

COLLECTIVE ASSISTANCE OR COLLECTIVE NEGLIGENCE? THE EU-TURKEY STATEMENT AND THE
EU'S LEGACY OF MIGRATION POLICY EXTERNALIZATION

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ABSTRACT

Samuel Scott Barber: Collective Assistance or Collective Negligence? The EU-Turkey Statement and the EU's Legacy of Migration Policy Externalization
(Under the direction of Eren Tasar)

This thesis analyzes the 2016 EU-Turkey Statement and, in particular, the ways in which externalization manifested as a primary means of coping with the Refugee Crisis. It then positions this response in context of the European Union's historical approach toward migration policy beginning with the Barcelona Process in 1995. Specifically, I analyze the 2016 EU-Turkey Statement, the 1995 Barcelona Declaration, the 2005 Turkey National Action Plan for Adoption of the EU Acquis and subsequent 2006 Progress Report, as well as the Law on Foreigners and International Protection and its by-law the Temporary Protection Resolution. It then considers the extent to which the externalization mechanisms found in the 2016 EU-Turkey Statement were either a singular response to a particular crisis, or a long-practiced mechanism in European Union migration governance.

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TABLE OF CONTENTS

LIST OF ABBREVIATIONS.....	vi
CHAPTER 1: INTRODUCTION.....	1
CHAPTER 2: EXTERNALIZATION AND CRIMINALIZATION THEORY.....	6
CHAPTER 3: EXTERNALIZATION IN THE EU-TURKEY STATEMENT.....	11
The EU-Turkey Statement.....	16
CHAPTER 4: THE BARCELONA PROCESS AND 'WIDER EUROPE POLICY.....	22
From Euro-Mediterranean Partnership to European Neighborhood Policy.....	28
CHAPTER 5: FROM ACCESSION TALKS TO LFIP.....	34
Changing Migration Flows and LFIP.....	37
CHAPTER 6: RETHINKING EXTERNALIZATION.....	43
REFERENCES.....	48

LIST OF ABBREVIATIONS

CEAS	Common European Asylum System
DGMM	Directorate of General of Migration Management
EC	European Council
EMFTZ	Euro-Mediterranean Free Trade Zone
EMP	Euro-Mediterranean Partnership
ENP	European Neighborhood Policy
EUAA	European Union Association Agreement
EU	European Union
IDP	Internally Displaced Person
LFIP	Law on Foreigners and International Protection
NATO	North Atlantic Treaty Organization
TNAP	Turkey National Action Plan
TPR	Temporary Protection Resolution
UN	United Nations
UNHCR	United Nations High Commissioner of Refugees
YPG	Kurdish People's Defense Unit

CHAPTER 1: INTRODUCTION

During a phone call on October 6, 2019, US President Donald Trump informed Turkish President Recep Tayyip Erdoğan that he intended to withdraw US troops stationed in northeastern Syria. At the time this area was held by the Kurdish People’s Defense Units (YPG), an organization long opposed by the Turkish government. Three days later, Erdoğan launched an invasion entitled “Operation Peace Spring” with the stated aim of securing the Syria-Turkey border region and establishing a 32km (20 mile) “safe-zone” where 1 million Syrian refugees were to be resettled.¹ This decision met with extensive criticism from political leaders and civil society groups, many of whom expressed concerns over the humanitarian impacts this operation would have on the 400,000-500,000 Internally Displaced Persons (IDPs) in the region.² Furthermore, many felt that the “safe-zone” proposal served as framework under which Turkey could prosecute refoulement of Syrian asylum seekers.³

What led the Turkish government to pursue such extreme actions? Certainly, there are a multitude of contributing factors, not least the decades-long effort by Ankara to suppress

¹ Colum Lynch and Lara Seligman, “Turkey Pitches Plan to Settle 1 Million Refugees in Northern Syria,” *Foreign Policy*, accessed on March 15, 2020. foreignpolicy.com/2019/12/18/turkey-pitches-plan-settle-1-million-refugees-northern-syria-erdogan-kurds/

² UNHCR, “Internally Displaced People,” United Nations, accessed on January 28, 2020 www.unhcr.org/sy/internally-displaced-people

³ Sinem Adar, “Repatriation to Turkey’s ‘Safe Zone’ in Northeast Syria,” *German Institute for International and Security Affairs* 1, (2020): 1-4.

Kurdish political mobilization. However, that Erdogan used the refugee crisis as the primary means of justifying the invasion points to the enduring salience of this issue both in the context of Turkish domestic politics as well as the region at-large. Though the refugee crisis has lost the attention of mass media outlets, the problem remains. A report published in October 2019 by the United Nations High Commissioner for Refugees (UNHCR), found that Turkey hosted 4 million registered refugees and asylum seekers, 3.6 million of which were Syrian nationals. This makes Turkey world's largest host of refugees and asylum seekers.⁴ However, this is not only a consequence of proximity, but also of a decades-long effort by the EU to externalize its migration policy. The EU's response to the 2016 refugee crisis is the latest iteration of these efforts.

From the start of the Syrian uprising in 2011, Turkey's open-door policy toward those fleeing the civil war and shared border made it easy for many Syrians to take shelter there. Yet the EU was the destination for many as Turkey only offered temporary protections and did not recognize refugee status for non-European refugees. However, the response of EU institutions and member states was incoherent at best. In the European Council (EC) Angela Merkel lobbied for a new European Agenda on Migration that would improve processing and relocation capabilities. Meanwhile, leaders like Viktor Orban instead advocated for rejecting asylum seekers outright. This internal dissonance effectively collapsed the prospect of a collective European response to the crisis. As a result, the EU chose to coordinate with Turkey on reducing migrant flows to Europe in exchange for financial assistance, advancement on visa

⁴ UNHCR, "Refugees and Asylum Seekers in Turkey," United Nations, accessed on March 15, 2020, www.unhcr.org/tr/en/refugees-and-asylum-seekers-in-turkey

liberalization, and a migrant readmission agreement. The agreement, known as the EU-Turkey Statement or colloquially as the EU-Turkey Deal, had the effect of dramatically decreasing migrant border crossings from 10,000 per day (Oct. 2015) to 80 per day (Mar. 2016).⁵

Though the EU-Turkey Statement certainly relieved pressure on the EU to find a long-term solution to the crisis, it left asylum seekers in a precarious position. Under Turkish law, non-European nationals do not qualify for refugee status so Syrian asylum seekers receive a special 'guest' status that guarantees a temporary set of protections and social benefits.⁶ Though assurance of these benefits was helpful, their temporariness left Syrian asylum seekers in an especially vulnerable position. The Turkish state was also not equipped with adequate resources to uniformly provide those promised services on such a massive scale. In addition, as it has become more apparent that Syrians asylum seekers would need to remain in Turkey in the long-term, tensions began to rise between many Turkish citizens and the 3.6 million 'guests.' In the summer of 2019 hashtags like "*Suriyelilerilstemiyoruz*" (We do not want Syrians) were trending on twitter while the Turkish government threatened to relocate any non-registered Syrians found in Istanbul.⁷ In addition, a recent poll from Istanbul's Bilgi University found that 86.2% of respondents felt that Syrians should go home after the war is over, compared to only 38.9% in a similar 2014 poll.⁸ In tandem with public opinion, Erdoğan's policy

⁵ European Commission, "EU-Turkey Statement: Three years on," European Union (2019):1-3.

⁶ Asli Öner, "Vulnerability leading to mobility: Syrians' exodus from Turkey," *Migration Letters* 12 no. 3 (2015): 251-262.

⁷ Sertan Sanderson, "Anti-refugee sentiments in Turkey at all-time high," Infomigrants, 29 July 2019. <https://www.infomigrants.net/en/post/18466/anti-refugee-sentiments-in-turkey-at-all-time-high>

towards asylum seekers has followed a similar trajectory. Erdoğan, someone who once advocated for offering citizenship to all Syrians, now insists that all Syrians must eventually return to Syria.⁹

It is clear that the externalization measures of the EU-Turkey Statement incurred a material cost to asylum seekers, many of whom now remain in a state of perpetual limbo in Turkey. Furthermore, Turkey's usage of the received funds has undergone extensive criticism as it remains unclear the extent to which these funds have directly gone to refugees.¹⁰ The Statement has been controversial to say the least, and such controversy might lead one to believe the agreement to be singular or anomalous in the EU's foreign policy doctrine. This thus begs the question: Is the externalization logic found in the EU-Turkey Statement unique to that agreement or was it embedded within the EU's historical approach to cooperation with key partners on migration governance?

