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THESIS

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Detention of Minors in the United Kingdom and Turkey as an Immigration Policy: Assessing the Predictive Value of Human Rights Compliance Theory

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Abstract

The end of World War II was the beginning of an era of promises being made for the protection of human rights. Since then, the international community has established a variety of legal instruments that aim to achieve this protection. These legal instruments at the international level provide certain standards for states to fulfil, such as the right to a fair trial and prohibition of arbitrary detention. Despite the growing international human rights network including several official and non-official actors, non-compliance with international protection standards by states is still a serious challenge within the system. The ever-enlarging literature on international law compliance theories persistently seeks to find ways to overcome this problem.

Immigration detention of children, one of the human rights issues on which the international network has provided guidance to states, has been practiced by Turkish and British immigration authorities for a considerable period of time. This practice has been justified on the grounds of efficient immigration control. Nevertheless, these two countries recently took legislative steps towards compliance with international human rights standards regarding immigration detention of minors. This research investigated these processes in Turkey and the UK to find out whether there were any actors that influenced the decision to change legislation by applying a selected compliance theory that focuses on socialisation between various actors such as courts and international monitoring bodies and the state. It was clear that these two very different countries reached the same conclusions via distinct routes, in reference to different reasons and motivations. While the theory's predictive value showed only limited success in the UK's case due to its reliance on socialisation and international law, it had high explanatory power for Turkey's case. Nonetheless, it still demonstrated the importance of identifying actors capable of influencing decision-making of states to further strengthen the system of protection of human rights.

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CHAPTER 1. INTRODUCTION

CHAPTER 1.1. COMPLIANCE THEORIES

The Universal Declaration of Human Rights,[1] adopted in 1948, was the beginning of an era of promises for the protection of human rights. Since this date, the international community has established a variety of legal instruments that aim to achieve this protection.[2] Several rights stated in the Universal Declaration of Human Rights laid out a background for many international treaties.[3] In 2017, we cannot point to a state that has not ratified at least one international human rights treaty.[4] Although we have this expanding international network between states to protect human rights, we have a serious problem: non-compliance.

Compliance can be defined as 'sustained behaviour and domestic practices that conform to the international human rights norms'.[5] It is not guaranteed that ratification of a treaty will be followed by compliance.[6] Even though some international treaties have their own monitoring bodies in order to follow up states' actions in relation to the treaty requirements, they do not have the authority to enforce the obligations defined under these treaties. Thus, states are the sole decision-makers regarding their compliance. This has led many scholars to develop research in order to identify the rationale of states towards compliance.

This research brought several different compliance theories that can be grouped under rational actor, normative and recent models. In general, the difference among these models is very important to note. Whereas rational actor and normative

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[1] Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR).

[2] Emilie M Hafner-Burton, 'International Regimes for Human Rights' (2012) 15 Annual Review of Political Science 265.

[3] Some examples of these international treaties: International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR), International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR), International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969) 660 UNTS 195 (CERD) and Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) UNGA Res 34/180 (CEDAW).

[4] 'Ratification of 18 International Human Rights Treaties' (*OHCHR*) <http://indicators.ohchr.org/> accessed 4 September 2017.

[5] Thomas Risse and Stephen C Ropp, 'Introduction and Overview' in Thomas Risse and others (eds), *The Persistent Power of Human Rights* (Cambridge University Press 2013) 9.

[6] Oona A. Hathaway, 'Do Human Rights Treaties Make a Difference?' (2002) 111 The Yale Law Journal 1935; Emilie M Hafner-Burton and Kiyoteru Tsutsui, 'Human Rights in a Globalizing World: The Paradox of Empty Promises' (2005) 110 American Journal of Sociology; Hafner-Burton (n 2).

models analyse the situations regarding compliance with international law in general, recent models have shifted their focus specifically on cases of compliance with human rights' treaties. This change of focus required new techniques and perceptions for recent models. Hence, this chapter also aims to touch upon these different perceptions of recent models.

I. RATIONAL ACTOR MODELS

a. Realism

There are several different perspectives to explain states' compliance. Rational actor models such as realism, institutionalism and liberalism have their own way of examining compliance of states. These models are described as rational actor models since these theories share this assumption that states are rational self-interested actors that can calculate costs and benefits of their actions.[7]

To start with, realist theory[8] defines states as unitary actors who mainly search for power and security.[9] For this reason, international politics is a ground for anarchy where states as unitary actors seek power. Realists believe that power should be controlled in order to minimise the danger of its misuse for the exploitation of others.[10] On the other hand, realism does not believe in pacifism or power-neutral administration. Although the use of power results unavoidably in evil, this is not an excuse for actors not to exercise their power, realists believe. The reason for this is that the anarchic environment in the international system brings a real conflict or potential uncertainty that states must always be fully prepared for a potential war.[11] They describe power as the currency of the international system.[12] For this reason, power as a phenomenon should be used but controlled at the same time.

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[7] Hathaway (n 6) 1944.
[8] For a discussion of classical realism, see Jack Donnelly, *Realism and International Relations* (Cambridge University Press 2000); Hans J Morgenthau, *Politics Among Nations: The Struggle for Power and Peace* (A. A. Knopf 1948); Michael C Williams, *Realism Reconsidered* (Oxford University Press 2007); Edward Hallett Carr and Michael Cox, *The Twenty Years' Crisis, 1919-1939* (Palgrave Macmillan 2010).
[9] Joseph M Grieco, 'Anarchy and the Limits of Cooperation: A Realist Critique of the Newest Liberal Institutionalism' (1988) 42 International Organization 485.
[10] Morgenthau (n 8) xxi-xxii.
[11] Anne-Marie Slaughter, 'International Law in a World of Liberal States' (1995) 6 European Journal of International Law 503, 507.
[12] ibid.

Realism at analytic framework level excludes transnational actors such as global corporations and non-governmental organisations in terms of their influence on states.[13] For this reason, international institutions cannot play a meaningful role in this power driven and anarchic environment.[14] According to this view, the reason why states comply with international law is only that compliance is coincidentally parallel with states' self-interest.[15] For this reason, realists claim that the wording of many international legal documents such as the Charter of the United Nations[16] is mostly vague and uncertain due to the necessity of finding a common ground for national interests of various states.[17] For instance, the priority of self-interest shows itself in the Nine Power Treaty relating to Principles and Policies to be followed in Matters concerning China[18] which recognised the sovereignty and territorial integrity of China. This treaty was signed by the United States, Belgium, the British Empire, the Republic of China, France, Italy, Imperial Japan, the Netherlands, and Portugal in order to stabilise the distribution of power relating to China.[19] The contracting parties signed this treaty prioritising their self-interests, which were mainly keeping strong trade relations with China. Hence, the territorial integrity of China was the main focus of the treaty, yet the reason for ratification by states was different.

b. Liberalism

Another existing international law theory, liberalism, argues that states are composed of many different dynamics instead of being unitary actors.[20] Hence, we have to comprehend different groups such as state actors or interest groups in a state in order to reason states' actions in general. Social ideas, interests and institutions have an impact on state behaviour in the sense that they frame state preferences.[21] This is why liberalism assumes that there is a certain level of interdependency in states'

[13] ibid.
[14] Kenneth Neal Waltz, *Theory of International Politics* (McGraw-Hill 1979) 118.
[15] Morgenthau (n 8).
[16] The Charter of the United Nations (signed 26 June 1945, entered into force 24 October 1945) 1 UNTS XV1.
[17] Morgenthau (n 8) 289.
[18] Principles and Policies Concerning China (signed 6 February 1922, entered into force 5 August 1925) 44 Stat. 2113 (Nine Power Treaty).
[19] Morgenthau (n 8) 52.
[20] For a detailed discussion on liberalism, see Slaughter (n 11) 503; Andrew Moravcsik, 'Taking Preferences Seriously: A Liberal Theory of International Politics' (1997) 51 International Organization 513, 513.
[21] Moravcsik (n 20).

decisions.[22] Liberalism emphasises the interdependence between actors and different ways of putting pressure on national governments by individuals and groups. States' preferences are dependent on the representation of individual and group actors' preferences.[23] States' compliance, thus, depends on the interrelated relations between domestic actors, i.e. domestic politics is key to determining states' compliance instead of states' self-interests as is claimed by realism.[24] For this reason, states become aware of other states' domestic political processes and legislative participation in order to be able to influence states' behaviour.[25] This can be seen in the General Agreement on Tariffs and Trade[26] (GATT) negotiations. During the Uruguay Round of negotiations, some negotiators from a number of states were in close contact with US senators based in Washington in order to bring an agreement, due to US senators' influence on this process.[27]

If adapted to human rights treaties' compliance, the liberal view would claim that these treaties must influence states' action through influencing domestic interests.[28] Ratification of a treaty brings an international legal obligation that domestic interest groups can employ in order to put pressure on the governments through conformity with that specific norm.[29] Therefore, liberalism asserts that it is possible to find out why states comply instead of labelling the compliance as only coincidental.

c. Institutionalism

The third theory of existing international law literature is institutionalism. This theory sees states as rational unitary actors like realism.[30] However, different from realism, institutionalism believes that there is a potential cooperation between states. Moreover, international institutions can initiate this type of cooperation.[31] According

[22] ibid 520.
[23] Slaughter (n 11) 508.
[24] Hathaway (n 6) 1954.
[25] Slaughter (n 11) 531.
[26] General Agreement on Tariff and Trade (signed 30 October 1947, entered into force 1 January 1948) 55 UNTS 187 (GATT).
[27] Slaughter (n 11) 531.
[28] Hathaway (n 6) 1954.
[29] ibid.
[30] Robert O Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy* (Princeton University Press 1984) 25; Robert M Axelrod, *The Evolution of Cooperation* (Basic Books 2006).
[31] Andrew T Guzman, 'A Compliance-Based Theory of International Law' (2002) 90 California Law Review 1823, 1840.

to this theory, institutions facilitate the cooperation between states by restricting the power of states in the short term in order to achieve long-term goals.[32] Hereby, states decide to comply with international law 'as the result of rational self-interested behaviour on the part of states, the result of a reasoned weighing of the costs and benefits of alternative modes of action'.[33] Thereby, unlike realism, institutionalism considers that states are open to cooperation with other states in order to achieve their self-interests in the long run.

As regards human rights treaties, this model asserts that states comply with their international legal obligations as they tend to protect their reputation. Since a state's reputation has an intrinsic value with potential benefits, states do not usually tend to damage this reputation. A state that has a reputation for general compliance with its international obligations will be perceived as a cooperative state by other states.[34] This will allow binding promises to happen between cooperative states.

II. NORMATIVE MODELS

a. Legitimacy theory

Normative models believe in 'the persuasive power of legitimate legal obligations'.[35] In order to comprehend states' action fully, we should be looking at the impact and importance of the ideas as suggested by normative models. Simple calculations of interests by rational actor models cannot define the situation fully according to normative models.

Thomas Franck's theory, called legitimacy theory, believes that states follow rules as long as rules are fair.[36] To make sure that rules are fair, they should be created and implemented in the right process. This right process has four paradigms, 'states are sovereign and equal; their sovereignty can only be restricted by consent; consent binds; and states, in joining the international community, are bound by the ground rules of community'.[37] There is a strong connection between fairness and legitimacy

[32] Robert O Keohane, 'The Demand for International Regimes' in Stephen D. Krasner (ed), *International Regimes* (Cornell University Press 1983) 141.
[33] Hathaway (n 6) 1951.
[34] Guzman (n 31) 1849.
[35] Hathaway (n 6) 1955.
[36] Thomas M. Franck, *Fairness in International Law and Institutions* (Oxford University Press 1998).
[37] ibid 26.

of rules and tendency of states towards compliance, legitimacy theory claims.

According to Franck, there are four signs for rules to have legitimacy: determinacy, symbolic validation, coherence, and adherence.[38] Determinacy offers an unambiguous and transparent message within the rule for states. This principle can be seen in the hearing between Nicaragua and the United States before the International Court of Justice in the 1980s.[39] The US had accepted the compulsory jurisdiction of the International Court of Justice. However, there was a 'Connally reservation' stating that the US does not have to answer to any suit regarding matters within its domestic jurisdiction.[40] For this reason, when Nicaragua opened a lawsuit against the US after the mining of Nicaragua's harbours, the US attorneys were not able to use the Connally reservation and had to accept ICJ's jurisdiction in this matter. The determinacy of the term domestic was vital in the failure of the US attorneys in this litigation.

Symbolic validation, on the other hand, suggests the existence of an authority in the sense that there is a community that should follow these rules. The United Nations' flag and emblem on peacekeeping forces is a relevant example of symbolic validation as this has provided a certain level of protection for peacekeeping forces on hostile territories like the Golan Heights. Coherence, on the other hand, means that the rule is applicable to similar cases and all rules are interrelated to each other uniformly. The Most Favoured Nation[41] principle within the GATT brings a consistency to this treaty by banning states from giving benefits to only some states.

Adherence, lastly, brings a bond between a single primary rule and a pyramid of secondary rules that manage the creation and implementation of such rules within the community. The Vienna Convention on Treaties[42] is an illustration of this point. This treaty brings the obligation of honouring treaty commitments. However, if this was the only source of *pacta sunt servanda's*[43] legitimacy, then this would allow a state, which is not the member state of this treaty, to disregard all the treaty

[38] ibid 31-42.
[39] ibid 32.
[40] The Resolution and Declaration filed expressly exclude: 'Disputes with regards to matters which are essentially within the domestic jurisdiction of the United States as determined by the United States.'
[41] GATT (n 26) art 1.
[42] Vienna Convention on the Law of Treaties (signed 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331.
[43] *Pacta sunt servanda* is a basic principle of international law meaning 'agreements must be kept'.

obligations by which it is bound. In practice, states still obey their treaty obligations whether or not they ratify the Vienna Convention. They honour their treaty commitments due to their membership of a community in which the sacredness of treaty obligations is a value. Legitimacy theory assumes that this tie would bring a better rate of compliance as the procedural and institutional framework supports rules. Overall, the presence of these four factors results in a push on states towards compliance.

b. Constructivism

Constructivism's fundamental approach is that state behaviour is shaped by beliefs, norms and identities.[44] States' identities are not a given, as realism and liberalism postulate, instead they are created through the actors' interactions. The ideas and discourses in society can have an impact on interests and identities of states. Alexander Wendt, as one of the main constructivists, refutes the neo-realist theory's presentation of anarchy as an inherent part of the international environment.[45] Instead, Wendt believes that anarchy is how states' view it. States' interaction with different states depends on the collective meanings between those two actors instead of describing such interactions as anarchy.[46] He cites as an example the difference in Canada and Cuba's perceptions of U.S. military power in spite of their similar structural positions. This derives from the understandings and expectations that establish their ideas of themselves and others. He believes that if the Soviet Union and the United States decided to be friends instead of enemies, the Cold War would be over instead of anarchy prevailing.[47]

According to Wendt, interaction between two states would require several different dynamics rather than a linear action. The first element in this interaction would be inter-subjective expectations and understandings of the states towards each other. This would be complemented by the process of the interaction itself, including the incentive for interaction, their definition of the situation, action and interpretation of this action. Hence, the international environment is shaped and reshaped constantly through these transactions.

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[44] Stephen M. Walt, 'International Relations: One World, Many Theories' (1998) 110 Foreign Policy 29, 38.
[45] Alexander Wendt, 'Anarchy is What States Make of it: The Social Construction of Power Politics' (1992) 46 International Organization 391, 394.
[46] ibid 398.
[47] ibid 397.

Recently, Martha Finnemore built her approach on constructivist theory in relation to international politics and established a ground for emphasising the international structure of meaning and value instead of power.[48] She argues that we need to look at the international structure of which a state is a part, in order to understand what states prefer. States are tangled in transnational and international networks that shape their perceptions and preferences.

Her contribution to the literature was the focus on the role of international organisations in this social structure. She presents international organisations as bureaucracies in a sense that they are fundamental actors that have autonomy and power.[49] International organisations can use material coercion and information to have an impact on states. For instance, the International Monetary Fund (IMF) can push states to adopt some policies through their financial resources.[50] They also manipulate information in order to influence more powerful states that cannot be influenced by material interests. She gives the example that a cease-fire certified by UN peacekeepers would be more secure as there is a risk of being caught if the ceasefire is broken.

c. Managerial Model

This model, brought by Chayes and Chayes, presumes that states tend to comply with their international treaty obligations instead of depending on effective threats to put pressure on states.[51] According to this theory, there are three distinct considerations that bring this presumption: efficiency, interests and norms. States spend their resources and time on the matters that are important to them. For this reason, if a state spends its resources and time, it must have an interest in this issue in order to be efficient. However, interests cannot be only limited to state's interests as states are composed of different actors and so different interests. This makes the negotiation process long and complicated. For instance, the UN Environment Program organised the first conference on stratospheric ozone in 1977 and the Vienna Convention on the

[48] Martha Finnemore, *National Interests in International Society* (Cornell University Press 2017) 10.
[49] Michael N Barnett and Martha Finnemore, *Rules for the World* (Cornell University Press 2004) 3.
[50] ibid 6.
[51] Abram Chayes and Antonia H Chayes, *The New Sovereignty* (Harvard University Press 1996) 3-6.

Protection of the Ozone Layer[52] was not adopted until 1985.[53] This lengthy process was due to the difficulty of finding a common ground for every related group in the negotiation process.

Chayes and Chayes claim that as long as state is looking for efficiency and is interested in the same norms as an international treaty enshrines, the state has an intention to comply with the treaty obligations. It states that actors comply with the norms since there is an obligation to obey legal norms even there is no threat for punishment. However, they also believe that during the negotiation and treaty-making process, states devote their time and resources not only to limiting their own commitment but also to ensuring other states' non-compliance more difficult.[54] Therefore, this is two-folded process.

Against this assumption of the tendency to comply with international treaty obligations, there are still cases of non-compliance in practice. This model asserts that non-compliance happens where there is a lack of capacity on the state side; vague treaty language and a transitional period for social and economic changes required for compliance. For this reason, 'managed compliance' is suggested to prevent the occurrences of these cases.

First of all, cases of lack of state capacity to comply can be easily managed by providing technical and financial assistance to these specific states. The most notable case of this solution is the Montreal Protocol.[55] Four years after the adoption of the Montreal Protocol, it was found out that only half the member states complied with the treaty requirement of reporting their annual chlorofluorocarbon consumption.[56] In order to investigate this low level of compliance, the Ad Hoc Group of Experts on Reporting was established. The results of the investigation illustrated that most of the non-complying states were not capable of reporting without any technical assistance from the treaty organisation. In the end, this non-compliance issue was solved by providing the necessary technical and financial assistance to the developing countries.

[52] Vienna Convention on the Protection of the Ozone Layer (signed 22 March 1985, entered into force 22 September 1988) 1513 UNTS 323.
[53] Chayes and Chayes (n 51) 182.
[54] ibid 187.
[55] The Montreal Protocol on Substances that Deplete the Ozone Layer (agreed on 16 September 1987, entered into force 1 January 1989) 1522 UNTS 1988.
[56] Chayes and Chayes (n 51) 194.

The ambiguity of treaty language, as the second 'cause' of non-compliance, can be solved with an improvement of dispute settlement mechanisms. The case between Japan and the US on the GATT exemplifies this point.[57] The GATT bans any member states from imposing quotas on imports.[58] When Japanese exports of steel reached high levels and resulted in heated reaction from domestic producers in the United States, US trade lawyers proposed the voluntary restraint agreement in which Japanese exporters agreed to limit their steel sales to the US instead of facing a strict quota. Hence, US lawyers found an indirect way to manage this issue that could have led to non-compliance by the US.

The last suggested reason for non-compliance is the temporal dimension of social and economic changes required by the treaty. This model suggests transparency as the potential management strategy to manipulate member states towards compliance with treaty agreements.[59] For instance, the Vienna Convention on the Protection of the Ozone Layer[60] brought one general obligation for member states to cooperate in research, exchange information and adopt domestic policies in line with the protection of the ozone layer 'in accordance with the means at their disposal and their capabilities'.[61] Two years later, scientific findings showed the damaging effect of CFCs on the ozone layer, and the Montreal Protocol negotiations supported a 50 per cent reduction from 1986 by 2000. In June 1990, the member states agreed to reach the target by the target date. Hence, transparency in treaty obligations and giving enough time for temporal changes required by a treaty can prevent non-compliance by states.

Overall, the managerial model brought the concept of managed compliance

[57] ibid 191.
[58] GATT (n 26) art 1.
[59] Chayes and Chayes (n 51) 195-196.
[60] Vienna Convention on the Protection of the Ozone Layer (n 52).
[61] To this end the Parties shall, in accordance with the means at their disposal and their capabilities:
Co-operate by means of systematic observations, research and information exchange in order to better understand and assess the effects of human activities on the ozone layer and the effects on human health and the environment from modification of the ozone layer;
Adopt appropriate legislative or administrative measures and co-operate in harmonizing appropriate policies to control, limit, reduce or prevent human activities under their jurisdiction or control should it be found that these activities have or are likely to have adverse effects resulting from modification or likely modification of the ozone layer;
Co-operate in the formulation of agreed measures, procedures and standards for the implementation of this Convention, with a view to the adoption of protocols and annexes;
Co-operate with competent international bodies to implement effectively this Convention and protocols to which they are party.

and so suggested that there are possible ways of avoiding non-compliance by member states. As a whole, these actions listed above will help to persuade non-complying countries to comply with international law.

d. Transnational Legal Model

The most recent normative theory was Harold Koh's theory of transnational legal process.[62] This is described as 'the complex process of institutional interaction whereby global norms are not just debated and interpreted, but ultimately internalized by domestic legal systems.'[63] This internalisation process has three defined phases. The first phase will be the *interaction* provoked by one or more transnational actors to another. This interaction will bring an *interpretation* of the specific norm. Thereby, the moving party pursues other party's internalisation of the new interpretation of that norm. This type of transaction brings a legal rule that can be applied to the future interactions between transnational actors. Future interactions will bring further internalisation of the norms.

A clear example of this is the reinterpretation of the Anti-Ballistic Missile Treaty. The ABM Treaty[64] was signed in 1972 between the US and Soviet Union that banned space-based systems for territorial defence. In 1983, the US proposed the Strategic Defense Initiative (SDI) that provided for a space-based anti-ballistic missile system for territorial defence. Furthermore, the US suggested reinterpreting the ABM treaty to allow SDI without the Soviet Union and Senate's consent. This caused an eight-year discussion and this proposal was revoked in the end. To Koh, transnational legal process can explain this process.[65] Transnational actors and several non-governmental organisations formed an 'epistemic community' to mobilise different elite constituencies and triggered interactions with the US Government. They questioned the proposal for a reinterpretation in public and private settings and managed to use the narrow interpretation in legislative texts. Finally, the executive branch also had to internalise this narrow interpretation into their policy.

[62] Harold Hongju Koh, 'Why Do Nations Obey International Law?' (1997) 106 The Yale Law Journal 2599.
[63] ibid 2602.
[64] Treaty on the Limitation of Anti-Ballistic Missile Systems (signed 26 May 1972, entered into force 3 October 1972) 944 UNTS 13 (ABM Treaty).
[65] Koh (n 62) 2648.

The application of this theory into the human rights regime and international arena is straightforward according to Koh. He argues that the increasing number of actors within this interaction and interpretation process can help to promote compliance of states with human rights treaties. Intergovernmental and nongovernmental organisations' participation in this process will bring further internalisation of international norms by states. Overall, like all other normative models mentioned above, Koh's transnational legal process theory depends on voluntary obedience instead of coercion.

III. RECENT COMPLIANCE MODELS

So far, rational actor and normative models explained compliance cases with regards to international law. They based their argument on the principle of reciprocity between participating states at international law level. However, there is a lack of reciprocity between states in human rights treaties. When states sign and ratify a human rights treaty, this does not bring any responsibilities towards other states. Therefore, the approaches adopted by rational actor and normative models find it challenging to explain state behaviour with regard to human rights treaties. Recent models have emerged out of recognition of this key difference, and have focused their approach towards solely human rights treaties.

a. Spiral Model

Risse, Ropp and Sikkink's theory of compliance is called the 'spiral model'.[66] The spiral model established five distinct phases during socialisation processes: repression, denial, tactical concessions, prescriptive status and rule-consistent behaviour.

Repression is the phase where the leaders of states suppress the society. During this phase, domestic advocacy groups are repressed and powerless. Denial as the second phase occurs if transnational groups can gather adequate information on human rights violations in order to facilitate the advocacy process at an international level and inform international society. In this process, states generally deny human rights violations and refuse to recognise the validity of international human rights

[66] Thomas Risse and others, *The Persistent Power of Human Rights* (Cambridge University Press 2013) 6-8.

norms. However, this model argued that denial process is valuable in the sense that there is an emerging conversation between international institutions and states. Following this stage, tactical concessions is the process whereby states take steps towards compliance in order to scale down the pressure coming from international human rights community. Tactical concessions can be signing up to international treaties or showing tolerance to mass demonstrations. During this stage, domestic advocacy groups improve their networking at domestic and international level and adopt human rights as domestic discourse. Therefore, this model indicated that this process results in further empowerment of domestic advocacy groups and assisting their rapid mobilisation. In the fourth phase, states accept the validity of international human rights norms and tend to make amendments in domestic law under the continuous mobilisation of the advocacy network at international level. Human rights norms become a part of state and bureaucratic discourse. After this phase, rule-consistent behaviour occurs, which was defined as *behavioural change and sustained compliance with international human rights*.[67] Thus, this model stated that compliance with international human rights norms arises as a result of local pro-change groups' success in influencing international support, which leads a victory over domestic opponents. In this scenario, international institutions and domestic pro-compliance groups use each other's work in order to pressure states towards compliance.[68]

There are several states looked at through the lens of the spiral model by different scholars. For instance, China as an example is worth mentioning. The scholars claimed that China is now in phase three of the spiral model: tactical concessions.[69] After the Tiananmen massacre[70] in 1989, China started participating actively in the international human rights community in order to lessen the negative publicity at international level. It passed a series of governmental white papers on human rights and two human rights action plans. It also files reports to treaty bodies and faced a public review in 2009 regarding human rights issues in China under the

[67] ibid 7.
[68] Xinyuan Dai, 'The "Compliance Gap" and the Efficacy of International Human Rights Institutions' in Thomas Risse and others (eds), *The Persistent Power of Human Rights* (Cambridge University Press 2013) 95-96.
[69] Katrin Kinzelbach, 'Resisting the Power of Human Rights' Thomas Risse and others (eds), *The Persistent Power of Human Rights* (Cambridge University Press 2013) 168.
[70] The democratic protest, started mostly by students in China, resulted in the killing of several hundred civilians by the Chinese army in Beijing's Tiananmen Square.

Human Rights Council's mandate. It is significant that it started giving tactical concessions and taking positive steps. Although there is no firm evidence that China is moving towards to the fourth phase of spiral model, some scholars believe that China is taking steps towards the fourth phase.

b. Material Inducement, Persuasion and Acculturation

Ryan Goodman and Derek Jinks, in their book, suggest that a model-based theory is necessary in order to capture the process by which international law influences states to promote human rights. [71] It suggests that there is a socialisation mechanism among states, international organisations, institutions and non-governmental organisations. The theory can be used to analyse the change in state behaviour in the case of a substantial interaction between a state and a relevant actor. Also, international law should be the fundamental element of this interaction in the sense that the relevant actor refers to international law to convince state to comply. They recognised three separate mechanisms as the drivers of state behaviour: material inducement, persuasion and acculturation. While putting special emphasis on acculturation as a distinct mechanism, they did not necessarily prioritise acculturation or present it as the most ideal mechanism. Nevertheless, their aim is to improve the understanding of these three mechanisms in general in order to improve the theory of international law's impact.

Material inducement is the process whereby the introduction of material costs and material benefits influence state behaviour.[72] Therefore, states and institutions can force states to comply with the standards of human rights through material rewards and punishments. The material interest of states is the main push towards compliance in this mechanism. Material inducement concentrates mostly on military or economic sanctions as the principal machinery to change state behaviour. [73] Accordingly, criticism brought by international monitoring bodies and domestic actors does not have a meaningful weight on state behaviour since it does not engage with any type of material sanctions. Although they might cause some sort of reputational damage, they would lack monetary sanctions, which is important for the material inducement

[71] Ryan Goodman and Derek Jinks, *Socializing States: Promoting Human Rights Through International Law* (Oxford University Press 2013).
[72] ibid 22.
[73] ibid 125.

approach. For instance, when the United States adopts the principle of not providing foreign assistance to states that 'are engaging in a consistent pattern of gross violations of internationally recognised human rights'[74] under its Foreign Assistance Act, the US openly employed material inducement to change other states' behaviour by changing the cost-benefit calculations of those states.[75] This change normally occurs through an involuntary acceptance rather than a voluntary one.

The second mechanism recognised by Goodman and Jinks is persuasion. Psychologists and sociologists describe persuasion as a social influence mechanism. They suggested that behaviour of a state could be changed through social learning and other forms of information exchange between actors. This is defined as the process 'whereby target actors are convinced of the truth, validity, or appropriateness of a norm, belief, or practice'.[76] In this scenario, states actively evaluate the content of a particular norm and change their opinions about this norm depending on the compatibility of that norm with their current beliefs.

This could happen through framing or cuing. With regards to framing, states can more likely be persuaded if the issue is reframed in order to associate it with their current norms. Three elements play a crucial role in this process: centrality, experiential commensurability and narrative fidelity. Centrality means how essential the beliefs or norms related to the message are to the target state. Experiential commensurability regards to the extent to which the message is related to the life and experiences of the target state. Narrative fidelity is about the extent to which the message relates to fundamental ideologies already embraced in the target states' social context. These three elements can determine whether the target state will be persuaded or not. Secondly, cuing is the other micro process to persuade the target actors. States can be persuaded through cuing in order to think harder about the advantages of that specific norm or message. When actors are introduced to new information, they are more likely to think, reflect and argue that information. Psychological empirical studies have shown that actors often tend to change their beliefs when they are exposed to new information.

[74] Foreign Assistance Act 1961, s 116.
[75] Goodman and Jinks (n 71) 23.
[76] ibid 125.

At the end of the persuasion process, states that are already persuaded internalise these new norms and practices. They, thus, adjust their interests and identities according to these new norms. For the persuasion mechanism, managerialism theory, suggested by Kal Raustiala and Anne-Marie Slaughter, is the means for promotion of objectives.[77] Managerialism theory asserted that states could change their behaviour 'by systematically engaging governments in discussion about controversial practices and (2) by fostering structural opportunities for transnational networks to engage governments (or other relevant audiences)'.[78] According to this view, monitoring mechanisms such as periodic state reports can have a valuable impact on state behaviour as it encourages persuasion and increases the engagement of states.

The final social influence mechanism on state behaviour is acculturation. Based on social psychological studies, Goodman and Jinks brought a set of related social processes together to define acculturation. Acculturation assumes that actors are induced to embrace the behavioural practices around them and this happens through pressures to conform by other actors. With regards to state behaviour, they proposed that states adopt behavioural norms of the surrounding culture without the influence of material benefits and punishments or through persuasion.[79] Unlike persuasion, acculturation relies on the relationship of the target actor to a reference group or a wider cultural environment.[80] The reference group's views play a very important role in the way the target actor would act.

Instead, acculturation occurs through cognitive and social pressures. Firstly, actors are generally compelled to conform, according to cognitive studies. Therefore, cognitive pressure comes from the inner self in two ways: a) social-psychological costs of nonconformity and b) social-psychological benefits of conformity. For instance, when people experience cognitive dissonance, defined as the discomfort due to holding two or more inconsistent cognitions, their reaction will be the basic human need to rationalise their actions to themselves and others. Empirical studies on this

[77] Kal Raustiala and Anne-Marie Slaughter, 'International Law, International Relations and Compliance' in Walter Carlsnaes and others (eds), *Handbook of International Relations* (Sage Publication 2002).
[78] Goodman and Jinks (n 71) 127.
[79] ibid 26.
[80] ibid 27.

topic illustrated that actors feel discomfort 'whenever they confront cognitions about some aspect of their behaviour inconsistent with their self-conception'.[81] They tend to change their behaviour or rationalise their past behaviour in order to lessen this discomfort. Hence, acculturation occurs through internal pressures rather than external ones.

Secondly, acculturation can also happen through social pressures by a group. They could be grouped under two elements: a) the employment of social-psychological costs through shaming or shunning and b) the presentation of social-psychological benefits through public approval. Social-psychological studies reveal that actors tend to change their behaviour in order to conform to the group's norms when faced social pressure from a group. The reputational damage that might be caused by the non-compliance with the group is very important in the decision to comply. Interestingly, actors follow these behavioural attitudes and patterns of the group even if the group is certainly wrong as this external pressure is about public compliance with social norms instead of personal acceptance. In the cases of acculturation happening through external pressures, it is more likely to end with public compliance but not necessarily private acceptance of the norm that is imposed by the reference group.

With regards to state behaviour, acculturation suggests that states change their behaviour in order to achieve cognitive/social comfort or terminate cognitive/social discomfort. Consequently, international regimes and domestic actors can push states to comply with international law through establishing models of legitimate state practice and engaging with citizenry and states through forums that apply these standards. Goodman and Jinks, in this study, based their argument at the empirical level on studies done by other scholars. For instance, the study by Bearce and Bondanella reveal that the voting behaviour in the United Nations General Assembly of pairs of states who participate in same intergovernmental (IGO) membership tend to show some convergence in time through social pressures.[82] Although this cannot be fully related to the socialisation between states, this must take a significant part in this convergence.

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[81] ibid.

[82] David H Bearce and Stacy Bondanella, 'Intergovernmental Organizations, Socialization, and Member-State Interest Convergence' (2007) 61 International Organization 703.

Another example of this type of convergence was seen in the arena of women's rights. According to one study, after universal suffrage became a well-founded principle that is linked to the modern nation-state, the number of states adopting women's suffrage rose dramatically.[83] Moreover, this study also reveals that when women's suffrage as a norm was institutionalised, states are more likely to follow their neighbouring states' adoption pattern. Another study on women's rights demonstrated that almost all American states formed women's councils that put domestic violence against women as a priority in a short amount of time.[84] These states also organised educational campaigns to fight against this issue and criminalised domestic violence. When the obligation to address domestic violence was institutionalised, states followed this pattern regardless of the different levels of political and economic power women have in different states. These examples can demonstrate that social and cognitive pressures can influence state behaviour on human rights issues.

CONCLUSION

Goodman and Jinks explanation of three distinct mechanisms provides valuable findings about the compliance of states. Given the findings of different compliance theories, Goodman and Jinks' approach is deployed in this thesis to apply to the chosen case studies. As their work on acculturation depends mostly on sociological and social psychological approaches[85], it is very distinct from rational actor and normative models. Goodman and Jinks discussed that acculturation can effectively encourage compliance more than material inducement and persuasion. However, they did not conduct empirical research on how acculturation can be seen in the real world. Hence, this thesis will look into all these three separate mechanisms instead of only acculturation. This theory of social mechanisms, as explained above, is very detailed and has broader capacity in terms of reasoning to understand state compliance. As a theory, it seeks to cover different mechanisms such as material, cognitive and social pressures on states. This gives the thesis the opportunity to improve the understanding

[83] Francisco O Ramirez and others, 'The Changing Logic of Political Citizenship: Cross-National Acquisition of Women's Suffrage Rights, 1890 to 1990' (1997) 62 American Sociological Review 735.
[84] Darren Hawkins and Melissa Humes, 'Human Rights and Domestic Violence' (2002) 117 Political Science Quarterly 231.
[85] Elizabeth S Bates, 'Sophisticated Constructivism in Human Rights Compliance Theory' (2014) 25 European Journal of International Law 1169.

of how exactly these factors can promote compliance.

Compared to rational actor models mentioned above, this theory does not solely depend on calculations of costs and benefits. There are more insights into state compliance rather than sole focus on rewards or punishments. Hence, this theory would give the opportunity to have a better and deeper understanding of compliance compared to rational actor models. On the other hand, normative models explain state compliance with a set of assumptions. This can be seen as a main limitation of normative models. The shared assumption of voluntary obedience of states by normative models can be quite hard to apply to the reality in modern world. Additionally, as mentioned before, Goodman and Jinks' theory as a recent compliance model can explain state behaviour towards human rights treaties. In contrast with the spiral model, this theory gives a more flexible approach to understand state behaviour instead of one strict model that has certain phases.

Even though a very broad and detailed theory has been picked for this research, it is still very challenging to have a whole understanding on compliance. The compliance process is rarely a straightforward process for states. It can involve different actors such as domestic advocacy groups or international monitoring bodies and different dynamics such as political costs or international reputation. Therefore, it is impossible to have conclusive findings on why states comply and reveal a direct causal link between developments in states' historical records of compliance. This is the main limitation of this research. Even though we have the empirical evidence and examples presented by Goodman and Jinks, every state's record will be different from each other. The compliance process will be still a multi-dynamic process with several distinct actors involved.

CHAPTER 1.2. CASE STUDIES

After establishing the first step of the general methodology framework with compliance theories in the previous chapter, it is important to address the main elements of case study research and data collection methods for this research. The selected case studies of this thesis are Turkey and the UK. The critical objective of this case study is to figure out the dynamics that led the compliance with international human rights standards for detention of minors on immigration grounds in Turkey and the UK. A case study can have several different definitions and ways of use and selection as a method. This subchapter will describe case study as a method and the appropriate data collection methods in relation to the reasons of choosing this as a method for this specific research.

a. What is a case study?

Many different theorists have defined case study research in distinct ways.[86] A case study can be used for qualitative studies or ethnographic, clinical or participant-observation field research. Furthermore, it might refer to a work of process-tracing, which will be defined later on, or a work that analyses the features of a single case. Last but not least, case study can be a type of research that explores a single phenomenon or sample. For our purposes here, a case study can be defined as a study that investigates the research questions while bringing different kinds of evidence.[87] It is an empirical and qualitative study that 'explores a phenomenon in depth and within its real context'.[88]

Case studies can be used in research where the researcher is looking for a broad and thorough description of a phenomenon.[89] This phenomenon can be a broad term or a historical event such as nation state or revolution. If a study seeks to show a decision or a set of decisions made by the involved actors and how and why those decisions are made, a case study will be a helpful option as a method.[90] Furthermore, case study research provides a space for the researcher to employ a wide range of

[86] John Gerring, 'What is a Case Study and What is it Good for?' (2004) 98 American Political Science Review 341, 342.
[87] Bill Gillham, *Case Study Research Methods* (Continuum 2000) 1.
[88] Robert K Yin, *Case Study Research* (Sage Publication 2014) 16.
[89] ibid 4.
[90] ibid 15.

different sources of data to answer the research questions.[91] This secures better evidence in terms of research findings during the reporting stage of the research.

b. Design and Case Selection

As stated previously, a case study, for our purposes here, can be defined as a method for investigation that focuses on a phenomenon in its real context. While doing this, this research employed a compliance theory of Ryan Goodman and Derek Jinks for the reasons explained in the previous part. There are three consecutive steps for designing and implementing a theory-oriented case study.[92] The first phase is where a researcher maps the objectives, design and structure of the research. The following phase is the part in which the researcher carries out each case study in line with the design. In the third phase, the researcher analyses the findings of the case studies and evaluates these findings in the light of the research objectives. These stages are complementary and the researcher is in the position to link them when necessary. Among these phases, it is necessary to elaborate on the first one as the rest is self-explanatory.

The design phase as the first phase mentioned above can be explained with five tasks. The first task is defining the problem and the research objective.[93] The problem should be a part of a carefully-made assessment that indicates the gaps in the current literature and justifies the need for this research. Regarding research objectives, George and Bennett explain six different types of theory-building research objectives: atheoretical/configurative idiographic case studies; disciplined configurative case studies; heuristic case studies; theory-testing case studies; plausibility probes; and 'building block'. For our purposes here, theory-testing case studies need further explanation since it suits this particular research. A theory-testing case study evaluates the validity and capacity of single or competing theories. This research, as firstly defined as a case study, has similarities with the theory-testing case study although this study chooses to apply the theory to see whether there is any applicability instead of testing to refute or promote the theory. This research employs Ryan Goodman and Derek Jinks' theory in two case studies in order to assess the

[91] Robert G Burgess, 'Cross-Cultural Case Study: Some issues and problems in cross-cultural case study research' (2015) 6 Emerald Insight 45 <https://doi.org/10.1016/S1042-3192(00)80020-8> accessed 29 June 2017.
[92] Alexander L George and Andrew Bennett, *Case Studies and Theory Development in the Social Sciences* (MIT Press 2007) 73.
[93] ibid 74.

applicability of this specific theory on states' compliance. This is significant in the sense that application of this theory may provide a way to map a pattern of the behaviour of two countries, Turkey and the UK, on the way to compliance with international human rights standards specific to immigration. Having a behavioural pattern for these two cases fills the gap in the current state of knowledge on this particular topic. Furthermore, to be able to demonstrate why Turkey and the UK complied with international human rights standards on detention of children for immigration purposes brings further information of these states' motivations during decision-making processes. This knowledge can be useful in the context of promoting further compliance needed in Turkey or the UK.

The second task under the first phase is developing a research strategy such as defining the variables.[94] George and Bennett note that there are certain questions to be answered in consideration of formulating the variables of a research. Questions are mostly about the dependent and independent variables of the research. For this specific research, the outcome that Turkey and the UK complied with international human rights standards regarding detention of minors for immigration purposes is the dependent variable while the independent variable is the dynamics behind the compliance decision. These factors can be listed under two categories: domestic and international. Domestic dynamics behind the compliance process might be pressure from civil society or national organisations, public opinion, discussions in Parliament or domestic case law. On the other hand, international dynamics could include pressure from the international human rights community, critiques from international monitoring reports or cases before international courts. The independent variables listed were intended to be inclusive. They were chosen after a thorough literature research and interviews with the selected officials. These different independent variables are central to this research in a sense that they help make sense of the dependent variable. They revealed the triggers behind the change in state behaviour in Turkey and the UK. Furthermore, they brought a detailed analysis on which factors weigh more than others in terms of influencing Turkey and the UK.

The third task within the first phase is case selection for the study.[95] Selecting cases for this particular study needed a well-informed assessment and clear vision. The potential contribution to the literature is to analyse these countries' compliance

[94] ibid 79.
[95] ibid 83.

experience in terms of the different dynamics involved. A further output of this research, as mentioned above, could be mapping a behavioural pattern for compliance in these two cases. Moreover, both countries recently showed compliance on detention of minors at policy and legislation level. Being two different countries and having two different profiles in terms of their human rights reputation and history produce different independent variables, which is important for theory application.

In addition to George and Bennett's theory of case selection, there are other several theories for case selection that could be suitable in this research. For instance, Gerring comes up with nine distinct case study types: typical; diverse; extreme; deviant; influential; crucial; path-way; most-similar; and most different.[96] The most different case study needs elaboration for the purposes of our case selection. This type of case study means that the selected cases are similar on the key factor of interest (one independent variable) and the outcome (the dependent variable) while they are different on all other factors.[97]

To elaborate on this point, in our case selection, Turkey and the UK are two very different countries in terms of human rights records and human rights commitment. For instance, Turkey and the UK can be positioned at two different sides of the human rights compliance spectrum. The UK was a founding member of the Council of Europe[98] and played an important role in the drafting of the European Convention on Human Rights and was among the first to ratify the Convention.[99] Furthermore, the UK Parliament passed the Human Rights Act in 1998 in order to incorporate the European Convention into its domestic law. Accordingly, the compliance record of the UK at European Court of Human Rights' judgments showed high rates of compliance at 71 per cent.[100] It was shown that the UK has an ideal record in implementing the judgments of the European Court of Human Rights.[101] The judgments of the European Court normally lead to changes in domestic legislation and practice. Hence, it can be said that the UK showed a clear commitment

[96] John Gerring, *Case Study Research* (Cambridge University Press 2007) 89.
[97] ibid 139-141.
[98] 'United Kingdom' (*COE*) <http://www.coe.int/en/web/portal/united-kingdom> accessed 10 September 2017.
[99] Alice Donald, Jane Gordon and Philip Leach, 'The UK and the European Court of Human Rights' (2012) 83 Equality and Human Rights Commission 8,9 <https://www.equalityhumanrights.com/sites/default/files/83._european_court_of_human_rights.pdf> accessed 29 June 2017.
[100] Courtney Hillebrecht, *Domestic Politics and International Human Rights Tribunals* (Cambridge University Press 2014) 48 Table 3.1.
[101] Donald, Gordon and Leach (n 99) 152.

to respect human rights so far.[102] On the other hand, Turkey's reputation in terms of respect towards human rights is different than the UK's. In the last fifty years, two military interventions occurred in Turkey with several human rights violations and ethnic conflict between Kurdish groups and Turkish army has existed for the last thirty years.[103] Freedom of speech and freedom of press are among the basic human rights and freedoms that are under restraint in Turkey. Turkey's membership application to European Union was made in 1999, and Turkey's membership chances are still doubtful. This long-term candidacy can be ascribed to many different reasons but Turkey's commitment towards human rights is certainly one of them as can be seen in Turkey's European Union progress reports.[104] Turkey's compliance record at the European Court of Human Rights, also, is around 49 per cent.[105]

Even though there are structural differences between Turkey and the UK, they are similar on the key factor of interest (practice of detention of minors for immigration purposes) and the outcome (compliance with international human rights standards of detention of minors for immigration purposes). To elaborate on this, the UK and Turkey practiced detention of minors for immigration purposes for a lengthy amount of time as will be explained in the respective chapters on Turkey and the UK's historical record on compliance.[106] Their policies and legislation supported this practice in the meantime. For that reason, this can be seen as the key factor of interest. On the other hand, the outcome of compliance with international human rights standards on immigration detention of minors is a recent development in these selected countries. This recent development showed us that Turkey and the UK revised their legislation in order to bring compliance with international human rights standards.[107] Overall, the selected theory can apply to these two countries for different reasons and at different levels. Being two different states yet producing same results

[102] This positive record of the UK can be challenged with the high publicity cases such as voting rights of prisoners. However, the bigger picture of compliance reveals that these cases can be seen as exceptions when looking at the overall record of implementing judgments into domestic legislation.
[103] To read further on Turkey's history during this specific era, see Erik J. Zurcher, *Turkey: A Modern History* (3rd edn, IBTauris 2004) pt III.
[104] To read further on this, see Turkey's progress reports since 1998 to date.
[105] Hillebrecht (n 100).
[106] To read further on immigration detention in Turkey, see Chapter 3. Turkey's Historical Record in Relation to Compliance with International Standards, for the UK's immigration detention practice see Chapter 4. The UK's Historical Record in Relation to Compliance with International Standards.
[107] To read further on this legislation change, see Chapter 3. Turkey's Historical Record in Relation to Compliance with International Standards and Chapter 4. The UK's Historical Record in Relation to Compliance with International Standards.

in terms of compliance makes the research a challenging and interesting process in terms of its findings.

The fourth task is describing the variance in variables.[108] This task is important in the sense that describing the variance decides on the capability of the case studies in terms of assessment of existing theories. The way of describing the variance in variables is essential to achieve the research objectives since identification of causal relationships might depend on the way of variance is decided. For this particular research, variance can be found and described in one of the independent variables. As mentioned before, the dynamics behind the compliance decision of Turkey and the UK is the main independent variable. After thorough research on this area, these dynamics can be identified in the following ways: domestic and international dynamics. As explained before, domestic dynamics behind the compliance process can be pressure from civil society or national organisations, public opinion, discussions in Parliaments or domestic cases. On the other hand, international dynamics can include pressure from the international human rights community, critiques from international monitoring reports or cases before international courts. By framing the independent variable in different types, there is the potential to recognise the effectiveness and validity of these factors that led states to compliance.

The last task in the first design phase is the formulation of data requirements.[109] Building the data requirements should be linked to the other four design tasks as it gives the structure to the study in general. For our purposes here, the data requirements were determined by the theoretical framework as there will be literature research on the independent variable and interviews with people who were directly involved in the potential processes that influenced Turkey and the UK's compliance with international human rights standards. These data collection methods will be explained below in more detail.

c. Carrying out a Theory-Oriented Case Study

A case study can have three different implications in terms of theories.[110] Theory-testing in a case study usually aims to reinforce or weaken a theory; limit or broaden the range of a theory; or decide whether this theory can explain a case or

[108] George and Bennett (n 92) 84-86.
[109] ibid 86-87.
[110] ibid 109.

general phenomenon. Here, a case study on Turkey and the UK using Ryan Goodman and Derek Jinks' theory seeks to find out whether this theory can explain the reasons behind Turkey and the UK's compliance with international human rights standards on detention of minors for immigration purposes. This should not be confused with refuting this theory as this theory might be capable of explaining different phenomenon thoroughly. On the other hand, this research is not aiming to claim this theory's success over all similar cases or phenomenon since overgeneralisation is risky. Having a claim like this can cause problems as it is a claim on cases that are not studied yet. Therefore, this research focuses its aim on deciding whether this theory can explain this phenomenon in the chosen case studies.

Theory-testing has its own challenges in the implementation of a case study. It is a testing process when theories suggest complex causal relations such as the influence of interaction between actors. The selected theory for this particular research theorises this type of causal relation, such as dynamics that can change state behaviour within an interaction. In order to overcome this challenge, this case study added process-tracing techniques into theory testing.

d. What is Process Tracing?

Process tracing provided by George and McKeown is a technique that can be used in case studies that explain a phenomenon or a historical event.[111] For our purposes here, this technique helps us to explain why compliance with international human rights standards on detention of minors for immigration purposes has happened in Turkey and the UK. It is a suitable way to approach theory-testing case studies where multiple interaction effects are involved.[112] Multiple interaction effects can be clarified as a situation where several different actors interact with each other and this interaction has an influence on this historical event. In this research, there are many distinct actors at domestic and international level that had an impact on the compliance decision of Turkey and the UK. For that reason, process tracing is valuable to reveal these interaction effects. While doing this, process tracing also does produce several distinct observations within a case as this provides adaptability to the

[111] Alexander L George and Tim McKeown, 'Case Studies and Theories of Organizational Decision Making' in Robert Coulam and Richard Smith (eds), *Advances in Information Processing in Organizations* (JAI Press 1985) 21-58.
[112] Peter A Hall, 'Aligning Ontology and Methodology In Comparative Politics', *Comparative Historical Analysis in the Social Sciences* (Cambridge University Press 2003) 398.

research in general. Instead of presenting only one observation for a case, several different observations bring flexibility to the argument.

There are different types of process tracing: detailed narrative; use of hypotheses and generalisations; analytical explanation; and more general explanation.[113] Detailed narrative as the basic model of process tracing comes up with a form of chronicle that tells a detailed story. This type is generally not suitable to use with theory-testing case studies as the narrative is very specific. The second variety of process tracing uses hypotheses and generalisations in a way that some details of the narrative are related to specific causal hypotheses without using any theoretical variables for this aim. Third type, analytical explanation, changes a historical narrative into a causal explanation in an analytical manner. This type of explanation can be selective as the researcher deliberately focuses on more significant parts of the narrative. The last type of process tracing chooses a general explanation instead of a detailed narrative. This type often is being used in research that does not pay particular attention to the individual decision-making process.

Overall, the third variety of process tracing, analytical explanation, is the most fitting method for this particular research as this research seeks to spot the dynamics behind the compliance decision by approaching the narrative in an analytical manner. Since the selected compliance theory provides well-established and specific predictions regarding the reasons for change in state behaviour, this research's process-tracing method evaluates these predictions of the theory. In this way, the research decides whether there is a match between the observed processes and the predictions of the selected theory.[114] However, like all other research methods, process tracing has its own limitations. For instance, if the theory is vague on variables or the data for process tracing is not accessible, process tracing can only provide tentative conclusions instead of definite conclusions.[115] However, the selected compliance theory for this specific research delivers detailed arguments and hypotheses as explained in the previous chapter in depth. Therefore, this limitation is overcome with the selected theory's characteristics. Also, the data for process tracing is accessible as the materials in relation to the compliance process are transparent and easily accessible to anyone.

[113] George and Bennett (n 92) 210-12.
[114] ibid 217.
[115] ibid 222.

e. Data Collection Methods

Data collection is a significant and essential part of a case study, as it is for all kinds of research. Evidence is primary in this research rather than theory as this research primarily aims to find out the reasons behind the decision of compliance instead of testing a theory.[116] There are different types of evidence for a case study: documents, records, interviews, detached observation, participant observation and physical artefacts.[117] Documents can be regulations, policy papers, regulations or any kind of evidence that provide a formal background to a case study. Records are mostly statistics of some phenomenon related to the case study concerned. Interviews are one of the main methods used in qualitative research in order to gather information from people who are involved in a related process or development. Detached observation, on the other hand, is totally different from interviews. It is an observation made from outside in a careful and particular way. This method is often used in quantitative research. Participant observation is another method of observation where the researcher is involved in the process and it is generally used in qualitative studies. Lastly, physical artefact is a device, tool or instrument that is used as evidence in a study. Detached observation and physical artefacts are not used in this specific case study since they are not suitable for qualitative studies. Participant observation is also not suitable as it requires the researcher's involvement in the process whereas this study investigates a phenomenon which has already occurred in the past. For this research in particular, documents, records and interviews are employed in order to feed process-tracing method. In order to have an accurate case study, it is essential to have multiple sources of evidence.[118]

Documents, as stated above, are policy papers, circulars, legislation, international monitoring reports, domestic and international cases and archival records such as parliamentary or committee discussions. This presents very detailed background information for what happened in the context of policy and law making for detention of minors in the UK and Turkey. This can be defined as a silent witness to show concerns and priorities which arose during this process in the UK and Turkey. In particular, archival records are seen as a sort of purposeful communication. The meaning and the evidential value of a speech or a discussion are assessed through

[116] Gillham (n 87) 34.
[117] ibid 20.
[118] Robert K Yin, *Applications of Case Study Research* (Sage Publication 2012) 10.

archival record.[119] Secondly, records that are used in this research are statistics of asylum, new detention centres and minors detained for immigration purposes. This data is the quantitative side of the case study. This shows the scale of the issue in terms level of migration and detention in these countries. This contribution is an important source to prove the importance of this issue in terms of human rights.

Last but not least, interviews with selected participants who were involved in the policy and law making on detention of minors for immigration law enforcement are one of the main methods to collect data regarding the legal developments in the UK and Turkey. Interviews are one of the main methods used in qualitative research in order to gather information from participants about their experiences, views and opinions.[120] This is a vocal side of the case study as the actors such as members of Parliament, representatives of non-governmental organisations and civil servants talk about their approach to the issue and legal developments regarding detention of minors. Interviewing distinct actors from different backgrounds reveals different parts of the puzzle as each of them has different priorities and agendas in this process. For instance, a Member of Parliament and a civil servant have different recollections on the law-making process because a Member of Parliament's agenda is filled with different topics and his or her daily work is not directly affected by the changes in the new legislation or policy whereas a civil servant's daily work is directly influenced by the changes brought by the new policy. Furthermore, as this case study works on two different countries, the different nature of law-making in these two countries is taken into consideration. For this reason, different levels of officials are interviewed in Turkey and the UK.

Interviews are chosen as data collection methods for the case studies where the sample is small, accessible and key for theory testing and research findings.[121] In addition to being a most suitable tool for conducting a qualitative research, interviews are also chosen as a method in view of the fact that the compliance experienced in Turkey and the UK is quite recent. Therefore, people involved in this process are still at work and accessible. Their insight to this process gives a different perspective to the research. However, they only play a complementary role to the objective evidence as interviews can be subjective.

[119] George and Bennett (n 92) 99.
[120] David A De Vaus, *Surveys in Social Research* (Routledge 2014) 6.
[121] Gillham (n 87) 62.

