in turn, make particular policy options more or less available to state leaders.<sup>72</sup>

For Watson, the elites, both from the public and the media, played a significant role in influencing the political representatives, which in turn led to more restrictive policies as well perpetuated specific language usage that amounted to the “speech acts” of securitization.

In “*The European Union and the securitization of migration,*” Huysmans examines earlier moments in which migration become securitized for the EU. By doing so, he emphasizes the fact that securitization is far from a new process and in fact, has its origins in Europe during the 1980s. More specifically, he argues that migration was a security issue for Western Europe as early as the 1980s and 1990s with the institutionalization of certain policies such as the Third Pillar on Justice and Home Affairs, the Schengen Agreements, and the Dublin Convention. For Huysmans, these restrictive migration policies are indicators that essentially allowed for the “social construction of migration into a security issue.”<sup>73</sup> It is through examining European developments and institutionalizations that facilitated this idea

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<sup>72</sup> Watson 2007, 117

<sup>73</sup> Huysmans 2000, 751.

of migration as a destabilizing force, that it is possible to see the securitization of migration.<sup>74</sup> In this respect, the securitization of migration was intimately connected to two overarching points: concerns over European identity and the maintenance of the welfare state. Along these lines, Huysmans sees the construction of the threat as allowing for “the construction of a scapegoat in a political and socio-economic struggle for the transformation and conservation of the welfare state.”<sup>75</sup>

In their *Introduction in Citizenship and Security: The Constitution of Political Being*, Huysmans and Guillaume (2013) argue that “...security practices and studies work very immediately on key terrains central to citizenship.”<sup>76</sup> They see security and citizenship as:

practices [that] are simultaneously a governmental practice securing the status of citizens and the author of political apparatuses, and a resource of counter-practices contesting the effects of securitizing. Through citizenship, conceptions of security and their effects become politically negotiated and contested.<sup>77</sup>

With this in mind, citizenship practices become a medium in which to further explore security-related questions. Thus, migration and borders play a significant role in bringing to surface once again the citizenship-security nexus. Their book focuses on specifically on two issues, “(1) how securitizing practices are changing and challenging the state’s crafting of the citizen-state relation; and (2) what opportunities exist for challenging these securitizations.”<sup>78</sup> For them, there is a certain type of urgency associated with this examination of citizenship and security, which is that the “political being is negotiated, formed and transfigured at its interstices.”<sup>79</sup> Exploring the inherent complexities of these issues will in fact lead to a more translucent awareness of the ways in which citizenship is formed and reformed through

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<sup>74</sup> Huysmans argues, “The security continuum is an institutionalized mode of policy-making that allows the transfer of the security connotations of terrorism, drugs traffic and money-laundering into the area of migration.” (760)

<sup>75</sup> Huysmans 2000, 770

<sup>76</sup> Xavier Guillaume and Jef Huysmans. 2013. Introduction to *Citizenship and security: the constitution of the political being*, edited by Xavier Guillaume and Jef Huysmans, 1-17. London: Routledge: 1

<sup>77</sup> Huysmans and Guillaume 2013, 2

<sup>78</sup> Huysmans and Guillaume 2013, 11

<sup>79</sup> Huysmans and Guillaume 2013, 5

security related issues. This citizenship-security nexus is a place in which citizenship practices undergo transformations and requires some rethinking in the context of current legal and social changes in Turkey.

### **Non-entrée regimes and Temporary Protection within International Law**

Having discussed the recent securitization of migration, particularly of migration movements to Europe, it is important to examine the broader impacts of securitization. With this in mind, there are two overarching implications of securitization that are addressed in the following two sections; first, its tangential impacts on law, and the increasing trend towards adopting temporary protection mechanisms, and second, its implication on changing conceptualizations of the citizen-state relation. This section argues that simultaneous processes of externalization of a territory's borders and the perpetuation of the securitization of migration have overarching implications that can in fact be broken down and examined more tangibly. Two of these implications are the ways in which law is affected and the second, the way the citizenship-state dynamic is shifting to encapsulate alternative forms of membership. The underlying argument is that both externalization and securitization impacts how law develops, in this case, the introduction of temporary protection measures in Turkey and the ways that citizenship is being re-conceptualized, but also how it can become a political tool. The focus of this section, however, remains on inherent tensions that exist within the international legal system as made indicative by the emergence of temporary protection measures and increasing non-entrée regimes.<sup>80</sup>

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<sup>80</sup> The impacts that this inherent tension have had can be seen more visibly through focusing on Turkey and more specifically, the recent developments in Turkish domestic law which are discussed and examined at great length in Chapter 5.

To aid in this discussion I have chosen several key sources: *Between Pragmatism and Predictability: Temporariness of International Law* from the Netherlands Yearbook of International Law (2014), Alexander Betts' *The international relations of the "new" extraterritorial approaches to refugee protection: Explaining the policy initiatives of the UK government and UNHCR* (2004), Thomas Gammeltoft-Hansen's University of Oxford Lecture series *The Law and Politics of Non-entrée* (2016) and Meltem Ineli-Ciger's *Implications of the new Turkish law on foreigners and international protection and regulation no. 29153 on temporary protection for Syrians seeking protection in Turkey*(2015).<sup>81</sup>

With this in mind, *Between Pragmatism and Predictability: Temporariness of International Law* from the Netherlands Yearbook of International Law 2014 analyzes different views on temporariness within international law including the legal regime on protection and refugee law. Highlighted early on in this text is the notion that one of the key functions of international law is in essence to provide a type of 'legal certainty.' Ambrus and Wessel argue that despite this key function, the legal framework has to be able to adapt to the changing environment. They raise two important questions in the introduction: "How does international law deal with matters that are non-permanent? What happens to international law when the originally temporary creatures become permanent?"<sup>82</sup>In this context, 'creatures' refers to subjects of temporariness, i.e. institutions and conditions susceptible to change. One way in which international law addressed the 'temporality' of certain conditions was with the introduction of Temporary Protection in Europe. Originally understood as a "return-oriented protection" mechanism, Temporary Protection is emerging in other countries

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<sup>81</sup> As primary source documents, sources of Turkish domestic law and regulations (*Law on Foreigners and International Protection* and the Temporary Protection Regulation from the Ministry of Interior Directorate General of Migration Management 2014) are examined in chapter 5.

<sup>82</sup>Ambrus, Mónica, and Ramses A. Wessel.2015. "Between pragmatism and predictability: temporariness in international law." In *Netherlands Yearbook of International Law 2014*, pp. 3-17. TMC Asser Press. 5. Accessed October 10, 2016.

and under different contexts. This text, which is a compilation of chapters by several authors, raises very important theoretical questions with regards to legal scholarship; if the overall objective of international law is to provide a “stable rule of law” then to what degree can it be coupled with ‘temporary’ issues or contexts?” This text is instrumental in approaching issues of temporariness within legal scholarship on international law.

The EU-Turkey migration management partnership can be understood as a type of off-shore asylum processing and is indicative of a type of non-entrée regime that questions the very essence of the non-refoulement principle.<sup>83</sup> Off-shore asylum processing, although not a new phenomenon, is a method increasingly used for circumventing certain international legal obligations. Betts (2004) writes,

*Extraterritorial protection* may be defined as: the raft of refugee policies initiated by OECD countries aimed at de-territorializing the provision of protection to refugees in such a way that temporary protection and the processing of asylum claims take place outside of the given nation-state.<sup>84</sup>

It becomes increasingly clearer that non-entrée regimes and off-shore asylum processing are methods by which countries externalize their borders through their migration management partnerships with border countries. The relevancy of this for the work at hand, is to understand the degree to which externalization leads to transformations in the “transit” country and the impacts that these ongoing processes have on a more tangible level.

Along these lines, Dr. Gammeltoft-Hansen, in an Oxford Seminar Series talk titled, *The law and politics of non-entrée* (2014), raised several important points regarding the connections between migration, international law and the “politics of non-entrée.”<sup>85</sup> He

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<sup>83</sup> Although non-entrée regimes exist in various parts of the world, such as in Australia for example, for the purposes of this paper, I only examine the EU vis-à-vis its partnership with Turkey.

<sup>84</sup> Betts, Alexander. 2004 "The international relations of the “new” extraterritorial approaches to refugee protection: Explaining the policy initiatives of the UK government and UNHCR." *Refuge: Canada's Journal on Refugees* 22, no.1. 58-70: 59. Accessed December 4, 2016.

<sup>85</sup> Gammeltoft-Hansen, Thomas, Dr. 2016. "The Law and Politics of Non-entree." *University of Oxford* (audio blog), June 11, 2014. Accessed December 9, 2016. <https://podcasts.ox.ac.uk/law-and-politics-non-entr-e>.

argued that non-entrée practices, such as carrier sanctions, designation of certain non-territory<sup>86</sup> and maritime high seas interceptions, allows “developed” states to insist on the non-refoulement principle while at the same time not accepting migrants and asylum seekers onto their territory through “patterns of minimalist engagement,” such as regional containment.<sup>87</sup> This need to insist on the non-refoulement principle, which has been explored earlier in this thesis, while also promoting regional containment of migrants and asylum seekers, highlights the tension that exists within international law, where states and entities such as the EU, wish to adhere to universal human rights principles, while also exercising sovereignty over their territory. These increasing “politics of non-entrée” regimes can be viewed as indicative of broader ongoing processes of EU externalization, with Turkey recently taking a central position.

*In Implications of the new Turkish law on foreigners and international protection and regulation no. 29153 on temporary protection for Syrians seeking protection in Turkey*, Ineliger examines some of the regulations behind temporary protection in Turkey as well as the role of the Council of Ministers, while also citing the ambiguity surrounding the time frame of the protection offered to the individual. This notion of ambiguity and subsequently accessibility surrounding the law is important to consider and is explored at greater length in the following chapters.

## **Citizenship and the State**

As mentioned previously, the second overarching implication of simultaneous externalization and securitization is the need to reexamine the citizen-state relation. This

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<sup>86</sup> Such as Australia’s excising of islands in the Pacific Solution in 2001.

<sup>87</sup> He argues further that there is a new generation of deterrence and non-entrée policies which engage transit countries. In the context of this paper, I have examined Turkey as one such case.

citizen-state dynamic has been undergoing a fundamental shift since globalization and the increasing trend of individuals leading transnational lives. There are certain trends, such as irregular migration, that continue to pose as “problematic” for a state’s sense of sovereignty. Within this scope, this section broadly discusses the relevant theoretical framework for what I conceptualize as citizenship, more specifically, research on citizenship in Turkey.

The following papers have laid the foundation for this thesis’ theoretical framework: Engin Isin’s *Theorizing Acts of Citizenship* (2008) and *City as Difference Machine* (2002), as well as Stephen Castles and Alastair Davidson’s *Citizenship and Migration* (2000), Peter Kivisto and Thomas Faist’s *Citizenship: Discourse, Theory and Transnational Prospects* (2007), as well as Eleonore Kofman’s *Citizenship, Migration and the Reassertion of National Identity* (2005). Rather than going into an in-depth examination into citizenship in Turkey here, this section lays the theoretical groundwork for discussing citizenship and the state more broadly.<sup>88</sup>

In Isin’s *Theorizing Acts of Citizenship*, the idea of claim-making as citizenship rather than solely legal status is further explored. He writes,

To put it another way, critical studies of citizenship over the last two decades have taught us that what is important is not only that citizenship is a legal status but that it also involves practices of making citizens- social, political, cultural and symbolic.<sup>89</sup>

Isin is concerned with the dialogical creation of the individual which occurs when enactment of the self is made in contrast to an “other.” With this in mind, he describes a type of fluidity that occurs with identities, and states, “being always involved being with others.”<sup>90</sup> In

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<sup>88</sup> Citizenship in Turkey is examined at greater length in *Chapter Five: Changes in Turkey’s Legal Landscape and its Broader Implications*

<sup>89</sup>Isin, Engin F. 2008. “Theorizing Acts of Citizenship.” In *Acts of Citizenship*, edited by Engin F. Isin and Greg M Nielsen, 15-43: 17 Zed Book Ltd. New York.

<sup>90</sup>Isin 2008, 19



another piece titled, *City as a Difference Machine*, Isin explores how citizenship has historically been associated with specific members of society. He writes,

The alterity of citizenship, therefore, does not preexist, but is constituted by it. The closure theories that defined citizenship as a space of privilege for the few that excludes others neglect a subtle but important aspect of citizenship, that it requires the constitution of these others to become possible.<sup>91</sup>

He goes on to argue that historically citizenship was a way for “dominant” groups to distinguish themselves from the “distant others.”<sup>92</sup> His investigation into citizenship is driven by the critical approach of critiquing the synoecism and orientalism associated with origins of cities. In doing so, Isin argues for citizenship as alterity and considers three overlapping categories of otherness: strangers, outsiders, and aliens.<sup>93</sup> This alternative narrative of citizenship allows for a broader critique about the formation of not only group identity but also the ways in which the individual formulates the self in relation to different categories of the “other.”

In *Becoming a Citizen*, Castles and Davidson explore how some countries have devised a system of multiple forms of membership in response to migration. They write, “However, citizenship is not always an ‘either/or’ situation: in response to large-scale settlement, some countries have devised forms of quasi-citizenship that confer some but not all of the rights of citizenship.”<sup>94</sup> On the categorization of quasi-citizens, denizens and margizens, they note, “Such arrangements create a new legal status, which is more than that of a foreigner but less than that of a citizen.”<sup>95</sup> Does ‘quasi-citizenship’ lead to the formation of 1<sup>st</sup> and 2<sup>nd</sup> class type citizenships? For Castles and David, EU citizenship can be

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<sup>91</sup>Isin, Engin F. 2002 "City as a difference machine." In *Being Political: Genealogies of Citizenship*: 1-51: 4

<sup>92</sup>Isin 2002, 5

<sup>93</sup>Isin 2002, 30

<sup>94</sup>Castles, Stephen, and Alastair Davidson. 2000. “Becoming a Citizen” In *Citizenship and migration: Globalization and the politics of belonging*. Psychology Press. 84-100. New York: Routledge: 85

<sup>95</sup> Castles and Davidson 2000, 94

considered to be a form of ‘quasi-citizenship’ in that it “confers[s] significant rights on the nationals of one member state living in another, but these fall short of citizenship, especially with regard to political participation.”<sup>96</sup>What is important to consider when thinking about quasi-citizenship, specifically in the case of countries offering temporary protection and in the case of Turkey, discussing a type of citizenship that might be extended to Syrian asylum seekers, is that a legal differentiation between individuals can form which would lead to, if not further perpetuate, social tensions and inequalities between social groups.

Kivisto and Faist describe a “return of the citizen in public and policy discourse,” and argue that this “renewed” interest stems from “two interrelated and shared convictions on the part of those who have entered into the fray: first, citizenship is important, and second, citizenship is changing.”<sup>97</sup>They go further in depth about the ways in which citizenship is undergoing changes from a legal rights-based understanding to claim-making, to the ways in which individuals articulate their claims, rights and obligations.