In order to explore this question, this thesis will engage in a qualitative discourse analysis of literature on externalization and criminalization in the context of the EU's migration governance regime and on the history of EU-Turkey cooperation in the migration policy field. In particular, it will investigate the specific ways in which externalization measures were pervasive in the EU-Turkey Statement and consider the specific controversies surrounding the agreement.

⁸ "Dimensions of Polarization in Turkey," İstanbul Bilgi Üniversitesi, 6 February 2018. goc.bilgi.edu.tr/media/uploads/2018/02/06/dimensions-of-polarizationppt_Tz7XeBg.pdf

⁹ Heather Stephenson, "Why is Turkey Pushing Refugees to Return to Syria?" TuftsNow, 9 October 2019. now.tufts.edu/articles/why-turkey-pushing-refugees-return-syria

¹⁰ Ioannis Antypas and Zehra Yildiz, "Turkey Refugee deal: following the money," Euronews., accessed on March 15, 2020. www.euronews.com/2018/03/24/over-1bn-pledged-in-eu-turkey-migrant-deal-still-to-be-paid-

It will then investigate the extent to which externalization has been deployed, or advocated for, throughout EU's foreign policy doctrines, specifically in the case of the 1995 Barcelona Process, the European Neighborhood Policy and in the 2005 accession talks with Turkey. Exploring these discussions will make it possible to determine whether or not there is a genuine through-line in the EU's usage of externalization in its approach to migration policy. The first chapter will layout a theoretical framework within which the EU-Turkey Statement and EU foreign policy regimes can be analyzed. The following chapter will provide an extensive analysis of the EU-Turkey Statement, specifically considering the implications of and reasoning behind the various externalization measures embedded in the agreement. Chapters three and four will then explore the degree to which externalization and criminalization measures were deployed at key moments in the EU's foreign policy regime and specifically in its political relationship with Turkey.

CHAPTER 2: EXTERNALIZATION AND CRIMINALIZATION THEORY

Prior to analyzing the EU-Turkey Statement and preceding components of the EU's externalization strategy, it is first important to discuss both the meaning of externalization as well as its relationship with criminalized migration. In the context of migration policy, externalization refers to the process whereby a state or supranational entity attempts to delegate border control, migration regulation, and asylum processing duties to neighboring or border states. Primary examples of externalizing strategies include imposition of visa requirements on travel, carrier sanctions, extraterritorial border patrolling, safe third country agreements, readmission agreements, and mobility partnerships.¹¹ Externalization measures are often deployed to serve as an effective means of both dealing with existing irregular migration while also discouraging future irregular migration flows.¹² However, these measures have also been widely criticized for disregarding the rights of migrants and shifting the burden of migrant processing rather than sharing it with neighboring countries.¹³ Readmission

¹¹ See Valsamis Mitsilegas, *The Criminalisation of Migration*, (London, UK: Springer, 2015).

See Anna Liguori, *Migration Law and the Externalization of Border Controls: European State Responsibility*, New York, USA: Routledge, 2019.

¹² Ibid, 288-290.

¹³ See Georgia Papagianni "Forging an Extn EU Migration Policy: From Externalisation of Border Management to a Comprehensive Policy?" *European Journal of Migration and Law* 15 (2013): 283-299.

agreements in particular have received extensive criticism regarding the way they treat asylum seekers.¹⁴

Readmission agreements refer to a deal where a third country agrees to receive irregular migrants of a particular nationality that are apprehended in another country. This is often justified through arguments that it helps country crackdown on crime associated with irregular migration, like drug trafficking or human trafficking. However, many have argued that these agreements “do not take sufficient consideration of the interests of the partners, in particular with regard to their lack of sufficient resources, infrastructure and experience, or the difficulties that readmission causes for them, due to the reduction of remittances and the risk of internal migration.”¹⁵ Furthermore, there are additional humanitarian concerns as such agreements do not differentiate between irregular migrants who may have legitimate asylum claims and those who do not. Rather, it is a strategy of blanket deportation that is less interested in human rights than ensuring migration is done through proper channels.

The concept of a safe third country agreement is also important in discussions of often-used externalization measures. This refers to an agreement reached where one state classifies another as a safe third country. Under international asylum law asylum seekers cannot be returned anywhere where they might face persecution based on their race, religion, nationality,

¹⁴ Georgia Papagianni, “Forging an External EU Migration Policy: From Externalisation of Border Management to a Comprehensive Policy?” *European Journal of Migration and Law* 15 (2013): 295-299.

¹⁵ Ibid, 295.

political opinion or membership in a particular social group.¹⁶ Therefore, by designating a state as a safe third country, another country may deport asylum seekers there while maintaining the appearance of adhering to international law.

Though these approaches are pitched as common-sense ways to relieve pressure on migration management institutions and organize asylum requests, this framework further entrenches migration governance within a security framework by normalizing deportation and mass detention practices.¹⁷ Furthermore, “they seem to focus largely on the externalization of the implementation of border management to third countries, since instead of targeting the source of the problem they target its mere symptoms, i.e., the inability of third countries to manage their borders.”¹⁸ This serves as a powerful critique as it underlines the extent to which externalization measures function as a mechanism for mitigating symptoms rather than solving the fundamental problems..

The result of this expansion of externalization measures amongst developed nations, is the establishment of external migration regimes fundamentally concerned with questions of internal security achieved through bilateral partnerships on border control and migration regulation. This has led to the progressive criminalization of migration in terms of governments

¹⁶ UNHCR, “Refugee Convention,” (document, Geneva, Switzerland, 1951), 1-55.

¹⁷ Georgia Papagianni, “Forging an External EU Migration Policy: From Externalisation of Border Management to a Comprehensive Policy?” *European Journal of Migration and Law* 15 (2013): 283-299

¹⁸ Ibid, 295.

develop policy solutions to this issue.¹⁹ In the legal sense, Valsamis Mitsilegas identifies this criminalization of migration as “the threefold process whereby migration management takes place via the adoption of substantive criminal law, via recourse to traditional criminal law enforcement mechanisms including surveillance and detention, as well as via the development of mechanisms of prevention and pre-emption.”²⁰ This concept of criminalization as process then results in the creation of a policy system where migration governance is approached as a criminal problem rather than an administrative one. Luisa Marin and Alessandro Spina identify this new system of migration governance as a ‘crimmigration’ system.²¹ They argue that though migrant detention and deportation has long been accepted practice in liberal democracies, “the huge increases, during the last fifteen to twenty years, in the rates of migration towards Europe has changed the practical impact of this measure, which has shifted from being an instrument to facilitate dealing with individual cases of uncertain migrant status to being an avenue to mass incarceration of migrants.”²² The institution of this crimmigration system via criminalizing migration policies can also have large impacts on how political leaders and voting publics conceive of migration issues and appropriate responses to them. For example, in response to the 2016 refugee crisis in Europe, leaders from many eastern European member states like

¹⁹ Valsamis Mitsilegas, *The Criminalisation of Migration*, (London, UK: Springer, 2015).

²⁰ Ibid, 2.

²¹ Ibid, 1.

²² Ibid, 2.

Hungarian prime minister Viktor Orban argued that there was a clear link between ‘illegal migration’ and terrorism.²³ Using such language further justifies drastic measures like rejecting outright any Muslim refugees seeking asylum, despite the human rights implications of such actions.

These concepts will prove to be useful when analyzing the particular terms and conditions outlined in the Turkey-EU Statement as many of the aforementioned policies and logics are embedded within the deal. In this sense it serves as a clear example of the extent to which both externalization and criminalization have become integrated into the EU’s current policy towards migration. The following chapter will discuss the how exactly the EU-Turkey Statement deploys externalization measures and what about those particular components was controversial.

²³ Gergely Szakacs, “Illegal migration clearly linked with terror threat: Hungary PM,” Reuters, accessed on March 17, 2020. www.reuters.com/article/us-europe-migrants-hungary/illegal-migration-clearly-linked-with-terror-threat-hungary-pm-idUSKCN0PZ08F20150725

CHAPTER 3: EXTERNALIZATION IN THE EU-TURKEY STATEMENT

The large influx of asylum seekers into Europe in 2015 posed a serious challenge for the EU. Initially, countries like Greece and Italy bore the brunt of this large increase due to border proximity. Existing EU immigration law under the Common European Asylum System (CEAS), and the Dublin system in particular, placed further pressure on these states.²⁴ Specifically, “the Dublin system aims at quickly determining the European state responsible for refugee protection but does *not* establish a European distribution scheme. By declaring the state of entrance responsible, it banishes further secondary movements within the Schengen zone. If secondary movements happen, then the person will be transferred back to the first state.”²⁵ In consequence, border states were both directly exposed to the sudden influxes of refugees while simultaneously bearing full responsibility for processing all subsequent asylum requests. They did not have sufficient resources or personnel to patrol the waters for sinking boats, consolidate asylum seekers, provide them accommodations, and then evaluate asylum requests. Such pressure placed on the already strained border states resulted in an administrative breakdown whereby they were unable to provide adequate living conditions for prospective applicants this led many asylum seekers to depart the holding facilities for the EU’s

²⁴ Georgina Turculet, “The Refugee “EU-Turkey Deal”: The Ethics of Border Politics,” *Boletín de Estudios Económicos* 72 no. 222 (2017): 547.

