

BACKGROUND DOCUMENT

TURKEY AS A “SAFE THIRD COUNTRY” FOR GREECE

17 October 2015

Restoring control in the Aegean – lawfully

For a resolution of the Syrian refugee crisis in the Aegean, ESI proposes that Greece declares Turkey a “safe third country”; that Turkey agrees to take back new migrants reaching Greece from its territory from a certain agreed date; and that Germany agrees to offer asylum in Germany to 500,000 Syrian refugees registered in Turkey over the coming 12 months. Other EU member states then also offer to take Syrian refugees directly from Turkey.¹

A “safe third country” describes a country that it safe for asylum seekers of *nationalities other than that of this country*. The ESI proposal is based on the assumption that Turkey is a safe third country for asylum-seekers from Syria, Iraq, Afghanistan and other countries, so that Greece could return them to Turkey without jeopardising their rights and safety. This would quickly reduce the number of boats crossing the Aegean as the dangerous passage would become pointless – everybody reaching Greece would be returned back to Turkey.

This proposal would also help save lives. It would be the most effective measure by far to undermine people’s smugglers in this region. And, as opposed to other vague proposals about how to restore control of movements in the Aegean, this proposal is in line with international, EU, Greek and Turkish law.

“Safe third country” versus “Safe country of origin”

In recent weeks the debate in the EU has been needlessly mixed up with a different debate: whether Turkey should be considered a “safe country of origin”. Sometimes journalists and think-tanks confuse this, arguing that Turkey should not be considered a “safe country” for refugees because of problems with human rights of Turkish citizens. However, “safe third country” and “safe country of origin” are two very different concepts.

Under EU asylum law, a “safe country of origin” is a country that is generally safe for its own citizens, in the sense that they generally do not face political persecution or the threat of serious harm through armed conflict, torture or the death penalty in their own country. In September 2015, the European Commission proposed that all Western Balkan countries as well as Turkey

¹ See ESI policy proposal: [The Merkel Plan – Restoring control; retaining compassion – A proposal for the Syrian refugee crisis](#), 4 October 2015.

be declared “safe countries of origin”.² This would allow EU member states to decide the asylum claims of citizens of these countries in an accelerated procedure

This measure targets primarily people from Western Balkan countries. In recent years, the number of asylum claims submitted in the EU by their citizens has dramatically increased, but they are overwhelmingly rejected.³ Dealing with these claims quickly would free up space and resources for refugees much more likely to qualify for international protection, such as Syrians. The Syrian recognition rate in 2014 was 95 percent, while that of Serbians and Macedonians was 2 and 1 percent.⁴

“Safe third country”, on the other hand, describes a country that is safe for asylum seekers of other nationalities. The ESI proposal is based on the assumption that Turkey is a safe third country for asylum-seekers from Syria, Iraq, Afghanistan and other countries, so that Greece could return them to Turkey without jeopardising their rights and safety. This would work as follows:

Greek legislation

Greece already has a readmission agreement with Turkey.⁵ The agreement details the modalities of returns to Turkey of *both* irregular Turkish citizens and third-country nationals who reached Greece via Turkey. These include migrants who crossed into Greece illegally (so-called “economic migrants” who have no right to remain), as well as asylum-seekers, but only if and after their asylum claims were rejected in Greece and they were then ordered to leave.

The vast majority of people currently arriving in Greece are asylum seekers. Greece has an obligation under EU law and the UN Refugee Convention to admit persons seeking asylum, to examine their claim and to grant them asylum if they qualify for it. It cannot simply send them back to Turkey without looking at their claim. It is also illegal under international, EU and Greek laws for Greek border guards - or any other border guards operating as part of an EU mission – to block their movement on the sea in Greek territorial waters.

However, Greek and EU legislation allows that Greece judges a third country “a safe third country” for individual applicants. It can then return them to this country for a substantive examination of their asylum claim.⁶ Greece still needs to look at the claim, but it does not have to examine it in substance. It can declare it “inadmissible” and return the asylum seeker to the safe third country for a substantial examination of the claim.

² European Commission, [Proposal for a Regulation of the European Parliament and of the Council establishing an EU common list of safe countries of origin](#), COM/2015/0452 final, 9 September 2015.

³ See ESI background paper [New facts and figures on Western Balkan Asylum Seekers](#), 6 April 2015, and ESI report [Saving visa-free travel – Visa, Asylum and the EU roadmap policy](#), 1 January 2013.

⁴ Eurostat, [Asylum applicants and first instance decisions on asylum applications: 2014](#), Data in Focus 3/2015, March 2015, p. 13.

