The EU-Turkey Refugee Deal and its Assumption of Turkey as a Safe Third Country: A Legal Analysis

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Abstract

The EU-Turkey Deal concluded on the 18th of March 2016 has as its main goal the reduction of irregular migration. It is the latest evidence of the increasing externalization of the European Union's asylum policies which is achieved through the conclusion of agreements between the Union and third countries regarding asylum processes. It allows the EU to maintain control over entries into its territory and the asylum process, yet questions have arisen regarding its ability to uphold the rights of asylum seekers and provide respect for fundamental human rights. Under Article 80 TFEU, Union policies are to be governed by the principles of solidarity and responsibility sharing within the European Union and in its relation to the wider world. The EU-Turkey Deal implies Turkey's status as a Safe Third Country on the basis of Article 38 of the Asylum Procedure Directive under the Common European Asylum System. A failed military coup, a violent breakdown and a refugee population of 2.8 million people of which most are without basic needs all hint toward Turkey's inability to be designated a Safe Third Country. Many angles to the EU-Turkey Deal have been examined, except for its conformity with international and European law. This is where this research paper comes in. It examines Turkey status as a Safe Third Country and investigate its conformity with and ability to uphold the principles of solidarity and responsibility sharing and provide respect for fundamental human rights.

To that end, this research paper analyses primary legal sources combined with NGO reports to deconstruct Turkey's status as a Safe Third Country. An argumentative legal dogmatic methodology examines whether Turkey was in compliance with obligations arising out of international, European and Turkish legal sources. The findings of this analysis are combined with the analysis of the most important court cases of the European Court of Human Rights, the European Court of Justice and NGO reports. This research papers' main finding is that Turkey cannot be designated as a Safe Third Country and that the Deal violates international and European law. This because Turkey is in breach of three essential requirements to be designated a Safe Third Country; it does not respect the principle of non-discrimination, it does not respect the principle of non-refoulement and it does not provide for access to the asylum procedure. This results in an inability of the Deal and Turkey to uphold the rights of asylum seekers and to provide for solidarity and responsibility sharing.

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List of Abbreviations

EU – European Union

MS – Member State

CEAS – Common European Asylum System

APD – Asylum Procedure Directive

ECJ – European Court of Justice

ECtHR – European Court of Human Rights

TFEU – Treaty on the Functioning of the European Union

TEU – Treaty on the European Union

STC – Safe Third Country

TFLIP – Turkish Law on Foreigners and International Protection

NGO – Non-Governmental Organization

UNHCR – United Nations High Commissioner for Human Rights

AI – Amnesty International

HRW – Human Rights Watch

MSF – Médecins Sans Frontières

Introduction

Reaching consensus at the European Union (EU) level between 28 Member States (MS) has proven to be an increasingly challenging task. Yet, one policy field where consensus is the norm rather than the exception is the Union's asylum policies and more specifically, the increasing externalization of asylum policies. A development not without consequences for the upholding of the rights of asylum seekers.

The Union's admission policies can be broken down into two dimensions. The first are internal admission policies, guiding the rights and obligations of MS and asylum seekers who have reached the EU and filed a claim for refugee status on the territory of a MS. The second group consist of external admission policies, focussing on the protection of asylum seekers in third countries i.e. countries outside the external borders of the EU (Heijer 2012). The external dimension is part of the European Agenda on Migration the origins of which can be traced back to the Tampere meeting of 1999, serving as the initial stage for the negotiation of an internal EU asylum policy (European Commission 2017; European Parliament Briefing 2015). The internal dimension is governed by the Common European Asylum System (CEAS), which is comprised of various directives and regulations establishing the rights and obligations of both asylum seekers and MS regarding asylum applications. The legal basis for the CEAS is found in Article 78(1) of the Treaty on the Functioning of the European Union (TFEU).

Both internal and external admission policies are governed by the principles of solidarity and responsibility sharing under Article 80 TFEU. These concepts will form the basis of this research papers' theoretical framework, incorporating a normative approach based on these two facets. The refugee crisis of 2011 has exposed the discrepancies in asylum systems between different MS and their inability to process the increasing influx of asylum seekers. Under the Dublin Convention, MS at the external border are responsible for asylum applications and are overwhelmed by the number of applications, resulting in an inability to uphold the rights of asylum seekers enshrined under international and European law.

This malfunctioning of the internal admission policy has led to lower levels of trust and solidarity between MS (Nanopoulos 2012), and an increase in efforts at the Union level to create a stronger external admission policy, involving third countries to conclude readmission agreements with the aim of reducing the burden posed by asylum seekers on

MS. France closing its border with Italy in 2011 is evidence of a lack of trust and solidarity between European MS (Carrera, Guild, Merlino and Parkin 2011). Questions have arisen as to the ability of the external dimension to provide the same legal safeguards to asylum seekers as under the elaborate internal admission policy (Heijer 2012).

This research paper will focus on the latest of these agreements, concluded between the EU and Turkey on the 18th of March 2016: the EU-Turkey Deal, hereafter 'the Deal', part of the EU-Turkey joint action plan. This Deal is chosen because it is the most up to date and elaborate policy initiative between the EU and a third country (TC) and therefore allows for inferring from this Deal to other agreements with third countries. The EU-Turkey joint action plan aims at: 1) addressing the root causes leading to the influx of Syrian; supporting Syrians under temporary protection and their host communities in Turkey and 2) strengthening cooperation to prevent further migration flows to the EU (European Commission 2015). Solidarity and responsibility sharing are important components of this action plan. The Deal's primary aim is the reduction of flows of illegal migrants (an overarching term with important implications that will be discussed in the methodology).

The legal basis for concluding agreements with third countries is found under Article 78 (2(g)) of the TFEU. It allows for the "…cooperation with third countries for the purpose of managing inflows of people applying for asylum…". To conclude such agreements with third countries, these must first be designated as Safe Third Countries (STCs). Article 38 of the Asylum Procedures Directive pertains to the criteria that need to be met for a country not part of the EU to be designated as an STC. As mentioned earlier, questions have arisen over the ability of externalization mechanisms to uphold the rights of asylum seekers. The purpose of this research is to contribute to answering that question. The objective here is to examine whether Turkey can be designated as a STC. Literature on the Deal is nearly non-existent due to its recent implementation just a little over a year ago. A second purpose of this research paper is to contribute to the creation of literature on the Deal and its conformity with international law and to filling the gap that currently exists regarding the absence of the examination of the Deals conformity with international and European law.

To that goal, the research question is the following: To what extent is the legitimization of Turkey as a STC through the EU-Turkey Deal supported by evidence from practices in Turkey and what are the consequences of this legitimization for the rights of asylum seekers who will have to seek asylum in Turkey instead of the European Union? Thus, we will investigate whether Turkey has legal safeguards in place for asylum seekers, and are these legal safeguards applied to refugees in Turkey, or are they perhaps not applied? Are the

rights of refugees provided for in legislation only, or also are they also exercised? Rights can be codified in law and still not be accessible to asylum seekers. This research question will be devised into two sub questions: 1) To what extent can Turkey be considered a Safe Third Country regarding non-discrimination and non-refoulement? 2) How does the Deal ensure the obligation to an individual examination of the merits of a refugee's asylum application? The two principles of non-discrimination and non-refoulement are chosen because they form the cornerstones of the international refugee system and will form the normative approach of this research paper. They are provided for in the 1951 Geneva Refugee Convention, hereafter 'Refugee Convention' as well as in European and Turkish national legislation.

The methodology of this research paper consists of an argumentative legal dogmatic method entailing that we will discern the meaning of the different laws through the systemization and interpretation of relevant legal sources. These legal sources consist of the 1951 Refugee Convention, the European Convention on Human Rights (ECHR), legislation under the CEAS as well as the Turkish national laws relating to asylum and migration processes. These legal sources will be supplemented by reports from governmental institutions as well as NGOs and by landmark cases by the European Court of Human Rights (ECtHR) and the European Court of Justice (ECJ). Both non-discrimination and non-refoulement form an integral part of this research papers' theoretical framework which consists of a tri-partite framework, incorporating international, European and national (Turkish) legislation. This tri-partite framework is chosen as the employment of a multi-layered analysis allowing to optimally deduce where tensions between different levels of legislation could arise. The hypothesis of this paper is that Turkey is not in compliance with the requirements to be designated as an STC, that it fails to provide for solidarity and responsibility sharing and that the Deal is therefore in violation of European law.

Section one has introduced the topic and research question. Section two elaborates on the methodology employed. Section three clarifies the theoretical framework operated in this research paper. Section four will provide an overview of the Deal, and examine whether tensions between the Deal's objective and its conformity with international and European legislation can arise. Section five provides an overview of the current state of literature on the CEAS, externalization and the Deal. Section six will be broken down into three sub-sections, analysing primary legal sources as well as government and NGO reports to determine: 1) if and how Turkey respects the principle of non-discrimination, 2) if and how

Turkey respects the principle of non-refoulement and 3) how the Deal affects asylum seekers' ability to obtain legal remedies and access to courts. Legal sources have little value without interpretation by courts. To that goal, section seven will assess the most important court cases by the European Court of Human Rights and the European Court of Justice to examine how non-discrimination, non-refoulement and the access to courts function in practice. Section eight will form the conclusion to this research paper.