²⁵ *Ibid*, 547.

interior in search of better conditions and prospects for application processing.

As asylum seekers began journeying through Eastern Europe in the summer of 2015, xenophobic and Islamophobic rhetoric became increasingly pervasive. Some countries like Hungary and Czechia refused outright to accept any asylum seekers and sought to reinstate border protections by building border fences. Jaroslaw Kaczynski, the leader of Poland's Law and Justice party, noted during electoral campaigns of 2015 that "migrants carry various types of parasites which could be dangerous here."²⁶ The Polish government also released a statement declaring that if it decided to accept any refugees, they would only be Christians.²⁷ Similarly, officials from Slovakia's government declared that, "in Slovakia we don't have mosques, we only want to choose the Christians."²⁸ This virulent rhetoric was coupled with a stark rightward shift in the policy responses of these member states. Hungary began erecting border fences and refused to accept any refugees on the grounds that they presented an opportunity for terrorist infiltration.²⁹ Meanwhile Slovakia vowed to refuse entry to all Muslim refugees.³⁰ In consequence, it became increasingly clear that the crisis would require the full

²⁶ François Heisbourg, "The Strategic Implications of the Syrian Refugee Crisis," *Survival: Global Politics and Strategy* 57 no.6 (2015):11.

²⁷ Georgina Turculet, "The Refugee "EU-Turkey Deal": The Ethics of Border Politics," *Boletín de Estudios Económicos* 72 no. 222 (2017): 547.

²⁸ François Heisbourg, "The Strategic Implications of the Syrian Refugee Crisis," *Survival: Global Politics and Strategy* 57 no.6 (2015):11.

²⁹ Gergely Szakacs, "Illegal migration clearly linked with terror threat: Hungary PM," Reuters, accessed on March 17, 2020. www.reuters.com/article/us-europe-migrants-hungary/illegal-migration-clearly-linked-with-terror-threat-hungary-pm-idUSKCN0PZ08F20150725

attention of the EU. By May of 2015 the European Commission created the EU Agenda on Migration which outlined exactly how the EU could respond to the current crisis.³¹

As a whole, the proposal intended to achieve an immediate solution to the problems arising from the increased migration flows. One of the most controversial measures within this agenda was the proposal of a temporary relocation scheme that would redistribute 160,000 refugees across the EU member states.³² Based on criteria that took into account national GDP, population size, unemployment rate and the number of asylum seekers already resettled, this scheme would allot a quota on asylum seekers to each EU member states. At its core, the proposal sought to address the disproportionate burden placed on the border states under the EU's existing asylum law in a way that ensured at least a minimum number of asylum requests were heard. However, many of the Balkan member states opposed this initiative as they worried it would encourage further asylum seekers to cross into the EU through irregular channels. After being introduced by the European Commission, the emergency relocation mechanism was passed by the European Parliament in September 2015 with a vote of 372-124 and 54 abstentions.³³ The members of the European Parliament voting against this measure

³⁰ "Slovakia vows to refuse entry to Muslim migrants," DW, accessed on March 17, 2020. www.dw.com/en/slovakia-vows-to-refuse-entry-to-muslim-migrants/a-18966481

³¹ Ilke Toygür and Bianca Benvenuti, "The European Response to the Refugee Crisis: Angela Merkel on the Move," *IPC- Mercator Policy Brief* (2016): 2

³² Sergio Carrera et al., "The EU's Response to the Refugee Crisis: Taking Stock and Setting Policy Priorities," *Center for European Policy Studies*, (2015) 5.

³³ Lucas Rasche, "EP 2014-19: Key Votes, Emergency Relocation Mechanism," *Centre for European Affairs at the Hertie School of Governance*, (2019): 1-8.

were predominantly from the eastern European member states (Poland, Hungary, Slovakia, Czechia, Romania) with the exception of the United Kingdom.³⁴ However, although the scheme successfully passed, it proved far less effective at relocating asylum seekers than many had hoped. Most member states did little to meet the requirements and by the end of January 2016 less than 500 of the pledged 160,000 refugees had been relocated or resettled.³⁵ This was in part due to the fact that those member states that rejected the proposal to begin with still refused to resettle any refugees. With the hopes of forcing compliance, “a total of 40 infringement decisions against several EU member states were launched in mid-September 2015 for failing to implement EU asylum legislation.”³⁶ The Commission then launched another “8 infringement decisions for failing to fully transpose and implement the Common European Asylum system against Greece, Croatia, Italy, Malta, and Hungary.”³⁷ However, these attempts were unable to achieve any immediate or substantive changes. Therefore, as asylum seeker flows continued to increase throughout the summer of 2015, it became clear that the divisions within the EU would pose a real challenge in developing a coherent, supranational response to challenge.

³⁴ Ibid, 3-4.

³⁵ Ibid, 2-3.

³⁶ Sergio Carrera et al, “The EU’s Response to the Refugee Crisis: Taking Stock and Setting Policy Priorities,” *Center for European Policy Studies*, (2015): 14.

³⁷ Ibid, 14.

After repeated obstruction at the supranational level, many leaders began taking action on the national level. One of the leaders on this front was German Chancellor Angela Merkel. In response to roadblocking in the EU and the urgency of the issue at hand, Merkel decided to open Germany's door to all Syrian asylum seekers already in the EU Schengen zone.³⁸ This amounted to roughly half of the asylum seekers travelling through Greece and the Balkans.³⁹ At the time the decision was met with both widespread support and criticism from other member states who felt the decision was irresponsible, short-sighted, and imperialistic.⁴⁰ This decision exacerbated existing divides between EU member states while also underlining national frustrations over the inability to construct an effective EU response.

This dysfunction at the supranational level posed an immense problem for the EU as the lack of an effective burden-sharing mechanism meant that the stress from the influx of asylum seekers would remain on the border states and member states that had opened their doors, namely Germany and Sweden. From a human rights perspective, this chaos was especially concerning for those seeking to claim their right to asylum. The political mess that followed the summer of 2015 made it difficult for asylum seekers to navigate the multitiered EU asylum

³⁸ İlke Toygür and Bianca Benvenuti, "The European Response to the Refugee Crisis: Angela Merkel on the move," *IPC-Mercator Policy Brief* (2016): 1-16.

³⁹ François Heisbourg, "The Strategic Implications of the Syrian Refugee Crisis," *Survival: Global Politics and Strategy* 57 no.6 (2015):12.

⁴⁰ *Ibid*, 12.

İlke Toygür and Bianca Benvenuti, "The European Response to the Refugee Crisis: Angela Merkel on the move," *IPC-Mercator Policy Brief* (2016): 2

system. Certain countries were ready and willing to review asylum applications while others imposed religious criterion and more still refused to accept any at all.

This breakdown led EU leaders, namely Merkel, to search for other means of addressing the problem. In the context of a dysfunctional supranational asylum policy, the EU again resorted to externalization. Coordination with Turkey seemed the most obvious place to begin since it was the primary path that many asylum seekers were taking to enter the continent. The EU would therefore be able to work towards limiting the flow of asylum who were using Turkey's shores as a launching point for entering the Schengen zone. Again, the emphasis placed on migration restriction reveals the extent to which the EU viewed this as a security crisis rather than a humanitarian one. Furthermore, the long history of EU-Turkish coordination on migration and asylum policy during the accession talks meant that there was already an established framework for negotiation. These efforts to develop an external solution to the migration flows led to the creation of the EU-Turkey Statement.

The EU-Turkey Statement

The statement, released in March 2016, contained a series of concessions and promises from both sides that served to relieve pressure on the EU by restricting irregular migration flows to Europe. Accordingly, the deal stated that, "In order to break the business model of the smugglers and to offer migrants an alternative to putting their lives at risk, the EU and Turkey today decided to end irregular migration from Turkey to the EU."⁴¹ Note the fact that the focus

⁴¹ European Council, "EU-Turkey Statement," (statement, 2016).

of the agreement is to eliminate the “irregular migration” rather than to ensure that the claims of all asylum seekers are processed in a fair and orderly manner. This word choice and the framework of criminality again reveal the extent to which fears over national security had overtaken genuine humanitarian concerns. It also echoes the language used in both the accession documents as well as the Barcelona declaration and further reflects the realities of the EU’s desire to externalize migration governance.