Lastly, Kofman in *Citizenship, Migration and the Reassertion of National Identity*, examines the role of global and international regimes, rather than the nation-state in asserting rights. By focusing on Europe, Kofman is able to dive into the tension between immigration policies, principles, assertion of national identity and notions of sovereignty. She critiques the postnational model of citizenship by arguing that with regards to migrants, European citizenship in reality became more of a split level, second class categorization of citizenship. She builds off of Agamben’s idea of the asylum seeker as “disrupt[ing] the holy trinity of nation-state territory,” and states that “Asylum challenges the sovereignty of a state to determine the number and composition of those who enter the nation-state, which seeks to

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<sup>96</sup> Castles and Davidson 2000, 98

<sup>97</sup>Kivisto, Peter and Thomas Faist. 2007. “Introduction” In *Citizenship: Discourse, Theory and Transnational Prospects*. Blackwell Publishing:1

reassert its authority.”<sup>98</sup> Kofman’s examination into the tension that exists between immigration policies and rights is one that continues to resurface with regards to the EU’s third-country partnerships to manage migration, which are intimately connected to their ongoing externalization processes. Isin’s citizenship as ‘alterity’ argument is exemplary and influenced my own understanding of levels of citizenship in the Turkish context. Castles and Davidson’s notions of “quasi-citizenship” is also incredibly provocative when considering the position of Syrians in Turkey as more than a foreigner but less than that of a citizen at this point in time.

### **Alternative Forms of Citizenship**

In this final section, *Alternative Forms of Citizenship*, I find it is necessary to address the multiplicity of ways in which citizenship has been re-conceptualized with regards to migration over the past two decades. There are many more conceptualizations however, for the purposes of this thesis, I have chosen a select number which I believe highlight the alternative ways in which non-citizens have been regarded and categorized in the social context.

With regards to alternative forms of citizenship, there is an abundance of themes present in academic literature ranging from the social role of non-citizens, the dynamic between non-citizens and migrants, the political participation of non-citizens, transnational networks to state differentiation between citizens and non-citizens.

Although the examples are varied and pertain mostly to migrant workers, which is not the focus of this thesis, it is important to address changes in how individuals associate citizenship/membership with non-citizens. It is important to note that the ideas stemming

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<sup>98</sup>Kofman, Eleonore. 2005 "Citizenship, migration and the reassertion of national identity." *Citizenship studies* 9, no. 5: 453-467: 459. Accessed April 2, 2017. doi: 10.1080/13621020500301221

from these alternative forms of citizenship are ones that are not prescribed from the state to the individual but are rather associations, that the authors imply, are made through process of self-identification on behalf of the migrant. Despite the different contexts, the ways in which non-citizens are assuming new forms of membership is incredibly useful for the broader discussion occurring in this thesis. The three texts I briefly delve into are Robyn Magalit Rodriguez's *Philippine Migrant Workers' Transnationalism in the Middle East* (2011), Neha Vora's *Unofficial citizens: Indian entrepreneurs and the State-Effect in Dubai* (2011), and lastly, Yasemin Soysal's *Limits of Citizenship: Migrants and Postnational Membership in Europe and Changing Citizenship in Europe and Changing Citizenship in Europe* (1994).

In *Philippine Migrant Workers' Transnationalism in the Middle-East*, Rodriguez(2011) examines how migrants can assert their rights as workers when they are non-nationals and experience significant difficulty asserting their human rights under international law. By focusing on an international grassroots organization "Migrante" and their campaigns for migrants workers, Rodriguez argues that a type of 'migrant citizenship' emerges and allows for migrants to assert their rights as citizens transnationally.

In *Unofficial Citizens: Indian Entrepreneurs and the State-Effect in Dubai*, Vora (2011) identifies another emerging form of citizenship, the 'unofficial citizen' among Indian business elites living and working in Dubai. Vora notes that the business elites, who live in a country that actively aims to distinguish between citizens and non-citizens, are somehow able to feel "more Indian" in Dubai, than if they decided to live anywhere else outside of India, and feel that they are able to assert their 'freedoms' more easily in Dubai in their capacity as 'unofficial citizens.'

In *Limits of Citizenship: Migrants and Postnational Membership in Europe*, Soysal(1994) argues that the institution and meaning of citizenship is in the process of changing since the post-Cold War. She argues that a type of 'universal personhood' rather

than national belonging has become central to notions of citizenship. Her case study of guest workers in Europe forms the basis for her discussion of how the guest workers became 'permanent' and formed 'foreign communities' within host countries and defied perceptions of the temporariness of the program. She writes,

Citizenship defines bounded populations, with a specific set of rights and duties, excluding 'others' on the grounds of nationality. Yet guest workers, who are formally and empirically constituted as aliens within the national collectivity, are nonetheless granted rights and protection by, and thus members in, a state that is not 'their own.'<sup>99</sup>

Soysal questions and challenges the assumption that 'national citizenship' is imperative to membership in a polity and in doing so argues instead for a postnational model of citizenship. Although my research does not examine migrant workers, but rather asylum seekers and migrants who migrate to and through Turkey, I find this alternative conceptualization of membership thought-provoking and useful as an initial foundation for questions and reconceptualizations about the possible emergence of "partial citizenship" in the Turkish context.

In *Changing Citizenship in Europe* (1996) Soysal argues that the institution of citizenship has undergone a massive shift in the post-war era, which has led to the decoupling of identity and rights. She writes, "The post-war changes in the organization and ideologies of the global system have increasingly shifted the institutional and normative basis of citizenship to a transnational level and have extended rights and privileges associated with it beyond national boundaries."<sup>100</sup> Along this line of thinking, Soysal argues that pre-war conceptions of citizenship revolved around the idea of a "single status." With the postnational model, she argues there is an implied "multiplicity of membership[s]."<sup>101</sup> The idea of

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<sup>99</sup>Soysal, Yasemin Nuhoglu. 1994. *Limits of citizenship: Migrants and postnational membership in Europe*. Chicago: University of Chicago Press: 2

<sup>100</sup>Soysal 1994, 21

<sup>101</sup>Soysal 1994, 22

temporary protection as a type of multi-layered form of membership, one that is ambiguous in its time frame and application of rights, comes to mind.

Alternative forms of citizenship and membership is another way to examine how citizenship is understood as encompassing many different things. Rather than being a static form of legal status, citizenship encompasses the different ways in which individuals belong to a community. The way the state understands citizenship may differ greatly than the way a migrant or an asylum seeker might. What is important to take away from these brief examples is that individuals are increasingly leading transnational lives that are no longer bound by association to one specific territory and as a result, new forms of membership and associations have already begun to form for many. Without wanting to conflate the vastly different experiences and groups of individuals into one overarching category, the idea behind examining *Alternative forms of citizenship*, is to see what ideas are emerging with regards migration, citizenship practices, non-citizens and membership.

## **Conclusion**

Taking it one step beyond the impacts that these simultaneous processes have on the changing legal landscape is a deeper examination into the citizen-state relation that is pushed once again by changing notions of territory, borders, mobility that are brought about by the changing legal landscape. Pushing further beyond that layer of citizenship is to examine and to question whether alternative forms of citizenship might emerge in relation to these simultaneous processes that are occurring at a much broader, sometimes intangible scale. Wide-encompassing processes such as externalization and securitization can often exist or remain at a theoretical level. In order to understand what these processes encompass and the degree to which they impact or influence other countries it is necessary to examine what is occurring at the domestic level, on a much smaller, more effable scale.

This emphasizes once again the need to examine numerous themes and scholars. The field of migration studies encompasses at its heart an inter-disciplinary approach which requires us to question and examine numerous themes from different angles. When discussing citizenship for example, it is important to also discuss how borders and bordering are inherently linked to not only territory but perhaps more importantly, in the context of migration today, to their fluidity as well as its non-static behavior as “doing something” rather than just existing as a demarcation, and lastly, the ways in which they can be manipulated and altered in the geopolitical context. Through an almost winding-down like process of examination we reach additional questions. In the case of Turkey, those questions revolve around the impacts that externalization and securitization have on changing notions of citizenship and whether alternative forms of membership will emerge from this highly charged political landscape. My work is placed in conversation with others in order to complement existing work on migration and citizenship to discuss how externalization of borders and securitization of migration have had reverberating effects at the domestic level in Turkey, namely, the formalization of how foreigners and non-citizens are conceptualized by the state.

## Chapter 4: Migration and the shifting of borders –Examining EU

### Externalization and the EU-Turkey partnership

#### Overview

Through examining the EU-Turkey migration management partnership, from 2012 onwards, it is possible to engage in an in-depth discussion about the connection between current migration movements viewed as security threats and the shifting of borders in the attempt to govern these migration movements. This chapter will address relevant themes and ideas such as the fluidity of borders and the ways in which migration and current policies challenge notions of a static border.

Crucial to this discussion is the concept and practice of the externalization of borders. Iker Barbero (2012) describes externalization as shifting the border “to the very starting point of the migration process, or at least anticipates the intervention before it arrives at the doors of the external door.”<sup>102</sup> In doing so, he argues, European migration policies seek “to establish a progressive security perimeter to anticipate the threat of unauthorized migration (among others) while acquiring a presence in the strategic geopolitical or economic interest.”<sup>103</sup>

Crucial to this is the element of risk and anticipation. In arguing that the EU anticipates the risk of being invaded by waves of migration,<sup>104</sup> Barbero argues that the externalization of borders is made possible through a highly structured set of mechanisms with implementing agencies as well as coordination between various information gathering

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<sup>102</sup> Barbero, Iker. 2012 "Orientalising citizenship: the legitimation of immigration regimes in the European Union." *Citizenship studies* 16, no. 5-6: 755. Accessed April 20, 2017. doi:10.1080/13621025.2012.698504

<sup>103</sup> Ibid.

<sup>104</sup> Barbero 2012, 755



systems. In referencing Davis(2008), Barbero writes that these agencies and mechanisms represent “the panopticon brain of border control.”<sup>105</sup>

This notion of risk and in particular risk management speaks to the broader phenomenon of the “crisis.” More specifically, examining the process of externalization of borders through this perspective of risk and anticipation allows for a deeper interpretation and critical analysis on the ways in which a state of “crisis” is managed and perpetuated. Examining this notion of risk management is critical to addressing *anticipated* threats rather than perhaps existing threats, which in turn shapes and furthers the security discourse surrounding migration. It is against this backdrop of risk management that the border can be stretched beyond the territory of the state and instead develops into a form of pre-emptive external border control.

Rumford’s work on critical border studies assists in highlighting the power behind the visibility and invisibility of borders through examining Balibar’s argument that “borders are everywhere.” By discussing Frontex as a type of border practice itself, he argues that the EU is constantly engaged in producing a flexible border. That is to say, that an ongoing project of migration management from afar, equipped with agencies such as Frontex, allows the border to not only be in a constant state of geopolitical flux, but that the Frontex patrol enforces and determines the EU border, thus becoming a bordering mechanism in and of itself.

Borders are not always something to be imposed on another. To describe the EU-Turkey migration partnership and subsequent EU externalization of borders as something *being done* to Turkey risks not only conflating complex processes but is also reminiscent of this notion of active and passive players in the broader governance system. Barbero understands the process of externalization from an EU-centered perspective of anticipation and emphasizes the role of agencies in anticipating the need for an intervention, whereas I

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<sup>105</sup>Ibid.

understand externalization as a process that requires the involvement of multiple state actors and counterparts, in this case, both the EU and Turkey. Turkey is far from a passive actor. On the contrary, what becomes apparent through the mutual use of migration as a tool to address political ideologies and policies is that borders and mechanisms of control are indicative of the active role that both the EU and Turkey play in perpetuating externalization.

So often with discussions of externalization and the pushing of borders what forms is an unbalanced dynamic, or at least the image of one in which one actor, the EU, dictates terms to another third-country. With migration management partnerships, however the uneasy tension and shifting of power dynamics is brought to the surface as both sets of actors perpetuate and further their own policy agendas. Turkey is also dictating the direction of these policies and extended geopolitical borders as much as the EU is. What is important to consider is the way in which Turkey contributes to the shifting border through its negotiations with the EU.

As the previous chapter explained in detail, several themes have emerged within critical border studies that allow us to carefully engage with the question of how the process of externalization affects citizenship and the governance of foreigners. First, the notion that the border is not a noun, but rather, a verb <sup>106</sup> that is doing something is important when considering the ways in which the EU's border has shifted and has been re-drawn geopolitically with its partnership with Turkey. Subsequently, it can be argued that Turkey's border has also undergone significant shifts in its recent migration partnership. Instead of imagining the border as a physical structure that is a set demarcation, the border can be understood as always shifting, and always *doing something*. Whether the border is shifting to extend geopolitical influence through political partnerships or through the presence of fences between countries, or whether it is in-flux in the liquid topography of the Mediterranean and

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<sup>106</sup>Nyers, Peter. 2013. "Liberating Irregularity – No borders, temporality, citizenship." In *Citizenship and security: the constitution of the political being*, edited by Xavier Guillaume and Jef Huysmans, 37-52. London: Routledge: 40

Aegean seas, ebbing and flowing between demarcated spaces of territorial waters, exclusive economic zones and high seas, the changing border is ever present in the governance of migration.

The process of bordering is closely linked to the creation of socio-cultural, political and geographic distinctions. The EU's involvement with Turkey through migration management points to the strengthening EU border regime. The impacts of this strengthening regime are multiple: from impacting the everyday lives of individuals who wish to migrate to more broadly the development of legal regimes at the domestic level in Turkey which address international protection, foreigners and non-citizens.

### **‘Migration Management’ Structures**

The institutional structures tasked with addressing migration are reflective of the way in which migration is viewed and understood, as well as the way that the territory and its population (both citizens and non-citizens) are governed. Against the backdrop of a “crisis” the way in which the European Commission has organized its priorities and action plans under the broader umbrella of ‘migration management’ is an important place to begin examining the types of partnerships that have recently arisen and the broader implications of those partnerships when it comes to the ways in which migration is governed.

By using terminology such as “crisis,” the EU was able to, in effect, engage with Turkey as a “transit” country, broker deals and “manage migration” through preemptive measures. By labeling something a “crisis,” a new set of policy frameworks and actions emerge that, under “normal” circumstances, would not be considered legally sound under international law. The collaborative project entitled, *Europe/Crisis New Key Words of “the*

*Crisis” in and of Europe,* <sup>107</sup> examines just how the word “crisis” has allowed for the malleability of policies and agendas. <sup>108</sup> They write that

Indeed, the proclamation of “crisis” consequently serves the ends of particular forms of governmental intervention, usually through the deployment of authoritarian measures: a situation of “crisis,” after all, appears to demand immediate responses that cannot afford the more prolonged temporalities of democratic debate and deliberative processes, or so we are told. <sup>109</sup>

Briefly examining the relevant structures and mechanisms that developed and allowed the EU to manage migration from ‘afar,’ it was in 2004 that both FRONTEX (from the French: frontier exterieure) was established as well as the European Neighborhood Policy (ENP) which worked to link the EU with neighboring countries to manage migration. <sup>110</sup> The formation of Frontex is an example of how the EU is actively involved, both on the ground and at the sea, in controlling migration movements at its external borders to the point in which its borders have become fluid and ever changing. The Frontex patrol has become a border in and of itself.