Methodology

This research paper employs an argumentative legal dogmatic methodology analysing positive law to discern its meaning (Nunez Vaquero 2013, Vranken 2012). The goal of the methodology at hand is not to simply describe the variety of relevant positive law sources, but also to interpret them and to provide a moral reasoning for said laws, as well as provide solutions to cases the law has no clear-cut answer to. Thus, it is not the point here to represent what laws are in place, but also to induce meaning from various legal sources and propose solutions considering the values and principles of the legal systems under review. Activities in this argumentative legal dogmatic methodology should be governed by two factors. Firstly, by the set of values and moral or legal principles posited in the legal system called 'law' and secondly, scholars must justify their position and proposed solutions, by offering supportive arguments (Nunez Vaquero 2013). Analysis of the law at hand and justification of proposed solutions are two important components. Interpretation of the law is not confined to an analysis of relevant legal sources; interpretations by courts play a vital role in this regard.

Within this context, the desk research will consist of the analysis of primary sources and will focus on a tri-partite framework of international, regional and national sources of law. At the international level, the 1948 UDHR and the 1951 Refugee Convention will be dissected. These two documents are chosen because they form the basis of the human rights and asylum regimes at the international level. All regional and national legislation needs to incorporate obligations arising out of the aforementioned legal sources, justifying their inclusion into the analysis. At the regional level, the ECHR and the CEAS will be analysed. The ECHR forms the basis of the European human rights regime and the CEAS clarifies

the workings of the European asylum system, what rights and obligations arise on both asylum seekers and MS. At the national level, Turkey's 2014 law on Foreigners and International Protection (TFLIP) will be considered as it is the main legal source relating to the treatment of asylum seekers and international protection. An official online translation in English of the original document in Turkish was provided for by the Turkish Ministry of Interior. Through this methodology, it will be assessed to what extent obligations arising out of international legal sources are implemented in the regional and national legislation.

The analysis of primary legal sources is not sufficient to inform us of their workings in practice. International law is constantly being (re)interpreted in courts of law allowing for a better understanding of context and render it applicable. As such, the analysis of primary legal sources will be combined with the analysis of landmark court cases from both the ECtHR and the ECJ relating to asylum. The most important cases treated by these two courts regarding non-discrimination, non-refoulement and access to the courts will be analysed to examine how the law is interpreted. Finally, then, the analysis of primary sources will be complimented with an analysis of secondary sources, reports by NGOs and government institutions. The purpose of this analysis is to uncover the situation on the ground in Turkey, allowing for the examination of how the rights and obligations arising out of the theoretical framework are implemented in Turkey and whether they respect the obligations in international legislation.

A possible limitation of the current methodology is its potential to, at times, overly depend on case law and legislation resulting in an inability to constitute a dynamic field. The point here is that case law and legislation more generally are not developed over night and take months or even years to develop and conclude. This causes a dependency of legal dogmatism on the renewal of such sources, and its inability to provide new insight without new court cases and legislation (Vranken 2012). This limitation is equally present in this research papers, as legal scholars are still awaiting a final court decision by the ECtHR or ECJ on Turkey's status as a STC. This does not, however, deny us the possibility to examine Turkey's STC status and its compliance with international law on the basis of NGO reports and court cases relating to our normative framework, which will hopefully be supplemented by a legally binding court case on Turkey's status as an STC by either of the European courts in the near future.

Terminology

This section will address definitional issues with regard to the terms refugee, asylum seeker, regular and irregular migrant that arise out of the absence of clear definitions in refugee legislation. The Deal attempts to reduce irregular migrants from reaching the territory of the EU. The problem here is that there does not exist a clear harmonized definition of what constitutes an irregular migrant in international, regional or national legislation; posing the risk that those who are eligible for refugee status are refused access on the basis of their designation as an irregular migrant. The Refugee convention only provides the definition of a refugee in Article 1 stating that anyone who '...owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to availing himself to the protection of that country…'. Although the definition of a refugee seems elaborate, it is still not inclusive as environmental refugees are not included, meaning that ultimately such refugees do not have a right to asylum and could potentially remain stateless (Marshall 2011). An asylum seeker is someone who has entered the legal process to apply for refugee status. The problem arises when using the term (irregular) migrant, an overarching term, meaning those who migrate for economic reasons as well as refugees (European Parliament Briefing 2015). Under the Deal, all irregular migrants entering the EU after March 20th, 2016 are refused entry to the EU. The danger here is that asylum seekers who have not filed a claim for international protection in Europe within the timeframe set out in EU legislation will fall under the category of 'irregular migrants', as they have not followed the procedural steps to apply for asylum. The Deal designates all those who are not entering the EU through legal pathways as irregular migrants, including asylum seekers who are eligible for refugee status, making them susceptible to being sent back, potentially constituting refoulement and being in breach with the right to life, freedom and to be free from torture, degrading and inhumane treatment. As will be shown in the analysis, procedural grounds do not constitute a basis for denying asylum seekers access to the procedure and this possibly constitutes a violation of the rights of asylum seekers.

Theoretical Framework

This research paper will employ a normative approach using a tri-partite theoretical framework analysing the relevant international, regional and national sources. In this theoretical framework, we will employ a normative analysis based on the concepts of solidarity and responsibility sharing enshrined under Article 80 TFEU. The policies of the Union are to be guided by these two principles, and in this research paper we will examine to what extent the Deal respects these two principles. Responsibility sharing is divided into three parts; sharing the influx of asylum seekers proportionally, contributing to asylum hosting projects financially and ensuring that the ideas evolving around asylum are implemented in a harmonized way across the legislation of 28 MS. Solidarity as an idea entails that MS within the Union must help each other in tackling the refugee and other crises in a manner where MS support each other. Solidarity is not however limited to those countries and subjects in the EU, but it also entails solidarity to the wider world (Art 80 TFEU) and ultimately also pertains to providing solidarity to asylum seekers that have not reached the territory of the EU in this case. Responsibility sharing is equally a prime principle in the EU's asylum policies and entails that the responsibility to process asylum claims must be shared. Again, this responsibility sharing is not confined to European MS but must be provided for in relation to the wider world as well. Thus, our normative framework posits that MS in the EU have human rights obligations that they must comply with, and that solidarity and responsibility sharing form an integral part to ensure the optimal execution of human rights obligations.

Next, we must examine what obligations arise out of the legal sources under examination, and how solidarity and responsibility sharing are provided for. In this research paper the analysis will take a normative stance arguing that the EUs external asylum policies must be governed by solidarity and responsibility sharing and examine to what extent these two concepts are respected under the Deal.

Universal Declaration of Human Rights

The UDHR is the pinnacle in human rights legislation and cannot be withheld from this research paper. The document contains 30 rights that all human beings possess in virtue of their humanity. Both Turkey and Greece have voted in favour of the UDHR, evidence of their desire to uphold the rights stipulated in it. Several articles in the UDHR are noteworthy. Solidarity and responsibility sharing are not explicitly mentioned in the UDHR. Article 3 ensures everybody to the right of life, liberty and security of persons. Article 5 provides that nobody shall be subject to cruel, inhuman and/or degrading treatment. These two articles are important as the analysis of this research paper will attempt to demonstrate that Turkey fails to comply with the definition of an STC set out under European legislation, and, that it, as a result, is unable to provide the security of life and persons as well as provide protection from cruel, inhumane and degrading treatment. Article 8 ensures to the right to an effective remedy. Article 9 provides that nobody shall be subject to arbitrary arrest and/or detention, an important article which will be returned upon in the analysis. Article 10 provides for equality in fair and public hearings by impartial tribunals. A final article that needs to be mentioned is Article 14, providing for the right to seek and enjoy asylum from prosecution in other countries. It is Article 14 that forms the legal basis for the Refugee Convention.

1951 Convention and Protocol Relating to the Status of Refugees

The Refugee Convention is the main legal source providing the obligations of signatories and asylum seekers regarding refugee protection. Both the EU and its individual MS have ratified the Refugee Convention. By contrast, Turkey holds a geographical limitation meaning that only refugees who come from the territory of the EU are recognized. This could potentially complicate the current research, were it not that Turkey has ensured its obligation to asylum seekers from other parts of the world through the adoption of the 2014 Turkish Law on Foreigners and International

Protection (TLFIP). Again, both responsibility sharing and solidarity are not explicitly mentioned in the Refugee Convention.