The structure of the interviews are semi-structured that allows the interviews to be more flexible and guided by the needs of the research. Semi-structured interviews allow a flexible way of conversation around the points which require clarification or elaboration whereas surveys are strictly limited to a list of predetermined questions.[122] The key issues for the research are determined and placed in the interview questions (Appendix 1) implicitly. The advantage of semi-structured interviews is that they allow the interviewee to reveal how they structure their own reality and perception in particular situations.[123] This input can provide significant insight to the case study. However, there are also challenging aspects of conducting semi-structured interviews. Interviews can be seen as subjective and personal story-telling. They can still provide us a better understanding of the developments in Turkey and the UK. As mentioned before, due to multiple interaction effects between actors, interviews are valuable in the sense that they give us a deeper insight into the factors which influenced the compliance process in Turkey and the UK. Another limitation is that interviews can be time-consuming.[124] Face to face interviews with the participants can take a longer time than expected. For this reason, the number of the participants should be kept small. For this particular research, the number of interviews is limited to ten as maximum. The limited numbers of interviews reduce the complexity of using interviews in terms of time management.

Within the literature on compliance theories, official history, legal developments, public statements of officials, confidential memos and interviews with the selected officials are employed in order to find out about the influential factors in the historical records on compliance.[125] Confidential memos and interviews are usually used in some states such as China and the United States in order to reveal more insights about the process.[126] For these reasons, interviews with selected participants involved in this process are valuable for this particular research. Furthermore, while understanding Turkey's case through the lens of the compliance theory, interviews are central as there are not enough academic sources on Turkey's compliance with human rights standards for detention of minors.

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[122] Gerard Guthrie, *Basic Research Methods* (Sage Publication 2010) 127.
[123] Yin, *Applications of Case Study Research* (n 118) 12.
[124] Steinar Kvale, *Doing Interviews* (Sage Publication 2013) 56.
[125] Risse and others (n 66) 151-152 and 171.
[126] Kathryn Sikkink, 'The United States and Torture: Does the Spiral Model Work?' in Thomas Risse and others (eds), *The Persistent Power of Human Rights* (Cambridge University Press 2013); Kinzelbach (n 69).

f. Ethics

As stated before, interviews are one of the main methods for data collection for this research. Using this method brings moral and ethical issues due to required human interaction in an interview. These issues can be explained at seven different research stages.[127] In *thematising* stage, the researcher should perceive the aim of this interview as not only scientific value it would bring to the research but also improvement of the concerned human situation. Therefore, interview should be selected as a data collection method if there is an improvement of the human situation concerned. During the *designing* stage, receiving the participants' informed consent to be a part of the study, ensuring confidentiality and analysing the risk assessment of the research should be taken into consideration regarding ethical issues of the research. Informed consent as an essential principle requires informing the participants regarding the aim of the research, potential risks and benefits, and the key characteristics of the design itself.[128] Furthermore, this principle also entails the voluntary participation of the interviewees and informing them about their right to withdraw at any time. This principle with different elements in it requires a written consent form in order to provide protection for the subject and the researcher. This form can guarantee to provide necessary information to the participants such as their confidentiality, who has access to their statements, and the amount of information from the interview the researcher can use.

Further on, *conducting interview* requires particular attention to the stress level of the interview or changes in self-awareness in terms of ethical issues. After conducting an interview, ethical issues should be still present in a researcher's mind. In *transcription* phase, the confidentiality principle needs to be taken into account as well as ensuring the transcribed text is in line with the participant's statement. The *analysis* stage also involves some ethical issues such as the level of involvement of the participant in interpreting his/her statements. During the *verification* stage, the researcher should ensure that the knowledge reported should be verified and protected. *Reporting*, as the last stage of the research, involves the principle of confidentiality of the participants since the research becomes accessible to public after reporting. It is indisputable that ethical issues are involved throughout every stage of the research. Overall, ethics and moral issues are an integral part of a research from

[127] Kvale (n 124) 24.
[128] ibid 27.

beginning until the publication of the research. Hence, the consent forms (Appendix 2) with participant information sheets (Appendix 3) for the interviewees are written in line with these abovementioned principles. During and after the interviews, these principles, again, were part of the thought process. The interviewees were informed of the transcription of their interviews and asked for any editing requests.

g. Strengths and Limitations of Case Studies

Like every research method, case study has its own strengths and limitations. It can be stated that it has advantages on four distinct parts: conceptual validity; deriving new hypotheses; exploring causal mechanisms; modelling and assessing complex causal relations.[129]

Firstly, high levels of conceptual validity can be achieved with case studies. It helps a researcher to describe and measure indicators that are generally very challenging to measure such as democracy or power. In order to measure these variables, it is necessary to implement some contextual work within the study. Case studies allow this kind of contextual work unlike statistical research methods. This contextual work is important for this particular research as the main focus, reasoning behind the compliance process, can be challenging to measure. In addition to this, case study allows a researcher to derive new hypotheses and variables while the research is still on-going. Since case study often involves interviews with key participants, this type of human interaction can potentially bring new variables and so new hypotheses. Furthermore, case studies are successful at exploring causal mechanisms. Unlike statistical methods, case studies allow the involvement of intervening and contextual variables throughout the study. This allows a researcher to have a better understanding of a phenomenon especially for historical developments like the particular focus of this research. Since historical developments require a more in-depth investigation on different variables, as this particular research aims to do, and case study is an appropriate method for these types of studies. Lastly, case studies can easily model and evaluate complex causal relations. Although they would need a considerable process-tracing evidence for this evaluation, case studies are still better at this than statistical methods where multiple interaction effects can be studied but very daunting to interpret. For this reason, case study combined with the process-

[129] George and Bennett (n 92) 19-23.

tracing evidence was suitable for this research as multiple interaction effects are more likely to be the main focus within this research.

There are two different types of case studies in terms of the numbers of cases involved. Multiple case studies have their own advantages compared to single case studies.[130] While multiple case studies can provide more robust evidence on a particular historical development or a phenomenon, single case studies' evidence are more limited in a sense that it is harder to generalise or apply to different cases. Furthermore, case studies often are seen as exploratory research methods instead of confirmatory.[131] This exploratory nature of a case study changes when it involves more than one case in a study. Therefore, multiple case designs allow the researcher to come up with a more confirmatory analysis at the end due to the number of cases being more than one. Having two case studies in this particular research increases the likelihood of producing more confirmatory and robust evidence at the end.

Beyond these advantages of a case study, it also has its own limitations to take into consideration. Case studies often do not rely on a sole method for investigation. They employ several different types of investigation methods such as interviews, archival records and so on. This makes case study a challenging and time-consuming research method. On the other hand, multiple sources of evidence make the study's findings more reliable and valid. In addition to this, if designed as a multi-case research, as mentioned before, it requires a large amount of time and resources while providing better evidence and bringing a confirmatory nature. Therefore, being time consuming should be seen as the trade-off of a case study.

CONCLUSION

Case study as one of the established research methods is widely used in qualitative studies. It is a reliable tool in the case of analysing a phenomenon or an event. It provides robust and confirmatory findings where there are multiple interaction effects. Although it has its limitations like every other research design, it is essential to find ways to overcome these limitations and challenges if the design is suited to the research objectives.

This research aims to identify the dynamics that could influence the decision to comply with the international human rights standards on detention of minors. This

[130] Yin, *Case Study Research* (n 86) 57.
[131] Gerring, 'What is a Case Study and What is it Good for?' (n 86) 349-350.

requires a contextual work on historical developments in these case studies. Multiple-effect interaction is involved as several different international and domestic dynamics need to be analysed to produce findings. Archival records combined with semi-structured interviews provide the necessary in-depth information.

CHAPTER 2. DETENTION OF CHILDREN IN THE IMMIGRATION CONTEXT: INTERNATIONAL HUMAN RIGHTS STANDARDS

States have legitimate interests in securing their borders and exercising immigration controls. International law recognises the notion of state sovereignty on this issue. Although there are domestic law and policies regarding the migration controls for each state, they are still obliged to observe international law standards to the extent they bound themselves. Being a party of those international conventions brings obligations that the States Parties need to follow. The international legal obligations by which Turkey and the UK are bound by ratification in terms of the treatment of immigrants with no right to enter or overstaying without any valid visa will be explained in detail in this chapter.

I. IMMIGRATION DETENTION

There are international human rights standards that specify the basis of immigration detention. To start with, Article 5 (1) of European Convention on Human Rights (ECHR) brings protection for the right to liberty and security of person.[132] The European Court of Human Rights (ECtHR) in its jurisprudence mentions this Article together with Articles 2, 3 and 4 as in the first rank of the fundamental rights for the physical security of a person.[133] Its key aim is to provide guarantees to prevent arbitrary deprivations of liberty.[134] Under this Article, Article 5 (1.f) permits detention

[132] Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR), art 5(1): 'Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
(a) the lawful detention of a person after conviction by a competent court;
(b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.'
[133] *McKay v UK* (2007) 44 EHRR 41, para 30.
[134] ibid and also see *Ilaşcu and Others v Moldova and Russia* (2005) 40 EHRR 46, para 461.

on the grounds of unauthorised entry and if there is an action taken against a person towards deportation or extradition. Hence, ECHR set the basis for immigration detention while preventing arbitrary detention.

As the implementing body of ECHR, the ECtHR[135] has been seeking answers to complex cases regarding immigration detention. There were cases in which the duration of immigration detention was the main question before the ECtHR. In the *Chahal*[136] case, for instance, the applicant was a Sikh separatist leader who was under detention for six years in the UK with a view to deportation on national security grounds. He, as an Indian national, was a lawful resident in the UK. Allegations against him were in relation to his participation in political violence in the UK and India. The ECtHR considered the lawfulness of detention:

> Article 5 para. 1 (f) does not demand that the detention of a person against whom action is being taken with a view to deportation be reasonably considered necessary, for example to prevent his committing an offence or fleeing; in this respect Article 5 para. 1 (f) provides a different level of protection from Article 5 para. 1 (c). Indeed, all that is required under this provision (art. 5-1-f) is that 'action is being taken with a view to deportation'.[137]

The ECtHR clearly expressed that the justification for a decision to detain can be only a deportation order without any further necessary reasons. However, the judgment, further, carried on one very important condition that any detention under Article 5 (1.f.) can be justified. Deportation proceedings must be in progress and dealt with due diligence by the authorities.[138] When this was considered, the ECtHR stated:

> As the Court has observed in the context of Article 3 (art. 3), Mr Chahal's case involves considerations of an extremely serious and weighty nature. …
>
> Against this background, and bearing in mind what was at stake for the applicant and the interest that he had in his claims being thoroughly examined

[135] 'European Court of Human Rights: Questions & Answers' (*ECHR*) <http://www.echr.coe.int/Documents/Questions_Answers_ENG.pdf> accessed 5 September 2017.
[136] *Chahal v UK* (1997) 23 EHRR 413.
[137] ibid para 112.
[138] ibid para 113.

> by the courts, none of the periods complained of can be regarded as excessive, taken either individually or in combination. [139]

Hence, there was no violation of Article 5 (1.f.) in relation to domestic procedures' due diligence. The ECtHR took a position towards immigration detention which confirmed that states have a wide discretion in their decision to detain as long as there is a deportation order and proceedings are on the way.

Another important case before the ECtHR was *Saadi*[140] case. The applicant who is a doctor fled the Kurdish Autonomous Region of Iraq after facilitating the escape of three fellow members of the Iraqi Workers' Communist Party. After his arrival at Heathrow airport, he claimed asylum immediately. Due to a lack of places at the Oakington Reception Centre, he was granted temporary admission three times. After the third time, he was detained and held at Oakington for seven days on fast track asylum process.[141] Here, the ECtHR sought to answer an immigration detention case where the decision to detain was only taken due to administrative reasons. This judgment, firstly, interpreted the meaning of 'to prevent his affecting an unauthorised entry into the country'. In its judgment, the Court stated:

> …until a State has 'authorised' entry to the country, any entry is 'unauthorised' and the detention of a person who wishes to effect entry and who needs but does not yet have authorisation to do so can be, without any distortion of language, to 'prevent his effecting an unauthorised entry'. [142]

The ECtHR claimed that an interpretation of 'unauthorised entry' as only involving those trying to evade entry restrictions would be too narrow so that the power of States to exercise their sovereign right to control their borders would be unduly restricted.[143] The ECtHR supports its interpretation by reference to Conclusion no. 44 of the Executive Committee of the United Nations High Commissioner for Refugees' Programme; UNHCR's guidelines and the Committee of Ministers' Recommendation which permits detention of asylum seekers on certain similar grounds such as

[139] ibid para 117.
[140] *Saadi v UK* (2008) 47 EHRR 17.
[141] ibid para 10-15.
[142] ibid para 65.
[143] ibid.

conducting identity checks[144]. It is clear that the ECtHR sees this as a necessary complement to the right to liberty so that States are permitted to detain would-be immigrants whether the application to permission to enter was made by asylum or not.[145] Therefore, the ECtHR rejected the necessity test within cases regarding unauthorised entry like it had in deportation cases.

The ECtHR, secondly, discussed the arbitrariness of this type of detention in detail. The judgment first listed the criteria to avoid arbitrary detention: acting in good faith; the purposeful connection to the aim; and the place, conditions and duration of detention. Taking these criteria into consideration, the ECtHR decided that this detention couldn't be branded as arbitrary while the detention centre was adapted to asylum seekers, duration of detention was only 7 days and the decision to detain was taken in a good faith and to serve a purpose. The ECtHR concluded:

> …given the difficult administrative problems with which the United Kingdom was confronted during the period in question, with increasingly high numbers of asylum-seekers (see also Amuur, cited above, § 41), it was not incompatible with Article 5 § 1 (f) of the Convention to detain the applicant for seven days in suitable conditions to enable his claim to asylum to be processed speedily.[146]

It is clear that states have wide discretion over their decision to detain for immigration law enforcement. These judgments, which did not challenge these practices, can give concerned states a stronger ground to continue with their current practice of detaining for immigration purposes.

Another international standard which pertains to general terms of the right to liberty is contained in the International Covenant on Civil and Political Rights[147]. This Covenant is a basis for protection of human rights around the world and has been ratified by a majority of states.[148] Article 9 of this Covenant states:

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[144] ibid.
[145] ibid para 64.
[146] ibid para 80.
[147] International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).
[148] This Covenant currently has 169 member states.

> Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

Under this Covenant's mandate, the Human Rights Committee [149] is established under Article 28 of the Covenant. This body has four different types of monitoring role.[150] It receives and evaluates the monitoring reports submitted by States Parties. It, secondly, forms general comments in order to give further guidance to States Parties on the Covenant's provisions. The Human Rights Committee's third task is to receive and examine individual complaints made by nationals of States Parties that sign the Optional Protocol.[151] It can produce non-binding 'opinions' with regards to individual complaints. Finally, the Human Rights Committee can consider inter-state complaints regarding the violations of the Covenant.

The Human Rights Committee's approach towards immigration detention can be examined through its opinions while seeking answers to individual complaints. The first one was *V.M.R.B. v Canada*[152] in 1988. An El-Salvador national entered Canada illegally and was detained for two months during his deportation hearings on the basis of danger to the public and high risk of absconding. The Human Rights Committee's decision:

> With regard to article 9, the Committee points out that this article prohibits unlawful arrest and detention, whereas the author was lawfully arrested in connection with his unauthorized entry into Canada, and the decision to detain him was not made arbitrarily, especially in view of his insistence not to leave the territory of Canada. [153]

In 1997, another immigration detention case was brought to the Human Rights Committee. The complainant was a Cambodian national who arrived in Australia by

[149] The Human Rights Committee is composed of independent experts, their task is to observe the implementation of the International Covenant on Civil and Political Rights by its States Parties.
[150] 'Civil and Political Rights: The Human Rights Committee' (*OHCHR*) <http://www.ohchr.org/Documents/Publications/FactSheet15rev.1en.pdf > accessed 4 July 2017.
[151] The Optional Protocol has 115 States Parties as of February 2016.
[152] *V.M.R.B. v Canada* (1988) Communication No. 236/1987, U.N. Doc. Supp. No. 40 (A/43/40) 258.
[153] ibid para 6.3.

boat and claimed asylum after entry in 1989.[154] His asylum application was rejected in 1990 and his appeal to this decision was also rejected in 1992. He was detained for approximately four years and challenged the lawfulness of his detention. The Human Rights Committee sought to answer whether the State party's justification for this detention such as unauthorised entry and risk of absconding were adequate for indefinite and lengthy detention. In relation to this, the Human Rights Committee's first note on this is very important:

> …the Committee recalls that the notion of 'arbitrariness' must not be equated with 'against the law' but be interpreted more broadly to include such elements as inappropriateness and injustice. Furthermore, remand in custody could be considered arbitrary if it is not necessary in all the circumstances of the case, for example to prevent flight or interference with evidence: the element of proportionality becomes relevant in this context. [155]

Hence, detainees should be released from detention at the point when the State could not provide proper justification. The Human Rights Committee elaborated:

> For example, the fact of illegal entry may indicate a need for investigation and there may be other factors particular to the individual, such as the likelihood of absconding and lack of cooperation, which may justify detention for a period. Without such factors detention may be considered arbitrary, even if entry was illegal.[156]

Thus, it stated that unauthorised entry couldn't be presented as the sole justification for immigration detention. Drawing upon this statement, the Human Rights Committee concluded that the State party did not provide any further justification for detention that took four years at different detention centres. Hence, there was a breach of Article 9.1.

Another case, again against Australia, was before the Human Rights Committee in 2002.[157] C, an Iranian national, entered Australia with a visitor's visa

[154] *A. v Australia* (1997) 6 Selected Decisions of the Human Rights Committee 89.
[155] ibid para 9.3.
[156] ibid para 9.4.
[157] *C. v Australia* (2002) 8 Selected Decisions of the Human Rights Committee 141.

but no return ticket. He was detained pending his removal. He made an asylum application on the basis of fear of persecution in Iran since he was an Assyrian Christian. He was in detention for two years. During this detention, his mental health was deteriorated. Drawing upon *A.* case mentioned above, the Human Rights Committee looked for further justification by the State party in order to continue detaining the complainant. Due to the complainant's mental health condition, the Human Rights Committee stated:

> the State party has not demonstrated that, in the light of the author's particular circumstances, there were not less invasive means of achieving the same ends, that is to say, compliance with the State party's immigration policies, by, for example, the imposition of reporting obligations, sureties or other conditions which would take account of the author's deteriorating condition.[158]

Therefore, C.'s detention was arbitrary due to long duration of detention without any further justification and judicial review. This case was important in the sense that it highlights detention can only be arbitrary as long as the State party is unable to advance its justifications.

The Human Rights Committee's position towards immigration detention is significant in the way that it brought the proportionality element into the discussion. Although the Human Rights Committee only delivers non-binding opinions in these complaints, these opinions are seen to be the most effective for the Human Rights Committee's role in developing achieving human rights jurisprudence.[159] Combined with the ECtHR's position, there has been a wide discretion for adult immigration detention for state authorities.

In terms of soft law, the United Nations (UN) Special Rapporteur on the Human Rights of Migrants[160] discusses the situation on migrants in general and the migrant children in his regional study report to the General Assembly.[161] This report is a result of the regional visits taken from June 2012 to April 2013. During these

[158] ibid para 8.2.
[159] Andrew T Guzman and Timothy L Meyer, 'International Soft Law' (2010) 2 Journal of Legal Analysis 171, 211.
[160] François Crépeau was appointed United Nations Special Rapporteur on the Human Rights of Migrants in 2011.
[161] UN Human Rights Council, 'Report of the Special Rapporteur on the human rights of migrants' (2013) UN Doc A/HRC/23/46.

regional visits, he visited detention centres in different States Parties and had meetings with representatives from European Union (EU) institutions and States Parties. In his report, he recommends states to refrain from the criminalisation of language, practice and policies towards the migrants and to avoid using the term 'illegal migrant/migration'.[162] Regarding detention on immigration purposes, he recommends that states promote viable alternatives to detention, and not insist on further entrenching detention as a migration control mechanism.[163] He states that detention should always be a measure of last resort; and most importantly, children should never be detained. Although his report is not legally binding for states, these recommendations have still strong character in terms of soft law.

The Working Group on Arbitrary Detention[164] within the United Nations mandate has published regular reports concerning detention standards. Its mandate has been extended to asylum seekers and immigrants in 1997 due to the concerns over immigration detention. In its report in 2009, the Working Group reminded states that detention should be the last resort, and is permissible only for the shortest period of time concerning detention of immigrants in an irregular situation.[165] Alternatives to detention must be sought whenever possible. The Working Group states that grounds for detention must be clearly and exhaustively defined and the legality of detention must be open for challenge before a court and regular review within fixed time limits.[166] The Working Group also warns states against criminalising immigrants in an irregular situation and looking at the case of the irregular migrants only through lenses of national security.

II. IMMIGRATION DETENTION OF CHILDREN

While immigration detention for adults is not directly challenged by international law, there are more specific standards for children under immigration detention. Due to their unique situation, children are granted higher standards and more protection by international law concerning any type of treatment in general.

[162] ibid para 89.
[163] ibid para 92.
[164] The Working Group on Arbitrary Detention was established by resolution 1991/42 of the former Commission on Human Rights. Its mandate was clarified and extended by Commission's resolution 1997/50. The mandate was extended for a further three-year period by resolution 15/18 of 30 September 2010.
[165] UN Human Rights Council, 'Report of the Working Group on Arbitrary Detention' (16 February 2009) UN Doc A/HRC/10/21.
[166] ibid para 67.

To start with, the International Convention on the Rights of the Child[167] (CRC) should be the primary source in order to understand states' obligations under international law regarding children. CRC is signed and ratified by most of the states in the world. The UK and Turkey, which are the case studies of this research, are among those states.[168] According to CRC, the definition of 'child' is every human being below the age of eighteen years.[169] Relying on its nature, CRC establishes and ensures that the best interests of the child should be applied all the time as a core principle.[170] This principle should be taken into consideration by authorities during decisions and implementation of regulations and policies that are related to children. The meaning of this principle is that states need to apply this principle during the establishment of policies and legislation in relation to immigration control. The principle of 'the best interests of the child' does not define explicitly what the best is and what it is not. This decision on what the best is for the child is left to the States Parties. However, the presence of this principle still brings a need for a justification by the States Parties in order to explain why they consider that regulation as the best for the child.

Besides this principle being applicable in general, CRC does not particularly ban detention of children under the principle of the best interests of the child if detention is in conformity with domestic law of the States Parties. Therefore, detention is seen as a legitimate claim in international law unless it is arbitrary or unlawful. Whereas there is no clear ban on detention of children, there are some clear-cut principles regarding potential detention of children. CRC explicitly sets out in Article 37.b:

> No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.

[167] International Convention on the Rights of the Child (signed 20 November 1989, entered into force 2 September 1990) 1577 UNTS 1 (CRC).
[168] United Kingdom of Great Britain and Northern Ireland, date of signature 19 April 1990, date of ratification 16 December 1991; Turkey, date of signature 14 September 1990, date of ratification 4 April 1995.
[169] CRC (n 167) art 1.
[170] ibid art 3.1 defines: 'In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.'

With this Article, CRC sets some general constraints on detention of children. A measure of last resort and the shortest appropriate period of time could be named as those constraints in this Article. The first limitation, concerning detention as being the last resort, put States Parties in the position that they need to justify the use of detention in terms of showing previous measures attempted before making a detention decision. In addition to this, duration of detention should be the shortest appropriate period of time, in order to prevent detention of children for long-term or indefinite time. However, appropriateness is a subjective word that gives States Parties a certain amount of flexibility since the definition of the appropriateness has not been made explicit in the CRC. This leaves the possible length of detention under shadow. This article would have been stronger on the issue of detention if there were an exact time limit for detention.

In addition to these standards, the ECtHR's jurisprudence on detention of minors recently pointed out that there should be certain standards in terms of conditions and duration of detention. In one of these recent cases[171], the applicants were a mother and her daughter. At that time, the first applicant was in Canada with refugee status. During the second applicant's travel to Europe from Congo, the authorities detained the second applicant in the Transit Centre and let the first applicant know about her daughter's situation. Directions were made for her removal on the ground of lack of necessary documents. She had been detained for nearly two months in a closed centre that was designed for adults. The ECtHR decided that there was a violation of Article 3[172] for the second applicant due to the conditions of the detention. However, the ECtHR also decided that there was a breach of Article 3 in respect of the first applicant since the stress and anxiety that the daughter's detention caused for the mother was severe. Referring to the absolute nature of Article 3, the ECtHR pointed out that this takes precedence over deliberations relating to a minor's immigration status. With this judgment, the ECtHR made clear that States Parties have to provide effective protection to everyone regardless of their immigration status due to the absolute nature of Article 3 while they are within States' borders. Concerning Article 5.1, the ECtHR stated that since the minor was detained at a

[171] *Mubilanzila Mayeka and Kaniki Mitunga v Belgium* (2008) 46 EHRR 23.
[172] ECHR (n 132) art 3: 'No one shall be subjected to torture or to inhuman or degrading treatment or punishment.'

facility not suitable for minors without being accompanied by her mother, her right to liberty had not been adequately protected. Hence, there was a breach of Article 5.1.

The following case is about a mother and four children detained at a Transit Centre with a view to their being handed over to Polish authorities.[173] The applicants claimed there was a violation of Article 3 during their administrative detention at the Transit Centre. In respect of the children, the ECtHR considered their ages in terms of understanding their surroundings during the detention. They were respectively aged seven months, three and a half years, five and seven years at the relevant time. The ECtHR stated that at least two of them were old enough to understand the conditions in which they were held. The closed transit centre was defined as a facility ill-equipped to have children. The ECtHR also took the doctors' assessment regarding the children's mental state into account. The psychological examination of the applicants showed serious psychological and psychosomatic symptoms. Finally, the ECtHR considered the duration of detention, the doctors' assessment and their ages in the decision and found that there had been a breach of Article 3 in respect of the children. Regarding Article 5.1, drawing upon the *Mubilanzila* case that explained above, the ECtHR stated that there was no reason to decide differently on this case regardless of the situation that mother accompanied her children at detention centre. Since the four children were held in a closed centre designed for adults, the ECtHR found that there had been a violation of Article 5.1. This case law demonstrated that conditions and length of detention play a significant role in terms of breach of the ECHR. Although the ECtHR did not set a time limit for detention of minors, it considered that time in detention should be fairly short for children.

The Human Rights Committee's approach towards detention of minors, however, did not differentiate from its approach towards immigration detention in general. The Human Rights Committee had the chance to examine a case regarding immigration detention including minors. In the case of *D and E, and their two children v. Australia*[174], an Iranian family with two children were detained after their unauthorised entry to Australia by boat. Their asylum application was subsequently rejected and they were detained for over three years. The complainants challenged the

[173] *Muskhadzhiyeva and Others v Belgium* App no 41442/07 (ECtHR, 19 January 2010).
[174] *D. and E., and their two children v Australia* (2006) Communication No. 1050/2002, UN Doc CCPR/C/87/D/1050/2002.

authorities' decision to detain their children under Article 24[175] of the Covenant. Nevertheless, the Human Rights Committee noted the effort of the authorities to provide detained children proper education and recreational programs outside the facility and found this claim inadmissible. In relation to Article 9, even though the Court found that this detention was arbitrary, there was no specific reference to children. The reasoning of the Human Rights Committee for the decision of breach carried the same features as the cases previously mentioned. The State Party could not justify this lengthy detention according to the Human Rights Committee. However, there was no special consideration as a consequence of this case including the detention of minors.

Beyond hard law, General Comments by the Committee on the Rights of the Child have brought up more detailed issues and clarifications on children's rights and especially migrant children's rights. General Comments are the documents that clarify the rights stated by the human rights conventions. Since the context in the international field is constantly changing, the conventions should be read from different perspectives from time to time and the missing parts should be filled in. After the formulation of the Conventions, new human rights issues can arise in certain countries. Rather than having a new convention on this new issue, General Comments could address them if these issues are related to the rights in one of the Conventions. Although they are not like treaties that need to be signed and ratified, they still have their legal authority. This is why it is important to analyse General Comments in order to understand the extensive implications of the rights mentioned in the Convention.

These General Comments mostly define the conditions, facilities and services that a detention centre should have in the case of holding children. For instance, General Comment 5 obliges States Parties to develop capacity building and training programs for the people who work with or for the children. [176] The Committee on the Rights of the Child mentioned the people who work with the children at institutions

[175] ICCPR (n 147) art 24.1: 'Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.'
[176] UN Committee on the Rights of the Child 'General Comment No. 5 (2003) on the general measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para 6)' (27 September 2003) UN Doc CRC/GC/2003/5.

and detention centres or in peacekeeping forces. States Parties are responsible for the organisation of these sorts of training in order to promote children's rights.

Further on, General Comment 6[177] is a response to the increasing numbers of children who are in vulnerable situations, such as being unaccompanied and separated from their families. This General Comment is an important step forward for the rights of unaccompanied, separated, asylum-seeking or irregular migrant children. It clearly explicates the obligations of the States Parties towards not only children who are citizens but also children who are attempting to enter the country.[178] The rights mentioned in the CRC and committed to by the States Parties upon ratification should be available to all children including refugee and migrant children irrespective of their nationality, immigration status and statelessness.[179] Furthermore, this General Comment articulates detention such that detention cannot be justified on the grounds of being unaccompanied or separated, or on children's migratory or residence status, or lack thereof.[180]

In relation to conditions and facilities, General Comments recommended that living quarters should be separated from adults and suitable for children.[181] According to these General Comments, the fundamental approach should be care rather than detention. Services such as community resources, medical treatment, psychological counselling and legal aid should be made available to children.[182] They should be able to make regular contact with their relatives, friends and guardians. They still have the right to education that takes place preferably outside of detention centres. The right of children to recreation and play should be still secured by the authorities as mentioned

[177] UN Committee on the Rights of the Child 'General Comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin'(1 September 2005) UN Doc CRC/GC/2005/6.
[178] ibid para 12.
[179] ibid.
[180] ibid para 61.
[181] ibid para 63.
[182] ibid and UN Committee on the Rights of the Child 'General Comment No. 7 (2006) on implementing child rights in early childhood' (20 September 2006) UN Doc CRC/C/GC/7/Rev1 para 24.

in the Article 31 of the Convention.[183] The best interests principle should be in practice in all decisions in relation to children in detention.[184]

CONCLUSION

There are certain set standards such as non-arbitrariness or lawfulness regarding immigration in general. In relation to children, there are more detailed standards such as the best interests principle or certain levels of care adapted for children's needs at detention centres. In addition to this, the ECtHR's position has been non-interventionist even though some cases forced the Court to answer complicated issues involving lengthy detention or detention for administrative purposes. Regarding detention of minors, the ECtHR set standards concerning conditions of detention centres and duration of detention. Although the standards were not clear-cut, they still limited the wide discretion of states to a certain extent. The Human Rights Committee, on the other hand, analysed the cases through proportionality and further justifications. However, its approach has not changed when children were involved.

With the increasing use of detention powers by states on the basis of sovereignty and effective border controls, international law has evolved accordingly. International law, with the help of case law, reports and General Comments has been seeking to find a balance for this practice between sovereignty and human rights. There has been a trend of a demand for a more restrictive approach to detention of minors.[185] However, the picture drawn in this chapter regarding international human rights standards of detention of minors reveals that there are certain expected standards on decision to detain such as the principle of last resort, conditions as being

[183] CRC (n 176) and UN Committee on the Rights of the Child 'General Comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art. 31)' (17 April 2013) UN Doc CRC/C/GC/17 para 51.
[184] UN Committee on the Rights of the Child 'General Comment No. 12 (2009) on the right of the child to be heard' (20 July 2009) UN Doc CRC/C/GC/12 paras 30 and 54.
[185] The United Nations High Commissioner for Refugees published a note in 2017 stating their position towards detention of minors in immigration context. UNHCR stated in this note that children should not be detained for immigration purposes as detention can never be in their best interests. UNHCR also recommended suitable care arrangements and community –based programmes should be put into practice in order to provide proper treatment to children and their families. The note can be found: http://www.unhcr.org/uk/protection/detention/58a458eb4/unhcrs-position-regarding-detention-refugee-migrant-children-migration.html. In addition to this note, in March 2017 the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) published a factsheet on immigration detention. In this factsheet, the CPT recalled its position from its 19th general report in 2009 towards detention of minors in the sense that states should avoid detention if that person is found to be a child. This factsheet can be found: https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806fbf12.

suitable for children and duration of detention as the shortest appropriate period of time. Nevertheless, these standards will still be limited due to the sovereign right of states to decide on the issues within their borders.

CHAPTER 3. TURKEY'S HISTORICAL RECORD IN RELATION TO COMPLIANCE WITH INTERNATIONAL STANDARDS

Domestic law evolves in time as a response to different contextual developments. These developments could be domestic such as change of public opinion or economic recession. On the other hand, there could be a development, which occurs at the international level, such as joining a transnational union or a conflict in a neighbouring region that could influence domestic law. To know and understand these developments affecting law-making is very important in order to analyse the reasoning behind change in domestic law. To serve this aim, this chapter explains the evolution of Turkey's immigration law with reference to the international and national actors' involvement in this process. While this chapter explains immigration law's history in general terms, it mostly traces how child detention finds its place within this immigration law. This chapter follows a chronological order of what changed in the immigration legislation and policy in Turkey and international and national reactions to the law and practices in relation to immigration detention.

Turkey's history could be characterised by a long tradition of immigration and asylum.[186] Over 1.6 million people migrated to Turkey, especially from Balkan countries between 1923 and 1997. Thousands of people from the Communist states in Eastern Europe sought asylum in Turkey and were settled to third countries by the United Nations High Commissioner for Refugees (UNHCR) during the Cold War.[187] Following this, asylum seekers from Iran, Iraq and other developing countries arrived in Turkey during the 1980s.[188] Conflicts, tension and wars in the region resulted in an increase in the numbers of asylum seekers. During 1988 to 1999, Turkey faced mass arrivals of Kurdish refugees from Iraq and also Albanians, Bosnian Muslims and Pomaks.[189] In total, Turkey was the host country to almost one million asylum seekers and refugees during this period of time. Recently, Turkey has become a transit country for irregular migrants on their way to the European Union (EU) due to its

[186] Kemal Kirişci, 'Turkey: the Political Dimension of Migration' in Philippe Fargues (ed), 'Mediterranean Migration 2005 Report' (European University Institute, Robert Schuman Centre for Advanced Studies 2005) 349.
[187] ibid.
[188] ibid.
[189] ibid.

geographical location[190] as well as becoming a destination country for people from former Soviet bloc countries and Middle Eastern countries.[191] As a result of the on-going war in Syria, Turkey is a host country to 2.7 million registered Syrian refugees.[192]

Despite the volume of immigration towards Turkey, immigration law did not adequately manage the consequences of this influx during this period. Turkey's immigration history can be broken down into three phases in terms of the evolution of its domestic law. These three stages could be listed as follows: a legal vacuum period before 1994; transition period towards international norms between 1994 and 2001 and the last period characterised by European Unionisation.[193]

I. LEGAL VACUUM PERIOD (PRE-1994)

The first period could be named a 'legal vacuum stage' in terms of immigration law in Turkey. During this period, there were not many laws or regulations regarding a migration management system. Although there was not an extensive immigration management system, Turkey still had certain legislation and policies before 1994. In 1934, the Turkish Parliament passed the Settlement Law, which was in use until the 2006 Settlement Law.[194] The Turkish Parliament brought this piece of law in 1934 while trying to find an answer to how to sort the issue of migration of people with Turkish descent or Turkish culture to mainland Turkey.[195] This law basically sets the parameters of asylum in Turkey.[196] It also determines how people of Turkish origin could come back to mainland in order to settle. This was strictly just for people of Turkish origin since that period was characterised by nation-state building attempts by the Government under the recently established Republic following the decline of the Ottoman Empire. Since this law did not include any systematic regulations regarding migration management, this period has been characterised as a legal vacuum

[190] Ahmet İçduygu and Damla B Aksel, 'Irregular Migration in Turkey' (International Migration Organization Turkey September 2012) 17.
[191] Kirişci (n 186).
[192] 'Syria Regional Refugee Response' (*UNHCR*) <http://data.unhcr.org/syrianrefugees/regional.php> accessed 4 September 2017.
[193] Ahmet İçduygu, 'Demographic Mobility over Turkey: Migration Experiences and Government Responses' (2004) 15 Mediterranean Quarterly 88, 90.
[194] İskan Kanunu [Settlement Law] 1934, No: 2510.
[195] İçduygu and Aksel (n 190) 40.
[196] Celia Mannaert, 'Irregular Migration and Asylum in Turkey' (2003) UNHCR New Issues in Refugee Research Working Paper No 89 7 <http://www.unhcr.org/3ebf5c054.pdf> accessed 6 July 2017.

period.[197]

While 1934 Settlement Law sets limited basic rules about migration management in Turkey, there were two additional laws passed in 1950 concerning foreigners' residency and travel. The law on foreigners' residency and movement[198] briefly states that if a foreigner's stay is seen as being against national security, political or administrative interests, that person could be asked to leave the country in a given amount of time. If voluntary leave does not happen, authorities could deport him/her.[199] In this way, this law sets the conditions for deportation without mentioning detention or detention centres. However, this legislation has a critical part declaring that authorities are obliged to accommodate 'political' asylum seekers till their asylum application's decision is reached.[200] This brought the establishment of guesthouses for asylum seekers in Turkey. Another piece of legislation during this period, the Passport Law[201], was drafted in 1950 and basically categorises types of passports for Turkish citizens and briefly sets out how people without valid passports or visas could be rejected at the border. This law, however, does not have any connotations regarding immigrant detention. In summary, these pieces of legislation did include a few principles of immigration management yet they did not bring systematic or detailed regulations in general.

Within this legal vacuum period, in 1983, the Ministry of Interior Affairs published a directive on refugees' guesthouses.[202] Before analysing this directive, it is essential to look closely what foreign guesthouses are. Contrary to its name, these guesthouses are in fact detention centres, which detainees were held involuntarily and were not allowed to leave freely.[203] Definition of detention centres was made by UNHCR as follows, 'custodial settings ranging from holding facilities at points of

[197] Ahmet İçduygu, 'EU-ization matters: Changes in Immigration and Asylum Practices in Turkey' in Thomas Faist and Andreas Ette (eds), *The Europeanization of national policies and politics of immigration: between autonomy and the European Union* (Palgrave Macmillan 2007) 209.
[198] Yabancıların Türkiye'de İkamet ve Seyahatleri Hakkında Kanun [Law on Foreigners' Residency and Movement] 1950, No: 5683.
[199] ibid art 19.
[200] ibid art 17.
[201] Pasaport Kanunu [Passport Law] 1950, No: 5682.
[202] Mülteci Misafirhaneleri Yönetmeliği [Refugees' Guesthouses Directive] 1983.
[203] Rachel Levitan, Esra Kaytaz and Oktay Durukan, 'Unwelcome Guests: The Detention of Refugees in Turkey's 'Foreigners' Guesthouses'' (Helsinki Citizens Assembly November 2007) 13 <http://www.hyd.org.tr/attachments/article/60/Mülteci_gozetim_raporu_tr.pdf> accessed 12 July 2017.

entry, to police stations, prisons and specialized detention centres'.[204] Despite their official name, Turkey's guesthouses undeniably fell under this definition.[205] Foreign nationals were detained in guesthouses for several reasons such as alleged criminal activity, illegal entry or exit from Turkey or failure to fulfil requirements of temporary asylum system.[206] The reason for their detention was usually implementing administrative procedures like deportation or transfer to a satellite city[207]. There was no court order needed to justify their detention. It depended on an administrative ruling provided by the Ministry of Interior.[208] This resulted in the lack of clear and foreseeable law for detainees. Furthermore, Turkish regulations did not mention the appropriate duration of detention.[209] Refugees could be kept under detention until they got their visa to leave the country or they were transferred to a satellite city.[210] Additionally, the conditions of the guesthouses were very problematic in terms of poor nutrition, mixed accommodation and inadequate bedding.[211] It is clear to say that the guesthouses were very different from accommodation centres that are sites used only for asylum seekers and their accompanying family members.[212]

As mentioned before, the Ministry of Interior Affairs published a directive on these guesthouses. Drafting this directive on the guesthouses coincided with the arrival of asylum seekers from Middle Eastern countries. This directive sets the division of labour between authorities regarding management of the guesthouses. While the police force is responsible for the security of the guesthouses and asylum seekers, the decision to build guesthouses is under the Ministry of Interior Affairs' responsibility. The directive also states that the duration of accommodation of asylum seekers would be temporary and would end once their case is finalised.[213] The directive also mentions facilities that the authorities should be providing to asylum

[204] UN High Commissioner for Refugees 'Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers' (Geneva 1999).
[205] UN Human Rights Council 'Report of the Working Group on Arbitrary Detention' (7 February 2007) UN Doc A/HRC/4/40/Add.5 paras 86–90.
[206] Levitan, Kaytaz and Durukan (n 203) 13.
[207] Following the registration of their asylum applications, asylum seekers are assigned to live in satellite cities by the Ministry of Interior till the decision is made on their application. For further information, see http://www.unhcr.org/50a607639.pdf.
[208] Levitan, Kaytaz and Durukan (n 203) 13.
[209] ibid 15.
[210] ibid 20.
[211] ibid 20-25.
[212] Commission, 'Proposal for a Council Directive Laying Down Minimum Standards on Reception of Applicants for Asylum in Member States' COM (2001) 181 final; ibid 13.
[213] Refugees' Guesthouses Directive (n 202) art 16.

seekers. Food would be served three times a day.[214] A laundry, reading rooms and a canteen are the facilities that are to be provided to detainees.[215] Visits to the guesthouses would be dependent on the Ministry of Interior Affairs' decision.[216] While the technicalities of detention practice such as facilities were explained in this directive, there was no regulation in relation to conditions of detention and legal basis for detention. This was the continuation of the lack of clear and foreseeable legislation for detainees.

II. TRANSITION PERIOD TOWARDS INSTITUTIONALISATION (1994-2001)

a. Changes in Immigration Legislation

This leads us to the next period of Turkey's immigration management that covers 1994 to 2001. Turkey faced large influxes of refugees and asylum seekers fleeing events taking place in Southeast Europe during the 1990s.[217] After 1989, for example, large numbers of Bulgarians of Turkish ethnic origin fled the oppressive regime in Bulgaria.[218] Due to war in Bosnia, around 25,000 Bosnian Muslims sought refuge in Turkey between 1992 and 1994.[219] Beyond migration from European countries, Turkey also witnessed a large wave of migrants from non-European countries during this period. Due to the change of regime in Iran after 1979 and the Iran-Iraq war, Turkey opened its borders for people fleeing Iran to stay temporarily in Turkey. Under this policy, around 1.5 million people came to Turkey between 1980 and 1991.[220] In addition to this, Iraqis form the second largest group of non-European refugees who fled to Turkey during this period.[221] First large influx occurred in 1988 due to Iraqi military attack on the Kurds because of their support towards Iran during the Iran-Iraq war. Between 1988 and 1991, around 600,000 people came to Turkey in search of protection.[222] Beyond these mass and one-time influxes, there was a constant move towards Turkey from Iraq due to years of political instability, conflict

[214] ibid art 19.
[215] ibid arts 20-21.
[216] ibid art 32.
[217] Mannaert (n 196) 2.
[218] ibid.
[219] ibid.
[220] ibid.
[221] ibid 3.
[222] ibid.

and poverty in the region.[223] Beyond that, Turkey became a transit country for people from countries such as Ghana, Nigeria, Tanzania, Ethiopia, Sudan, Algeria, Tunisia, Indonesia, Sri Lanka, the Philippines, Bangladesh and Pakistan on the way to the West.

The 1994 Asylum Regulation[224] was brought as a response to these large influxes of refugees and asylum seekers stated above. However, this was not the only reason for this piece of legislation. It also aimed to solve the issue of Turkey becoming a buffer zone where asylum seekers and other migrants were stuck due to stricter European border controls.[225] This regulation was the turning point towards change and institutionalisation in immigration management policies.[226] It basically gave the responsibility of status determination for asylum seekers to the Ministry of Interior Affairs instead of the UNHCR.[227] It set the obligation of being recognised by the Ministry of Interior Affairs before being able to be referred to the UNHCR for resettlement.[228] Furthermore, under this framework asylum seekers had to register with the police within five days of entry to Turkey – a requirement that caused criticism due to the short amount of time given for such registration.[229] Although this regulation was a basis for asylum procedures in Turkey, it referred to the Refugees' Guesthouses Directive only very briefly.[230] Unless stated otherwise, this Directive was to be the basis for treatment of refugees. In addition to that, it mentioned that asylum seekers whose application was taken by the Ministry of Interior Affairs would be accommodated in one of the guesthouses in Turkey. As mentioned above, this would mean detention of asylum seekers until their application reaches a decision. In general, this regulation was significant in terms of bringing structure to the

[223] ibid.
[224] 1994 Türkiye'ye İltica Eden veya Başka Bir Ülkeye İltica Etmek Üzere Türkiye'den İkamet İzni Talep Eden Münferit Yabancılar ile Topluca Sığınma Amacıyla Sınırlarımıza Gelen Yabancılara ve Olabilecek Nüfus Hareketlerine Uygulanacak Usul ve Esaslar Hakkında Yönetmelik [1994 Asylum Regulation] 1994.
[225] Mannaert (n 196) 7.
[226] İçduygu and Aksel (n 190) 40.
[227] 1994 Asylum Regulation (n 224) art 6: 'Decisions on the applications of individual aliens who either seek asylum from Turkey or request residence permission in order to seek asylum from another country shall be concluded by the Ministry of the Interior in accordance with the 1951 Geneva Convention relating to the Status of Refugees and the Protocol of 31 January 1967 relating to the Status of Refugees and this Regulation.'
[228] Mannaert (n 196) 7.
[229] ibid.
[230] 1994 Asylum Regulation (n 224) art 15.

immigration system. However, it also resulted in an increase in the State's authoritative power over migration management.[231]

b. The Approach of the International Community to Turkey's Progress

As mentioned before, new policies and legislation can be introduced due to several dynamics. So far, it is obvious that Turkey's immigration law was influenced by mass influxes caused by regional conflicts. In addition to this, it is essential to see what type of opinion the international community had towards Turkey's immigration law in order to find out whether there was any impact of the new legislation on the international community's opinion. The EU's progress reports on Turkey are very significant in order to see this impact. They only date back to 1998, as it was the time that Turkey's EU negotiation process started. The 1998 Progress Report[232] defined the problem of irregular migration to Turkey on the way to West. It also mentioned concerns over Turkey's border controls and suggested re-admission agreements with third countries.[233] It also offered cooperation with the EU on migration-related issues and suggested Turkey bring new regulations and law on this area. The following year's report[234] also stated irregular migration statistics for Turkey and pointed out Turkey's position as a transit country instead of a destination country. However, increasing numbers of irregular migrants apprehended in Turkey revealed the need of establishing accommodation centres for these people and allocating funds for this area.

The 1999 Progress Report suggested a new way of centralised organisation for border controls as border controls were under the responsibility of different branches of the army and police in Turkey. It specifically stated concerns over the conditions in which asylum seekers were kept and recommended improvement of these conditions. Lastly, the 2000 Progress Report[235] appreciated Turkey's efforts of cooperation with the EU on border controls and training of officials. It suggested acceleration of efforts to decrease the numbers of irregular migrants to European countries. It again

[231] İçduygu and Aksel (n 190) 40.
[232] Commission, 'Turkey's Progress towards Accession' (Commission Staff Working Document) COM (98) 711 final.
[233] ibid.
[234] Commission, 'Regular Report on Turkey's Progress towards Accession' (Commission Staff Working Document) COM (99) 513 final.
[235] Commission, 'Regular Report on Turkey's Progress towards Accession' (Commission Staff Working Document) COM (2000) 713 final.

recommended the need for establishing suitable accommodation centres for asylum seekers.

Apart from the EU's progress reports, the same kind of concerns could also be seen in the European Commission's reports. In 1999, the European Commission against Racism and Intolerance[236]'s country report[237] on Turkey highlighted the lack of comprehensive immigration policy. It also recommended that Turkey take necessary measures to introduce an immigration policy as a response to rising immigration into Turkey.[238] The following year's report still pointed out a lack of comprehensive immigration management system.[239] Its second country report on Turkey also mentioned the use of excessive force by law enforcement officials against irregular migrants in Turkey and the harsh and degrading conditions of detention for irregular migrants.[240] It also stated that rising criminalisation of migrants should be prevented and necessary complaint mechanisms should be put in place in order to follow unlawful behaviour of law enforcement officials.[241] Therefore, it is clear that the EU and the European Commission were increasingly critical of both Turkey's asylum procedures and its border and immigration policies in the late 1990s.[242]

III. "EUROPEANISATION" PERIOD (2001-)

Turkey's further step towards proper immigration law started with beginning of the EU negotiation process after 1999. This period could be characterised by Europeanisation as the third period of Turkey's immigration law.[243] It is clear that up to 1999, Turkey had not shown much improvement on its immigration law.[244] The statistics showed a dramatic increase in terms of asylum applications and arrivals to Turkey. While the number of foreigners who came to Turkey was 6,762,956 in 1995,

[236] ECRI is a human rights body of the Council of Europe that monitors problems of racism, xenophobia, anti-Semitism, intolerance and discrimination. It is composed of independent experts and prepares reports and issues recommendations to member States.
[237] European Commission against Racism and Intolerance, 'ECRI's country by country approach: Report on Turkey' (9 November 1999) CRI (99) 52.
[238] ibid para 18.
[239] European Commission against Racism and Intolerance, 'Second report on Turkey' (15 December 2000) CRI (2001) 37.
[240] ibid para 48.
[241] ibid.
[242] Mannaert (n 196) 10.
[243] İçduygu, 'Demographic Mobility over Turkey: Migration Experiences and Government Responses' (n 193).
[244] Hasan Canpolat and Hakkı Onur Arıner, *Global Migration and Development of Migration Policies of Turkey and European Union* (ORSAM June 2012) 20.

this number reached to 27,024,609 in 2010.[245] The asylum statistics also showed a steady increase during this period. While the number of asylum applications was 2,024 in 1995, it was 8,190 in 2010.

Immigration law became one of the top concerns on government officials' list due to external pressure, such as from the EU, instead of local policy concerns.[246] Thus, the beginning of the EU accession period could be named as the crucial turning point[247] and main driving force behind development of the immigration policies and legislation in Turkey.[248] This part of the chapter will follow a chronological order in terms of the developments in Turkey's immigration law and the dynamics that have potential influence on these developments.

Due to the EU's concerns over immigration issues, asylum and migration were main elements of the agenda of reforms during the accession period.[249] As a first step of the accession period, Turkey signed Acquis Communautaire through a national programme focusing on justice and home affairs.[250] This Accession Partnership Document included some priorities and targets for Turkey's immigration law. These were as follows[251]:

- Develop training programmes on Community law and on the implementation of the Justice and Home Affairs[252] (JHA) Acquis.

- Further develop and strengthen JHA institutions with a view in particular to ensuring the accountability of the police.

- Start alignment of visa legislation and practice with those of the EU.

- Adopt and implement the EU Acquis and practices on migration (admission,

[245] The Preamble of Law on Foreigners and International Protection 2013 (*Goc*) <http://www.goc.gov.tr/icerik3/overall-rationale_913_975_977> accessed 3 July 2017.
[246] İçduygu, 'Demographic Mobility over Turkey: Migration Experiences and Government Responses' (n 193) 210.
[247] ibid.
[248] Saime Özçürümez and Nazlı Şenses, 'Europeanization and Turkey: Studying Irregular Migration Policy' (2011) 13 Journal of Balkan and Near Eastern Studies 233, 238.
[249] Mannaert (n 196) 10.
[250] ibid.
[251] The Council of European Union, 'On the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with the Republic of Turkey' (8 March 2001) 2001/235/EC.
[252] The Justice and Home Affairs Council develops cooperation and common policies on various cross-border issues, with the aim of building an EU-wide area of justice, <http://wwwd.consilium.europa.eu/council/council-configurations?lang=en#jha> accessed 5 September 2017.

readmission, expulsion) so as to prevent illegal migrations.

- Continue strengthening border management and prepare for full implementation of the Schengen Convention.

According to these targets, Turkey wrote a national programme for the adoption of the Acquis in 2001.[253] Within this programme under the subject of JHA, Turkey put comprehensive targets on the asylum and migration issue, such as alignment of Turkish visa legislation and practices with the EU Acquis. There were also specific targets such as further development of accommodation facilities and social support mechanisms for refugees or adoption of the EU Acquis and practices to prevent illegal migration.[254] Due to the importance of migration issues in the eyes of the EU, Turkey established a Special Task Force in the field of migration and asylum, on which several state agencies responsible for border control, migration and asylum are represented.[255] They started working on a national action plan on migration and asylum.

a. The Approach of the International Community to Turkey's Progress (1)

International reactions to these kinds of improvements are significant in order to see how the development of law and policy is affected by these international reactions as a next step. Following signature of the EU Acquis and forming the national programme in 2001, the EU's progress reports on Turkey should be mentioned in order to see the international community's opinion on this area. The 2001 Progress Report stated that there were some improvements on areas such as strengthening border controls with building new checkpoints and starting negotiations for readmission agreements with countries like Iran, Pakistan and Bangladesh.[256] The report also mentioned the EU's concerns over growing numbers of irregular migrants to Turkey.[257] These improvements and pressure led Turkey to consider adopting or reviewing legislation on asylum, which was appreciated by the EU in the report. The work towards ameliorating accommodations and conditions for refugees was started

[253] Turkish National Programme for the Adoption of Acquis (2001).
[254] ibid 15.
[255] Emine Akçadağ, 'Yasadışı Göç ve Türkiye [Irregular Migration and Turkey]' (BILGESAM 2012) 42 32 <http://www.bilgesam.org/Images/Dokumanlar/0-96-2014032653yasadisigocveturkiye.pdf> accessed 12 July 2017.
[256] Commission, 'Regular Report on Turkey's Progress towards Accession' (Commission Staff Working Document) SEC (2001) 1756 final.
[257] ibid.

in two refugee guesthouses at Yozgat and Kirklareli.[258] Officials pointed out the necessity of new guesthouses in 11 different cities.

The 2002 Progress Report appreciated Turkey's formation of the Special Task Force within the Ministry of Interior Affairs, composed of representatives from several ministries and law enforcement officials, which is mentioned above.[259] This report also referred to Turkey as not only a transit but also a destination country for illegal migration flows for the first time.[260] It stated the statistics of irregular migrants apprehended in 2001. Finally, the 2003 Progress Report indicated that the Special Task Force finished their work on alignment with EU Acquis on border management.[261] It also stated that the trend of irregular migration via Turkey had shown a decrease.[262] Turkish authorities reported that increased efforts and measures targeting irregular migration led routes to divert away from Turkey in 2002 and 2003.[263] There was no reference to the guesthouses or return centres in this report.

In 2003, the EU revised its 2001 Accession Partnership Document and Turkey adopted a new national programme accordingly. The Revised Accession Partnership Document stated a few short-term and medium-term targets for Turkey to follow on the immigration issue. Some of them were as follows[264]:

Short term:

- Reinforce the fight against illegal immigration, negotiate and conclude as soon as possible a readmission agreement with the European Community.
- Improve the capacity of public administration to develop an effective border management, including the detection of forged and falsified documents, in line with the Acquis and best practices with a view to preventing and combating illegal migration.

[258] ibid 83.
[259] Commission, 'Regular Report on Turkey's Progress towards Accession' (Commission Staff Working Document) SEC (2002) 1412 final, 115.
[260] ibid 116.
[261] Commission, 'Regular Report on Turkey's Progress towards Accession' (Commission Staff Working Document) SEC (2003) 1212 final 110.
[262] ibid 111.
[263] ibid.
[264] The Council of European Union, 'On the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with the Republic of Turkey' (19 May 2003) 2003/398/EC.