In addition to the development of Frontex and the ENP, the Global Approach to Migration (GAM) framework, which was established in 2005, embodies EU externalization efforts on multiple levels. With the establishment of GAM, an intra-regional network of EU extensions formed to include the “neighbors of neighbors” in migration management. <sup>111</sup> With the ENP and GAM as overarching policy frameworks and institutions such as Frontex,

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<sup>107</sup> The New Key Words Collective aims to respond to this discourse of ‘migrant/refugee crisis’ by producing a counter-discourse that problematizes the ways in which movement, immigration and borders are being reconceptualized.

<sup>108</sup> It is also important to note that ‘crisis’ is far from a new phenomenon, it has been used in numerous contexts with the EU, from the financial crisis, to a humanitarian crisis, to describe the attacks in Paris in 2015. ‘Crisis’ sustains the urgency necessary for government responses/actions.

<sup>109</sup>De Genova, Nicholas and MartinaTazzioli,ed. 2016." New Keywords Collective “Europe /Crisis: New Keywords of ‘the Crisis’ in and of ‘Europe’.” *Near Futures Online*.11. Accessed June 2,2016. <http://nearfuturesonline.org/europecrisis-new-keywords-of-crisis-in-and-of-europe/>

<sup>110</sup>Casas, Maribel, Sebastian Cobarrubias, and John Pickles. 2010."Stretching borders beyond sovereign territories? Mapping EU and Spain’s border externalization policies." *Geopolitica (s)* 2, no. 1: 71-90. Accessed May 10, 2016. doi: 10.5209/rev\_GEOP.2011.v2.n1.37898

<sup>111</sup> Casas et al. 2010, 79

the EU neighborhood schemes became symbolic of a “geographical imaginary” and essentially, emphasize an ongoing process of extending its borders.<sup>112</sup>

Another important structure that emerged from Frontex operations was the European Surveillance System (Eurosur) which developed mechanisms of sharing information, in real time, so as to reduce irregular migration and the number of deaths at sea as well as to increase border security.<sup>113</sup> Alongside Eurosur, Rapid Border Intervention Teams (RABITs) were established by Frontex to address “localized border emergencies” between Greece and Turkey as early as 2012,<sup>114</sup> which brings to the forefront Frontex’s increased capacity as an actor involved in migration management through working with third-countries.<sup>115</sup> One such example of this increased involvement is its presence in Turkey which is made clear with the European Commission report:

Frontex has deployed a liaison officer in Ankara since April [2016] which has allowed for regular operational contacts and daily reporting with the Turkish National Frontex Point of Contact.<sup>116</sup>

Lastly, another example which emphasizes how the EU has externalized its borders, through migration management policies, is the i-map interactive cartography project which was developed in conjunction with the Mediterranean Transit Migration Dialogue of the International Centre for Migration Policy Development, Frontex and Europol. Through the virtual tracking and mapping of human movement the i-map provides interactive maps of the migration routes that lead to the EU.<sup>117</sup>

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<sup>112</sup> Ibid.

<sup>113</sup> Koff, Harlan. 2014. "The EU Migration-Security Nexus: The Reinforcement and Externalization of Borders from the Center." EUSC. 5 Accessed April 19, 2016. [http://eusc.essex.ac.uk/documents/EUSC\\_Migration\\_EU\\_Koff.pdf](http://eusc.essex.ac.uk/documents/EUSC_Migration_EU_Koff.pdf)

<sup>114</sup> Koff, 2014, 5

<sup>115</sup> Koff, 2014, 6

<sup>116</sup> Implementing the EU-Turkey Statement – Questions and Answers. Brussels 15 June 2016. *European Commission*.

<sup>117</sup> Casas et al 2010, 81

This type of virtual tracking and mapping pushes the conventional notions of jurisdiction and puts into question the legality of such a method of border control and once again illustrates the fluidity of borders when it comes to migration management structures. For Casas et al., this tracking reflects a “hardening” of borders rather than a disappearance of borders in today’s globalized world. I would argue that in addition to hardening borders, these methods of migration management in fact suggests that the border, as a verb, is actively involved and is in-flux. Whether the border shifts with Frontex operations or is in-flux depending on i-map tracking and mapping, defining and re-defining the border has become a vital tool of migration management. These developments in tracking, mapping and halting migration movements demonstrate the changing conceptions of territory and the reinforcement and proliferation of imagined borders.

These are the most relevant EU structures which address how migration management policies have in fact blurred and shifted numerous geopolitical borders.<sup>118</sup> In their examination of the EU and Spain, Casas et al., describe the architecture of Spanish border externalization through examining the institutions and actors involved in “stretching the border.” It is an influential case-study to keep in mind when examining the types of structures

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<sup>118</sup>For a more in-depth examination into the blurring of legal jurisdiction borders with regards to migration management, please see: Bauder, Harald. 2013. “Why We Should Use the Term Illegalized Immigrant.” *RCIS Research Brief*, 1:1-7; Carling, Jørgen. 2007. “Migration Control and Migrant Fatalities at the Spanish-African Borders.” *IMR* 41, no. 2: 316-343; Fargues, Philippe, et al. 2013. “Migrants smuggled by sea to the EU: facts, laws and policy options.” *EUI*. Bruxelles: Migration Policy Centre; Fargues, Philippe, and Anna Di Bartolomeo. 2015. “Drowned Europe.” *EUI*. Bruxelles: Migration Policy Centre; Gammeltoft-Hansen, Thomas, and Tanja E. Alberts. 2010. “Sovereignty at Sea: The law and politics of saving lives in the Mare Liberum.” *DIIS Working Paper*: 1-31; Guilfoyle, Douglas. 2009. *Shipping Interdiction and the Law of the Sea*. Cambridge University Press; Last, Tamara, and Thomas Spijkerboer. 2014. “Tracking deaths in the Mediterranean.” In Tara Brian and Frank Laczko, eds. *Fatal Journeys: Tracking Lives Lost during Migration*. International Organisation of Migration; Monzini, Paola. 2010. *Smuggling of migrants into, through and from North Africa*. Vienna: United Nations Office on Drugs and Crime; Monzini, Paola, Nourhan Abdel Aziz, Ferruccio Pastore. 2015. “The Changing Dynamics of Cross-border Human Smuggling and Trafficking in the Mediterranean.” *Istituto Affari Internazionali (IAI)*, Rome: 1-75; Heller, Charles, Pezzani, Lorenzo, and Situ Research. 2012. “Report on the Left-to-Die Boat.” London: Forensic Architecture. <http://www.forensic-architecture.org/wp-content/uploads/2014/05/FO-report.pdf>

and institutions that developed in Turkey in conjunction with renewed EU accession talks in 2012, which is explored further in the following sections.

### **The EU-Turkey Partnership**

The EU-Turkey migration management partnership, although not new and spanning several decades,<sup>119</sup> has taken a more defined shape in the aftermath of the Arab Uprisings, particularly during 2011-2012. Specific events that arguably contributed to the development of this partnership include the increasing numbers of asylum seekers and migrants irregularly crossing the Mediterranean into Europe and the political instability within Libya that led the EU to temporarily halt its migration management partnership. Although this thesis does not examine the Libyan migration management partnership, the timeline with which one partnership dissolved and the other one began is thought-provoking.<sup>120</sup> It can be argued that in the aftermath of the overthrowing of Colonel Gaddafi, the EU was forced to forge another partnership with a country in the region that, similar to Libya, was considered an EU “border” country. Turkey’s geographical position in the region, its proximity to conflict-areas and the fact that it was accepting nearly 20,000 Syrians each month during 2012 alone with increased numbers in 2013<sup>121</sup> and the emergence of new migratory routes<sup>122</sup> are important factors to consider. The following sections examine the EU-Turkey partnership from the perspective of the EU through an examination of EU Commission reports and press-releases.

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<sup>119</sup> Specifics of this dynamic are explored throughout the chapter at greater length

<sup>120</sup> For more on the EU-Libya migration management partnership see: Harlan, Koff (2014); Paoletti, Emanuella(2011); Seeberg, Peter(2013); Toaldo, Mattia(2015); &Tucci, Sabrina(2013).

<sup>121</sup>Icdygu, Ahmet.2015. “Syrian Refugees in Turkey: The Long Road Ahead.”*Migration Policy Institute*.[www.migrationpolicy.org/sites/default/files/.../TCM-Protection-Syria.pdf](http://www.migrationpolicy.org/sites/default/files/.../TCM-Protection-Syria.pdf). Accessed December 10, 2015

<sup>122</sup>Düvell, Franck.2013 "Turkey, the Syrian Refugee Crisis and the Changing Dynamics of Transit Migration." *IEMed. Mediterranean Yearbook 2013*. Accessed April 10, 2017. For more on the emergence of routes, see <http://www.consilium.europa.eu/en/policies/migratory-pressures/history-migratory-pressures/>

The EU-Turkey partnership on migration arguably began when Turkey was used as a pilot project on transit and irregular migration with the Intergovernmental Consultations on Migration, Asylum and Refugees (IGC). Since October 2005, EU-Turkey negotiations for full membership have included numerous European Commission reports that specifically address Turkey's role in protecting the external borders of the EU from transit migration.<sup>123</sup> Although the area of focus for this chapter is the recent EU-Turkey partnership, it is important to note that migration management has been central to EU-Turkey relations for decades. Whether in the form of a pilot project for the IGC in Europe back in the 1980s or more recently with EU accession talks, Turkey has occupied a key position for Europe when it comes to discussing, strategizing and managing migration.

The 2012 renewed EU accession talks is a possible starting point to discuss the EU-Turkey partnership.<sup>124</sup> In a European Commission report from October 2012, we see the official opening up accession talks began a few months earlier in May:

Building on the 2011 Strategy paper for Enlargement and the Council conclusions of December 2011, a positive agenda for EU-Turkey relations was launched in May 2012, with the aim of supporting the accession negotiation process, in line with the Negotiating Framework and the relevant Council conclusions. The agenda covers a broad range of areas of common interest including political reforms, foreign policy dialogue, alignment with the EU acquis, visas, mobility and migration, trade, energy, the fight against terrorism and participation of Turkey in EU programmes.<sup>125</sup>

After a several year hiatus in EU-Turkey negotiations, the re-opening of accession talks suggests that among other areas of cooperation, Turkey was identified as a key actor in the region with which to manage migration. Examining earlier reports from the European

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<sup>123</sup>Icduygu, Ahmet, and Deniz Yüksek. 2012. "Rethinking transit migration in Turkey: reality and re-presentation in the creation of a migratory phenomenon." *Population, Space and Place* 18. No.4: 452

<sup>124</sup> For more on the 2012 EU-Turkey renewed accession talks see:

<https://www.theguardian.com/world/2012/may/16/turkey-renew-talks-european-union-membership>;

<sup>125</sup>Communication from the Commission to the European Parliament and the Council. Brussels 10/10/2012 European Commission: 11



Commission starting in 2012 and 2013,<sup>126</sup> it becomes clearer that migration management and border control are some of the main factors included in the negotiation process, including assisting the EU in exchange for visa liberation for Turkish citizens.<sup>127</sup>

Since 2012, perhaps the most notable agreement has been the “one-for-one” deal that developed in March of 2016. The deal was met with immediate criticism from human rights organizations and international human rights lawyers stating that in addition to being legally unsound, the deal was in essence a form of codification of Syrian asylum seekers being exchanged and sent back. Formally known as the “EU-Turkey Statement” in European Commission reports, the aim of this deal is described as such:

In order to break the business model of the smugglers and to offer migrants an alternative to putting their lives at risk, the EU and Turkey today decided to end the irregular migration from Turkey to the EU.<sup>128</sup>

Additionally in the same European Commission Press Release, the breakdown of who is to be “returned” is described as follows: “All new irregular migrants crossing from Turkey into Greek islands as from 20 March 2016 will be returned to Turkey.”<sup>129</sup> Within the same press release which includes the exact process by which this arrangement will occur, are “action points” to achieve the main objective of “breaking the business model of the smugglers.”<sup>130</sup>

One such action point is:

The fulfillment of the visa liberalisation roadmap will be accelerated vis-à-vis all participating Member States with a view to lifting the visa requirements for

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<sup>126</sup> For European Commission reports on Turkey see: “Turkey Progress Report.” European Commission. October 2014. Accessed March 31, 2017. Available at: [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key\\_documents/2014/20141008-turkey-progress-report\\_en.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2014/20141008-turkey-progress-report_en.pdf);

“Turkey 2012 Progress Report.” European Commission. October 2012. Accessed March 31, 2017. Available at: [https://ec.europa.eu/neighbourhoodenlargement/sites/near/files/pdf/key\\_documents/2012/package/tr\\_rapport\\_2\\_012\\_en.pdf](https://ec.europa.eu/neighbourhoodenlargement/sites/near/files/pdf/key_documents/2012/package/tr_rapport_2_012_en.pdf);

“Communication from the Commission to the European Parliament and the Council.” European Commission. June 2013. Accessed March 31, 2017. Available at: <http://www.emn.at/wp-content/uploads/2016/12/EC-Report-on-Immigration-and-Asylum.pdf>.

<sup>127</sup> EU-Turkey Statement. 18 March 2016 Press Release 144/16

<sup>128</sup> EU-Turkey Statement, 18 March 2016 Press Release 144/16.

<sup>129</sup> Ibid.

<sup>130</sup> Ibid.

Turkish citizens at the latest by the end of June 2016, provided that all benchmarks have been met.<sup>131</sup>

Similar descriptions that further illustrate the context of this partnership include:

Cooperation with Turkey has been fundamental in tackling the exploitation of vulnerable people seeking to cross the Aegean Sea...The EU-Turkey Statement established new ways to bring order into migration flows and save lives.<sup>132</sup>

The aim is to replace disorganised, chaotic, irregular and dangerous migratory flows by organised, safe and legal pathways to Europe for those entitled to international protection in line with EU and international law.<sup>133</sup>

In line with the EU-Turkey Statement from 18 March 2016, all new irregular migrants and asylum seekers arriving from Turkey to the Greek islands and whose applications for asylum have been declared inadmissible should be returned to Turkey. This temporary and extraordinary step is designed to end human suffering by showing clearly that there is no benefit in following the route offered by the smugglers.<sup>134</sup>

The Statement has become an important element in the EU's comprehensive approach to better manage migration as set out in the European Agenda on Migration from May 2015, whose objectives it helps to implement.”

One such object is:

ensuring that the EU's external borders are protected and that irregular migration can be stemmed, and that those not in need of protection are returned in full respect of international and human rights.<sup>135</sup>

When analyzing some of the excerpts from the European Commission reports it becomes clear that current irregular migration is deemed chaotic and a threat and that the EU's role is to bring some form of organization to something understood as inherently disorganized. Specific language usage demonstrates this point exactly. When reading that aim

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<sup>131</sup>EU-Turkey statement, 18 March 2016. Press Release 144/16

<sup>132</sup> Commission announces New Migration Partnership Framework: reinforced cooperation with third countries to better manage migration. European Commission Press Release 7 June, 2016

<sup>133</sup> Implementing the EU-Turkey Statement- Questions and Answers. 15 June 2016. European Commission – Fact Sheet.