Article 1 provides for the definition of a refugee. Article 3 ensures for the obligation of non-discrimination. Article 7 specifies the exemption from reciprocity, meaning that asylum seekers should be granted the same treatment as aliens. Article 9 is noteworthy as it allows for the taking of provisional measures in times of "grave exceptional circumstances". Article 16 relates to access to courts and provides that free access to the court of law of the contracting state should be provided for. Moreover, refugees should receive the same treatment as nationals. Here, we must question how the Deal respects the 'access to courts' obligation when asylum seekers who have not filed an asylum claim are sent back to Turkey without having an opportunity to present their claim in a court of law on the territory of a European MS. Other important articles to this analysis are Article 25 pertaining to administrative assistance that is to be ensured to refugees who want to exercise their right and cannot without such assistance, Article 27 stating the obligation that contracting parties must provide identity papers to refugees not in possession of valid travel documents. Article 31 ensures that refugees who are unlawfully in a country cannot be penalized on account of their illegal entry, an important article the Deal is possibly in violation of. Finally, Article 33 relates to the prohibition of refoulement. It ensures that contracting states shall not return a refugee to a country where his freedom or life would be threatened on account or race, religion or nationality. It is this article that forms the basis of non-discrimination at the international level which is then taken over in European and national legislation.

Treaty on the European Union and Treaty on the Functioning of the European Union

The Treaty on the European Union and the Treaty on the Functioning of the European Union govern the workings of the EU institutions and MS internally as well as its relations to the wider world.

Article 3 TEU presents the values of the EU, these being peace, solidarity and the well-being of its peoples. Subsection 5) provides that these values must be upheld in relation to the wider world as well; an important article with implications that are considered in

the analysis section. Article 4 (3) provides for the principle of sincere cooperation and Article 5 provides for the principle of conferral, meaning that the EU shall only act within the competencies conferred upon it. The external dimension of asylum policies is such a dimension, meaning that the EU can take decisions at the Union level.

Article 78 pertains to the development of a common policy on asylum and provides it must be in accordance with the Refugee Convention. Article 79 relates to the development of a common immigration policy and subsection 3) functions as the basis for the conclusion of readmission agreements with third countries. Article 79 (3) is the legal basis for the conclusion of the Deal under examination. A final important article is Article 80 TFEU, which forms the basis of our theoretical framework, ensuring that the policies set out in the TEU and TFEU must be governed by the principles of solidarity and responsibility sharing. This means that externalization policies must respect Article 80 TFEU.

European Convention on Human Rights

The European Convention on Human Rights is the EU's main legal source regarding human rights obligations. In light of Article 80 TFEU all articles coming forth from this convention must respect the principles of solidarity and responsibility sharing. Article 2 provides for the right to life, Article 3 the prohibition of torture and Article 5 the right to liberty and security. In the context of the current research we must ask whether sending back an asylum seeker to a country where they are at risk of torture and inhuman or degrading treatment constitutes a breach of Articles 2, 3 and 5. Article 6 ensures the right to a fair trial. Subsections 3-a/b/c/d are important here as well as they stipulate the condition to qualify as a fair trial and these conditions will be touched upon in the analysis as well. Article 13 relates to the previous Art 6, in that it provides for the right to an effective remedy under national law, something which is questionable under the Deal. Article 14 provides for the prohibition of discrimination. Under Protocol 4 of the convention, Article 4 provides for the protection of collective expulsion.

Common European Asylum System

Within the CEAS, this research paper focusses on the relevant articles under the Asylum Procedures Directive (APD). Specifically, Article 38 APD, establishing the concept of a Safe Third Country. To qualify as an STC, third countries must ensure that a) life and liberty are not threatened, b) there is no risk of serious harm, c) the principle on non-refoulement is respected in accordance with the Refugee Convention, d) the prohibition of removal is respected and e) the possibility exists to request refugee status. In this research paper points 1) 2) and 4) will be grouped under the analysis regarding non-discrimination, point 3) will be analysed under the section of non-refoulement and point 5) will form the basis for the analysis of the section on legal remedies. Another important point is subsection 2 b) pertaining to the obligation of an individual, case by case treatment regarding considerations of STC for asylum seekers. This case by case clause is important and likely to be violated under the Deal. Although the Deal ensure the obligation of a case by case examination of asylum seekers' merits, Greece's reception capacities will be shown to not suffice in the analysis, a development likely to contribute to the inability to uphold the obligation of an individual examination.

The 2014 Turkish Law on Foreigners and International Protection

The final legal source that must be addressed is the 2014 TLFIP. Turkey has a reservation on the Refugee Convention in that it recognizes European asylum seekers only (Heijer 2012). It is this national legal source that ensures rights to asylum seekers coming from non-EU countries and allows to infer what rights and obligations arise for asylum seekers in Turkey and whether they uphold equal standards as in international and European legal sources. It must be noted that the source used is an unofficial translation and has no legally binding force in courts of law. For the purpose

of this research it does allows to infer the type of standards the Turkish authorities aim to uphold and thus can be included.

Solidarity and responsibility sharing are absent from the TLFIP, though several articles are noteworthy. Article 1 establishes the purpose of the law in question. Article 3 poses definitions. Article 4 is essential as it pertains to the obligation of non-refoulement. The inclusion of respect for non-refoulement is very welcomed; however, we must examine how this obligation plays out. Article 61 grants refugee status, but only to those asylum seekers coming directly from the territory of the EU. Article 62 is essential because it establishes that those coming from other territories than the EU, shall be granted conditional refugee status until they are resettled to a third country. It is the terms within Article 62 that could pose problems for the respect of non-refoulement as well as non-discrimination. Article 68 pertains to the grounds on which administrative detention can be applied. Article 70 ensures that relevant information and translation services are provided for if necessary. Articles 73 and 74 relate to asylum seekers coming from either a first country of asylum or an STC, meaning that responsibility for the asylum applications lies with those countries rather than with Turkey.

Prior to delving into the analysis and examining to what extent the Deal functions with respect for the obligations arising out of this theoretical framework, we will first present the Deal and examine its most noteworthy points.

The EU-Turkey Migration Deal

On the 18th of March 2016, the European Council presented a statement on the implementation of a deal between the European Union and Turkey regarding migration, both regular and irregular. This agreement has been implemented as of the 20th of March 2016. It is part of a greater initiative between the EU and Turkey, specifically the EU-Turkey joint action plan. This action plan aims at addressing the refugee crisis in the Mediterranean in three ways: 1) addressing root causes leading to massive influx of Syrians, 2) supporting Syrians under the temporary protection and their host communities in Turkey and 3) strengthening cooperation to prevent the irregular migration flows to the

EU (European Council 2016). The Deal is part of objective 3) as its main goal is to put an end to irregular migration from Turkey to the EU. Nine points of action are proposed in the deal, with a short summary of each point provided below.

1. The return from Greece to Turkey of all new irregular migrants entering Greece as of 20th March 2016.
2. 1 for 1 trading scheme: for every Syrian returned from Greece to Turkey, another Syrian will be resettled from Turkey to the EU.
3. Turkey to take increasing measure to prevent the creation of new sea and land routes into the EU.
4. Creation of a Voluntary Humanitarian Admission Scheme once irregular crossings have been reduced.
5. Fulfilment of visa liberalization for Turkish nationals.
6. EU to provide 6 billion Euros to Turkey under the Facility for Refugees in Turkey to aid in providing facilities for those in Turkey under temporary protection regimes.
7. Continue workings between the EU and Turkey toward upgrading the Customs Union.
8. Re-energise Turkey's accession process.
9. EU and Turkey to work in joint endeavour to improve humanitarian conditions inside Syria.

The Deal's major implication is that of Turkey as an STC. Article 38 of the APD established the five criteria that a third country needs to meet to be able to be designated as an STC. These five criteria can be understood as: 1) life and liberty should not be threatened; 2) there is no risk of serious harm; 3) the principle of non-refoulement is respected; 4) the prohibition of removal, in violation of the right to freedom or torture and cruel, inhumane and degrading treatment; 5) the possibility exists to request refugee status and if granted to receive protection. It is the assumption of Turkey as an STC that is under review in this research paper and will be further elaborated on in the analysis.

Several points need to be stressed from the analysis of the Deal itself. To begin with, it sets high legal standards. This is evident from the wording under topic 1) wherein it states that returns "will take place in full accordance with EU and international law, thus excluding any kind of collective expulsion" (European Council

2016). This phrase is wholeheartedly welcomed, as compliance with international law is essential in agreements with third countries to respect the rights of asylum seekers and would be evidence of solidarity. However, this research paper questions the ability of the Deal to uphold this commitment. Furthermore, the phrasing of point 1) bring up questions as well. It refers specifically to non-refoulement when addressing returns, does this mean that access to legal remedies and respect for non-discrimination hold lesser importance. Withholding them in the phrasing under point 1 seems to imply so. Leaving out the obligations to respect non-discrimination and access to legal remedies is worrisome.

Another point of concern under topic 1) is that "all new irregular migrants" who entered the Greek island from Turkey after the 20th of March 2016 will be returned. Here, it must be stressed that asylum processing capacities in countries at the external borders of the EU are insufficient to treat all entries on their territory. In Greece, a country already overburdened with seekers of international protection, there is currently a lack of reception facilities for asylum seekers leaving many of them without housing. This poses a risk, as the incapacity of MS at the external borders to treat asylum applications will leave many asylum seekers unable to apply for refugee status in a timely fashion resulting in them being qualified as irregular migrant and per consequence being sent back. If it is the incapacity to treat asylum applications that leads to asylum seekers being designated as irregular migrants, then this seems to be highly controversial as it is the EU MS who are to blame for this incapacity, at the same time it is the asylum seekers who are punished when being send back. This will be further discussed under section 6.1.