One of the primary mechanisms for achieving further externalization was a readmission agreement between the two partners. The agreement stated that “all new irregular migrants crossing from Turkey into Greek islands as from 20 March 2016 will be returned to Turkey”⁴² and that “Migrants not applying for asylum or whose application has been found unfounded or inadmissible in accordance with the said directive will be returned to Turkey.”⁴³ This was intended first and foremost to discourage more asylum seekers from making the treacherous journey from Turkey to the EU and secondly to provide a framework under which the EU felt it could export the problem without violating the *non-refoulement* clause of the 1951 Refugee Convention.⁴⁴ This rested, however, on contested assumptions about whether or not Turkey qualified as a safe third country. According to international law, “No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his [or her] life or freedom would be threatened on account of his [or her] race, religion,

⁴² Ibid.

⁴³ Ibid.

⁴⁴ UNHCR, “Refugee Convention,” (document, Geneva, 1951), 1-55.

nationality, membership of a particular social group or political opinion.”⁴⁵ Therefore, in order for this readmission agreement to adhere with international law, of which the EU is routinely an advocate for, Turkey must be considered a safe third country. Many legal experts and human rights scholars have found that Turkey does not in fact meet these standards since it does not acknowledge the refugee status of non-European asylum seekers and only offers temporary protection status to Syrians.⁴⁶ Notwithstanding this debate, the readmission agreement also put asylum seekers at risk of experiencing chain readmissions at the hands of the Turkish government. Since the Turkish Ministry of Foreign Affairs declared that Turkey has readmission agreements with fifteen countries, namely Yemen, Nigeria, Pakistan, and Syria, this means that asylum seekers returned to Turkey are at risk of further deportation.⁴⁷ As was discussed earlier, the externalization via readmission agreement in the EU-Turkey Statement presented serious humanitarian concerns and risked denying migrants their right to seek asylum in favor of cracking down on irregular migration.

Another controversial aspect of the EU-Turkey Statement was the so-called “one-for-one initiative.” The one-for-one initiative made it so that “for every Syrian who had traveled without authorization to Greece and been returned to Turkey, EU Member States will resettle

⁴⁵ UNHCR, “Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol,” (advisory opinion, 2007).

⁴⁶ See Suzan Ilcan, “The Syrian Refugee Crisis: The EU-Turkey ‘Deal’ and Temporary Protection,” *Global Social Policy* 16 no.3 (2016):315-320.

See Nilgün Eralp, “Challenges of the German-led refugee deal between Turkey and the EU,” *CESifo Forum* (2016).

⁴⁷ Zeynep Kivilcim, “Migration Crises in Turkey,” in *The Oxford Handbook of Migration Crises* (Oxford, UK: Oxford University Press, 2018) 9.

one Syrian from Turkey.”⁴⁸ This policy mandated that asylum seekers who had not previously entered or tried to enter the EU irregularly would receive priority.⁴⁹ Like similar EU externalization measures, the one-for-one initiative made a differentiation between two migrant groups: asylum seekers who had attempted to enter the EU via irregular means and those who had gone through formal channels. This effectively established a two-tiered asylum system within the EU, whereby the rights claim of asylum seekers who had used formal channels took precedence over those who entered the EU irregularly. For this reason, it has received extensive criticism from human rights advocates and organizations. Amnesty International was particularly critical, claiming that it revealed the EU’s “dogged determination to turn its back on a global refugee crisis, and willfully ignore its international obligations.”⁵⁰

Within this framework, although the EU acknowledged Syrian’s rights to claim asylum, it did so with temporal and legal caveats. It is also worth noting that all of these stipulations listed in the statement only applied to Syrian asylum seekers. Although Syrian asylum seekers represented the vast majority of those entering the EU during 2015, a significant number of Afghan and Iraqi asylum seekers also made the treacherous journey to Europe. Neither the one-for-one principal, nor the EU-Turkey Statement, provided any method for ensuring that rights claims from these groups were heard. As a result, the claims of non-Syrian asylum seekers,

⁴⁸ European Council, “EU-Turkey Statement,” (statement, Brussels, 2016).

⁴⁹ Ibid.

⁵⁰ Suzan Ilcan, “The Syrian Refugee Crisis: The EU-Turkey ‘Deal’ and Temporary Protection,” *Global Social Policy* 16 no.3 (2016):316.

though they might have been legitimate, were discarded in favor of making a deal that prioritized limiting migration flows above all else.

The deal also provided significant political and financial benefits to Turkey for its cooperation with the EU's externalization measures. Specifically, "in return for its cooperation in preventing illegal migration to the EU, i.e., an initial payment of 3 billion euro¹ to support improving Syrians' conditions in Turkey together with a promise from Brussels to speed up the accession negotiations and visa-free travel for Turkish citizens."⁵¹ In addition to these concessions, the EU promised to invest an additional 3 billion euro by the end of 2018 providing that the listed conditions were met.⁵² Visa liberalization in particular was a long-sought after policy goal for the Turkish government dating back to the 2005 accession negotiations. Securing these concessions would have provided the AKP with a resounding political win.

In sum, the EU-Turkey Statement serves as a chief example of how externalization is deployed in the EU's approach to migration policy. Though the deal did offer Turkey financial support, it provided no mechanism for the EU to ensure that it resettled its fair share of refugees in comparison to overburdened host countries such as Turkey, Lebanon, or Jordan. Though many member states within the EU felt that they should do more to alleviate the humanitarian burden placed on Turkey, the internal institutional disorder restrained their ability to act in a coherent and effective manner. Consequently, the end product of these negotiations was an agreement that outsourced the EU's humanitarian obligations to unsafe

⁵¹ Ibid, 3.

⁵² European Council, "EU-Turkey Statement," (statement, Brussels, 2016).

third countries all the while resuming its efforts to establish a more permanent regime of external migration governance. However, the institution of this externalization logic via the EU-Turkey Statement did not appear spontaneously, but rather has long played a part in the EU's relationship with strategic partner countries like Turkey. This coordinated approach to migration governance came to the forefront when Turkey began seeking accession to the EU. However, although Turkey's official accession talks started in 2004, one can look even further back to the foundational documents of EU foreign policy. Analyzing these sources will underline the extent to which externalization has always been the principal EU policy when it comes to migration issues.

CHAPTER 4: THE BARCELONA PROCESS AND 'WIDER EUROPE POLICY'

In order to understand the role of externalization in the EU's foreign policy doctrine, it is first vital to understand its relationship with its' key partners countries on coordinated migration governance, namely Turkey. Turkey is of particular importance due to its function as a key launching point for those seeking to enter the EU via irregular channels. It is therefore vital to provide a historical overview of Turkey's migration regime as well as its migratory history with the EU member states in order to holistically investigate the historical role of externalization in EU foreign policy.

The original piece of legislation establishing Turkey's migration regime was the Law on Settlement of 1934.⁵³ This law, like many other European immigration laws at the time, adopted a *jus sanguinis* approach to immigration.⁵⁴ This meant that immigration to Turkey was reserved for those of Turkish descent or culture. A significant moment in the EU-Turkey migration relationship came following the conclusion of World War II when there was a large labor demand amongst states devastated by the war. This demand was largely met by Turkish migrants who were permitted to visit the continent on seasonal work permits. Germany, in

⁵³ See Ahmet İçduygu and Damla Aksel, "Turkish Migration Policies: A Critical Historical Perspective," *Perceptions* 18 no.3 (2013):167-190.

⁵⁴ "Refugee Law and Policy: Turkey," The Law Library of Congress, Library of Congress, accessed on 10 January 2020, www.loc.gov/law/help/refugee-law/turkey.php

particular, employed a large number of Turkish migrants.⁵⁵ This post-war period was significant as it effectively serves as the cooperation on migration policy between Turkey and what would become the EU member states. Though at this point in time migration policies would have significantly differed across European states, the broad solicitation of Turks as a source of mobile labor was a common trend.⁵⁶

Amidst the years of this worker program, 1951 saw the first serious reform to this system as Turkey became a signatory to the Refugee Convention held that year in Geneva.⁵⁷ During that convention countries from across the globe gathered to discuss the status of those victimized by violent conflict or systematic state persecution. After the mass devastation caused by World War II, states sought to create formal protections to ensure that, in the future, civilians would have access to legal rights that would enable them to apply for asylum. This treaty that emerged from this convention established the legal status of refugee and asylum seeker and was signed by 145 countries, one of which was Turkey. The treaty meant that the Turkish government acknowledged a human right to seek asylum and resettlement which went against its previously ethnocentric policies.