Medium:

- Adopt and implement the Acquis and best practices on migration (admission, readmission, expulsion) with a view to preventing illegal immigration.
- Continue alignment with the Acquis and best practices concerning border management so as to prepare for full implementation of the Schengen Acquis.
- Start with the alignment of the Acquis in the field of asylum including lifting the geographical reservation to the 1951 Geneva Convention; strengthen the system for hearing and determining applications for asylum; develop accommodation facilities and social support for asylum seekers and refugees.

The Revised Accession Partnership Document still took the same approach as the 2001 Accession Partnership Document. Turkey's national programme, formed in 2003 according to this revised Accession Partnership Document, put a timeline for necessary changes in two topics as legislative and institutional changes.[265] In the area of asylum, the national programme listed necessary legislative changes such as alignment with the Joint Action of 26 April 1999 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, establishing projects and measures to provide practical support in relation to the reception and voluntary repatriation of refugees, displaced persons and asylum seekers, including emergency assistance to persons who have fled as a result of recent events in Kosovo.[266] In the same area, necessary institutional changes were the establishment of additional refugee guesthouses and shelter houses and reception centres for asylum seekers; developing social support mechanisms for refugees; strengthening social support mechanisms that are being provided for the vulnerable; recruitment and training of personnel such as experts for psycho-social support and interpreters.[267] In the area of irregular migration, Turkey promised alignment with EU legislation related to irregular migration flows in the national programme. Necessary legislative changes included issues like adopting Council decisions and recommendations on carrying out expulsion measures or adopting a uniform format for residence permits.[268] Institutional changes were the establishment of expulsion centres and training of personnel to be employed at these centres.

[265] Turkish National Programme for the Adoption of Acquis (2003).
[266] ibid 656.
[267] ibid 657.
[268] ibid 666.

This highly Europeanised influence on Turkey's national programme could also be seen in the budget for these plans. For instance, while the establishment of expulsion centres had a budget of twenty million euros, three quarters of the budget is from the EU resources.[269] Apart from this financial support, there were twinning projects on asylum and immigration and combating trafficking in human beings with Austria, Denmark, Germany and the United Kingdom in order to help to build up institutional capacity and form training programmes.[270] Several training seminars were organised for Turkish officials on EU practice on these areas.[271] Following this revised national programme according to the Revised Accession Partnership Document, the 2004 Progress Report appreciated the start of the work on a National Action Plan by the Special Task Force to implement the asylum and migration strategy adopted in 2003.[272] It also mentioned that training sessions were completed with law enforcement officials.

In addition to the EU's progress reports, there are other institutions in international arena that submit reports on Turkey's approach to human rights in the area of immigration. Council of Europe (COE) is one of those institutions, and Turkey has been a member since 1949. The Commissioner for Human Rights[273], as a non-judicial institution under COE's mandate, does regular visits to member countries and submits country reports on human rights issues such as protection of vulnerable groups or cultural rights. The Commissioner for Human Rights submitted his country report following an official visit to Turkey in 2003.[274] In his report, he reported on the lack of suitable reception centres for asylum seekers.[275] He criticised Turkey's approach towards asylum as being more an internal security problem instead of human rights issue[276]. He recommended that Turkey work towards reaching European standards by amending current legislation.[277]

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[269] ibid 667.
[270] Joanna Apap, Sergio Carrera and Kemal Kirişci, 'Turkey in the European Area of Freedom, Security and Justice', (2004) 3 Centre for European Policy Studies 1, 19.
[271] ibid.
[272] Commission, 'Regular Report on Turkey's Progress towards Accession' (Commission Staff Working Document) SEC (2004) 1201 final.
[273] The Commissioner for Human Rights is an independent institution within the Council of Europe. Its mandate is to raise the awareness of and respect for human rights in the member states.
[274] Office of the Commissioner for Human Rights, 'Report by Mr Alvaro Gil-Robles, Commissioner For Human Rights, on His Visit to Turkey' (19 December 2003) CommDH(2003)15.
[275] ibid 36.
[276] ibid.
[277] ibid.

As an important step to answer this criticism, following their activities, the Special Task Force produced a National Action Plan for the adoption of the EU Acquis in the field of asylum and migration in 2005.[278] This National Action Plan covered the legal arrangements that should be brought up within the harmonisation process with EU and measured necessary actions in finalising administrative set-up and physical infrastructure in order to adopt the EU Acquis within Turkish asylum/migration legislation.[279] In relation to the detention centres, the Plan indicated necessary steps for accommodation centres for asylum seekers, refugee guesthouses and return centres for aliens to be returned.[280] The Plan stated that work should be done towards establishment of accommodation centres and guesthouses for applicants who have applied for asylum and who have not yet been granted the status and those, who have been granted the refugee or asylum seeker status, for whom residence outside of detention centres is not deemed appropriate.[281] These centres with a capacity of around 750 people should be built in seven different regions in Turkey and serve as Regional Centres. The Plan referred to EU Council Directive on reception centres as a source of the state's responsibility on providing shelter and suitable physical reception conditions to asylum seekers.[282] It also covered return centres to host aliens who are to be returned to their origin countries until the completion of their procedures. Necessary legal arrangements should be made regarding the operation of these centres and recruitment of staff to be employed in the centres.[283] The Plan referred to participation of NGOs and negotiations with the relevant institutions and agencies during the establishment of a reception system. This Action Plan covered broad issues regarding the establishment of detention centres and the scope of detention.

The following year's progress report commends the finished version of the National Action Plan on asylum and migration as progress.[284] It recommended that this plan should be put into action as soon as possible by the officials.[285] While these

[278] Special Task Force, 'Turkish National Action Plan for the Adoption of the EU Acquis in the Field of Asylum and Migration' (2005).
[279] ibid para 1.2.
[280] ibid paras 4.4.3 and 4.4.5.
[281] ibid.
[282] ibid.
[283] ibid.
[284] Commission, 'Turkey 2005 Progress Report' (Commission Staff Working Document) SEC (2005) 1426 final.
[285] ibid 111.

new steps are appreciated, reports showing that some asylum seekers at the border are prosecuted for illegal entry and deported are still the EU's main concerns. People who are apprehended away from the border are not always allowed to apply for asylum as their illegal entries are seen as acts in bad faith.[286] This resulted in difficulties for the UNHCR in accessing such people while they are under detention. Lastly, the report also encouraged Turkey to improve the efforts to ameliorate reception conditions.[287]

As mentioned above, the COE is an organisation that submits reports on its member countries. Apart from that, the Parliamentary Assembly of the COE (the Assembly) consists of 318 representatives from the parliaments of the COE's 47 member states. While the Commissioner for Human Rights under the COE is an independent expert submitting reports, the Assembly is formed of member states' representatives that make it a political mechanism. In this way, Commissioner's reports and the Assembly' resolutions carry different role and character. The Assembly could demand answers from Presidents and Prime Ministers regarding critical human rights violations. The Assembly submits resolutions regarding critical issues in member countries.

In 2005, the Assembly published a resolution on the issue of asylum seekers and migrants in Turkey.[288] In this resolution, the Assembly called on the Government of Turkey to continue the process of amending or introducing new legislation regarding irregular migration. Furthermore, there were some recommendations on improving the accommodation and social support services for asylum seekers and refugees. The Assembly also called on Turkey to review certain requirements on asylum applications such as the ten-day limit for filing an application and to improve its financial and technical resources to deal with illegal migration in a more effective way.

Following year, the Assembly published another resolution due to growing concern over irregular migration in Europe.[289] In this resolution, the Assembly basically set minimum conditions for detention of irregular migrants such as that detention should be as a last resort and not for an excessive period of time. It also stated the standards for child detention for immigration law enforcement. Regarding

[286] ibid 112.
[287] ibid.
[288] Parliamentary Assembly, 'Asylum Seekers and Irregular Migrants in Turkey' Resolution No: 1429 (18 March 2005) Doc. 10445.
[289] Parliamentary Assembly, 'Human Rights of Irregular Migrants' Resolution No: 1509 (27 June 2006) Doc. 10924.

detention of families, separate accommodation should be made available. The rights of irregular migrants such as the right to challenge the lawfulness of their detention or communication with the outside world whilst under detention were reiterated to the member states. During the same year, the Assembly composed another resolution on irregular migrants and found it necessary to remind the member states on their human rights and humanitarian obligations regarding detention of irregular migrants.[290]

During 2006, the EU revised the Accession Partnership Document and established targets (some of which are listed below) for Turkey under Justice, Freedom and Security.[291]

- Continue to develop and strengthen all law enforcement institutions and align their status and functioning with European standards, including through developing inter-agency cooperation.

- Establish an independent and effective complaints system to ensure greater accountability of the police and gendarmerie. Develop the use of modern investigative techniques and crime prevention strategies.

- Continue efforts to implement the National Action Plan on Migration and Asylum, to combat illegal migration and to conclude urgently a readmission agreement with the EU.

- Adopt and begin implementation of the National Action Plan on Border Management, in particular through de-mining of the border.

It is clear that the EU called for more alignment with the European standards on immigration, more cooperation with the EU on institutionalisation, and more training for law enforcement officials in this revised Accession Partnership Document. Beyond its revised Accession Partnership Document, the EU also evaluated Turkey's progress in its regular progress reports as mentioned above. In its 2006 Progress

[290] Parliamentary Assembly, 'Mass Arrival of Irregular Migrants on Europe's Southern Shores' Resolution No: 1521 (5 October 2006) Doc. 11053.
[291] The Council of European Union, 'On the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with the Republic of Turkey' (26 January 2006) 2006/35/EC.

Report, the EU stated that only limited progress was made in the field of migration.[292] Although the National Action Plan was being implemented, it still did not provide details on deadlines. In the area of asylum, there was still much improvement needed in the legislation in order to provide appropriate protection for asylum seekers. It held that the capacity at the reception centres needed improvement and these facilities needed renovation. The EU also asked for clarification on the institutional responsibility for these centres. Like the 2006 Progress Report, the 2007 Progress Report could not relate much improvement in the field of migration and asylum.[293] The report pointed out that new legislation was necessary in these fields and it was important to improve the reception conditions and accommodation arrangements.

According to these comments and recommendations from the EU, Turkey submitted a national programme in 2008.[294] In this national programme, Turkey set targets in terms of legislation and institutional capacity in the area of asylum and migration within a timeline. While some of the legislative changes were forming a common unit for asylum migration under the Ministry of the Interior or harmonising the means of struggle against illegal migration, institutional changes were still concerned with the establishment of reception centres for asylum seekers and removal centres for aliens. These were scheduled for between 2009 and 2011. Within the same year, Turkey formed a Development and Implementation Office on Asylum and Migration Legislation and Administrative Capacity (Asylum and Migration Bureau) in order to keep promises made to the EU to establish a common unit for asylum and migration. This office was established under the Ministry of the Interior. Their responsibilities are carrying out studies, projects and analysis on the legislative and administrative structure in line with the National Action Plan on asylum and migration and national programmes.

After explaining the context in Turkey in terms of targets and plans, it is essential to look at the international context for the reasons mentioned above. The Assembly wrote a resolution on irregular migration flows as Europe's "boat people", due to growing concerns on irregular migration and irregular migrants' human rights.[295] In

[292] Commission, 'Turkey 2006 Progress Report' (Commission Staff Working Document) SEC (2006) 1390 final.
[293] Commission, 'Turkey 2007 Progress Report' (Commission Staff Working Document) SEC (2007) 1436 final.
[294] Turkish National Programme for the Adoption of Acquis (2008).
[295] Parliamentary Assembly, 'Europe's "boat-people": Mixed Migration Flows by Sea into Southern Europe' Resolution No: 1637 (28 November 2008) Doc 11688.

this resolution, the Assembly reminded the member states of several principles of which they need to be aware during immigrant detention. These are for example: detention must be authorised by the judiciary; duration of detention; vulnerable persons' treatment; facilities and services that every reception or detention centre needs to have; separate accommodation for families and communication with the outside world.[296]

The EU's 2008 Progress Report on Turkey reported the statistics of irregular migration and capacity to accommodate illegal migrants.[297] This capacity was increased from 1512 to 1793.[298] The report states that limited progress can be reported on the management of irregular migrants in Turkey. Regarding the detention and deportation procedures, the officials need to inform detainees in a language they can understand. Duration of detention should be limited by law and reviewed on regular basis. The conditions of detention centres need to be ameliorated. The segregation should be based on gender, age and criminal record. Family members should have the right to be accommodated together. The report recommended that Turkey provide services to detainees (such as access to free legal aid or asylum procedures; recreational activities or counselling) in close cooperation with national and international organisations. The report pointed out there was no specific training for staff working in this area and there was no compatible data system in migration.

Apart from the EU and the COE, Turkey has ratified Convention on the Rights of the Child (CRC).[299] Within this domain, the Committee on the Rights of the Child (the Committee) submits concluding observations depending on reports submitted by member states. Since detention of children for immigration law enforcement is the main focus for this research, the Committee's concluding observations are very significant in terms of understanding problem areas. Although the situation of minors in the case of detention was not particularly mentioned in the documents stated previously, the Committee's observations that will be mentioned in this chapter include issues regarding detention of minors.

[296] ibid paras 9.3-9.9.
[297] Commission, 'Turkey 2008 Progress Report' (Commission Staff Working Document) SEC (2008) 2699 final.
[298] ibid 71.
[299] n 167.

In 2009, the Committee wrote a concluding observation on Turkey regarding children in armed conflict.[300] Within this observation, the Committee referred to refugee and asylum seeking children's identification. It criticised Turkey for not having a regular and appropriate identification, reintegration and recovery scheme for children who might have been involved in the hostilities. As mentioned before, the Commissioner for Human Rights of the COE visits member countries and writes country reports afterwards. In 2009, the Commissioner's visit to Turkey was followed by a detailed country report.[301] In his report, he pointed out the inadequate conditions of detention centres in Turkey.[302] He mentioned they were usually overcrowded, dirty and insect-infected without hot water. Outside communication was limited due to fares for public telephones and a shortage of such phones. Food was generally in low quality and low in nutritious level. Children were kept with their parents in the wards. There were not any separate accommodation facilities for families. The Commissioner held that detention of families should be a last resort and for a limited period of time. The Commissioner appreciated the Government's effort to shorten duration of detention.

The same year's Progress Report also mentioned Turkey's progress in the migration and asylum area.[303] The EU appreciated the establishment of the Development and Implementation Office on Asylum and Migration Legislation and Administrative Capacity even though the report mentioned that the resources of the office are very limited compared to its responsibilities. The report also referred to the capacity of the accommodation for irregular migrants as being low although new units were established. There was limited progress on establishing a network of six centres for reception, screening and accommodation of refugees and asylum seekers, two centres for illegal migrants and a new set of procedures and management rules for these centres. Following criticism in the CRC's previous report, Turkey established a screening system for apprehended irregular migrants in order to identify people in need of protection, which was appreciated by the EU.

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[300] UN Committee on the Rights of the Child, 'Concluding Observations: Turkey' (29 October 2009) UN Doc CRC/C/OPAC/TUR/CO/1.
[301] Office of the Commissioner for Human Rights, 'Report by Thomas Hammarberg Commissioner for Human Rights of the Council of Europe following his visit to Turkey on 28 June – 3 July 2009' (1 October 2009) CommDH(2009)30.
[302] ibid para 60.
[303] Commission, 'Turkey 2009 Progress Report' (Commission Staff Working Document) SEC (2009) 1334 final.

b. Civil Society Reports

To start with, there are only a handful of civil society reports on Turkey's detention practices. Helsinki Citizens Assembly (HCA) published two reports on the conditions of the detention centres and detention of minors respectively. In the first report, HCA conducted interviews with 40 refugees who had experienced detention on immigration grounds at six different detention centres in Turkey.[304] The interviews with these former detainees showed that overcrowding had been a major problem at the guesthouses and it sometimes led detainees to sleep on the floor due to lack of bedding. Meals served were low in nutritional and caloric value. Fresh vegetables or fruit were not being served. No drinking water was provided at detention centres where tap water was undrinkable. Communication with the outside was limited as costs to use telephones were really high and there was a limit on the number of visitors. Recreational facilities and activities were mostly unavailable to detainees. This report also showed that minors were detained for immigration law enforcement in the guesthouses against the principle of best interests of the child. It revealed that minors were housed with adults or with others accused of or convicted of crimes. At the end of the report, HCA made a detailed list of recommendations on legal rights, improvement of detention centres and alternatives to detention of minors.

The second report, published in 2010, was particularly on separated minor refugees.[305] HCA conducted interviews with minor refugees, civil servants, UNHCR staff and members of NGOs for this report. It also reviewed their client files as they work closely with asylum seekers in Turkey to inform them of their legal rights and help with the procedure. Seventeen in-depth interviews were conducted with separated minor refugees. The findings demonstrated that minor refugees had very negative experiences at detention centres. Many of the interviewees reported overcrowded rooms, insufficient bedding and inadequate food at the detention centres.[306] One of the minors mentioned that he was only given bread and cheese on some days and he was not provided any food on other days. Another minor reported that he was with 16 children with four beds in the room. Based on these findings,

[304] Levitan, Kaytaz and Durukan (n 203) 34-42. The locations of these detention centres are as follows: Istanbul, Kirklareli, Edirne, Izmir, Ankara, Hatay and Van. However, the interviews also talked about their experiences at police stations and transit zone at Istanbul Ataturk Airport.
[305] Helsinki Citizens' Assembly, 'Childhood on Hold: Conditions and Treatment of Separated Minor Refugees in Turkey' (Helsinki Citizens' Assembly March 2010) <http://www.hyd.org.tr/attachments/article/168/childhood_on_hold_-_eng.pdf> accessed 12 July 2017.
[306] ibid 22.

HCA urged the Government of Turkey to comply with their international obligations in relation to minors and respect the principles brought by these obligations.[307] HCA also recommended that the Government use detention only as a last resort and improve the conditions of the guesthouses.

c. The European Court of Human Rights' perspective on Turkey's immigration law

As a member of the COE, Turkey ratified the European Convention on Human Rights (ECHR)[308] in 1954. This ratification gave the European Court of Human Rights (ECtHR) a mandate to rule on allegations regarding Turkey. The ECtHR decides on the cases regarding the civil and political rights stated in the European Convention on Human Rights. There are two possible ways of applying to the ECtHR: individual applications and inter-state applications brought by one state against another state.[309] The ECtHR's decisions are binding on the states concerned. When the ECtHR issues a judgment on the case which confirms a violation, it submits the judgment to the Committee of Ministers of the COE in order to monitor the execution of the judgment.[310] The monitoring of the judgment by the Committee especially ensures that the concerned state will pay the monetary compensation awarded to the applicant. In the cases of damage sustained, the ECtHR can decide on monetary compensation that will be paid to the applicant directly by the concerned state. Overall, the ECtHR is an essential part of this system of human rights.

In 2009, Turkey faced a case in front of the ECtHR regarding its detention and deportation procedures where there was not any relevant domestic case law regarding immigration detention.[311] The applicants, Mohsen Abdolkhani and Hamid Karimnia, were Iranian nationals who were held in Gaziosmanpaşa Foreigners' Admission and Accommodation Centre in Kırklareli (Turkey). As previous members of the People's Mohajedin Organisation, they left Iran for Iraq to be trained at the camp. Due to disagreements with the organisation, they entered a refugee camp in Iraq. After their refugee camp was closed, they entered Turkey irregularly and were arrested and

[307] ibid 45-49.
[308] Date of signature 4 November 1950, date of ratification 18 May 1954.
[309] 'European Court of Human Rights: Questions & Answers' (*ECHR*) <http://www.echr.coe.int/Documents/Questions_Answers_ENG.pdf> accessed 5 September 2017.
[310] ECHR (n 132) art 46.
[311] *Abdolkhani and Karimnia v Turkey* App no 30471/08 (ECtHR 22 September 2009).

deported back to Iraq on 17 June 2008. Right after deportation, they re-entered Turkey and were arrested and detained in police custody. During this period, they were not provided any legal assistance. They informed authorities about their background and refugee status under the UNHCR's mandate. Following this, they were convicted of illegal entry to Turkey. Although they claimed their lives were in danger in the country of origin, the courts noted that they would be deported. The applicants were notified of neither the decision nor the reason of this decision.

The first attempt to deport them failed as Iranian authorities refused their entry. The applicants claimed that their detention was a deprivation of liberty. The Government claimed that the applicants were not detained within the meaning of Turkish law, yet were accommodated pending deportation proceedings. The ECtHR concluded that in the lack of clear legal provisions establishing the procedure for ordering and extending detention for deportation proceedings, their detention was arbitrary due to the lack of adequate safeguards.[312] The ECtHR stated that Turkey's immigration management system lacked clear legal provisions regarding detention with a view to deportation. Following this judgment, there were fifteen cases within two years where the ECtHR found that Turkey's detention centres conditions were threatening migrants' human rights and most of these judgments demanded monetary compensation to be paid to applicants.[313]

This case paved the way for other applicants that were in the same situation to bring cases to the ECtHR which ended with awards for monetary compensation. For instance, in Aliev's case, the ECtHR clearly expressed that:

> The Court has already examined a similar grievance in the case of Abdolkhani and Karimnia v. Turkey (no. 30471/08, §§ 125-135, 22 September 2009), in which it found that in the absence of clear legal provisions in Turkish law

[312] ibid para 135.
[313] The list of these cases: *Charahili v Turkey* App no 46605/07 (ECtHR, 13 April 2010); *Alipour and Hosseinzadgan v Turkey* App no 6909/08 28960/08 (ECtHR, 13 July 2010); *Z.N.S v Turkey* (2010) 55 EHRR 11; *Tehrani and Others v Turkey* App no 32940/08 41626/08 43616/08 (ECtHR, 13 April 2010); *Yarashonen v Turkey* App no 72710/11 (24 June 2014); *T. and A. v Turkey* App no 47146/11 (ECtHR, 21 October 2014); *Kurkaev v Turkey* App no 10424/05 (ECtHR, 19 October 2010); *Keshmiri v Turkey* App no 22426/10 (17 January 2012); *Moghaddas v Turkey* App no 46134/08 (ECtHR, 15 February 2011); *Musaev v Turkey* App no 72754/11 (ECtHR, 21 October 2014); *Athary v Turkey* App no 50372/09 (ECtHR, 11 December 2012); *Asalya v Turkey* App no 43875/09 (ECtHR, 15 April 2014); *A.D. and Others v Turkey* App no 22681/09 (22 July 2014); *Ahmadpour v Turkey* (2010) 59 EHRR 27; *Aliev v Turkey* App no 30518/11 (ECtHR, 21 October 2014); Akçadağ (n 255) 42 and Kemal Kirişci, '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) 77.

> establishing the procedure for ordering detention with a view to deportation, the applicants' detention was not 'lawful' for the purposes of Article 5 of the Convention. The Court has examined the present case and finds no particular circumstances which would require it to depart from its findings in the above-mentioned judgment. [314]

In addition to this, the ECtHR also decided that applicants did not need to exhaust domestic remedies since Turkish domestic law did not provide any effective remedy for the people that were affected in these circumstances. Another example from Tehrani's case, the ECtHR stated this argument:

> The Court reiterates that, under Turkish law, seeking the annulment of a deportation order does not have automatic suspensive effect and, therefore, applicants were not required to apply to the administrative courts in order to exhaust domestic remedies as understood by Article 35 § 1 of the Convention (see Abdolkhani and Karimnia, cited above, § 59). The Court accordingly dismisses the Government's objections. [315]

The ECtHR also commented on the conditions of detention in Turkey in one of these cases. In the *Charahili*[316] case, the applicant was a Tunisian national who came to Turkey and obtained a false passport because his documents were stolen. After his arrest by police officers in Hatay, he was detained at Fatih police station till he was transferred to Kırklareli Foreigners' Admission and Accommodation Centre. During his time in detention at the police station, the applicant claimed that he was detained for nineteen months and twenty-six days in a dirty room that had serious ventilation problems.[317] He claimed that the capacity of the room was exceeded so people had to share single beds. The Government claimed that it was not a detention facility; instead it was a guesthouse in the basement of the detention facility where the rooms were not locked.[318] Since the Government had not submitted any evidence to show the difference between the basement and the rest of the building, the ECtHR held that the

[314] *Aliev v Turkey* (n 313) para 56.
[315] *Tehrani and Others v Turkey* (n 313) para 62.
[316] *Charahili v Turkey* (n 313).
[317] ibid para 74.
[318] ibid para 73.

applicant was detained for almost twenty months in an ordinary police detention facility.[319] Although the ECtHR could not verify the applicants' allegations on the conditions of the detention facility, the inordinate length of time in detention amounted to a degrading treatment under Article 3[320].[321]

d. Circulars: Turkey's domestic law progress

Following these judgments and criticisms in international organisations' reports, Turkey took some substantial steps in immigration management in 2010. First of all, the Ministry of Interior Affairs published a circular on illegal migration.[322] In this Circular, the Ministry gave information about the measures that the authorities should take regarding irregular migration. It states that cooperation between authorities is essential. This Circular also explains further steps after apprehending irregular migrants. It notes that irregular migrants will be accommodated at return centres till their deportation proceedings end. Return centres will be established in cities in which law enforcement officials apprehend irregular migrants more frequently. These centres will be investigated with or without notice twice a year by the Police Force.

As an attachment to this Circular, another document was sent to the authorities. This document set out the main principles and conditions with which return centres need to comply. It states that these centres should have three different sections for men, women and families. Facilities such as toilets, hot water and washing machines will be provided at the centres. Food will be served three times a day. Drinking water will be provided where tap water is not drinkable. Medical services will be provided at entry and exit. A doctor should see irregular migrants if there is an urgent situation. Recreational activities will be provided to migrants. This is the first time that the authorities formed a detailed directive regarding the management of return centres.

In addition to this, the Ministry of Interior submitted another Circular on asylum seekers and refugees.[323] This Circular points out that there is an on-going process on alignment with the EU Acquis regarding migration and asylum. Until new legislation is passed, the Ministry concludes that some major changes in the immigration

[319] ibid para 76.
[320] n 172.
[321] *Charahili v Turkey* (n 313) para 77.
[322] Yasadışı Göçle Mücadele [Fight Against Irregular Migration] 19 March 2010, B.050.ÖKM.0000.11 – 12/632.
[323] Mülteci ve Sığınmacılar [Asylum Seekers and Refugees] 19 March 2010, B.050. ÖKM.0000.11-12/631.

management system are needed in practice. Turkey was criticised severely on its restrictions on asylum applications of irregular migrants so far. In this Circular, the Ministry states that migrants who are apprehended because of illegal entry or overstay should be able to access asylum application procedures. Their applications should be directed to suitable authorities in the shortest period of time. This Circular is a step towards alignment with the EU Acquis.

In 2010, there was one last circular on migration and asylum. This was submitted by Social Services regarding unaccompanied minors in Turkey.[324] Unaccompanied minors are to be accommodated at facilities under the auspices of Social Services. The type of facilities in which they would be accommodated depends on their age and gender. This Circular states that unaccompanied minors should be sent to language courses after their settlement at state facilities. Before they reach 18, all arrangements should be completed to transfer the minors to guesthouses once they come of age. These three Circulars published in 2010 give a clearer picture on the measures that the authorities should be taking in the area of immigration management. They also carried a very similar tone with the EU's recommendations to Turkey.

e. The Approach of the International Community to Turkey's Progress (2)

Apart from sending out the Circulars discussed above to relevant departments, Turkey was also still working on legislative alignment with the EU Acquis. It is essential to investigate the reaction from the international actors during this period in which Turkey developed new legislation and made some improvements in this field. In the same year of these developments in Turkey, the Commissioner for Human Rights wrote a letter to the Minister of Interior of Turkey.[325] In this letter, he welcomed the plans of the Government to introduce new legislation in order to prevent further human rights violations. He also appreciated the first steps taken by the ministerial circulars as explained above. He held that he received favourable comments from civil society members and the UNHCR regarding significant reforms Turkey has gone through. However, he mentioned a few problems experienced in practice such as some detainees' access to asylum procedures. He recommended that Turkey ensured its reforms were reflected in practice and that such developments became a stable

[324] Sığınmacı ve Mültecilere ait İşlemler [Procedures Regarding Asylum Seekers and Refugees] 2010, B.02.1.SÇE.0.09.01.00/.
[325] Thomas Hammarberg's letter to the Ministry of Interior of the Republic of Turkey (8 June 2010) CommDH(2010)26.

feature of the immigration management system.

The EU's progress report of the same year appreciated the ministerial circulars on migration and asylum.[326] As mentioned above, Turkey was undertaking a comprehensive programme of new legislation on foreigners. The progress report pointed out that full implementation of the new circulars and fast adoption of the new legislation is a key priority in order to provide fair procedures for the detention and deportation of irregular migrants.[327] The report also addressed the judgment of the ECtHR on *Abdolkhani and Karimnia v Turkey* and *Charahili v Turkey*, mentioned above, in order to show Turkey was still in the early stages of its transition to a modern, efficient and fair management system.[328] The EU appreciated the establishment of new removal centres in different cities of Turkey. The EU reminded Turkey to raise awareness among administrators, governors, municipalities and the public on the rights of irregular migrants and procedures in migration management.

In 2011, the European Commission on Racism and Intolerance (ECRI) submitted a country report on Turkey.[329] This report pointed out that Turkey still didn't have a comprehensive asylum and immigration law.[330] It also referred to the *Abdolkhani and Karimnia v. Turkey* case. The report stated that since this judgment became final and binding, two ministerial circulars as explained above were issued by the Ministry of Interior in order to remedy these kinds of problems. ECRI also welcomed the upcoming legislation under preparation on asylum and migration and noted that the Committee of Ministers, as part of their supervision responsibility, would examine all of these reforms.[331]

Within the same year, the Assembly submitted two resolutions on irregular migration due to growing concern over the large-scale arrival of irregular migration flows. First one mentioned that member states should refrain from automatic detention, which should only be used when there is no other alternative.[332] States

[326] Commission, 'Turkey's 2010 Progress Report' (Commission Staff Working Document) SEC (2010) 1327 final.
[327] ibid 81.
[328] ibid 82.
[329] European Commission on Racism and Intolerance, 'ECRI Report on Turkey' (10 December 2010) CRI (2011) 5.
[330] ibid 128.
[331] ibid para 129.
[332] Parliamentary Assembly, 'The Large-Scale Arrival of Irregular Migrants, Asylum Seekers and Refugees on Europe's Southern Shores' Resolution No: 1805 (14 April 2011) Doc 12581.

should ensure that detention conditions meet minimum human rights standards.[333] Vulnerable people should not be detained and should be provided with the necessary care and assistance. The Assembly's second resolution was on the same topic.[334] The Assembly called on member states to ensure that detention facilities are authorised by the judicial authorities. Detention should only happen where necessary and on grounds prescribed by law.[335]

The 2011 Progress Report referred to Turkey as an important country of transit and a destination for irregular migration.[336] The EU noted that the statistics of illegal entries coming directly or transiting from Turkey had increased significantly.[337] The EU welcomed the efforts of expanding the capacity to host irregular migrants in decent conditions with a view to deportation. The EU appreciated preparation of new legislation regulating the status of regular and irregular migrants, asylum seekers and refugees in Turkey. It also noted that the circulars issued in 2010 had improved the practices of law enforcement forces. After the issuance of the Circulars, posters and brochures explaining the rights of irregular migrants were sent to all removal centres. However, the EU criticised the lack of systematic psychosocial services in the removal centres. It noted that access to legal aid is also limited at the removal centres.

In 2012, the Committee on Rights of the Child mentioned asylum seeking and refugee children in its concluding observations of Turkey.[338] The Committee raised its concerns on the difficulties for asylum seeking and refugee children to access health and education and their detention with adults.[339] The Committee called on Turkey to ensure that every effort is made to secure these children' rights and provide counselling. The same year's progress report by the EU pointed out that progress had been made towards enacting new legislation.[340] The report noted that the work towards the new legislation[341] is a significant step towards having a single and

[333] ibid para 12.3.
[334] Parliamentary Assembly, 'The Interception and Rescue at Sea of Asylum Seekers, Refugees and Irregular Migrants' Resolution No: 1821 (21 June 2011) Doc 12628.
[335] ibid para 9.8.
[336] Commission, 'Turkey 2011 Progress Report' (Commission Staff Working Document) SEC (2011) 1201 final.
[337] ibid 89.
[338] UN Committee on the Rights of the Child, 'Concluding Observations: Turkey' (20 July 2012) UN Doc CRC/C/TUR/CO/2-3.
[339] ibid para 60.
[340] Commission, 'Turkey 2012 Progress Report' (Commission Staff Working Document) SWD (2012) 336 final.
[341] The new law on Foreigners and International Protection was sent to Parliament in May 2012, yet it was not adopted whilst drafting this Progress Report.

comprehensive legislative framework in the area of immigration management.[342] Although the new law was on its way to adoption at the Parliament, there were no substantial administrative measures in order to improve the situation of irregular migrants. The capacity to host irregular migrants decreased to 2176. The report stated that minimum living standards at removal centres and their inspection remain unregulated. Lack of human and financial resources damaged the improvement of conditions at removal centres. There was no progress on providing psychosocial services to irregular migrants. The EU appreciated the training of the staff working in this area with national resources and support from the EU. Access to legal aid still remained limited. In the asylum area, the report welcomed the submission of the new law to the Parliament. The report noted that building of seven reception centres for asylum seekers and refugees funded by the EU was still on-going.

f. Syrian Refugee Influx and Public Opinion on Immigration

In addition to international dynamics, it is also vital to look at internal dynamics. Public opinion can be a significant factor for governments in deciding how they will act on a specific issue. Research was carried out on the Turkish public's opinion on refugees, asylum seekers and irregular migrants.[343] This research's findings revealed that there was an obvious lack of information regarding numbers of irregular migrants and asylum seekers and confusion over terms such as irregular migrants and refugees.[344] The interviewees in this research assumed that there was an insignificant number of asylum seekers or irregular migrants in Turkey. They also were not sure about the meaning of terms such as asylum seekers, refugees or irregular migrants. The interviewees mostly approached the topic in a positive way by saying that Turkey is a multicultural and welcoming country and so is Turkish society. There was also a compassionate concern factor in the interviews towards aliens in difficult situations.[345] Beyond that, some interviewees mentioned that Turkey should stay Turkish without any interference with foreigners.[346] Few of them pointed out

[342] Commission, 'Turkey 2012 Progress Report' (n 340) 75.
[343] Juliette Tolay, 'Türkiye'de Mültecilere Yönelik Söylemler ve Söylemlerin Politikaya Etkisi [Opinion Towards Refugees and Their Influence on Politics]' in Özlen Çelebi, Saime Özçürümez and Şirin Türkay (eds), *Iltica, Uluslararasi Göç ve Vatansızlık: Kuram, Gözlem ve Politika* [Asylum, International Migration and Statelessness: Theory, Observation and Politics] (BMMYK [UNHCR] 2011) 201.
[344] ibid 203.
[345] ibid 205.
[346] ibid 206.

Turkey's weak economy in the sense that they assume aliens will come and steal 'their' jobs.[347] However, the research revealed that as there was no public discussion over migration and asylum issues at the time, public opinion did not have an impact on policy making unlike Western nations where negative perceptions influence policy.[348]

Here, it is significant to bring the incoming Syrian refugee population to the discussion. As mentioned before, Turkey is a host country to 2.7 million Syrian refugees as of today.[349] Nonetheless, this influx from Syria had a limited impact on the introduction of this new legislation. This can be related to the numbers of people arrived to Turkey and severity of the issue during the making of this legislation. While there were only 174,491 persons of concern on 1 January 2013, there were 2,620,553 persons of concern on 15 February 2016.[350] This demonstrated that during the law making process, Syrian refugee influx was a minor issue in terms of its numbers although the statistics proved otherwise in a short amount of time. This was also in line with the lack of public opinion explained above. However, the perception towards refugees has also recently changed in public eye. The research conducted in 2015 presented that 84% of the respondents were worried by refugees coming from Syria and 68% of them wanted the government to introduce more restrictive immigration policies.[351] This dramatic shift in numbers and so public opinion in a short span of time showed that the legislation might have had a different structure and focus if discussed at Parliament a few years later than it was. However, this lack of impact and public opinion during law making allowed the law-drafting group to be more liberal with the upcoming legislation.

IV. THE LAW ON FOREIGNERS AND INTERNATIONAL PROTECTION (2013)

It is clear that Turkey's immigration management system was widely criticised by the EU and other international organisations of which Turkey is a member in terms of the lack of a comprehensive immigration and asylum policy in line with international and

[347] ibid 207.
[348] ibid 210.
[349] n 192.
[350] ibid.
[351] 'Turkish Perceptions Survey 2015' *(GMF)* 12-13 <http://www.gmfus.org/sites/default/files/TurkeySurvey_2015_web1.pdf> accessed 10 January 2018.

EU standards. In the meantime, the Turkish authorities dealt with the issue with circulars and policies instead of adopting comprehensive immigration legislation.

However, the work on the new law on Foreigners and International Protection started in 2009. As mentioned before, the Government formed a Development and Implementation Office on Asylum and Migration Legislation and Administrative Capacity under the Ministry of Interior in order to keep promises to the EU to draft comprehensive legislation. This Office had been working on drafting a new law on immigration and asylum since 2009. Once the draft was finalised, the Cabinet submitted the work to the Head of Parliament and from there is was due to be sent to the relevant Commissions.[352] Hence, it was sent to the Interior Affairs Commission in 2012 for scrutiny. This was followed by revision and amendments by other Commissions such as the Justice and International Affairs Commissions.[353] Subsequently, this was sent to Parliament, discussed in three sessions and adopted on 4 April 2013.[354]

This law is remarkable in terms of the reform it brought to Turkey's immigration management system. It brings clear provisions about administrative detention of irregular migrants, as mentioned in the ECtHR's previous judgments.[355] The new law states that when law enforcement officials apprehend foreigners under Article 54, they should contact the governorship of the concerned city immediately. The governorship will decide on their status within the next forty-eight hours. If the governorship takes a removal decision, they should issue an administrative detention order for those who bear the risk of absconding or disappearing; have breached the rules of entry into and exit from Turkey; have used false documents; have overstayed in Turkey after the expiry of their visa or pose a threat to public order, public security or health.

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[352] The law-making process in Turkey starts with Cabinet or a member of Parliament's submission of a draft law to the Head of Parliament. Head of Parliament sends the draft to the relevant Commissions for further discussion and amendments. Commissions are composed of same number of members from each party in Parliament. They work on different topics such as human rights issues, education or health. The final version will be submitted to Parliament for discussion and adoption. The adoption of the Bill with the majority of the votes in Parliament will be sent to the President for approval. The President can either accept the Bill or send it back to Parliament. However, the President only has the right to veto a Bill once. The second time has to be followed by an approval. After this, the Bill becomes law following the publication on the Official Gazette.

[353] The draft was discussed at Justice; International Affairs; Interior Affairs; Human Rights Investigation; National Education, Culture, Youth and Sports; Plan and Budget; Health, Family and Social Policies; and European Union Commissions.

[354] Yabancılar ve Uluslararası Koruma Kanunu [Law on Foreigners and International Protection] 2013, No: 6458.

[355] ibid art 57.

The new law also states that the duration of administrative detention cannot exceed six months. However, if the removal is not successful due to the foreigner's failure of cooperation or providing correct documents about their country of origin, duration might be extended to an additional six months. There should be monthly reviews on the need for detention. All of these decisions should be notified to the foreigner. Foreigners under administrative detention shall be held at removal centres.[356] The directive regarding the management of the removal centres will be the main document to follow for the authorities. Lastly, emergency and primary health care services will be provided free of charge.[357] Foreigners can have visitors and meet representatives from the UNHCR.

The law mentions the best interests of the child principle and requires that families with children and unaccompanied minors will have separate accommodation. With regard to unaccompanied children, the new law takes the best interests of the child as primary consideration.[358] The Ministry of Family and Social Policies will place unaccompanied minors in suitable units in the care of their adult relatives or a foster family. Children over 16 might be placed at reception or accommodation centres. Siblings will be accommodated together taking into account their interest, age and level of maturity.

This new law established a new civilian institution called the General Directorate of Migration Management which the EU had recommended for Turkey since the beginning of the accession period. As mentioned above, there is a new directive on the management on the removal centres.[359] This Directive states that the services that the removal centres are to have are as follows: shelter, food, security, emergency and primary health care, psychological and social assistance and separate areas for people in need. Providing these facilities could be read as an attempt to bring remedy to the EU's and other international actors' concerns as explained above. These centres will be inspected by the governorship on a regular basis. They will be also inspected by General Directorate of Migration Management every year and Ministerial Inspection Bureau every three years. This Directive puts clear provisions on the services and inspections. As discussed above, the EU had previously criticised the lack of such

[356] ibid art 58.
[357] ibid art 59.
[358] ibid art 66.
[359] Kabul ve Barınma Merkezleri ile Geri Gönderme Merkezlerinin Kurulması, Yönetimi, İşletilmesi, İşlettirilmesi ve Denetimi Hakkinda Yönetmelik [Principles and Procedures Related to the Establishment, Management, Outsourcing, Inspection of Removal Centres] April 2014, No: 28980.

services and inspections.

In 2013, EU's progress report appreciated adoption of this new law and called on Turkey to implement the legislation as a priority.[360] The report also welcomed establishment of the civilian institution in the migration management system. However, there were still shortcomings on Turkey's side regarding irregular migrants' rights. The establishment of removal centres had not been completed.[361] The EU criticised Turkey on the lack of structured psychosocial services for irregular migrants staying in the centres as they did a year before. In 2013, the Assembly also issued a resolution and urged Greece, Turkey and other Mediterranean countries to take necessary to measures to tackle irregular migration.[362] The Assembly invited Turkey to take steps to improve the conditions of detention of irregular migrants and asylum seekers.

CONCLUSION

The law has come a long way since the start of the evolution of legislation and policies on immigration in Turkey. During the first two periods, the Government did not prioritise immigration issues. They managed the massive influxes with circulars and regulations. These two periods also were characterised by a lack of any international reaction such as monitoring or progress reports, recommendation or resolutions.

Finally, the final period that started with the EU's membership application, witnessed the start of changes in the management of immigration legislation. There were several improvements in relation to managing asylum and immigration such as building removal centres and such as forming an office to start working on the new law. This period was also unique in terms of the international community's involvement. While there was a constant and yearly monitoring by the EU's progress reports, there were other actors that had a say on Turkey's immigration management and in particular its detention policies such as the ECtHR, the Committee on the Rights of the Child and Council of Europe.

This period was followed by the adoption of new immigration and international protection legislation that provided several safeguards for the relevant

[360] Commission, 'Turkey 2013 Progress Report' (Commission Staff Working Document) SWD (2013) 417 final.
[361] ibid 65.
[362] Parliamentary Assembly, 'Migration and Asylum: Mounting Tensions in the Eastern Mediterranean' Resolution No: 1918 (24 January 2013) Doc 13106.

people. Turkey, now, has comprehensive legislation that follows the EU and international human rights standards. In the Parliamentary Commission meeting and parliamentary debates, there was a common opinion on the need for a new legislation in this area due to the EU alignment process and to bring remedy to issues pointed out by judgments of the ECtHR.[363] In the Parliamentary Commission and parliamentary debates there was not a deep discussion or disagreement among political parties as is normally the case for other issues, such as reforms in national education or health. There was a dearth of public opinion on migration issues and no significant difference in the agendas of political parties and so the Parliament Members were in agreement in this new legislation. It was passed by Parliament after only three brief parliamentary sessions without any amendments.

While this chapter aimed to list the history of the evolution of Turkey's immigration law and policies and the international reaction to Turkey's detention policies chronologically, they will be scrutinised in Chapter 5 with reference to parliamentary debates, Commission debates and interviews with selected officials involved in the recent law drafting process.

[363] 'İçişleri Komisyonu Tutanak Dergisi [Interior Affairs Commission Meeting Minutes]' (*TBMM,* 31 May 2012) <http://www.tbmm.gov.tr/develop/owa/komisyon_tutanaklari.tutanaklar?pKomKod=13> accessed 5 September 2017; 'İnsan Haklarını İnceleme Komisyonu Tutanak Dergisi [Human Rights Commission Meeting Minutes]' (*TBMM,* 20 June 2012) <http://www.tbmm.gov.tr/develop/owa/komisyon_tutanaklari.tutanaklar?pKomKod=14> accessed 5 September 2017; 'İnsan Haklarını İnceleme Komisyonu Tutanak Dergisi [Human Rights Commission Meeting Minutes]' (*TBMM,* 24 May 2012) <http://www.tbmm.gov.tr/develop/owa/komisyon_tutanaklari.tutanaklar?pKomKod=14> accessed 5 September 2017.

CHAPTER 4. THE UK'S HISTORICAL RECORD IN RELATION TO COMPLIANCE WITH INTERNATIONAL STANDARDS

Following the previous chapter on Turkey's immigration law history, this chapter will be on the development of the UK's domestic law in relation to immigration issues. This will have a specific focus on immigration detention. This chapter will also analyse international and national approaches to changes in the UK's immigration law and practices in relation to immigration detention. As mentioned in the chapter on Turkey, domestic law evolves in time as a response to different contextual developments such as campaigning at domestic level or being a part of a transnational union. These developments can be important in terms of a state's decision on compliance with human rights standards. This chapter will specifically trace how the UK's approach towards immigrant detention has changed over the years and reactions towards these issues in a chronological order.

As explained in the theoretical analysis of compliance theories, compliance is generally the result of international and institutional drivers, facilitated by domestic politics and structures[364] with the motives of advancing their reputation or avoiding sanctions.[365] The selected compliance theory for this thesis, on the other hand, came up with three distinct social mechanisms that change state behaviour in order to give a better understanding of states' compliance: material inducement, persuasion and acculturation. This chapter will provide valuable data in order to find out whether the UK's compliance can be read with one of those mechanisms. Analysis on these factors and application of Ryan Goodman and Derek Jinks' theory to this case study will be presented in the next chapter.

This chapter, with its four subchapters, seeks to explain the UK's approach towards immigration detention with reference to contextual changes at domestic and international level within a timeline starting from the 1970s. The first subchapter will be on the period between 1971 and 1993 while touching issues like *habeas corpus*, the definition of detention and statistics during this period. Following this, the second subchapter's focus will be on adult detention in the UK between 1993 and 2009. This

[364] M Peter Haas and Richard B Bilder, 'Compliance Theories Choosing to Comply: Theorizing from International Relations and Comparative Politics', in Dinah Shelton (ed), *Commitment and Compliance: The Role of Non-binding Norms in the International Legal System* (Oxford Scholarship Press 2003) 43.

[365] Oona A. Hathaway, 'Do Human Rights Treaties Make a Difference?' (2002) 111 The Yale Law Journal 1935, 1944.

period was characterised by rising detention of irregular migrants and asylum seekers. The third part will analyse detention of minors in the UK with reference to domestic cases and statistics between 1993 and 2009. The last subchapter will evaluate the period after 2010 when the Government committed to end detention of minors for immigration law enforcement. In order to understand the history of the UK's compliance with human rights standards, this chapter will be crucial in terms of revealing the dynamics that might have an impact on progress.

I. ADULT DETENTION (1971-1993)

a. Background of the 1971 Immigration Act and Its Implications

The UK has always been a country that receives a significant number of migrants from different countries due to its colonial history. To summarise the immigration flows to Britain, it can be stated that 600,000 people were added to the UK's population through immigration between 1961 and 1971.[366] Another large influx happened between 1991 and 2001, during which time immigration added 1.1 million people to the total population.[367] Overall, the non-UK born residents in England and Wales has quadrupled between 1951 and 2011.[368]

As a country with a long history of immigration, the UK had an established immigration law for a long time. The 1971 Immigration Act[369] can be characterised as the start of modern detention in the UK immigration history even though the 1905 Aliens Act[370] provided immigration authorities with the power to detain. The 1905 Aliens Act banned immigrants from landing without a medical examination and a permit from an immigration officer.[371] People who were refused entry under the 1905 Aliens Act were detained on board the vessels on which they had come to the UK

[366] Randall Hansen, 'United Kingdom' (*Focus Migration*, December 2007) <http://focus-migration.hwwi.de/United-Kingdom.2708.0.html?&L=1> accessed 11 July 2017.
[367] ibid.
[368] 'Non-UK Born Population of England and Wales Quadrupled Between 1951 and 2011' (*Office for National Statistics*, 17 December 2013) <http://www.ons.gov.uk/ons/rel/census/2011-census-analysis/immigration-patterns-and-characteristics-of-non-uk-born-population-groups-in-england-and-wales/summary.html> accessed 11 July 2017.
[369] sch 2, paras 9, 16 (2).
[370] ch 13 7 (3).
[371] Stephanie D'Orey, *Immigration Prisoners* (Runnymede Trust 1984) 1.

since there was no accommodation facility on shore.[372] Following the 1905 Aliens Act, the 1971 Act was the start of modern immigration detention.

The 1971 Act was the culmination of legislative changes which occurred in the 1960s.[373] The 1960s was marked by policy changes towards Commonwealth immigration.[374] Commonwealth citizens as citizens of colonies and former colonies of the UK had free entry to the UK before the 1960s. The Commonwealth Immigrants Act 1962 and 1968 were brought by the then Governments in order to manage high flow from Commonwealth countries to the UK as this phenomenon became an issue in the media and the public eye. Research carried out during the 1960s and 1970s on the public concern about immigration indicated that three-quarters of the British public believed that the UK had received too many immigrants without any strict limitations.[375] While the 1962 Act brought statutory powers to refuse entry and deport Commonwealth citizens if they did so within 24 hours of entry, the 1968 Act introduced administrative removal for illegal Commonwealth entrants if caught within 28 days and made the entry conditional for Commonwealth citizens upon their parent or grandparent being born in Britain.[376]

Following these changes in immigration law, the 1971 Act clarified the powers of expulsion and codified the modern detention for immigration purposes.[377] The background of the 1971 Act could also be linked to motives in domestic politics. The Conservative party intended to satisfy the opponents of immigration after they won the elections in 1970.[378] The general election manifesto by the Conservative Party in 1970 targeted the public's concerns regarding immigration statistics and revealed that their plan was to bring a new unified system of control over immigration from overseas and give the Home Secretary authority of a complete control over the entry of individuals into the country.[379] As a result, Parliament started planning a

[372] ibid.
[373] Vaughan Bevan, *The Development of British Immigration Law* (Croom Helm 1986) 83.
[374] ibid 77.
[375] Lauren McLaren, 'Immigration and Political Trust in the UK' (2013) 4 Political Insight 14, 15.
[376] Robin Cohen, *Frontiers of Identity* (Longman 1994) 48.
[377] Bevan (n 373) 83.
[378] Ann Dummett and Andrew Nicol, *Subjects, Citizens, Aliens and Others* (Weidenfeld and Nicolson 1990) 219-220.
[379] '1970 Conservative Party General Election Manifesto' (*Politics Resources*) <http://www.politicsresources.net/area/uk/man/con70.htm> accessed 11 July 2017.

comprehensive immigration bill to replace its old approach towards immigration.[380] This context brought the Immigration Act 1971 as a formal and statutory basis for immigration detention[381] that also gave a strong message on limiting immigration to the UK.[382] It was a clear sign of the Government's intention to have wide powers on control over the entry of non-Europeans.[383]

In terms of the Act's content, immigration officers in the Home Office have the authority to detain or grant temporary admission to migrants subject to immigration control.[384] As a general overview, this Act 'legalized detention, pending completion of legal examination, a decision to remove, the execution of removal directions, or successful deportation'.[385] These circumstances can be grouped under two main forms: people who are detained on entry and after entry.[386] On entry detention occurs when there is a pending decision to admit, to change the conditions of admission, to allow 'exceptional leave to remain', to remove or to deport.[387] Detention happens after entry when there is a violation of permitted entry or overstay.[388]

It is essential to state the statistics in the 1970s and 1980s in order to understand how widely these powers were used. Immigration statistics showed a steady increase in numbers of immigration detainees in the UK within this period. While the numbers of detained people under immigration purposes were just over 100 until 1975, this statistics hit 1000 in 1980 and increased steadily after 1985 reaching 3,138 in 1989.[389] With regard to detention of minors' statistics, available statistics at Harmondsworth detention centre, one of the main detention centres in the UK, showed that there were 271 children detained in 1978.[390] This number was 315 in

[380] Stephanie J. Silverman, '"Regrettable But Necessary?" A Historical and Theoretical Study of the Rise of the U.K. Immigration Detention Estate and Its Opposition' (2012) 40 Politics & Policy 1131, 1138.
[381] ibid.
[382] Don Flynn, Rob Ford and Will Somerville, 'Immigration and the Election' (2010) 18 Renewal 102, 102.
[383] Liza Schuster, *The Use and Abuse of Political Asylum in Britain and Germany* (Frank Cass 2003) 139.
[384] Immigration Act 1971 (n 369), schs 2-3.
[385] Silverman (n 380).
[386] Cohen (n 376) 106.
[387] ibid.
[388] ibid.
[389] Mari Malmberg, 'Control and Deterrence Discourses of detention of asylum-seekers' (2004) Sussex Migration Working Paper no. 20 Sussex Centre for Migration Research 8 Table 1.
[390] d'Orey (n 371) 16.

1979 and 131 in 1981.[391] During this time period, the UK did not have many established detention facilities compared to the numbers under detention. Detentions usually occurred at Harmondsworth, Gatwick and Queen's Building within those years.[392] Due to overcrowding at Harmondsworth, many other detainees were kept in local prisons.[393] Although they were not brought before the courts when they were detained under the 1971 Immigration Act powers, they were still treated as prisoners and experienced the same treatment as prisoners in the prisons.[394]

b. The Approach of Domestic Courts towards Immigration Detention

Domestic courts interpreted the 1971 Act in several cases. Courts' jurisprudence can be a push factor on states towards compliance with human rights standards in the presence of an alignment between jurisprudence and human rights standards. Domestic courts can use international law to force lawmakers to change their legislation and policies in a case of inconsistency between practice and international standards. On the other hand, unless there is such alignment, states can use Courts' jurisprudence in order to support non-compliance with human rights standards. For this reason, domestic courts' approach to detention is worth mentioning as an important dynamic at domestic level.

The 1971 Act does not require any judicial approval mechanisms. This has resulted in increasing arbitrariness in the cases.[395] Under these circumstances, an alleged illegal entrant can challenge a decision to detain him through *habeas corpus*[396].[397] In the *Azam and Others* case, the applicants were illegal entrants before the 1971 Act came into force and were detained for six months pending the conclusion of proceedings.[398] They were apprehended after the 1971 Act passed. They applied for *habeas corpus* and claimed that they had 'settled' status when the 1971 Act passed. This would give them an indefinite leave to remain as settled people as long as they were not in breach of immigration laws under the 1971 Act. However,

[391] ibid.
[392] ibid 17.
[393] Bevan (n 373) 355; d'Orey (n 371) 15.
[394] Bevan (n 373) 355.
[395] Daniel Wilsher, *Immigration Detention: Law, History, Politics* (Cambridge University Press 2013) 79.
[396] *Habeas corpus* is a legal term defining the requirement of a court order for the detainee to be brought before a judge or into court to prevent arbitrary detention by the authorities.
[397] Bevan (n 373) 353.
[398] *Azam and Others v Secretary of State for the Home Department and Another Respondents* [1973] UKHL 7, [1973] 2 WLR 105.

the Court took a more restrictive interpretation and decided that they were in breach of immigration laws by their illegal entry. Their illegal entry in the first place made their detention lawful.