A final point of concern is the "one for one" mechanism the Deal employs under point 2). For every Syrian sent back from the Greek island to Turkey, the EU will resettle a Syrian currently in Turkey to the EU. This raises several questions. Do other nationalities not have a stake in the asylum process? Are the lives of Syrians currently in Turkey more important than those who arrive in the EU through Greece? And does irregular entry suffice as a condition for sending legitimate asylum seekers to Turkey? These questions will be addressed in the analysis under section 6.

Literature Review

In this section, we will evaluate the state of play on the literature regarding the Deal, which currently remains limited. The main reason for this is that the Deal is a little over a year old and has not yet been extensively examined from different angles in the current literature. In order to understand how the Deal came to life, we must first examine literature on the CEAS, allowing us to uncover where its origins lie and what criticisms there exist that have resulted in the move toward externalization. Next, we will focus on what has been written on the EU-Turkey deal more generally.

Over the past decade, the CEAS has been the focus of criticism from different scholars on several topics. The first point of criticism addresses the creation of the CEAS and more specifically, the power of strong regulating states. Here, Zaun (2017) argues that the CEAS is the result of the bargaining power of politically stronger Northern MS to impose their will and high legal protection standards on weaker Eastern and Southern MS. This has resulted in an increased refugee protection on paper, but research has shown there exists a true inability to provide it in practice (Zaun 2017). Southern MS who did not have adequate facilities in place were nonetheless forced to comply with high standards on paper, and now find themselves in a situation where they are unable to provide meaningful protection.

An example of this is the Dublin regulation, responsible for the determination of which MS should examine an asylum application. It is subject to criticisms from various scholars (Noll 2000; Gray 2013; O'Nions 2014; Peers 2015; Morgades-Gill 2015; Trauner 2016). These criticisms evolve around two points. Firstly, the principle of first arrival, stating that the first European MS an asylum seeker enters is responsible for its application is criticized. The main argument here is that this system places a disproportionate burden on European MS that function as countries of first arrival (those at the external border of the EU, such as Greece, Italy). Under the Dublin regulation, countries at the external borders that are responsible for an asylum application and as a consequence, southern MS are overburdened, whilst northern MS evade responsibility (O'Nions 2014, Peers 2015). Secondly, under the current system, there is a failure to a fair sharing of responsibility, an obligation enshrined under Art 80 TFEU. Responsibility falls on southern MS, who are overcrowded and unable to

provide meaningful help to asylum seekers, whilst northern MS evade any responsibility (Peers 2015). Clearly this is in contradiction to Art 80 TFEU.

This leads to a second major criticism regarding the CEAS, its inability to provide for solidarity and responsibility sharing, both enshrined under Art 80 TFEU. (McDonough and Tsourdi 2012; Hatton 2012; Langford 2013; Mitsilegas 2015; Karageorgiou 2016; Trauner 2016; Barbulescu 2016; Tawat 2016). A first difficulty lies in the fact the there is no universal definition of what solidarity means (Lang 2013). A lack of solidarity is evident according to scholars who argue that the disproportionate burden posed on MS through the CEAS and the Dublin regulation is a prime example of the failure of European MS to respect Art 80 TFEU and the principles of solidarity and responsibility sharing (Lang 2013; Grimmel and Giang 2017). The consequence of this disproportionate system is a non-functioning system in which asylum seekers are unable to have their basic needs met, and find themselves in overcrowded reception centres unable to obtain adequate food, water and medicines or access to the asylum procedure.

Another criticism evolves around the lack of asylum quotas. Currently, MS take in asylum seekers on a voluntary basis; there exists no scheme for the distribution of asylum seekers, which again, is evidence of a failure to provide solidarity and responsibility sharing (Thielemans 2010). Tawat (2016) argues that the absence of a mandatory intake scheme is problematic. He points to Eastern European MS, who systematically oppose taking in asylum seekers because they feel that taking in asylum seekers threatens their cultural, political and social integrity. Fernandez-Huertas Moraga and Rapoport (2015) propose tradable refugee quotas (TRQ) as a solution to the absence of mandatory intake schemes; a proposal that has not reached policy makers yet with decisive conviction. Regarding Greece more specifically, the Dublin regulation is heavily criticized. Greece, currently witnessing both a refugee and financial crisis is by no means capable of tackling the flow of asylum seekers entering its territory each moth and its burden not being relieved by other MS is yet another example of a failure to provide solidarity and responsibility sharing.

A third criticism focusses on the lack of harmonization. Although the CEAS has made serious efforts at attempting to harmonize legislation regarding asylum throughout the EU, the problem here is that it only aims at establishing minimal standards in practice. (Lambert 2009; Nollkaemper 2013; O'Nions 2014). The point is that weak standards are the only way forward as high standards of protection would be

opposed by countries with inadequate reception capacities. Because strong countries such as Germany or France want asylum applications to be treated at the external border of the EU, they agree to lower standards in practice. This means that where harmonization occurs, it only provides for the lowest common denominator, effectively resulting in an inability to provide meaningful help to asylum seekers.

It is evident from the literature that the CEAS is heavily criticized; a criticism that has ultimately resulted in a move toward the externalization of the CEAS (Haddad 2008; Paoletti 2011; Mason 2013; Menz 2015). The main debate here focusses on who is responsible for the move toward externalization; is it Union driven or is it driven by individual MS? Mason (2013) argues individual MS are the main drivers of the externalization process, whereby MS are putting restraints on EU-level policy making to erect 'Fortress Europe' through their own practices. According to Mason it is MS acting through the EU level that are the main responsible. Andrijasevic (2010) makes a compelling argument stating that EU policies that are aimed at reducing irregular migration are paradoxically the same policies that contribute to creation to the 'illegalizing' of movements of migrants. Another important contribution is made by Hampshire (2015) who investigates the ability of the Union to reach agreements with third countries and argues that contrasting approaches between the different EU institutions as well as different agendas reduce the EU's ability to conclude agreements with third countries.

Another debate focusses on the usage and efficiency of readmission agreements (RAS) between European MS and TC's as well as on bilateral agreements between the EU or its individual MS and TC. A group of scholars have argued that RAS are a quick and efficient method to prevent irregular migration (Icduygu and Aksel 2014), other scholars have dismissed this assumption (Haddad 2008; Reslow and Vink 2014). Another scholar (McNamara 2013) has argues that externalization, which he defines as "direct control by MS of the EU within third states" is the attempt of MS to maintain control of the inflow of asylum seekers, whilst at the same time avoiding the responsibility to process their asylum claims. Under externalization, MS maintain a level of control to deny individuals in dire need of access to their territory, whilst at the same time evading any responsibility to assess asylum applications. It is clear then, according to Papagiani (2013) that the EU has to put in a great amount of effort to achieve a harmonized, comprehensive and well-functioning external migration policy and that solidarity and trust play a vital role in the achievement thereof.

Literature on the CEAS elucidates that it is under serious criticisms, which the EU has responded to with a move toward externalization. The debate on the efficiency of this externalization is still open (Heijer 2012).

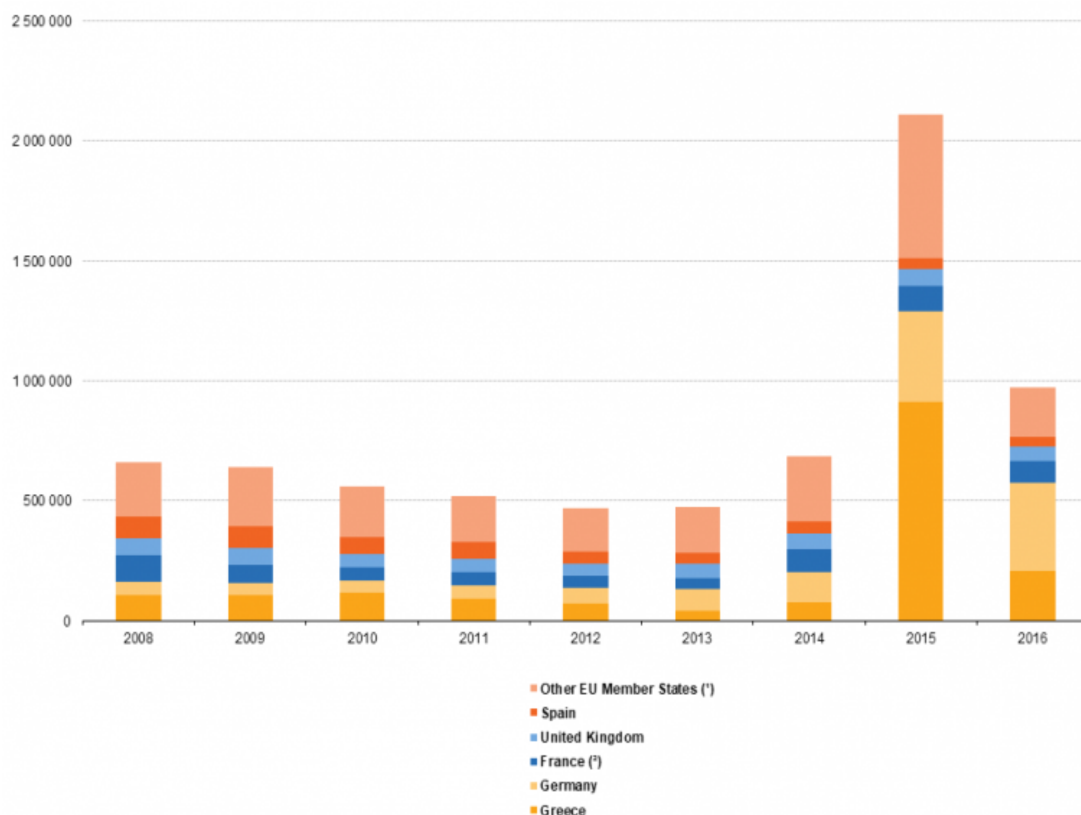
Finally, we must focus on what has been written on the EU-Turkey deal, which has been approached from a number of angles. Okyay and Zaragosa (2016) have examined Turkey's position as a 'gatekeeper' between refugee flows originating from the Middle-East that travel to Europe. They argue that Turkey's position as a gatekeeper, allowing it to exercise the most effective control over asylum seekers' movements, is the origin of Turkey's ability to influence the deal. RAS, such as the Deal are the most effective mechanism to prevent irregular migrants entering the EU according to Icduygu and Aksel (2014), an assumption that is still contested. Memimsoglu and Ilgit (2016) examine whether there exists a harmonized approach to the treatment of asylum seekers between the Turkish state and various local, national and international organizations and NGOs when addressing the refugee crisis in Syria. They reach the conclusion that these actors in Turkey increasingly follow a European model. In light of the above-mentioned criticism, we must ask ourselves whether this is a welcome development in terms of upholding the rights of asylum seekers and refugee protection. One angle that has not been researched regarding the Deal is its legality. Its conformity with international and European law is still left blank, a blank space this research paper attempts to answer. Whether it complies with international and European law and what its consequences are for the protection of the rights of asylum seekers is the purpose of this research.