⁵⁵ Ahmet İçduygu and Damla Aksel. "Turkish Migration Policies: A Critical Historical Retrospective." *Perceptions* 18 no.3 (2013): 167-190.

⁵⁶ Ibid.

Elie Katzenon, "The Patterns and Impacts of Turkish Immigration to the European Union." *Claremont-UC Undergraduate Research Conference on the European Union* 6 (2015): 35-41

⁵⁷ UNHCR, "Refugee Convention," (document, Geneva, Switzerland, 1951), 1-55.

However, though the 1951 Refugee Convention was certainly a landmark treaty for asylum rights, it did not ascribe a universal right to asylum. Rather, it limited this right to those impacted by any persecution prior to 1951. Therefore, sixteen years later in 1967, members of the UN assembled in New York to create a more inclusive and exhaustive guarantee. The aim of this meeting was to provide states the option to lift the temporal restriction laid out in the original convention. It also gave states the option to instead implement a geographic restriction that would limit the right to asylum to Europeans. Turkey was one of four countries, along with Madagascar, Monaco, and the Republic of Congo that opted to maintain this geographic limitation on the right to asylum. This moment was especially significant in Turkish migration policy as it meant that “Turkey formalized that it would not grant refugee status to non-European asylum seekers and embraced a two-tiered asylum policy, the first covering asylum seekers from European countries and the second dealing with people from outside Europe.”⁵⁸ This two-tiered system was put to the practice in the 1980s and 1990s as small-waves of refugees fleeing the wars in Iraq and Iran, Afghanistan, and the Balkans sought refuge within Turkish borders.⁵⁹ Due to the geographic restriction, Turkey did not recognize their refugee status, though worked to ensure that many were resettled into safe third countries.⁶⁰

Therefore, by the 1980s and 90s Turkey was already becoming an increasingly important actor

⁵⁸ Birce Demiryontar, “The Shaping of Turkish Migration Policy: Competing Influences between the European Union, International Organisations and Domestic Authorities,” *University of Sussex* (2016), 64.

⁵⁹ Ibid, 64.

⁶⁰ Ibid, 64.

in regional migration governance. In consequence, Turkey became of increasing interest to the EU as by that time it had undergone several rounds of enlargement which rendered it as a much larger and powerful player in the region.

By the 1990s, the EU had expanded well beyond its initial borders and was looking to expand its role as a global and regional power. This sort of power projection required a coherent foreign policy doctrine with clear goals and a set of strategies to reach them. This desire for the EU to take on a larger role in global politics led to the development of the Euro-Mediterranean Partnership (EMP). The EMP, also known as the Barcelona Process, was outlined at a convention held in Barcelona in 1995 where leaders of EU member states and key Mediterranean partner countries met to outline a clear EU foreign policy agenda. According to the declaration following the meeting, known as the Barcelona declaration, the primary goals of the EMP were “to turn the Mediterranean basin into an area of dialogue, exchange and cooperation that guarantees peace, stability and prosperity.”⁶¹ This was to be achieved primarily through a multi-pronged strategy of “strengthening democracy, the respect of human rights, sustainable and balanced economic and social development as well as measures to combat poverty.”⁶² Furthermore, the declaration clearly outlined the principal mechanism to achieve these aims would be “intensification of bi- and multilateral trade exchange and the establishment of a Euro-Mediterranean Free Trade Zone (EMFTZ) by 2010.”⁶³ With these

⁶¹ Tobias Schumacher, “Survival of the Fittest: The First Five Years of Euro-Mediterranean Economic Relations,” *European University Institute*, (2004): 1.

⁶² *Ibid*, 1.

reforms and a broader push by the EU to facilitate free trade, the Barcelona Process sought to establish regional stability and peace.

Migration is also noted in the declaration as an area of primary concern and coordination between the EU and its Mediterranean neighbors.⁶⁴ The document makes specific note of the issues of terrorism, drug trafficking/organized crime and illegal immigration, all of which are treated as intertwined with migration.⁶⁵ This serves as a clear example of the extent to which migration was already viewed as a criminal issue even at the early stages of the EU's foreign policy formulation. Migration and irregular migration in particular were associated with criminal activity and so the policy recommendations are designed to address this. Smuggling and human trafficking are particularly pervasive issues in the EU as they are reported to be multibillion-dollar industries that are unconcerned with potential human rights violations.⁶⁶ Therefore, ensuring regional cooperation was a vital part of addressing this issue as much of this activity occurred via the EU's southern neighbors. However, this framing also creates differentiations between types of migrants. It portrays irregular migrants as criminals that bring instability and organized crime, whereas those using regular channels as more legitimate. This differentiation poses serious problems for irregular migrants who might wish to assert their right to asylum, though do not have the proper paperwork to enter through proper ports of

⁶³ Ibid, 1.

⁶⁴ "Barcelona Declaration," (declaration, Barcelona, 1995), 1-17.

⁶⁵ Ibid, 16.

⁶⁶ European Commission, "Migration and Home Affairs: Migrant Smuggling," European Union, accessed on March 16, 2020. ec.europa.eu/home-affairs/what-we-do/policies/irregular-migration-return-policy/facilitation-irregular-migration_en

entry. For example, in 2013, following the outbreak of the Syrian Civil war, it was reported that “fewer than 30 percent of Syrian refugees arrived in Turkey with a passport.”⁶⁷ Among other documents, passports are vital for crossing borders through ports of entry. This lack of proper conventional travel documents can lead to situations where legitimate refugees enter through irregular channels due to a fear that they will be refused entry at recognized entry points.

Upon observing the language in the Barcelona declaration, it is clear that the EU considered migration first and foremost to be a security issue. In the five paragraphs dedicated to outlining the EMP’s goals with respect to migration, each one employs the framework of criminality. More precisely, the declaration highlights the urgent need to develop practical measures to combat terrorism, drug trafficking, organized crime, and illegal immigration.⁶⁸ This is not to say that concerns over irregular migration were entirely unwarranted, as at the time of the Barcelona Process, “approximately 500,000 people entered the European Union every year as illegal immigrants.”⁶⁹ However, the fact that security is the only framework employed when discussing migration reveals the extent to which the issue had already been securitized and criminalized in the eyes of the EU. Furthermore, it again underlines the extent to which, even at the outset, migration was perceived by the EU as a criminal challenge rather than an administrative one.

⁶⁷ Sarnata Reynolds, “Syria’s passport rules leave refugees stranded,” alJazeera, accessed on March 17, 2020. america.aljazeera.com/opinions/2015/5/syrias-paperwork-crisis.html

⁶⁸ Ibid.

⁶⁹ Ibid, 36.

In summation, even at a very early stage of its political organization, the EU's foreign policy approaches to migration were driven by security concerns. Rather than focusing on multilateral cooperation to ensure efficient administration of migrants, the EU's foreign policy under the EMP was more concerned with restricting irregular migration flows. This trend continued after the eventual transition from the EMP to the ENP. In particular, the capacity for the EU to establish more differentiated, bilateral relationships enabled further externalization with key partner states.

From Euro-Mediterranean Policy to European Neighborhood Policy

The ENP, also referred to as the 'wider Europe' policy, was established in 2004 and sought to improve on what many felt were the weaknesses of the EMP. Firstly, it departed from the EMP's regional policy approach and instead enabled the EU to differentiate these relations and develop more targeted policies towards neighboring states. Since no further enlargement was planned by the member states, the primary mechanism for achieving this differentiation was through the establishment of European Union Association Agreements (EUAA). Through these agreements the EU was able to create varying degrees of political, security, and economic integration with neighboring states. This broad shift in the EU's foreign policy doctrine functioned as a mechanism through which the EU could further establish externalization measures via cooperation with key partners. Though this new doctrine was distinct from the relationships and accession negotiations between the EU and prospective member states, it still demonstrated the EU's growing interest in targeting cooperation to specific policy areas. As a

consequence, this new logic would influence how the EU would approach particular foreign relations in general.