Following this case, another case came before the domestic court in 1976. In *R v. Governor of Risley ex parte Hassan*[399], the applicant, from Pakistan, was detained a year after his entry to the UK on the suspicion of entering the UK illegally. He claimed that he obtained a six month tourist visa during his entry. However, he lost the passport that contained this six month tourist visa stamp. He was detained for a month pending an application for *habeas corpus*. The Court stated that as long as the Government claimed that detention was based on its existing power to detain, the burden to prove the illegality of detention would be on detainees.[400] This reflected the changing approach towards Commonwealth citizens in the 1968 Act. It became obvious that there is a very limited burden on authorities to justify immigration detention. The Court held that it would be satisfactory if the executive merely asserts its powers under the 1971 Immigration Act.[401]

In 1983, in the *Khawaja* case, after the appellants had obtained leave to enter the UK, the Home Office noticed that they both gained this permission by practising fraud or deception at the ports of entry.[402] For this reason, the immigration officers decided that the appellants should be detained with a view to deportation as illegal entrants. However, both of the appellants took the case to Court. In the judgment, the Court stated that *habeas corpus* should be available to all as there should be no distinction between citizens and aliens.[403] This interpretation can be seen as very significant as it provided an equal right to all against administrative detention.[404]

Within the same year, the Administrative Court introduced several principles on the duration of detention and stated the limitations on power to detain in the *Hardial Singh*[405] case. The Administrative Court stated that the Secretary of State's power to detain was subject to several limitations even though the Act did not provide any specific limitations on the duration of detention. Firstly, detention could only be

[399] *R v Governor of Risley Remand Centre, ex parte Hassan* [1976] 2 All ER 123, [1976] 1 WLR 971.
[400] Wilsher (n 395) 84.
[401] ibid 85.
[402] *Khawaja v Secretary of State for the Home Department* [1982] Imm AR 139, [1983] 2 WLR 321.
[403] Wilsher (n 395) 86-88.
[404] ibid 87.
[405] *Singh, R (on the application of) v Governor of Durham Prison* [1983] EWHC 1 (QB), 1984 1 WLR 704.

authorised if there was an on-going process on the making of a deportation order or pending detainee's removal.[406] No other reason could be used to justify detention. Since power to detain was only given to ensure deportation to be finalised, length of detention had to be limited to a time that was reasonably necessary for this aim.[407] In addition to this, the Secretary of State should not use its power to detain in a situation where it was clear that the deportation order could not be finalised in a reasonable amount of time.[408] Lastly, the Court emphasised that the Secretary of State should act with due diligence throughout the removal process.[409] Thereby, the Administrative Court set out criteria for lawful detention for immigration law enforcement through this case. However, the case law does not clarify to what extent the *Hardial Singh* principles should be applied. It is not clear whether these principles can be applied to cases where the individual is awaiting a decision on its asylum application.[410] [411]

c. Parliament's Secondary Agenda: Administrative Detention

It is essential to be familiar with the arguments brought forward in Parliament in order to understand the dynamics that can have a potential impact on the approach towards immigrant detention.[412] Parliamentary debates are central to understanding the reasons for compliance or non-compliance with human rights standards in terms of immigration detention. Since compliance is determined by Parliament, particularly initiated by Government, parliamentary debates are the place to search for the soul of the reasoning for compliance or non-compliance. Given that states have the capacity to enforce change, the willingness to comply will be still dependent on the calculated political costs.[413]

With regard to child detention for immigration purposes, it can be stated that this issue was not extensively on Parliament's agenda in the 1970s and 1980s. Low numbers in detention statistics might be the reason for lack of attention by Parliament

[406] ibid para 7.
[407] ibid.
[408] ibid.
[409] ibid para 8.
[410] Harriet Samuels, 'Administrative detention in immigration cases: the Hardial Singh principles revisited' (1997) Public Law 623, 627.
[411] While there was not any international law reference within these judgments, it is still important to acknowledge them in order to see the Court's perspective towards immigration detention during this period.
[412] Chapter 3. Turkey's Historical Record in Relation to Compliance with International Standards did not, however, include any parliamentary debate on immigration detention as the archival research has shown that Turkish Parliament did not discuss immigration detention at any point except during the adoption of new legislation in 2014.
[413] Haas and Bilder (n 364) 46.

members. In 1979, the Government was asked to give statistics regarding detention of minors at Harmondsworth centre and whether any special care arrangements had been made in order to protect children welfare.[414] After providing the numbers of minors detained, the answer about special arrangements was as follows:

> If a child admitted to the detention centre is, or looks to be, under 17 years of age he is allowed to be with his/her parents if they, too, are detained. Unaccompanied children are placed in the care of a selected female detainee. Female Securicor orderlies must be present at all times that children are detained. Small children of either sex sleep in the women's quarters.[415]

This topic also came to Parliament's agenda in 1986 as there was a question directed to the Secretary of State regarding what type of childcare was provided in detention centres.[416] It was revealed that children were not detained unless accompanied by one or both parents.[417]

Adult detention was discussed frequently in the House of Lords and Commons in the 1980s. The discussion was mostly on length of detention; numbers of people detained under Immigration Act 1971; and the cost of the overall procedure of detention.[418] It was requested from the Secretary of State to provide numbers detained overnight at Harmondsworth, Gatwick and Queen's Building and also prison establishments.[419] The answer revealed that 93 people were detained at prison establishments across the UK on 31 March 1987.[420] Since costs to taxpayers were high to detain people at detention centres, temporary admission was suggested as a possible alternative to detention.[421] However, this suggestion was not accepted as suggested that this might hamper the operation of immigration control.[422] It was argued that in order to protect the integrity of immigration control, detention had to be used on necessary occasions given that the UK did not use power to detain excessively.[423]

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[414] HL Deb 19 July 1979, vol 401, cols WA1617-8. Lord Avebury asked for further information.
[415] ibid Lord Belstead explained special care arrangements.
[416] HC Deb 06 November 1986, vol 103, col 532-4W. Mr. Corbyn directed this question.
[417] ibid.
[418] Hansard Archives, 1980-1989.
[419] HC Deb 10 April 1987, vol 114, cols 419-20W. Mr. Soley directed this question to the Secretary of State.
[420] ibid.
[421] HL Deb 23 July 1985, vol 466, cols 1164-80.
[422] ibid.
[423] ibid the explanation was made by Lord Glenarthur.

In addition to that, conditions in the detention centres, such as the meals provided and access to necessary information in different languages were also questioned.[424] It was stated that a wide range of meals seek to cover all dietary requirements as far as possible and work on providing necessary information to detainees in different languages was under the way.[425]

II. ADULT DETENTION (1993-2009)

This chapter seeks to establish a framework for adult detention in the UK. It will explain how administrative detention of adults become a standard practice between 1993 and 2009 with reference to statistics, parliamentary debate on detention and international monitoring bodies' approach to this measure. Since this period covers a long timeline, this chapter divides this period into two as 1993-2000 and 2000-2009 in order to have a clear picture.

a. 1993-2000

a.1. More Asylum Applications, More Administrative Detention

The end of the Cold War and greater accessibility to global mobility were the significant features to define the period after 1989.[426] The UK was one of the countries affected by those developments in the world. During the 1990s, the UK faced high and constant levels of immigration to the country.[427] The sharp increase in asylum applications started at the very end of the 1980s. Since the mid-to-late 1990s, the number of asylum seekers considerably increased.[428] Between 1988 and 1991, the number of asylum applications rose to 44,840 from 3,998 in 1988.[429] This rapid increase reflected itself on the detention statistics and new legislation. The detention statistics showed an increase in parallel as some of these asylum seekers were held on arrival.[430] In addition to this, some of the asylum seekers were not deported

[424] HC Deb 06 November 1986, vol 103, cols 532-4W.
[425] ibid.
[426] Bridget Anderson, *Us and Them?: The Dangerous Politics of Immigration Control* (Oxford University Press 2013) 51.
[427] Will Somerville and Betsy Cooper, 'Immigration to the United Kingdom' in Uma A. Segal, Doreen Elliot and Nazneen S. Mayadas (eds), *Immigration Worldwide: Policies, Practices and Trends* (Oxford University Press 2009) 125.
[428] Eytan Meyers, *International Immigration Policy: A Theoretical and Comparative Analysis* (Palgrave Macmillan 2004) 71.
[429] Home Office, 'Asylum Statistics: United Kingdom 1995' (Statistical Bulletin, 16 May 1996) Table 1.1; Randall Hansen, *Citizenship and Immigration in Post-war Britain: The Institutional Origins of a Multi-Cultural Nation* (Oxford University Press 2000) 234.
[430] Wilsher (n 395) 88.

immediately after their applications were refused.[431] Thus, they were housed in prison-like detention centres.[432] Whereas the number of detained people under 1971 Act powers were just 1,086 in 1985, this number reached 5,778 in 1993 and 10,240 in 1995.[433]

Until the 1990s, the UK did not have many permanent detention centres.[434] Increase in the numbers of detained people resulted in expansion of detention facilities throughout the country. The Home Office announced that another 300 immigration detention places were under way especially for detention of asylum seekers in November 1991.[435] In November 1993, the Campsfield, Oxford detention centre was opened as the first purpose-built camp for immigration detainees with a capacity of 186 places.[436] This was followed by expansion of facilities at the end of the 1990s. Following the 1999 Immigration and Asylum Act, three detention centres were built: Oakington – around 400 places, Harmondsworth – 530 places and Yarl's Wood – 900 places.[437]

a.2. The UK's Domestic Law Response to Rise in Asylum Applications

The rise in the number of asylum applications was not welcomed by the British public as asylum seekers were seen as a threat to the welfare state and national identity.[438] The Governments also approached this phenomenon with caution. For this reason, the 1990s saw a new Act regarding asylum issues every three years.

Asylum was an important driver in terms of the UK's immigration policy since the statistics in asylum applications showed a rapid increase after 1990.[439] This increase pointed out a need for a new legislation and the Government announced the new Act in 1992.[440] The 1993 Act was aimed to deal with the high number of asylum

[431] Christian Joppke, *Immigration and the Nation-State: The United States, Germany, and Great Britain* (Oxford University Press 2003) 134.
[432] ibid.
[433] Malmberg (n 389) 8.
[434] Michael Welch and Liza Schuster, 'Detention of asylum seekers in the US, UK, France, Germany, and Italy: A critical view of the globalizing culture of control' (2005) 5 Criminal Justice 2005 331, 337.
[435] Sue Shutter, *Immigration and Nationality Law Handbook* (Joint Council for the Welfare of Immigrants 1992) 197.
[436] Welch and Schuster (n 434) 338.
[437] ibid.
[438] Schuster (n 383) 144.
[439] Robert Winder, *Bloody Foreigners: The Story of Immigration to Britain* (Abacus 2005) 419.
[440] Asylum and Immigration Appeal Act 1993.

applications, the delay in processing claims and the challenges of making decisions.[441] The 1993 Act provided rights of appeal for asylum applicants.[442] It also brought in the procedure of fingerprinting for asylum seekers and their children.[443]

Within this period, administrative detention was regulated by the executive guidelines prepared for the Home Office staff.[444] These guidelines explained that detention should be used as a last resort in order to effect removal or prevent absconding or offending.[445] They refer to certain situations such as illegal entry, or fraud on documents as a substantial risk of absconding.[446] In addition to this, the Immigration (Places of Detention) Direction was in place as it indicated where to detain people. This Direction stated that a person could be detained at secondary examination areas at ports, Prison Service establishments, Immigration Service detention centres and police cells.[447]

Following the 1993 Act, the Asylum and Immigration Act 1996 announced a list of countries where there was no 'serious' risk of persecution and thereby applicants from these countries were only allowed to apply to the accelerated appeals procedure.[448] The appeal right given under the 1993 Act was thus undermined. Finally, the Immigration and Asylum Act 1999 introduced a 'one-stop' appeal process replacing the appeal process and did not provide any appeal rights for migrants that entered illegally.[449] With regard to detention, the 1999 Act did not touch the main points of the 1971 Act. It only created statutory rules regarding management of a detention centre such as an appointment of a manager and declaring general rules for management of detention centres.[450] Detention centre rules, which will be mentioned below, came into force in 2001. The 1999 Act also provided automatic bail hearings.[451] However, this procedure was never implemented.[452]

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[441] Cohen (n 376) 95.
[442] Asylum and Immigration Appeal Act (n 437), sch 2.
[443] ibid.
[444] Immigration Service Instructions to Staff on Detention, 31 December 1991 and 20 September 1994; Wilsher (n 395) 89.
[445] Immigration Service Instructions to Staff on Detention (n 444).
[446] ibid.
[447] Immigration (Places of Detention) Direction 1996; Home Secretary, *Fairer, Faster and Firmer - A Modern Approach to Immigration and Asylum* (White Paper, Cm 4018, 1998).
[448] Asylum Claims.
[449] pt IV Appeals, One-Stop Procedure.
[450] ibid pt VIII Detention Centres and Detained Persons.
[451] ibid pt III Bail.

These Acts were passed by the Conservative and Labour Party Governments consecutively in the 1990s. Although these two parties are from two different sides of the political spectrum, their Governments in the 1990s approached immigrant detention and asylum seekers in a similar manner. Immigration policy still gave a strong message about the Government's fight against irregular migration and bogus refugees.[453] The 1990s did not see any changes on detention measures regarding adults, minors or families. In addition to this, detention practices expanded, including asylum seekers as was seen in the statistics. Hence, this period, covering between 1990 and 2000, did not experience any milestones with regards to the UK's compliance with human rights standards.

a.3. The Resistance of Parliament to Change

In 1990, there were questions directed to the Secretary of State regarding the number of people detained for immigration purposes; places of detention and the number of asylum seekers in detention within these statistics.[454] The written answer to these types of questions usually gave statistics for that exact date as there was no central record maintained.[455] There were also inquiries with regard to the duration of immigration detention and any measures taken to reduce length of detention.[456] The Minister of State explained the longest duration of detention was nine and a half months at that certain date.[457] With relation to steps in order to reduce the duration of detention, the Minister of State declared, 'Use of the power to detain under the Immigration Act is already kept to the minimum, and continuing detention in individual cases is regularly reviewed at progressively senior levels'. [458]

In 1991, detention of asylum seekers was discussed in terms of the Secretary of State's plans for the future such as increasing the use of this measure or reducing the numbers kept in prisons.[459] As an answer to this question, it was stated that persons were detained for immigration purposes only if they had not complied with

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[452] Silverman (n 380) 1137.
[453] ibid; Meyers (n 428).
[454] HC Deb 06 March 1990, vol 168, cols 559-60W. The questions were directed by Mr. Corbyn.
[455] ibid.
[456] HL Deb 25 June 1990, vol 520, col WA429. The questions were directed by Lord Hylton.
[457] ibid.
[458] ibid.
[459] HC Deb 28 June 1991, vol 193, col 572W. The questions were directed by Mr. Roy Hughes.

the terms of temporary admission or release.[460] Thereby, in order to keep efficiency of immigration control, there were no plans to change this policy. It was also clarified that the places of detention could be prisons or detention centres depending on availability and the level of security required.[461] In 1992, the Government was asked to provide information about the weekly cost of holding a detainee at a detention centre and a prison and the number of deaths which had occurred at Harmondsworth detention centre.[462]

In 1993, there was an inquiry similar to the ones that had come before, regarding whether there were any plans to end detaining asylum seekers in prisons and the scale of increasing places at immigration detention centres.[463] The answer was similar to the previous one as some immigration detainees might be held at prisons due to the lack of spaces.[464] They also announced the plans to increase the number of places in immigration detention centres.[465]

In 1994, the Secretary of State for the Home Department was asked what has been done to examine the duration of detention of asylum seekers in relation to the European Human Rights Convention (ECHR), Article 5.4.[466] The answer from the Secretary of State stated that detention was only used when there was no alternative and people would not comply with the conditions of temporary admission.[467] It also explained the rights of bail and appeal for detainees given under the 1993 Act.

In 1997, the discussion was still about the use of power under immigration powers to detain asylum seekers.[468] Mr Wardle of the Conservative Party claimed that the information about detention of asylum seekers were all misleading.[469] He asserted that only a small proportion of applicants were detained. They were only detained if they were waiting for their removal or appeal in the case of risk of absconding.[470]

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[460] ibid.
[461] ibid.
[462] HC Deb 10 December 1992, vol 215, cols 733-4W.
[463] HC Deb 30 November 1993, vol 233, col 405W. The questions were directed by Mrs. Roche.
[464] ibid.
[465] ibid.
[466] HC Deb 14 December 1994, vol 251, cols 644-5W. The questions were directed by Mr. Cunningham.
[467] ibid.
[468] HC Deb 05 March 1997, vol 291, cols 837-58.
[469] ibid.
[470] ibid the speech by Mr. Wardle.

Parliamentary debates show that there was no attempt to change detention policy. Instead of this, the power to detain under the Immigration Act was always defended as an important part of asylum and immigration policy. Even though human rights standards from international conventions such as ECHR were brought before Parliament beside other issues such as places of detention, the policy of detention was defended and given priority over compliance with human rights standards for the efficiency of immigration control.

a.4. The Approach of the International Community to the UK's Immigration Detention Policy

The international community's opinion might result in introducing new legislation in domestic law in some countries with different motives such as sanctions, rewards or protection of reputation as mentioned within the discussion on compliance theories above. The selected compliance theory for this thesis stated that international institutions could change state behaviour by altering the cost-benefit calculations of that specified state.[471] This potentially happens through increasing the benefits of compliance or the costs of noncompliance.[472] For this reason, international institutions' critiques along with domestic actors such as domestic courts and non-governmental organisation can be meaningful in understanding the factors which affect historical developments regarding compliance.

The UK is a party to the International Covenant on Civil and Political Rights (ICCPR) and Convention on the Rights of the Child (CRC).[473] Through this ratification, the UK has to submit reports on a regular basis and receive concluding observations or reports in return. In the 1990s, there were several reports written by the UK and also addressed the UK. At the end of 1994, the UK submitted a report to the Human Rights Committee[474] regarding its application of the ICCPR articles into practice.[475] The UK explained the conditions of detention centres in detail with references to outdoor/indoor facilities, provided meals, medical care and access to

[471] Ryan Goodman and Derek Jinks, *Socializing States: Promoting Human Rights Through International Law* (Oxford University Press 2013) 23.
[472] ibid.
[473] ICCPR date of signature 16 September 1968, date of ratification 20 May 1976; CRC date of signature 19 April 1990, date of ratification 16 December 1991.
[474] The Human Rights Committee is composed of independent experts, their task is to observe the implementation of the International Covenant on Civil and Political Rights by its States Parties.
[475] The United Kingdom, 'Fourth Periodic Report' (19 December 1994) UN Doc CCPR/C/95/Add.3.

legal representatives.[476] In addition to this, the UK explained in which circumstances detention was used and how the authorities regularly reviewed it.[477] In 1995, the Human Rights Committee submitted its report on the UK.[478] In this report, the Human Rights Committee stated its concerns over the treatment of irregular migrants, asylum seekers and people with a view to deportation.[479] The Committee held that the long duration of the detention might not be necessary in every case.[480]

The European Court of Human Rights (ECtHR) judgments are crucial to look at in detail in order to have a general idea on international jurisprudence on this issue. As a member of the Council of Europe (COE)[481], the UK ratified ECHR in 1951. Following this, the UK also accepted the optional clause that made the right of individual petition possible in 1966. This ratification and acceptance of this optional clause gave the ECtHR a mandate to rule on inter-state and individual allegations concerning the UK. In the case of violations by the UK, these judgments can award monetary compensation to the victim. In addition to the judgments against the UK, the Human Rights Act 1998 Section 2[482] states that 'any judgment, decision, declaration or advisory opinion of the ECtHR should be taken into account by the domestic courts in the UK in relation to the ECHR rights. By adopting Human Rights Act in 1998, the UK Government widened the influence of the ECtHR judgments in a way that any ECtHR judgment should be taken into account by domestic courts. This should increase the potential level of influence of ECtHR on the UK.

The *Chahal* case[483] in the 1990s was a landmark case relating to detention.[484] The applicant was a Sikh separatist leader who was under detention for six years in the UK. The ECtHR held that the as long as deportation proceedings are in progress and prosecuted with due diligence, the detention will be permissible.[485] For this

[476] ibid para 282.
[477] ibid para 189.
[478] Human Rights Committee, 'Comment on the United Kingdom's Fourth Periodic Report on Implementation of the ICCPR' (27 July 1995) UN Doc CCPR/C/79/Add. 55.
[479] ibid para 15.
[480] ibid.
[481] 'Who we are' (*COE*, 2017) <http://www.coe.int/en/web/about-us/who-we-are> accessed 11 July 2017. The UK is a founder member of the Organisation and became a member on 5 May 1949.
[482] Human Rights Act is an Act to give further effect to rights and freedoms guaranteed under the European Convention on Human Rights; to make provision with respect to holders of certain judicial offices who become judges of the European Court of Human Rights; and for connected purposes.
[483] *Chahal v UK* (1997) 23 EHRR 413.
[484] To read further on this case, see Chapter 2. Detention of Children in the Immigration Context: International Human Rights Standards.
[485] *Chahal* (n 483) para 123.

reason, the ECtHR found that six years detention did not violate Article 5 of the ECHR due to the given exceptional circumstances of the case.[486] Overall, while the ICCPR's monitoring body was concerned over the widespread use of detention in the UK, the ECtHR's jurisprudence had a more flexible approach towards detention for immigration purposes. This judgment points to the non-interventionist approach of the ECtHR in relation to immigration cases even when the right to liberty is at risk.[487] This gave the UK a wide discretion over the use of power to detain under the Immigration Act 1971.

b. 2000-2009

b.1. Rising Statistics of Administrative Detention and Expansion of Detention Centres

In the 2000s, the UK was still under the Labour Party Government. This period of this Government in the 2000s can be defined as a 'managed migration' period.[488] The general intention was to link the economy to migration policy due to the labour shortages in the UK, but also combat irregular migration at the same time.[489] With the introduction of the 1999 Immigration and Asylum Act, the number of places for detention had immensely increased.[490] Right after the 1999 Act, three detention centres were opened at Oakington, Harmondsworth and Yarl's Wood as mentioned before. Oakington and Harmondsworth detention centres had a large capacity for families. In addition to this, Lindholme RAF base was redesigned as a removal centre, Dungavel prison was turned into a detention centre and a closed induction centre was established at Dover.[491] Thereby, the Government followed its plans to expand its immigration detention estate in order to meet its commitment of 30,000 removals in a year.[492] While there were 10,240 people detained under immigration act powers in

[486] ibid.
[487] Samuels (410) 628.
[488] Will Somerville, *Immigration under New Labour* (Policy Press 2007) 22. The level of skills shortages fell from 102,000 in 1999 to 94,000 in 2001 for establishments with five or more employees. To read further on labour shortages in the UK, see <www.ons.gov.uk/ons/rel/lms/labour-market.../skills-shortages.pdf> accessed 5 September 2017.
[489] ibid.
[490] Welch and Schuster (n 434) 338.
[491] ibid.
[492] Schuster (n 383) 166.

1995, there were estimated 23,940 people detained in the UK for immigration purposes in 2003.[493]

b.2. The UK's Domestic Law on Detention: Introduction of Fast Track and Policy Guidance

In 1998, the Labour Government presented a White Paper to Parliament on their fairer, faster and firmer approach to immigration and asylum.[494] This White Paper introduced detention under a fast track system for asylum seekers, which would be put into practice from 2000, in order to clear the backlog of applications and manage faster removals.[495] The Minister of State announced that the fast track system would be in practice for only single men from the start of the asylum application till a decision was made.[496] The features of this type of detention were a relaxed regime, legal representation on site, and seven days maximum detention.[497] The Government expanded the capacity of fast track detention policy and started detaining single females at Yarl's Wood detention centre in 2005.[498] 375 female asylum applicants were received into Yarl's Wood detention centre and 1,205 applicants were detained at the Harmondsworth detention centre in 2006.[499]

In addition to this fast track procedure, the Government passed the Nationality, Immigration and Asylum Act in 2002. The 2002 Act changed the name of the detention centres to 'removal centres'.[500] Thereby, the name change emphasised the importance of detention in the removal of failed asylum seekers and others. The 2002 Act provided powers to detain to the Secretary of State in cases where previously the immigration service was bestowed with detention powers.[501] Along with the new Act, a statutory instrument called the Detention Centre Rules

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[493] Malmberg (n 389) 8.
[494] Home Secretary (n 447).
[495] ibid.
[496] HC Deb 16 March 2000, vol 346, cols 262-4W.
[497] Human Rights Watch, *Fast-Tracked Unfairness: Detention and Denial of Women Asylum Seekers in the UK* (Human Rights Watch February 2010) 21.
[498] ibid 22.
[499] Home Office, 'Asylum Statistics: United Kingdom 2006' (Statistical Bulletin, 21 August 2007) 22.
[500] ibid para 66.
[501] ibid cl 62 and Silverman (n 380) 1137. Cl 62 stated: '1) A person may be detained under the authority of the Secretary of State pending—
(a) a decision by the Secretary of State whether to give directions in respect of the person under paragraph 10, 10A or 14 of Schedule 2 to the Immigration Act 1971 (c. 77) (control of entry: removal), or
(b) removal of the person from the United Kingdom in pursuance of directions given by the Secretary of State under any of those paragraphs.

2001 was passed by Parliament in 2001.[502] This instrument set out the standards of the services provided by the authorities such as food, clothing, hygiene and outdoor facilities.

The enforcement instructions and guidance for the immigration authorities in the 2000s are also significant in order to see the policy in practice. Chapter 55 on detention and temporary release states that detention is most usually appropriate to effect removal; initially to establish a person's identity or basis of claim; or where there is reason to believe that the person will fail to comply with any conditions attached to grant of temporary admission or release.[503] It also said that detention must be used very carefully and for the shortest period of time.[504] It advised immigration officers to consider temporary admission or temporary release if there is no strong ground that a person will not comply with conditions of temporary admission or release.[505] In addition to that, all alternatives to detention should be taken into account.[506] This guidance sets the power to detain with reference to the Immigration Act 1971 and mentions the factors that influence the decision to detain in detail.[507]

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[502] The Detention Centre Rules 2001, SI 2001/238.

[503] UK Border Agency Enforcement Instructions and Guidance, ch 55 Detention and Temporary Release, 55.1.1 <http://webarchive.nationalarchives.gov.uk/20080205154057/http://www.ind.homeoffice.gov.uk/sitecontent/documents/policyandlaw/enforcement/detentionandremovals/chapter55?view=Binary> accessed 3 September 2017. Before the publication of these instructions, Operation Enforcement Manual (21 December 2000) was in place stating that detention should be used as a last resort for removal or prevent absconding without referring to further details.

[504] ibid 55.1.3.

[505] ibid 55.3.

[506] ibid.

[507] ibid ch 55.3.1: 'All relevant factors must be taken into account when considering the need for initial or continued detention, including:
What is the likelihood of the person being removed and, if so, after what timescale?
Is there any evidence of previous absconding?
Is there any evidence of a previous failure to comply with conditions of temporary release or bail?
Has the subject taken part in a determined attempt to breach the immigration laws? (For example, entry in breach of a deportation order, attempted or actual clandestine entry).
Is there a previous history of complying with the requirements of immigration control? (For example, by applying for a visa or further leave).
What are the person's ties with the UK? Are there close relatives (including dependants) here? Does anyone rely on the person for support? If the dependant is a child or vulnerable adult, do they depend heavily on public welfare services for their daily care needs in lieu of support from the detainee? Does the person have a settled address/employment?
What are the individual's expectations about the outcome of the case? Are there factors such as an outstanding appeal, an application for judicial review or representations which afford incentive to keep in touch?
Is there a risk of offending or harm to the public (this requires consideration of the likelihood of harm and the seriousness of the harm if the person does offend)?
Is the subject under 18?
Does the subject have a history of torture?
Does the subject have a history of physical or mental ill health?'

The 2000s were also significant in terms of the changing rhetoric of immigration policies due to the growing concerns over national security. Following 9/11 and the Madrid and London bombings, the balance between securitisation and human rights became distorted. Governments put security as a priority in their policies in the United States and Europe. This, mostly, had an impact on the immigration policies in Western countries. The wide scale of immigration was perceived as a security threat by governments.[508] Following these attacks, immigration policies became stricter in order to improve security measures.[509] The link between migrants and terrorism allowed governments to come up with exceptional measures that do not have a place in normal democratic politics.[510] The trend in the immigration policies has become a "worst-case scenario" that justified a catch-all approach.[511] This led to a situation where human rights can be overlooked for the sake of the country's security. This has been seen in the conditions of detention centres and deportation processes.[512] Governments in U.S. and Europe justified the sacrifice of human rights by arguing that this approach is regrettable but necessary for the security of their citizens. This approach can be implicitly seen in the UK Government's decision on bringing a fast track system to detain asylum seekers.

This period, in terms of the developments at domestic law and policy level, included several mixed steps towards compliance with human rights standards. On the one hand, one important development, fast track policy, widened the use of detention of asylum seekers. This was obviously a backward step for the UK's compliance. Non-compliance steps were clearly a result of rising asylum applications and emerging necessity to control this rise. However, establishing detention centre rules was definitely a forward step towards compliance.

b.3. Parliamentary Debate: Similar Approach to Similar Issues

In the 2000s, Parliament discussed adult detention referring to different aspects such as cost, average time spent under detention, the statistics and new legislation. In 2000, the discussion tried to establish the capacity of planned detention centres at three

[508] Mikhail A. Alexseev, *Immigration Phobia and the Security Dilemma: Russia, Europe, and the United States* (Cambridge University Press 2005) 228.
[509] Ariane Chebel D'Appollonia, *Frontiers of Fear: Immigration and Insecurity in the United States and Europe* (Cornell University Press 2012) 1.
[510] Ian Loader and Neil Walker, *Civilizing Security* (Cambridge University Press 2007).
[511] Chebel D'Appollonia (n 509) 4-16.
[512] ibid 201-202.

different locations and the criteria to detain asylum seekers and other immigrants.[513] The answer reflected the previous approach to immigration detention as inadmissible passengers, illegal entrants or people with a view to deportation would be kept under detention in these centres.[514] It is clear that previous principles on detention remained unchanged. In 2001, the average length of detention was inquired, yet the answer was only accessible at disproportionate cost.[515]

As mentioned before, the Detention Centre Rules were brought into force in 2001. The scope of the Detention Centre Rules was mentioned in the parliamentary discussion. The inquiry was on whether this instrument would also be applicable to asylum seekers subject to detention.[516] The Secretary of State explained that Detention Centre Rules would apply to all detainees detained at immigration detention centres.[517] In addition to this, the Government was asked whether the drafting of the Detention Centre Rules had involved enough consultation.[518] It was stated that consultation with HM Chief Inspector of Prisons, NGOs, the United Nations High Commission for Refugees, the Refugee Council, the Medical Foundation for the Care of Victims of Torture and several others regarding the Detention Centre Rules took two years.[519] In 2002, plans to expand the number of places for detention were revealed in parliamentary discussions.[520] In addition to 1,609 detention places in removal centres at that date, the Government stated that they were still planning to reach 4,000 detention places.[521]

In 2004, the Secretary of State was asked about the number of immigration detainees held overnight in police cells in 2004.[522] The response was that this information was not held centrally, yet immigration detention in police cells was kept to the minimum.[523] On the other hand, the duration of detention was discussed in the House of Lords. It was questioned whether any steps had been taken to limit long

[513] HC Deb 22 June 2000, vol 352, cols 249-50W. The questions were directed by Mr. Lidington.
[514] ibid.
[515] HL Deb 08 March 2001, vol 623, col WA35.
[516] HC Deb 12 March 2001, vol 364, cols 489-90W. The question was directed by Mr. Gerrard.
[517] ibid.
[518] HL Deb 28 July 1999, vol 604, cols 1611-66.
[519] ibid.
[520] HC Deb 23 October 2002, vol 391, col 333W. The question was directed by Mr. Malins.
[521] ibid.
[522] HC Deb 29 April 2004, vol 420, cols 1278-91W. The question was directed by Mr. Oaten.
[523] ibid.

periods of detention.[524] The answer to this inquiry yet again showed a similar approach as in previous years. It was argued:

> Detention is used sparingly and for the shortest period necessary. However, the power to detain must be retained to preserve the integrity of immigration control. Detention at Dover and Haslar, as with other immigration removal centres, is most usually appropriate in the following circumstances: initially, to establish identity and the basis of claim; where there are reasonable grounds for believing that an individual will not comply with the conditions of temporary admission or release; or to effect removal. In all cases detention is subject to regular and frequent review at successively higher levels within the Immigration Service to ensure that continued detention remains appropriate.[525]

In addition to the places and the duration of detention, alternatives to detention such as electronic tagging were also discussed in Parliament. It was argued that the electronic tagging device might be used as an alternative to detention for immigration detainees depending on a decision of Chief Immigration Officer, adjudicator or judge of the Special Immigration Appeals Commission.[526] Electronic monitoring can be appropriate for families instead of detention after the risk of absconding was assessed.[527] However, it was argued that this alternative for immigration purposes would be only available to people who are 18 and older.

b.4. The International and National Community's Approach to the UK's Detention Policy and Permissive Tone of the Case Law

As mentioned in the chapter on Turkey's historical record of immigration law, the European Commission against Racism and Intolerance (ECRI) is a human rights body of the COE[528] that focuses on problems of racism and discrimination. As a member of the COE, the UK receives reports from the ECRI. Throughout the 2000s, the ECRI submitted several reports on the UK that mentioned detention for immigration purposes. The ECRI expressed its concerns over the increasing number of detention cases and the UK's approach to irregular migrants and asylum seekers from a

[524] HL Deb 11 October 2004, vol 665, cols WA20-1. The question was directed by Lord Hylton.
[525] ibid the speech by Baroness Scotland of Asthal.
[526] HC Deb 21 July 2004, vol 424, cols 333-4W. This plan was explained by Mr. Browne.
[527] HC Deb 22 July 2004, vol 424, col 574W.
[528] The UK is a founder member of the COE.

criminalisation perspective.[529] Furthermore, the ECRI also suggested that the UK should ensure that detention of children stays limited to cases where it is definitely necessary and that such detention should only be used on a temporary basis.[530]

The HM Chief Inspector of Prisons[531] completed inspections at the UK's immigration removal centres and submitted inspection reports in relation to conditions of these centres. For instance, the visit to Harmondsworth Immigration Removal Centre in July 2006 demonstrated that the conditions of the detainees' rooms and showers were poor and needed improvement.[532] Two years after this inspection, the Chief Inspector inspected the same immigration removal centre and checked whether the authorities had followed the recommendations given in the last inspection. This visit in 2008 revealed that some of the recommendations concerning the conditions of the detainees' rooms, such as improving ventilation, had not been achieved.[533] These inspections were made at different immigration removal centres such as Colnbrook, Yarl's Wood, Dover and Tinsley House almost on a yearly or biennial basis.[534] They all pointed out the poor conditions of the detention centres and urged the authorities to act to improve these conditions.

In 2006, the Joint Committee on Human Rights[535], as another national monitoring body, opened an inquiry on the treatment of asylum seekers.[536] In this report, the Committee openly criticised the fast track procedure to detain asylum seekers and stated their concerns over the duration of this type of detention in

[529] European Commission Against Racism and Tolerance, 'Second Report on the UK' (16 June 2000) CRI (2001) 6 para 63; European Commission Against Racism and Tolerance, 'Third Report on the UK' (17 December 2004) CRI (2005) 27 para 117.
[530] ibid para 118.
[531] Her Majesty's Inspectorate of Prisons for England and Wales (HM Inspectorate of Prisons) is an independent inspectorate that gives reports on treatment of people in prison, young offender institutions, secure training centres, immigration detention facilities, police and court custody suites, customs custody facilities and military detention.
[532] HM Chief Inspector of Prisons, *Report on an announced inspection of Harmondsworth Immigration Removal Centre 17-21 July 2006* (Her Majesty's Inspectorate of Prisons 2006) ss 2.2-2.6 <http://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2014/06/Harmondsworth-2006-report.pdf> accessed 5 September 2017.
[533] HM Chief Inspector of Prisons, *Report on an unannounced full follow-up inspection of Harmondsworth Immigration Removal Centre 14-18 January 2008* (Her Majesty's Inspectorate of Prisons 2008) 25 <http://www.justiceinspectorates.gov.uk/prisons/wp-content/uploads/sites/4/2014/03/harmondsworth_2008-rps.pdf> accessed 5 September 2017.
[534] 'Immigration Removal Centre Inspections' (*Justice Inspectorates*) <http://www.justiceinspectorates.gov.uk/hmiprisons/inspections/?post_type=inspection&prison-inspection-type=immigration-removal-centre-inspections> accessed 5 September 2017.
[535] Joint Committee on Human Rights is appointed from the House of Lords and the House of Commons to consider human rights issues in the United Kingdom.
[536] Joint Committee on Human Rights, *The Treatment of Asylum Seekers* (2006-07, HL 81, HC 60).

practice.[537] It recommended that the Government ensure there is a time limit of 28 days of detention for cases in which detention of an asylum seeker is unavoidable.[538]

In 2008, the Commissioner for Human Rights, under the COE mandate, visited one of the immigration removal centres in the UK and wrote his report.[539] He pointed out the lack of a time limit for administrative detention under Immigration Act powers.[540] He also urged the authorities in the UK:

> …to consider the possibility of drastically limiting the practice of administrative detention of migrants, one problematic aspect of which is the high degree of discretion and broad powers of immigration officers… In the meantime, the Commissioner strongly recommends that a maximum time limit for administrative detention be introduced into the United Kingdom legislation.[541]

The Human Rights Committee, under the mandate of ICCPR, also submitted reports and demanded further information on detention for immigration law enforcement during the 2000s. The Human Rights Committee stated their concerns on wide scale of detention of asylum seekers including children and holding asylum seekers in prisons[542]. Thereby, the Human Rights Committee recommended the UK:

> … review its detention policy with regard to asylum- seekers, especially children. It should take immediate and effective measures to ensure that all asylum-seekers who are detained pending deportation are held in centres specifically designed for that purpose, should consider alternatives to detention, and should end the detention of asylum-seekers in prisons. It should also ensure that asylum-seekers have full access to early and free legal representation so that their rights under the Covenant receive full protection.[543]

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[537] ibid paras 226-227.
[538] ibid para 276.
[539] Office of Commissioner for Human Rights, 'Memorandum by Thomas Hammarberg Commissioner for Human Rights of the Council of Europe following his visits to the UK on 5-8 February and 31 March-2 April 2008' (18 September 2008) CommDH(2008)23.
[540] ibid para 38.
[541] ibid paras 51-52.
[542] Human Rights Committee, 'Concluding observations of the Human Rights Committee: United Kingdom of Great Britain and Northern Ireland' (30 July 2008) UN Doc CCPR/C/GBR/CO/6 para 21.
[543] ibid.

In addition to international monitoring bodies' reports and recommendations, the domestic courts and ECtHR interpreted the fast track procedure in the UK within the *Saadi*[544] case.[545] Before being brought the attention of the ECtHR, the applicant took this case to the domestic court in the UK. The domestic court found the fast track detention policy[546] lawful and reasonable. The House of Lords' judgment sought to strike the balance between the management of asylum applications and the right to liberty within this practice and dismissed the appeal:

> It is regrettable that anyone should be deprived of his liberty other than pursuant to the order of a court but there are situations where such a course is justified. In a situation like the present with huge numbers and difficult decisions involved, with the risk of long delays to applicants seeking to come, a balancing exercise has to be performed. Getting a speedy decision is in the interests not only of the applicants but of those increasingly in the queue. [547]

After exhausting domestic remedies, the applicants brought their case to the ECtHR. The ECtHR's judgment also decided that fast track detention of asylum seekers did not breach the ECHR considering the flexible conditions at detention centres in the *Saadi* case.[548] The ECtHR elaborated on its decision, indicating that this fast track detention could not be branded as arbitrary while the detention centre was adapted to asylum seekers, duration of detention was only 7 days and the decision to detain was taken in a good faith and to serve a purpose.

Even though international monitoring bodies such as ECRI and the Human Rights Committee criticised the UK over the extent of use of detention for immigration purposes, the ECtHR, on the other hand, found that fast track detention of asylum seekers did not breach Article 5 (1.f) of the ECHR. Thereby, the ECtHR did not find the policy unlawful. As stated before, such judgments which contradict international monitoring bodies' view and declare the lawfulness of a policy can give a state a stronger ground to continue with its current practice. This judgment, in a way, eased the UK's discomfort created by international monitoring bodies' critique.

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[544] *Saadi and Others v Secretary of State for the Home Department* [2002] UKHL 41, [2002] 1 WLR 3131; *Saadi v UK* (2008) 47 EHRR 17, para 64.
[545] To read the facts of this case, see Chapter 2. Detention of Children in the Immigration Context: International Human Rights Standards.
[546] Fast track detention of asylum seekers is a system that allows detention of asylum seekers from the start of the asylum application until a decision is made. The features of this type of detention are a relaxed regime, legal representation on site, and seven days maximum detention.
[547] *Saadi and Others* (n 544) para 47.
[548] *Saadi v UK* (n 544) para 64.

III. DETENTION OF MINORS (1993-2009)

a. Statistics on Detention of Minors and Asylum Applications

As explained so far in this chapter, the UK has a long history of detention for immigration law enforcement. Children were also part of this system as they were detained or deported with their parents or alone.[549] Detention of minors became a routine part of the UK's immigration law system from the start of the 21st century. In the 2000s, new detention centres (Yarl's Wood, Dungavel and Tinsley removal centres) were built with allocated spaces for families and children as mentioned before. Instead of detaining families only before removal, families were detained indefinitely and for administrative purposes.[550] Although this practice within the immigration system has been discussed widely in Parliament and criticised by domestic and international monitoring bodies, the Government justified it on the grounds of ensuring an effective immigration policy. This part of the chapter will touch on these issues.

With regard to statistics, there had been no separate statistics showing how many children were detained for immigration purposes before 2009. As a result of persistent lobbying of NGOs[551], and criticisms by Her Majesty's Chief Inspector of Prisons[552], separate statistics on detention of minors was made available to the public in 2009. Before this date, data on detention of asylum seekers were only given in quarterly snapshots and are no longer publicly available on the Home Office website.

However, limited but available statistics revealed that detention of minors became a more frequent practice over time. While there were only 819 children detained in Harmondsworth between 1978 and 1982,[553] there were 585 minors kept at Oakington only between September 2003 and September 2004.[554] In 2007, the

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[549] Jon Burnett and others, *State Sponsored Cruelty: Children in Immigration Detention* (Medical Justice 2010) 11 <http://www.medicaljustice.org.uk/wp-content/uploads/2016/03/state-sponsored-cruelty.pdf> accessed 5 September 2017.
[550] ibid.
[551] Bail for Immigration Detainees, 'Briefing paper on immigration detention in London' (Bail for Immigration Detainees March 2009) <http://www.biduk.org/sites/default/files/media/docs/2009%20BID%20briefing%20detention%20in%20London.pdf > accessed 13 July 2017; Immigration Law Practitioners Association, 'ILPA Submission on Immigration Statistics'(ILPA June 2005).
[552] HM Chief Inspector of Prisons (n 534).
[553] d'Orey (n 371) 1.
[554] Heaven Crawley and Trine Lester, *No Place for a Child: Children in immigration detention: Impacts, alternatives and safeguards* (Save the Children 2005) 7.

Children's Champion's Office within the UKBA stated that 874 children were detained between May 2007 and May 2008, and 991 children for the calendar year in 2008.[555]

Asylum statistics, as an external dynamic, might play an important role influencing the Government's decision to bring compliance or new legislation. Statistics show that there was a considerable decrease in the number of asylum applications after 2004. While the number of applications reached 80,000 at the beginning of the 2000s, this number dropped to 33,960 in 2004.[556] This number showed a steady decrease until 2010, dropping to 17,916 in 2010.

b. Where Does the UK Stand on Children's Rights and Detention of Minors?

In 1991, the UK ratified the Convention on the Rights of the Child (CRC) that provides important rights for all children, yet with a reservation that has significant implications in terms of immigration law. In practice, a reservation lets the state be a party to the treaty and exclude the legal effect of that specific provision in the treaty at the same time.[557] The reservation to Article 22[558] of the CRC stated that the UK retains its right to apply such immigration legislation as it may deem necessary to people who do not have the right to enter or remain in the UK.[559] With this

[555] Children's Commissioner, 'The Arrest and Detention of Children Subject to Immigration Control: A Report Following the Children's Commissioner for England's visit to Yarl's Wood Immigration' (11 Million 2009) 4.

[556] Scott Blinder, 'Migration to the UK: Asylum' (*The Migration Observatory*, 20 July 2016) <http://www.migrationobservatory.ox.ac.uk/resources/briefings/migration-to-the-uk-asylum/#kp1> accessed 13 July 2017.

[557] Vienna Convention on the Law of Treaties (signed 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, art 21.

[558] ibid art 22: '1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.'

[559] The UK's reservation was as follows: 'The United Kingdom reserves the right to apply such legislation, in so far as it relates to the entry into, stay in and departure from the United Kingdom on those who do not have the right under the law of the United Kingdom to enter and remain in the United

reservation, the UK aimed to keep immigration-related issues under its domestic control rather than being subject to international scrutiny. The reservation served as a protection for the Government to claim that issues related to immigration, even if concerning children's rights, were under the UK's control instead of the international human rights regime. The Government lifted this reservation to CRC in 2008.[560] Until 2008, several national and international organisations criticised the presence of this reservation and recommended that the UK lift it in order to show their commitment to children's rights.[561]

The presence of this reservation served as a protection for the UK in order to justify their treatment of minors for immigration purposes so far. Thereby, lifting reservation was a very noteworthy step towards compliance with human rights standards in the sense that the UK accepted its obligation to provide same level of protection for all children within the country. Although the lifting of the reservation was welcomed by all these domestic organisations, the announcement by the Minister for Borders and Immigration in 2008 that there was no plan to change legislation, guidance or practice caused disappointment since the lack of intention to change practice might make existing issues, such as not adopting the child's best interests principle, persist.[562]

Instead, in order to follow up this development, the UK Parliament imposed a general duty regarding the welfare of the children on the Home Office.[563] The adaptation was stated in the 2009 Act as follows:

> Duty regarding the welfare of children
>
> The Secretary of State must make arrangements for ensuring that—
>
> (a) the functions mentioned in subsection (2) are discharged having regard to the need to safeguard and promote the welfare of children who are in the United Kingdom, and

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Kingdom, and to the Acquisition and possession of citizenship, as it may deem necessary from time to time.'

[560] 'United Nations Treaty Collection' (*UN Treaties*) <https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&lang=en> accessed 10 September 2017.

[561] These reports will be explained further below under d. The Approach of International and National Monitoring Bodies: Criticism of the UK's Detention Policy.

[562] Joint Committee on Human Rights, *Children's Rights* (2008-09, HL 157/HC 318).

[563] Borders, Citizenship and Immigration Act 2009, s 55.

(b) any services provided by another person pursuant to arrangements which are made by the Secretary of State and relate to the discharge of a function mentioned in subsection (2) are provided having regard to that need.[564]

Thereby, the Secretary of State has to promote and safeguard the welfare of the children in the UK within their arrangements. This was a very significant step for promoting children's rights equally in immigration field as this would potentially bring a duty on the Home Office to safeguard the welfare of the children who do not necessarily have to be the citizens of the UK. In addition to this, this can be seen as another step towards compliance with human rights standards as these standards such as CRC require the consideration of the welfare of children as a fundamental principle. Furthermore, this duty was repeated in a statutory guidance for the UK Border Agency in 2009.[565] This guidance set new duties for the UKBA regarding children's rights, such as taking the child's best interest principle as the primary consideration during detention or removal procedures.[566]

In specific relation to detention of children, Parliament passed the Detention Centre Rules that has a particular section regarding treatment of children in detention.[567] This instrument gave guidance on the situation of families and detention of minors. It stated that family members should enjoy family life within the security and safety of the detention centre.[568] Families and minors should be provided accommodation that is suitable to their needs and everything reasonably necessary for detainees' protection, safety, well-being and care of infants should be provided.[569] This detailed instrument demonstrated that there was no intention to ban minor or family detention, instead providing rights and services within the limits of the security and safety of detention centres. Furthermore, UKBA's guidance on detention and temporary release also structured policy on detention of minors during this period. First of all, UKBA has to conduct the criteria test in order to assess the age correctly

[564] ibid.
[565] Home Office and Department for Children, School and Families, 'Every Child Matters Change for Children, Statutory guidance to the UK Border Agency on making arrangements to safeguard and promote the welfare of children' (November 2009).
[566] ibid 15.
[567] The Detention Centre Rules 2001 (n 502).
[568] ibid r 11.1.
[569] ibid rs 11.2-3.

if there is an individual claiming to be under 18.[570] However, if there is an individual who claims to be under 18, review on detention decision should be taken immediately.[571] The guidance clearly declares that if the individual is found to be under 18, he, as an unaccompanied minor, must be released from detention into the care of a local authority.[572] Only in exceptional situations may he be detained, normally overnight and with appropriate care, whilst alternative arrangements for their care and safety are made.[573] The examples of the exceptional circumstances are listed in the instruction as follows: where there are no relatives or other appropriate adults immediately available to look after them; to separate them from adults thought to be a risk to them; or to prevent them from absconding pending a care placement being arranged.[574] In these exceptional circumstances, unaccompanied minors can be detained at detention facilities overnight.

c. Sensitive Topic on the Parliamentary Agenda: Detention of Minors 1993-2000

Parliamentary debates are significant to look into in order to understand the dynamics underlying the approach to detention of minors. During the 1990s, issues related to detention of minors for immigration law enforcement led Parliament to discuss this topic more frequently than previously in the 1980s. In 1991, the discussion in Parliament was mostly on the numbers of minors detained and some of the members of Parliament asked for an assurance to cease this practice in the near future.[575] In addition to this, the practice of fingerprinting procedures being applied to children was highly criticised.[576] During the 1990s, detention of minors was a practice only used on a much smaller scale. Hence, there was not much attention from Parliament and civil society organisations. However, with the beginning of 2000s, this practice became more widely used. Hence, since 1996, the discussion before Parliament regarding detention of minors became more intense and detailed. Compliance with

[570] UK Border Agency Enforcement Instructions and Guidance (n 500) ch 55.9.3.1 Individuals claiming to be under 18.
[571] ibid.
[572] ibid.
[573] UK Border Agency, Immigration Directorates' Instructions, ch 31, s 1 Detention and Detention Policy in Port Cases, para 10.A.2. Young Persons.
[574] ibid.
[575] HC Deb 05 November 1991, vol 198, cols 351-425.
[576] HL Deb 10 February 1992, vol 535, cols 457-530.

international obligations regarding detention of minors for immigration purposes was mentioned. On the other hand, it claimed:

> Children are detained under Immigration Act powers only in the most exceptional circumstances. Authority at a minimum of inspector level is required for the detention of children under 18 and is reviewed by an assistant director within 24 hours. Unaccompanied young persons may be detained at around the age of 16 or 17 years. But in a large number of cases the true age may be the subject of dispute. Children younger than that will normally be held in detention centres only as part of a family unit. In those circumstances, the children may not be detained but accommodated with the detained parent or parents with their agreement. In those circumstances, the detention would be for a very short period only prior to removal of the family unit. We do not believe that our arrangements represent any breach of the United Kingdom's international obligations. [577]

In 1996, another parliamentary discussion was on a proposed amendment that suggested unaccompanied minors' detention should not be permitted if there was no risk of absconding.[578] It was supported by the argument that keeping children at adult detention centres was not appropriate. However, in rejecting this amendment, it was argued that the ECtHR's case law demonstrated that 1971 Act was consistent with the ECHR. It was stated that:

> First, our record in relation to adhering to international obligations is very good in this country. The noble Earl is all too ready to note those few cases where the Government have lost a challenge on these issues, but the vast majority of cases, and in particular asylum cases, are won by the Government. Therefore, there is some imbalance in the criticisms made by the noble Earl.
>
> Secondly, the procedure described by law is satisfied by the 1971 Act which confers the power to detain as confirmed by Strasbourg. …
>
> …The noble Earl said that we are not consistent with our obligations under the ECHR. That is simply not the case. This is not just our law. Decisions of the

[577] HL Deb 14 March 1996, vol 570, cols 958-1035.
[578] HL Deb 24 June 1996, vol 573, cols 633-41.

> European Court of Human Rights have confirmed that the 1971 Act is indeed consistent with the convention. [579]

For this reason, there was no need to amend the current practice.[580] Furthermore, the numbers detained were low and the detention was always used as a measure of last resort.

Parliamentary debates after 1997 are a good indicator of the Labour Party's attitude towards detention of minors. As mentioned above, the Labour Party followed a similar approach regarding irregular migration even though they adopted a more liberal immigration regime due to the market needs. After 1997, the UK's reservation to CRC came to Parliament's agenda and the Government responded that it had no intention of withdrawing this reservation.[581] Following this, Parliament discussed Sir David Ramsbotham's, the Chief Inspector of Prisons, report[582] written on the Campsfield House with reference to the conditions and numbers detained.[583] However, it was asserted that detention was a regrettable but necessary consequence of immigration policy.[584]

During the discussions regarding the 1999 Act, an amendment was suggested as follows: 'A person who appeals under section 59 and who is under the age of 18 shall not be detained for any period while the outcome of his appeal remains undetermined'.[585] This amendment was opposed and stated that:

> The noble Lord, Lord Cope of Berkeley, says that every effort should be made to avoid detention of under-age children wherever possible. I agree, but we

[579] ibid, Baroness Blatch gave the speech.
[580] ibid.
[581] HL Deb 26 March 1998, vol 587, col WA256.
[582] HM Chief Inspector of Prisons, *Report on an unannounced full follow-up inspection of Campsfield House Immigration Removal Centre 12-16 May 2008* (Her Majesty's Inspectorate of Prisons 2008) <http://webarchive.nationalarchives.gov.uk/20110204170815/http://www.justice.gov.uk/inspectorates/hmi-prisons/docs/campsfieldhouse_(2008)-rps.pdf> accessed 5 September 2017.
[583] HL Deb 29 April 1998, vol 589, cols 338-61.
[584] ibid, the Lord Bishop of Oxford stated: 'Detention is probably a regrettable but necessary consequence of any immigration policy. We all recognise the need for what the Government in their White Paper called a "Firmer, fairer, faster" service and are anxiously looking for the details of this policy when the Government's reviews are complete. I believe the situation at Campsfield has improved, is improving, and will continue to improve, so that the regime of those who have been deprived of their liberty is as humane and constructive as possible. What goes on in detention centres, the atmosphere and mood, is inevitably heavily affected by the overall system in which they operate.'
[585] HL Deb 21 July 1999, vol 604, cols 974-96.