Analysis

Before delving in to the more detailed inspection on the three topics of analysis at hand, we need to first examine the effectiveness of the Deal in light of its objective, which is to put an end to all new irregular migration after the 20th March 2016.

The European Commission presents monthly statements updating on progress made under the Deal. Tracking irregular migration is a difficult task however. Whereas regular migrants can be tracked because they follow legal institutionalised pathways,

irregular migrants do not, resulting in an increasing difficulty to detect them. The Deals inability to fully account for irregular entries, as such entries usually circumvent legal detection mechanisms poses a first shortcoming. Nonetheless, some preliminary conclusions can be drawn. Regarding the reduction of detected irregular migrants, the Deal is effective. In 2015, the five most affected countries by the refugee crisis recorded over two million detected irregular entries. In 2016 (the Deal taking effect in March and being active for ¾ of the year) this number had dropped to slightly less than one million irregular migrants (Eurostat 2017).

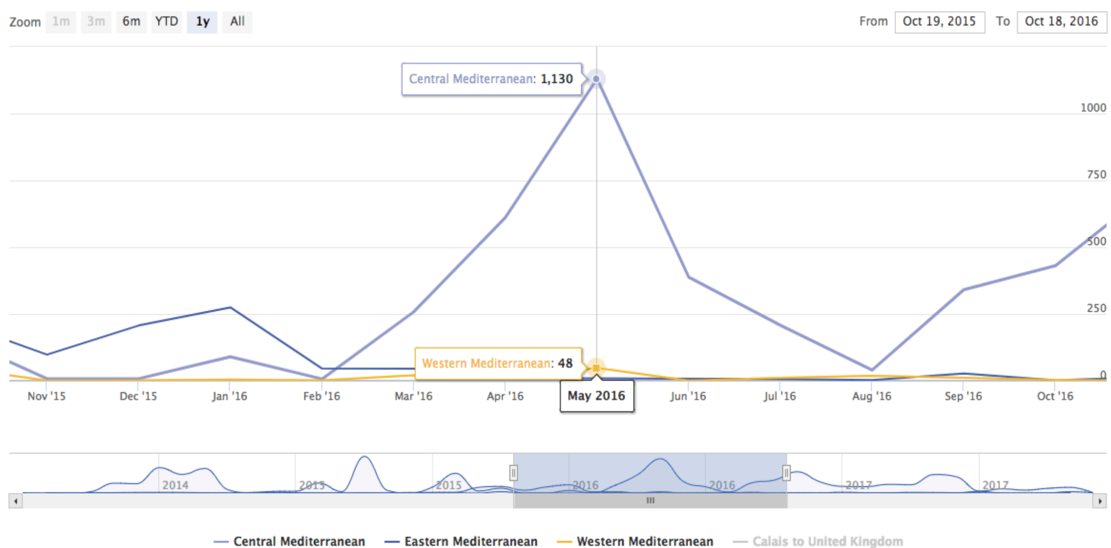


Note: the selection of these five EU Member States is based on the cumulative number of persons for the entire period covering 2008-2016.
(¹) Includes an estimate for missing data for the Netherlands for 2012 (based on the average of 2011 and 2013).
(²) 2014: break in series.
Source: Eurostat (online data code: migr_eipre)

The main goal of reducing irregular migrants seems to be achieved. A worrisome development however, is that the number of returns from Greece to Turkey remains lower than the number of arrivals in Greece (European Commission Report, 2017). This is problematic, as it means that despite the Deal, reception facilities in Greece that had already exceeded their capacity limit are still over-pressured and overburdened, resulting in an inability to provide asylum seekers with adequate basic needs such as food, water and accommodation. Another shortfall lies in the lack of

interpretation and border guard experts currently deployed on the hotspots in the Greek islands. (European Commission Report, 2017). With a lack of vital expertise in hotspots, the ability to provide meaningful assistance to asylum seekers is questionable.

A final but important and problematic result of the Deal is the correlation between the official closing of the Eastern Mediterranean route and the increase in migrant deaths via other known Mediterranean migration routes. Arrivals via the Eastern Mediterranean route (Turkey to Greece) have declined, yet this decline has been accompanied by a rise in arrivals and deaths via other routes including the Central (Libya to Italy) and Western (Morocco to Spain) Mediterranean routes. In the first two months following the implementation of the Deal and the closing of the Eastern Mediterranean route, the number of deaths on the Central European route had risen from 258, to 611 and finally to 1,130. An increase in the number of deaths by nearly 500% (IOM, Missing Migrants Project, 2017).



(Source: IOM, Missing Migrants Project 2017. Accessible at http://missingmigrants.iom.int/region/mediterranean)

Overall, the Deal achieved its goal of reducing irregular migration from Turkey to Greece, yet shortcomings are still visible and acknowledged by the European Commission. The effect on the other routes due to the closing of the Eastern Mediterranean route on the Central or Western Mediterranean route has yet to be investigated, a shortcoming of the EU institutions as this effect needs to be examined

as well. In the following three sub-sections, we will examine to what extent the Deal, as well as Turkey itself, is able to uphold the principles of non-discrimination, non-refoulement as well as the obligation to provide asylum seekers with access to courts. Each subsection will be divided between a segment analysing the Deal itself, and a segment analysing practices in Turkey.

Non-Discrimination

Non-discrimination holds a central place in our normative framework. From this human rights approach asylum seekers need to be provided with equality before the law and non-discrimination plays a vital role. It ensures equal treatment between state nationals and aliens, including asylum seekers. Within the tri-partite framework, non-discrimination is a right provided for at two out of the three levels. At the international level, Art 7 UDHR provides for the right to non-discrimination and equality before the law as well as Article 3 of the Refugee Convention. At the regional level, the right to not be discriminated against is provided for under Art 14 of the ECHR. A worrisome development is the absence of the right to non-discrimination at the national level, specifically, its absence from Turkey legislation relating to asylum. The absence of such a provision allows for practices that constitute discrimination to occur, but to be guarded against legally proves difficult as they are not provided for under national law, meaning that they cannot be called on in Turkish courts. The Deal is discriminating, or enables discrimination through the designation of Turkey as an STC in several ways.

To begin with the deal itself and its objective of preventing all new irregular migrant to enter the territory of the EU is highly questionable and arguably a discriminatory practice. The right to apply for asylum in a country is enshrined under the Refugee Convention and under Art 14 of the UDHR, which the EU and its MS have ratified and have an obligation to uphold. Under point 1) of the deal all irregular migrants will be returned to Turkey in compliance with EU and international law. This is a measure the EU can take under exceptional circumstances, yet the wording ensures that each asylum application will be treated individually and in accordance with the law. An obligation which proves increasingly difficult to uphold in reality. Refusing

access to the EU to a specific group clearly constitutes discrimination. Asylum seekers, both regular and irregular have a right to file a claim for asylum that needs to be treated on substantive ground. Refusing access to the EU to a specific group of migrants and returning them to Turkey amounts to discrimination. Under the current system, the ECtHR has deemed Greece not a safe country because it lacks hosting facilities resulting in an inhumane and degrading treatment (UNHCR 2009), causing asylum seekers to live in terrible circumstances. This potentially amounts to discrimination in that a specific group, irregular migrants consisting of both asylum seekers and economic migrants, are withheld of the ability to live in dignity. Related to this, is another topic of concern giving rise to possible discrimination is the absence of sufficient experts in hotspots on the Greek islands. Asylum have the right to a personal interview pursuant to Article 34(1) APD allowing them to rebut the assumption of the designation of a STC, or a connection between them and the STC in their case (UNHCR 2016). This personal interview is of utmost importance as it is the only moment asylum seekers can participate in the asylum designation process, providing them with agency. Without sufficient experts, vital components of the asylum process risk to be skipped, with asylum seekers being treated as irregular migrants and being discriminated against and denied the rights under the APD.