With respect to Turkey, the accession negotiations of the early 2000s were the principal means through which the EU was able to materialize certain aspects of this externalization agenda. This desire for increased cooperation was further assisted by the election of the pro-EU AKP in 2004 as it set the table with a ready and willing negotiating partner. By 2004, official accession negotiations began and both parties sought to outline a clear pathway for Turkey to gain full membership in the union. A significant point of discussion during these negotiations was the harmonization of Turkey's migration policy with that of the EU. During these discussions, Turkey made notable efforts to reform its system, firstly with the announcement of a National Action Plan for Asylum and Migration in 2005.⁷⁰ This plan functioned as a roadmap of the steps that Turkey needed to take in order to reform its migration regime in adherence with EU standards. Although the Turkish government never fully actualized this plan, the objectives and reforms outlined still provide interesting examples of how externalization fit into the relationship between the two.

The document entitled the "Turkish National Action Plan for the Adoption of the EU Acquis in the Field of Asylum and Migration" provides a clear list of these objectives. The document first notes that the Accession Partnership Document of 2001, signed by Turkey and the EU, lists the overarching goals of Turkish harmonization with the EU's asylum and migration

⁷⁰ "National Action Plan of Turkey for the Adoption of EU Acquis in the Field of Asylum and Migration," (legal document, Turkey, 2005).

regime.⁷¹ The National Action Plan then divides the objectives into short-term and long-term categories. In the short term, the document states that the “struggle against illegal migration will be further strengthened and a readmission agreement will be negotiated with the European Commission.”⁷² As with the Barcelona declaration, the primary framing of this agreement is through the lens of border and internal EU security and reflects the tendency towards criminalization.

Another significant short-term goal is the creation of a readmission agreement between Turkey and the EU. Such a readmission agreement between the EU and Turkey would have required Turkish authorities to readmit Turkish nationals and other migrants who had entered the Schengen Area via Turkey through irregular channels. The efforts to establish this agreement serves as a prime example of externalization as it intends to project the responsibility for administering irregular migrants to Turkey. It also again demonstrates the prioritization of security over humanitarian concerns and the extent to which irregular migration flows are considered illegitimate. Rather than prioritizing humanitarian concerns in the short-term, the EU first and foremost sought to dissuade and punish irregular migration regardless of whether they held legitimate claims. Altogether, when considering the short-term objectives of the National Action Plan, it becomes apparent that the EU saw Turkey as a mechanism for controlling irregular migration and reinforcing external border control measures.

⁷¹ Ibid.

⁷² Ibid, 4.

The medium-term objectives of the action plan provide a more nuanced set of concerns, though they are still grounded in a securitized framework. The document states that in the medium-term “the EU Acquis and practices on migration (permission for entrance and re-entrance to the territory and deportation) will be adopted and put into force for the purposes of preventing illegal migration.”⁷³ It then adds that, “alignment in the field of asylum will be ensured, activities striving for lifting the geographical limitation to the 1951 Geneva Convention will commence, the system for evaluating and deciding on asylum claims will be strengthened and accommodation centers and social assistance will be provided for asylum seekers and refugees.”⁷⁴ Again, the principal concern in the action plan is that of irregular migration. Further harmonization of entry and border procedures with the EU are emphasized in order to ensure that ‘illegal migration’ is firmly prevented and discouraged. At the same time, the latter half of the medium-term goals do touch on asylum procedures and processing systems concerned with ensuring uniform treatment of rights claims. However, even these goals differentiate between irregular and regular asylum seekers. Such a differentiation perpetuates associations of irregular migrants with crime or economic migration and consequently implies that they have no legitimate claim to asylum because they did not go through proper channels. This differentiation obscures the fact that these categories often overlap. Many asylum seekers enter countries irregularly because they do not possess required paperwork or fear rejection at established ports of entry.⁷⁵ Therefore, although the emphasis on harmonization of asylum

⁷³ Ibid, 4.

⁷⁴ Ibid, 4.

procedures might seem to further humanitarian goals, it still furthers the criminalization of migration unless under specific conditions.

It is also worth noting the degree to which the EU advocated for genuine, constructive reforms to Turkey's outdated asylum system. During accession negotiations with the EU in 2005, Turkey still maintained a geographic limitation on who could qualify for refugee status. Under this restriction, only refugees from European countries were able to qualify for protections from Turkey. This restriction therefore enabled Turkey to adhere to technically adhere to international law while simultaneously ignoring the rights of non-European refugees. Furthermore, the time period within which asylum applications had to be filed was limited to mere 10-days.⁷⁶ It also required the Turkish state to improve mechanisms for allocating social insurance and support to asylum seekers. These reforms were needed changes to the Turkish asylum system at the time as it was largely underdeveloped, at least in part because Turkey had yet to experience large-scale migration.⁷⁷ These reform proposals also point to a genuine interest on the part of the EU in ensuring that all asylum seekers have access to rights in Turkey. However, the document still differentiates between regular and irregular migrants. Asylum seekers are assumed to have arrived via proper channels and deserve to have exhaustive

⁷⁵ Asli Öner and Deniz Genç, "Vulnerability leading to mobility: Syrian's exodus from Turkey," *Migration Letters* 12 no.3 (2013): 251-262.

⁷⁶ "National Action Plan of Turkey for the Adoption of EU Acquis in the Field of Asylum and Migration," (legal document, Turkey, 2005) 11.

⁷⁷ Birce Demiryontar, "The Shaping of Turkish Migration Policy: Competing Influences between the European Union, International Organisations and Domestic Authorities," *University of Sussex* (2016).

Asli Öner and Deniz Genç, "Vulnerability leading to mobility: Syrian's exodus from Turkey," *Migration Letters* 12 no.3 (2013): 251-262.

institutional support so to assure their applications are processed, whereas irregular migrants are viewed with skepticism and through the framework of criminality. This differentiation continues to be the predominant means of understanding migration issues even through the 2005 accession negotiations and the subsequent reforms to Turkey's migration regime in 2012 and 2013.

CHAPTER 5: FROM ACCESSION TALKS TO LFIP

The accession-era reform efforts of the mid-2000s were a significant milestone in Turkish-EU relations and set the table for future cooperation on migration issues. However, in order to better analyze the trajectory following these reforms, it is first important to establish a historical framework within which they occurred. If we are to understand the political and technical roots of the EU-Turkey Statement it is imperative to understand how EU-Turkish cooperation was impacted by the 2005 accession negotiations. These negotiations would outline the EU's preferred strategies when dealing with migration issues and set the table for future cooperation with Turkey in this policy field. The following chapter will provide a brief overview of some key aspects of Turkey's migration regime leading up to accession negotiations in order to demonstrate how and to what degree the EU-Turkey accession negotiations influenced the Turkish migration regime and how that set the stage for the 2016 EU-Turkey Statement.

Going into the accession negotiations between the EU and Turkey it is vital to understand the context within which the EU was arguing for increased harmonization of migration policy. The 2000s were a dynamic time in global migration flows as many migrants sought to gain entry to the EU. Under these new migration patterns, countries like Turkey and Morocco were classified as transit countries since they served as primary points of access to the EU Schengen zone. This meant that the EU had a vested interest cooperating with these two states in order to mitigate incoming migration flows. In the case of Morocco, further

fortification of the border fences surrounding the Spanish colonies of Ceuta and Melilla was done as a means of discouraging African migrants from irregularly crossing the border.⁷⁸

Turkey, however, was different as it was a candidate for membership to the EU. This enabled the EU to leverage the prospect of accession as a means to obtain certain desired changes in the Turkish migration regime.

One of the most significant changes that emerged from these negotiations was an update to the Law on Settlement in 2006. Proposed by the Turkish General Assembly and encouraged by the EU, this law was sought to address domestic concerns regarding the Turkish immigration system.⁷⁹ ⁸⁰ The new amendments to the law eliminated the 10-day window to apply for asylum, decentralized asylum application review by allowing governorates to make decisions, and affirmed that the government intended to lift the geographic limitation on refugees by 2012.⁸¹ However, as a whole, the amendments to the Law on Settlement achieved little systemic change to the existing model.

The EU expressed frustration with this apparent lack of development in its 2006 progress report, in which, it found that Turkey's asylum reception centers needed further investment for upgrading their capacities and updating their methods. The EU also criticized

⁷⁸ Pietro Soddu, "Ceuta and Melilla: Security, Human Rights and Frontier Control," *Culture and Society: Migrations* (2006): 212-214.

⁷⁹ Ibid, 55.

⁸⁰ "Law No. 5543," (law, Turkey, 2006).

⁸¹ Commission of the European Communities, "Turkey 2006 Progress Report," (progress report, Brussels, 2006) 64.