> recognise that there are certain limited circumstances where it is not possible for a short period of time to avoid detention. In those circumstances, Amendment No. 114, which would prevent detention ever, is not appropriate.
>
> I give one example of the circumstances in which such detention might be appropriate. A child's application is refused. He lodges an appeal; he absconds; he sleeps rough; he comes to the authorities late one night; and social services cannot respond. Amendment No. 114 means that he could not be sent to a detention centre even for the night.[586]

Therefore, it was argued that detention was for child's best interests until arrangements were made. With regard to family detention, it was asserted:

> It is our view that wherever possible the family should be kept together as a single unit unless the best interests of the child indicate otherwise. In family cases detention should again be for the shortest possible period, usually overnight prior to removal. [587]

Furthermore, it was also stated that there couldn't be any lengthy detention as there was just one family unit at Tinsley House detention centre.[588] With regard to the conditions of detention centres, specialist counselling; medical care and separate accommodation for families with children were suggested.[589] There was no major opposition to these suggestions. Lastly, one amendment suggested a ten-day limit on the detention of asylum seekers at Oakington reception centre.[590] The reasoning for this type of amendment was as follows:

> We simply tried to get the House to recognise that if we are to introduce the measure, there should be a limit on the time for which it applies. All we are asking is that while his application is looked into, an asylum seeker with no previous record of offending and no previous visits to the United Kingdom should not be required, by regulations that we have not seen, to be

[586] ibid, the Minister of State, Cabinet Office made this explanation.
[587] ibid.
[588] The Minister of State argued this point.
[589] HL Deb 28 July 1999, vol 604, cols 1611-66.
[590] HC Deb 09 November 1999, vol 337, cols 1004-35. Mr. Simon Hughes mentioned this amendment.

under house arrest for more than 10 days. That should be long enough for someone to decide his status and how to deal with him. [591]

However, it was rejected by a majority vote. It was argued that detention would occur in order to have speedy results on asylum applications. Establishing a time limit on dealing with asylum applications and releasing the applicants before a decision was made might damage the meaning of this new policy.[592] Furthermore, there were speeches against detention of children in the debate, but in response the ruling party explained the planned conditions at Oakington reception centre for asylum seekers and their families such as separate accommodation; short stay and flexible security.[593] However, further questioning on conditions of Oakington revealed its resemblance to any detention centre. It was stated that Oakington is a detention centre in terms of its design and current powers would be used to run it.[594]

Overall, it can be stated that the approach towards minor and adult detention did not change regardless of the change in governing parties. Even though there was opposition towards this practice and so discussions over it, the majority of members of both main parties had still seen this practice as a 'regrettable but necessary' measure in the 1990s.

d. The Approach of the International and National Monitoring Bodies: Criticism of the UK's Detention Policy and Reservation to CRC

In 1995, the Committee on the Rights of the Child submitted a concluding observation on the UK's progress in terms of protection of child rights.[595] This report was concerned about the UK's reservation[596], which is stated before, to CRC as this broad nature reservation might hamper the compatibility with the object and purpose of the Convention as it prevents migrant and asylum-seeking children from enjoying

[591] ibid.
[592] ibid.
[593] HC Deb (n 590). Mrs. Roche, the then Minister of State, explained the suggested conditions at Oakington reception centre.
[594] ibid.
[595] UN Committee on the Rights of the Child, 'Concluding observations of the Committee on the Rights of the Child: United Kingdom of Great Britain and Northern Ireland' (15 February 1995) UN Doc CRC/C/15/Add.34.
[596] To read further on this reservation, see b. Where Does the UK Stand on Children Rights Detention of Minors?.

the protection provided by the CRC.[597] They also pointed out that the Immigration Acts couldn't be compatible with the general principles of the CRC, especially Articles 2, 3, 9 and 10 of the CRC.[598] The Articles concerned carry the core principles of the CRC such as the best interests of the child principle and anti-discrimination. Furthermore, detention-related parts of these Articles noted that detention should be used as a measure of last resort and for a shortest appropriate amount of time. Thereby, the Committee on the Rights of the Child was concerned that these core principles might be in conflict with the UK's immigration law and regulations.

At the national level in relation to the UK's reservation to CRC, the Joint Committee on Human Rights published reports in order to explain their concerns and recommend that the Government lift the reservation.[599] The report stated:

> Of the 192 signatories to the CRC, only three have entered declarations relating to the treatment of non-nationals and only the UK has entered a general reservation to the application of the Convention to children who are subject to immigration control. We do not accept that the CRC undermines effective immigration controls. Our principal concern is that the practical impact of the reservation goes far beyond the determination of immigration status, and leaves children seeking asylum with a lower level of protection in relation to a range of rights which are unrelated to their immigration status. The evidence we have received testifies to the unequal protection of the rights of asylum seeking children under domestic law and practice. We reiterate our previous recommendation that the Government's reservation to the CRC should be withdrawn. It is not needed to protect the public interest and undermines the international reputation of the country. [600]

Therefore, it is clear that the UK was criticised over the absence of consideration of the child's best interests in its immigration policy and the presence of the reservations to CRC as an impediment to providing equal protection for asylum-seeking and migrant children.

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[597] ibid para 7.
[598] International Convention on the Rights of the Child (signed 20 November 1989, entered into force 2 September 1990) 1577 UNTS 1 (CRC), arts 2,3,9,10.
[599] Joint Committee on Human Rights (n 533) paras 180-182; Joint Committee on Human Rights, *Human Trafficking* (2005-06, HL 245, HC 1127) para 180.
[600] ibid.

In 2002, the Committee on the Rights of the Child raised its concerns over the increasing numbers of child detainees for immigration law enforcement in the UK.[601] It was noted that their detention for a lengthy period of time might breach their basic rights such as health and education.[602] The Committee on the Rights of the Child also pointed out that new acts and policies on asylum did not address minors' needs and rights.[603] The Committee, again, urged the Government to withdraw the reservations on immigration and citizenship, which were incompatible with the purpose and object of the CRC as it prevents immigrant or asylum-seeking minors from enjoying the protection the CRC provided.[604] In the 2008's concluding observations, the Committee welcomed the withdrawal of the reservations to Article 22 and 37(c) of the CRC.[605] However, the Committee was still concerned about the numbers of minor detainees in the UK and recommended that the UK use detention as a measure of last resort and for the shortest appropriate amount of time as suggested by the CRC.[606]

The Commissioner for Human Rights, also under the mandate of COE, visits member countries and submits reports upon her/his observations. In 2004, after a visit to the UK, the Commissioner expressed his concerns over the extent of use of detention in the UK.[607] He noted:

> The numbers of children detained with their families suggests that insufficient attention has been paid to the examination of alternative forms of supervision. There has, it appears, been very little study of the likelihood of families with children to abscond that might support the Immigration Service's increasing resort to detention. Prima facie, indeed, families with children, particularly those who are settled with their children attending school, are less likely to abscond than any other category.[608]

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[601] UN Committee on the Rights of the Child, 'Concluding observations of the Committee on the Rights of the Child: United Kingdom of Great Britain and Northern Ireland' (9 October 2002) UN Doc CRC/C/15/Add.188 para 49.
[602] ibid.
[603] ibid.
[604] ibid paras 6-7.
[605] UN Committee on the Rights of the Child, 'Concluding observations of the Committee on the Rights of the Child: United Kingdom of Great Britain and Northern Ireland' (20 October 2008) UN Doc CRC/C/GBR/CO/4 para 4.a.
[606] ibid paras 70.a-71.a.
[607] Office of the Commissioner for Human Rights, 'Report by Mr Alvaro Gil-Robles, Commissioner For Human Rights on his visit to the UK' (8 June 2005) CommDH(2005)6 para 42.
[608] ibid para 58.

He was also concerned over the conditions of the detention centres that could increase the level of stress for detainees.[609] He pointed out the problem of snap-shot statistics on detained children:

> There is a clear duty to ensure the utmost transparency on an issue of such importance – snap-shot statistics on any one day cannot be said to give a detailed picture of the true extent of the detention of children. If the detention of children really is as exceptional as the Government claims, and subject, moreover, to special scrutiny, then it cannot be either time-consuming or costly to make detailed statistics publicly available. [610]

The Commissioner for Human Rights submitted another report, previously mentioned, in 2008 following a visit to the UK's immigration removal centre. He was concerned over the use of detention for accompanied children for a period over three months.[611] He urged the authorities to follow the standards of the CRC and ECHR and take a decision to detain children only in exceptional circumstances. Finally, he recommended that the UK withdraw its immigration reservation to the Convention on Rights of the Child as soon as possible.[612]

National monitoring bodies also pointed out the wrong-doings regarding detention of minors. Firstly, the HM Chief Inspector of Prisons reported on the conditions at immigration removal centres, regarding minors. Dungavel Immigration Removal Centre, for instance, has been inspected several times. The first report voiced the concerns regarding the time limit of detention and the facilities provided to children detainees. The Inspectorate stated:

> Nevertheless, in spite of these admirable efforts, HMIE considered that even the improved educational facilities they found in July 2003 were acceptable only for a short period - no more than two weeks – and could not meet the educational needs of children detained for lengthier periods, certainly not more than six weeks. This is solely in relation to educational needs: there is also the wider question, which we also address in this report, of the development and welfare of children held for an indefinite period in a secure facility, without the possibility of normal social life, and exposed to the

[609] ibid.
[610] ibid para 55.
[611] Office of the Commissioner for Human Rights, 'Memorandum by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe following his visits to the UK on 5-8 February and 31 March-2 April 2008' (18 September 2008) CommDH(2008)23 para 74.
[612] ibid para 76.

> general feelings of insecurity evident in the centre. [613]

In 2004 as result of an unannounced inspection of the centre, as the problems persisted, recommendations of the Inspectorate were as follows:

> The detention of children should be exceptional and for the shortest possible period. Within a matter of days, there should be an independent assessment of the welfare, educational and developmental needs of each child held in detention to inform decisions about the necessity of continued detention. This should be repeated at regular intervals to advise on the compatibility of detention with the welfare of the child and to inform reviews of detention. [614]

This demonstrated that even though the detention policy had the protections mentioned by the CRC, the practice was still lacking those protections. In 2006, another inspection led to a report that voiced concerns over the child's best interests principle as mentioned by international human rights standards. Anne Owers, then HM Chief Inspector of Prisons, expressed her concerns:

> …and we repeat our recommendation that such assessments should take place within seven days of detention. Even this, however, is too late to identify any adverse impact of detention on a child, and we could find no evidence that the child's interests played any part in initial decisions to detain, or that their detention was only authorised in exceptional cases. [615]

In 2008, the recommendations regarding child detention were repeated by Anne Owers in her report.[616] The same pattern was followed for other detention centres as well such as Harmondsworth, Oakington, Tinsley House, and Yarl's Wood

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[613] HM Chief Inspector of Prisons, *An Inspection of Dungavel Immigration Removal Centre October 2002* (Her Majesty's Inspectorate of Prisons 2003) < http://webarchive.nationalarchives.gov.uk/20130206164509/https://www.justice.gov.uk/publications/inspectorate-reports/hmi-prisons/immigration-removal-centres/dungavel> accessed 16 July 2017.

[614] HM Chief Inspector of Prisons, *Report on an unannounced inspection of Dungavel House Immigration Removal Centre 14-16 December 2004* (Her Majesty's Inspectorate of Prisons 2005) <http://webarchive.nationalarchives.gov.uk/20130206164509/https://www.justice.gov.uk/publications/inspectorate-reports/hmi-prisons/immigration-removal-centres/dungavel> accessed 16 July 2017.

[615] HM Chief Inspector of Prisons, *Report on an unannounced inspection of Dungavel House Immigration Removal Centre 4-8 December 2006* (Her Majesty's Inspectorate of Prisons 2007) <http://webarchive.nationalarchives.gov.uk/20130206164509/https://www.justice.gov.uk/publications/inspectorate-reports/hmi-prisons/immigration-removal-centres/dungavel> accessed 16 July 2017.

[616] HM Chief Inspector of Prisons, *Report on an unannounced short follow-up inspection of Dungavel Immigration Removal Centre 30 September-2 October 2008* (Her Majesty's Inspectorate of Prisons 2009) <http://webarchive.nationalarchives.gov.uk/20130206164509/https://www.justice.gov.uk/publications/inspectorate-reports/hmi-prisons/immigration-removal-centres/dungavel> accessed 16 July 2017.

since 2002.[617] The circumstances at the detention and removal centres were inspected and evaluated according to the international human rights standards. Not only the time principle but also additional facilities such as play and recreational areas that are required by international human rights standards were investigated at these centres.

As previously mentioned, the Joint Committee on Human Rights opened an inquiry on the treatment of asylum seekers in 2006. This inquiry's report had a section on detention of children.[618] This part included references from international and national monitoring bodies' such as the Committee on the Rights of the Child and HM Inspectorate of Prisons and expressed their own recommendations:

> We are concerned that the current process of detention does not consider the welfare of the child, meaning that children and their needs are invisible throughout the process – at the point a decision to detain is made; at the point of arrest and detention; whilst in detention; and during the removal process. We are particularly concerned that the detention of children can – and sometimes does – continue for lengthy periods with no automatic review of the decision. Where the case is reviewed (for example by an immigration judge or by the Minister after 28 days), assessments of the welfare of the child who is detained are not taken into account. The detention of children for the purpose of immigration control is incompatible with children's right to liberty and is in breach of UK's international human right's obligations. [619]

In spite of these recommendations, a following inquiry in 2008 shared the same concerns and repeated its recommendations.[620]

Lastly, the Children's Commissioner also expressed his opinions on the topic of detention of minors in the UK. After a visit to Yarl's Wood in 2005, one of the detention centres that held children, the Children's Commissioner published the recommendations and expressed the shortcomings of the system.[621] As a follow-up to

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[617] 'Immigration Removal Centre Inspections' (*webarchive*, 28 June 2012) <http://webarchive.nationalarchives.gov.uk/20130206115950/http://www.justice.gov.uk/publications/inspectorate-reports/hmi-prisons/immigration-removal-centres> accessed 16 July 2017.
[618] Joint Committee on Human Rights (n 536).
[619] ibid paras 239-241.
[620] Joint Committee on Human Rights (n 562) paras 117-122.
[621] Children's Commissioner, 'An Announced Visit to Yarl's Wood Immigration Removal Centre' (30 December 2005) <http://www.childrenscommissioner.gov.uk/publications/announced-visit-yarls-wood-immigration-removal-centre> accessed 16 July 2017.

this report, the Commissioner has done two more visits to the same detention centre and conducted interviews. This revealed that UKBA followed some of the recommendations given previously.[622] However, some were not followed and the Children's Commissioner pointed out the situation regarding the decision to detain and better healthcare for children.

e. The Approach of Civil Society to the UK's Detention Policy

Non-governmental organisations (NGOs) and civil society were also part of the picture in the sense that they also produced reports and initiated advocacy campaigns against this steadily increasing practice across the UK followed by the increase in the number of detention centres. There had been different campaigns by different civil society organisations and NGOs such as BID, Save the Children, the Children's Society and Citizens UK. The common theme in these campaigns and reports was providing counterargument and evidence against the Government's justifications of the decision to detain families with children. To start with, the Government claimed that detention with families was only for removals and so only for a short period of time. Hence, the Government suggested that the practice followed the compliance norm of detention for a shortest period of time. Research by BID in 2003 has suggested that this was not the case. A small sample research with detained families revealed that families were detained for lengthy periods of times, for example 161 days or 111 days.[623] Another finding of this research demonstrated that detention occurred where removal was not immediate.[624]

In 2005, Save the Children published a report based on case studies of 32 children who were detained with or without their families.[625] This report's name, No Place for a Child, became the name of the campaign run by the Refugee Council, Bail for Immigration Detainees and Save the Children as the Refugee Children's Consortium members in 2006. Some case studies in this research also showed that children with families were detained for more than 100 days.[626] This study also demonstrated that some families were taken into detention while their asylum

[622] Children's Commissioner (n 555) 63.
[623] Emma K H Cole, 'A few families too many: The detention of asylum-seeking families in the UK' (Bail for Immigration Detainees March 2003) 4 <http://www.biduk.org/sites/default/files/media/docs/a_few_families_too_many_march_03.pdf> accessed 13 July 2017.
[624] ibid.
[625] Crawley and Lester (n 554).
[626] ibid 27.

application still had outstanding aspects.[627] In 2008, the same problem of lengthy period of detention showed itself in BID's briefing.[628] This briefing stated 'between October 2008 and January 2009 families supported by BID were detained on average for six and a half weeks'. [629]

As a second justification, the Government stated that detention of children with families was only used as a last resort and at a minimum scale. This is another part of the compliance norm that the Government, again, claimed to be following. Civil society reports have demonstrated that large numbers of children were detained each year. For instance, in 2005 it was stated that about 2000 children were detained for immigration purposes.[630] This number dropped to 1000 in 2009[631], yet it showed that there was still significant number of detention cases. Another BID and the Children's Society's joint report under a campaign called OutCry!: End Immigration Detention of Children [632] , which was funded by Princess of Wales Memorial Fund, demonstrated that detention was not used as a last resort. It stated:

> Our research found that in a considerable number of cases, families were detained when there was little risk of them absconding, their removal was not imminent, and they had not been given a meaningful opportunity to return voluntarily to their countries of origin. Indeed, in a large proportion of cases, there were barriers to families returning to their countries of origin during the time they were detained, which meant it was not possible, lawful or in the children's best interests for the Home Office to forcibly remove them. [633]

Meanwhile, the Independent Asylum Commission (IAC) under Citizens UK[634] also launched a nationwide citizens' review of the UK asylum system in 2008. This

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[627] ibid 28.
[628] Bail for Immigration Detainees, 'Briefing paper on children and immigration detention' (Bail for Immigration Detainees February 2009) < http://www.biduk.org/sites/default/files/2009%20BID%20briefing%20on%20children%20and%20immigration%20detention%20Feb%2009.pdf > accessed 13 July 2017.
[629] ibid 3.
[630] ibid viii.
[631] Stephanie J Silverman and Ruchi Hajela, 'Briefing: Immigration Detention in the UK' (The Migration Observatory 29 November 2013) 2.
[632] The OutCry! Campaign**,** funded by Princess of Wales Memorial Fund, was developed by the Children's Society and Bail for Immigration Detainees in order to campaign to end detention of children.
[633] Sarah Campbell, Maria Baqueriza and James Ingram, 'Last resort or first resort?: Immigration detention of children in the UK' (Bail for Immigration Detainees and the Children's Society 2011) 1 <http://www.biduk.org/sites/default/files/LastResortFirstResort_FULL%20REPORT%20WEB%20VERSION.pdf> accessed 14 July 2017.
[634] Citizens UK works for building an alliance of civil society organisations in the UK.

Commission produced three reports on more general aspects of the asylum system and the reports led to the Sanctuary Pledge Campaign. However, the reports also referred to detention of children. Their second report stated the findings regarding detention of children.[635] The reports included the UKBA's responses to these findings and the IAC's assessment based on the UKBA's responses. Regarding detention practice, the UKBA responded that only two very limited circumstances where children were detained: as a family for a few days for removal or as unaccompanied minors while care arrangements were made. However, the IAC assessed this response and expressed their concerns:

> We remain concerned that decisions are not always taken with the best interests of the child in mind, and note the prominence given to this criterion in the EU directives, the force of which is accepted by UKBA. We believe that detention, other than for the briefest of periods to avoid absolute destitution, can never be in the best interests of the child.[636]

The IAC also referred to a public opinion poll conducted by Citizens UK on an online system stating that 53% of participants said that children should never be detained.[637] As it is clear that instead of a legal reference to international law, the campaigns used more of an ethical argument to justify their assertion that children should never be detained.

In addition to the issue of when to detain, civil society also published reports regarding facilities and services provided at detention centres. For instance, the reports touched upon healthcare and leisure and play facilities provided for children. For instance, BID's report in 2003 stated that child detainees received inadequate healthcare advice and treatment in detention centres.[638] The case studies in this research showed that child detainees' health problems were not taken seriously.[639] These findings were also echoed in case studies of the Save the Children's report that was published in 2005.[640]

In addition to this, the end of 2009 also saw the open letter written by a famous

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[635] Chris Hobson, Jonathan Cox and Nicholas Sagovsky, 'Deserving Dignity' (Independent Asylum Commission 10 July 2008) 35 <http://www.independentasylumcommission.org.uk/files/10.07.08.pdf> accessed 14 July 2017.
[636] ibid 36.
[637] ibid.
[638] Cole (n 623) 38.
[639] ibid.
[640] Crawley and Lester (n 554) 15.

poet that was appointed as Poet Laureate[641] in 2009, Carol Ann Duffy, and seventy other writers addressing the prime minister. The letter called upon the Prime Minister and the Government to stop the practice of child detention as it was too harmful to be accepted in a civilised society.[642] Again, here the reference was to moral values instead of international law or standards. Furthermore, several groups such as Medical Justice[643] started similar campaigns in order to raise public awareness of this issue in 2010.[644] The Church of Scotland was also concerned over the conditions of the immigration removal centres in terms of children's well-being.[645] All of these efforts and campaigns helped to create a discussion over ethics of this practice in the UK.[646]

Hence, it is apparent that there was wide criticism coming from civil society through shared projects, research reports including case studies and joint campaigns between 2002 and 2008. While the concerns and criticisms followed the same pattern, the recommendations to the Government and the border officials had the same tone as well. It was stated that detention is never in the best interest of a child, and so recommended that children should not be detained under Immigration Act powers.[647] Hence, these civil society reports showed that the norm of detaining children as a last resort for the shortest appropriate time and not detaining them at ill-suited detention centres was not fully followed by the immigration authorities in the UK. Whereas the international law reference was always there, the underlying argument by civil society had a moral nature than a legal one.

f. The Approach of Domestic Courts to the UK's Detention Policy and Administrative Detention in Practice

In 2007, a case relating to a family's detention came before the domestic courts in the UK. The applicant was a Jamaican national with her daughter and they arrived in the UK in 2002. They had been granted temporary admission with a requirement to return

[641] This is an official appointment dating back to 1668 by the Queen with the advice of the Prime Minister. These poets are expected to produce poems to mark significant national events.
[642] Silverman (n 380) 1145.
[643] Medical Justice is a charity that seeks basic rights for detainees, it is the only UK organisation that arranges for independent volunteer doctors to visit men, women and children in immigration detention. For more information, see http://www.medicaljustice.org.uk/index.php.
[644] ibid.
[645] David McClean, 'Immigration and Asylum in the United Kingdom' (2010) 12 Ecclesiastical Law Society 159.
[646] Silverman (n 380) 1145.
[647] Cole (n 623) 8; Crawley and Lester (n 554) 25, 35; Hobson, Cox and Sagovsky (n 635) 40; Campbell, Baqueriza and Ingram (n 633) 7.

to the airport in order to leave the UK in a week.[648] Since she failed to do so, she was treated as an absconder. Until 2005, she lived in the UK illegally and gave birth to her second baby. In 2005, she was arrested because of an allegation of shoplifting at a supermarket and came to the attention of the Immigration Authorities. She and her daughters were taken to Yarl's Wood Immigration Centre and the applicant was interviewed. During the interview, she claimed asylum. The applicant and her two children were released but they were told to come back to Gatwick Airport in two days in order to be taken to Oakington Detention Centre for fast track procedure. On the day requested, the applicant with her two children came to Gatwick Airport and was taken to Oakington. The applicant and her children were kept in detention after the conclusion of the fast track procedure.[649] Their detention was reviewed and further authorised by the Immigration authorities according to their guidelines where it set out that once detention has been authorised, it has to be under close review.[650] Their detention was authorised one more time because the decision to deport them to their country had been taken and there was a risk of absconding in the case of a temporary admission or release.[651] In the end, they were not deported and they were released after two months in detention. In this case, the Government's policy of detention of families with children was challenged. For this reason, the judgment referred to the relevant articles of CRC and ECHR as follows in order to decide on the Government's policy:

> In my judgment, it is open to significantly greater debate whether the Defendant's policy in 2005 on detention generally as it applied to families with children is unlawful. On balance, however, I have reached the conclusion that it is not. As I have indicated above the policy consists of a number of key elements. Although these key elements are not phrased in an identical manner to the phraseology of the relevant articles of UNCRC, in my judgment the Defendant's policy is compatible with the general thrust of the Articles of UNCRC… there is no material difference between Article 37 (b) which prohibits the deprivation of liberty of a child in an arbitrary fashion and specifies that detention shall be used a measure of last resort and for the shortest appropriate period of time and a policy which demands that detention

[648] *S & Ors v Secretary of State for the Home Department* [2007] EWHC 1654.
[649] ibid.
[650] Operational Enforcement Manual, ch 38 Detention and Temporary Release.
[651] *S & Ors v Secretary of State for the Home Department* (n 645) para 9.

> must be used only where all reasonable alternatives are discounted and for the shortest period necessary. Further, the fact that the interests of the child must be a primary consideration when taking action in respect of a child cannot preclude detention in all circumstances. [652]

Hence, the Court found that the defendant's policies were in line with the principles mentioned in these international conventions.[653] This is why the policy was lawful. However, the judgment also stated that:

> In my judgment a period of detention of two months, more or less, for these Claimants was unreasonable and would have been recognised as being unreasonable by a decision maker who turned his or her mind to such a period of detention. The detention period, after all, was coming immediately after a period of 13 days in detention when the fast-track procedures were operated. The detainees were a young woman and two very young children. It is not for this Court to lay down to what may have been a reasonable period of detention but, in my judgment, such a period was bound to be far less than approximately two months. [654]

In addition to this, the defendant's statement of risk of absconding was not supported by evidence and the defendant did not consider all reasonable alternatives to detention during this unreasonably long detention period.[655] For this reason, their detention after the completion of the fast track procedure to their date of release was found unlawful.[656] The key argument in this judgment was confirming the lawfulness of the policy. As long as the policy was applied as it ought to be, there would not be any question regarding lawfulness of immigration detention of children with families in practice. Hence, this approach of the domestic court is vital for understanding the UK's historical record on compliance. As mentioned before, a judgment supporting governmental policy can potentially provide a valid ground for non-compliance in the hands of a state that has no intention to comply as it does not cause any discomfort on the government in question, or lead to a discussion.

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[652] ibid para 44.
[653] ibid.
[654] ibid para 69.
[655] ibid para 62.
[656] ibid para 93.

g. Sensitive Topic on the Parliamentary Agenda: Detention of Minors 2000-2009

The discussion over detention of minors became a frequent topic in Parliament in the 2000s. There were concerns and questions mentioned in parliamentary debate regarding the risk assessment of detaining children, rising numbers of detention spaces and lack of time limits on detention of minors.[657] The ministerial answers to these concerns carried a similar perspective as the ones in the 1990s in order to justify current measures and explained the present practices in detail. They stated that unaccompanied children were not detained; instead they were taken to local social services department.[658] Detention of unaccompanied children only happened in exceptional circumstances till alternative care arrangements were made. Furthermore, the decision to detain families was said to be taken within consideration of Article 8 of the ECHR and evidence of absconding and a previous history of not complying with the requirements of immigration control. This decision was risk-assessed by the Immigration Service.

In addition to this, the same attitude was also taken towards proposals for reform in detention policy. The proposals were generally on bringing time limits on detention of minors and removing the power to detain minors. However, these proposals were rejected and claimed to be not reflecting reality. It was argued that:

> Our current policy on the detention of minors is clear. It is, of course, very regrettable to have to detain those who are under 18, but there are two limited sets of circumstances in which we may decide to do so. The first is where it is considered necessary in line with our policy to detain a family with children. In such a case, it is surely better for the children to be detained with the parents rather than to separate the family, which is likely to cause the children needless distress and anxiety. To suggest that in that case families should not be detained is, frankly, unrealistic. They may need to be detained while their identities or the basis of their claim are established, because they are unlikely to comply with the terms of temporary admission or release, to effect their removal, or as part of the fast-track asylum process at Oakington reception centre.

[657] Hansard Archives, 2000-2003.
[658] HC Deb 12 April 2002, vol 383, cols 629-30W.

> Secondly, there are exceptional instances where it is necessary to detain an unaccompanied minor while alternative care arrangements are made. The detention would normally be just overnight and in most cases with appropriate care facilities. A minor arrives alone late at night at a port of entry, for example, without family or adult relatives to go to. I am sure we can imagine circumstances arising from time to time fortunately, not too frequently, but they do arise—in which immigration officers and staff have to make hard decisions. [659]

It was claimed that in order to have an effective immigration policy, these practices should remain.

Nevertheless, there was a growing opposition towards detention of children in Parliament at the same time. Parliamentary support towards ending detention of children for immigration purposes can be seen in early day motions[660] in Parliament since 2006. The main reason for submitting an early day motion is to bring an issue or a campaign to the spotlight. Since 2006, early day motions have been used every year in order to highlight the issue of detention of minors for immigration purposes.[661]

Overall, every time this practice was questioned in Parliament, it was defined by the Labour Government as a regrettable but necessary practice in certain cases in order to ensure an effective immigration control and handle abuses in asylum system.[662] Effective immigration policy was stated as a primary consideration in decision-making. Thereby, although it is a regrettable practice, the UK claimed that it is allowed to use this practice from time to time if necessary. At the same time, some of the Members of Parliament demonstrated their opposition towards this practice with early day motions.

[659] HL Deb 17 July 2002, vol 637, cols 1233-43.
[660] Early day motions are submitted by members of Parliament in order to debate specific topics in the House of Commons. They can be employed to show the level of parliamentary support in relation to a specific cause in the case of signatures by other Members of Parliament.
[661] Submitted early day motions on this topic will be explained further below in Chapter 6. The Factors Affecting Policy and Legal Changes: Case Study – The United Kingdom.
[662] HC Deb 08 May 2003, vol 404, cols 929-36.

IV. POST-2010

a. Declining Statistics after 2010

From 2010 to date, immigration detention has still been an important topic in the UK's agenda. During 2010, 25,000 people were detained under the Immigration Act powers.[663] The capacity of detention facilities has increased from 250 in 1993 to 3500 in 2011. [664] In 2010, approximately 26,000 people entered detention under Immigration Act powers.[665] In 2011, this number reached to around 27,000 and 29,000 in 2012.[666] The year ending September 2013, there was around 30,000 people entered detention.[667] The following year, there was also approximately 30,000 people entered detention.[668] With regard to minors, in 2010 there were 436 children entered detention and in 2011 over 100 children were under immigration detention.[669] In 2012, over 200 children entered detention under Immigration Act powers.[670] This rise in numbers compared to previous year was linked to increasing use of Cedars pre-departure accommodation, will be explained in detail, where children were kept in better conditions than previously in detention facilities.[671] While there were around 235 minors entered detention in 2013,[672] this number dropped to approximately 120 in 2014.

b. The Approach of Domestic Courts to the UK's Immigration Detention Policy

Since 2010, there have been several important domestic cases concerning detention for immigration purposes. In *Suppiah & Ors* case in 2011, the claimants were a

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[663] Home Office, 'Control of Immigration: Quarterly Statistical Summary, United Kingdom' (National Statistics October - December 2010) <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/116074/control-immigration-q4-2010.pdf> accessed 16 July 2017.

[664] Robyn Sampson and Grant Mitchell, 'Global Trends in Immigration Detention and Alternatives to Detention: Practical, Political and Symbolic Rationales' (2013) 1 Journal on Migration and Human Security 97, 101.

[665] Home Office (n 663) 27.

[666] Silverman and Hajela (n 631) 2.

[667] 'Immigration Statistics, July to September 2014' (*Government*, 27 November 2014) <https://www.gov.uk/government/publications/immigration-statistics-july-to-september-2014/immigration-statistics-july-to-september-2014#detention-1> accessed 16 July 2017.

[668] ibid.

[669] ibid and Silverman and Hajela (n 631).

[670] 'Immigration Statistics, October to December 2012' (*Government*, 28 February 2013) <https://www.gov.uk/government/publications/immigration-statistics-october-to-december-2012/immigration-statistics-october-to-december-2012#detention-1> accessed 16 July 2017.

[671] ibid.

[672] 'Immigration Statistics, October to December 2013' (*Government*, 27 February 2014) <https://www.gov.uk/government/publications/immigration-statistics-october-to-december-2013/immigration-statistics-october-to-december-2013> accessed 16 July 2017.

mother and her two sons from Malaysia and a mother from Nigeria and her child.[673] The first claimant arrived in the UK while she was pregnant with the third claimant. She was granted leave to remain for six months as a visitor. The second claimant, the son of the first claimant, arrived in the UK and joined his mother. Nine months after her entry, she claimed asylum and was given papers treating her as an overstayer. Her asylum application was refused and her appeal was also dismissed. The three claimants were served their removal directions and were detained on the same date at Yarl's Wood Immigration Removal Centre. There, the first claimant submitted further evidence to immigration authorities about her concerns over their removal. She also started proceedings for judicial review. The UKBA decided against removing the three claimants on 10 February 2010. However, they were detained until 24 February 2010 in spite of cancellation of their removal directions.[674]

The fourth claimant entered the UK from Nigeria with false documentation and she gave birth to the fifth claimant the day following her arrival.[675] She claimed asylum two years after her illegal entry to the UK. Her asylum application was refused and her following appeal was also dismissed in a similar way to the first claimant. They were served their removal directions on 10 February 2010 and were taken to Yarl's Wood Immigration Removal Centre with a view to deportation on 13 February 2010. However, the fourth and fifth claimant were not removed on 13 February as there was a ruling restraining removal on 12 February and the fourth claimant was not able to travel on that date. They remained at the detention centre till 22 February 2010.

The claimants challenged the lawfulness of the policy of detaining children with families. The judge found that the policy referred to several key elements:

> As I have found the Defendant's policy contains a number of key elements. Upon its proper interpretation exceptional circumstances must exist before detention of families with children is justified. It is the key elements taken together with the overarching obligation to resort to detention only in exceptional circumstances which ensure that the policy complies with section 55 of the 2009 Act, obligations under UNCRC and the ECHR. The policy ensures that every decision-maker should know that the Defendant's policy

[673] *Suppiah & Ors, R (on the application of) v Secretary of State for the Home Department,* EWHC 2, 2011, paras 1-3.
[674] ibid para 6.
[675] ibid para 7.

> demands that detaining children should take place in exceptional circumstances only and is a measure of last resort; inevitably, therefore, the decision-maker will know that it is incumbent upon him to undergo a rigorous analysis of all relevant factors before authorising that measure of last resort. [676]

Furthermore, he held that as long as the policy was applied as it ought to be, there would not be any question regarding lawfulness of it.

The claimants also referred to several ECtHR judgments against Belgium, especially *Muskhadzhiyeva*[677] and *Mubilanzila Mayeka and Kaniki Mitunga*[678], in order to support their claim that their detention breached Article 3 and Article 5 of the ECHR. Relying on their argument on these two significant cases by the claimants in the *Suppiah* case, the Court took the facts of these cases into account in its judgment. With regard to Article 3, the judge held that the conditions in the Yarl's Wood detention centre were not comparable to the conditions in the 127 *bis detention centre in* Belgium mentioned in *Muskhadzhiyeva v Belgium*.[679] It was also argued that the claimants did not develop any significant illnesses during their detention. For this reason, the minimum level of severity has not been reached in this case and the Court held that detention did not violate Article 3.[680] The Court also found that there was a violation of Article 5 for all applicants as their detention from the time they were taken to custody till their release was unlawful as there was no risk of absconding and the detention was not a measure of last resort. The judgment concluded that the Defendant's policy of detention of families with children, even though unwanted and potentially harmful to children, was lawful as it complied with its obligations under CRC and provided sufficient safeguards. [681] Although the policy was lawful, the judge still stated:

> There is, nonetheless, a significant body of evidence which demonstrates that employees of UKBA have failed to apply that policy with the rigour it deserves. The cases of the two families involved in this litigation provide good examples of the failure by UKBA to apply important aspects of the policy

[676] ibid para 214.
[677] *Muskhadzhiyeva and Others v Belgium* App no 41442/07 (ECtHR, 19 January 2010).
[678] *Mubilanzila Mayeka and Kaniki Mitunga v Belgium* (2008) 46 EHRR 23.
[679] *Suppiah & Ors, R (on the application of) v Secretary of State for the Home Department* (n 673) para 184.
[680] ibid para 224.
[681] ibid paras 210-223.

> both when the decisions were taken to detain each family and when decisions were taken to maintain detention after removal directions had been cancelled.[682]

The Court found that the UKBA failed to perform its duty regarding welfare of children. The detention of claimants was not a measure of last resort because alternatives had not been considered.[683] The key thing in this judgment was that the Court did not see the clarity in the obligations under CRC and ECHR. The absence of a well-defined ban gave a ground for the Court to decide the policy was lawful. It was clear that there was no push from courts towards the Government in order to change the policy.

c. The UK's Immigration Law: Ending Detention of Minors or Not Yet? More Challenges Ahead?

Following the civil society campaigns mentioned before, Nick Clegg as the then leader of the Liberal Democrats referred to detention of minors for immigration law enforcement as a 'state-sponsored cruelty' and a 'moral outrage' in December 2009.[684] This perspective found its place in the 2010 election manifesto of the Liberal Democrats as a promise to ban child immigration detention.[685] The Liberal Democrats, in their manifesto, stated that they were committed to providing a safe haven for those fleeing persecution and to incorporate CRC into UK law. Along the same lines, they were devoted to ending detention of minors for immigration purposes.

The previously mentioned Sanctuary Pledge campaign, run by Citizens UK and several partner organisations, brought Nick Clegg, Gordon Brown and David Cameron together at the Citizens UK General Election Assembly on May 3rd 2010, only three days before the general election, where all party leaders expressed their commitment to end child detention for immigration purposes if they won the election.[686] Before this Assembly, teams of Citizens UK around the country met their

[682] ibid para 224.
[683] ibid para 201.
[684] Silverman (n 380) 1145.
[685] 'Liberal Democrat Manifesto 2010' (*General Election 2010*) 76 <http://www.general-election-2010.co.uk/2010-general-election-manifestos/Liberal-Democrat-Party-Manifesto-2010.pdf> accessed 16 July 2017.
[686] 'We just made history! New coalition government pledges end to child detention'(*Citizens UK*, 11 May 2010) <http://www.citizensukblog.org/we-just-made-history-new-coalition-government-pledges-end-to-child-detention/> accessed 16 July 2017. The partner organisations were as listed: The Church

respective parliamentary candidates and discussed supporting policies to end detention of children.[687]

The 2010's election resulted in the Conservative Party's victory, ending up with a coalition government with the Liberal Democrats. The Coalition Government's perspective on immigration was shaped on the Conservative's terms, such as an introduction of an immigration cap, due to their majority in the Government.[688] The Conservative Party's election manifesto briefly mentioned their potential policies on immigration, mostly suggesting reducing the numbers of immigrants.[689] With regard to immigration detention, the only reference was made in suggesting improvement on immigration controls. The contribution of the Liberal Democrats in the coalition's agenda was the promise of the Government to commit to end detention of minors for immigration purposes.[690] Given the wide support for ending the practice by human rights activists, the Coalition parties might justify their commitment to their voters by arguing that the ban on detention of minors was very important as it would end this practice, but it would not damage immigration authorities' capacity to deal with immigration offenders.[691]

As a follow-up to the commitment of the Liberal Democrats in their election manifesto and in response to the previously mentioned public disapproval, Nick Clegg announced their commitment as a coalition government to this issue in July 21, 2010 in Parliament. He promised the closure of family unit at Yarl's Wood Immigration Removal Centre (IRC), which was the main place for detaining children.[692] He also stated:

> …an enormous culture shift within our immigration system. The Coalition government has always been clear that the detention of children for

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of England, the Catholic Bishops' Conference of England and Wales, Churches Together in Britain and Ireland, the Methodist, Baptist and United Reformed Churches. The Muslim Council of Britain, the Jewish Council on Racial Equality, the Board of Deputies of British Jews and the Chief Rabbi. Church Action on Poverty, the Vincentian Millennium Partnership, the Salvation Army, the Evangelical Alliance and the Mothers' Union.

[687] ibid.

[688] Flynn, Ford and Somerville (n 382) 110.

[689] 'Invitation to Join the Government of Britain' (*Conservatives*) <https://www.conservatives.com/~/media/Files/Manifesto2010> accessed 6 July 2017.

[690] Flynn, Ford and Somerville (n 382) 110.

[691] ibid.

[692] Silverman (n 380) 1146.

immigration purposes is unacceptable. We are placing the welfare of children and families at the centre of a fairer and more compassionate system. [693]

However, opening a pre-departure accommodation centre at Cedars just after closing the family units at Yarl's Wood IRC has raised concerns over the real intention and demonstrated the complexity of this issue.[694] This facility established at West Sussex, called Cedars, was a pre-departure accommodation centre that houses 44 detainees in families for up to one week with a view to deportation.[695]

After 2010, this approach to detention of minors was reflected in policy as well. UKBA detention policy guidance has made several changes regarding family with children under 18 detention policy. The policy guidance used to note that detention of families with children was not subject to a particular time limit.[696] However, the policy recently stated that for planned returns, families should be kept at pre-departure accommodation centres for a maximum of 72 hours, yet in exceptional cases this time could be extended to a total of seven days with Ministerial authority.[697] Furthermore, the policy guidance demonstrated that there are rare circumstances in which families could be kept at Tinsley House rather than in pre-departure accommodation.[698] As a general policy, the guidance establishes that families with

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[693] Home Office UK Border Agency, *Review into Ending the Detention of Children for Immigration Purposes* (UK Border Agency, Immigration Group 2010).
[694] Silverman (n 380) 1146.
[695] ibid.
[696] UK Border Agency Enforcement Instructions and Guidance (n 503) ch 55.9.4 Families.
[697] Enforcement Instructions and Guidance, ch 55.9.4. Families with children under the age of 18 <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/552478/EIG_55_detention_and_temporary_release_v21.pdf> accessed 6 September 2017.
[698] ibid says: '1. Where a family presents risks which make the use of pre-departure accommodation inappropriate (see 45.5.6). Such a proposal would need to be referred to the Family Returns Panel for advice and would, in addition, require Ministerial authorisation. The same time limits as for pre-departure accommodation apply.
2. Where criminal case work is returning a mother and baby from a prison mother and baby unit during the early removal scheme (ERS) period but it is not practicable or desirable, owing to time or distance constraints, to transfer mother and infant direct from prison to the airport for removal. Tinsley House may be used to accommodate the family on the night before their flight. This is because it would not be appropriate to separate mother and baby, and the mother cannot be moved to non-detained or pre-departure accommodation during the ERS period since she continues to be a serving prisoner who can only be released from prison for the purpose of removal. If Tinsley House is to be used in these circumstances, the criminal casework case owner must liaise with the family returns unit (FRU) in good time before the proposed removal to ensure that accommodation is suitable and available. FRU will require a copy of the Family Welfare Form before the booking can be confirmed. Should the removal fail, the mother and child will be returned to the prison.
3. Where after reuniting a single parent foreign national offender with their child at the airport for removal, either straight from prison custody or immigration detention, the removal does not proceed. For this reason, the criminal casework case owner should always seek to retain the involvement of the person who has been caring for the child until the flight departs so that they can step in to take care of the child again until the removal can be rearranged. However, where this is not possible and it is not

children under the age of 18 may be held in short-term holding facilities (holding rooms), pre-departure accommodation and the family unit at Tinsley House immigration removal centre for planned returns.[699]

Following this new policy, a new Immigration Act was also passed by Parliament in 2014.[700] The changes brought by the 2014 Act with regard to detention of minors for immigration purposes are as follows:

- A 'reflection period', which is 28 days, must take place during which a child and one parent are protected from removal from the UK following the exhaustion of their appeal rights.[701]
- The Independent Family Returns Panel was created as a statutory body in order to provide advice to UKBA on the method of removal and ensure that UKBA safeguard and promote the welfare of children in its arrangements.[702]
- Unaccompanied children cannot be detained for more than a 24-hour period and they can only be detained at short-term holding facilities during transfer to or from a short-term facility and or a place where their presence is needed for immigration purposes.[703]
- Pre-departure accommodation is the only place where families with children will be held, for a maximum of 72 hours.[704] The duration of detention can be extended to seven days only with an authorisation by the Minister.

After 2010, the UK showed a significant level of commitment to end detention of minors for immigration purposes. The developments were meaningful in terms of the UK's compliance with human rights standards. The Government basically limited detention of minors to detention at pre-departure accommodation centres for 72 hours with a repeated emphasis on the welfare of children. The dynamics that played a

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appropriate to release the parent, the family unit at Tinsley House may be used to accommodate the parent and child until alternative, community-based arrangements for the care of the child are made (e.g. with local authority Children's Services). Director level authority must be obtained before Tinsley House is used in these circumstances. The time limits above apply but, in most cases, the aim should be for the child's stay to be for no more than one night. As a contingency, FRU should be advised in advance of cases where criminal casework is reuniting a family at the airport and it is possible that accommodation at Tinsley House may be needed should the removal fail.'

[699] ibid ch 55.13. Places of Detention.

[700] Immigration Act 2014.

[701] ibid s 2 and Melanie Gower, 'Ending child immigration detention' (SN/HA/5591, House of Commons Library, 4 September 2014) <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN05591#fullreport> accessed 16 July 2017.

[702] Immigration Act 2014 (n 700) s 3.

[703] ibid s 5.

[704] ibid s 6.

valuable role in this process were the push which came from national campaigns and creation of public disapproval. For this reason, it was easier for the Government to follow their promise of the ban which they gave before the elections of 2010.

During the 2014 Immigration Bill discussions in Parliament, there were several concerns raised by Members of Parliament with regard to the changes mentioned above. The main concerns and criticisms in parliamentary debate were on lack of clarification concerning detention of minors for immigration purposes.[705] It was suggested that incorporating the ban into the Act would prevent further detention of minors for immigration purposes.[706] Furthermore, the Act did not refer to any time limits on detention of minors and it was criticised as follows:

> In May 2010, the Government did indeed commit to ending the immigration detention of children. There was a widespread, positive response to this change—and there have been some improvements. Fewer children are detained, and when they are it is for shorter periods. This must be recognised. The Government's amendments would create a legislative basis for some of these improvements, for example by setting a time limit on child detention in law. However, it is very disappointing that the Government's amendments do not prohibit or even properly limit child detention. They do not state that detention should be a last resort, as is the current policy, or that detention should be for the shortest possible time. I fear that, in practice, it may become normal for children to be detained for the maximum permissible period, where this is administratively convenient.[707]

However, the Government defended these changes and the then Home Secretary Theresa May stated that they reflected their commitment to end child detention and mentioned a statutory provision that allowed detention of minors at pre-departure accommodation instead of immigration removal centres:

> We propose to reinforce the commitment to end the detention of children for immigration purposes by putting key elements of the family returns process into primary legislation. That will involve providing a statutory prohibition on the detention of children within immigration removals centres, subject to the exceptions agreed in 2010, which continue to be Government policy;

[705] HC Deb 22 October 2013, vol 569, cols 186-187.
[706] ibid col 248.
[707] HL Deb 1 April 2014, vol 753, col 853.

providing families with children a minimum of a 28-day reflection period following the exhaustion of appeal rights against a removal before their enforced removal; placing a statutory duty on the Secretary of State to appoint an independent family returns panel to advise on the best interests of the child in every case in which enforced return is proposed; and providing a separate legal basis for pre-departure accommodation independent of other immigration detention facilities.[708]

Given the concerns over detention of minors, we can examine whether the restriction has been effective in practice. First of all, it is significant to refer back to the statistics mentioned before regarding detention of minors after the ban was in place. Statistics of detention of minors were still around 100 per year in 2010, over 200 in 2012 and 2013. During these times, detention of minors occurred mostly before family removal at Cedars Pre-Departure Accommodation. The Government stated that this is family-friendly environment instead of a detention or removal facility.[709] However, families accommodated at Cedars are still arrested and detained under 1971 Immigration Act powers. The critics attacked conditions at Cedars such as high fences, surveillance cameras and full body search on entry and criticised the changes as being superficial.[710]

Following the policy, the new challenge the Government faced was the implementation of the new arrangement that result in separation of families in some cases. After 2010, detaining parents and putting minors in care became a more obvious alternative to detaining minors with families. However, the impact of separation of families on children became a concern within the duty to protect child welfare defined in the 2009 Act and reasserted in the 2014 Act.[711] The Bail for Immigration Detainees' report revealed that some children were transferred between unstable care arrangements and neglected by the authorities during separation of families.[712] The average duration of detention of parents was 270 days.[713] While some

[708] HC Deb 30 January 2014, vol 574, col 1053.
[709] HC Deb, 16 December 2010, vol 520, col 126 WS.
[710] Adam Weiss and Esther Lieu, 'Detention of Children' (2012) 26 Immigration, Asylum and Nationality Law 349, 355.
[711] Borders, Citizenship and Immigration Act (n 563) and Immigration Act 2014 (n 700) cl 71.
[712] Bail for Immigration Detainees, 'Fractured Childhoods: the separation of families by immigration detention' (Bail for Immigration Detainees April 2013) <http://www.biduk.org/sites/default/files/FRACTURED%20CHILDHOODS%20THE%20SEPARATION%20OF%20FAMILIES%20BY%20IMMIGRATION%20DETENTION%20FULL%20REPORT.pdf> accessed 16 July 2017. BID conducted this research with 115 parents who left detention between

of these parents were deported from the UK without their children, the majority of them were released at the end.[714] Being away from their parents at local care units caused children to feel distressed and affected their quality of life.[715] However, it was observed that the immigration authorities did not take these experiences of minors into consideration as required by their duty regarding children welfare.[716] This demonstrated the complexity of the issue surrounding the practice of decision to detain children for immigration purposes. While placing children in the care of local authorities during detention of parents was seen as a viable alternative instead of detaining children with their parents in the beginning, this caused several problems once put into practice in terms of child's best interest principle. This reveals that child-related policies and legislation need further assessment if the state is committed to secure children's rights in their policies. In this specific case, different alternatives that can secure family unity in a non-closed centre without constant surveillance can be considered to be in the child's best interest.

Overall, the Government's amendments and commitment to end detention of minors, in practice, did not actually prevent detention of minors for immigration purposes fully. The statistics with regard to detention of minors and recent practice to detain minors at short term holding facilities and pre-departure facilities prove this assertion. For this reason, it is very challenging to measure effectiveness of the ban on detention of minors in the UK as detention of minors has not ceased to exist, yet.

e. The International Community's Approach to the UK's Immigration Detention Policy

Since 2010, international monitoring bodies have been addressing developments in the UK. The ECRI's report in 2010 criticised the UK regarding the lack of a time limit:

> As regards detentions, ECRI notes with concern that there is no maximum limit on the length of detention of asylum-seekers. Moreover, despite a new

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January 2009 and July 2012. For this research, data was collected from 111 of these parents and their 200 children.

[713] ibid.

[714] Bail for Immigration Detainees, 'Bail for Immigration Detainee's submission to the APPG on Refugees and APPG on Migration's parliamentary inquiry into the use of immigration detention in the UK' (September 2014) <http://www.biduk.org/sites/default/files/BID%20submission%20to%20detention%20inquiry_separated%20families%20Sept%202014_0.pdf > accessed 16 July 2017.

[715] Bail for Immigration Detainees (n 712) 29.

[716] Bail for Immigration Detainees (n 714).

> duty imposed on the Secretary of State to make arrangements to ensure that asylum functions are discharged having regard to the need to safeguard and promote the welfare of children who are in the United Kingdom, there is at present no maximum limit on the length of detention of children who are detained with their families. … ECRI stresses that the detention of asylum seekers should be used only as a last resort, when no other viable options are available. [717]

The report also stated:

> ECRI urges the United Kingdom authorities not to treat undocumented asylum-seekers as criminals. It urges the authorities to ensure that the detention of asylum-seekers is used only as a last resort, and that individual decisions to detain are subject to thorough and effective judicial scrutiny. ECRI again recommends that the authorities ensure that the detention of children remains strictly limited to cases where it is absolutely necessary. [718]

The UK's response to these criticisms was that detention plays a vital role during the removal process of families, hence it is an inevitable part of the immigration system.[719]

Furthermore, the Parliamentary Assembly of the COE also submitted resolutions addressing all member states regarding detention of children with families and unaccompanied children. The Assembly called upon member states not to detain unaccompanied children on any ground.[720] Appropriate care arrangements should be preferred instead of the detention facilities.[721] The Assembly was also concerned over the rising detention numbers in the member states due to the increasing numbers of asylum seekers and irregular migrants and stricter immigration policies of the member states.[722] After pointing out these concerns, the Assembly called member states to

[717] European Commission Against Racism and Tolerance, 'ECRI's report on the United Kingdom' (2 March 2010) CRI (2010) 4 para 173.
[718] ibid.
[719] ibid para 91.
[720] Parliamentary Assembly, 'Unaccompanied Children in Europe: Issues of Arrival, Stay and Return' Resolution No: 1810 (15 April 2011) Doc. 12539 para 5.9.
[721] ibid.
[722] Parliamentary Assembly, 'Detention of Asylum Seekers and Irregular Migrants in Europe' Resolution No: 1707 (28 January 2010) Doc. 12105 para 1.

follow their obligations under international human rights and refugee law.[723] The authorities were asked to consider alternatives to detention.[724]

CONCLUSION

Detention of children with or without their families for immigration purposes has been on the agenda of the UK for a long time as shown chronologically in this chapter. In 1971, the UK was at the start of modern immigration detention. The 1971 Immigration Act created this phenomenon with wide discretionary powers in the hands of immigration authorities. This main principle of the power to detain still remained untouched in the UK since the 1971 Act. Although there were not many established immigration detention centres, the numbers of detained people before the 1990s were still considerable. Between 1993 and 2009, the UK experienced increasing detention numbers due to increasing numbers of asylum applications. Asylum became an important driver for the Government to manage the issue of immigration and asylum. Especially with the start of the 2000s, immigration detention became a routine practice used by authorities compared to the 1990s. Therefore, while new places of detention were planned and established all across the country, a new type of detention, called fast-track for asylum seekers, emerged simultaneously. This period has faced new legislation targeted in particular at asylum seekers.

With regard to detention of minors, it occurred in the UK when either the child was alone or accompanied by her family. Withdrawing the reservation to CRC, which was related to immigrant and asylum-seeker children, led the Government to adopt a duty regarding protecting welfare of children in the 2009 Act. This reflected in the UKBA guidance later on, in a way that required the UKBA to safeguard the welfare of the children during its arrangements. During this time, immigration detention, in particular detention of minors, was criticised by the international monitoring bodies to which the UK reports; NGOs; domestic organisations and establishments; domestic courts; and members of Parliament. International monitoring bodies noted their concerns over the use of detention of minors and recommended that the UK end this practice. NGOs addressed the issue in their reports and campaigned for a fairer immigration system. Domestic organisations reported poor conditions of detention centres and pointed out how harmful it would be for minors' development. While

[723] ibid para 9.
[724] ibid para 9.1.1.

domestic courts and ECtHR did not find the policy to detain unlawful, it usually criticised the way authorities exercised this power. In return, this practice was defended by the governments for the sake of an efficient immigration control. Criticisms and discussions around detention of minors by NGOs and Members of Parliament became more intense at the end of 2000s. This was followed by a commitment given by the Coalition Government of Liberal Democrats and Conservatives to end detention of minors for immigration law enforcement. However, the chronology pictured in this chapter also showed that a commitment to end detention of minors is not as straightforward and effortless as it sounds. It brings its own challenges for governments to overcome, such as separation of families.

Discussing detention of minors in legal terms is challenging as there is no single legal document outlawing detention of minors for immigration purposes. As stated in the chapter explaining international human rights standards, international conventions setting standards for detention of minors have not banned detention of minors for immigration purposes yet. For instance, CRC, especially formed for children's rights, did not openly ban detention of minors. Instead, it brought principles to be considered during detention. However, it was not clear on the obligations of the member states in terms of detention of minors. The principles established by the CRC need some clarification. For instance, detention of minors as a last resort by states is allowed under the CRC. On the other hand, the CRC does not provide an assessment test to establish the necessity of detention as a last resort. Vague obligations of the member states under the CRC led the courts argue that detention policy was lawful as long as the policy adopts the same principles under the CRC and immigration authorities follow these obligations. This was very significant in terms of the UK's compliance since there was no pushing factor deriving from the jurisprudence.

After 2010, the UK showed strong signs of compliance and commitment to end detention of minors for immigration purposes. The Coalition Government limited detention of children to detention at pre-departure accommodation facilities for a period of 72 hours. Even though there is still no clear-cut ban on detention of minors, declining numbers of minors under detention is very meaningful and valuable in terms of the UK's compliance.