Another major concern which gives rise to discriminatory practices is the fact that asylum seekers are denied refugee status on the basis of procedural rather than substantive grounds. Procedural ground, such as the failure to apply for asylum as soon as possible have led to asylum seekers being denied refugee status. Yet in the NS. v. UK 2011 case, the judges reached the conclusion that procedural grounds do not constitute a sufficient reason to refuse international protection to asylum seekers. Rather than procedural grounds, the court argued, it is the substantive grounds that need to be examined. This means the opportunity to an individual interview is essential, an obligation that is currently unable to be realised in the overburdened reception centres in Greece. In relation to the Deals objective, asylum seekers run the risk of being registered as irregular migrants on the Greek island, withheld from the opportunity to provide their account, and sent back under the accelerated procedure. This is a procedure that hints greatly toward discrimination and an unwillingness on the part of the EU and its MS to provide solidarity and responsibility sharing toward asylum seekers. Thus, the fact that there are insufficient reception capacities in Europe, especially on the Greek islands (Medecins Sans Frontieres 2017), results in huge

numbers of asylum seekers being qualified as irregular migrants and being sent back to Turkey under accelerated return procedure. This based on administrative, rather than substantive grounds, effectively discriminating on the basis of their status as irregular migrants and is clearly in violation of international and European law.

Beside the deal hinting toward a discriminatory policy of a general nature, we need to closer examine discriminatory practices in Turkey to establish whether it complies with the criteria to be determined as an STC or not. Furthermore, we must examine to what extent Turkey complies with its human rights obligations and provide for solidarity and responsibility sharing arising out of this theoretical framework. Discriminatory practices in Turkey are of two categories, the is first aimed at asylum seekers specifically and the second against specific sub-sets of the Turkish population. Syrian asylum seekers are discriminated under Turkey's 2014 Temporary Protection law. This constitutes a first instance of discrimination in that Syrian nationals cannot obtain full asylum status in Turkey, but only temporary protection, before they are sent to a STC (Amnesty International 2016). Syrian refugees being solely provided with temporary protection status is clearly not an example of solidarity. Rather, a clear example of showing solidarity with Syrian refugees would be for the Turkish government to provide them with indefinite refugee status. Turkey has readmission agreements with third countries of its own (Coleman 2009). This temporary status is in breach of Turkey's obligation under international law, regarding the provision of international protection which is not tied to a time limit. Furthermore, such readmission agreements pose the risk of chain-refoulement, which will be addressed in the next section.

The treatment of asylum applicants more generally in Turkey has been documented by many NGOs strongly criticising Turkey's ability to respect the life and liberty of asylum seekers and ensure they are not harmed. The absence of information shared with asylum seekers, administrative detention practices in detention facilities that are too small, underequipped and understaffed, refugee reception facilities that are inhabitable resulting in sickness and disease have all been documented (Medecins Sans Frontieres 2017). A failure to provide adequate reception facilities potentially constitutes discrimination and is evidence of a failure to provide solidarity to refugees. There are currently some 2.8 million refugees that do not fit in reception camps and are left to meet their own needs without support (Amnesty International 2016). Social assistance is equally unavailable in Turkey and most social help comes from asylum

seekers' family members or religious communities. The Turkish government is nearly completely absent in this process (Amnesty International 2016). Beatings of refugees by police officers, cramping of asylum seekers in cells that are too small, withholding food and water are common practices that are unacceptable in a country that is designated as an STC. All these practices constitute discrimination as they are aimed at asylum seekers a specific group of the population and contribute to inhumane and degrading treatment of asylum seekers and clearly expose Turkey's inability to comply with subparagraphs a) and b) of Article 38 APD relating to the qualification of STCs.

Besides discriminatory practices against the refugee population in Turkey, there are also documented instances of discrimination by the Turkish government against its own citizens. Human Rights Watch (2017) issued a report elaborating on practices on the excessive use of violence by Turkish police forces including abductions. After the attempted 2016 coup in Turkey, thousands of university professors, lawyers and artists were detained by the Turkish government on suspicion of participating in the coup, media outlets were closed and journalists were imprisoned (Human Rights Watch World Report 2017). Such practices are in direct contradiction with international law and it is evident from the treatment of certain groups after the coup that freedom of expression, of association and assembly rights that are absent in Turkey. These rights form the basis of democratic societies and Turkey's breakdown on protesters and other parts of its population after the coup show Turkey cannot be considered a democratic country, as thousands of people were arrested and detained without any charges being brought up against them.

Turkey is unable to uphold the rights of asylum seekers due to its lack of reception facilities, inexperienced border and police guards and the absence of social assistance by the government to the refugee population currently residing in its territory. All this results in the inability to prevent asylum seekers being harmed and to provide respect for the life and liberty, both clauses that need to be met for Turkey to qualify as an STC. Finally, the above analysis is evidence of Turkey's inability to provide solidarity, responsibility sharing and respect for human rights.

Non-Refoulement

The prohibition of refoulement in asylum law combines a dualist approach. The first facet to the prohibition of refoulement provides that countries may not refuse access to their territory to asylum seekers. The second part consists of the prohibition to send asylum seekers to a country where their rights to life, freedom and be free from inhumane and degrading treatment cannot be upheld (Heijer 2012).

In contrast to the previous topic of analysis, non-refoulement is codified strongly throughout the three levels of this research papers' theoretical framework. At the international level, Art 33 of the Refugee Convention provides for the prohibition of refoulement. This is equally enshrined at the regional level under Art 28(2) of the APD, as well as Articles 35 and 38 relating to the designation of safe countries of origin and safe third countries both include the obligation to respect the principle of non-refoulement. Under the TFLIP Art 4 provides for the obligation to respect non-refoulement. Non-refoulement forms an integral part of this research papers' normative framework as it is one of the cornerstones of the international refugee system. Whereas it seems that the prohibition to non-refoulement is well codified, its implementation provides a different picture.

As mentioned, refusing asylum seekers access to the territory of a MS falls under refoulement. A first instance of refoulement occurs at the Turkish border with Syria. Whereas the Deal has effectively closed the Western Mediterranean route into Europe via Greece, an even more worrisome development is that it has indirectly led to the same development in Turkey, which had in 2015 already began the construction of a wall on its border with Syria as soon as talks of a Joint Action plan between the EU and Turkey developed, aimed at keeping Syrian nationals, including asylum seekers eligibly for international protection, out of Turkey (The Guardian 2017). Turkey has effectively closed its border with Syria, preventing those in need to reach its territory, effectively constituting refoulement. This is a clear failure to provide solidarity towards the Syrian population desperately in need of assistance. Building a wall with the aim to prevent people access to the Turkish territory, especially Syrian nations who are in many cases eligible for international protection is a clear breach of the principle of non-refoulement.

Next, under the agreement, all irregular migrants entering Greece as of the 20th of March 2016 will be sent back to Tukey. This practice equally hints to refoulement taking place and a failure to provide solidarity and responsibility sharing. It is the phrasing of point 1) of the Deal "all new irregular migrants" that causes the risk of returning both asylum seekers in need of international protection as well as irregular economic migrants. Irregular migrants being an overarching term, including asylum seekers and economic migrants, the return of all those falling under this category will risk returning those eligible to protection. Procedural grounds, including the use of illegal pathways into the EU, are not a sufficient reason to deny asylum seekers access to the territory of MS. Institutional capacities on the various hotspots on Greek islands do not suffice to allow every entry into the EU to be registered. This means asylum seekers are sent back because they have failed to be registered, but this is not the fault of their own but rather, it is the lack of institutional capacity on Greek islands that causes these asylum seekers to not be able to register and be designated as irregular migrants and through this designation to be subsequently refused entry into the EU, a practice in violation of European court decisions. Furthermore, the return of all irregular migrants to Turkey is evidence of a failure to provide for responsibility sharing equally.

Under this deal, Turkey will be responsible for all irregular migrants after the 20th of March 2016. Clearly the responsibility is not shared, but falls solely on Turkey. Although the 1 for 1 scheme, where the EU will take in a refugee for an irregular migrant returned to Turkey, seems to share responsibility, it ultimately does not. The reason for this is that the population of asylum seekers in the EU and Turkey remains the same, they exchange an irregular migrant for an asylum seeker, but this means that the refugee population in both countries remains the same; they merely exchange populations and do not relieve each other (Greece or Turkey) of their burden.