⁵ [Protocol on readmission between the Government of Turkey and the Government of the Hellenic Republic](#), signed in Athens on 18 November 2001, effective since April 2002. There is also an EU-Turkey readmission agreement, but the provisions concerning third-country nationals will become effective only on 1 October 2017. [Agreement between the European Union and the Republic of Turkey on the readmission of persons residing without authorisation](#), signed 13 December 2013, entry into force 1 October 2014.

⁶ [Greek Presidential Decree No. 113](#): Establishment of a single procedure for granting the status of refugee or of subsidiary protection beneficiary to aliens or to stateless individuals in conformity with Council Directive 2005/85/EC “on minimum standards on procedures in Member States for granting and withdrawing refugee status” (L 326/13.12.2005) and other provisions. Government Gazette of the Hellenic Republic, First Volume, Issue No: 146, 14 June 2013, Art.20.

Greece has so far not used the concept of a safe third country. Under our proposal it would do so for the first time. To be considered a safe third country, Turkey would need to fulfil the following conditions, according to Greek and EU legislation:⁷

“1. A country shall be considered as a safe third country for a specific applicant when all the following criteria are fulfilled:

- a. the applicant’s life and liberty are not threatened for reasons of race, religion, nationality, membership of a particular social group or political opinion,
- b. this country respects the principle of non-refoulement, in accordance with the Geneva Convention,
- c. the applicant is in no risk of suffering serious harm according to Article 15 of P.D. 96/2008,
- d. the country prohibits the removal of an applicant to a country where he/she risks to be subject to torture and cruel, inhuman or degrading treatment or punishment, as defined in international law,
- e. the possibility to apply for refugee status exists and, if the applicant is recognized as a refugee, to receive protection in accordance with the Geneva Convention and
- f. the applicant has a connection with that country, under which it would be reasonable for the applicant to move to it.”⁸

If the Greek authorities reject an asylum claim as inadmissible based on the safe third country concept, they have to inform the applicant and provide him with a document for the authorities of the third country (Turkey) stating that they have not examined the application on merits.⁹

Under Greek legislation, the rejected applicant can lodge an administrative appeal against the inadmissibility decision within 15 days¹⁰ and has a right to remain in Greece until he is notified of the final decision.¹¹ If the appeals body upholds the first-instance decision, the applicant can appeal to a court. However, this court appeal has no suspensive effect; the applicant is still obliged to leave.¹²

Turkey’s post-2013 asylum system

Turkey is currently implementing its new 2013 Law on Foreigners and International Protection and setting up its own asylum system. This law is inspired by EU asylum legislation. When it was adopted, UNHCR hailed it “as a reflection of Turkey’s strong commitment to humanitarian values and principles” and “an important advancement for international protection.”¹³

⁷ [Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection \(recast\)](#), Art. 38.

⁸ [Presidential Decree No. 113](#), Art. 20, paragraph 1.

⁹ [Presidential Decree No. 113](#), Art.20, paragraph 2.

¹⁰ [Presidential Decree No. 113](#), Art. 25, paragraph 1, point (b).

¹¹ [Presidential Decree No. 113](#), Art. 25, paragraph 2.

¹² Asylum Information Database AIDA, [Country Report Greece](#), updated April 2015, p. 37.

¹³ UNHCR Press Briefing Notes, [UNHCR welcomes Turkey's new law on asylum](#), 12 April 2013.

According to the European Commission, the law “provides for the establishment of a national asylum procedure and protection statuses that are in line, overall, with international and EU standards.”¹⁴ The “overall” refers to the “geographical limitation” for which Turkey opted when it signed the UN Refugee Convention.

When the UN Refugee Convention was negotiated in Geneva in 1951, its aim was to alleviate the dramatic refugee crisis unfolding in Europe as a result of the Second World War. At the time some states wanted to make sure that their new obligations towards refugees would only apply to refugees from Europe and not from somewhere else. So it was decided that each acceding state should declare whether it would interpret the reference to the reasons behind the refugee crisis as “events occurring *in Europe* before 1 January 1951” or “events occurring *in Europe or elsewhere* before 1 January 1951.”¹⁵

Turkey opted for “events in Europe.” A protocol to the Refugee Convention, which entered into force in 1967, eliminated the geographical and time limits, but Turkey maintained the geographical restriction. Today four parties to the convention do so: Turkey, Congo, Madagascar and Monaco, out of a total of 145 states that have acceded to the convention.¹⁶

Turkey defines “Europeans” as citizens of one of the 47 member states of the Council of Europe. However, Turkey received only 289 claims from European asylum seekers between 1995 and 2010, which is less than 20 per year.¹⁷

In recent decades, most refugees coming to Turkey have not been Europeans. The Turkish government allowed UNHCR to operate in the country and to receive and examine their asylum applications. If they were recognised as refugees, UNHCR would also resettle them to other countries. During this process, the applicants were allowed to stay in Turkey and they could send their children to Turkish schools.