CHAPTER 5. THE FACTORS AFFECTING POLICY AND LEGAL CHANGES: CASE STUDY - TURKEY

Drawing upon the findings of the Chapter 3 on Turkey's immigration law history, this chapter combines the historical evolution of Turkey's immigration legislation with the reaction from international and domestic actors in order to analyse what this means for the case study and application of theory. It seeks to identify the relevant triggers that led Turkey to reform its legislation on immigration and asylum management. In addition to these triggers, it also focuses on the law-drafting period and explores how the international human rights standards on detention of minors became a part of Turkey's latest immigration legislation in 2014. While tackling these issues, the thesis applies the selected compliance theory by Ryan Goodman and Derek Jinks in order to put these motivating factors into a theoretical framework.

This chapter's main focus will be the period that starts after the beginning of EU accession period in 1999. It will, however, briefly touch on the period before this date. While analysing this timeline after 1999, the chapter will have three main parts where each part analyses different types of influence deriving from different international and national institutions on Turkey: by courts, supranational agencies and civil society. Each part examines whether there are any meaningful and influential triggers to push the Government of Turkey to change its behaviour. It will read each of these influences through the lens of Ryan Goodman and Derek Jinks' theory in order to demonstrate whether this theory is applicable to this case study. Each part will refer to parliamentary and Commission debates and interviews with the selected officials. Due to the way legislation is being drafted in Turkey[725], Commission debates will weigh more than parliamentary debates. Commission

[725] The law-making process in Turkey starts with Cabinet or a Member of Parliament's submission of a draft law to the Head of Parliament. Head of Parliament sends the draft to the relevant Commissions for further discussion and amendments. Commissions are composed of same number of members from each party in Parliament. They work on different topics such as human rights issues, education or health. The final version will be submitted to Parliament for discussion and adoption. The adoption of the Bill with the majority of the votes in Parliament will be sent to the President for approval. The President can either accept the Bill or send it back to Parliament. However, the President only has right to veto a Bill once. The second time has to be followed by an approval. After this, the Bill becomes law following the publication in the Official Gazette.

debates will be at the centre in order to understand the reasons for compliance or non-compliance with human rights standards in terms of immigration detention.

The chapter on Turkey's historical record of immigration law has demonstrated that the first period before 1994 was a legal vacuum period.[726] During this period, the Government brought the Law on Foreigners' Residency and Movement and Passport Law in 1950.[727] However, this law did not bring detailed regulations regarding immigration management. In addition to this, the law made in 1950 did not include any provisions concerning immigration detention. The provisions within the Law on Foreigners' Residency and Movement only implied administrative detention by mentioning that immigrants who were to be deported would be accommodated at the places that would be decided by the Ministry of Interior Affairs.[728] Lastly, the Ministry of Interior Affairs published a directive on refugees' guesthouses.[729] Whereas the Directive did not bring any guidelines about conditions of detention and the legal basis for detention, it basically provided practical guidelines such as the services provided to the asylum seekers. Hence, the detention policy was not comprehensive and Turkey did not have detailed regulations governing immigration-related detention during this legal vacuum period.

As mentioned before, this chapter seeks to find out whether there was any influential actor(s) in Turkey's historical record of immigration law that resulted in compliance with international human rights standards in terms of immigration detention of minors. When we look at this legal vacuum period before 1994, we can state that there was not any international or domestic reaction towards Turkey's immigration management system, hence the lack of a social mechanism suggested by the selected compliance theory during this period. The legislation and the policy brought during this period were made by the initiation of the then Governments without any socialisation mechanism among different actors. Hence, there was no pressure or encouragement for a change in Turkey's domestic law in the immigration field. As an important observation, the changes made during this time did not carry

[726] To read further on these periods and the reasons for this division, see Chapter 3. Turkey's Historical Record in Relation to Compliance with International Standards.
[727] Yabancıların Türkiye'de İkamet ve Seyahatleri Hakkında Kanun [Law on Foreigners' Residency and Movement] 1950, No: 5683.
[728] ibid art 23.
[729] Mülteci Misafirhaneleri Yönetmeliği [Refugees' Guesthouses Directive] 1983. To read further on the practical meaning of the guesthouses, see Chapter 3. Turkey's Historical Record in Relation to Compliance with International Standards.

much human rights essence. For instance, the legislation did not have the international protection element for asylum seekers. This could be the result of the intensely government-involved law and policy-making without any external influence. On the other hand, this lack of human rights background in law and regulations provided international institutions a solid argument regarding Turkey in the following periods after the intense interaction process started, which will be explained in detail later on. However, based on an extensive literature research, it is clear that that there was no substantial record of international or national social mechanism that criticised Turkey's immigration policies and law regarding immigration detention, or specifically child detention, during this period.

This brings us to the next period where Turkey moved towards a certain level of institutionalisation of its immigration law. During this period, Turkey faced large influxes of refugees and asylum seekers from different regions such as Bulgaria, Iran, and Iraq due to wars and tensions in these regions.[730] These vast numbers pushed Turkey to take a step towards managing this issue with detailed regulation. Hence, the Government brought more regulations and principles for immigration management under the 1994 Asylum Regulation.[731] This regulation was the turning point towards change and institutionalisation of immigration management policies.[732] With this regulation, the status determination of asylum seekers was given into the hands of the Ministry of Interior Affairs instead of the United Nations High Commissioner for Refugees (UNHCR)[733].[734] The meaning of this new reorganisation was that the Ministry of Interior Affairs' recognition of asylum seekers was needed before they were able to be referred to the UNHCR for resettlement.[735] This regulation, also, required that asylum seekers whose application was taken by the Ministry of Interior

[730] To read the details of these different movements to Turkey, see Chapter 3. Turkey's Historical Record in Relation to Compliance with International Standards.
[731] 1994 Türkiye'ye İltica Eden veya Başka Bir Ülkeye İltica Etmek Üzere Türkiye'den İkamet İzni Talep Eden Münferit Yabancılar ile Topluca Sığınma Amacıyla Sınırlarımıza Gelen Yabancılara ve Olabilecek Nüfus Hareketlerine Uygulanacak Usul ve Esaslar Hakkında Yönetmelik [1994 Asylum Regulation] 1994.
[732] Ahmet İçduygu and Damla B Aksel, 'Irregular Migration in Turkey' (International Migration Organization Turkey September 2012) 17, 40.
[733] UNHCR as the UN Refugee Agency is a global organisation that is established in 1950. Its work focuses on protection of rights for refugees, forcibly displaced communities and stateless people.
[734] 1994 Asylum Regulation (n 731) art 6.
[735] Celia Mannaert, 'Irregular Migration and Asylum in Turkey' (2003) UNHCR New Issues in Refugee Research Working Paper No 89 7 <http://www.unhcr.org/3ebf5c054.pdf> accessed 6 July 2017.

Affairs would be accommodated in one of the guesthouses[736] without any set time limit. In general, this regulation was significant in terms of bringing a certain level of structure to Turkey's immigration management system. On the other hand, it was missing an important component of an immigration management system: international protection. The asylum regulation did not carry any elements of international protection.

Turkey initiated this new regulation as a reaction to the large influxes of asylum seekers from different parts of the world which occurred in the late 1980s and during the 1990s. Through the Goodman and Jinks' theory, it is hard to identify any type of interaction or socialisation between Turkey and international or national institutions during this period. There was not any international monitoring report, expert report or case law that referred to Turkey's immigration law and policies or encouraged Turkey to change their immigration law and policies within this timeline. In the absence of a socialisation mechanism, the reaction to influxes could be the only reason for a change in state behaviour.

Furthermore, since this change in state behaviour did not include any international protection element in this asylum regulation, this may be the consequence of an absence of international or national pressure on Turkey towards compliance with international human rights standards. In addition to this, the power shift from the UNHCR to the Ministry of Interior Affairs on status determination and referring asylum seekers to accommodation at the guesthouses without setting any time limit demonstrated the State's authoritative power over its immigration management system instead of a human rights-oriented approach within the immigration system.[737] This picture can give us a clue about the state's mentality and priorities in Turkey in the area of immigration. Although this thesis aims to apply Goodman and Jinks' compliance theory into this case study, it is impossible to analyse the period before 1999 in Turkey due to a lack of socialisation at international or domestic level. During the period before 1999, there were not any concerns voiced by groups or institutions in relation to the immigration system in Turkey. Hence, the application of the theory will be relevant for the post 1999 period where socialisation between groups, institutions and the Government occurred.

[736] To read further on the guesthouses and the conditions at the guesthouses in Turkey, see Chapter 3. Turkey's Historical Record in Relation to Compliance with International Standards.
[737] İçduygu and Aksel (n 732) 40.

EUROPEANISATION: AFTER 1999

Beginning with 1999, Turkey took some substantial steps in the area of immigration management. The Ministry of Interior Affairs published several circulars on illegal migration, return centres and unaccompanied minors.[738] Through these circulars, the Ministry informed the authorities about the measures that needed to be taken towards irregular migration, return centres and how to treat unaccompanied minors.[739] While these small but important developments were taking place at the policy level, the Asylum and Migration Bureau was established in 2008 in order to drafting a new and comprehensive immigration law. This Bureau drafted a new law called the Law on Foreigners and International Protection that was ratified by Parliament in 2013.[740] This law included several important elements of international protection for asylum seekers and immigrants and a clear and comprehensive immigration management system. For that reason, it is very important and valuable to focus on this period and the dynamics behind it for the purposes of this research.

After 1999, Turkey's socialisation with international and national institutions on the topic of immigration has shown a dramatic shift from non-existent to intense interaction. It is essential to look at this period by focusing on these different institutions classifying them under their types of influence on Turkey. The actors that became involved in Turkey's immigration law development were the European Union (EU), the Council of Europe (COE), Parliamentary Assembly of the COE, the European Court of Human Rights (ECtHR) [741], other human rights bodies and experts under the COE mandate, the Committee on the Rights of the Child and civil society organisations. Whereas the judicial influence derives from the ECtHR's judgments, the political influence results from the EU's progress reports, the Parliamentary Assembly of COE's resolutions, human rights bodies' reports and the Committee on the Rights of the Child's reports. Last but not least, civil society organisations' reports will be taken into consideration. Detention of children has never been the central

[738] Yasadışı Göçle Mücadele [Fight Against Irregular Migration] 19 March 2010, B.050.ÖKM.0000.11 – 12/632; Mülteci ve Sığınmacılar [Asylum Seekers and Refugees] 19 March 2010, B.050. ÖKM.0000.11-12/631; Sığınmacılar ve Mültecilere ait İşlemler [Procedures Regarding Asylum Seekers and Refugees] 2010, B.02.1.SÇE.0.09.01.00/.

[739] To read further on these circulars, see III. Europeanisation Period in Chapter 3. Turkey's Historical Record in Relation to Compliance with International Standards.

[740] Yabancılar ve Uluslararası Koruma Kanunu [Law on Foreigners and International Protection] 2013, No: 6458.

[741] The Court was set up in 1959. For further information, see http://www.echr.coe.int/Documents/Court_in_brief_ENG.pdf.

focus within this socialisation between state and various different actors. Since Turkey lacked a comprehensive immigration management system including border controls, deportation procedures and removal centres, the reaction from international and national actors focused on the fundamental missing elements of the system rather than specific focus on detention of children. In the Parliamentary Commission meetings and parliamentary debate about the Bill, detention of minors was only briefly mentioned, mostly focusing on treatment of unaccompanied minors.[742] However, there was not any detailed specific discussion over detention of minors during these debates. Aydoğan Asar, one of the interviewees, while commenting on detention of children, mentioned that there was not much discussion about the details regarding children 'since the main philosophy adapted was child's best interests from the International Convention of Rights of the Child'.[743]

As previously mentioned in the methodology regarding the interviews, the data from the interviews will be complementary to the findings from the extensive archival research and parliamentary and Commission debates in order to find out the potential impact of the judicial influence, influence of supranational agencies and civil society influence. The data from the interviews cannot be conclusive as it cannot be fully objective and includes personal story telling. The interviewees would be stating their own views and opinions on what happened in this process. However, due to the limited parliamentary debate on this issue in this particular case study, interviews can produce some insights that are worth exploring further.

I. JUDICIAL INFLUENCE

To start with, the ECtHR's decisions against Turkey can be considered as an influential trigger on Turkey's decision to set up a Bureau to work on drafting a new

[742] 'İnsan Haklarını İnceleme Komisyonu Tutanak Dergisi [Human Rights Commission Meeting Minutes]' (*TBMM,* 10 October 2012) <http://www.tbmm.gov.tr/develop/owa/komisyon_tutanaklari.tutanaklar?pKomKod=14> accessed 6 September 2017; 'Avrupa Birliği Uyum Komisyonu Tutanak Dergisi [EU Affairs Commission Meeting Minutes]' (*TBMM,* 6 June 2012) <https://www.tbmm.gov.tr/develop/owa/komisyon_tutanaklari.tutanaklar?pKomKod=401&pDonem=24&pYasamaYili=2> accessed 6 September 2017; 'Parliamentary Debate on the New Law on Foreigners and International Protection' (*TBMM,* 24th Term 80th, 81st and 88th sessions) <http://www.tbmm.gov.tr/develop/owa/kanunlar_sd.durumu?kanun_no=6458> accessed 6 September 2017.

[743] Interview with Aydoğan Asar, Director, The Society of International Migration Integration and Border Management Studies (Ankara, Turkey, 28 December 2015). He was the Head of the Foreigners Department under the Asylum and Migration Bureau and was a member of the working group that drafted the 2013 Law on Foreigners and International Protection in Turkey.

law in the area of immigration. In terms of judicial influence[744], there were not any judgments delivered by neither the ECtHR nor national courts regarding the practice of immigration detention in Turkey before 2009. To this date, there still has not been a judgment from national court on this issue. For this reason, this section will focus on the ECtHR's judgments only. In 2009, Turkey faced a case in front of the ECtHR regarding its immigration detention and deportation procedures.[745] This first case became a landmark case in terms of Turkey's immigration management system in the sense that it revealed the defects in the system and punished Turkey for these gaps. Following this judgment, the ECtHR delivered fifteen cases within a short amount of time in which it found that conditions at the detention centres in Turkey were threatening migrants' human rights and most of these judgments demanded compensation to be paid to the applicants.[746]

This wide range of case law demonstrated that the ECtHR was willing to deliver judgments regarding immigration detention in Turkey that found Turkey in violation of the Convention due to the lack of safeguards in domestic law. Although there were not any cases regarding detention of children, these cases attached great importance in order to show the fundamental gaps in immigration detention practice in Turkey. In order to understand this judicial influence better and put it into a theoretical framework, the next section will read these findings through three different socialisation mechanisms suggested by Goodman and Jinks' compliance theory.

[744] To read further on this relationship, see b. The European Court of Human Rights' perspective on Turkey's immigration law in Chapter 3. Turkey's Historical Record in Relation to Compliance with International Standards.

[745] *Abdolkhani and Karimnia v Turkey* App no 30471/08 (ECtHR 22 September 2009). To read further on this case, see b. The Court's perspective on Turkey's immigration law in Chapter 3. Turkey's Historical Record in Relation to Compliance with International Standards.

[746] The list of these cases: *Charahili v Turkey* App no 46605/07 (ECtHR, 13 April 2010); *Alipour and Hosseinzadgan v Turkey* App no 6909/08 28960/08 (ECtHR, 13 July 2010); *Z.N.S v Turkey* (2010) 55 EHRR 11; *Tehrani and Others v Turkey* App no 32940/08 41626/08 43616/08 (ECtHR, 13 April 2010); *Yarashonen v Turkey* App no 72710/11 (24 June 2014); *T. and A. v Turkey* App no 47146/11 (ECtHR, 21 October 2014); *Kurkaev v Turkey* App no 10424/05 (ECtHR, 19 October 2010); *Keshmiri v Turkey* App no 22426/10 (17 January 2012); *Moghaddas v Turkey* App no 46134/08 (ECtHR, 15 February 2011); *Musaev v Turkey* App no 72754/11 (ECtHR, 21 October 2014); *Athary v Turkey* App no 50372/09 (ECtHR, 11 December 2012); *Asalya v Turkey* App no 43875/09 (ECtHR, 15 April 2014); *A.D. and Others v Turkey* App no 22681/09 (22 July 2014); *Ahmadpour v Turkey* (2010) 59 EHRR 27; *Aliev v Turkey* App no 30518/11 (ECtHR, 21 October 2014); Akçadağ (n 258) 42.

I.1. Material Inducement

According to Ryan Goodman and Derek Jinks, material inducement is one of the social mechanisms to change state behaviour. The material inducement approach suggests that state behaviour can be influenced through introduction of material costs and material benefits.[747] Therefore, states and institutions can force states to comply with the standards of human rights through material rewards and punishments. Material inducement concentrates mostly on military or economic sanctions as the principal machinery to push states towards compliance.[748] This approach emphasises states' instrumentalist nature. As a result of material inducement, states show compliance with international human rights standards. However, the state does not necessarily change their underlying preferences on the way to compliance. While the preferences stay the same, the cost-benefit calculations of the target state change.[749] Hence, this approach proposes that the change in state behaviour occurs only if the target state can see it to be in their material interest to do so in its cost-benefit calculations.

Under the material inducement approach, the material punishment that Turkey as a state needs to pay after every judgment relating to this issue would make Turkey reconsider their cost-benefit calculations. According to material inducement, this would change Turkey's behaviour as it is in their material interest to do so. However, the interviewees' and other involved actors' statements can challenge this theory. As explained in detail before in Chapter 3, the law-making process in Turkey involves relevant Parliamentary Commission meetings before the law is submitted to Parliament. While different actors brought the ECtHR's several judgments to the attention of the Parliamentary Commissions during almost every meeting, the monetary compensation Turkey had to pay has never been the central argument of this discussion. For instance, when the Minister of Interior Affairs described the reasons for an urgent need of a new immigration law to the Parliamentary Commission, he mentioned the ECtHR's judgments only at the closing remarks of his speech.[750] He

[747] Ryan Goodman and Derek Jinks, *Socializing States: Promoting Human Rights Through International Law* (Oxford University Press 2013) 22.
[748] ibid 125.
[749] ibid 23.
[750] 'İçişleri Komisyonu Tutanak Dergisi [Interior Affairs Commission Meeting Minutes]' (*TBMM,* 31 May 2012)

also did not point out the amount of the money Turkey had to pay so far. When the draft of the new legislation was submitted to Parliament, the Minister of Interior Affairs repeated his predecessor's argument:

> With this new law, the deportation procedures and detention of foreigners will be regulated in line with the European Court of Human Rights' judgments, hence this will prevent the European Court of Human Rights to deliver judgments against our country.[751]

In addition to this, during the parliamentary discussions of the new law, the speech of the Member of Parliament from the opposition party revealed:

> Our concerns, as a party, over the lack of a comprehensive immigration management system were particularly about detention and deportation procedures where the Court's judgments found that Turkey was in breach of the Convention rights. [752]

In addition to these findings, one of the interviewees also stated 'The monetary compensation was not something that Turkey as a state cannot afford. The issue was reputational damage more than monetary damage on the budget.'[753] He carried on, 'The drafting process of the new law was neither started nor carried on as a result of material nature.'[754]

Even though these judgments were very significant in terms of its frequency and impact, none of the officials paid much attention to the material aspect of the judgments. The reputational damage was far more important than the monetary damage Turkey had due to the ECtHR's decisions since 2009.

<https://www.tbmm.gov.tr/develop/owa/komisyon_tutanaklari.goruntule?pTutanakId=338> accessed 6 September 2017.

[751] 'Parliamentary Debate on the New Law on Foreigners and International Protection' (*TBMM,* 24th Term 80th session 20th March 2013) <https://www.tbmm.gov.tr/develop/owa/tutanak_g_sd.birlesim_baslangic?P4=21915&P5=B&PAGE1=1&PAGE2=87> accessed 6 September 2017.

[752] ibid speech made by the Republican Party's MP Celal Dinçer.

[753] Interview with the anonymous interviewee, a member of the working group that drafted the 2013 Law on Foreigners and International Protection in Turkey (Skype, 2 February 2016).

[754] ibid.

I.2. Persuasion

The second mechanism of social influence suggested by Goodman and Jinks is persuasion. This mechanism offers an explanation for change in state behaviour through processes of social learning and information exchange within international organisations and transnational networks.[755] This involves discussion and deliberation in order to convince target actors. As a result of this deliberation, target actors become fully and voluntarily convinced of 'the truth, validity and appropriateness of a norm, belief or practice'.[756] There are two different techniques to apply this mechanism: framing and cuing. Framing occurs if the subject of the message that needs to be transferred to the target actor has resemblance with already accepted norms by the concerned actor. In addition to framing, another micro-process that can help persuasion to happen is cuing. This element is based on the assumption that states can be persuaded through thinking harder about the advantages of that specific norm or message. When actors are exposed to new information, they are more likely to think, reflect and argue that information.

The ECtHR's judgments after 2009 were the common factor to be referred to in the interviews, the Parliamentary Commission meetings and parliamentary discussions. These judgments pointed out the controversial practices in Turkey and expressed the measures that need to be taken in order not to lose cases against applicants before the ECtHR. In the light of the persuasion approach, the ECtHR's judgments can be seen as an important cuing element.

> One of the interviewees as a member of the working group who drafted the law, Aydoğan Asar, clearly expressed, 'The decisions of the Court pushed Turkey to think harder on the existing domestic law. The Government decided to take further steps in order to prevent further decisions from the Court.'[757]

He carried on:

> We (the working group) had close contacts with the European Court of Human Rights in Strasbourg. The aim during these interactions was to find out the reasons of the Court's recent judgments and what type of regulation was

[755] Goodman and Jinks (n 747) 25.
[756] ibid.
[757] Interview with Aydoğan Asar (n 743).

necessary in order to overcome these decisions. In addition to this, when the Court's officials came to Turkey, we invited them to our workshops in order to receive their feedback on our work.[758]

This interaction is significant in terms of cuing as this would allow deliberation and also increase familiarity with the best practices. However, persuasion's final phase is fully and voluntarily acceptance of the norm that is imposed in this socialisation mechanism. However, it was argued that the authorities did not reach this stage. The anonymous interviewee, who was involved in the process since the formation of the working group, stated:

> The argument concerning the balance between human rights and security during the drafting process was used so many times, the involved actors started to believe in this. However, I do not think they internalised the human rights norms fully. In addition to this, now (after the law was passed) the working group was dissolved. The perspective they gained is gone with them.[759]

> Instead, it is believed that the actors involved in the law-making process did not fully internalise the human rights values and feel a need to redefine their interests or beliefs accordingly. Meral Açıkgöz, as one of the interviewees, mentioned 'at the practice level, I can see the shift towards securitisation as the mentality has not fully changed'.[760]

Hence, one of the tools of the persuasion approach has been applied in this case although it is hard to label this socialisation as only persuasion. It can only be stated that there was a certain level of persuasion at the judicial influence perspective.

I.3. Acculturation

The third mechanism of social influence by Goodman and Jinks is acculturation.[761] They argue that this is the missing mechanism in compliance and international relations theories. They aimed to bring a set of related social processes that are

[758] ibid.
[759] Interview with the anonymous interviewee (n 753).
[760] Interview with Meral Açıkgöz, Project Coordinator, International Organisation for Migration (Istanbul, Turkey, 27 December 2015) She was a member of the working group that drafted the 2013 Law on Foreigners and International Protection in Turkey.
[761] Goodman and Jinks (n 747) 25.

described by interdisciplinary literature under the acculturation approach. This approach put its focus on 'the relationship of the actor to a reference group or wider cultural environment'.[762] The target actor changes its behaviour due to this relationship rather than believing in the norm's 'validity or appropriateness'. Instead, the change occurs because the norm is related to a desired relationship with a reference group. Subsequently, the target actor uses methods such as mimicry and status maximisation to have a better relationship with the reference group. The underlying mechanism is that change occurs through pressures to conform with the reference group or environment.

To start with, actors will be influenced by cognitive pressures. Cognitive pressures can be classified under two types of pressure: 'social-psychological costs of nonconformity and social-psychological benefits of conforming to group norms and expectations'.[763] Empirical studies show that people show discomfort when they face a challenge in a way that their behaviour was not consistent with their self-conception. To reduce the feeling of discomfort, the actor changes its behaviour or brings a justification for their past behaviour. This can be linked to the basic human need of rationalising their actions to themselves and others.

In addition to cognitive pressures, acculturation can also occur through social pressures. Individuals seek to maximise social status and lessen social disapproval. This type of social pressure can have two different forms: shaming or shunning for imposing social-psychological costs and social approval for providing social-psychological benefits. Social-psychological studies demonstrate that actors alter their behaviour when they face a threat of social pressure that will be imposed by a reference group. In the cases of acculturation happening through external pressures, it is more likely to end with public compliance but not necessarily private acceptance of the norm that is imposed by the reference group. This is a very significant and unique element of acculturation that makes this mechanism distinct from other compliance mechanisms.

The impact of the ECtHR's judgments on Turkey can be described as

[762] ibid.
[763] ibid 27.

embarrassment. Before the Bill was sent to the Parliamentary Commissions, in Parliament there was also a request by a group of MPs to understand the circumstances that asylum seekers are in with a reference to the judgments of the ECtHR:

> The decisions of the European Court of Human Rights pointing to the arbitrary detention at foreigner guesthouses, domestic law's inefficiency in deportation and asylum cases, and the need for a major change in Turkey's immigration management system are important to reveal the picture our country is in. [764]

The Members of Parliament in Parliamentary Commission meetings and parliamentary discussions also expressed their disappointment with these judgments and expressed the urgent need to take some steps towards making new legislation immediately.[765] For instance, after referring to the number of the decisions of the ECtHR, a member of the Parliamentary Commission and a Member of Parliament, Celal Dinçer, asserted during a Commission meeting:

> We are hoping that we will ensure that this draft will clear the legal gaps that the European Court of Human Rights pointed out. This draft should be able to prevent further decisions of the Court that find us in violation of the Convention. [766]

Another Commission's final report after discussing the draft of the new law stated 'It is absolutely vital that there should be new legislation on immigration and asylum due

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[764] 'Parliamentary Debate' (*TBMM,* 23rd Term 29th session 10 December 2009) 881 <https://www.tbmm.gov.tr/tutanaklar/TUTANAK/TBMM/d23/c054/tbmm23054029.pdf> accessed 7 September 2017.

[765] 'İçişleri Komisyonu Tutanak Dergisi [Interior Affairs Commission Meeting Minutes]' (*TBMM,* 31 May 2012) <http://www.tbmm.gov.tr/develop/owa/komisyon_tutanaklari.tutanaklar?pKomKod=13> accessed 7 September 2017; 'İçişleri Komisyonu Tutanak Dergisi [Interior Affairs Commission Meeting]' (*TBMM,* 20 June 2012) <http://www.tbmm.gov.tr/develop/owa/komisyon_tutanaklari.tutanaklar?pKomKod=13> accessed 7 September 2017; 'İnsan Haklarını İnceleme Komisyonu Tutanak Dergisi [Human Rights Commission Meeting]' (*TBMM,* 24 May 2012) <http://www.tbmm.gov.tr/develop/owa/komisyon_tutanaklari.tutanaklar?pKomKod=14> accessed 7 September 2017; 'Parliamentary Debate on the New Law on Foreigners and International Protection' (n 739).

[766] 'İnsan Haklarını İnceleme Komisyonu Tutanak Dergisi [Human Rights Commission Meeting Minutes]' (*TBMM,* 24 May 2012) <http://www.tbmm.gov.tr/develop/owa/komisyon_tutanaklari.tutanaklar?pKomKod=14> accessed 7 September 2017.

to the ECtHR's recent judgments against our country.'[767] During one of the Interior Affairs Commission meetings, a member of the opposition party, Hasan Huseyin Turkoglu, stated, 'It should be appreciated by all parties that this draft includes the elements inspired from international conventions and the European Court of Human Rights' decisions and approach to the issue.'[768]

Acculturation focuses on the importance of a reference group with which the target actor seeks to be associated. In this case study, the influential reference group in Turkey's case can be easily spotted as Europe throughout the constant and intense relationship over the years[769]. This cultural environment of Europe can include the European Union, the ECtHR under the COE or other European organisations related to the immigration law in Turkey. Europe, in general, has always been a place that Turkey desires to be associated with in one way or another.[770] Westernism, as an important ideology in Turkey, suggests that Turkey will have a more dominant role in the international realm if it becomes a civilised country in the eyes of the West and emphasises the importance of close relations with the Western world.[771] Being part of the Council of Europe and ratification of European Convention on Human Rights only a year after it became effective also demonstrates the degree of Turkey's desire to be associated with Europe. For that reason, the ECtHR's judgments were harmful in a sense that it was damaging the image Turkey was trying to create by saying that Turkey's domestic law is violating the European Convention on Human Rights.

Hence, what was drafted in the new legislation was highly influenced by the judgments of the ECtHR. For instance, in the Interior Affairs Commission meetings, when there was a proposal to amend the wording of a provision on the circumstances

[767] 'Yabancılar ve Uluslararası Koruma Kanunu Tasarısı ile İnsan Haklarını İnceleme Komisyonu, Avrupa Birliği Uyum Komisyonu ve İçişleri
Komisyonu Raporları [Final Reports of Human Rights Commission, EU Affairs Commission and Interior Affairs Commission about the Bill on Foreigners and International Protection]' 16 (*TBMM*) <https://www.tbmm.gov.tr/sirasayi/donem24/yil01/ss310.pdf > accessed 7 September 2017.
[768] 'İçişleri Komisyonu Tutanak Dergisi [Interior Affairs Commission Meeting Minutes]' (*TBMM,* 31 May 2012) <http://www.tbmm.gov.tr/develop/owa/komisyon_tutanaklari.tutanaklar?pKomKod=13> accessed 7 September 2017.
[769] To read further on this interaction, see Chapter 3. Turkey's Historical Record in Relation to Compliance with International Standards.
[770] Binnur Özkeçeci Taner, 'The Impact of Institutionalized Ideas in Coalition Foreign Policy Making: Turkey as an Example 1991-2002' (2005) 1 Foreign Policy Analysis 249; Nathalie Tocci, 'Europeanization in Turkey: Trigger or Anchor for Reform?' (2005) 10 (1) South European Society and Politics 73 <http://www.tandfonline.com/doi/abs/10.1080/13608740500037973> accessed 7 September 2017.
[771] Özkeçeci Taner (n 770) 261.

in which deportation decisions cannot be taken, the reply by Atilla Toros, the Director in Immigration and Asylum Office was, 'This wording is fully in line with the European Convention on Human Rights and the European Court of Human Rights.'[772]

The importance of these decisions to the Members of Parliament was also evident in the parliamentary stage. The parliamentary debates showed that there was a constant questioning of Government officials on the number of cases in relation to Turkey in front of the ECtHR.[773] Furthermore, when the Bill was submitted to Parliament, Celal Dinçer, as a member of an opposition party and Interior Affair Commission, made a speech on the need for this legislation. After he listed all the shortcomings of existing immigration management system, he put a special emphasis on the case law of the ECtHR:

> However, among all these gaps in the system, the most worrying thing for us is the European Court of Human Rights' recent judgments against our country. These judgments have been about immigration detention and deportation decisions. With this new legislation, I believe these problems and needs will be cleared.[774]

As a supporting argument, Meral Açıkgöz, also stated, 'The decisions of the ECtHR were the most important justifications for the Government to draft a new law as it was seen as having done damage to Turkey's reputation.'[775]

The damage on the reputation due to this wave of decisions from the ECtHR shows that the ECtHR played an important role during the initiation of the law-

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[772] 'İçişleri Komisyonu Tutanak Dergisi [Interior Affairs Commission Meeting Minutes]' (*TBMM,* 20 June 2012) <http://www.tbmm.gov.tr/develop/owa/komisyon_tutanaklari.tutanaklar?pKomKod=13> accessed 7 September 2017.

[773] Two examples of this can be listed: 'Parliamentary Debate' (*TBMM,* 23rd Term 10th session 23 October 2008) <https://www.tbmm.gov.tr/tutanaklar/TUTANAK/TBMM/d23/c030/tbmm23030010.pdf> accessed 7 September 2017; 'Parliamentary Debate' (*TBMM,* 23rd Term 95th session 28 May 2009) <https://www.tbmm.gov.tr/tutanaklar/TUTANAK/TBMM/d23/c045/tbmm23045095.pdf> accessed 7 September 2017. The reliability of the search engine at the parliamentary debate database can be questionable as at some parts of the engine does not produce the results that it should produce. However, as this is the only database to search archive of the parliamentary debates, the results that came up will be used in this thesis.

[774] 'Parliamentary Debate on the New Law on Foreigners and International Protection' (*TBMM*, 24th term 80th session 20 March 2013) 694 <https://www.tbmm.gov.tr/tutanaklar/TUTANAK/TBMM/d24/c046/tbmm24046080.pdf> accessed 7 September 2017.

[775] Interview with Meral Açıkgöz (n 760).

drafting process. The anonymous interviewee's opinions on the ECtHR's decisions were very similar to the other interviewees'. He pointed out 'The biggest drive behind the law-drafting process was the case law of the ECtHR due to the volume of the decisions delivered.'[776] One of the interviewees also disclosed that they 'visited Strasbourg to meet the judges of the ECtHR in order to discuss what needed to be done in the new law that would prevent further judgments'.[777] He carried on:

> The judgments of the Court were mostly related to the removal centres. For this reason, we brought new regulations for these removal centres. With this new law, the conditions and the duration of administrative detention are clear now.[778]

This direct focus on the ECtHR and the aim of preventing further decisions by the Government revealed how significant these decisions were on the way to draft a new law in immigration and asylum management system. This clearly demonstrated that Turkey sought to find ways to stop receiving disapproval from the ECtHR, as its reference group, like acculturation would suggest in this scenario. Since Turkey's exposure to the ECtHR and the importance of the ECtHR to Turkey are both quite high, conformity with the norms induced by the ECtHR became more likely as predicted by acculturation.

II. INFLUENCE OF SUPRANATIONAL AGENCIES

II.1. The Interaction with the EU

Turkey has been a candidate country for the EU accession after its application was examined and accepted by the EU in 1998. Under this application scheme, the EU submits progress reports on the candidate country's progress in complying with the Copenhagen criteria.[779] Thereby, the EU's progress reports on Turkey were the main source of international criticism with regards to the lack of a comprehensive

[776] Interview conducted with the anonymous interviewee (n 753).
[777] Interview with Aydoğan Asar (n 743).
[778] ibid.
[779] The Copenhagen criteria are: 'stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities;
a functioning market economy and the ability to cope with competitive pressure and market forces within the EU;
ability to take on the obligations of membership, including the capacity to effectively implement the rules, standards and policies that make up the body of EU law (the 'Acquis'), and adherence to the aims of political, economic and monetary union.'

immigration law since 1998.[780]

This interaction between Turkey and the EU, as explained in greater detail in Chapter 3, displayed a strong level of socialisation. This level of socialisation can be seen as a dominant influence towards drafting a new law that complies with international human rights standards regarding immigration detention of children.

In terms of detention of minors, detention of children for immigration purposes was a tiny detail of the bigger picture of the immigration management system within this socialisation between Turkey and the EU. As reported before in Chapter 3, the EU's progress reports did not necessarily mention detention of children for immigration law enforcement.[781] The main concern of the EU was about the lack of a comprehensive immigration management system that can manage irregular migration in Turkey. For that reason, prevention of illegal migration and stricter border controls were always the main discussion in the progress reports. The push from the EU had more of a practical weight than human-rights oriented approach. Nonetheless, the criticisms in the progress reports still pointed out the necessary elements in relation to administrative detention and deportation procedures that Turkey needs to follow. Hence, within this bigger picture, the human rights approach towards detention of minors was only a necessary component of the bundle.

II.1.1. Material Inducement

Material inducement plays a key role in terms of the socialisation between the EU and Turkey. Although there have been no direct or explicit sanctions or rewards from the EU towards Turkey, the membership application can be read as a very beneficial reward for Turkey if the application process ends successfully. Being a member state of the EU can open many doors such as free movement of goods, people and free trade. This can bring a significant material advantage to Turkey in the region and prosperity to the country's economy. As a developing economy, EU membership can bring a further boost to Turkey. Hence, Turkey followed the national action plans and accession partnership documents over many years in recalculation of benefits and costs since this push from the EU had a materialistic nature as an end result instead of an instant reward/sanction. The interviewees and the Members of Parliament involved

[780] To read further on this relationship, see Chapter 3. Turkey's Historical Record in Relation to Compliance with International Standards.
[781] To read further, see Chapter 3. Turkey's Historical Record on Compliance with International Standards.

in the Parliamentary Commission meetings stated that being in line with the EU's regulations was important in order to gain momentum in the accession process to the EU. As quoted before:

> In 2008, the main reason behind the establishment of the Asylum and Migration Bureau was the harmonisation with the European Union. In order to see what Turkey has done so far to comply with the 2005 National Action Plan, this Bureau was set up as a result of a direct pressure from the EU.[782]

Hence, it can be stated that there was a hidden material inducement agenda in the beginning of the process while setting up the working group to draft the new law. The accession and harmonisation with the EU was an important drive for the Government of Turkey.

The drafting procedure which followed setting up the working group can be read under the acculturation approach as it will provide some parallel themes to this social mechanism. As quoted before, all interviewees agreed upon their efforts to take EU legislation as standard setting criteria during the drafting. During the Parliamentary Commission meetings, the accession process to the EU was referred. A Member of Parliament, Alpaslan Kavaklıoğlu, in one of the meetings stated:

> Immigration issue is one of the significant pillars of the EU accession process. Until the full accession to the EU happens, we have to make our international protection system in line with EU legislation and complete our institutional structure.[783]

The Preamble of the law also stated that the documents submitted within the accession process to the EU showed the need for a new law.[784] This constant reference to the accession process showed how important becoming a member of the EU was to Turkey, with all the added material advantages a successful application

[782] Interview with Meral Açıkgöz (n 760).
[783] 'İçişleri Komisyonu Tutanak Dergisi [Interior Affairs Parliamentary Commission Meeting Minutes]' (*TBMM,* 31 May 2012) <http://www.tbmm.gov.tr/develop/owa/komisyon_tutanaklari.tutanaklar?pKomKod=13> accessed 7 September 2017.
[784] The Preamble of Law on Foreigners and International Protection 2014 (*Goc*) <http://www.goc.gov.tr/icerik3/overall-rationale_913_975_977> accessed 3 July 2017.

would bring. Hence, the push in the beginning to adopt new circulars and legislation was derived from a materialistic nature.

II.1.2. Persuasion

When we look back to the detailed historical record of Turkey in Chapter 3 and this Chapter, it is readily conceded that the persuasion approach was steadily evident during the timeline within the interaction with the EU. There was a constant information exchange and deliberation between actors. Monitoring and reporting played a significant role in the sense that it prompted Turkey to realise that there was a need for new legislation in the area of immigration and asylum.

Cuing, as a micro process of persuasion, can be seen here in reporting and monitoring since the EU made Turkey think harder on their needs and controversial practices. Concerning the change of behaviour because of a need, the persuasion approach also suggests that the target actor can accept the induced behaviour as it may solve a problem or be useful for his needs. Therefore, in this case study, it is apparent that Turkey has seen this need and adapted the induced behaviour accordingly.

On the other hand, it is challenging to claim that persuasion was the main mechanism used by the EU that influenced Turkey to comply with international human rights standards. Although social learning and deliberations are central under the persuasion approach, the basis of influence for this mechanism, as stated before, is the congruence with internal values. This approach indicates that the norm should be similar to the target actor's internal values. For that reason, framing has three different elements that demonstrate to what extent the target actor's values and beliefs are similar to the induced norm or belief. As a result of this, the persuasion approach implies that the target actor will fully accept the norm and revise its identity and interests accordingly. However, when we apply this to Turkey's case, it is hard to claim that Turkey as a state has fully internalised human rights norms. The interviews with the selected people, as quoted before[785], revealed that there was not full acceptance of the human rights norms in relation to administrative detention since state actors did not internalise the norms.

[785] See n 753 and 760.

II.1.3. Acculturation

The EU can be defined as the reference group with a dominant influence on Turkey. To start with, the acculturation approach would expect to see the impact of social pressures coming from European institutions, in general, on Turkey as the target actor. Social pressures on the target actor work through shaming or shunning for imposing social-psychological costs and social approval for providing social-psychological benefits. Turkey has experienced a constant wave of progress reports from the EU following its application for membership in 1998. These reports criticised the lack of a comprehensive immigration management system in Turkey year after year as explained in detail before. Whenever there was a development towards the induced practice by the EU, the progress reports showed appreciation of this effort and showed approval. However, controversial practices and the lack of immigration legislation were accorded the EU's public disapproval in the progress reports. During this process, Turkey had taken baby steps towards making new legislation including setting up a Special Task Force and writing action plans. The substantial step towards law-making was only taken in 2008 by setting up the Immigration and Asylum Bureau. This discontent in the case of limited progress and praise in the case of the progress can be seen as part of the shaming and social approval mechanisms that are the key elements in the acculturation approach.

In addition to this, in most of the Parliamentary Commission meetings, harmonisation with the EU was always mentioned as an important part of this new proposed legislation. For instance, in a Human Rights Commission meeting, a member of the ruling party, Cemal Yılmaz Dinçer, focused on the importance of this legislation for the negotiations with the EU:

> This proposed legislation is a significant step towards the harmonisation with the European Union Acquis. Within the negotiations, asylum and immigration management is an important element under the 24th Chapter called 'Justice, Freedom and Security'. [786]

The EU's influence on the Government to draft this proposed legislation became clear

[786] 'İnsan Haklarını İnceleme Komisyonu Tutanak Dergisi [Human Rights Commission Meeting Minutes]' (*TBMM,* 24 May 2012) <http://www.tbmm.gov.tr/develop/owa/komisyon_tutanaklari.tutanaklar?pKomKod=14> accessed 7 September 2017.

when a representative from the Ministry for EU Affairs, Ege Erkoçak, expressed this legislation's place in the negotiations with the EU as follows:

> The common emphasis of the national programmes written for the EU Acquis for the last ten years has been a new legislation on immigration and asylum and one institutional structure to manage this system. The importance of this proposed legislation and the EU's expectation on this topic have been clearly expressed in the latest EU Progress Report….
>
> We have an upcoming working group meeting with the EU on the 24th Chapter. Bringing this draft law to a point close to the finalisation is going to help our position in the negotiations in these meetings.[787]

One of the interviewees involved in this research also expressed:

> In 2008, the main reason behind the establishment of the Asylum and Migration Bureau was the harmonisation with the European Union. In order to see what Turkey has done so far to comply with the 2005 National Action Plan, this Bureau was set up as a result of a direct pressure from the EU.[788]

Therefore, it can be stated that there was a direct influence of the EU during the establishment of this Bureau that paved the way for a new law. Another study that conducted interviews with the Bureau officials stated that the Asylum and Migration Bureau was founded with 'the wind of the European Union behind it', and with the recognition that 'new civilian institutions were needed to better comply with the conditions set forth by the European Union'.[789] Turkey, as an outsider and striving to be a member of this environment, was in a position to push harder and ensure that the integration process with the EU would progress swiftly.

Following the first steps of setting up the law-making process, the EU's influence was also seen during the law-making process. In terms of setting a standard, the EU's

[787] 'Avrupa Birliği Uyum Komisyonu Tutanak Dergisi [EU Affairs Commission Meeting Minutes] (*TBMM,* 6 June 2012) <https://www.tbmm.gov.tr/develop/owa/komisyon_tutanaklari.tutanaklar?pKomKod=401&pDonem=24&pYasamaYili=2> accessed 7 September 2017.
[788] Interview with Meral Açıkgöz (n 760).
[789] Hakki Onur Ariner, 'Acculturation with international standards in Turkey's migration reform: The Law on Foreigners and International Protection' (Turkish Migration in Europe: Projecting the Next 50 Years, Regent's College, December 2012) 5.

norms and regulations on immigration management and international protection played a significant role during the law-making process. The Preamble of the new law, where the lawmakers explain the reasoning of new legislation, clearly emphasised that the new law aimed to bring harmonisation with EU legislation on the way to full membership to the EU. [790] The Preamble also described how the National Development Plans of Turkey had pointed out this need since 2007 in the light of the suggestions from the EU. Turkey was clearly attempting to fit in in this cultural environment by following the EU guidelines and standards during the drafting of new legislation. This can be explained as mimicry of the reference group's practices under the acculturation approach. Hence, the law-drafting group referenced EU legislation very closely. Ms Açıkgöz, as one of the interviewees, expressed, 'During the drafting process, there was determination to bring a holistic system that would cover immigration and asylum issues. For that reason, there was painstaking research on legislation of the EU.'[791] The anonymous interviewee supported this argument by stating 'We prepared charts that showed the legal context in Turkey before the new law, the legal context in the EU and the legal context in Turkey after the new law.'[792] For instance, Mr Asar referred to best practices stating 'We have applied the EU's best practices model and looked for the best practices within the EU member states and reflected this into our draft.'[793] Overall, the EU was not only an initial push but also provided significant standard-setting criteria for Turkey's recent Law on Foreigners and International Protection.

It can be claimed that the socialisation process with the EU started with a material consideration as EU accession could lead to several rewards for Turkey's economy. However in time, with the constant exposure to human rights discourse, the involved actors started to believe that they can associate with the reference group's values. The anonymous interviewee referred to this, 'The actors in the working group started to claim that Turkey can write a better and more humane law than the EU. I do not think that they believed in this in the first place.' [794]

[790] The Preamble of Law on Foreigners and International Protection (n 784).
[791] Interview with Meral Açıkgöz (n 760).
[792] Interview with the anonymous interviewee (n 753).
[793] Interview with Aydoğan Asar (n 743).
[794] Interview with the anonymous interviewee (n 753).

Furthermore, acculturation also suggests several elements to identify patterns of state action to recognise whether acculturation is at work. One of those elements is isomorphism where states become similar in terms of their organisational structures and policies. This is linked to the presence of decoupling within states where states conform to the group norms even though there is no national interest or need for this change. In this case study, it can be observed that Turkey has taken adequate steps to become similar to the reference group during the law-making process. The interviewees all expressed that they brought EU legislation and best practices from around Europe to the drafting committee in order to make the new legislation compatible with the European values. There were also several twinning projects between European countries and Turkey on asylum and immigration and training given by European officials to Turkish officials in the immigration management field. These developments prove that there is a high level of isomorphism between Europe and Turkey. However, in terms of decoupling, it is challenging that this is applicable to Turkey's case as there was a national need for a new immigration law. On the other hand, this does not rule out the acculturation experience in this case study since Goodman and Jinks believe that decoupling can be a strong sign for the presence of acculturation, yet acculturation is not necessarily an indicator for decoupling.[795]

Beyond the technicalities of new legislation, acculturation suggests that target actors assess the relationship to the reference group instead of assessing the induced norm, in contrast to the process involved in persuasion. This is very visible in Turkey's case as the discussion around detention of minors for immigration purposes was not at the highest level. Not only the statements by the interviewees but also the Parliamentary Commission meeting notes revealed no substantial discussion over the human rights standards for treatment of minors during immigration law enforcement. Instead, Turkey evaluated the relationship with Europe before and during the drafting process.

On a general note, as a developing economy, Turkey desired to be a part of the EU and its economic advantages such as free trade in terms of material rewards. This aim initiated the compliance with the EU's requests towards new legislation on immigration and asylum. However, this sole material inducement turned into an

[795] Goodman and Jinks (747) 139.

acculturation process since Turkey, as an outsider, tried to be a part of this European cultural environment by complying with their standards. It is more likely that acculturation occurred as a by-product of the material inducement approach in Turkey.

II.2. The Council of Europe and the Committee on the Rights of the Child

Following this important interaction between the EU and Turkey, it is essential to examine the interactions between Turkey and international organisations such as the Council of Europe's human rights bodies and the Committee on the Rights of the Child as the second type of political influence on Turkey.

To start with, Turkey, as a member of the COE[796], has received reports and recommendations from the Commissioner for Human Rights, resolutions from Parliamentary Assembly and other human rights bodies that have a mandate under the COE. These reports referred to the lack of comprehensive immigration legislation in Turkey and recommended that Turkey take necessary measures to rectify this situation.[797]

Turkey, as a member state that ratified the Convention on the Rights of the Child, also receives concluding observations from the Committee on Rights of the Child, which is important to include when considering in the interactions between Turkey and the international organisations. In 2012, the Committee on Rights of the Child mentioned asylum-seeking and refugee children in its concluding observations of Turkey.[798] The Committee raised its concerns on detention of children with adults and the difficulties for asylum-seeking and refugee children to access health and education.[799] The Committee called on Turkey to ensure that every effort is made to secure these children' rights and provide counselling.

This interaction of the Committee and the bodies under the mandate of the COE with Turkey often did not get much attention from the Government. This was reflected in the drafting and law-making process. The interviewees from the working

[796] Turkey became the 13th Member State of the Council of Europe on 13 April 1950.
[797] To read further on this, see Chapter 3. Turkey's Historical Record on Compliance with International Standards.
[798] UN Committee on the Rights of the Child, 'Concluding Observations: Turkey' (20 July 2012) UN Doc CRC/C/TUR/CO/2-3.
[799] ibid para 60.

group did not refer to these reports or observations during the interviews. When they were asked specifically, they expressed that they do not have any recollection of these observations or reports being mentioned in the meetings. In addition to this, neither the Parliamentary Commission meetings' notes nor the parliamentary debates showed any discussion in relation to these country reports or concluding observations. This lack of attention overruled any type of efficient or successful trigger coming from these organisations on Turkey to change state behaviour.

II.2.1. Material Inducement

The COE does not have any material leverage over Turkey. Turkey was a member of the COE from 1950. Hence, there is no on-going application process for membership at stake in the case that Turkey does not follow the human rights standards set by the COE. These reports and recommendations do not impose any material sanctions on or rewards to Turkey. For that reason, under the material inducement approach, they would only have a nominal meaning. This argument can be applied to the influence of the Committee on Rights of the Child since the reports do not have any material sanctions/rewards, only has a nominal meaning for Turkey.

II.2.2. Persuasion

Throughout this period of interaction between Turkey and the international organisations that Turkey became involved in such as the COE and the Committee on Rights of the Child, it can be stated that social learning or deliberation did not play a significant role. We have not seen any type of reaction coming from the Turkish Government towards these institutions either in a way of acceptance or denial. The information exchange did not happen at a significant level. In terms of cuing as a micro-process under the persuasion approach, it is visible that Turkey was in a phase of change during this period by publishing circulars and directives as a result of critiques of their controversial practices. However, Turkey did not fully comply with the advice and recommendations to introduce new legislation coming from these international organisations during this long period of interaction. Instead of this, Turkey attempted to fix its policies by circulars and directives. The Parliamentary Commission meetings' notes did not show any discussion in relation to these country reports or concluding observations. The interviewees also expressed that there was no

reference to these country reports or resolutions in or before the law-making process.[800]

II.2.3. Acculturation

Social pressures from other international institutions include the reports of the COE human rights bodies, Parliamentary Assembly resolutions and the Committee on Rights of the Child. As explained in detailed before, Turkey has faced reports from these European human rights bodies concerning its controversial practices of detention of minors and families for immigration purposes and the lack of comprehensive immigration legislation. The reports and resolutions, however, were not submitted as often as the EU's progress reports. Furthermore, it is hard to describe the relationship between these bodies and Turkey as close as the relation between Turkey and the EU, with reference to public opinion and public awareness of these institutions. While the judgments of the ECtHR and the progress reports of the EU can be easily found in the news for the public, there would be not any articles or news on these human rights bodies' criticisms of Turkey.

These reports neither created a huge stir in Turkish politics nor dominated the working group or Parliamentary Commission or parliamentary discussions. This could be explained with the acculturation approach's perspective about the reference group. It was suggested that conformity happens if the importance of the reference group is higher; the relationship between the reference group and the target actor is closer; lastly, the size of the reference group is larger. Hence, the low impact of these bodies can be explained with this argument by the acculturation approach. As stated before, the importance of this reference group within the European cultural environment was lower than the EU to Turkey. In addition to this, the exposure of Turkey to these bodies was not particularly significant, based on the number of reports. Thus, it can be articulated that these particular bodies under the mandate of the COE is a part of wide European cultural environment. However, there are some discrepancies within this environment in terms of different reference groups at different levels of importance to the target actor. For that reason, the impact on the target actor can vary between those reference groups.

[800] Interview with Meral Açıkgöz (n 757); interview with the anonymous interviewee (n 750); interview with Aydoğan Asar (n 740).

III. CIVIL SOCIETY INFLUENCE

Before 2007, there were no significant civil society reports that criticised or commented on Turkey's detention practices in general or specifically in relation to minors. After 2007, there are a few civil society reports commenting on Turkey's controversial practices regarding detention of minors and adults for immigration purposes.[801] However, the existence of these reports would become significant if there was an interaction and information exchange between state and civil society actors. In Turkey's case, there was no reaction found coming from the Government or any other state official in response to these reports. Ms Açıkgöz, on the other hand, explained the lack of civil society's influence on the process stating 'We did not have any written source of criticism from civil society to be used as a reference in the discussions during drafting the new law.' [802]

The reasoning behind this can be the lack of public opinion in Turkey. Immigration and asylum issues have never been politicised in Turkey's context.[803] If this were a politicised topic, it would have led to argument and reflection on the state side. For that reason, the apathy of the state towards civil society reports can be considered a result of this lack of public opinion in Turkey over this topic. In order to apply the theory, there has to be an interaction and socialisation between state and the relevant actor. In that sense, there was not enough interaction between lawmakers and civil society to analyse through the lens of the theory.

CONCLUSION

This chapter analysed the historical record of Turkey's immigration law with reference to the selected compliance theory for this case study. Each part explained a different type of influence in Turkey's historical record with references to the developments in immigration law and explored whether there is any applicability to the social mechanisms suggested by the compliance theory.

During the period before 1994, the developments were not extensive or comprehensive enough to make the immigration management system efficient. In

[801] For further details, see Chapter 3. Turkey's Historical Record in Relation to Compliance with International Standards. There were two reports published by Helsinki Citizens Assembly.
[802] Interview with Meral Açıkgöz (n 760).
[803] Interview with Meral Açıkgöz (n 760); interview with the anonymous interviewee (n 753); interview with Aydoğan Asar (n 743).

terms of socialisation of Turkey with different international and national actors, there was not any evidence to show that this type of socialisation occurred during this period. This led the Turkish Government to act on their own initiatives and interests without any impact of human rights in the introduced legislation and policies during this stage. The following period is where Turkey moved towards institutionalisation. During this period, the Turkish Government brought new legislation due to the immigration flows to Turkey from different regions. The Government felt the need to manage the issue of asylum with a new regulation since the numbers received by Turkey were increasing due to the troubles in the neighbouring countries. Like the period before, there was no record to demonstrate that there was any level of socialisation between Turkey as a state and international or national institutions over the immigration law issue.

The last and more fundamental period for this research, after 1999, is where an intense level of socialisation is evident. This period was analysed under three parts: judicial influence, influence of supranational agencies and civil society influence. The judicial influence coming from the ECtHR's judgments had an important role in Turkey's development of immigration law. These judgments were referred as an important push on the Turkish Government to take substantial steps towards new immigration legislation by the interviewees who were in the working group that drafted the new law, the officials that were in the Parliamentary Commission meetings and the Members of Parliament at the parliamentary discussions. This strong dynamic was, then, read through the lens of Ryan Goodman and Derek Jinks' theory. While these judgments carried a material nature through compensation awarded to the applicants, the material aspect of these judgments did not have a significant weight during the decision-making of the Government to draft new legislation. Instead of this, the reputational damage was mentioned more frequently and dominantly. In terms of persuasion, the officials in the working group visited Strasbourg and had a close dialogue with the judges at the ECtHR in order to see what was needed to fill the gaps in Turkish immigration law. This was important in terms of using a tool of the persuasion approach named cuing where the target actor thought harder and reflected on its needs. The last mechanism suggested by the compliance theory was acculturation where the reference group that a state wants to be associated with has an influential power through cognitive and social pressures. Europe, as a wide cultural

environment, can be defined as Turkey's reference group. Within this reference group, the EU and the ECtHR under the COE can be included. For that reason, the judgments of the reference group were harmful to the country's reputation that Turkey desired to boost. It was clear that the working group was determined to prevent disapproval from the ECtHR through its judgments in order to end the discomfort Turkey experienced due to social pressures. Being criticised by the ECtHR was damaging Turkey's plan to be associated with the reference group. Hence, it can be claimed that there was a strong acculturation impact within the judicial influence perspective.