Turkey for what it perceived as Turkey's slow-walking of removing the geographic limitation on refugee status. This stalling, however, was at least in part due to concerns from the Turkish government that conceding to all the EU's demands would lead to Turkey being treated as a sort of 'dumping-ground' for irregular migrants and asylum seekers.⁸² This reveals the extent to which Turkey was aware of the EU's externalization strategy as well as how, at the time, it felt that cooperating with such measures would not be in its best interest.

As Turkish accession negotiations continued it became increasingly clear that obtaining full membership in the EU would not happen anytime soon. However, this is not to say that the EU and Turkey ceased cooperating and coordinating with regards to migration. The EU still had a vested interest in ensuring that Turkey strictly regulated its borders and Turkey wanted to use this as leverage to obtain further integration. It is worth noting that in this post accession period Turkey began experiencing a significant shift both in terms of its demographic makeup and migration flows which would further increase its importance to the EU.⁸³ The arrival of migration as a potent issue in domestic Turkish politics would lead to further coordination with the EU on the topic of migration, despite the EU's inability to continue employing accession as a leverage.

⁸² Zeynep Kivilcim, "Migration Crises in Turkey," in *The Oxford Handbook of Migration Crises* (Oxford, UK: Oxford University Press, 2018) 1-20.

⁸³ Ahmet İçduygu and Damla Aksel, "Turkish Migration Policies: A Critical Historical Retrospective," *Perceptions* 18 no.3 (2013): 167-190.

Changing Migration Flows and LFIP

Further cooperation was made all the more urgent by the overthrow of Libyan dictator Muammar al-Gaddafi by Libyan rebels with the assistance of NATO air support in 2011. The subsequent power vacuum left Libya as an ungoverned space within which the human trafficking and smuggling industries could flourish.⁸⁴ As a consequence, Libya also became a notable departure point for those seeking irregular entry into the Schengen zone.⁸⁵ Furthermore, the Syrian Civil War had broken out and was rendering Syria to be a similarly ungoverned space. This new political landscape emerging in the early 2010s was one of both increasing chaos as well as an increase in factors pushing migrants towards the EU's borders.

One of the first significant developments to emerge from this new political landscape was the Law on Foreigners and International Protection (LFIP) which sought to address the increased flow of asylum seekers crossing the Turkey-Syria border following the outbreak of the Syrian civil war. The law was a long overdue change to the old Turkish system of border control and migration regulation which was primarily decentralized, ineffective, and almost entirely handled by law enforcement forces.⁸⁶ Though LFIP did not enable a complete overhaul of the Turkish migration regime, it introduced several key changes that represented a stark shift in the country's migration policy. The legislation "establishes clear procedures for asylum seekers,

⁸⁴ Mattia Toaldo, "Migrations Through and From Libya: A Mediterranean Challenge," *Istituto Affari Internazionali* 15 no. 14 (2015): 2-20.

⁸⁵ Ibid.

⁸⁶ Asli Öner, "Vulnerability leading to mobility: Syrians' exodus from Turkey," *Migration Letters* 12 no. 3 (2015): 251-262.

simplifying identification and registration; and introduced additional categories for non-European asylum seekers who cannot be granted refugee status because of the geographical limitation clause Turkey maintains in the 1951 Geneva Convention.”⁸⁷ Furthermore, it constructed a new government agency, the Directorate General of Migration Management (DGMM) to handle the processing of asylum applications, overall implementation of the migration agenda, among other general migration management responsibilities.⁸⁸ Broadly the law is credited with -“expanding Turkey’s protective scope towards forced migrants” and “bringing institutional mechanisms necessary for migration and asylum policy making.”⁸⁹ Not only did it further liberalize Turkey’s immigration system as a whole, but it also centralized its enforcement and implementation into a unitary body. In prior years the Ministry of the Interior had born almost exclusive responsibility for these duties, but had become overwhelmed due to the vast number of new asylum requests. The newly established DGMM functioned as the single body responsible for processing asylum applications and administering benefits.⁹⁰ Along with asylum and benefit requests the Ministry of the Interior was also responsible for handling many other internal affairs.

⁸⁷ Birce Demiryontar, “The Shaping of the Turkish Migration Policy: Competing Influences between the European Union, International Organizations and Domestic Authorities,” University of Sussex, 2016, 82.

⁸⁸ “Law on Foreigners and International Protection,” (law, Turkey, 2013).

⁸⁹ Asli Öner, “Vulnerability leading to mobility: Syrians’ exodus from Turkey,” *Migration Letters* 12 no. 3 (2015): 254.

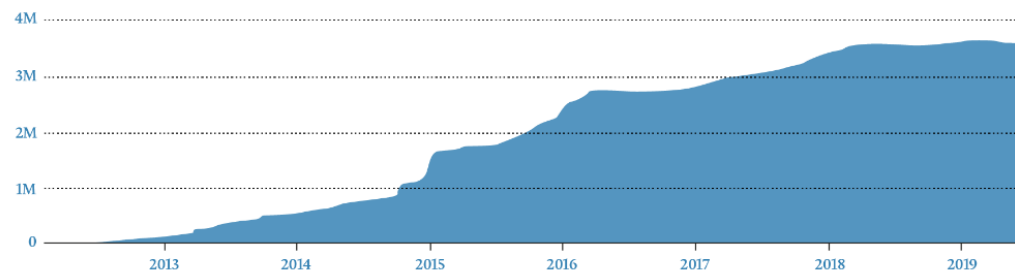
⁹⁰ Ibid.

EU pressure on Turkey to adhere to the 2005 acquis plan is widely credited as the leading external pressure for the reforms, though they were also certainly a response to growing internal pressure to respond to a growing crisis.⁹¹ By 2012 the Syrian Civil War had entered full swing and was displacing millions of Syrians. As a consequence, many fled to neighboring countries for shelter from the violence, with Turkey being a prime destination due to historic open-borders policies with Syria.⁹² This consequently placed enormous pressure on the Turkish state as it had to deal with processing and providing for well over a million asylum seekers.

Registered Syrian Refugees in Turkey

3,614,108

Last updated 13 June 2019



Sources: UNCHR, Government of Turkey



middleeasteye.net

⁹¹ Zeynep Kivilcim, "Migration Crises in Turkey," in *The Oxford Handbook of Migration Crises* (Oxford, UK: Oxford University Press, 2018) 1-20.

⁹² Ahmet İçduygu and Damla Aksel, "Turkish Migration Policies: A Critical Historical Retrospective," *Perceptions* 18 no.3, 167-190.

To specifically address the Syrian situation, the Turkish government adopted a Temporary Protection Resolution (TPR) to extend protected status to the millions of Syrian asylum seekers residing in Turkey. This was by no means an unprecedented occurrence as a similar status had been designated to previous group of non-European asylum seekers, like Iranians, Iraqis and Afghans.⁹³ Under the Turkish law, Syrians were not recognized as refugees by the Turkish government due to the geographic restriction of the 1951 Refugee Convention and although TPR did not lift this restriction, it did give Syrians a special designation that qualified them to receive certain benefits and rights that were not provided under the previous law.⁹⁴ Specifically, TPR “provided the right of access to health, to education, to social assistance and to the labor market.”⁹⁵

However, these reforms rested on an assumption that proved to be false. The main issue was the fact that these measures were established as *temporary* measures to address what many thought would be a *temporary* crisis. However, by 2014 the war showed little chance of reaching a conclusion. In fact, it had actually expanded, transforming into an international conflict involving several world and regional powers. As Syrians began realizing they would not be able to return home anytime soon, the temporariness of their protected status exposed the precarity of their situation. The TPR enshrined this temporariness into law

⁹³ Ibid, 259.

⁹⁴ “Law on Foreigners and International Protection,” (law, Turkey, 2013)..

⁹⁵ Ahmet İçduygu and Damla Aksel, “Turkish Migration Policies: A Critical Historical Retrospective,” *Perceptions* 18 no.3, 255.

as it only granted them “the right to stay in the country but not the right for transition to long-term residence permit and it does not entitle its holder to apply for Turkish citizenship.”⁹⁶

Furthermore, the actual implementation of benefits and protections ensured by the TPR raised further problems. Many Syrians were unable to gain access to the assurances listed in the TPR due to irregular implementation of the law by local authorities.⁹⁷ For example, though Syrians were afforded the right to an education, that did not necessitate instruction in their native language. Schools outside of the refugee camps on Turkey’s southern border were primarily taught in Turkish rather than Arabic.⁹⁸ This posed a serious obstacle for Syrian children who sought to continue their education despite their status as asylees. In addition, the few schools that offered instruction in Arabic on the border camps also ran into bureaucratic issues as the degrees they issued were often not recognized by many universities in Turkey.⁹⁹ This made it difficult for Syrians seeking to find gainful employment to compete with similarly qualified Turkish job seekers. The right to healthcare also proved difficult to fulfill as many regional hospitals were understaffed and under resourced to handle the number of patients seeking treatment.¹⁰⁰ In addition, many asylum seekers ran into issues where they were

⁹⁶ Asli Öner, “Vulnerability leading to mobility: Syrians’ exodus from Turkey,” *Migration Letters* 12 no. 3 (2015): 257.