The Law on Foreigners and International Protection, adopted in April 2013 and effective since 11 April 2014, has changed this system in crucial ways. It has established a Turkish asylum authority, the Directorate-General for Migration Management. The DGMM deals with the claims of *all* asylum seekers in Turkey regardless of their nationality.

There are now different types of protection in Turkey: “refugee status” for recognised European refugees; “conditional refugee status” for recognised non-European refugees; “subsidiary protection status” for both European and non-European nationals who do not meet the strict definition of refugee under the UN Refugee Convention, but cannot return to their home country due to armed conflicts, or the threat of a death penalty or of torture and inhuman or degrading treatment; and “temporary protection” in a mass influx situation. Art. 91 states that,

“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

¹⁴ European Commission, [Report on progress by Turkey in fulfilling the requirements of its visa liberalization roadmap](#), Brussels, 20 October 2014, COM (2014) 646 final, p. 16.

¹⁵ [1951 Convention Relating to the Status of Refugees](#), Article 1, paragraph B, point (1).

¹⁶ UNHCR, [States Parties to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol](#), updated as of April 2015.

¹⁷ Kemal Kirisci, [“Turkey’s New Draft Law on Asylum: What to Make of It?”](#), in: Secil Pacaci Elitok and Thomas Straubhaar (eds.), *Turkey, Migration and the EU: Potentials, Challenges and Opportunities*, Hamburg University Press, 2012, p. 66.

borders of Turkey in a mass influx situation seeking immediate and temporary protection.”¹⁸

The law stipulates that the government determines all issues related to their reception, rights and obligations.

The rights granted to all other categories include residence permission, access to school education and access to health care.¹⁹ The new law also envisages access to social assistance, social services and an allowance for those in need,²⁰ as well as accommodation in collective centres with all services, including food, provided.²¹ However, the necessary details still need to be clarified in secondary legislation.

The 2013 law makes one difference between Europeans and non-Europeans: this is the access to the labour market. Recognised “refugees” (hence Europeans) and beneficiaries of subsidiary protection (both Europeans and non-Europeans) can work immediately after being recognised, while “conditional refugees” (non-Europeans) and asylum seekers can “request” a work permit 6 months after their registration; even if it is granted, it can be restricted to certain professions and/or certain provinces.²² (This too requires further clarification in secondary legislation.)

The European Commission wrote:

“The status offered to ‘conditional refugees’ is somewhat less beneficial than the status offered to those who are covered by the ‘geographic limitation’, but the differences are not huge. Where the law leaves a margin of discretion as to its implementation, these differences have the potential to become almost symbolic.”²³

The law provides for all procedural safeguards, such as giving asylum seekers the opportunity to make their case in a personal interview with the help of interpreters and having access to lawyers and legal remedies (the law offers two levels of appeals, an administrative, in which UNHCR is involved, and a judicial with two instances).

Syrians in Turkey

On 22 October 2014, the Turkish government issued a Temporary Protection Regulation for Syrian refugees, thus bringing them under the scope of the Law on Foreigners and International Protection. They have a right to reside in Turkey, and can ask to be placed in one of currently 25 refugee camps, which are of high standard, providing all the necessary services. At present the refugee camps accommodate 260,000 people.²⁴

If Syrians do not receive a place in one of the camps or opt to stay outside – 85 percent of the Syrian refugees live outside the camps – they still receive a refugee ID free of charge. They have rights to health care and education. In fact, language is a major obstacle. Syrian children

¹⁸ [Law on Foreigners and International Protection](#) (translated into English by the Turkish government), Art. 91, para 1.

¹⁹ [Law on Foreigners and International Protection](#) (translated into English by the Turkish government), Art. 89, paragraph (2) and (5).

²⁰ [Law on Foreigners and International Protection](#), Art. 89.

²¹ [Law on Foreigners and International Protection](#), Art. 95.

²² Asylum Information Database AIDA, [Country Report Turkey](#), May 2015, pp. 53-54.