<sup>134</sup> Managing the Refugee Crisis: Commission reports on progress made in the implementation of the EU-Turkey Statement. European Commission Press Release. 15 June 2016

<sup>135</sup>EU-Turkey Statement One Year On. 17 March 2017. European Commission.

of the EU-Turkey statement, the word “replace,” stands out among many others. This specifically suggests that the EU is not only the appropriate actor, but perhaps the only actor, that can organize the “disorganized” flows. Language such as “temporary” and “extraordinary” goes to perhaps remedy the inherent tension in the EU’s human rights rhetoric and actual practice as some migration scholars have noted.<sup>136</sup> What appears across multiple European Commission reports is this reaffirming of irregular migration as something strictly controlled and manipulated by smugglers, when in fact the barriers to migrate regularly have been strategically cut off through numerous policies, most notably the 2004 EC Directive<sup>137</sup> which forces airlines to be the first form of border control. Objectives stemming from this EU-Turkey Statement also clearly highlight the need to “ensure that the EU’s external borders are protected.” Though the exact perimeter of the “external borders” remain slightly ambiguous, the notion that they need to be actively protected and that it needs to be done through a “comprehensive approach” further illustrates this ever expanding EU sphere.

In just a few brief statements released by the European Commission it becomes clear that the scope of the EU-Turkey Statement is not only far-reaching but integral to EU-Turkey relations. This specific “joint action plan” indicates the role that Turkey is to play in the EU’s attempt at having a comprehensive approach for international migration.

### **Architecture of Externalization**

If we are to examine the “architecture of externalization” as Casas et al. did with the case of Spain, we would need to analyze specific developments that took place in Turkey beginning in 2012. In the years leading up to the 2016 *EU-Turkey Statement*, government

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<sup>136</sup>De Haas, Hein and Nando Sigona. 2011-2012. “Migration and Revolution.” *Forced Migration Review*. 39. 4-5

<sup>137</sup> Directive 2004/82/EC

bodies and institutions were formed and new laws and regulations were introduced which address the ways in which foreigners and non-citizens can seek protection and how they can access political membership in the community.

The clear change in Turkey's legal framework is exhibited by the development of the Ministry of Interior Directorate General of Migration Management (2013)<sup>138</sup> the introduction of the new Law on Foreigners and International Protection (2013)<sup>139</sup> and the creation and implementation of the Temporary Protection Regulation (2014). Before 2013, Turkey's legal framework on foreigners and immigration lay relatively unchanged since its 1934 Settlement Law.<sup>140</sup> These new institutions and laws developed early on in the EU-Turkey migration management partnership to facilitate the labeling of Turkey as a safe third-country to send asylum seekers and migrants back to and subsequently to justify the 2016 EU-Turkey 1-1 deal. The very development of these legal frameworks allowed the EU, to argue that Turkey's temporary protection regulation alongside Turkey's commitment of non-refoulement<sup>141</sup> was seemingly characteristic of international standards of protection.

I am not arguing that Turkey is externalizing its own borders through the development of these institutions and laws, but rather that these developments occurred in conjunction with its recent EU partnership. Thus, the architecture of externalization is taking place in the third-country and is reflective of the EU's perpetuation of containment policies and non-entrée regimes. Of course, Turkey's development of legal frameworks on protection cannot only be viewed through this one lens. This is an overarching frame which includes a multiplicity of factors and variables that would influence such wide-ranging developments. However,

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<sup>138</sup> The Directorate General for Migration Management was established by Law of 04/04/2013 No. 6458 on Foreigners and International Protection. Article 103 of Law no 6458 governs the establishment of the Directorate General. [http://www.goc.gov.tr/main/Eng\\_3](http://www.goc.gov.tr/main/Eng_3)

<sup>139</sup> Date law was adopted 4/4/13

<sup>140</sup> Icdygu, Ahmet. 2015. "Syrian Refugees in Turkey: The Long Road Ahead." *Migration Policy Institute*. [www.migrationpolicy.org/sites/default/files/.../TCM-Protection-Syria.pdf](http://www.migrationpolicy.org/sites/default/files/.../TCM-Protection-Syria.pdf). Accessed December 10, 2015

<sup>141</sup> UN High Commissioner for Refugees (UNHCR), *UNHCR Note on the Principle of Non-Refoulement*, November 1997, available at: <http://www.refworld.org/docid/438c6d972.html> Accessed April 28, 2017

Turkey has been a host to migrants and asylum seekers for decades<sup>142</sup> without formalizing their protection laws. It is only in the past few years that with its EU partnership, that formal changes in its legal landscape are occurring rapidly on the ground. Through an examination of the evolving institutional and legal architecture in Turkey it is possible to situate these developments in a broader frame of reference.

Inherent within the broader process of externalization is the need to examine the tools with the process can be implemented. One such tool is the idea of labeling. It is important to once again consider the power that labeling has, especially with regards to knowledge production and subsequent decision-making.

Looking to B.S Chimni in his paper, *The Geopolitics of Refugee Studies: A View from the South* (1998), this very notion of specified knowledge production greatly contributes to the discussion on the methodology and architecture of externalization that has made containment policies the norm in migration management. Arguably, the construction of irregular migration as a threat began within Europe as distinctions between Cold War ‘ideological’ refugees and post-Cold War ‘non-white’ refugees were made. For Chimni, the 1980s marked a change in the way in which asylum seekers were seen by the global north. This marked the institutional creation of the “new asylum seeker,” one that needed a “new approach” which furthered the idea of a “myth of difference”<sup>143</sup> between the “old” and the “new” asylum-seekers and their reasons for seeking international protection.

The labeling of Turkey as a ‘transit’ country during the 1980s by the IGC has allowed for the EU to engage in a migration management partnership that puts into question the very

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<sup>142</sup>Kirisici, Kemal. ‘Turkey: A Transformation from Emigration to Immigration’. *Migration Policy Institute*. November 1<sup>st</sup>, 2003. Accessed September 15, 2015. <<http://www.migrationpolicy.org/article/turkey-transformation-emigration-immigration>>; Soykan, Cavidan. 2012. “The New Draft Law on Foreigners and International Protection in Turkey.” *Oxford Monitor of Forced Migration*. 2 no. 2. 38-47:40 Accessed May 5, 2017.

<sup>143</sup>Chimni 1998, 350

boundaries of the EU's geopolitical borders.<sup>144</sup> In *Rethinking Transit Migration in Turkey: Reality and Re-presentation in the Creation of a Migratory Phenomenon* (2012), Ahmet Icduygu and Deniz Yukseker approach the terminology of 'transit' critically and argue that

the political construction of transit migration in the European sphere should be interpreted through the intertwined processes of securitization and economization of international migration regimes, which are not only becoming more restrictive and selective, but also more dynamic and multi-faceted.<sup>145</sup>

They argue that the very discussions of transit migration, specifically with regards to Europe and its "peripheries" work towards constructing a certain type of reality complete with its own discursive practice. The labeling and using of "transit" to describe countries also works to mold specific policies and approaches that are interconnected to previous notions and fears over security threats. For Icduygu and Yukseker, "the securitisation of the migration discourse is built upon the concept that transit migration leads to a chaotic migratory system."<sup>146</sup> This image of a "chaotic" system is reminiscent of both earlier EU characterization of irregular migration occurring near its borders and of certain boundaries and of earlier discussions in this chapter in which international migration is often organized into two categories of irregular and regular with the belief that migration movements are linear. These clear divisions of categories work to "control" what is deemed as "uncontrollable" i.e. the large influxes. In an effort to solidify certain boundaries, i.e. the ones separating the Global North, which is seen as "orderly" and having "controlled" spaces, from the Global South, which is seen spaces of transit, conflict, mass "uncontrollable" migration, labels are created and strategically used.

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<sup>144</sup> This concept of labeling Turkey as a transit country is expanded in the sections to follow.

<sup>145</sup>Icduygu and Yukseker 2012, 442

<sup>146</sup>Icduygu and Yukseker 2012, 451

## Why Turkey as a Migration Management Partner

Having delved into the context of the EU-Turkey migration management partnership, it is important to critically examine what makes Turkey a viable partner from the EU's perspective. I argue that Turkey's geopolitical positioning and being labeled a "transit" country for irregular migration makes it a prime candidate for EU partnerships. Before doing so however, it is important to step back and to critically examine what is meant by "transit" and to examine the wide-reaching implications of such labeling against a broader backdrop of EU externalization of borders through migration policies. Labeling countries as 'transit' countries and re-categorizing the EU "neighborhood" to include "neighbors of neighbors" is a reflection of borders being pushed to encompass wider spheres. In this section the very terminology of "transit" will be examined critically in order to pose the following questions: Why is Turkey a transit country and can it still be considered a "transit" country?

To critically examine the use of "transit" countries in migration management partnerships, namely the EU-Turkey partnership, requires thinking not only about the implications of the labeling but also the actors who are "labeling" and who are being "labeled."<sup>147</sup> For Oelgemoller, there is a very specific historical construction and trajectory of the term "transit country" which is tied intimately to a "perceived loss of control over migration that governments of the developed North have increasingly felt."<sup>148</sup> This perception of a "loss of control" is made clearer with the shift in the ways migration was viewed and written about both in academic and policy oriented circles as early as the 1990s. Collyer, Duvel and de Haas<sup>149</sup> refer to the 1990s as a critical point in the development of

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<sup>147</sup>Oelgemöller, Christina. 2011. "'Transit' and 'Suspension': Migration Management or the Metamorphosis of Asylum-Seekers into 'Illegal' Immigrants." *Journal of Ethnic and Migration Studies* 37, no. 3: 407-424. Accessed April 4, 2017. doi:10.1080/1369183X.2011.526782.

<sup>148</sup>Oelgemoller 2011, 407

<sup>149</sup>Collyer, M., Düvell, F. and de Haas, H. 2012. "Critical approaches to transit migration." *Population Space Place*, 18: 407-414. Accessed April 4, 2017 doi:10.1002/psp.630

perceptions surrounding “new” migration. If we consider developments in the political science discipline occurring congruently, the “new wars” theory, stemming from the “popular” human security discourse, of the post-Soviet conflicts and formations of nation-states, fits in line with the notion of the “new migration” that Western countries were “coming to terms with.”<sup>150</sup>

The re-conceptualizations of war and conflict, human security and migration led to discourse which was “unquestioned and accepted by policy-makers and many academics” of migration management.<sup>151</sup> As several scholars argue<sup>152</sup> there was an inherent linking of irregularity and illegality with the “transit” movement of migrants and asylum seekers. Individuals who “transited” were seen as crossing multiple borders without documentation, hence fortifying a rather simplistic association of criminal behavior with transit movement. The term “transit” became a “vital political function”<sup>153</sup> which further propagated the classic binary of “us v. them” with regards to migration control. Countries in which “transit” migration was occurring subsequently garnered increased attention by countries seen as the “ultimate destination;” in this case the EU. This type of categorization of destination and transit opened up ways in which migration was conceptualized and the types of policies that could be enacted.

Although this chapter does not go into great depth about the historical trajectory of the EU’s use of “transit” in migration management, it is important to briefly highlight the structures that developed to make such labeling possible as it pertains to the EU’s partnership with Turkey. The IGC is as Oelgemoller describes it, evolved out of a “UNHCR in-house working group in the early 1980s, and moved to autonomy, away from the scrutiny of the

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<sup>150</sup> For a critical study of this development, see Christie, Ryerson. 2010. "Critical voices and human security: To endure, to engage or to critique?." *Security Dialogue* 41, no. 2: 169-190.

<sup>151</sup> Oelgemoller 2011, 407

<sup>152</sup> See Collyer, M., Düvell, F. and de Haas, H. 2012; Oelgemoller 2011.

<sup>153</sup> Oelgemoller 2011, 408



international community, in the late 1980s.”<sup>154</sup> The IGC became a platform for Western governments to talk about international migration in very specific ways; the focus remained on control and containment rather than identifying forms of protection.<sup>155</sup> In an attempt to “regulate” “large influxes” that were stemming from decolonization and post-war countries, the EU, along with other “Western” countries began to assimilate irregular movement with transit spaces. Subsequently, the importance of including “transit” countries into EU dialogue became ever present in the EU’s global migration management projects.

Relevant to my project is the role that Turkey played in this development of “transit” spaces of migration management. Turkey is seen as a “pilot project” and is often viewed as the first country to be termed a “transit country” in the aftermath of the Iranian Revolution. It was during this time that Turkey’s position in the region became clearer to countries in Europe and more specifically to the IGC which proposed a series of working groups and informal agreements.<sup>156</sup>

The labeling of Turkey as a “transit” country became a tool in which a geographic description of spatiality turned into a “tool of governance.”<sup>157</sup> Thus a clearer narrative forms of how Turkey became a country of interest for the EU. With EU externalization, shifting of borders, creation of labels and the development of institutions and government structures to complement changes in migration policies, forms a very specific trajectory. Turkey was labeled a “transit” country several decades ago to “filter” and “contain” what were considered to be modes of irregular movement stemming from regional conflicts.<sup>158</sup> In being labeled as a “transit” country, Turkey entered into various agreements, both formal and informal with the IGC to contain and control. The most recent changes in Turkey, i.e. the labeling of it being a

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<sup>154</sup>Oelgemoller 2011,410

<sup>155</sup>Ibid.

<sup>156</sup>Oelgemoller 2011,415

<sup>157</sup>Oelgemoller 2011, 416

<sup>158</sup> During the 1980s, the Iranian Revolution of 1979 and the Iran-Iraq War 1980-1988 resulted in the migration of asylum seekers into Turkey and arguably is one of the factors that helped frame Turkey as a transit country for Europe. (Oelgemoller 2011)

“safe-third country” as evidenced by its new legal structure and introduction of temporary protection, suggests that the ongoing project of labeling is a fundamental factor in migration management. Beginning in the 1990s, the EU was able to fortify the labeling of “transit” countries through placing regulations on them, from funds to improve border control, to resuming accession talks.<sup>159</sup>

Just as borders are not always “imposed” on other countries, labels are also something that take on mutual characteristics. Being labeled a “transit” country works to Turkey’s benefit as it can also use its labeling as a form of advancement of its own political policies and agendas with regards to the EU. Amid the Syrian conflict and migration of asylum seekers and migrants from the region, accession talks were reopened<sup>160</sup> as a part of Turkey’s migration management partnership with the EU. In addition to accession talks are various financial assistance packages, one of which is EUR 3 billion, and the possibility of visa liberalization for Turkish citizens.<sup>161</sup>

Having only discussed the implications of “transit” labeling on the state, it is important to also consider the assumptions it makes on individuals migrating. Oelgemoller notes, individuals become “suspended” as they “fall through the juridico-political gap assumed in a bipolar migration paradigm,” which is ultimately connected to the idea that “international borders are still seen as linear.”<sup>162</sup>

What is at stake with labeling a country as a “transit” space is the ways in which modes of exclusion and inclusion are also affected. Individuals who are migrating to or through Turkey, whether or not they wish to migrate to Europe, are either contained in Turkey or are sent back through the 1-1 deal. Labeling a country as “transit” and then as a “safe-third-country” has reverberating effects on the ways in which individuals are forced to

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<sup>159</sup>Oelgemoller 2011, 420

<sup>160</sup> Though at the time of writing, those talks have been temporarily put back on hold due to political instability in Turkey after the failed coup attempt in July 2016 and subsequent state of emergency in the country.