Secondly, there is the influence that derives from the EU, the COE and the Committee on the Rights of the Child. However, the human rights bodies under the mandate of the COE, the COE's parliamentary resolutions and the Committee's reports and concluding observations did not carry much weight for the Turkish Government. They were often either ignored or not successful in creating enough discussion. Although these institutions are part of the European cultural environment, they did not have that strong leverage over Turkey due to lack of public opinion and public awareness about these institutions and the amount of these reports.

Another type of influence, on the other hand, was very powerful at different stages of drafting this new legislation. The interaction between the EU and Turkey was a regular and productive type in terms of its results. Turkey's desire to be a member of the EU triggered Turkey to bring its legislation in line with the EU as an aim to comply with the EU's criteria for accession. The EU's priority in this relationship was to ensure that Turkey would have a stronger system to fight illegal migration. The norms regarding detention centres and detention of children were part of the bigger package of an immigration management system. In order to gain momentum in the accession process to the EU, Turkey was open to listen to the EU's stance towards immigration and asylum. The reason for this interest could be attributed to the material advantages that the membership to the EU would bring to Turkey and its economy. Hence, this process can be read as an implied material inducement. Following the attraction of EU membership as a trigger to Turkey as a developing economy in the first place, the law-drafting process turned out to be a very involved process for the state officials. Throughout this process, they became aware of, discussed and reflected on the immigration issues. The desire to be associated with this reference group as an outsider to this cultural environment and this constant

exposure to the EU norms on the immigration issue led the officials to be acculturated in a sense. Hence, acculturation occurred as a consequence of material inducement. It can be stated the socialisation between Turkey and the EU was more about material advantages and the strong power of the reference group over the target state than a significant internalisation of EU values and/or private acceptance of human rights norms.

To summarise, it can be stated that Turkey was under social pressures from Europe as a cultural environment. As mentioned before, Turkey would like to be part of Europe and its culture as an outsider. Whenever Turkey faces a challenge from Europe, they should feel discomfort and seek ways to change the behaviour, according to the acculturation approach. In reality, it can be stated that the discomfort felt after receiving several progress reports and experiencing the ECtHR's consistent stance towards Turkey's immigration law may have led Turkey to conform with the European norms in order to lessen the social-psychological costs and improve social-psychological benefits. In this example, Turkey was attempting to minimise the dissonance that resulted from conflict with the norms of the reference group. By conforming to the group norms, Turkey could feel the social-psychological benefit of being part of European's wider cultural environment and reduce the social-psychological costs of getting criticism on a regular basis. This could be reason of the Strasbourg visit by the working group and the steps taken by Turkey within its domestic law throughout the years of the European Union accession period.

Furthermore, having greater linkages with international networks could be as a sign of acculturation. This has an impact in practice in the sense that greater linkages will bring greater pressure from international organisations on the target actor. This case study exhibits these signs as Turkey has been receiving reports, resolutions and the ECtHR judgments from different bodies of European human rights institutions. The common themes of these documents was the urgent need of a new immigration law in Turkey in order to deal with the challenges regarding migration and bring the legislation in line with human rights standards. The extent of pressure resulting from greater linkages played a considerable role in Turkey's realisation of this need.

In a general note in relation to the application of the theory, Turkey's case study can be explained by more than one mechanism. While it is evident that acculturation was at work concerning the judicial and supranational agencies' influence, material inducement was the initiating factor in terms of Turkey's

relationship with the EU. Furthermore, persuasion was present at a certain level where Turkey was in an information exchange with the EU and the ECtHR. However, persuasion was not as strong as the other social mechanisms as full internalisation of the norm has not occurred. Turkey's progress towards compliance with international human rights standards was highly influenced by external actors and socialisation with these actors. Therefore, the selected compliance theory that focuses on this type of socialisation fits in this case study and has a strong defining power.

In conclusion, it could be said that the EU; the ECtHR's judgments; international organisations' constant criticism over the lack of legislation on immigration and asylum has had an immense influence on Turkey's progress in immigration law. The harmonisation process with the EU brought structure, a concrete time plan and institutionalisation to Turkey's immigration management system. Turkey has made extensive progress in order to align with the EU Acquis without any clear parliamentary or public resistance.[804] In addition to that, the process could be characterised by academic and technocratic routes instead of political actors' discussion, which made the process smoother.[805]

[804] Saime Özçürümez and Nazlı Şenses, 'Europeanization and Turkey: Studying Irregular Migration Policy' (2011) 13 Journal of Balkan and Near Eastern Studies 233, 245.
[805] ibid 245-6.

CHAPTER 6. THE FACTORS AFFECTING POLICY AND LEGAL CHANGES: CASE STUDY – THE UNITED KINGDOM

Following the previous chapter on Turkey's case analysis, this analysis chapter will examine the UK's case and draw conclusions on this case study. It seeks to investigate the relevant drivers that led the UK to revise its legislation that allowed detention of minors for immigration law enforcement. While looking at these different potential dynamics that could affect the Government to change behaviour, it will be vital to place these triggers into a meaningful theoretical framework. In order to do this, the thesis applies the selected compliance theory by Ryan Goodman and Derek Jinks to the case study.

This chapter will have three main parts: Judicial Influence, Influence of Official State and Supranational Agencies and Civil Society Influence. The first part will be on domestic court's approach and the European Court of Human Rights' (ECtHR) judgments regarding detention of minors under Judicial Influence section. It will start with a brief summary of domestic and international case law concerning this topic. Following this summary, the thesis will examine what this case law meant for the Government. This will also include references to the interviews[806] conducted for this research. This data will complement the objective evidence derived from parliamentary debates and literature search. Lastly, there will be an application of the chosen compliance theory to this specific part. Every part will follow the same structure with different findings and different analysis. While the judicial influence section will be focusing on case law, the influence of official state and supranational agencies section will analyse the international and official state agencies' reports with

[806] The interviews were conducted between 2015-2016 with Zrinka Bralo, The Lord Ramsbotham GCB CBE, Julian Huppert and Tony Smith. Zrinka Bralo was a Commissioner on the Independent Asylum Commission, the most comprehensive review of the UK protection system. She was involved in campaign to end detention of children for immigration purposes in 2010. She has been a Chief Executive at Migrants Organise since 2001. The Lord Ramsbotham is a member of House of Lords since November 2006. He was involved in Citizens UK Campaign to end detention of children for immigration purposes in 2010. He is still actively working on detention issue in Parliament. Julian Huppert is a Liberal Democrat politician and is a former Member of Parliament for Cambridge. He worked in Parliament between 2010 and 2015. He was involved in drafting of the immigration legislation that ends the immigration detention of children. He is a lecturer in Physics and Public Policy at Clare College, Cambridge University. Tony Smith is a former Director General of the UK Border Force. He worked for the UK Home Office for 40 years.

references to the response they have received from members of Parliament. This second part will have two subsections as international and official state agencies will be studied separately. The third part will be on civil society organisations and NGOs' reports and campaigns while being structured with the same pattern.

I. JUDICIAL INFLUENCE

To begin with, domestic and international judgments can have an influential stance on states to amend their policies or legislation. Since 1971 with the introduction of immigration detention in the UK[807], there have been several domestic and international cases regarding the detention practices in the UK as explained in detail in the Chapter 4[808]. Domestic case law, firstly, reveals what the judiciary branch's approach to the detention policy compared to the executive and legislative branches in the UK.

The domestic courts had a cautious approach towards immigration detention practices in the UK since 1971.[809] Domestic case law suggested that the detention policy is lawful as it provided certain protection from the international conventions, it only criticised the way authorities exercised this power to detain children for immigration purposes. On the other hand, international case law found the UK's detention policy lawful in relation to adult detention as there were not any ECtHR judgments against the UK regarding detention of minors. This non-interventionist nature of the case law should be read with an analysis of the obligations under CRC.[810] CRC does not ban detention of children for immigration purposes. There is a lack of a well-defined ban that the courts need to take into account. On the other hand, the principles brought by CRC are also open to interpretation as they are missing clear-cut definitions. For instance, CRC urges States Parties to use detention 'only as a measure of last resort and for the shortest appropriate period of time'.[811] However, CRC does not provide any clear time limit for detention of minors. It is open to interpretation for the immigration authorities to decide on the shortest appropriate

[807] Immigration Act 1971, sch 2, paras 9, 16 (2).
[808] To read further on the case law, see Chapter 4. The UK's Historical Record in Relation to Compliance with International Standards.
[809] To read further on the case law at domestic and international level, see Chapter 4. The UK's Historical Record in Relation to Compliance with International Standards.
[810] To read further on the international human rights standards regarding detention of minors, see Chapter 2. Detention of Children in the Immigration Context: International Human Rights Standards.
[811] International Convention on the Rights of the Child (signed 20 November 1989, entered into force 2 September 1990) 1577 UNTS 1 (CRC), art 37.b.

period of time. For that reason, the Court's view on time limit stated as 'It is not for this Court to lay down to what may have been a reasonable period of detention but, in my judgment, such a period was bound to be far less than approximately two months.'[812]

This non-interventionist approach by the courts can be explained with this absence of clarity in the obligations under CRC. As long as the policy carries the features of the CRC principles in general, it is hard to dispute the legality of the detention policy. This gave the UK a wide discretion over the use of power to detain under the Immigration Act 1971 powers. For the application of the theory, since the criticism did not focus on the policy itself, this lack of meaningful intervention in relation to the detention policy under the judicial influence made the theory application difficult as the selected theory relies on criticism towards a state's policy in order to bring compliance.

I.1. Material Inducement

When we apply judicial influence to the selected theory, material inducement should be our first mechanism to check whether there is any parallel between the UK's case and the theory's elements. As explained in detail before under Chapter 1.1. Compliance Theories, material inducement depends on material sanctions or rewards. This mechanism suggests that states change their behaviour in order to prevent financial burden or receive financial help. This process does not involve any voluntary change. Financial elements play the central role in the decision for change in behaviour. The costs that will be incurred can be social or material. However, in order to see the relevance of these social costs to the material inducement approach, these social costs must be translated into material costs in the end. In terms of judicial influence at national and international level, the UK was not sanctioned to pay any monetary compensation to people who challenged the UK's detention policy. Hence, this makes it impossible to apply material inducement into this case study where there were no monetary sanctions or rewards available to analyse the UK's reaction.

[812] *S & Ors v Secretary of State for the Home Department* [2007] EWHC 1654, para 69.

I.2. Persuasion

Secondly, the persuasion approach claims that change in state behaviour occurs through processes of social learning and information exchange within international organisations and transnational networks. Hence, domestic and international judgments can be a tool of persuasion in order to persuade states to change their legislation and policies on a certain topic. The reflection of these cases in parliamentary debate can give us clues whether this limited case law led to any argument of the policy on legal or moral grounds in Parliament. In the UK's case, the judgments were used within parliamentary discussion of new legislation or existing legislation in order to show the gaps in the legislation if the judgment was against the Government's policies like in the *Chahal* case. The *Chahal* case was discussed heavily by Members of Parliament as the judgment found the UK was in a breach of the Convention rights. The judgment of the ECtHR, finding a breach of Article 5.4[813] of the Convention, had an impact on the appeal process set out in the legislation.[814] As the right to appeal to the immigration appellate authorities against the Home Secretary's decision was not provided to the detainees if national security was involved, and this was criticised by the ECtHR, Parliament set up a new bill that introduced the right to appeal to an independent commission. For that reason, social learning occurred to a certain extent where the Members of Parliament used the *Chahal* case in order to pass a new legislation.

However, as research showed, the UK's detention policy has not been heavily criticised by domestic or international courts since 1971. Although the ECtHR decisions criticised Belgian authorities in the aforementioned cases on their detention policy relating to minors after 2006[815], there have been no cases brought to the attention of the ECtHR regarding the situation in the UK. In spite of the reference to these cases concerning Belgium in the *Suppiah* case in 2010 at the domestic court, the UK's policy was found lawful as it covered key protection elements from different

[813] Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR), art 5.4: 'Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.'

[814] HL Deb 05 June 1997, vol 580, cols 733-56; HL Deb 23 June 1997, vol 580, cols 430-40; HL Deb 07 July 1997, vol 581, cols 481-94; HL Deb 15 July 1997, vol 581, cols 912-49; HC Deb 30 October 1997, vol 299, cols 053-73; HC Deb 26 November 1997, vol 301, cols 032-41.

[815] *Mubilanzila Mayeka and Kaniki Mitunga v Belgium* (2008) 46 EHRR 23; *Muskhadzhiyeva and Others v Belgium* App no 41442/07 (ECtHR, 19 January 2010).

international conventions. Violation of Article 5 was found on the basis of the failure of the application of this policy by the authorities. In addition to that, it was found that the conditions at detention centres were better equipped to accommodate the needs of minors, unlike Belgian cases.

The lack of ECtHR judgments regarding the UK's policy and positive feedback by the domestic courts towards the UK's policy in relation to other ECtHR judgments on Belgian cases prevented any social learning from occurring for the UK's authorities. For this reason, social learning did not materialise between these institutions and the Government concerning detention of minors. In addition to that, this persuasion approach puts great emphasis on the norm that the target actor needs to adopt. The norm, here, is that detention should be only used as a last resort at detention centres that are not suitable for children. In the UK's case, the detention policy of minors was not challenged with an alternative norm or policy by the courts under the judicial influence. The courts have found the policy lawful and reasonable in their judgments. This was also a significant missing point in the case study while looking for parallel themes between case study and the selected theory.

I.3. Acculturation

Finally, the selected theory suggests acculturation as a socialisation mechanism in where the reference group plays an important role on the way to changing state behaviour. Through cognitive and social pressures pushed by the reference group, the target actor is made to change the policy or legislation in question as the target actor would like to have a better relationship with its reference group. Receiving constant pressure and disapproval would lead target actor to act in away of which the reference group approves. The costs that the target actor needs to pay will be social costs, unlike the material inducement's material costs. Under the judicial influence in the UK's case, it should be expected that the ECtHR is an important reference group to the UK owing to the high rate of implementing the judgments of the ECtHR.[816] However, the lack of judgments on this issue made an analysis of this relationship between the UK and the ECtHR unattainable.

[816] Courtney Hillebrecht, *Domestic Politics and International Human Rights Tribunals: The Problem of Compliance* (Cambridge University Press 2014) 48 table 3.1.

In the *Chahal* case, there was a certain level of inclusion of the judgment within the parliamentary debate on a new legislation. In these judgments, the detention policy of the UK was not criticised, instead being found lawful by the ECtHR. Hence, parliamentary debate was about this process in practice rather than the detention policy itself. However, reference to the case law in Parliament showed that there was value attached by the Government on this case law criticising practices. Furthermore, the *Khawaja*[817] case was also mentioned in parliamentary debate relating to the questions to the Home Secretary regarding the number of detainees detained at prison establishments and remand centres.[818] It was also brought to the attention of Parliament when the appeal process was discussed as this judgment stated that the appeal process was impractical.[819] Immigration detention as a practice has not been challenged in the light of this judgment as it was not challenged by the domestic courts. Nevertheless, these references in parliamentary debates are important to recognise that the ECtHR as an institution through its judgments carried a certain level of pressure on the UK.

By contrast to the criticisms derived from case law, the *Saadi* case was also brought to the attention in Parliament. The national court's decision of the lawfulness of the detention policy was mentioned briefly in Parliament in order to prove the argument that the detention policy could not be criticised on legal grounds. Case law's confirmative approach was reflected in Parliament in order to prove the current policy's legality. Mr Browne as then Minister for Citizenship and Immigration stated this, 'The lawfulness of detaining asylum claimants for the sole purpose of deciding their claims quickly was upheld by the Court of Appeal and by the House of Lords in the case of Saadi.'[820]

This reference to the judgment of the domestic courts in relation to support of detention policy of asylum seekers demonstrated that case law is taken seriously by Members of Parliament in a way that Minister of the Cabinet felt the need to refer to this to make a point on the legality of this policy. What this means for the acculturation approach is that the courts at domestic and international level can be a significant reference group for the UK. It can be speculated that if there was substantial criticism from the courts concerning the detention policy, this would have

[817] *Khawaja v Secretary of State for the Home Department* [1982] Imm AR 139, [1983] 2 WLR 321.
[818] HC Deb 31 July 1984, vol 65, col 218-9W.
[819] HL Deb 29 March 1983, vol 440, cols 523-49.
[820] HC Deb 16 September 2004, vol 424, col 157-9W.

been one of the influential triggers behind steps to comply with international standards.

Since this research is looking for the motives behind the decision for change in this policy, it is important to note that judicial influence was not a factor which pushed the state to change the policy due to its positive feedback and approval. Judicial influence was not one of the major triggers in the UK's compliance history. There is not enough evidence to say that the reason for a change in detention policy of minors in the UK was the judicial influence on the Government as the judgments were confirmative of the UK's detention policy and did not deeply challenge the policy as long as the immigration authorities follow the safeguards provided by the international conventions. The judgments stated that there was no obvious breach of the Convention because of the policy as there was no discussion over the compliance issue. This approach has not changed up to the present time because the recent judgment of the ECtHR showed that the UK system of immigration detention did not breach the Convention despite the lack of statutory time limit.[821]

II. INFLUENCE OF OFFICIAL STATE AND SUPRANATIONAL AGENCIES

II.1. Supranational Agencies

States are under constant monitoring by the committees of the international conventions they have signed and ratified in the past. This system normally requires state actors to submit reports regarding the steps they take in order to realise their obligations under that particular convention. On the other side, these committees produce reports on the States Parties in order to comment on the developments regarding the realisation of the rights specified in related conventions. These complementary reports can be significant factors for promoting compliance with international human rights standards. As State Parties are criticised or praised by these bodies on the international stage, this would apply a political leverage on the governments concerned.

[821] *J.N. v The United Kingdom* App no 37289/12 (ECtHR, 19 May 2016). The Court stated in its judgment that setting a time limit for detention is not enough to ensure the 'quality of law'. Hence, the Court always chose to assess the detention system as a whole instead of just focusing on time limit.

The UK has been part of this system through its ratified conventions throughout the years. For the purposes of this research, two important committees and one Commissioner can be identified as being the Human Rights Committee, the Committee on the Rights of the Child and the Commissioner for Human Rights. These institutions were in the position to monitor the situation in the UK concerning detention of minors for immigration law enforcement. Starting in 1995, the records have shown that the UK received reports and concluding observations from the Human Rights Committee and the Committee on the Rights of the Child on the issue of detention of minors.[822] The Human Rights Committee and the Committee on the Rights of the Child, in their reports, expressed their concerns over the treatment of irregular migrants and asylum seekers with a view to deportation. The Committee on the Rights of the Child called on the UK to approach this practice as a measure of last resort. In 2000s, the Commissioner for Human Rights also submitted reports on the UK's human rights practice and found the extent of use of detention of minors for immigration law enforcement concerning.

In addition to the criticism concerning detention practice in the UK, the UK's reservation[823] to CRC was a major point within the reports received from the Committee on the Rights of the Child. With this reservation, the UK reserved its right to apply its own immigration legislation, notwithstanding the rights set out in the Convention. The scope of this reservation stated that the UK upheld its right to refuse to provide protections to children who do not have the right to enter and remain in the country. This crucial reservation has been criticised by the Committee on the Rights of the Child several times since 1995. The main argument in these reports was that this reservation could hamper the compatibility with the object and the purpose of CRC as the scope of the protection provided by CRC could exclude migrant and asylum children in the UK.

Overall, supranational agencies produced several reports regarding the human rights situation in the UK since the ratification of international conventions. The committees voiced their concerns over the detention of minors for immigration

[822] To read further on the history of these reports, see Chapter 4. The UK's Historical Record in Relation to Compliance with International Standards.

[823] The UK's reservation was as follows: 'The United Kingdom reserves the right to apply such legislation, in so far as it relates to the entry into, stay in and departure from the United Kingdom on those who do not have the right under the law of the United Kingdom to enter and remain in the United Kingdom, and to the Acquisition and possession of citizenship, as it may deem necessary from time to time.'

purposes and the UK's reservation to CRC. There was a certain level of attention towards these reports and criticism at parliament level. However, there has been no substantial change at the legal and practical level as a result of these reports. Along with this general overview, it is important to put this analysis into the theory.

II.1.1. Material Inducement

To start with, material inducement, as explained before, offers a way of understanding for the change of state behaviour in terms of monetary sanctions and rewards. Since this mechanism relies on solely monetary damage or rewards, these supranational agencies do not have such power over the ratifying countries as they can only produce social costs or social approval that cannot be turned into material costs. Hence, we cannot show any parallel themes between this case and the theory themes.

II.1.2. Persuasion

When we have a look at persuasion as a way of changing state behaviour, the norm that state actors should change becomes central. In this case study, the norm is to use child detention as a last resort for the shortest appropriate period of time and not to detain children at ill-suited detention centres. In addition to this principle, legislation should also cover providing other facilities such as education and recreational activities to child detainees.

The persuasion mechanism does not fit into this part of the case study's history of compliance. Supranational agencies' comments on detention of minors were not brought to attention to the parliamentary debate. Although there were substantial criticisms coming from these actors, socialisation between state and these actors did not occur on a positive note. Social learning or information exchange, as persuasion suggests, did not play an important role for the UK to push forward towards compliance.

II.1.3. Acculturation

The last mechanism of the selected theory, acculturation, offers a different explanation for change in state behaviour. It happens because there is a desire to have a better and closer relationship with a reference group that values compliance. In this case study, however, it is very hard to see this type of desire on the UK Government side, unlike in Turkey's case. It is opposite to the first case study in the sense that Turkey's desire to be associated with the European cultural environment was at the

same level as the UK's reluctance to be seen as a follower of the international treaty bodies. The lack of attention and reference to the reports by these monitoring bodies by Members of Parliament and the defensive approach by Government officials in the case of a reference to these reports can be seen as the signs of this reluctance to be associated with these treaty bodies. For instance, we can present two examples of reaction from the government officials when faced with references to international obligations and monitoring bodies' criticisms. In the first example, the international obligations of the UK towards children were mentioned:

> …So the Government have an obligation to explain to the Committee how the detention of children in these centres is compatible with their duties under the Human Rights Act and how they came to make a statement on the face of the Bill that there was nothing in it that was not compatible with our obligations under the convention.[824]

Additionally, they pointed how poor conditions of detention centres might damage minors' personal development.[825] Nevertheless, the government officials asserted:

> We believe that we are acting within the spirit of our human rights and UNCRC obligations. …The detention of children, regrettable though it is, is necessary from time to time. It is within the scope of Article 5(1)(f) and is not prevented by Article 5….
>
> We believe that we are exercising our powers in a proportionate, reasonable and fair-minded way. We make full provision to protect the welfare and interests of the child.[826]

The second example also follows the same pattern. Mr Browne of the Liberal Democrats remarked on the Government's view on the treaty bodies:

> The first is about the Government not enforcing the UN convention on the rights of the child and about their desire to be seen as tough in this area. They seem to be concerned that anything that smacks of a UN-led, consensual, international approach would be seen as a sign of weakness.[827]

This remark is very significant in terms of understanding the UK's approach towards supranational agencies. This demonstrates that the Government was reluctant to change its policy or legislation following a critique from treaty bodies. International

[824] HC Deb 09 November 1999, vol 337, cols 1004-35.
[825] ibid.
[826] ibid.
[827] HC Deb 20 November 2007, vol 467, cols 53-4WH.

monitoring body influence could be viewed as weakness in the eyes of the Government.

A response to this remark came from Meg Hillier as the Parliamentary Under-Secretary of State for the Home Department. She pointed out:

> When I was first elected as a councillor in 1994 and first came across the issue of unaccompanied asylum-seeking children, I certainly did not think that I would stand here one day as part of a Government who have to make tough decisions about detention, including detention of children. It is not something that we aim to do but something that we have to do as part of the immigration process.[828]

The response carried the same characteristics of other responses from different governments as executive branches throughout the history of this discussion.[829] It was suggested that detention practice of minors was undesirable but necessary part of the immigration law in the UK. The morality argument made this practice undesirable. This is even stated by Government officials as above.

The interviews conducted for this research cannot be deemed conclusive in terms of findings, yet can provide some insights that help us understand the situation further. The interviewees were all selected depending on their involvement in this discussion. Hence, their contribution to this discussion will be valuable in order to bring a different light to these findings. For instance, Lord Ramsbotham, a member of House of Lords, is an important figure that worked within Parliament and with non-governmental organisations in order to end detention of minors. He stated:

> All I can say is that during the period 2005 to 2010 it was only if there was an immigration legislation that attention was focused on it, otherwise there were certain individuals who focused on issues in certain countries, but it never received tremendous attention as such.[830]

Further on, he also expressed the level of emphasis given to international criticisms by state institutions:

> But what I was concerned about was that all too frequently the international criticism is just sort of disregarded, it will go away. And it's an unfortunate

[828] ibid.
[829] HC Deb 08 May 2003, vol 404, cols 929-36.
[830] Interview with Lord Ramsbotham GCB CBE, House of Lords (London, the UK, 12 April 2016).

characteristic of both the Home Office and the Ministry of Justice, which I discovered the case in point.[831]

Another interviewee, Julian Huppert as a former Member of Parliament for the Liberal Democrats, believed 'in terms of that level of debate, treaty requirements and so forth were particularly important.'[832]

Cognitive or social pressures, suggested by the acculturation approach, did not show any parallel ties with the UK's case in relation to supranational agencies as there was no desired relationship that led to mimicry by the UK. Considering the vast amount of criticism coming from monitoring bodies, the reaction to these reports and recommendations in the parliamentary debates was only minor.

II.2. Official State Agencies

Following the supranational agencies' reaction to the situation in the UK regarding detention of minors, it is crucial to look at the developments at the national level. The UK has been monitored by several domestic institutions on this topic such as Children's Commissioner, Her Majesty's Inspectorate of Prisons for England and Wales and the Joint Committee on Human Rights.[833] The reports and comments from these institutions can be very important to understand the compliance decision by the Government.

To start with, Her Majesty's Inspectorate of Prisons for England and Wales completed several announced and unannounced inspections at immigration detention and removal centres across the UK.[834] These reports have observed the situation at these centres and given recommendations on the issues that needed improvement. The situation concerning minors was one of the main issues in these reports since 2002. Another national monitoring body is the Parliamentary Joint Committee on Human Rights[835]. This body submitted reports regarding the UK's reservation to CRC and detention practice in the UK. Lastly, the Children's Commissioner also expressed his opinions on the topic of detention of minors in the UK. After a visit to Yarl's Wood in 2005, one of the detention centres that held children, the Children's Commissioner

[831] ibid.
[832] Interview with Julian Huppert, Politician, Liberal Democrat (Cambridge, the UK, 26 October 2015).
[833] To read further on these monitoring bodies' reports, see Chapter 4. The UK's Historical Record in Relation to Compliance with International Standards.
[834] To read further on these inspection reports, see Chapter 4. The UK's Historical Record in Relation to Compliance with International Standards.
[835] Joint Committee on Human Rights is appointed from the House of Lords and the House of Commons to consider human rights issues in the United Kingdom.

published recommendations and expressed the shortcomings of the system.[836] As a follow-up to this report, the Commissioner carried out two more visits to the same detention centre and conducted interviews. These reports used several references to international law to support their arguments.

II.2.1. Material Inducement

Along with this background information, it is essential to read all this through the lens of the selected theory. To start with, it will be hard for material inducement to play a role in the UK's compliance with international human rights standards regarding the influence potentially created by national and supranational agencies as this mechanism relies heavily on monetary rewards and sanctions. Official state agencies, like supranational agencies, cannot impose any monetary sanctions or rewards. These bodies are only capable of creating a certain level of political influence that would only impose social costs on the Government, such as reputational damage. Under the material inducement approach, social sanctions can be significant as long as they produce material sanctions at the end. However, official state agencies cannot produce such sanctions. For this reason, it is impossible to find parallel themes between this social mechanism and the case study.

II.2.2. Persuasion

Persuasion, however, might play a role in terms of pushing the Government and its officials to consider about the shortcomings of detention practice. Official state agencies' reports produced information on the situation of detention centres and level of care provided to children detainees. Furthermore, they pointed out the gap between the UK's human rights treaty obligations and the practice. As these reports were referenced during parliamentary debate several times, they could have pushed the Government and its officials to think harder about detention of children and the reasons for the demand to end this practice. Hence, this process can be described as cuing that is an important element under the persuasion approach where target actors are pushed to think harder on their law and policies that are not complying with international human rights standards. For instance, in one of those parliamentary

[836] Children's Commissioner, 'An Announced Visit to Yarl's Wood Immigration Removal Centre' (30 December 2005) <http://www.childrenscommissioner.gov.uk/publications/announced-visit-yarls-wood-immigration-removal-centre> accessed 16 July 2017.

debates Lord Avebury as a Liberal Democrat Peer brought the Inspector's report to the attention of Parliament. The more important point in this debate was when Lord Avebury referred to the interaction between the Government and the inspector, 'On 12 July, we discussed the time that the Government are taking to reply to Anne Owers' reports on the IRCs, and the Minister told the Committee that the reply on Dungavel had been published.'[837] Here, we can see that the Government were replying to the concerns expressed by the Chief Inspector's reports. This means that there was a certain level of interaction between the Chief Inspector and government officials.

In addition to that, the Joint Committee's output regarding the treatment of asylum seekers was quoted by Lord Judd during a debate concerning a new immigration bill in 2007:

> I want to speak specifically about how this Bill affects children. Earlier this year, the Joint Committee on Human Rights conducted an inquiry into the treatment of asylum seekers. I was repeatedly struck during that inquiry by the way children are treated in the asylum process and, too often, by the sheer invisibility of their needs.[838]

Another parliamentary debate referred to one of the outputs of the Joint Committee in order to show the wrongdoings in the system. Diane Abbott of the Labour Party mentioned this reference, 'Finally, the Joint Committee on Human Rights, in its report on the treatment of asylum seekers in March 2007, found that the UK was in breach of its human rights obligations by detaining children.'[839]

This inquiry by the Joint Committee pushed state actors to think harder in a way that can be seen as cuing under the persuasion approach. In contrast with supranational agencies, reference to these bodies' reports in parliamentary debate gives us a clue about the level of interaction between national bodies and members of Parliament. Although cuing as one of the tools persuasion suggested has been used here, persuasion's final stage of being fully convinced did not occur in the UK's case study. This showed itself how detention policy was still defended for the sake of immigration control.

[837] HL Deb 23 July 2007, vol 694, cols 54-5GC.
[838] HL Deb 13 June 2007, vol 692, cols 722-5.
[839] HC Deb 20 November 2007, vol 467, cols 41-3WH.

II.2.3. Acculturation

Finally, acculturation, as suggested by Ryan Goodman and Derek Jinks, suggests that the desired relationship to a group or an environment will pressure state actors towards compliance. This pressure aims to create psychological discomfort in the target state. If these social sanctions stay abstract, such as reputational damage instead of being translated into material costs, it can be claimed that acculturation occurs. If we see official state agencies as a group with which the UK Government body wants to be associated, from whom it is reluctant to receive any criticism, we can find parallels between this mechanism and this case study. Official state agencies were always mentioned with high respect during the parliamentary debates.

To explain further, Diane Abbott of Labour Party as the then ruling party referred the Chief Inspector's report:

> Having spoken generally about the problems in detention centres, I move to some specifics relating to children. I could quote from many pressure groups and lobbyists, but I cannot do better than to quote the Government's own chief inspector of prisons, Anne Owers, on her most recent inspection of Yarl's Wood immigration centre in February 2006:
>
> 'Our most important concern...remained the detention of children.'[840]

This remark can be quite significant in order to see the importance of the chief Inspector. She continued her remarks:

> I have known Anne Owers for years, ever since she was campaigning on immigration issues and I was a lobbyist on race and immigration issues. If the chief inspector of prisons puts such a paragraph into the introduction of her inspection report on a detention centre, it should not take a debate such as this to make Ministers realise that our treatment of children in detention is not satisfactory.[841]

Last but not least, Ms Abbott again explains why the Inspector's remarks were important and should be taken into consideration stating 'Her Majesty's chief inspector of prisons cannot be accused of being partisan or hearing only one side of the story.'[842] In a different discussion, Lord Bassam of Brighton as a Labour peer indicated:

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[840] HC Deb 20 November 2007, vol 467, cols 41-3WH.
[841] ibid.
[842] ibid.

> …that the inspector made some positive comments even about Yarl's Wood. She observed that a child protection committee had been established and met regularly twice a month; that the terms of reference were clear and appropriate; that the committee operated as a strategic planning and policy-making group; and that the work plan produced to develop child protection policy and practice was impressive. Those are positive observations. [843]

During the same year, Lord Avebury criticised the UK's reservation to CRC by mentioning the criticism only from official state agencies, 'It allows the UK to detain children in places such as Yarl's Wood, contrary to the advice of the JCHR and in the face of repeated criticism by the Chief Inspector of Prisons, Anne Owers.'[844]

The Inspector's reports or recommendations were mentioned by Members of Parliament several times either to support their argument against detention of minors or praise the Government's steps taken towards compliance. For instance, Ms Abbott pointed out:

> Successive bodies and individuals have tried to get past Governments to deal with this issue. It was a particular preoccupation of a previous Children's Commissioner and it is a preoccupation of the chief inspector of prisons, Anne Owers, who did a comprehensive report on the issue two or three years ago. As I said, every reputable organisation that has looked at this has said that the detention of children is wrong in principle and detrimental to children in practice.[845]

On the other hand, Mr Woolas as then Minister of State referred to the Inspector's reports to improve the image of the Government's actions in relation to Yarl's Wood detention centre:

> We take the welfare of children in our care very seriously and are proud of the investment made to improve services at Yarl's Wood over the last couple of years, the main centre for holding families with children. The improvements we have made have been considered and acknowledged by the likes of the Children's Commissioner for England, the Independent Monitoring Board and HM Chief Inspector of Prisons.[846]

[843] HL Deb 23 July 2007, vol 694, cols 54-5GC.
[844] HL Deb 12 July 2007, vol 694, cols 66-8GC.
[845] HC Deb 17 June 2010, vol 511, cols 222-3WH.
[846] HC Deb 18 January 2010, vol 504, col 33W.

Hence, it is clear that the position of HM Chief Inspector of Prisons was highly respected by Members of Parliament. They used the Chief Inspector's reports in their arguments for or against the detention policy. It has been used more often than the reports of supranational agencies on detention of children for immigration purposes.

Moreover, Lord Roberts of Llandudno made a direct reference to one of the reports by the Children's Commissioner stating:

> It is alleged that in Yarl's Wood - the Minister may say that my figure is not correct - 83 children last year were detained for 28 days or more. That is horrific. The Children's Commissioner for England said:
>
> 'The UK should not be detaining any child who has had an unsuccessful asylum claim. Not only is there no reason to continue the administrative detention of children, we present evidence in this report to demonstrate that it may be harmful to their health and well-being'.[847]

In addition to this, since social and cognitive pressures play an important role under this mechanism, the way the reports were written and quoted within the parliamentary debate could cause shaming and social approval as solely social sanctions for the Government. For that reason, we have seen the reference to the Inspector's reports in positive and negative ways in the parliamentary debate. As explained above, while opposition party members quoted the Inspector's reports to point out the wrongdoings of the system, Government officials quoted same reports, only mentioning the Inspector's positive feedback[848]. The criticism from the Chief Inspector also had an impact on the NGOs' work as well. Julian Huppert, one of the interviewees, explained why HM Inspector's reports were significant, 'Because of some of the inspection reports that have been done, there were in atrocious conditions previously, so that did play well with the NGO's and few people who were very involved.'[849]

On a more general note, there is a definite difference between international and official state agencies in terms of this case study. Supranational agencies' criticisms were not taken into consideration as much as were those of official state agencies. The reason behind this was the Government's approach to these different bodies. While the approach towards supranational agencies was distant in a way that

[847] HL Deb 4 November 2009, vol 714, cols 323-5.
[848] See (n 843) and (n 846).
[849] Interview with Julian Huppert (n 832).

the Government was reluctant to be associated with this reference group, official state agencies' output regarding the UK's detention policy became part of the discussion to establish a strong argument for change. However, this demonstrates that instead of persuasion where the norm is the most important element, acculturation played a more important role in this case study since acculturation refers to the relationship with a reference group. Hence, even though these international and official state agencies pointed out exactly the same issues regarding detention of children in their reports and recommendations, official state agencies' reports weighed more than international ones within the parliamentary debate by legislative and executive branches and also in interviews. Furthermore, the presence of acculturation depends on how close the relationship between the target actor and the reference group. It can be claimed that official state agencies have a close relationship with Parliament in general. For instance, while the Joint Committee is itself composed of members of Parliament, the Justice Secretary appoints the Chief Inspector of Prisons.

Nevertheless, compared to Turkey's case, acculturation is not as obvious in this interaction between official state agencies and the Government since it might be too ambitious to say that official state agencies can be seen as a reference group for the Government. As stated in Turkey's case, there was a constant reference to the EU and the ECtHR in the law-making process, parliamentary debates and even the Preamble of the legislation. Here, while there was reference to these bodies in the parliamentary debate and respect shown towards their work, it was not as persistent as in Turkey's case. Hence, the importance of these state agencies' criticism for the Government can also be seen through different analysis. It is well known in international relations literature that formal and informal institutions work towards promoting compliance and they have better chance of success in established democracies.[850] These national monitoring agencies were in a position to create meaningful impact on the Government's decision-making due to the UK's position of being a stable democracy.

Nonetheless, it would still be hard to claim that socialisation with official state agencies was the only interaction that influenced the Government's decision to act towards compliance with international human rights standards. These official state agencies produced reports for many years. The Government only decided to end

[850] Beth A Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics* (Cambridge University Press 2009) 152-153.

detention of minors in 2010. Hence, there was no instant impact on the Labour Government despite its influence throughout time. On the other hand, it would be safe to say that the constant pressure and criticism could have caused a certain level of social pressure that the actor desired to end by complying with international human rights standards. Hence, it is clear that official state agencies' critique was one of the necessary measures for the change in the UK's detention policy.

III. CIVIL SOCIETY INFLUENCE

Before 2001, the policy regarding detention of children with their families stated that the decision to detain should 'be effective as close to removal as possible so as to ensure that families are not normally detained for more than a few days'[851]. Yet in 2001, the change in policy wording led to a dramatic increase in the scale of detention of children with families. The renewed policy stated that detention of families would be allowed if their circumstances justify detention. These circumstances would include risk of absconding or the need for identity clarification. This, surely, widened the scale of detention of families as the circumstances permitting a decision to detain were much more extensive with this renewed policy instead of just being limited to pending removal cases.

Following this change, civil society and non-governmental organisations (NGOs) started their advocacy campaigns against this practice.[852] In these campaigns, they provided counter-arguments for the Government's justification of using detention practice for minors and families. However, the legality of the policy was not part of the discussion as the policy carried key elements of the international conventions and was approved by the case law. The points made about international obligations of the UK were challenged that detention of minors is not prevented by international law. For that reason, the argument in these reports was about finding a balance in this practice of detaining minors in terms of numbers and duration rather than focussing on the lawfulness of the policy. Therefore, the ethical argument was weighed more than the lawfulness argument in relation to the detention policy.

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[851] Home Secretary, *Fairer, Faster and Firmer - A Modern Approach to Immigration and Asylum* (White Paper, Cm 4018, 1998).

[852] To read these campaigns in more detail, see Chapter 4. The UK's Historical Record in Relation to Compliance with International Standards.

III.1. Material Inducement

After bringing the relevant archive and information to light, it is crucial to see these developments and the way they folded through theory application. Material inducement is a social mechanism in which target actors are forced to change behaviour through material sanctions and rewards. In this case study, civil society organisations and NGOs do not have that type of power to push the Government in this way as they cannot provide material rewards or sanction the target actor. Even though they can push social sanctions that can be useful to manipulate the target actor, the costs on the target actor are not calculable. Hence, it is easy to rule out any parallels between the material inducement approach and the case study.

III.2. Persuasion

Secondly, persuasion plays an important role in convincing target actors towards compliance with international human rights standards according to the selected theory. It depends on the norm in question and the level of importance given to the norm by target actors. Hence, civil society and NGOs can use persuasion techniques such as cuing and framing, as explained before, in order to push states to comply with international human rights standards. With the reports produced and campaigns run by civil society organisations, it can be claimed that they aimed to use cuing techniques where a target actor is forced to think harder on its practices and internalise the norm fully in the end.

The widespread criticism by civil society organisations was cited in the parliamentary debates. To start with, BID's handbooks were mentioned within parliamentary debates. For instance, in 2007 Jeremy Corbyn of the Labour Party referred to this organisation's work, 'Bail for Immigration Detainees, which has done good work, produced a handbook and press release on 2 July. The press release stated that children are being damaged by immigration detention…'[853]

Save the Children's research on case studies also was quoted by concerned Members of Parliament and Lords. For instance, Lord Judd as a Labour peer pointed out:

> I am indebted to the Save the Children Fund for its concern and insight into these matters and also to the Refugee Children's Consortium for its incredibly hard and committed work in this area of policy. Save the Children Fund

[853] HC Deb 20 November 2007, vol 467, cols 53-4WH.

> research found that the length of time that children were detained with their families varied from seven to 268 days.[854]

He, again, made his argument based on the findings of the Save the Children's research:

> The Government have said that they detain children only as a last resort and for as short a period as possible. Yet the statistics that I have seen suggest that is not the reality for many children. For example, Save the Children found children who were detained for up to 268 days in 2005. That is backed by other members of the Refugee Children's Consortium. What we are witnessing is ongoing detention throughout the asylum process and, most worryingly, in many cases people are being detained and subsequently released.[855]

Members of Government as well as members of the opposition parties also refer these reports. Neil Francis Gerrard, as a member of the governing party, referred to Save the Children's evidence that refutes the Government's argument regarding detaining children for the shortest period of time:

> We all understand that it can be difficult to remove a family with children. I accept that there may be circumstances in which some pretty tough, nasty decisions have to be made by Ministers. However, we do not need to keep children in detention for long periods. On 30 June, children were in detention - mainly in Yarl's Wood -10 of whom had been in detention for more than a month. Save the Children came up with cases of families with children that have been in detention for more than six months. I do not think that any of us should find that acceptable.[856]

Another campaigning civil society organisation, the Children's Society, was also part of parliamentary debate. The Children's Society's reports and case studies were used as part of the argument against detention of children several times. For instance, Lord Judd as a Labour Peer stated:

> The Children's Society reports the case of a family who were detained in Yarl's Wood for several months. One of the children in the family, who was eight years old at the time, had learning difficulties and was distressed to see

[854] HL Deb 9 October 2007, vol 695, cols 73-6.
[855] ibid.
[856] HC Deb 13 December 2007, vol 469, cols 57-60WH.

> his mother disintegrate while in detention until she attempted to take her own life. The child missed several medical appointments while he was in the centre, appointments which were essential to have a prosthetic limb fitted, and eventually contracted a bone infection that made it impossible for the limb to be fitted. It is impossible to overestimate the impact of this experience on an eight year-old child.[857]

Lord Ramsbotham as a member of House of Lords also explained the involvement of civil society organisations in the process and the Government's intention to receive a direction from Citizens UK:

> Citizens UK have been very strong on this; they've been campaigning for it for ages. I mean you know about Citizens UK and it is the coalition. And I got involved with it first when it did an inquiry into what's called Lunar House, which is the home of the international...the Immigration Directorate. And this report showed just how inefficient the whole organisation was. But what was interesting was the Government were very keen on that report and were very grateful for it because it pointed the direction that they should go. And then came the asylum inquiry or commission, again which was Citizens UK.[858]

As persuasion, one of the socialisation mechanisms in this theory, puts great emphasis on the interaction between actors in a way that this leads further thinking on the controversial practices, there was this type of interaction between civil society and Members of Parliament in this case study. Government officials are pushed to think harder on detention of minors during this debate in Parliament with detailed reference to the conditions of detention centres or psychological impact on detained children.

However, it is hard to find any supporting indication that the UK Government fully and voluntarily internalised the norm of detaining children as a last resort for shortest period of time at detention centres that are suitable for children. There was always this abovementioned dilemma of the Government between an efficient immigration control and detention of children. Julian Huppert raised his argument about persuasion, '…I was very pleased to have pushed that legislation because it was quite clear that if Labour had a free reign, they would just go back to detaining children.'[859]

[857] HL Deb 13 June 2007, vol 692, cols 722-5.
[858] Interview with Lord Ramsbotham (n 830).
[859] Interview with Julian Huppert (n 832).

To a certain extent, it is clear that Nick Clegg, as the Liberal Democrat Party leader, was committed to ensuring that detention of children should be forbidden by domestic legislation, as he put this commitment in the party's election manifesto[860]. He also pushed for the legislation and was closely involved in the negotiations. It can be claimed that he was fully persuaded about the validity of this norm in relation to detention of children. Lord Ramsbotham, as a person who was involved in this process before and after the manifesto commitment, clearly expressed Nick Clegg's involvement in the process:

> Well, I think the dominant factor in it all was actually the Liberal Democrat Party because during all our activities against the Labour Government, during the time of the Labour Government, it was always the Liberal Democrats who were in alliance with cross-benchers and others who were taking this strong line, more than the Conservatives. And actually the leading figure was Nick Clegg and it was to him we always felt that we were reporting and he was determined to get this through. I mean the trouble is with the immigration thing at that time, one always felt there were party politics involved.[861]

Zrinka Bralo of the IAC also pointed out the importance of having a key person in Parliament to push the new legislation:

> So the next thing that happened is that elections happened two days after that, Nick Clegg pushed it because it was his thing into the manifesto. And this is how it happens. So campaigns are helpful because they raise general awareness, but campaigns don't force politicians, it is people who force politicians to change something.[862]

Putting this commitment to end detention of minors to the election manifesto and Nick Clegg's involvement in the negotiation process can be seen as one of the essential measures for the change at the policy and legislation level. This was another important turning point in terms of the UK's detention policy and the compliance with the norm.

However, it would be daunting to claim that all members of the Government fully and voluntarily internalised this change. Therefore, the ban on detention of

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[860] 'Liberal Democrat Manifesto 2010' (*General Election 2010*) 76 <http://www.general-election-2010.co.uk/2010-general-election-manifestos/Liberal-Democrat-Party-Manifesto-2010.pdf> accessed 16 July 2017.
[861] Interview with Lord Ramsbotham (n 830).
[862] Interview with Zrinka Bralo, Chief Executive, Migrants Organise (London, the UK, 6 February 2015).

children for immigration purposes did not happen overnight. Tony Smith stated the circumstances after formation of the Coalition Government in 2010:

> So they get elected and then they get briefings from us about, well we don't want to detain children either (laughing), but you're not going to be able to remove some people unless you detain. So Citizens found that after a year or two the promises that had been made were not being kept because then the Government realised that they had a problem with this because they did not want to be seen to be weak on immigration control.[863]

If full internalisation occurred on the Government's side, there would not have been any discussion over this ban. However, in practice the ban did not happen smoothly and it needed further work and negotiations.

III.3. Acculturation

Lastly, acculturation is a mechanism suggested by Ryan Goodman and Derek Jinks in this compliance theory. Instead of emphasising the norm as occurs in the persuasion approach, the relationship with the reference group plays an important role in order to push the target actor to comply with international human rights standards in the acculturation approach.

While applying the theory, the impact of civil society is difficult to be read under the theory due to lack of international law reference. Prioritising the ethical argument instead of a legal one in their campaigns made it difficult to find fit with Goodman and Jinks' theory as this theory puts an emphasis on influence through international law. Hence, this does not fit into this theory's acculturation approach.

III.4. Alternative Explanations for Civil Society Influence

Although not matching with the selected theory, civil society still played a fundamental role in this process. Within the parliamentary debate, civil society campaigns were mentioned on several occasions. For instance, Jeremy Browne of the Liberal Democrats, as one of the opposition parties, openly expressed his party's support for No Place for a Child campaign in 2007. He declared:

> The Government talk about their 'Every Child Matters' campaign, but if that is to be anything other than a slightly trite slogan, it must encompass children who are not British children within the mainstream education system. It must

[863] Interview with Tony Smith, former Director General, the UK Border Force (Skype, 9 May 2016).

> mean that literally every child has a set of rights and that we have a duty and obligation to them. It is on that basis that my party supports the 'No Place for a Child' campaign of Save the Children, the Refugee Council and Bail for Immigration Detainees, which calls for alternatives to child custodies, such as granting such people bail, or having them attend reporting centres or stay in supervised community accommodation. The campaign also proposes a host of other measures that might lead to a more satisfactory resolution to this vexed issue than that which the Government have so far managed to achieve.[864]

The general public's involvement and support of this campaign was also mentioned in the House of Lords in 2009. Lord Hylton stated:

> The detention of children is contrary to the UN Convention on the Rights of the Child. That fact compels the Government to derogate from the convention. This is a great shame on the 20th anniversary of the convention, which we as a country helped to draft. …In 2006, 13,500 members of the public backed the campaign called 'No Place for a Child'.[865]

In addition to the parliamentary debate, there was a growing opposition towards detention of children in Parliament at the same time. Parliamentary support towards ending detention of children for immigration purposes can be seen in early day motions[866] in Parliament since 2006. The first one, for instance, had an explanation as follows:

> That this House is concerned by the detention of children in UK immigration detention centres as part of the standard immigration procedure; recognises the negative impact on children's mental and physical health and the disruption of their education; welcomes the work conducted by Save the Children, the Refugee Council, Bail for Immigration Detainees, the Scottish Refugee Council and the Welsh Refugee Council to bring an end to this unjust policy; supports their recommendations that children should be treated as children first and foremost and their needs and rights protected; calls for alternatives to detention to be piloted; and urges the Government to make detailed statistics

[864] HC Deb 20 November 2007, vol 467, cols 53-4WH.
[865] HL Deb 4 November 2009, vol 714, cols 317-9.
[866] Early day motions are submitted by members of Parliament in order to debate specific topics in the House of Commons. They can be employed to show the level of parliamentary support in relation to a specific cause in the case of signatures by other Members of Parliament.

> available on an ongoing basis regarding the ages of, and numbers of, children held in detention and the length of time each is held in detention.[867]

The second early day motion also expressed the concerns while referring to the relevant civil society organisations and campaigns. Its brief clearly mentioned the work done by the No Place for a Child Coalition by Save the Children, the Refugee Council, Bail for Immigration Detainees, the Scottish Refugee Council and the Welsh Refugee Council and urged the Government to follow the recommendations by this Coalition.[868] In the following years, early day motions followed the same pattern and referred to the work conducted by civil society organisations and called the Government to end this practice.[869] In 2010, in order to bring attention to another campaign to end detention of children, called OutCry!, another early day motion was also submitted.[870] These early day motions showed the growing support for a change in detention policy and awareness of public campaigns.

Following the 2010 election, the work towards ending detention of minors for immigration purposes started. The then Minister for Immigration, Damian Green of Conservative Party, referred to their work with the civil society organisations:

> In June I set up a review of how we work with families in the immigration system. The Home Office launched a consultation which received over 340 responses from different organisations and members of the public. We also sought the views of interested parties through a working group co-chaired with the Diana, Princess of Wales Memorial Fund, received recommendations from a further expert group convened by Citizens UK and examined how other countries manage family removals.[871]

Zrinka Bralo of IAC explained these negotiations in detail:

> So Citizen's UK were then approached by the Diana Princess Memorial Trust Fund and I was drawn into that conversation and Lord Ramsbotham as well.

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[867] 'Early Day Motion 1845' (*Parliament*, 17 March 2006) <http://www.parliament.uk/edm/2005-06/1845> accessed 14 July 2017.
[868] 'Early Day Motion 399' (*Parliament*, 5 December 2006) <http://www.parliament.uk/edm/2006-07/399> accessed 14 July 2017.
[869] 'Early Day Motion 634' (*Parliament*, 7 January 2008) <http://www.parliament.uk/edm/2007-08/634> accessed 14 July 2017; 'Early Day Motion 1982' (*Parliament*, 12 October 2009) <http://www.parliament.uk/edm/2008-09/1982> accessed 14 July 2017; 'Early Day Motion 139' (*Parliament*, 19 November 2009) <http://www.parliament.uk/edm/2009-10/139> accessed 14 July 2017.
[870] 'Early Day Motion 1037', (*Parliament*, 17 November 2010) <http://www.parliament.uk/edm/2010-12/1037> accessed 14 July 2017.
[871] HC Deb 16 December 2010, vol 520, cols 125-7WS.

> And a number of other experts as well as two women who were in detention with children and one was still facing deportation. And we then quickly held two day negotiations with the Government in order to make sure that we come up with step by step on what needs to happen for the Government to end detention.[872]

This work was also referenced in parliamentary debate. Baroness Neville-Jones declared, 'At the moment, we are working with various charities and NGOs that will help us to find solutions so that we can come forward with something that is not just process but that incorporates a solution.'[873]

The work conducted with civil society and the UKBA officials reflected in the new policy. After 2010, UKBA guidance also has made several changes regarding family with children under 18 detention policy.[874] This policy was also by a new Immigration Bill[875] that brought compliance with the abovementioned norm in 2014.[876]

This close work between relevant civil society and Government officials showed a strong level of commitment towards their promise of ending detention of minors. This also demonstrated that the involvement of civil society was significant for Government officials as it was one of the fundamental push factors for the Government to act on this issue. For that reason, it is still very significant to acknowledge the role of civil society and its impact here with the help of an alternative theory.

A theory particularly focusing on the potential of civil society suggested by Keck and Sikkink offers a greater interpretation of how civil society reacts to non-compliance.[877] Since advocacy networks fall into a different category of a group that is motivated by values rather than material interests or professional norms, it has

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[872] Interview with Zrinka Bralo (n 862).
[873] HL Deb 2 June 2010, vol 719 col 252.
[874] To read further details of this policy, see IV. Post-2010 in Chapter 4. The UK's Historical Record in Relation to Compliance with International Standards.
[875] Immigration Act 2014.
[876] To read further on this new legislation, see IV. Post-2010 in Chapter 4. The UK's Historical Record in Relation to Compliance with International Standards.
[877] Margaret E Keck and Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (Cornell University Press 1998). According to Keck and Sikkink, an advocacy network can include 'international and national non-governmental organisations, local social movements, foundations, the media, churches, trade unions, consumer organisations, intellectuals, parts of regional and international intergovernmental organisations, parts of the executive branches of the government.' However, their research has shown that international domestic NGOs play a central role within this network by initiating new ideas and lobbying for change.

taken time to give their efforts recognition. In the case of non-compliance, they 'frame' issues to clarify them for the target audience and encourage action.[878] Seen in this case study, civil society organisations framed detention of minors in their campaigns and made this topic more understandable for everyone. Since they aim for policy change towards compliance, they employ *information, symbolic, leverage or accountability politics.*[879] While information politics focuses on newly-generated information, symbolic politics make use of symbols and stories. Leverage politics gets powerful actors involved in the process and initiates a certain level of moral leverage; accountability politics ensures holding target actors responsible for their previous policies. Advocacy networks can combine these elements in one campaign. Here, civil society organisations in their campaigns also employed information, leverage and accountability politics together.