²³ European Commission, [Report on progress by Turkey in fulfilling the requirements of its visa liberalization roadmap](#), Brussels, 20 October 2014, COM (2014) 646 final, p. 16.

²⁴ Hurriyet Daily News, [“Turkey hosts over a quarter mln Syrians at refugee camps”](#), 16 September 2015.

do not speak Turkish. In the camps and a few urban centres, the Turkish authorities offer Arabic-language classes, but they are rare. At the end of March 2015, 70 percent of school-aged Syrian children did not go to school.²⁵

Even though Syrian refugees are not allowed to work, many do so illegally. Those in need of humanitarian assistance receive it from NGOs or the state, with the levels of state-provided assistance varying widely across Turkey's provinces.

Implementing the law on protection

Implementing the Law on Foreigners and International Protection is a huge task. In 2014/15, DGMM also had to register almost 2 million Syrian refugees, which took up enormous resources. The Directorate-General for Migration Management (DGMM) does not share this statistical data,²⁶ but UNHCR data for 2014 are a good indicator of the caseload that the DGMM has to handle. In 2014 – when UNHCR in Turkey still had the lead in dealing with asylum applications – it was approached by more than 130,000 persons seeking protection.²⁷ UNHCR only accepted applications from refugees for whom it saw a resettlement chance, so 87,820 could lodge an application with UNHCR.²⁸

Under current plans, the DGMM is supposed to have 2,640 staff including 1,680 case workers who conduct interviews with asylum seekers and make decisions.²⁹ Recruitment and training are still ongoing. Training covers international law and asylum law and practices, interview techniques, approaches to other cultures, working with interpreters, and knowledge of the political and human rights situations in the countries of origin. While the headquarters in Ankara is already fully operational, the DGMM directorates in Turkey's 81 provinces are still being staffed.³⁰

In May 2015, DGMM officially took over the task of registering (non-Syrian) asylum seekers, which until then had been carried out by the Foreigners Departments of the National Police, and of subsequently conducting interviews with them to determine if they qualify for international protection. Anecdotal evidence suggests that most asylum seekers have already had an interview with DGMM. DGMM, however, has so far refrained from issuing decisions on their claims.³¹

In conclusion, Turkey's framework legislation is solid and in place. The DGMM needs to implement all provisions of the new law. This requires that Turkey adopts all the necessary secondary legislation; and that DGMM issues decisions and grants international protection.

²⁵ UNHCR, [3RP Turkey Monthly Update: Education – March 2015](#), cited in Asylum Information Database AIDA, [Country Report Turkey](#), May 2015, p. 74.

²⁶ It does not publish statistical data, and neither European Commission officials nor NGOs who have requested it have received it. ESI interviews with European Commission officials in September 2015 and Asylum Information Database AIDA, [Country Report Turkey](#), May 2015.

²⁷ Asylum Information Database AIDA, [Country Report Turkey](#), May 2015, p. 23.

²⁸ UNHCR, [Asylum Trends 2014. Levels and Trends in Industrialized Countries](#), updated as of 14 March 2015.

²⁹ Asylum Information Database AIDA, [Country Report Turkey](#), May 2015, p. 14.

³⁰ Asylum Information Database AIDA, [Country Report Turkey](#), May 2015, pp. 14-16.

³¹ The information in this paragraph is based on ESI interviews with European Commission officials and NGOs operating in Turkey, conducted in September and October 2015, as well as the AIDA [Country Report Turkey](#), May 2015.

Turkey as a safe third country

Let us now look at each of the six conditions that Turkey would need to meet to see if whether Turkey could generally qualify as a safe third country for asylum seekers reaching Greece.

- a. *“the applicant’s life and liberty are not threatened for reasons of race, religion, nationality, membership of a particular social group or political opinion;”*

The lives and liberty of asylum seekers in Turkey are not threatened for these or other reasons.

- b. *“this country respects the principle of non-refoulement, in accordance with the Geneva Convention;”*

This principle bans the expulsion or return of “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.”³² It also bans returning people to places where they risk being subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

Turkey has committed itself to respecting the principle of non-refoulement. Article 4 of the Law on Foreigners and International Protection states:

“No one within the scope of this of this Law shall be returned to a place where he or she may be subjected to torture, inhuman or degrading punishment or treatment or, where his/her life or freedom would be threatened on account of his/her race, religion, nationality, membership of a particular social group or political opinion.”³³

Art. 55 extends this further, stating that removal decisions cannot be issued in respect of foreigners “when there are serious indications to believe that they shall be subjected to the death penalty, torture, inhuman or degrading treatment or punishment in the country to which they shall be returned to.”³⁴ In fact, these are reason to grant protection.³⁵ Turkey is also a party to the European Convention on Human Rights and the UN’s Anti-Torture Convention, both of which incorporate the non-refoulement principle.