<sup>161</sup> EU-Turkey Statement Questions and Answers. European Commission. 19 March 2016.

<sup>162</sup>Oelgemoller 2011, 419

be included or excluded. Turkey's recent regulations and laws on temporary protection and on foreigners is an example of a legal framework that still remains relatively ambiguous in its application on the ground. What will modes of inclusion look like when it comes to citizenship and forms of membership in society? Through an increased policy of non-entrée and designating "border" and "transit" countries as spaces for "containment" there are multiple impacts on how international migration is being conceptualized and the types of decision-making and policy-making. These processes are ultimately re-structuring not only the ways in which people move, but how governments categorize individuals as non-citizens.

## **Conclusion**

This chapter has sought to extrapolate upon various aspects of the EU-Turkey migration management partnership. It has argued that Turkey's recent EU migration management partnership began to take shape alongside the development of key institutions and laws regulating migration which suggests the widening of the EU sphere of political influence and demonstrates additional forms of externalization of EU borders. Migration related policies and partnerships can often highlight the very fluidity of "juridico-political" borders of the state. In its migration partnership with Turkey, the EU has demonstrated the ways in which it pushes its supranational borders, beyond that of its territory, in order to control, regulate and contain irregular international migration that veers near its external borders. From Frontex operations that work with third-countries,<sup>163</sup> to tracking and mapping potential migration movements across the Mediterranean and Aegean seas with the assistance of third-countries, the EU is actively involved in processes of externalization. This chapter

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<sup>163</sup>For more information on Frontex operations and cooperation with 3<sup>rd</sup> countries see: Third Countries. *Frontex European Border and Coast Guard Agency*. Accessed April 10, 2017. Available at: <http://frontex.europa.eu/partners/third-countries/>

has examined the EU's recent partnership with Turkey to further emphasize the interconnectedness of non-entr e regimes, containment policies and subsequent third-country partnerships on the development of specific architecture of institutional organization. For Turkey, this has meant the development of institutions and laws that did not exist prior to 2012 that will have an impact on the ways in which non-citizens will be categorized and given protection, forms of social membership and participation.

## Chapter 5: Changes in Turkey's Legal Landscape and its Broader Implications

### Overview

Examining the changing legal landscape is an important component of this research for two overarching reasons. First, these changes in the country's legal framework are very recent, and arguably are the most notable changes to its domestic law concerning migration and non-citizens since the 1934 Settlement Law. Second, the legal changes are occurring at a time in which Turkey occupies a central role as a host country to nearly three million Syrian asylum seekers<sup>164</sup>, among migrants and asylum seekers from other nationalities. Turkey's position within the region is pivotal both in terms of its reception of asylum seekers and migrants as well as its political partnership with the EU in addressing the migration flows.

Through examining temporary protection in from its emergence in Europe in 2001 to the development of the Temporary Protection Regulation in Turkey in 2014, I argue that its presence in Turkey is an indicator of the growing trend towards non-entrée regimes and containment policies that the EU enters into with third-countries. Moreover, I assert that the ambiguity often associated with temporary protection can lead to a stratification of rights and political membership between citizens and non-citizens. Further complicating the issue at hand are the recent discussions of extending citizenship to Syrian asylum seekers in Turkey without fully divulging what this process would encompass. This chapter critically examines the recent development of institutions and legal frameworks relating to migration that have taken shape in Turkey since 2013, with the aim of discussing more broadly the implications

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<sup>164</sup>Figure is from the UNHCR Syria Regional Refugee Response Portal, updated as of April 27, 2017. <http://data.unhcr.org/syrianrefugees/country.php?id=224>

of such changes on citizenship practices in order to raise the question of whether alternative forms of membership will arise in Turkey. To do so, the chapter first provides an overview of the context in which temporary protection developed in Europe. Second, it discusses the context in which the 2013 Law on Foreigners and International Protection and the 2014 Temporary Protection Regulation emerged in Turkey, and engages in an analysis of the legal changes and their implications.

### **Context of Temporary Protection – Europe**

The year 2001 is marked by events that continue to affect migration movements and the ways in which migration is managed. Against the backdrop of the post 9/11 “War on Terror,” the externalization of border controls, the use of biometric screening and increased surveillance have all had reverberating effects on the ways in which people move. 2001 also marked the formal end of the ethnic conflicts in the former Yugoslavia.<sup>165</sup> The end of these conflicts gave way to the formation of new states in the region, and consequently, massive displacement within Europe.<sup>166</sup> It was also during 2001 that the EU decided to introduce the Temporary Protection Directive<sup>167</sup> in an attempt to deal with this ongoing displacement and to address the immediate needs of those internally displaced without having to follow the procedures of the Refugee Status Determination (RSD), which were considered to be both back-logged and an overly lengthy process.

Temporary protection, which is often viewed by human rights activists as a “quick fix” to migration and displacement resulting from conflict, is ambiguous in nature. Joan

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<sup>165</sup>United Nations International Criminal Tribunal for the Former Yugoslavia. <http://www.icty.org/en/about/what-former-yugoslavia/conflicts>

<sup>166</sup> European Commission, Migration and Home Affairs: Temporary Protection. [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/temporary-protection/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/temporary-protection/index_en.htm)

<sup>167</sup> The EU Temporary Protection Directive 2001/55/EC

Fitzpatrick (2000) in *Temporary Protection of Refugees: Elements of a Formalized Regime* captures this ambiguity of temporary protection when she writes,

For several decades, temporary protection has hovered at the edges of refugee law, assuming multiple identities and serving various functions. Interest in the formalization of temporary protection has increased in recent years, but this interest stems from an uneasy mix of progressive and retrogressive impulses.<sup>168</sup>

Although the focus of this thesis is not on refugee law, there are overlaps in how temporary protection became a tool utilized by the state to address the movement and protection of non-citizens with a specific understanding of temporality. That is to say that, the temporariness of the approach, i.e. that permanent re-settlement or granting citizenship was not the approach, was in fact a way to understand or conceptualize what future role or position the non-citizen would encompass in the host society. It was during this time period of large-scale migration and displacement at the end of the 1990s and into 2000 that Europe began to formalize temporary protection measures in an attempt to harmonize their migration policies. This attempt at dealing with internal displacement through “burden-sharing” mechanisms is seen as the beginning of *formal temporary protection* in Europe.<sup>169</sup> Subsequently, temporary protection came into existence with the EU Directive 2001/55/EC, with the specific aim of “harmonizing temporary protection practices across the EU through establishing certain welfare rights for duration of one to three years.”<sup>170</sup> Although there is a type of formality associated with temporary protection as a legal regulation, it can be seen as possessing an

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<sup>168</sup>Fitzpatrick, J., 2000. “Temporary protection of refugees: elements of a formalized regime.” *American Journal of International Law*: 279-306: 305. Accessed December 9, 2016. doi: 10.1017/S0002930000221143

<sup>169</sup>Thorburn, Joanne.1995. "Transcending boundaries: Temporary protection and burden-sharing in Europe." *International Journal of Refugee Law* 7, no. 3: 459-480: 472. Accessed December 4, 2016. doi: 10.1093/ijrl/7.3.459

<sup>170</sup> “Temporary Protection.” European Commission, Migration and Home Affairs. ([http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/temporary-protection/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/temporary-protection/index_en.htm))

ambiguous nature which is that the state administering temporary protection determines the time frame and the type of rights accessible under temporary protection.<sup>171</sup>

Temporary protection was introduced to address a specific urgent need to ensure that those displaced as a result of the ethnic conflicts in the former Yugoslavia were able to access rights without going through the RSD procedure for three overarching and overlapping reasons: 1. Governments had hoped that the displacement would be temporary and so it was considered unnecessary for individuals to go through RSD procedures. 2. As the institutions overseeing RSD processes were back-logged, it would take years for requests to be processed (for either approved or declined applications)<sup>172</sup> 3. Temporary measures would mean that the host governments would be required to provide minimal assistance to those displaced from the conflict, who perhaps otherwise might not have qualified for international protection under the 1951 Refugee Convention.<sup>173</sup> As such, temporary protection was viewed by some as providing a basic form of international protection for individuals who would have otherwise not met the stricter RSD requirements. For host governments, temporary protection provided a limited and temporally-bound form of protection for individuals.

The introduction of temporary protection measures highlights a shift in how protection and membership in a host community are imagined. The ambiguity and tension arising from state sovereignty and the need for adherence to international laws and norms suggests the purposeful malleability of temporary protection. The vagueness of temporary

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<sup>171</sup>When the EU implemented Temporary Protection, Member States developed their own national versions of TP which determined the length of time and which specific rights were accessible. Study on the Temporary Protection Directive. European Commission. January 2016. Pg 1 [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/documents/policies/asylum/temporary-protection/docs/executive\\_summary\\_evaluation\\_tpd\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/documents/policies/asylum/temporary-protection/docs/executive_summary_evaluation_tpd_en.pdf)

<sup>172</sup>Koser, Khalid, and Richard Black. 1999. "Limits to harmonization: The "temporary protection" of refugees in the European Union." *International Migration* 37, no. 3: 521-543: 523. Accessed December 4, 2016. doi: 10.1111/1468-2435.00082

<sup>173</sup> In the aftermath of ethnic conflicts during the 1990s and into 2001, individuals who migrated either for asylum or for reasons due to economic hardship or who were displaced from the conflict often did not meet the narrow definition of the 1951 Convention Relating to the Status of Refugees to receive protection under international law which required that individuals prove a fear of persecution for reasons stated in Article 1 of the 1951 Convention Relating to the Status of Refugees.



protection is inherent so as to not “interfere” with the state’s right to sovereignty, while also making sure it is not in violation of universal principles, namely, the principle of non-refoulement.

As discussed in the previous chapter, the issue of labeling becomes pertinent here. In the section mentioned earlier, labeling a country as a “safe third-country” allows the EU’s migration policies to send or push asylum seekers and migrants back to other countries with the purpose of containing certain populations in specific regions with the use of non-entrée regimes. The change in Turkey’s legal framework on the way it addresses foreigners and international protection, particularly, its introduction of Temporary Protection Regulation in 2014, with its commitment of non-refoulement, allowed for the labeling of Turkey to seem as a “safe third-country.”

### **A More Formalized Regime for the Governance of Foreigners in Turkey**

Temporary protection came into effect in Turkey in 2014 amid a very different political context to that of Europe in 2001. In the midst of the Syrian conflict and ongoing migration from the Middle East and North Africa region to Europe, two overarching processes took place that are relevant: the development and implementation of the EU-Turkey migration partnership, and subsequent development of laws and institutions concerning foreigners and international protection in Turkey.

Although temporary protection is not considered to be a sought-after model of protection by those work on human rights advocacy and legal protection for asylum seekers, Turkey has made it clear over the years that it will not lift its geographical limitation to the

1951 Convention.<sup>174</sup> With this in mind, and the signing of the recent EU-Turkey partnership, which coincided with the resumed EU accession talks in 2012, Turkey's legal landscape went through a series of structural changes and formalization. The most notable of these changes are the introduction of the 2013 Law on Foreigners and International Protection and the 2014 Temporary Protection Regulation into the Turkish domestic law, both of which suggest an attempt to align with EU migration policies. As explored at greater length in the previous chapter, the EU, in its migration management partnerships, has shifted the obligation for international protection to border countries, which, in turn, have developed relevant legal frameworks for non-citizens within their territories.

I argue that the EU-Turkey migration management partnership depicts a structured form of off-shore asylum processing. This partnership is reflective of the increasing trend towards non-entrée regimes which put into question the ways in which certain international legal obligations are circumvented, namely how the non-refoulement principle<sup>175</sup> is adhered to by way of shifting the responsibility to other countries.<sup>176</sup> With this in mind, it is important to address the broader picture: the EU is engaged in migration management from afar that puts into question the boundaries of its geopolitical borders, and is thus engaged in forms of externalizing its own border. Against the backdrop of the EU's externalization of its border and its migration management partnership with Turkey are very distinct changes and developments in Turkey's legal landscape, namely, the ways in which the state governs citizens and non-citizens and the types of protection it is offering. In the EU-Turkey

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<sup>174</sup> Icduygu, Ahmet. 2015. "Syrian Refugees in Turkey: The Long Road Ahead." *Migration Policy Institute*. 1-18: 12. Accessed December 10, 2015.

<sup>175</sup> Although non-entrée regimes exist in various parts of the world, such as in Australia for example, for the purposes of this paper, I only examine the EU vis-à-vis its partnership with Turkey.

<sup>176</sup> That is, if an individual never reaches EU territory but is intercepted and sent to another country, one that is deemed as a "safe-third country" then the obligation to respect non-refoulement falls with that third country. A controversial example of shifting the "burden" to other countries, and more specifically of non-assistance at sea, is the case of the 2011 "left-to-die boat" from Libya. For more information on this specific case, please see: Heller, Charles, Pezzani, Lorenzo, and Situ Research. 2012. *Report on the Left-to-Die Boat*. London: Forensic Architecture. <http://www.forensic-architecture.org/wp-content/uploads/2014/05/FO-report.pdf>. Accessed May 30, 2016.

partnership we see the development of extra-territorial processing of asylum claims, which is relevant to the broader discussion of how citizens and non-citizens are categorized and dealt with on the ground in Turkey. Before the 2012 renewed accession talks and migration partnership, Turkey had hosted asylum seekers and migrants in its territory without a formal domestic legal framework.<sup>177</sup> However, since the 2013 Law took effect in 2014, the ways in which individuals migrate within and into/out of Turkey has changed drastically as have the ways in which individuals are registered. Within this same vein, I argue that temporary protection mechanisms in Turkey can in fact be viewed as a more formalized governance regime of foreigners. In addition to providing a set of rights for non-citizens, the sets of laws and institutions that emerged recently, i.e. the 2013 Law on Foreigners and International Protection and the 2014 Temporary Protection Regulation, speak to a more formalized method in which foreigners and non-Turks themselves are governed.

### **Changes in the Legal Landscape and its Implications**

The political context in which temporary protection emerged in Turkey differs significantly from that of Europe. Temporary protection developed at a time when estimates from both AFAD<sup>178</sup> and UNHCR placed the number of Syrian asylum seekers in Turkey between 700,000 and 900,000<sup>179</sup> as well as renewed EU accession talks and a burgeoning EU migration management partnership.