In the beginning of the campaigns, they produced credible information and statistics on the detention of minors and what kind of impact this practice had on children. This newly-generated information and facts about detention of minors, as stated before, brought counter-arguments to the Government's justification of detaining children and families. This, somehow, held the actors accountable to their previously-stated claims under accountability politics. Last but not least, leverage politics can be seen in play where civil society mobilised the general public in their public campaigns. As stated before, unlike other actors, civil society adopted a moral argument in order to push state actors to change their practices on detention of minors. This moral leverage produced better results in this case study than the legal argument by other involved actors in this process.

This brings us a better explanation of what civil society can do against non-compliant states. In established democracies, findings suggest that compliance with international law is more likely in strong democracies with the help of a solid presence of domestic civil society.[880] What civil society achieved here was not about international law's impact on states. Contrarily, they chose to use an ethical argument to put pressure on decision-makers. A sustained campaign based on ethical arguments created a space for reform in relation to detention of children. Here, international law stayed in the background regarding the argument used in civil society campaigns.

[878] ibid 3.
[879] ibid 16-17.
[880] Eric Neumayer, 'Do International Human Rights Treaties Improve Respect for Human Rights?' (2005) 49 Journal of Conflict Resolution 925, 950.

This can be related to the lack of prescriptive obligations in international human rights standards set for detention of children for immigration purposes, as mentioned before. International law did not necessarily adopt strict language in relation to detention of minors such as specifying the duration of detention. For this reason, while the legal argument allowed a platform for decision-makers to defend the practice of detaining minors, ethical argument did not leave this kind of leeway for the authorities in the UK.

CONCLUSION

This chapter analysed different types of influences that could have had an impact on the UK's decision to comply with international human rights standards on detention of minors for immigration purposes such as detention as last resort and for a shortest period of time. Goodman and Jinks' compliance theory was also applied to this analysis in order to put these developments into perspective.

To start with, the judicial influence of international and domestic case law was taken into consideration. After a brief summary of these judgments, it was stated that the UK's detention policy was lawful as it provided the same protections as the relevant Conventions. Since there was no clear ban on detention of minors in international law, the courts found that the policy did not breach human rights. However, when the immigration authorities did not comply with the policy, the judgments clearly stated that there was a violation. The ECtHR judgments on Belgium in relation to detention of minors were referenced in these judgments. Nonetheless, there was no learning from them as the judgments concerning the UK's policy and practice expressed that there was a difference between Belgium and the UK in terms of practice and policy. While the UK's policy carried certain elements of protection for children, Belgium's immigration detention policy was not adequate to provide rights for children. Furthermore, the conditions of detention centres in the UK and Belgium showed differences as the UK's detention centres were more equipped for children than Belgium's detention centres. This can be seen as an endorsement for the Government as the policy received approval at judicial level. This had given the UK leeway to carry on with this practice as the challenge from case law was not strong enough to make a change. Hence, judicial influence did not play a key role in the UK's decision to comply with international human rights standards.

When the selected compliance theory is applied to this part of the case study, it is found that material inducement was not present as there were not any monetary sanctions ordered by these judgments regarding practice of detention of minors. Secondly, persuasion might have played a role if there were more cases telling the UK that this practice was wrong. This could have led social learning or discussion on the side of Parliament. However, in reality due to the non-interventionist approach by the Courts, this did not materialise. Lastly, it was difficult to find any parallels between judicial influence and acculturation as the third mechanism of the selected compliance theory. The lack of judgments stating that the UK's detention policy was unlawful brought up a clear message that there was not any cognitive or social pressure on the UK Government to change its current legislation or policy of detention of children. As mentioned before, these judgments carried a permissive approach towards this policy.

The second part of the chapter focused on the influence of international and official state agencies. There have been several reports produced by supranational agencies such as the Human Rights Committee or the Committee on the Rights of the Child. These reports criticised the UK's reservation to CRC and the Government's practice of detaining children with or without their families. Although there have been occasional references to these reports in the parliamentary debates, they were mostly about the criticism regarding the UK's reservation to CRC. The reports' criticisms on the detention of minors were not mentioned in the parliamentary debates. When theory is applied, it was clear that material inducement do not exist in this part of the case study as these monitoring bodies do not have this type of power over States Parties. They can only create political influence to a certain extent instead of any monetary sanctions.

Secondly, the persuasion mechanism could be in play, as this approach suggests monitoring and reporting can play an important role in convincing target actors. However, the lack of reaction given by the legislative and executive bodies has demonstrated that these reports were not strong enough to create social learning and persuasion at the end. Lastly, acculturation as suggested by the compliance theory can be analysed to see whether there are any parallels between the case study and this mechanism. Since the acculturation approach relies on the desired relationship to a reference group, it was challenging to find any parallel links in this case study. The UK's approach to these bodies has revealed that these supranational agencies are not

within the UK's reference group with which the UK would like to have a better and close relationship. As a matter of fact, the interviews and the parliamentary debates demonstrated that the UK Government did not want to look weak by following the recommendations produced by UN treaty bodies.

In the section on the influence of official state and supranational agencies, the second subpart looked into official state agencies such as the HM Inspector of Prisons, the Children's Commissioner and the Joint Committee on Human Rights. These institutions have produced reports and conducted inspections at removal and detention centres. The parliamentary debates including members of opposition and ruling parties showed a considerable amount of reference to these reports and recommendations. It was clear that there was respect towards these institutions at Parliament level. In order to read this analysis meaningfully, this subpart has applied the compliance theory to the case study. It was apparent that material inducement couldn't exist for the same reasons listed above while analysing supranational agencies. Monitoring bodies generally have a political influence instead of monetary one. They cannot produce material costs for the target actor. However, persuasion was significant in terms of pushing the UK Government to think harder about its practices. There is little clarity that persuasion played a fundamental role but it was important in a sense that these reports were used against the Government in order to make an argument against detention of children.

Finally, acculturation was relevant to a limited extent since the Government depicted official state agencies as important and respected institutions. As suggested by the theory, acculturation uses shaming and praising in order to change state behaviour. During the parliamentary debates, the reports were quoted in terms of both their positive and negative points. While the Members of Parliament who were against detention of children used these bodies' reports in order to support their argument, government officials defended the policy by using the good points in these reports. For that reason, shaming and praising were used at the same time for different purposes. It is clear to say that official state agencies were one of the necessary factors that influenced the Government's decision to act towards compliance with international human rights standards. While there is no direct causality towards compliance, it can be said that persistent shaming from these bodies can be seen as one of the essential measures that have resulted in the compliance decision by the UK Government.

On the other hand, it was challenging to depict this interaction between the Government and national state agencies as a strong example of acculturation unlike Turkey's interaction with the EU and the ECtHR. Although the criticisms of these national agencies were taken into consideration by members of Parliament, the reference to these reports was not constant in the process. The success of these agencies to reach the authorities and impact their decision-making to a certain extent can be related to the UK's being an established democracy with a strong presence of influential national institutions.

The last part examined civil society influence through civil society and NGOs in the UK. There had been wide criticism by organisations such as BID, Save the Children and the Children's Society. They produced reports with case studies and had organised public campaigns against detention of minors in the UK. Their reports and campaigns were mentioned in the parliamentary debates. At the end, they also played a significant role during the drafting process. Unlike the judicial bodies using a legal argument, NGOs and civil society used a moral and ethical argument in relation to detention of children while campaigning.

When theory is applied to the civil society influence part of the case study, material inducement can be dismissed easily as these organisations do not have any powers of monetary sanction or reward over the Government. Second of all, persuasion did not happen fully as the full internalisation and acceptance of the norm did not occur in the Government. Detention of minors as a policy was still defended for the sake of an effective immigration control. Lastly, there was no fit with the acculturation approach as civil society is not the reference group. In addition to that, civil society used a more ethical argument instead of relying on international law argument as required by the theory. With the adoption of another analysis by Sikkink and Keck, it can be stated that civil society influence was one of the main elements of this compliance case study. They not only mobilised public opinion but also used a moral argument to eliminate the justifications of the Government of the legality of this practice. This brought a new perspective to this issue as legality of detention of minors had never been contradicted successfully due to lack of clear-cut international standards and international and domestic law against the UK. Also, aforementioned findings suggest that stable democracies with a strong domestic civil society are more likely to comply with international human rights law. This could be another angle by which to explain the success of civil society influence in this case.

The application of this theory to this case study demonstrated that material inducement did not work at any parts of the case study. However, some parts of the case showed some elements of persuasion once there was a certain level of interaction between the Government and the actor. This can be seen in the relationship between official state agencies and the Government. The Government gave a degree of importance to these reports. Acculturation also showed some parallel themes in relation to the interaction between official state agencies and the Government.

Nevertheless, it is still very complex to read this process through the lens of the compliance theory as the theory suggests that change can happen through the rhetoric of human rights. However, there are several different dynamics beyond human rights involved in this case study, such as the need for immigration control. For that reason, there is not one comprehensive explanation of how the decision to change policy and legislation of detention of minors was made. This case study did not fit into the theory as strongly as Turkey's case study.

The alternative explanation can be provided by a combination of different elements in this case study. There were some necessary and sufficient measures that led the Government to change the policy. As stated before, official state agencies' critique, especially the inspection reports by HM Chief Inspector, played a necessary role in this process. Additionally, NGOs' campaigns and reports were successful in making a moral argument and raising awareness among the public and Liberal Democrats. However, there were some dynamics that cannot be captured with the limits of this theory. Beyond all these related and internal factors, there is one more thing to bring to the discussion: asylum statistics. As mentioned before in Chapter 4[881], statistics show that there was a considerable decrease in the number of asylum applications after 2004. This could be an underlying factor influencing the Government to change this policy as there was a much reduced flow of people coming to the UK at the end of the decade unlike in 2001 or 2002. While the rising numbers of detained children for immigration purposes in the 2000s brought a sense of crisis on the Government's side, this sense of crisis lost its power over the authorities due to the fall in asylum numbers. This policy was not so urgently needed for an efficient immigration control anymore. This is a circumstantial factor in the sense that it cannot be read as socialisation mechanism as it is not under an actor's

[881] To read further on this, see III. Detention of Minors (1993-2009) in Chapter 4. The UK's Historical Record in Relation to Compliance with International Standards.

control. Lastly, it was an additional push that Nick Clegg and the Liberal Democrats became a part of the coalition Government after May 2010 election. As mentioned before, Nick Clegg's promise to change and commitment to this change was also another part that played a significant role.

On a general note, official state agencies' reports quoted some international law references as they mentioned international human rights standards in their reports. However, the rest of aforementioned influential factors carried a more domestic character, hence there was lack of reference to international pressure. On the other hand, domestic criticism by official state agencies and civil society dominated the discussion in relation to detention of minors. The process in the UK referred to domestic rather than international criticism. International law has been used as a further tool instead of a fundamental argument. For this reason, it can be described as a moral journey rather than a legal one. Common sense towards immigration detention of children has changed over time while sense of crisis management in relation to high numbers of asylum has disappeared due to decline in asylum numbers. The long-established policy and law on immigration detention of minors have shifted through moral values and pragmatic needs at domestic level rather than reference to international law.

CONCLUSIONS

This thesis investigates the factors that led Turkey and the UK to comply with international human rights standards on immigration detention of minors. It examines international and domestic criticisms and the governments' interaction with international and domestic groups in order to explain factors that influenced this process towards compliance. Using the process tracing method to find out about these dynamics in two selected case studies, this research suggests that these two very different countries, the UK and Turkey, adopted the same course of action albeit prompted by different considerations. The case selection of Turkey and the UK was based on the most different case study principle. While the UK and Turkey had both previously detained children for immigration purposes and had recently changed their policy and legislation on this topic, their history and culture in relation to human rights are different. The research aimed to analyse why these two very different countries acted in a similar way in complying with international human rights standards in relation to immigration detention of children.

There are many distinct human rights compliance theories to explain why states comply with international law standards. Ryan Goodman and Derek Jinks' human rights compliance theory was the selected theory for this thesis to apply to these two case studies. Goodman and Jinks puts a great emphasis on international law and how international law influences states to promote human rights. Although their theory focuses on state's interaction with various actors such as international organisations and non-governmental organisations, the theory attaches great weight to this interaction's reference to international law standards. Hence, this theory can explain the change if there is a substantial interaction between state and the relevant actor if this actor uses international law arguments to convince the state to comply. This theory claims three distinct socialisation mechanisms that can have an impact on state behaviour: material inducement, persuasion and acculturation. The material inducement approach relies on material sanctions and rewards in its socialisation mechanism where states are forced to make cost-benefit calculations while making decisions of compliance or non-compliance. Persuasion, on the other hand, occurs through social learning where states are convinced of the truth or the validity of the norm that they need to comply with. A successful persuasion mechanism should be able to achieve a full internalisation of this norm by a state. Lastly, acculturation,

based on social psychological studies, puts a significant level of emphasis on the relationship to a reference group. States adopt the behavioural norms of their reference group due to the desire to be associated with this group. This can occur through cognitive and social pressures imposed by the reference group, such as shaming non-compliant state behaviour or providing benefits of conformity for a compliant state. The acculturated state shows public conformity rather than private acceptance of international human rights standards. By choosing this theory to examine its effectiveness to explain the change in these two countries, the research aimed to bring a deeper understanding of what triggered the decision to comply with international human rights standards regarding immigration detention of children.

There are certain standards for immigration detention in general provided by the European Convention on Human Rights and the International Convention on Civil and Political Rights. These conventions set the basis for immigration detention while preventing arbitrary detention. Bodies established under these Conventions' mandates, such as the European Court of Human Rights (ECtHR) or Human Rights Committee, interpreted immigration detention in their judgments and decisions on a case-by-case basis. However, there are more specific standards set for detention of minors for immigration purposes. The main element of these standards emerges from the Convention on the Rights of the Child and the judgments of the ECtHR. Although this Convention does not ban detention of minors, it points out three important principles in relation to detention of minors. The first principle is that the best interests of the child principle should be applied by decision makers in policies and legislation regarding children. The second one, particularly on detention practice, is that detention should be used only as a measure of last resort. The last one is that detention shall be only used for the shortest appropriate period of time. In addition to this, there are several General Comments published by the Committee under this Convention's mandate. These General Comments provided standards that should be met at the detention centres such as access to education, recreational and play facilities. In addition to these, the judgments of the ECtHR pointed out the need for detention centres that are suitable for children's needs.

This research found that these standards do not amount to a clear-cut ban on detention of minors. These conventions do not rule out deprivation of liberty in relation to immigration detention. They explicitly allow detention in the context of immigration proceedings. They only establish certain minimum standards for this

practice. Hence, detention of minors would be allowed if the policy or legislation on this practice follows international standards. Apart from that, the aforementioned principles do not carry explicit language in terms of limiting the detention of minors. The wording of these principles has a permissive tone. For instance, the wording regarding the shortest appropriate period of time does not set a clear time limit and is open to interpretation by decision-makers. This vagueness and subjective element in these principles regarding detention of minors allowed the authorities to claim their compliance with international human rights standards despite problematic practices. This also made legal arguments against immigration detention of minors weak and easily refutable.

Keeping in mind these principles, in order to answer the central research question of finding the underlying factors behind the move towards compliance, this thesis captured and analysed different domestic or international dynamics that had the potential to be influential on the UK's and Turkey's history of compliance. This included a detailed examination of the UK's and Turkey's historical developments, law and policy changes. This study also made an original distinction between different types of influence that can be achieved over decision-makers. It has identified potential influences and analysed them under sections called judicial influence, influence of official state and supranational agencies, and civil society influence. Judicial influence refers to relevant case law derived from national and international courts in relation to immigration detention. Influence of official state and supranational agencies include domestic and international monitoring bodies' reaction. This categorisation of influences, which was not provided by the theory, systematised different types of influences and allowed a clearer analysis.

I. TURKEY

Turkey, one of the case studies in this research, had three important phases in terms of its immigration law. The first period before 1994 was a period with only limited progress on general immigration management. For the purposes of this research, the most important development in Turkey's immigration law during this period was the 1950 Law on Foreigners' Residency and Movement. This law brought the establishment of guesthouses for asylum seekers in Turkey. This establishment was the start of the practice of holding asylum seekers in a confined facility in Turkey. Following this legislation, in 1983 this period also saw a directive on the guesthouses

in relation to the facilities provided in these places. These developments were the seeds of the detention practice in Turkey's immigration law.

The second period under focus in this research was the period between 1994 and 2001. One major development during this time was the 1994 Asylum Regulation. It was significant in the sense that it brought a certain level of structure to Turkey's immigration management system. This regulation relocated decision-making powers in relation to status determination from the United Nations High Commissioner for Refugees to the Ministry of Interior Affairs. This relocation of power showed the Government's controlling approach towards asylum and immigration during this period.

Although the introduction of new legislation and policies into this area was very much needed and significant during these two periods, it was clear that there was a lack of criticism from domestic or international groups concerning immigration detention. There were not any recorded monitoring reports that referred to detention of minors or immigration detention. Since Goodman and Jinks' theory relies on a presence of interaction among states and other influential groups for socialisation mechanisms to occur, there was not any basis to apply the theory throughout these two periods. This lack of interaction on this topic, however, had an impact on the progress made in immigration management system in Turkey. For instance, the policies and legislation that were passed during this period did not carry any human rights-oriented approach. This can be mostly related to the lack of inputs from national or international actors. Most progress in the immigration law and policies were derived from the basic need to control the influx of immigration and asylum applications. Without any criticism from different actors towards the Government's decisions, this need to control immigration led government officials to act on this issue with an authoritarian approach without any human rights concerns or sensitivities. This also demonstrated the perspective of the decision-makers towards asylum and immigration in general. They preferred to choose a stricter way to deal with these issues in the absence of guidance.

On the other hand, the most recent period in Turkey's immigration law, which started after 2001, has seen several circulars in order to bring a more accountable structure in relation to return centres and unaccompanied minors. These circulars were the first steps towards new and extensive immigration legislation that was

accepted in Parliament on 4 April 2013.[882] This law is remarkable in terms of the reform it brought to Turkey's immigration management system. It introduced clear provisions about administrative detention, set a time limit for detention and adopted the best interests of the child principle. This thorough immigration law was a meaningful step towards Turkey's compliance with international human rights standards at the legislative level as it included international protection elements that are required for detention of minors such as the best interests of the child principle.

This important period after 2001 was the phase in which several different actors interacted with Turkey, unlike during the first two periods. To start with, Turkey's candidacy application to the European Union (EU) put a spotlight on Turkey's immigration management system at the international level. Hence, the most important actor during this period was certainly the EU. The close-knit relationship between Turkey and the EU resulted in several documents, reports and action plans to improve Turkey's immigration management system. Turkey's national plan and programmes were highly influenced by the EU's concerns, such as border controls and the establishment of reception and removal centres. Turkey's immigration management system has changed immensely and adopted several principles from the EU's vision for Turkey since its application to join the EU.

The EU frequently revised Turkey's Accession Partnership document as part of the membership process. These documents set up the targets that Turkey needed to reach in relation to its immigration management. According to these targets, Turkey wrote national programmes that included timetables for legislative alignment with EU legislation. This was an important indication of the EU's direct influence on Turkey's immigration law. The most concrete step taken by the Turkish Government was setting up a Development and Implementation Office on Asylum and Migration Legislation and Administrative Capacity (Asylum and Migration Bureau) in 2008. This was a promise given to the EU to establish a common unit for asylum and migration. This office, under the Ministry of the Interior, was the first institutional step on the way to an extensive immigration law. This Bureau was appointed to carry out studies, projects and analysis on legislative and administrative structure in line with the National Action Plan on asylum and migration and national programmes.

[882] Yabancılar ve Uluslararası Koruma Kanunu [Law on Foreigners and International Protection] 2013, No: 6458.

There were also twinning projects where the EU officials trained Turkish officials on topics such as asylum and human trafficking for capacity building. In addition to this, the EU funded most of the projects regarding immigration and asylum in Turkey. For instance, while the establishment of expulsion centres have twenty million euros budget, three quarters of the budget was from the EU funding.[883] Hence, the character of the relationship between these two actors was not only at the mentoring level but also financial level. This demonstrated the EU's clear desire to ensure that changes were made to Turkey's immigration management system in the way that the EU preferred.

In addition to these Accession Partnership documents and national programmes, the EU progress reports were another main means of interaction between the EU and Turkey. The EU progress reports, dating back to 1998, showed appreciation when there was progress in Turkey's immigration management system. On the other hand, the reports were critical in the times in which no progress was made regarding the immigration system. On the specific issue of immigration detention, the EU's approach in these reports was critical of the conditions of the removal centres, yet appreciative for the establishment of reception and removal centres.

This research suggested that the progress made in Turkey's immigration legislation after 2001 has taken its inspiration from the EU. For instance, the Preamble of the new immigration legislation made strong references to the EU's impact within this law-making process. Debates at several different parliamentary Commissions[884] such as the Human Rights Commission and the parliamentary debates also mentioned the desire for harmonisation with the EU on this issue. This desire was also mentioned in the interviews conducted for this research.

Whilst reading these dynamics through the lens of the selected theory, it was clear that material inducement, persuasion and acculturation, the three socialisation mechanisms recognised by Goodman and Jinks, all played a significant role in the interaction between the EU and Turkey under the influence of supranational agencies. Firstly, the socialisation process with the EU started with Turkey's interests in the potential rewards that the EU membership could bring, such as free trade and free movement. The Government was on a mission to comply with the EU's demands for

[883] Turkish National Programme for the Adoption of Acquis (2003) 667.
[884] See footnote 346.

an immigration management system in return for better trading opportunities. This brought rapid progress in terms of changes in immigration management system. On the other hand, the EU's clear message to Turkey was to have better border controls and more capacity at removal centres to stop flows of migrants. While Turkey used this candidacy process to obtain material rewards, the EU used the potential EU membership card with Turkey in order to secure better border controls.

Apart from the material rewards of EU membership, an ideology of Westernism played an important role in Turkey's decisions towards compliance. This ideology puts a great emphasis on how the West's positive perspective towards Turkey could give Turkey a more dominant role in the international realm. This dominant role does not only mean economically but also politically. Along with this belief, Turkey's reference group can be seen as the EU under the acculturation approach. This brought the desire to be associated with the EU in order to have the benefits of conformity with a reference group, such as being a dominant actor in the international arena. Although Turkey's motivation was material in the first place, this was followed by the acculturation approach. The ideology of Westernism certainly strengthened this interaction between the EU and Turkey. In addition to this, combined with the constant exposure to human rights discourse, the involved actors started to show public conformity with the EU's values concerning immigration. It is more likely that acculturation occurred as a by-product of the material inducement approach in Turkey. Although material inducement and acculturation are the two main socialisation mechanisms here, persuasion also played a limited role. The findings showed that the group that drafted new legislation worked on the EU legislation continuously. This could achieve the social learning that is recognised under the persuasion approach.

In addition to the EU's involvement as an international actor after 2001, there were some other international actors that had some potential political influence on the Turkish Government. The Commissioner for Human Rights, the Committee on the Rights of the Child, European Commission on Racism and Intolerance and Parliamentary Assembly submitted their recommendations and criticisms in relation to Turkey's immigration management system. These agencies all criticised the security-oriented approach of the Turkish authorities in its immigration and asylum

management and the conditions of the immigration removal centres. However, it was very difficult to find out what kind of impact these institutions had on the Government's law-making process as they were not mentioned in the parliamentary debates, the parliamentary Commission debates or the interviews. This can be related to the lack of leverage that these institutions have over Turkey. While the EU promised a membership to a transnational network with several economic and political benefits, these institutions were not in a position to pledge any benefits.

Another point of influence during this last period within Turkey's immigration law was the judiciary at the international level as there has been a lack of relevant domestic case law regarding immigration detention to this date. Since Turkey ratified the European Convention of Human Rights and accepted the optional clause to recognise the ECtHR and accept individual complaints procedures, this ECtHR's judgments were the main elements of this influence. Starting from 2009, Turkey received several judgments stating that Turkey's immigration law did not provide basic protections to immigration detainees and asylum seekers as it lacked clear legal provisions establishing the procedure for ordering and extending detention for deportation proceedings. Hence, within a very short amount of time, Turkey faced more than 12 cases that ended in the applicants' favour, requiring that the Government pay monetary compensation to the victims. This series of judgments were seen as damaging to Turkey's reputation by the Turkish Government. The ECtHR's influence far exceeded its potential legal impact on a state. It also created reputational damage for Turkey due to its important position in the European context and the level of importance given to this body by Turkey. The interviewees for this research all mentioned how government officials sought to prevent these judgments from the ECtHR. The members of the law-drafting group mentioned that they visited the judges in Strasbourg in order to do what was required in new legislation to prevent further judgments. In the parliamentary Commission and parliamentary debates, these judgments were a clear source of frustration and there was an urgent need to deal with the issues pointed out by the ECtHR in order to stop the embarrassment rather than simply to prevent the monetary consequences of these judgments. This was echoed in the interviews conducted for this research, and in parliamentary and Commission debates.

Hence, it can be stated that the second significant socialisation process occurred between Turkey and the ECtHR. Since the judgments of the ECtHR

damaged Turkey's reputation in the international realm, it was obvious that the Government decided to draft the new law to prevent further reputational damage. Although there was a material consequence for Turkey in these judgments, such as monetary compensation to be paid to victims, this was never the concern in the eyes of the Government. This, again, can be related to the strong ideology of Westernism in Turkey. To be seen as a non-compliant actor by the West can have significant costs in terms of Turkey's place in international realm, according to this ideology. For that reason, it is hard to say this socialisation between Turkey and the ECtHR was a type of material inducement despite the fact that Turkey had to pay a significant amount in compensation to victims. Instead, the findings suggested that the series of judgments created a strong feeling of embarrassment in Turkey. This is a clear indication of the acculturation approach where a state prefers to conform to the reference group's position to that particular issue in order to lessen the degree of psychological costs of non-conformity. Seeing the ECtHR as one of the reference groups in the European context led Turkey to act on new legislation that could prevent further criticism from the ECtHR. Finally, persuasion was also present to a limited extent where the law-drafting group had meetings with the judges in Strasbourg in order to ensure what was needed to fill the gap in the legislation. This can be seen as social learning under the persuasion approach.

Finally, due to the low numbers of NGOs working on this issue in Turkey, the Government was not under a great pressure from civil society unlike in the UK. In this period, there were only a few civil society reports on the guesthouses of Turkey and unaccompanied minors. Although civil society was included during the discussion of the Bill at Parliamentary Commission meetings, the interviewees concluded that there was no reference to civil society reports during the law-drafting process. Since Goodman and Jinks' theory relies on socialisation occurring between states and other influential groups, this lack of socialisation on this front made it impossible for the application of the theory in this instance.

Hence, the theory had high explanatory power in relation to this case study as Turkey's case study provided a good fit with the selected theory. While it is evident that acculturation was present in the relationship between the ECtHR and the EU, material inducement was the initiating factor for the EU's socialisation with Turkey. Furthermore, persuasion was present at a limited level through social learning as

Turkey was in an information exchange with the EU and the ECtHR. Although this thesis focuses on detention of children for immigration purposes, in Turkey's case study there was not much reference to children. Since previous Turkish immigration legislation lacked international protection elements, much needed to be done during the law-making process. Hence, in terms of detention of minors, it is recognisable so far that detention of children for immigration purposes was a tiny detail in the bigger picture of the immigration management system. For that reason, there was no particular focus on children by the institutions involved in this process.

Another observation of this research was that there was no resistance from the opposition parties regarding this legislation in the Parliamentary Commission and parliamentary debates. The lack of informed public opinion on issues such as immigration statistics, asylum applications or detention of children in Turkey before the Bill was passed helped the law makers to adopt international protection elements easily and without any concerns regarding loss of electoral support. However, the recently changing political landscape and the substantial numbers of refugees in Turkey has resulted in increased public awareness towards immigration issues. The polls showed that Turkish citizens are increasingly alarmed about competition in the employment market and rising crime rates in the regions where Syrian refugees live.[885] If the Government had brought this Bill before Parliament only two years later than it was passed, the harmony in the Parliamentary Commission and Parliamentary debates might have been absent due to fear of loss of electoral support.

II. THE UK

Compared to Turkey, the UK has had long-standing legislation on immigration detention since the 1970s. While domestic law on power to detain did not differ much in time, the numbers of detention centres and detained people have gradually risen. For instance, the new policy of fast-track detention in 2000 brought a practice of detaining asylum seekers until a decision on their asylum application is made. This showed the shift in policy towards greater use of immigration detention. However, in 2010, the Government announced its decision to end detention of minors for immigration purposes. This announcement was first followed by policy change and

[885] Aykan Erdemir, 'The Syrian Refugee Crisis: Can Turkey be an Effective Partner?' (*Defend Democracy,* 16 February 2016) <http://www.defenddemocracy.org/media-hit/dr-aykan-erdemir-the-syrian-refugee-crisis-can-turkey-be-an-effective-partner/> accessed 8 September 2017.

later by legislative change. The Immigration Act 2014 brought in a restriction which only permitted the detention of families with children at pre-departure accommodation centres. It also limited the duration of detention of unaccompanied minors to a 24-hour period only. Here, with this legislation, the UK followed the principles of detention for the shortest appropriate period of time as a last resort at suitable detention centres.

Up until the policy change in 2010, there was not any change in domestic legislation regarding immigration detention and the detention statistics were rising simultaneously. Hence, the UK faced criticisms and recommendations in relation to its detention practice from supranational agencies such as the Committee on Rights of the Child and the Human Rights Committee. The criticism from these bodies pointed out the large-scale use of power to detain children for immigration law enforcement. They also criticised the lengthy period of detention of minors and recommended the authorities stop detaining children. However, these criticisms were not given great weight as they were based on international law standards. As explained before, international human rights standards only provide principles to follow during detention of children, such as the shortest appropriate period of time or detention as a last resort. Hence, government officials easily challenged the criticism from these agencies by stating that detention of minors for immigration purposes is essentially in line with international law as long as detention policy carries certain protections that international law provides, such as judicial review and that the authorities follow these protections in practice. As an answer to these criticisms, government officials defended the policy of immigration detention in parliamentary debates for the sake of an efficient immigration control. Detention of children was depicted as a 'regrettable but necessary' measure to ensure effective immigration control and handle abuses in the asylum system. Due to the grey area in international human rights law regarding detention of children which was mentioned before, government officials were in a position to defend this practice if it was necessary.

When this socialisation between these international agencies and the Government was analysed with the help of Goodman and Jinks' theory, it was clear that this criticism was not strong enough to create change in immigration policy or legislation. The parliamentary debates demonstrated that there was not much reference to supranational agencies' recommendations and critiques. Furthermore, there was a negative approach to some extent towards supranational agencies in

parliamentary debates. Their critique was almost avoided and not taken into account while discussing immigration detention in Parliament. Here, application of the theory to the interaction between these agencies and the Government could not draw any parallels between the theory and the case study. The compliance theory mainly focuses on how change can occur and analyses the socialisation between actors in the case of a change in state behaviour. While there was an attempt to change the UK's way of using immigration detention, there was a lack of reaction from the Government as the other side of the interaction. Socialisation attempts by these agencies failed to create an impact.

Supranational agencies were not the only ones that criticised this policy and practice. Additionally, official state agencies such as the Chief Inspector of Prisons and Joint Committee on Human Rights also published reports that denounced detention of children for immigration purposes. These agencies' reports were part of the parliamentary debates in the discussions regarding detention policy and the bodies were mostly referred to as respectable institutions. Their outputs were mentioned not only by opposition party members but also government officials. This demonstrated that there was a desire to associate with these bodies' opinions by Members of Parliament. There was also a clear intention to engage with these bodies, in contrast to the reaction towards the criticisms of supranational agencies.

When Goodman and Jinks' theory was applied to this socialisation between official state agencies and the Government, findings can suggest that official state agencies might be an important reference group to the Government. As the acculturation approach suggests that the reference group can use shaming and shunning to influence a state, these reports can be read as meaningful tools to make a change in the decision-maker's perspective towards this policy. However, it is daunting to claim that this socialisation is purely present due to the acculturation approach as it was not as strong as Turkey's socialisation with the EU and the ECtHR. The reason for these internal bodies' capacity to make a change can also be linked to the close link between the members of these agencies and Members of Parliament. For instance, the members of the Joint Committee on Human Rights are Members of Parliament at the same time. On the other hand, the Chief Inspector of Prisons is appointed by the Justice Secretary. Although these bodies are independent bodies, they have undeniable links with Parliament. Nevertheless, these national bodies managed to receive a reaction from Members of Parliament in the discussions

about detention of minors. Furthermore, it is widely accepted that influential national institutions can play a fundamental role in change of policies towards compliance in stable democracies. Hence, this can tell us more about the success of official state agencies' involvement.

In addition to this influence from monitoring bodies, it is significant to look at the case law to see whether there was any judicial influence behind compliance decisions. Despite several judgments of the ECtHR criticising Belgium's immigration detention policy of minors, there were not any Court decisions against the UK's detention policy for minors. Domestic courts and the ECtHR followed a non-interventionist approach in the decisions regarding the UK's detention policy. It was stated that the policy and legislation carried the protections that international human rights standards set, such as using detention as a last resort. For that reason, there was no meaningful push from the judgments to push the decision-makers to change the detention policy. This non-interventionist approach reflects the context where there was a lack of clear-cut prohibition coming from international human rights conventions. Hence, as long as these protection elements, such as ban on arbitrary detention and using detention as a last resort, were provided by the policy and legislation, the courts followed a permissive attitude towards UK's detention policy in terms of lawfulness. When the compliance theory is applied to the judicial influence component, there was no meaningful judicial criticism in relation to this policy. This lack of criticism made it difficult to apply the theory as there was not any message which called for a change in policy from case law. Hence, this influence did not act as a factor within the theory.

Last but not least, the UK was under scrutiny by civil society and non-governmental organisations. There was wide criticism by organisations such as Bail for Immigration Detainees, Save the Children and the Children's Society. These organisations submitted reports and case studies in order to show that the justifications of the Government for using this measure were wrong. These reports demonstrated that the standards provided by international law such as detention for the shortest appropriate time as a last resort at detention centres that are suitable for children were not followed in practice although they were included in the detention policy. They also initiated public campaigns to raise awareness regarding detention of children. During their public campaigns, their main argument was whether detaining children and families was morally right. For that reason, their strategy differed from

the international and official state agencies in the way that they used a moral and ethical argument instead of a legal one depending on international human rights standards. This was significantly more powerful in mobilising and raising awareness amongst the public. Furthermore, it became harder for government officials to defend and justify this practice when being asked the simple ethical question of whether detaining children is right or wrong. In contrast, when criticism was levelled on the basis of international law, it was much easier for the Government to use international law as a tool to justify this policy due to the permissive character of international human rights standards. Furthermore, civil society campaigners' close work with the Liberal Democrats as a party and its leader, Nick Clegg, starting from prior to the 2010 election, helped with the success of these campaigns as the Conservative Party formed a coalition government with the Liberal Democrats after the 2010 election. Due to being part of the Government, Nick Clegg's commitment to end detention of minors resulted in quick actions towards changing the UK's policy.

Applying the compliance theory to this interaction between civil society and the Government demonstrated that civil society influence did not produce any parallel elements with Goodman and Jinks' theory. While the selected compliance theory relies heavily on international law arguments, civil society campaigns prioritised the ethical argument more than the legal argument. Although it is challenging to find any parallel themes with this theory, it is still significant to understand the impact of civil society in depth as the change in policy happened following these campaigns. Sikkink and Keck's analysis of how civil society can force policy change was adopted in this thesis to achieve this further understanding. This analysis suggests that civil society uses different types of politics such as leverage or information politics to react non-compliance in states. Here, civil society in this case study employed information, leverage and accountability politics to push decision-makers towards change.

The reports produced credible information on how the detention of families was used in practice, and in so doing they achieved moral leverage that can be seen as leverage politics. Leverage politics also played a role when civil society campaigners called for a meeting three days before the 2010 election and hosted a debate involving the leaders of the major political parties. At this meeting, civil society campaigners asked these leaders whether they would commit to end child detention and received a positive answer. Following the election result, this commitment was used as part of the accountability politics in which these politicians were held accountable for their

commitment. Last but not least, by producing credible information that contradicted the Government's claim of using detention of minors within the international standards, civil society used accountability politics to hold government officials accountable for their previous statements. The success of civil society here can also be analysed by the recognised fact that stable democracies with a strong domestic civil society are more likely to comply with international human rights law. It is clear that civil society played a fundamental role towards the change in the UK and this was achieved not through the socialisation mechanisms suggested by Goodman and Jinks. Hence, it was only be explained by alternative explanations.

On a general note, applying the selected compliance theory to the UK's case study was challenging due to lack of parallel themes between the case study and the theory's implications. Goodman and Jinks' theory heavily relies on international human rights law and the role of the institutions to use international law to influence non-compliant states. However, the UK's case showed a distinct path to influence the Government separate from employing an international law argument. Since international law did not provide clear standards such as a set time limit regarding detention of minors, the criticism on the UK's detention policy was weak and easily refuted. Hence, using an ethical argument created a platform to discuss this policy in order to change it. Thereby, these findings can open up a new route to understand alternative ways of instigating change when international law only provides permissive and subjective standards. Criticism depending on international law is not necessarily the only way to push a state to compliance.

Furthermore, the theory's particular focus on a necessary socialisation mechanism led it to overlook the possibility of any circumstantial factors. Non-inclusion of circumstantial factors in the theory caused a further mismatch between the theory and the UK's case study. While it contributed to the understanding of the phenomenon, it failed to capture the whole reality. This case study has involved some circumstantial factors that influenced the decision to comply with international human rights standards. In the beginning, the need for a wider detention policy was a result of increasing numbers of asylum applications around the 1990s. This created a sense of crisis. However, during the following decade, there was a dramatic decrease in the numbers of asylum applications as mentioned in Chapter 4. This dramatic fall made detention policy not so necessary any longer as asylum applications were dealt in a timely manner. This circumstantial factor eased the sense of crisis in the eyes of the

Government. It was a very important factor behind the compliance decision which was not captured by the selected theory as the sole focus of the theory is on interaction among groups, institutions and states. In general, the long-established policy and law on immigration detention of children has shown change due to moral values and pragmatic needs at domestic level rather than references to international law for the UK's case study.

III. COMPARATIVE PERSPECTIVES

The *most-different* type of case selection for this study was based on these two very different countries having common features, such as practicing detention of minors and making a decision towards compliance despite being at different sides of the human rights spectrum. While Turkey is a relatively new democracy with a developing economy and an outsider to the EU club, the UK had a long-established democracy with a robust economy and the EU membership. The priorities towards human rights in their agenda can be described as being in different places. Nevertheless, they both practiced detention of children for immigration purposes for a long time and recently changed their legislation in a way that is compliant with international human rights standards on this issue. During this case selection, this study aimed to examine the underlying dynamics that led the compliance for these two different countries in order to reveal whether the reasoning for this move was also different or similar.

To conclude, there are subtle differences between these two case studies although they produced the same result in the end. The compliance by these two Governments was achieved for different reasons and through different decision-making processes. Turkey's immigration management system lacked many basic elements such as legal provisions regarding deportation proceedings in the beginning. On the other hand, the UK has always had a very established immigration management system. For this reason, Turkey was in a position to draft new legislation from scratch. There were several gaps in the immigration management system in Turkey during the first two periods. Hence, the drafting of new legislation was open to guidance and influence from external sources. The UK, however, had had an immigration detention policy since the 1970s. The detention policy and legislation adopted human rights standards such as bail hearings. The legal framework was very structured. Hence, while Turkey did not need to change the pre-existing legislation as

there was none, the UK was asked to change the policy and legislation that had been in place since the 1970s. It was much easier for Turkey to adopt a thorough immigration management system and be inspired by international best practice in immigration management systems. For the UK, it was more difficult in the sense that they needed to limit the existing power of immigration authorities, such as setting a time limit for detention of children, in order to ensure the authorities were complying with international human rights standards.

Furthermore, this difference between already having a structured immigration management system and starting from scratch demonstrated itself in the process. While Turkey was in a position to be criticised by the EU and the ECtHR in relation to this missing framework, the UK was not equally criticised by international agencies as the legislative framework provided certain rights such as bail hearings. The criticism in relation to the UK was not about the spirit of the policy but mostly about the authorities' failure to follow the policy adequately.

These two case studies also experienced different types of socialisation in the terms of the theory. In Turkey's case, it can be seen that material inducement played an important role at the beginning due to a promise to be a part of the EU. The Government took several steps towards having thorough immigration management system in line with the EU membership process. Together with this, the constant flow of case law from the ECtHR pushed the Government to act on the lack of immigration legislation that covers particular human rights and international protection elements. Even though the judgments of the ECtHR resulted in monetary compensation that Turkey as a state had to pay to the victims, the reputational damage before the ECtHR and Europe as a wider community was referred to more often in parliamentary and Commission debates, when compared with monetary compensation. The importance of the EU and the ECtHR to Turkey as a reference group brought the elements of the acculturation approach into this case study. Furthermore, persuasion was also present at a certain level whilst Turkey was in an information exchange with the EU and the ECtHR. It can be seen that the socialisation which created an impact on compliance decision was very internationally oriented. This can be related back to Turkey's position as a new democracy and a relative newcomer in Europe.

On the other hand, the UK's case showed limited, if any, socialisation at the international level. Although there have been a long period of receiving criticisms from supranational agencies regarding detention of children, subsequent governments

followed the same pattern such that the criticism of supranational agencies were not taken into consideration. On the contrary, the ECtHR's approach to the UK's detention policy was almost permissive as the policy covered the required protections. The UK Governments were able to use the ECtHR's approach to justify this policy. Hence, international dynamics were either not taken into account or used for protection of the policy. On the contrary, socialisation at the domestic level was more dominant. Official state agencies and civil society's involvement and criticism created the necessary pressure on the Government to change its child detention policy and legislation. The parliamentary debate paid a significant level of attention to these reports and campaigns. Intensive socialisation at the domestic level compared to the socialisation at international level in Turkey can be explained by the UK being an established democracy and having influential formal and informal national institutions.

While looking into to what extent the involved groups or agencies made an impact on decision-makers, the parliamentary discussions were key to achieve this aim. In the UK's case, parliamentary attention towards immigration detention of children was present. Hence, it was clear whether or not the involved actors were referred to within this parliamentary discussion about detention of minors. On the contrary, the parliamentary debate on immigration was lacking in Turkey's case. The parliamentary discussion only briefly referred to this new law-making process. It was difficult to see which actors played a more substantial role through parliamentary discussions. However, the parliamentary Commission debates, where the draft of legislation was discussed, and interviews with the selected officials from the law-drafting working group supported the analysis of the ECtHR and the EU as significantly influential actors, whilst bearing in mind the level of subjectivity of interviews as evidence. Also, the relationship between the ECtHR and Turkey through case law and EU and Turkey through the membership process was strong enough to see the elements of influence from these actors.

The two very different cases chosen for this study showed very different paths to compliance in parallel with their differences as states. While material inducement followed by acculturation played an important role in Turkey's case, the UK's case showed parallel elements with the theory only regarding socialisation with official state agencies. It was also not a direct impact in the UK's case and the process involved circumstantial dynamics such as the drop in asylum numbers and a change

of perception towards asylum. Turkey's position, as mentioned before, as an outsider and being relatively new democracy with a developing economy, provided a platform for material inducement to play a deeper role followed by acculturation. On the other hand, the UK as a long-established member of the European environment with a long history of democracy paid more attention to domestic criticism. This gave an opportunity to civil society organisations and official state agencies to push the state towards compliance. However, the difference between these two case studies was evident in terms of being open to influence and taking international criticism into account. While Turkey was in a position to accept criticism and comply with this feedback in return for the reward of EU membership and improved reputation in relation to immigration law, the UK was not as easily influenced by international groups. Rather, national actors played a more influential and fundamental role in the UK's case. This showed that the UK and Turkey had different attitudes towards supranational agencies. Furthermore, Goodman and Jinks' theory is predicated on the assumption that international law is a prominent behaviour modifier. The theory suggests that actors refer and employ international law in their arguments to encourage states to comply. In Turkey's case, actors that used international law in their arguments managed to create an impact towards compliance. On the other hand, the UK's case demonstrated that actors that used moral argument succeeded in their efforts to promote compliance unlike actors that used international law in their arguments. Hence, while the theory was effective to explain the change in Turkey, it failed to prove a good fit for the UK's case.

Revealing the factors that led to the decision of compliance in these two countries is very important in the sense that it provides an insight on how to push the Governments to make a compliance decision. This demonstrates that there are different sensitivities in these two chosen countries. To sum up the general findings, this research showed that using an international law-based argument to influence decision-maker's perceptions towards one particular policy might not work if a state is not open to socialisation with that particular actor. Furthermore, compliance decisions might not be only taken for the sake of compliance, but for different rewards or expectations. Nonetheless, it is still paramount to acknowledge what type of factors can push these states to show compliance. If relevant groups such as civil society or official state agencies of a particular country know how they can push the

decision-makers to change their policies and legislation in relation to different topics, change can happen on a larger scale within a wide range of human rights issues.

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Interviews

Interview with Aydoğan Asar, Director, The Society of International Migration Integration and Border Management Studies (Ankara, Turkey, 28 December 2015)
Interview with Julian Huppert, Politician, Liberal Democrat (Cambridge, the UK, 26 October 2015)
Interview with Lord Ramsbotham GCB CBE, House of Lords (London, the UK, 12 April 2016)
Interview with Meral Açıkgöz, Project Coordinator, International Organisation for Migration (Istanbul, Turkey, 27 December 2015)
Interview with the anonymous interviewee, a member of the working group that drafted the 2013 Law on Foreigners and International Protection in Turkey (Skype, 2 February 2016)
Interview with Tony Smith, former Director General, the UK Border Force (Skype, 9 May 2016)
Interview with Zrinka Bralo, Chief Executive, Migrants Organise (London, the UK, 6 February 2015)

Appendix 1. Interview Questions

1. Could we please talk about your work on ending detention of minors for immigration purposes between 2010 and 2015?
2. What types of arguments were raised during these discussions involving child detention for immigration law enforcement? Why did they think that they need to change this law?
   Did the UK's international human rights treaty obligations played any role?
   To what extent was public opinion taken into account?
   Was there any emphasis on treaty bodies' country reports and UN Human Rights Committee concluding observations of the UK?
   Any emphasis on NGOs' reports?
3. Have you involved in any active work related to this issue outside Parliament? Ex. Committee or NGO negotiations, Home Office ministers and officials?
4. (If involved in extra parliamentary activities) What types of arguments were raised during these extra-parliamentary discussions involving child detention for immigration law enforcement?
   Shaming?
   Did the UK's international human rights treaty obligations played any role?
   To what extent was public opinion taken into account?
   Was there any emphasis on treaty bodies' country reports and UN Human Rights Committee concluding observations of the UK?
   NGOs' reports?
5. Do you consider that Parliament members were persuaded that detention of minors for immigration purposes is a morally wrong practice after 2010 when the internal guidance of UK Border Agency was passed?
6. Overall, child detention has not been completely banned; there are still exceptional circumstances defined in 2014 Immigration Act to allow this practice. Why was there this type of compromise instead of fully banning this practice?
7. Do you think it is essential to put it into law? Why was this extra step taken in 2014 Immigration Act? Did this bring any costs?
8. Were you disappointed that critics still said children are being detained even after 2010's commitment?

9. Why do you think it was and still is challenging to secure parliamentary support in favour of legislation to prohibit detaining minors without any exceptional circumstances?

Interview Questions (Turkish)

1. Bildiginiz uzere, Turkiye yeni bir yabancilar kanunu gecirerek gocmen cocuklarin gozalti kosullarina dair yeni maddeler getirdi ve uluslararasi insan haklari normlarina uyumluluk sagladi. Bu kanunun gorusmeleri sirasinda siz de Komisyon toplantilarinda yer aldiniz. Ben bu surecin nasil gelistigini ve turkiye'nin neden uyum saglama kararligini gosterdigini arastiriyorum. Sizinde katildiginiz bu komisyon toplantilarinda ne gibi tartismalar oldu? Hangi dinamikler ya da gerekceler one suruldu partiler tarafindan?
2. Turkiye'nin imzalamis oldugu uluslararasi antlasmalardan dogan yukumlulukleri tartismada yer aldi mi? Avrupa birligi'ne uyum sureci mi? Kamuoyunun dusuncesi herhangi bir rol oynadi mi? Ya da Turkiye'nin BM Insan Haklari sonuc gozlemleri? Sivil toplum kuruluslarinin raporlari?
3. Cocuk gozaltisi ve gocmen gozaltisina dair komisyon disi toplantilarda da yer aldiniz mi? Mesela sivil toplum toplantilari? Buralarda ne tarz argumanlar one cikti? Turkiye'nin imzalamis oldugu uluslararasi antlasmalardan dogan yukumlulukleri tartismada yer aldi mi? AB uyum sureci? Kamuoyunun dusuncesi herhangi bir rol oynadi mi? Ya da Turkiye'nin BM Insan Haklari sonuc gozlemleri? Sivil toplum kuruluslarinin raporlari?
4. Turkiye'nin uluslararasi normlara uyum sureci sizce zorunlu mu yoksa istege bagli bir surec miydi?
5. Turkiye'deki gocmenlere dair bakis acisinin cok bilinir konusulur olmasinin sebebini neye bagliyorsunuz?
6. Sizce Turkiye parlamentosu bu kanunu gecirirken bu yukumlulukleri yerine getirebilecegine inaniyor muydu?
7. Avrupa Birligi'nin surecteki rolunu baski mi yoksa tesvik olarak mi tanimlarsiniz?

Appendix 2. Consent Form

CITY UNIVERSITY LONDON

EST 1894

Consent Form

Title of study: **Detention of minors in the United Kingdom and Turkey as an immigration policy: Assessing the Predictive Value of Human Rights Compliance Theory**

Please initial box

1.	I agree to take part in the above City University London research project. I have had the project explained to me, and I have read the participant information sheet, which I may keep for my records. I understand this will involve: • being interviewed by the researcher • allowing the interview to be audiotaped • completing questionnaires asking me about immigration law • making myself available for a further interview should that be required	
2.	This information will be held and processed for the following purpose(s): The researcher's Phd Thesis I understand that I will be given a transcript of data concerning me for my approval before it is included in the write-up of the research. I understand that I have given approval for my name and/or the name of my village/community, and/or the name of my workplace to be used in the final report of the project, and future publications.	
5.	I would like to keep my details anonymous in this research.	
6.	I understand that my participation is voluntary, that I can choose not to participate in part or all of the project, and that I can withdraw at any stage of the project without being penalized or disadvantaged in any way.	
7.	I agree to City University London recording and processing this information about me. I understand that this information will be used only for the purpose(s) set out in this statement and my consent is conditional on the University complying with its duties and obligations under the Data Protection Act 1998.	
8.	My employer has given consent to my participation in this study on these terms.	
9.	I agree to take part in the above study.	

_____ _____ _____

Name of Participant Signature Date

_____ _____ _____

Name of Researcher Signature Date

Appendix 3. Participant Information Sheet

CITY UNIVERSITY LONDON

EST 1894

Participant Information Sheet

Title of study: **Detention of minors in the United Kingdom and Turkey as an immigration policy: Assessing the Predictive Value of Human Rights Compliance Theory**

We would like to invite you to take part in a research study. Before you decide whether you would like to take part it is important that you understand why the research is being done and what it would involve for you. Please take time to read the following information carefully and discuss it with others if you wish. Ask us if there is anything that is not clear or if you would like more information.

What is the purpose of the study?
The study is part of my PhD degree in Law. The research looks for the factors that influenced the historical record on compliance with human rights standards regarding detention of minors for immigration purposes in the United Kingdom (UK) and Turkey. In order to be able to answer this research question, the thesis should capture different historical domestic or international dynamics that had the potential be influential on the UK and Turkey's history of compliance. Furthermore, the research asks whether the historical records on compliance of the UK and Turkey are adequately explicable through Ryan Goodman and Derek Jinks' compliance theory.

Why have I been invited?
You have been invited to participate in this research because of your experience in law making process and information on child detention practices in the United Kingdom.

Do I have to take part?
Participation in the project is voluntary, and you can choose not to participate in part or all of the project. You can withdraw at any stage of the project without being penalised or disadvantaged in any way.

It is up to you to decide whether or not to take part. If you do decide to take part you will be asked to sign a consent form. If you decide to take part you are still free to withdraw at any time and without giving a reason. You could ask for a consent from your institution if needed.

What will happen if I take part?

- *You will participate in an interview.*
- *The research will end by the end of 2017.*
- *You will meet the researcher once or twice.*
- *The meetings will last in around an hour.*
- *It will involve a semi-structured interview.*
- *The research is a part of the researcher's PhD degree in law.*

What do I have to do?
You will answer the questions written in the interview. This will be an exchange of information.

What are the possible benefits of taking part?
Contributing to the current literature.

What will happen when the research study stops?
The data you have provided will be used in the PhD thesis.

Will my taking part in the study be kept confidential?

- Research supervisors and researchers will have access to the data.
- Data could be based on audio recording.
- Personal information, if allowed, could be used in the dissertation.

- The data will be restored in the researcher's files.

What will happen to the results of the research study?
Thesis as a whole or some chapters of thesis could be published in the future. Anonymity, if asked by participants, will be maintained at all times. Participants will get a copy of thesis if they request one after the interview/questionnaire.

What will happen if I don't want to carry on with the study?
The participant is free to withdraw from the study without an explanation or penalty at any time.

What if there is a problem?

If you would like to complain about any aspect of the study, City University London has established a complaints procedure via the Secretary to the University's Senate Research Ethics Committee. To complain about the study, you need to phone 020 7040 3040. You can then ask to speak to the Secretary to Senate Research Ethics Committee and inform them that the name of the project is the detention of undocumented children in the UK and Turkey as an immigration policy: Problems and Alternatives

You could also write to the Secretary at:
Anna Ramberg
Secretary to Senate Research Ethics Committee
Research Office, E214
City University London
Northampton Square
London EC1V 0HB
Email: [redacted]

Who has reviewed the study?
This study has been approved by City University London Research Ethics Committee.

Further information and contact details
The researcher: Pinar Canga
Email: [redacted]

Supervisors:
Prof Daniel Wilsher – [redacted]
Dr Carmen Draghici - [redacted]

Thank you for taking the time to read this information sheet.

Appendix 4. Ethics Approval Letter

CITY UNIVERSITY LONDON

LREC14002 Pina Canga approval letter

The City Law School
City University London
London EC1V 0HB

24th October 2014

Dear Miss Canga,

Reference: LREC14002
Project title: The detention of undocumented children in the UK and Turkey as an immigration policy: Problems and Alternatives

I am writing to confirm that the research proposal detailed above has been granted ethical approval by the City Law School.

Period of approval
Approval is valid for a period of three years from the date of this letter. If data collection runs beyond this period you will need to apply for an extension using the Amendments Form.

Project start date: 1st November 2014
Project end date: 30th June 2017
Date end of project report due: 30th September 2017

Project amendments
You will also need to submit an Amendments Form if you want to make any of the following changes to your research:

(a) Recruit a new category of participants
(b) Change, or add to, the research method employed
(c) Collect additional types of data
(d) Change the researchers involved in the project

Adverse events
You will need to submit an Adverse Events Form, copied to the Secretary of the Senate Research Ethics Committee ([redacted]), in the event of any of the following:

(a) Adverse events
(b) Breaches of confidentiality
(c) Safeguarding issues relating to children and vulnerable adults
(d) Incidents that affect the personal safety of a participant or researcher

Issues (a) and (b) should be reported as soon as possible and no later than 5 days after the event. Issues (c) and (d) should be reported immediately. Where appropriate the researcher should also report adverse events to other relevant institutions such as the police or social services.

Should you have any further queries then please do not hesitate to get in touch.

Yours faithfully,

[redacted]

Peter Aggar
Research Manager
Email: [redacted]

[redacted]

Professor Daniel Wilsher
Ethics Director
Em [redacted]