Turkey also applies this in practice. In the past, there were reports of individual violations of the principle of non-refoulement.³⁶ European Commission officials interviewed in September 2015 were not aware of any recent violations. In 2014, UNHCR Turkey told the US government that seven persons were returned to their countries of origin where they might face risks between January and November 2014.³⁷ Turkish authorities stress that they

³² Art. 33, paragraph 1 of the [Refugee Convention](#).

³³ [Law on Foreigners and International Protection](#) (translated into English by the Turkish government), Art. 4.

³⁴ [Law on Foreigners and International Protection](#) (translated into English by the Turkish government), Art. 55, paragraph 1, point (1).

³⁵ [Law on Foreigners and International Protection](#) (translated into English by the Turkish government), Art. 63, paragraph 1.

³⁶ See for example Amnesty International, [The human cost of Fortress Europe: human rights violations against migrants and refugees at Europe’s borders](#), 9 July 2014, and ProAsyl, [Überleben im Transit – Zur Lage von Flüchtlingen in der Türkei](#), May 2012.

³⁷ US Department of State, Bureau of Democracy, Human Rights and Labour, [Country Reports on Human Rights Practices for 2014 – Turkey](#), June 2015.

have a no-return policy for Syrians (for which 2.2 million Syrians in the country are ample evidence).³⁸

- c. *“the applicant is in no risk of suffering serious harm according to Article 15 of P.D. 96/2008;”*

The EU (and the cited Greek Presidential Decree) define serious harm as “(a) the death penalty or execution; or (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or (c) serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict”³⁹.

Both in the EU and in Turkey, these are reasons to grant applicants international protection. Both call it “subsidiary protection”.⁴⁰ So Turkey fully complies with this requirement.

- d. *“the country prohibits the removal of an applicant to a country where he/she risks to be subject to torture and cruel, inhuman or degrading treatment or punishment, as defined in international law;”*

Turkey does so, under Art. 4 of the Law on Foreigners and International Protection.

- e. *“the possibility to apply for refugee status exists and, if the applicant is recognized as a refugee, to receive protection in accordance with the Geneva Convention,”*

In Turkey today according to the law both European and non-European asylum seekers can receive international protection. The difference in their rights concerns only access to the labour market. Secondary legislation and implementation practices may even eliminate the difference related to the labour market. What is of crucial importance now is that Turkey starts issuing decisions on asylum claims and that it adopts the necessary secondary legislation to clarify all outstanding issues.

As regards Syrian asylum seekers who will reach Greece they will be able to apply from Turkey for asylum in Germany under ESI’s Merkel Plan.⁴¹ So for them, too, the possibility to apply for and receive refugee status will exist.

- f. *“the applicant has a connection with that country, under which it would be reasonable for the applicant to move to it.”⁴²*

Many asylum seekers have spent considerable time in Turkey and the biggest group among them – Syrians – enjoy protection in Turkey.

³⁸ The Guardian, [“Rescued boat refugees held in Turkey ‘threatened with deportation to Syria’”](#), 20 September 2015.

³⁹ [Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted](#), Art. 15.

⁴⁰ See [Law on Foreigners and International Protection](#) (translated into English by the Turkish government), Art. 63.

⁴¹ See ESI policy proposal: [The Merkel Plan – Restoring control; retaining compassion – A proposal for the Syrian refugee crisis](#), 4 October 2015.

⁴² [Presidential Decree No. 113](#), Art. 20, paragraph 1.

Note that if the Greek authorities start to judge Turkey as a safe third country for individual asylum seekers, they will still have to examine “each individual case and applicant separately.”⁴³

The way forward

In conclusion, Turkey can be considered a safe third country for asylum seekers that have crossed into Greece from Turkey once DGMM starts issuing decisions and granting protection. The Turkish government should also adopt all outstanding bylaws.

One way to address this would be to have a trilateral agreement between Germany, Greece and Turkey. In this agreement, Turkey would commit to taking back migrants entering Greece from a specific date, finalising the implementation of the Law on Foreigners and International Protection and granting international protection to asylum seekers. Germany would commit to taking 500,000 Syrian refugees over the 12 months from the same date. At the same time, Germany should then ask other EU member states to top up this number.

⁴³ [Presidential Decree No. 113](#), Art. 20, paragraph 2.