⁹⁷ Aysen Üstübici, *The Governance of International Migration: Irregular Migrants’ Access to Right to Stay in Turkey and Morocco*, Amsterdam: Amsterdam University Press, 2018.

⁹⁸ Ibid.

⁹⁹ Ibid.

¹⁰⁰ Ibid.

rejected from clinics that did not recognize the rights guaranteed under TPR. This irregular implementation exacerbated the issues faced by many Syrians and instituted a system of temporariness that left asylum seekers in a state of increasing precarity.

It is important to consider the LFIP and the TPR within the context of EU externalization efforts as they represented significant steps toward alignment with what the EU sought for in 2005. Though Turkey still maintained the 1951 geographic limitation on refugees, it had increased its capacity to process asylum requests and expressed a responsibility to ensure a base level of protections for asylum seekers. These reforms would prove to function as the foundation of the external migration governance regime later solidified under the EU-Turkey Statement as they sought to halt mass migration flows from reaching member states.

CHAPTER 6: RETHINKING EXTERNALIZATION

Externalization consistently emerges as the predominant guiding logic. The Barcelona Declaration of 1995 clearly states that the EU's stance on migration in the EMP framework is one primarily concerned with limiting irregular migration and cracking down on organized crime.¹⁰¹ By framing migration as first and foremost an issue of criminality, the EU clarified that it would treat irregular migration as a crime problem rather than a humanitarian one .

This strategy is again demonstrated in the TNAP and 2005 Progress report documents during accession talks with Turkey.¹⁰² In this case the EU sought to employ the differentiated integration approach enabled by the EUAs in order to pursue more precise cooperation with specifically Turkey in the field of migration. By using the prospect of membership status as leverage, the EU encouraged Turkey to enact select reforms to its migration regime that aligned with this externalization strategy. Although these reforms did not initially reach the extent that the EU had wished for, those that were achieved again reveal externalization to be the predominant EU strategy and criminalization as the natural consequence. The subsequent changes to Turkey's migration system instituted via the LFIP and its TPR laid the groundwork for

¹⁰¹ "Barcelona Declaration," (declaration, Barcelona, 1995).

¹⁰² "Turkish National Action Plan on Migration," (action plan, Turkey, 2005).

Commission of the European Communities, "Turkey 2006 Progress Report," (progress report, Brussels, 2006).

further development of an external migration governance regime. Though these significant reforms were in part driven by domestic pressures from the mass surge of asylum seekers entering Turkey, the influence of the EU's accession requirements established a clear foundation on which future externalization efforts could be built.

Accordingly, the 2016 EU-Turkey Statement is much in line with this history of externalization and criminalization. In particular, the institution of a readmission agreement was a long sought-after policy goal of the EU that it had pursued since the early-2000s. This agreement empowered EU officials to deport asylum seekers who had entered the Schengen zone irregularly to Turkey which would then hold responsibility for processing them. Furthermore, Turkey promised to increase information sharing with EU officials as well as security measures along its western borders as a means of further discouraging irregular entry into the continent. These measures, along with the one-for-one initiative enabled the EU to differentiate between regular versus irregular asylum seekers, viewing the former as legitimate and the latter as illegitimate. Though discussions surrounding these measures were couched in humanitarian terms, the design of the statement was done to restrict migration flows above all else.

The focus on differentiating between regular versus irregular asylum seekers in the EU-Turkey Statement serves to effectively deny the right to asylum for those who entered the EU via irregular channels. Though they may have had an equally legitimate asylum claim as those who entered via formal channels, the applications of irregular asylum seekers were dismissed. In addition, the statement denied non-Syrians their right to seek asylum and provided no mechanism for ensuring the EU resettled its fair share of refugees. However, even certain

Syrian asylum seekers were excluded in this framework due to conditionalities over previous attempts to enter the EU. Altogether, the EU-Turkey Statement serves as a powerful example of the extent to which externalization is still the primary strategy of the EU when it comes to migration, regardless of the human cost.

Yet, it is important to consider these measures, however disheartening they may be, when seeking to find more sustainable solutions to migration issues in the future. Though many media pundits have labeled the mass influx of asylum seekers to Europe in 2015 as the ‘migration crisis’ or ‘refugee crisis,’ such labels mask the reality of the problem. In fact, it was a ‘policy crisis’ for the EU stemming from its ill-prepared asylum system and subsequent inability to actualize any real reforms that would address the problem at hand. Though the number of asylum seekers entering the EU in 2015 was historically high, other countries with significantly less resources and administrative capacity have dealt with the same challenge at a far greater degree. For reference, since the outset of the crisis in 2015, the EU “has given refuge to around a million Syrians - that is, less than 0.2 percent of its population.”¹⁰³ By contrast, as of October 2019, Turkey harbors an estimated 4 million refugees and asylum seekers - this constitutes 5 percent of its total population and makes it the country with the largest population of refugees and asylum seekers in the world.¹⁰⁴ Even more challenging are the situations in Jordan and

¹⁰³ Zeynep Kivilcim, “Migration Crises in Turkey,” in *The Oxford Handbook of Migration Crises* (Oxford, UK: Oxford University Press, 2018) 10.

¹⁰⁴ UNHCR, “Turkey: Operational Update October 2019,” (operational update, 2019).

Lebanon, where refugees and asylum seekers make up 8 and 17 percent of the entire population of those respective states.¹⁰⁵

Simply put, as the second largest economy in the world, the EU is entirely capable of taking a more proactive and central role in solving this problem. Moving forward on this issue will require a clear commitment and action plan from the EU to increase the number of refugees it resettles so to ensure it shoulders a fair share of the burden. However, the continual institutionalization of an external migration regime and further normalization of measures like mass detention and deportation make such a shift in policy appear unlikely.

Such measures have also had broader impacts outside the EU, particularly in Turkish domestic politics. In the years since the EU-Turkey Statement Erdoğan has used his important position in the EU external migration regime as cover to pursue a series of anti-democratic reforms in Turkey. After the July 2016 coup attempt, the Turkish government cracked down on opposition parties and was able to pass a referendum which consolidated a great deal of power in the hands of the presidency.¹⁰⁶ These changes also eroded the separation between the Turkish judiciary and executive offices by giving the president more oversight over the former branch.

¹⁰⁵ UNHCR, “UNHCR Operations Worldwide: Jordan,” United Nations, accessed on 18 February 2020. reporting.unhcr.org/jordan.

UNHCR, “UNHCR Operations Worldwide: Lebanon,” United Nations, accessed on 18 February 2020. reporting.unhcr.org/lebanon.

¹⁰⁶ Sinan Ekim and Kemal Kirişçi. “The Turkish constitutional referendum, explained.” Brookings, accessed on 19 February 2020. www.brookings.edu/blog/order-from-chaos/2017/04/13/the-turkish-constitutional-referendum-explained/

Furthermore, with many recent polls indicating that Turkish views towards Syrians and other asylum seekers are souring, Erdoğan's rhetoric has shifted from advocating for integrating Syrians to insisting that they must return home. The 'safe-zone proposal' presented by Erdoğan at the UN is the latest example of Turkey's shifting stances on its asylum policy and the growing chaos arising from an unresolved asylum dilemma.¹⁰⁷ Turkey's recent decision to invade northern Syria was done, at least in-part, to actualize this safe-zone plan which has consequently put thousands of lives at risk. EU externalization, though not directly causal of these current affairs, has at the very least had a profound impact on how they have developed since the EU-Turkey Statement.

By maintaining Turkey, and other states neighboring Syria, as those primarily responsible for hosting asylum seekers, the EU has undermined its own standing as a normative power and called into question its own commitment to human rights and humanitarian values. The status quo has proven unsustainable and, as a predominant power in the region, the EU must reform this system of external migration governance and create a more sustainable, long-term solution for the millions vulnerable asylum seekers currently stuck in limbo.

¹⁰⁷ Colum Lynch and Lara Seligman, "Turkey Pitches Plan to Settle 1 Million Refugees in Northern Syria," *Foreign Policy*, 18 December 2019. foreignpolicy.com/2019/12/18/turkey-pitches-plan-settle-1-million-refugees-northern-syria-erdogan-kurds/

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