Having examined to what extent the agreement enables refoulement practices in violation of international law, Turkey itself is also in breach of the obligation to respect the non-refoulement principle. Under Art 62 of the 2014 Law on Foreigners and International protection, those asylum seekers coming from other territories that the EU are only granted temporary protection status until they are resettled to a STC. This article seems to be in clear violation of the right to seek international protection on a permanent basis under the Refugee Convention. International protection cannot be provided on a time limited basis.

Another concern raised by Art 62 of the TLFIP is that of chain refoulement, the practice of sending asylum seekers back from one country to another, until they eventually find themselves in the country they initially fled from, where their right to life cannot be safeguarded and they are in risk of political persecution and inhumane and degrading treatment (Heijer 2012). The problem here lies in Turkey's ability to conclude its own readmission agreements with third countries deemed STCs (Coleman 2009). These readmission agreements are usually concluded with countries in the region, yet, few countries in that region would qualify to be designated as an STC under European legislation. Despite that Art 74 of the TLFIP governing STCs provides for standards that are similar to the EUs, it is the ability of Turkey to conclude readmission agreements of its own with third countries in the region that poses a risk of chain refoulement, a practice that must be averted as asylum seekers fail to have their claims reviewed each time they are returned to an STC. In the current context, asylum seekers that are refused international protection on procedural grounds in the EU, are sent back to Turkey, which will then send them back to their country of origin if designated an STC resulting in chain refoulement and the inability to protect asylum seekers from threats to their life. It is the lack of harmonization between the designation of STC at each return step that risks the lowering of standards regarding the determination of STC between each return. This is another instance where the obligation to provide solidarity is non-existent.

Finally, various reports from different NGOs have confirmed multiple accounts of illegal return practices of asylum seekers by the Turkish authorities. An Amnesty International (2016) report found consistent evidence of asylum seeker and refugees alike being in risk of refoulement to their countries of origin such as Afghanistan, Syria and Iraq, countries where their lives are certainly at risk. This practice is in direct violation of the principle of non-refoulement. Other reports contain testimonies of asylum seekers being kept in detention for an indefinite time until they would agree to sign a voluntary return document and would subsequently be returned via official procedures (Amnesty International 2015, Human Rights Watch 2016). Here, volunteers would be given the option to either remain in detention for an indefinite period of time, or to sign a document stating their voluntary return. Such voluntary returns have been frequently given as justification for returns of refugees, yet in light of Amnesty International reports, we must ask ourselves whether these returns are truly voluntary,

or obtain through coercion. Generally, such voluntary returns appear to be forced through coercion and detentions by Turkish authorities that can amount to torture.

From these practices, it becomes evident that the Deal is unable to respect and ensure the application of the principle of non-refoulement. Turkey itself is also in violation as seen from the compelling evidence that it illegally returns asylum seekers, even using forced indefinite detentions to obtain a signature for voluntary returns from refugees and asylum seekers. Clearly then, Turkey seems to be in breach of subparagraph (C) of the APD in respect of non-refoulement and does not qualify as a safe country in this regard and does not provide for solidarity towards the refugee population.

Access to Procedure

In the final section of our analysis we will shift the focus from practices pertaining to the treatment of asylum seekers to an examination of asylum seekers' ability to gain access to the procedure of obtaining international protection, which can be divided in two parts. One consists of the provision of information to those who wish to lodge an application for international protection, a second consists of providing access to the courts of law to applicants of international protection. Information sharing and access to the courts is essential as it provides asylum seekers with agency, meaning they can participate more adequately in the asylum process and that through this information sharing and access they are able to exercise their rights under the various national jurisdictions.

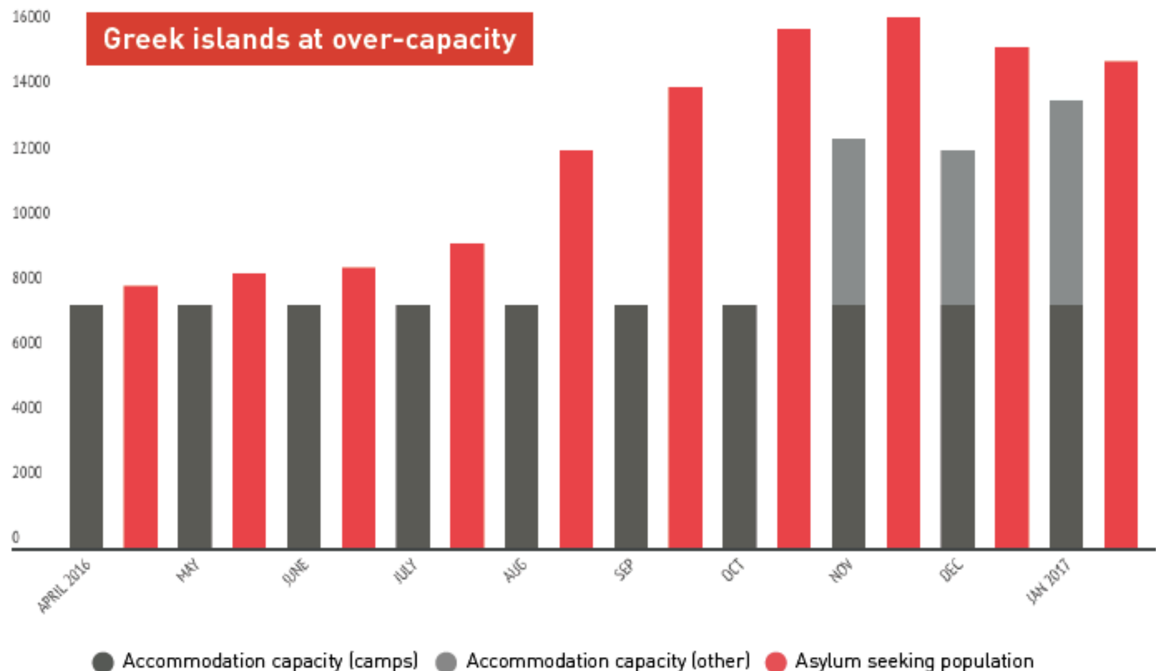
At the international level, access to courts is provided for under Article 16 of the Refugee convention and the obligation to provide administrative assistance under Article 25. These two articles form the basis of this obligation at the international level which is then codified at the European and national level as well. At the European level, the APD extensively addresses the obligations of MS regarding these two topics. Art 6 ensures that MS must provide the opportunity to lodge an application as soon as possible. Art 8 provides for information sharing at border crossings and reception centres and Art 12 obliges MS to provide information in a language understood by the

applicant and equally to provide interpreters where necessary. A personal interview, in a confidential area conducted by competent persons trained in asylum law is provided for under Articles 14 and 15. Finally, free legal assistance in the normal procedure as well as the appeals procedure is guaranteed by Articles 19 and 20. It is evident that under European legislation these two facets are well codified. The TLFIP however holds much lower standards and little specifications are provided for. Article 70 states that an applicant shall be informed of their rights and obligations when they lodge an application and provide for the ability to request (not the obligation to provide) a translator. Art 101 provides that the Supreme Council of Judges and Persecutors shall determine what court is to be used to appeal. It becomes evident that information sharing and access to court are well codified under European law, but that they are only very limited and vaguely described under Turkish national legislation.

The Deal sets high standards when under point 1) it ensures that all migrants entering the Greek islands shall be registered and processed in compliance with the procedures set out in the APD. Compliance is welcomed as it shows a true desire to provide solidarity. We must examine whether this solidarity is implemented on the ground as well and to what extent does the EU uphold the standards it strives for. Greece's ability to process applications for international protection has been exceeded for several years and the horrendous conditions of the its refugee centres has been well documented (UNHCR 2009; The Guardian 2017). The Dublin regulation has overburdened Greece in its capacity to treat asylum applications, a clear absence of solidarity and responsibility sharing on the part of the other European MS. Whereas the Deal was supposed to provide solidarity and responsibility sharing by relieving Greece of this burden and providing asylum seekers with better access to the procedure, this has not been achieved. The fact that the number of returns from Greece to Turkey remains lower than the number of arrivals in Greece is threatening asylum seekers' ability to gain access to the procedure (European Commission Report 2017). A higher entry than return number means the already overcrowded centres witness an increasing pressure they cannot handle. This withholds asylum seekers' ability to be provided with adequate information and opportunities to lodge their application.

Since April 2016 the asylum-seeking population on Greek islands has systematically been above their accommodation capacity with a drastic rise since August 2016. Currently the asylum population on the islands exceeds their accommodation capacity by 2:1 (Medecins Sans Froniteres 2016). In overcrowded

reception centres, it is impossible for every applicant to have their application treated in a timely and orderly fashion.



Source: Medecins Sans Frontieres (2017) *One Year on from the EU-Turkey deal*

Another worrisome fact is the absence of sufficient asylum experts and translators on hotspots on the Greek islands. According to EU data, the shortfall of experts is currently 54 (European Commission 2017). Without such experts in place, who possess the necessary knowledge to ensure the optimal and objective examination of an application, asylum seekers are left without personnel informing them on what procedures to follow. Reports of police officers conducting interviews with multiple applicants at once, in public spaces unable to guarantee confidentiality is evidence of a failure to uphold the obligations arising out of the APD regarding Articles 14 and 15. Overall then, the practices and conditions in Greece greatly hinder the ability of asylum seekers to receive information on the procedure and constitutes a failure to provide solidarity to asylum seekers through the insufficient creation of reception centres, information sharing and the provision of asylum experts, a potential breach of Articles 8 APD.