There are vast implications of formalizing a regime that governs rights, protection and membership of foreigners or non-citizens/non-Turks in the case of Turkey. Before 2014, Turkey had a type of temporary protection mechanism in place during the mid 1990s when it

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<sup>177</sup> Soykan, Cavidan. 2012. "The New Draft Law on Foreigners and International Protection in Turkey." *Oxford Monitor of Forced Migration*. 2 no. 2. 38-47:40 Accessed May 5, 2017.

<sup>178</sup> AFAD: The Republic of Turkey Prime Ministry Disaster and Emergency Management Presidency

<sup>179</sup> For more on those estimates, see: Icduygu (2015); UNHCR (2014); Kirisci (2014).

established the 1994 Regulation.<sup>180</sup> However, the previous protection mechanism was considered to be more of a secondary form of legislation that regulated protection and resulted in an uneven or inconsistent implementation of protection at varying levels within the territory, i.e. practices differed within cities as the rules were understood as “non-binding.”<sup>181</sup> As a result, the 2013 Law on Foreigners and International Protection is considered to be the first domestic law in Turkey that regulates practices of asylum and protection.<sup>182</sup> This is an important point to consider as it speaks to a formalization of how non-citizens are addressed and governed by the state. Stemming from the introduction of the 2013 Law, there have been many changes to the previous laws that addressed entry and exit, namely, the abolishing of the Law on Sojourn and Movement of Foreigners in Turkey No. 5683/1950 and the now mainly inactive Passport Law No. 5682/1950.<sup>183</sup>

The 2013 Law is seen as providing a more comprehensive approach to issues that Turkey has faced in the past with regards to irregular migration, presence of foreigners and the need for protection and asylum for those who do not qualify under Turkey’s geographic limitation to the 1951 Convention. The 2013 Law is divided into five parts: Part One on the *Purpose, Scope, Definitions, and Non-Refoulement*, Part Two addresses *Foreigners*, and more specifically entry, exit, residency, stateless persons and removal, Part Three addresses *International Protection*, Part Four is comprised of the *Common Provision Regarding Foreigners and International Protection*, and lastly, Part Five addresses the *Directorate General of Migration Management*.

The following sets of excerpts are from the 2013 Law on Foreigners and International Protection No. 6458, of which Article 91 specifically addresses and regulates Temporary

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<sup>180</sup>Regulation No. 1994/6169 on the Procedures and Principles related to Possible Population Movements and Aliens Arriving in Turkey either as Individuals or in Groups Wishing to Seek Asylum either from Turkey or Requesting Residence Permission in order to Seek Asylum From Another Country. For more on the specific Regulation, see <http://www.refworld.org/docid/49746cc62.html>

<sup>181</sup>Soykan 2012, 41

<sup>182</sup>Ibid.

<sup>183</sup>Soykan 2012, 40-41

Protection as well as the 2014 Temporary Protection Regulation (Resolution No. 29153) which provides additional changes and information to the temporary protection outlined in Law No. 6458. Additionally, I outline the relevant Articles within the 2014 Temporary Protection Regulation that speak directly to the development of an institutional structure to address the new mechanisms.<sup>184</sup> Through an analysis of certain aspects of this new law, it is possible to gauge how, legally and on paper, the formalization process that is underway in Turkey to deal with non-citizens in its territory.

These excerpts and sections help to lay the foundation of both the Law and of the Regulation which help to provide a base with which to discuss the implications of the restructuring of how migration and foreigners, i.e. non-citizens are situated in the country and of the shifting of the legal landscape to reflect more formalized methods of governing and regulating foreigners.

Each section points to relevant descriptions or articles within the Law and the Regulation with regards to the creation of the Ministry of Interior Directorate General of Migration Management, the role and duties of the Council of Ministers in terms of decision-making and consequently, the interpretation of the law, and more specific aspects of the articles addressing temporary protection and foreigners. The excerpts also highlight the all-encompassing nature of the law in its dealing with foreigners as a category; from regulating entry and exit, to residency, to protection, the law organizes foreigners into distinct categories that revolve around their presence in Turkey, while at the same time, it does so through one overarching form of Law; a law that addresses foreigners in its entirety. The wide-reaching implications of these excerpts are explored at greater length in the third section of this chapter.

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<sup>184</sup>For the purposes of this research, the English version of both the 2013 Law and the Changes Provided by Temporary Protection Regulation document issued by the Directorate General of Migration Management are quoted and were cross-checked with the Turkish version. The original Turkish version of the Temporary Protection Regulation was used in this analysis and in deciphering of the articles within the Regulation.

*Content of the Law:*

*2013 Law on Foreigners and International Protection No. 6458*

The Ministry of Interior Directorate General of Migration Management has provided a PDF document<sup>185</sup> of the Law on Foreigners and International Protection, organized into the five parts that were briefly outlined above and which are explored further on, it outlines the content and purpose of the articles. As a Note on Usage, it also states however, that:

This is the unofficial translation of “Law of Foreigners and International Protection.” This translation does not have legal bindingness. It is not used as an official document in any official and private corporations and institutions and national and international courts. It cannot be quoted for official documents. Our administration cannot be responsible for any legal results that may occur with the use of the translation text. The Turkish version of the law is binding for official and private operations, quotes and legal processes. This translation is only for informing and it can only be used for informing.

As for the content of the law itself, the document states Article 1:

The purpose of this Law is to regulate the principles and procedures with regard to foreigners’ entry into, stay in and exit from Turkey, and the scope and implementation of the protection to be provided for foreigners who seek protection from Turkey, and the establishment, duties, mandate and responsibilities of the Directorate General of Migration Management under the Ministry of Interior.

Also relevant to our examination is the content of Article 91:

(1) Temporary protection may be provided for foreigners who have been forced to leave their country, cannot return to the country that they have left, and have arrived at or crossed the borders of Turkey in a mass influx situation seeking immediate and temporary protection.

(2) The actions to be carried out for the reception of such foreigners into Turkey; their stay in Turkey and rights and obligations; their exit from Turkey; measures

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<sup>185</sup>English version available at: [http://www.goc.gov.tr/files/files/eng\\_minikanun\\_5\\_son.pdf](http://www.goc.gov.tr/files/files/eng_minikanun_5_son.pdf)

to be taken to prevent mass influxes; cooperation and coordination among national and international institutions and organisations; determination of the duties and mandate of the central and provincial institutions and organisations shall be stipulated in a Directive to be issued by the Council of Ministers.

### *Temporary Protection (Resolution No. 29153)*

As stated by the Republic of Turkey Ministry of Interior Directorate General of Migration Management, in the *Changes Provided by Temporary Protection Regulation*:

Turkey provides “Temporary Protection” to Syrian nationals in compliance with the international and customary law. Temporary Protection in Turkey is based on the three main factors:

- Unconditional admission under the open door policy
- Implementation of non-refoulement principle without any exceptions
- Addressing the basic needs and access to rights

Additional sections state:<sup>186</sup>

A decision for providing or discontinuation of the temporary protection shall be made by the Council of Ministers. Details of the decision will be arranged by the Council of Ministers. Procedures and principles relating to the method to be used for temporary protection and its implementation shall be set forth by the Migration Policy and implemented by appropriate public agencies and entities. (Articles 9-11).

The Council of Ministers may decide to discontinuation or annulment of temporary protection if any hazardous condition may be in question in terms of national security, public order or public security.

Any application by a foreigner shall not be processed in order to ensure that temporary protection measures are effectively implemented during the period when protection is provided. (Article 16)<sup>187</sup>

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<sup>186</sup> English version available at: [http://www.goc.gov.tr/files/\\_dokuman38.pdf](http://www.goc.gov.tr/files/_dokuman38.pdf)

<sup>187</sup> According to Turkish translation, it says: to ensure that temporary protection is effective, no other form of international protection will be offered/available.

### *Relevant Articles within Temporary Protection Regulation*

Within the original Turkish version of the Temporary Protection Regulation<sup>188</sup>, several articles stand out with regards in their significance, particularly the institution that was set up to regulate and administer the temporary protection. Article 9 refers specifically to the role and duties of the Turkish Council of Ministers, as outlined above. Article 10 states the Council of Ministers decides on the specific components of temporary protection. Article 11 gives the Council of Ministers the authority to determine the length of time for temporary protection and Article 12 states that the Council of Ministers determine when temporary protection ends or should be revoked. Article 15 gives the Council of Ministers the authority to limit or halt indefinitely, the temporary protection measures for reasons of national security and safety. Details that would clarify duration or length of time of temporary protection are not provided, hence the ambiguity that lies in the application of this measure.

In adopting the 2014 Temporary Protection Regulation, the Turkish Council of Ministers have the sole authority to determine the eligibility of groups (Article 91).<sup>189</sup> Once registered, the asylum seeker is given a temporary protection card does not equate to automatic guarantee of certain economic and social assistance, the specific details of which remain ambiguous in the 2014 Regulation itself.

When analyzing aspects of the 2013 Law and the 2014 Regulation, certain areas are considered to be an improvement from the previous secondary forms of administrative law, namely the formalization and comprehensiveness of the law itself. There are also areas considered that require further clarification and elaboration. One such area that remains

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<sup>188</sup> Turkish version available at: [http://www.goc.gov.tr/files/files/03052014\\_6883.pdf](http://www.goc.gov.tr/files/files/03052014_6883.pdf) ;  
<http://www.goc.gov.tr/files/files/Gi%C3%A7ici%20Koruma%20Y%C3%B6netmeli%C4%9Finin%20Getirdikleri.pdf>

<sup>189</sup>Ineli-Ciger, Meltem.2015. “ Implications of the New Turkish Law on Foreigners and International Protection and Regulation no. 29153 on Temporary Protection for Syrians Seeking Protection in Turkey.” *Oxford Monitor of Forced Migration* 4, no. 2: 28-36. Accessed February 10, 2017.



ambiguous is the time-frame associated with temporary protection. As Ineli-Ciger (2014) notes, in contrast with the EU Temporary Protection Directive, which requires the EU Council to consider whether “the situation in the country of origin is such as to permit the safe and durable return of temporary protection with due respect for human rights and fundamental freedoms and Member States,” before revoking of temporary protection, “the 2014 Regulation does not refer to safe and durable return as prescribed by the UNHCR or outline which criteria should be considered by the Council of Ministers.”<sup>190</sup> This once again reiterates that the authority lies within the Council of Ministers when deciding how to regulate temporary protection in Turkey.

When examining the different excerpts from the 2013 Law and the 2014 Regulation, what becomes subtly clear is the way in which the state is conceptualizing or re-conceptualizing the foreigners that visit, reside, or pass through its territory. This all encompassing law, which addresses very different categories of foreigners, from those who wish to seek temporary residence, to those who reside through diplomatic means, foreigners in general are seemingly being re-categorized, and the bureaucratic process of being a foreigner in Turkey is undergoing a shift. Instead of introducing a Temporary Protection Regulation on its own, in order to address the influx of Syrians in Turkey, the entire legal landscape concerning non-citizen foreigners was re-configured. This suggests, in the most general sense, that the presence of foreigners, and how foreigners are conceptualized by the state is undergoing a massive change in and of itself; the implications of which can have reverberating effects. The formalization and change in length of time that foreigners can reside in Turkey before having to apply for a residency permit points to a different conceptualization of foreigners in the territory.<sup>191</sup>

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<sup>190</sup>Ineli-Ciger referencing Article 6 of the EU Temporary Protection Directive and Article 11 of the 2014 Regulation.

<sup>191</sup> Before the 2013 Law, foreigners were allowed to remain in Turkey for a period usually up to 3 months, after which they had to leave and re-enter on a new visa; a process that could be completed by leaving Turkey often

The excerpts selected point to the codification and organization of how foreigners are grouped within the Law itself. It also points to a shift away from the 1934 Settlement Law<sup>192</sup> which, despite having had additions to various articles over the years, remained as the main source of Law concerning immigration, determined who could migrate, settle or seek asylum in Turkey. The 2013 Law has lifted the “Turkish descent and culture” component of settlement<sup>193</sup> which has far-reaching implications on the short-term process of acquiring citizenship in Turkey. Arguably, for the first time in Turkey’s domestic legislation, this component, which has remained in Turkey’s domestic laws since the beginning of the Republic, is not present or is not seen as compulsory. This speaks to a potential for different forms of membership in a country that, since the end of the Ottoman Empire, has worked towards creating a “homogenous” society. Despite the “descent and culture” clause existing in legislation, the early immigration practices of the State show that in fact individuals that did not fulfil either category of “descent and culture” were allowed to migrate and settle in Turkey through what was known as the Balkanization process.<sup>194</sup> It can be argued that a revision of domestic law that concerns foreigners is in fact an indicator for renewed attempts at spatially reorganizing the population within the territory.

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for a day or a weekend. Under the 2013 Law, foreigners are required to be out of the country for 6 months before being able to apply for another visa, or are required to apply for different forms of residency to remain in Turkey. The shorter length of time that a foreigner can remain in Turkey without having a residency permit requires individuals to either leave Turkey, apply for one of several types of short-term residencies (including the paying of multiple fees and taxes that did not exist before) or to seek a more permanent form of residency through acquiring citizenship (which can occur through various economic/business investments, paperwork, length of uninterrupted residence in Turkey, etc).

<sup>192</sup> Law No. 2510 regulated the settlement of foreigners in Turkey between the years of 1934 and 2006 when a new law on settlement was adopted. However, seeing as the requirement for Turkish descent and culture remained, it can be argued that the 2006 Law is still mostly based on the 1934 Law. (Refugee Law and Policy: Turkey. *Library of Congress*. Available at [https://www.loc.gov/law/help/refugee-law/turkey.php#\\_ftn13](https://www.loc.gov/law/help/refugee-law/turkey.php#_ftn13)

<sup>193</sup> Icdygu 2015, 6.

<sup>194</sup> Kirişçi, Kemal. 2000. "Disaggregating Turkish citizenship and immigration practices." *Middle Eastern Studies* 36, no. 3: 1-22: 7. Accessed May 10, 2016. doi: 10.1080/00263200008701316

## Broader Implications of Changing Legal Landscape

The changing legal landscape in Turkey has referred to the development of government institutions and laws pertaining to foreigners and temporary forms of protection. The emergence of a new legal landscape, one that is equipped with new institutions to address issues pertaining to migration, asylum, protection and foreigners have been grouped under the newly formed Ministry of Interior Directorate General of Migration Management, which was formed through Article 103 of the 2013 Law on Foreigners and International Protection.<sup>195</sup>

Authority to decide on the duration of the 2014 Regulation lies with the Turkish Council of Ministers. Once temporary protection ends, the individual does have a right to seek protection elsewhere had they migrated to Europe, or if they were sent back to Turkey. In this respect, the individual's universal right to seek asylum is greatly impeded.<sup>196</sup>

The implications of the changing legal landscape are twofold: there are legal implications such as the ways in which rights are accessed, the formalization of protection measures, at least on paper and then there are broader implications, on how individuals are grouped, contained, categorized and how conceptions of citizenship, alongside the division of 'citizen' and 'non-citizen' might be changing in Turkey. More specifically, there are implications on how non-citizens are governed in Turkey.

This thesis has been concerned with the broader implications of how non-citizens are addressed by the state in light of the recent migration management partnership and subsequent changing legal landscape. Although the law itself is seemingly permanent in the

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<sup>195</sup>The Directorate General of Migration Management has been established under the Ministry of Interior in order to implement migration policies and strategies, ensure coordination among relevant agencies and organisations, and carry-out functions and actions related to the entry into, stay in and exit from of foreigners in Turkey as well as their removal, international protection, temporary protection and the protection of victims of human trafficking. Article 103, 2013 Law on Foreigners and International Protection.

<sup>196</sup> The universal right to seek and enjoy asylum is detailed in Article 14(1) of the Universal Declaration of Human Rights, 1948.

establishment of entities and governing structures in Turkish domestic law, the specific components of the law point to addressing protection issues through a temporary lens. This would seemingly lead to a type of dichotomous relationship between the purpose, or aim, of law, which I view as providing a type of concreteness or a type of permanence on the one hand, while the ‘temporary’ lens points to a fluid flexibility that is ambiguous and hard to define or pinpoint on the other.

This fluid flexibility and ‘temporariness,’ which is associated with temporary protection for example, suggests that the individual is a type of ‘temporary’ subject of law. It would seem that a temporary lens would suggest a temporary approach to issues that perhaps require long-term, more “durable” and a-temporal type responses. Temporary measures are also often used as a way of justifying a reduction of protection of human rights,<sup>197</sup> while also being seen as a step towards addressing rights for those who would not necessarily be covered under other forms of international protection. Fluid flexibility and ambiguity in this ‘temporary’ lens or approach in law also suggests an awareness, or an acknowledgement of shifting political contexts which would alter incentives to offer more “permanent” or “concrete” solutions. Therein lies the dichotomous relationship, as I have come to understand it, between law as providing a form of permanence and law dealing with what are considered to be ‘temporary’ issues or contexts.

Common themes continue to surface throughout these discussions, such as temporariness and “integration” within the context of externalized borders and deterritorialized protection. One way in which international law addressed the ‘temporality’ of certain conditions was with the introduction of Temporary Protection in Europe, as I have gone into depth earlier in this chapter. Here, the Netherlands Yearbook of International Law

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<sup>197</sup>Ambrus, Mónica, and Ramses A. Wessel.2015. "Between pragmatism and predictability: temporariness in international law." In *Netherlands Yearbook of International Law 2014*, pp. 3-17. TMC Asser Press. 5. Accessed October 10, 2016

(2014) is instrumental in approaching issues of temporariness within legal scholarship on international law and although this thesis is not focused on providing a legal analysis of temporary protection in Turkey, it seeks to situate the legal developments in Turkey and to consider through a critical analysis lens, the implications of such recent changes on how non-citizens are governed and if these changes speak to alternative forms of layered membership occurring.

When thinking about how non-citizens are grouped and organized under what is considered to be a formalized legal regime in Turkey, the only non-Turkish access that is made available to the public is a PDF of an “unofficial” translation of the law provided by the Ministry of Interior Directorate General Migration Management.<sup>198</sup> What one can find in Turkish, is the version published in the *Resmi Gazete*, or the Official Gazette of the Republic of Turkey, which is the only official national journal that publishes changes in legislation and law.<sup>199</sup> The unofficial translation is described as not being legally binding and that the purpose of the translation is “only for informing, and it can only used for informing.”<sup>200</sup> The new comprehensive law that addresses foreigners (non-citizens) and protection is thus officially only available in Turkish.

One issue that is raised by this then is the question of a private/public dichotomous use of the text of the law. The broader implications of such a divide or distinction are twofold: the authority of interpretation as well as the accessibility of the law itself. It is a general principle of law that promulgation is a fundamental component of law creation.<sup>201</sup> In this understanding, law becomes *law* through the act of declaring it and making it public. One

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<sup>198</sup>For the full document, please see [http://www.goc.gov.tr/files/files/eng\\_minikanun\\_5\\_son.pdf](http://www.goc.gov.tr/files/files/eng_minikanun_5_son.pdf)

<sup>199</sup>The *Resmi Gazete* has been in publication since its inception in October of 1920. For the *Resmi Gazete* website in Turkish, please see: <http://www.resmigazete.gov.tr/default.aspx>

<sup>200</sup>Republic of Turkey Ministry of Interior Directorate General of Migration Management. Publishing Number:6, April 2014.

<sup>201</sup> For more on the role of promulgation of law, see: Fuller, Lon L. 1969. “The Morality of Law.” Yale University Press.

could argue that the announcements in the *Resmi Gazete*, which have been a source of public announcement since the year 1920<sup>202</sup> is one form of promulgation. However, when the law is made legally binding in only Turkish, i.e. the official version, then there is an immediate form of exclusion that occurs. When the law is promulgated in Turkish, the state inherently creates a hermeneutical limitation. Therefore, it controls the interpretation and specifies the “intended” meaning of the law. With regards to the private/public dichotomous use, it is possible to argue that a private interpretation, one reserved for the Council of Ministers, is taking place. The public is given an official document in Turkish, however filled with ambiguity concerning various aspects of temporary protection for example, the details and specifics of which are decided upon by the Council of Ministers. Subsequently, the actors involved in legal interpretation are not only limited but are also arguably contained. The issue at stake is the ambiguity that lies within aspects of this law that have been discussed at great length earlier in the chapter, and more broadly, that the accessibility of this law is in fact hindered by the way in which it is made available.

## Conclusion

The recent changes in Turkey’s legal framework on the ways in which foreigners are governed and on temporary protection occur at a time in which questions about citizenship are also surfacing. The presence of a Temporary Protection Regulation and the 2013 Law on Foreigners and International Protection in Turkey are indicators for shifting notions about how foreigners (non-citizens) are situated in Turkey, against a backdrop of migration partnerships, renewed EU-accession talks, and changing conceptions of state migration practices. Temporary protection speaks to informal mechanisms of integration into a host

<sup>202</sup>The *Resmi Gazete* was founded on October 7, 1920 and has made announcements dating back to January 7, 1921 accessible electronically.

community without the permanence of citizenship. However, what we see is that discussions of citizenship are occurring alongside the development and issuance of temporary protection measures.

Another implication is currently evolving, and although has not taken shape and is yet to be further explored are the emerging statements regarding citizenship. These discussions are evolving amid the current EU-Turkey migration management partnership and the presence of both asylum seekers and migrants that are contained in Turkey. There are a few notable moments in which citizenship being extended to non-Turks was raised by the Turkish Government both in July of 2016<sup>203</sup> and more recently in January 2017.<sup>204</sup>

Has the introduction of temporary protection led to talks of extending citizenship? If citizenship were to be extended would those individuals benefit from the same set of rights and access that Turkish citizens now have or would a second-class form of citizenship develop, one that is considered partial or one that is governed by the Ministry of Interior Directorate General for Migration Management and the subsequent Council of Turkish Ministers? Would this “citizenship” be an indefinite status or would it have certain conditions and a certain temporality attached?

Rather than critiquing whether offering citizenship to asylum seekers is negative or harmful, or for that matter positive or beneficial, it is more productive to engage in a discussion on the broader implications around theoretical changes to citizenship in a country that has had very specific notions and ideas of what it means to be a *Turkish citizen* and a specific historical trajectory of immigration practices.

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<sup>203</sup>“Erdogan: Syrian refugees could become Turkish citizens President says government will help Syrians by offering them the chance to acquire Turkish nationality.” Al Jazeera. July 4, 2016

<http://www.aljazeera.com/news/2016/07/erdogan-syrian-refugees-turkish-citizens-160703133739430.html>

“Turkey’s Erdogan moots plan to grant citizenship to Syrians.” Reuters. July 5, 2016.

<http://www.reuters.com/article/us-mideast-crisis-syria-turkey-idUSKCN0ZL155>

<sup>204</sup>“Erdogan offers citizenship to Syrian and Iraqi refugees *President Erdogan says some refugees who pass screenings will be granted nationality to "make use" of their skills.*” Al Jazeera . January 7, 2017

<http://www.aljazeera.com/news/2017/01/erdogan-offers-citizenship-syrian-iraqi-refugees-170106195134961.html>

At this theoretical point what the citizenship would look like is speculation. Online news articles in Turkish, which address the speculation of citizenship being extended or “given” to certain categories or groups of migrants and asylum seekers, taper off in February of 2017. Some of the Turkish news sources cite that the process is already underway but that the details are unknown and will become clearer after the April 16 2017 Referendum vote.<sup>205</sup> What types of changes or regulations would take place for this type of citizenship to be extended? The idea behind offering or “giving” citizenship as the word is often used in Turkish sources, is seemingly connected to the interests of the labor market and economy in Turkey. News reports highlight that those who can offer a “skill” will be considered for Turkish citizenship.<sup>206</sup>

This chapter has argued that the recent shifting legal landscape in Turkey is in fact intimately connected to the EU trying to promote Turkey as a “safe third country” so that they as the EU do not violate the non-refoulement principle<sup>207</sup> when sending migrants and asylum seekers back to Turkey through the “one-for-one” deal. This is not to say that there is a direct causal link between the two that one has led only to the other, but rather to suggest that they are both connected to a degree that is worth considering. There are a multiplicity of variables that influence the development of laws, however, it is possible to use the changing legal landscape as an indicator for wider discussions on how foreigners and non-citizens are governed through migration.

What has developed recently in Turkey is an overarching comprehensive law on foreigners and yet there is also a layering within the law of the different types of foreigners, their protection needs, the reasons for excluding certain foreigners, while at the same time,

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<sup>205</sup>“Istanbul’da Suriyelilere vatandaşlık için çalışmalar başladı.” Haber Turk. February 23, 2017. <http://www.haberturk.com/gundem/haber/1401708-istanbulda-suriyelilere-vatandaslik-icin-calismalar-basladi>

<sup>206</sup>“Suriyeliler vatandaşlık vermesi için hazırlandı.” Euro News. January 16, 2017. <http://tr.euronews.com/2017/01/16/suriyeli-multecilere-vatandaslik-sureci-basladi>

<sup>207</sup> Article 33(1) of the 1951 Convention states: 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.”



talks of “integrating” other foreigners either through temporary protection measures or through talks of “giving” citizenship to integrate certain foreigners into the labor market through their skill set. This notion of temporariness and integration are very much relevant to the previous themes that have emerged, such as the formalization of laws and the permanence in the law associated with this new approach to foreigners.

It is worth mentioning that what sets the 2013 Law apart from previous legal measures is the formalization of the law itself. As Soykan (2012) argues, this is the first form of domestic *law* that deals with regulating asylum and protection. Previous legal measures were consequently considered to be informal as they differed in practice across different governorates. However, what we find when analyzing sections of the 2013 Law is that governorates continue to play a significant role in several areas: from the issuance of visas in exceptional cases (Art. 11), to enforcing an entry ban for foreigners to be deported from Turkey (Art.12), to issuing border visas (Art.13), to the extension of a residence permit (Art. 24), to investigating the validity of claims for family visas (Art. 37), the role of the governorate appears in almost every Article of the 2013 Law. This suggests that a unified or coherent approach to the presence of foreigners is perhaps not the main objective, despite the formalization, on paper, of how the state deals with foreigners.

An overarching impact, in its simplest form, within the scope of this partnership and ensuing change in domestic laws, are the ways in which non-Turkish individuals within the Turkish territory are governed. The development of the law and the specifics of the law can be analyzed from very different perspectives. For some, the introduction of a more comprehensive set of laws and regulations that address foreigners and protection is a step towards a more EU-like approach to asylum. For others, and myself included, the labeling of Turkey as a transit country for irregular migration, the recent EU partnership, the subsequent development of laws in Turkey that address foreigners and temporary protection and recent

talks of citizenship being extended to some asylum seekers in Turkey, is reflective of a different way in which the government has chosen to categorize and deal with citizens and non-citizens, the full scale of impact of which is not yet fully known.

This thesis argues that the very process by which the EU is externalizing its borders and political influence through cooperation agreements with neighboring countries, such as Turkey, has led Turkey to revisit its migration policies and laws on “non-citizens.” As I have shown, in earlier chapters as well, through focusing on a specific country, i.e. Turkey, it is possible to narrow in on what could otherwise be all encompassing, intangible processes of externalization of borders and the continued securitization of migration. Without a specific focus to ground these two overarching concepts which are both intertwined and simultaneously occurring, it would be difficult to grasp what exactly follows when, for example, a geopolitical border is pushed beyond its territory, or what pushes a country or entity to extend its border through partnerships amid heightened security fears over misconceptions of irregular movement and criminality.

## Chapter 6: Conclusion

### Overview

In this final chapter, I briefly review the key themes and main arguments from each chapter in order to thoroughly address the narrative that has formed and to situate my own work and arguments within ongoing discussions in the field of migration and refugee studies. What has emerged throughout each of the chapters is the centrality of the fluidity and malleability of borders with regards to how migration is governed and managed. At the core of this study and this research has been the realization that to study migration one must be fully aware of, and pay critical attention to, the current contexts and backgrounds that ultimately shape the dialogues that are occurring, whether these dialogues are in the form of partnerships between countries, or the development of legal frameworks. Each form of dialogue or each development speaks volumes to the ways in which the current migration movements are perceived and then translated into either policy or a form of reaction/action by governments, institutions or even researchers.

There are a “matrix of institutions, policies, and political notions” connected to the EU,<sup>208</sup> which allow for it to govern migration from afar, which brings to mind once again the notion of an architecture of externalization. With regards to this thesis, it is possible to raise questions of what state sovereignty means in today’s globalized world in which borders constantly extend beyond their territorial boundaries and ultimately engage with third-countries, i.e. as is the case with the EU-Turkey partnership.

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<sup>208</sup>Casas, Maribel, Sebastian Cobarrubias, and John Pickles. 2010. "Stretching borders beyond sovereign territories? Mapping EU and Spain's border externalization policies." *Geopolítica (s)* 2, no. 1:75. Accessed May 10, 2016. doi:10.5209/rev\_GEOP.2011.v2.n1.37898

As Casas et al., have argued, externalization requires us to rethink “engrained concepts such as national sovereignty and identity with more nuanced understandings of citizenship and territorial demarcations.”<sup>209</sup> The EU’s slow and steady extension of its geopolitical borders through its various migration management partnerships, namely with Turkey, is a way in which to rethink these very concepts. By this I mean to say that instead of conceptualizing externalization of borders as something that exists only at a theoretical or perhaps abstract level, we can use this ongoing process of externalization as a way to actually examine, almost in real-time, what is occurring in Turkey, and by extension, to examine the malleability of certain concepts such as borders, national sovereignty, and citizenship. More specifically, in addition to the ongoing processes of externalization of EU borders, we find that perhaps the conceptualization of the ‘citizen’ and the ‘foreigner’ changing for the Turkish State.

This thesis has critically examined the changes in Turkey’s legal framework, with regards to its legislation on migration and foreigners against the backdrop of its EU migration management partnership. What has emerged throughout is a discussion on how borders shift, the ways in which labeling a country as “transit” allows for a specific type of knowledge and power production and that the changing legal landscape of a country is an indicator of something much broader occurring with regards to how a state organizes and governs non-citizens in its territory.

This thesis has demonstrated both the emergence of temporary protection measures and the first *law* on foreigners are indicators of a changing legal landscape in Turkey. More importantly though, these indicators are in essence a formalization of the ways that the state conceptualizes foreigners, the presence of non-citizens within its territory, and more broadly, the ways in which it governs foreigners. These changes are occurring in conjunction with a

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<sup>209</sup> Casas et al. 2010, 76

renewed EU partnership to manage migration and as I argue, are in fact materialized forms of non-entrée regimes and containment policies that the EU continues to perpetuate against the backdrop of a securitized stance of migration.

## **Brief Review of Chapters**

In *Chapter One: Introduction*, I discussed the contexts in which migration has been increasingly viewed through a securitized lens, paying particular attention to the post-September 11<sup>th</sup> political context and the subsequent “war on terror.” Commentators in the West, and more specifically for this thesis, in Europe, have framed migration and migration related questions or issues in the form of a securitized threat and “crisis.” As I have previously argued, the way in which something is securitized and labeled a “crisis” allows for alternative interpretations and actions to deal with a situation through a “crisis measure” approach, one that suggests a sense of urgency but also of temporariness. A “crisis” requires immediate responses rather than long-term more durable, sustainable approaches. Temporality plays a significant role in the “crisis” and the subsequent sets of responses.

Expanding on this thought more with regards to migration, irregular migration through the Mediterranean and through countries like Turkey, is seen by the EU as perpetuating a form of criminal behavior, whether this refers to the individual who is crossing irregularly, or the smuggler and smuggling industry that facilitates this irregular movement. There is an association made by the West that further perpetuates the securitization of migration through the problematic correlation between irregular migration and criminality, which began several decades ago.<sup>210</sup> The tools that allow governments and policy makers to perpetuate this securitization is, namely through this process of framing, labeling and

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<sup>210</sup> For more on the securitization of migration in Europe, and other countries in the West, namely, Canada, and the US, see: Huysmans (2000), Watson (2007).

knowledge production. As such, the use of the word “crisis” has been instrumental in this process.

In addition to setting the geopolitical context in which this thesis is researching issues pertaining to migration, the *Introduction* also briefly examined Turkey’s historical relationship to immigration practices. This was a starting point for focusing on questions of how shifting borders, externalization, migration and migration management partnerships interact at both the global and domestic levels, so as to delve into much more specific critiques and understandings of how foreigners and non-citizens are situated in Turkey.

From there, in *Chapter 2: Methodology*, I argued that focusing on a particular country is essential for an examination into two ongoing simultaneous processes that shape how migration is being studied and understood today: securitization and externalization. This chapter set the tone for how I approached these questions and the tools I was going to use. Using a critical analysis perspective, this thesis examined several types of data including policy and legal documents as well as academic literature from multiple disciplines. I argued that the very process by which the EU is externalizing its borders and political influence through cooperation agreements with neighboring countries, such as Turkey, has led Turkey to revisit its migration policies and laws on “non-citizens.”

In *Chapter 3: Literature and Theoretical Background* I addressed six themes central to the study of migration: *Borders and Bordering, Territory and Extensions of the State, Securitization of Migration, Non-entrée regimes and Temporary Protection within International Law, Citizenship and the State* and lastly, *Alternative Forms of Citizenship*. As such, the literature review and theoretical background for this thesis approached questions of citizenship and non-citizens through multiple themes and theoretical frameworks as well as multiple disciplines, leaning on political science and the discourse of securitization theory, while also exploring cultural geography with critical border studies, among several others. I

examined the gaps in non-critical approaches and how my own work and literature review help to address these problems. I situated my own thinking and ideas within broader discussions about the significance of the border as well in identifying gaps in critical analyses on the recent EU-Turkey partnership.

From there, *Chapter 4: Migration and the shifting of borders –Examining EU Externalization and the EU-Turkey partnership* delved into how the EU is actively involved in externalizing its borders with Turkey, which it considers as existing on the peripheries of the EU territory; spaces that are perceived as “border countries” and countries of “transit.” In this chapter, I argued that the EU-Turkey migration management partnership is in fact indicative of broader policies of containment and non-entrée regimes in which countries partnered with the EU to address irregular migration are expected to curtail and contain “unwanted” migration that veers near the EU’s external borders. This chapter emphasized that the border is always in the process of *doing something* when it comes to migration; the border is shifting and is fluid. From a Frontex patrol, to an airline security check, the border is constantly pushed beyond the territory in an attempt to prevent migration. The border, and border protection, becomes a tool with which to “affirm[s] the difference between citizen and alien outsiders.”<sup>211</sup> Additionally, the very malleability of the border makes it difficult to navigate; with the change in migration routes or policies aimed at managing migration, the temporary checkpoints, or coast guard patrols change as well. This chapter also examined in more depth the partnership between the EU and Turkey and discussed the political context in which the partnership was revisited. Perhaps more importantly, this chapter also examined how Turkey became labeled as a “transit” country and how this process of labeling and knowledge production became a tool that furthered containment policies and non-entrée regimes. These policies in turn influenced the development of domestic law in Turkey,

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<sup>211</sup>Kofman, Eleonore. 2005. "Citizenship, migration and the reassertion of national identity." *Citizenship studies* 9, no. 5: 453-467.459. Accessed May 15, 2017. doi: 10.1080/13621020500301221

further securitized migration to the EU and perpetuated the externalization of the EU's geopolitical borders. This chapter attempted to bring together several simultaneous processes that fuse together in order to show the interconnectedness of shifting borders and changes in law and how these shape questions about forms of 'temporary protection' as possibly 'temporary integration' and regarding the position of non-citizens.

Lastly, in *Chapter 5: Changes in Turkey's Legal Landscape and its Broader Implications*, I argue that examining a country's legal landscape can be a useful tool for understanding how broader global processes have an impact on the ground in the domestic context. Oftentimes, when discussing the externalization of borders or the recent securitization of migration, it is easier to think only in broad theoretical terms of what these processes mean. Focusing on Turkey allows for both a theoretical discussion but also a more tangible one as there are very recent changes in its legal system that coincides with its EU partnership. I argued that examining the changing legal landscape is an important component of this research for two overarching reasons: the changes in Turkey's legal framework are very recent and arguably the first of their kind regarding protection, non-citizens and migration, and second, the changes in the legal framework are occurring when Turkey's geopolitical position within the region make it a key actor both in terms of its reception of asylum seekers and migrants as well as its political partnership with the EU in addressing the migration flows.

### **Implications for citizenship**

In examining how borders shift in relation to migration management, the political context in which migration is perpetually securitized, and the reverberating effects of the



ways in which migration is managed from afar by the EU, there are wide-ranging implications for how, at a domestic level, non-citizens are governed.

Laws concerning foreigners and international protection have undergone significant changes in Turkey, arguably only being formalized during the years of 2013 and 2014. Previous laws that dealt with foreigners, international protection and immigration were considered to be more of a secondary form of legislation that ultimately speak to a more informal method of governance. In other words, until recently there was no overarching form of *law* that addressed these issues.<sup>212</sup> A previous law that addressed immigration and the settlement of foreigners was the 1934 Law of Settlement, which can be argued was one of the earliest instances in which the state restructured its population through migration-related law. The concerns of the early republic reflected deeper questions about what a Turk was and should be, and how to construct citizenship in a country that a decade earlier had transitioned from Empire to Statehood. This transition period also highlighted several issues regarding how to address a decreased population as well as a population that had become geographically and socially “spread out.” Spatial organization and re-organization through immigration practices became a vital tool. Along these lines, on the centrality of state-building, Kadioglu writes,

As in the formation of all modern national identities, the process of nation-state formation was accompanied by the constant definition and redefinition of the various “others” of an aspired sense of a national being.<sup>213</sup>

Adding further to this discussion is the notion of how “others” were conceptualized and the significance of language in demarcating the divisions between Turk and “other.” The word

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<sup>212</sup>Soykan, Cavidan. 2012. “The New Draft Law on Foreigners and International Protection in Turkey.” *Oxford Monitor of Forced Migration*. 2 no. 2. 38-47:41 Accessed May 5, 2017.

<sup>213</sup>Kadioglu, Ayse. 2007. “Denationalization of Citizenship? The Turkish Experience.” *Citizenship studies* 11, no. 3: 283-299: 284. Accessed May 15, 2017. doi: 10.1080/17450100701381839

*yabancı*<sup>214</sup> is used in Turkish to describe a foreigner. The word itself has several connotations including “strange,” as in a strange place, or an unknown and the root of the word, *yaban*, can mean “wild,” as in non-native flora and fauna within a region. The root *yaban* is thought to have come from Farsi, with the oldest recorded reference occurring sometime during the 1300s first as a reference to *a remote or empty place, a place without people*, and then in the 1400s as *outside*, and *another territory/homeland*. The idea that early uses of this word are a *place without people*, is thought provoking as it then becomes a way to describe *others*, and ultimately *foreigners*.

What role does this play in understanding the ways in which Turks and “others” have been constructed linguistically and culturally? How does that divide or distinction, become situated in citizenship practices and in what is considered to be *Turkish*? Is what is considered to be Turkish undergoing conceptual changes or developments in relation to current migration movements, formalization of protection measures and EU migration management partnership? One possible indicator for a shift in the ways in which citizenship might be re-conceptualized in the case of Turkey is the changing legal landscape and more importantly the ways in which foreigners’ presence and rights are being more formally addressed by the state. This “formalization” that comes with the law on foreigners and protection works to both solidify a distinction between Turk and non-Turk while at the same time, the shifting legal landscape speaks to an opening up of perhaps alternative forms of “partial” belonging and membership in Turkey, such as through the introduction of temporary protection, which extends an unspecified amount of time for residency as well as certain basic rights.<sup>215</sup>

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<sup>214</sup>*Türk Etimoloji* online reference. Reference available at: <https://www.etimolojiturkce.com/kelime/yaban>

<sup>215</sup> “Any foreigner who is subject to this Regulation may be provided with medical care, education, access to labor market, social welfare, interpretation and similar services.” Part 6 of Temporary Protection Regulation dated 22/10/2014. Ministry of Interior Directorate General of Migration Management.

The 1990s saw the emergence of a field devoted to studying and understanding citizenship. In referencing Isin & Turner 2003, Kadioglu notes, this

...prompted a definition of citizenship ‘not simply as a legal status but as political and social recognition and economic distribution.’<sup>216</sup>

More recently, citizenship has been critically examined through the lens of migration. With migration management partnerships, the continued externalization of borders and securitization of migration, there are reverberating impacts on how citizenship and membership is being considered. With the case of Turkey, the introduction of temporary protection measures and formalization of how foreigners are governed are indicators of alternative methods for the state to perhaps temporarily integrate as well as to categorize more formally, the foreigners within its territory.

## **Concluding Thoughts**

In conclusion, this thesis has examined multiple components of the EU-Turkey migration partnership and subsequent changes in Turkey’s legal framework. I have argued that in studying migration today, within the context of the EU and Turkey as key actors, it is important to consider two simultaneous and ongoing processes that continue to impact how migration is viewed and studied, which are the securitization of migration and the externalization of borders. Kofman writes,

In response to the proliferation of scales of governance and increasing movement in a global age, consideration has to be given to whether and how citizenship has been reconfigured.<sup>217</sup>

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<sup>216</sup>Kadioglu 2007, 284

<sup>217</sup>Kofman 2005, 453

There are broader implications of Turkey's changing legal framework on foreigners, namely the ways in which non-Turkish "others" or "foreigners" are governed by the state. These changes are occurring in the context of migration policies and against the backdrop of renewed EU accession talks, and at the height of the displacement and forced migration of millions from and within the Middle East and North Africa region particularly from 2011 until today. From here, the research can be taken in many different directions; explored through a more ethnographic lens, through a more policy-oriented perspective, or through a critical analysis that examines ideas such as temporary protection as a form of temporary integration and subsequently, alternative forms of membership.

What becomes clear throughout this research is the fluidity of a number of concepts that continue to occupy a central place in today's globalized world; from notions of citizenship and membership to the ways in which borders shift and movement is affected. Despite the fluidity of these ideas, there are tangible ways to approach studying how they shift, how they ebb and flow amid a constantly changing political and socio-cultural landscape.

One such attempt has been to identify the impact that externalization of borders has on a third country. One tangible way to discuss or to examine what is happening, without conflating the simultaneous processes, is through focusing on Turkey, which can ground theoretical work on externalization. Additionally, this country-specific focus offers a platform in which to examine something that is changing and evolving in a way that might be hard to pinpoint or even navigate. Using a shifting legal landscape as an indicator of change to discuss both theoretically specific as well as broad questions, such as: what would alternative citizenship look like, i.e. what types of rights would be given or extended, and for what length of time? What are the implications of these shifting legal landscapes, in connection to the EU partnership, on the ways in which Turks and non-Turks or citizens and

non-citizens are categorized by the state? How individuals participate in society? How do individuals self-identify in a space that, from 1923 until 2013 and 2014 been structured in a very specific way both in legally and culturally in terms of what it meant to be a “Turk”? Thinking back to Castles and Davidson (2000), the idea that citizenship is not “always an either/or situation” with regards to large scale migration and settlement, allows for us to consider the various ways in which the state is perhaps trying to temporarily integrate or manage a population without granting the full rights of citizenship. There are many wide-ranging questions that stem from this that are worth considering for future work.

Turkey’s partnership with the EU has gone through several phases over the past few years and with current domestic instability in Turkey, the state of the EU-Turkey partnership is not clear. Kofman notes,

As geographers have highlighted, the scales of governance (local, national European, global) are constantly being re-scaled and redrawn in response to economic, cultural and political developments.<sup>218</sup>

This is especially important to consider when thinking about how migration policies and partnerships are influenced by contexts, such as the securitization of migration, which are continuously in a state of being reformulated to current affairs.

When migration is in the news on a daily basis, it becomes difficult to disentangle daily events from broader ongoing processes. This thesis has attempted to step back and state that these ongoing processes, although develop more gradually and are less easily displayed, are monumental and demand our attention and awareness if we are to situate some of our future integration-related questions. There is a very specific narrative that has formed, and continues to form, over current migration movements from the Middle East and North Africa region, the EU’s externalization of its borders and the continued securitization of migration at the periphery of the EU. In choosing to examine the EU-Turkey migration partnership, while

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<sup>218</sup>Kofman 2005, 464

focusing on Turkey, this thesis has delved into an analysis of changes in Turkey's legal landscape as connected to its partnership and expectation to further the EU's containment policies. What emerges is a detailed and critical analysis of the direction that migration management partnerships are heading or are striving towards. The growing trend towards non-entrée regimes and containment policies has incredibly serious repercussions, both ethically and legally in terms of individuals' mobility and immobility. What we see with the shifting of borders and mechanisms of control are in fact defining moments of the problematic growing and hardening divide between the global north and the global south, the power in labeling of countries and in the production of specific knowledge surrounding migration today.

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