Relocation efforts under the Deal are currently equally lacking behind, example of the failure to provide responsibility sharing within the EU. According to a European

Commission factsheet (2017) by September 2017 the number of people relocated out of those eligible for relocation from Greece and Italy into the EU is 57% and 44% respectively. This means that only half of those eligible have been relocated. For a policy that is to be governed by the principles of solidarity and responsibility sharing they are awfully absent in reality. Eastern European MS systematically oppose the intake of refugees and political as well as social factors play an important role. This leads to a situation where responsibility in refugee intake is not shared sufficiently and the bulk of it falls on MS at the external borders of the EU, unable to cope with it.

Next, we need to examine to what extent access to the procedure and access to courts of law is available to asylum seekers in Turkey; two important components of solidarity towards the asylum population and essential to the justification of Turkey as a STC. One of the requirements for Turkey to be designated an STC under the APD Art 38-1) e) is that there exists the possibility of requesting and being granted refugee status. In light of solidarity, we here posit that this possibility must not only exist in the national legislation, but that it must be sufficiently provided for so that all potential applicants have an opportunity to apply for international protection.

A first disturbing practice is the refusal of entry into the Turkish territory to Syrian nationals fleeing the civil war. This practice has been well documented (Amnesty International 2016, Human Rights Watch 2016). Accounts of refusal of entry to all those but the severely injured are in clear breach of the international obligation to provide protection and access to the procedure. This practice can lead to families being separated in the process, with sometimes children being left behind without anybody to care for them. Amnesty International has uncovered at least two such cases. Refusing entry to its territory is a clear example of a failure to provide solidarity with populations in need of assistance. This becomes even more problematic, when Turkish border guards shoot at Syrians trying to cross the border, which potentially constitutes a threat to life. Practices of refusal to entry at the border are in clear breach of the refugee convention. Although Art 9 thereof allows for the taking of exceptional measures in grave circumstances, surely shooting at refugees does not fit this category. The closing of its borders could fall under a legitimate exceptional measure, yet we question the ability of such a measure to prevent asylum seekers from entering the Turkish territory and argue instead that it will only cause them to take more risks, putting their life in greater danger to reach Turkey.

Another instance where Turkey seems to be in breach of its obligations to constitute a STC is in the provision of good quantitative as well as qualitative assistance to asylum seekers. By December 2015, Refugee Rights Turkey (2015) stated that they were uncertain about the number of anticipated staff and migration experts that had actually been hired. This points to a shortcoming in professional staff and an inability to provide good qualitative information. The DGMM (Directorate General for Migration Management) had by end 2015 anticipated to hire roughly 4000 staff and migration experts to deal with the information gap. The refugee population at that time was about 400,000, or 10,000 asylum applications to be treated by 1 staff member. As it stands, the refugee population in Turkey is roughly 2.8 million people, yet there is no indication of an increase in staff. Clearly then the intended number of staff will not be able to ensure adequate information sharing to all refugees.

Another worrisome fact is the misinformation provided by Turkish government, which had told the European Commission that it had treated 459 asylum decisions in 2015, only to shortly after that statement revise the number to 4,115 decisions in 2015, a tenfold increase (Amnesty International 2016). With government officials changing the numbers, it is questionable to what extent they are reliable numbers at all. A final important factor to the inability of asylum seekers to apply for international protection is preventive detention, which is often followed by forced returns. Amnesty International has documented such practices, where asylum seekers are kept in detention, without access to lawyers or the outside world, being beaten up and sometimes even forced to sign voluntary return documents. Refugees are given the option to 'Go back to Syria, or stay in jail' (Amnesty International 2016). Such forced returns are in breach of the principle of non-refoulement and are clear evidence of a failure to provide solidarity by the Turkish government to the refugee population in its territory.

All in all, the Deal does not sufficiently address Greece's inability to treat asylum applications in a human manner as hotspots in Greece are still increasingly overburdened, a trend the Deal has not been able to reduce. Furthermore, Turkey's capacity to treat asylum applications is nearly non-existent and accounts of refusal of entry, insufficient staff, and forced returns obtained through the indeterminate detention of asylum seekers certainly point to Turkey's failure to comply with Art 38-1) APD, as it is unable to provide access to the asylum procedure to those asylum seekers currently present in Turkey.

Court Cases

Examining legal sources has little value without actual interpretations by courts as to how specific articles are to be understood and how various rights and obligation are to be applied in practice. To that goal this section will focus on landmark cases, defined as those which provided the most important judgments on applications of asylum law by the CJEU and ECtHR relating to discrimination, refoulement and access to the procedure.

With regard to refoulement, the 1989 Soering v UK was one of the first cases brought before the ECtHR. Soering, a German national who had been accused of two murders sentenced and to death in the USA opposed his extradition from the UK to the USA on the basis that it was in breach of Art 3 ECHR and exposed him to inhumane, degrading treatment and a threat to his life. The court's judgement upheld this reasoning. This was the first case where the prohibition of refoulement was implied, a person could not be sent to a country where his life was at risk.

Regarding the STC concept and refoulement, T.I. v UK (CJEU 2000) concerned a Sri Lankan applicant who had lodged an application for asylum in the UK after he had left Germany where he feared to be sent back to Sri Lanka where his life was in danger. The UK argued that Germany was responsible for the asylum application under the Dublin regulation, as it was Germany that had denied international protection in the first instance. The court upheld this claim and pronounced the applicants claim inadmissible, as it found no breach of Art 3 Refugee Convention leading him to be sent back to Germany. The court's reasoning was that there was no risk of refoulement to Sri Lanka by the German authorities, and sending the applicant back from the UK to Germany was in line with the Dublin regulation (ECtHR, Dublin Cases 2016). All MS were to be considered STC and thus the applicant would not be in risk of refoulement in Germany.

An ECtHR (2011) case changed the state of play on returns and the designation of EU MS as safe countries. In MSS v Belgium, an Afghan applicant had entered the EU via Greece and travelled to Belgium where he lodged an application for international protection. Belgium denied his claim, arguing that it was Greece that was responsible under the Dublin regulation. The applicant opposed this reasoning arguing that application possibilities were not in line with the CEAS and living conditions in Greece amounted to inhumane and degrading treatment. The ECtHR upheld the applicants position and judged

that Belgium was in violation of Art 3 relating to degrading treatment by sending the applicant back to Greece, which was equally in violation of Art 13 and 3 ECHR. Based on NGO and government reports, Greece was deemed not a safe country. The reasoning of the ECtHR here opposed the CJEUs reasoning in the previous case in that MS could not simply assume all countries in Europe to be safe countries and had an obligation to apply a rigorous and individual examination of an applicants' claims before a decision on their asylum application or return was to be take. This was a landmark case as it ensured that asylum seekers must have their claims assessed on an individual basis. Furthermore, it pronounced that MS have an obligation to thoroughly examine the state of play in a country where a refugee is sent to, before they can send them onward. They could no longer assume all European MS were safe countries, but rather from that moment onwards, states had an obligation to an individual examination of asylum applications as well as appeals to decisions, enlarging their scope of responsibility.

The CJEU subsequently followed a similar reasoning in NS v UK (2011). In this case, an Afghan national had entered the EU via Greece but only lodged an application for international protection in the UK which opposed it as it deemed Greece responsible under the Dublin regulation. In its reasoning, the CJEU took the ECtHR reasoning in the MSS case into account when it reached a similar conclusion providing that MS cannot work on the presumption of compliance with fundamental rights between all MS in the EU. Again, a rigorous and individual examination of merits of an application or an appeal had to be considered. Furthermore, here the court established that procedural grounds do not suffice to refuse refugee status to an applicant of international protection. Rather it is substantive claims that need to be examined. Thus, refusing access on the account of illegal entry of asylum seekers or the failure to present them at registration offices as soon as possible are not a ground to refuse access. An important development. In relation to the current analysis, it becomes evident that Greece is still overwhelmed with international protection seekers and being understaffed it cannot ensure the rights of asylum seekers. Turkey likewise holds a refugee population of nearly 2.8 million people and its institutional capacities seem to be equally lacking to ensure the individual examination of applications for international protection (Human Rights Watch 2015, Amnesty International 2016).

Shafari and Others v Italy and Greece (ECtHR 2014) is another landmark relating to the prohibition of collective expulsion. Italy had returned 32 Afghan nationals to Greece under the Dublin regulation. This decision was opposed by the nationals and the ECtHR upheld their appeal. The court found that both Greece and Italy were in violation of Art 13

(right to effective remedy) and Art 3 (prohibition of inhuman or degrading treatment) and reiterated the prohibition of collective expulsion considering the systematic inability of Greece to uphold the rights of asylum seekers. This case is also important as it point to the inability of Greece to provide effective remedies against decisions taken on international protection status. Having examined the most important cases regarding the obligation surrounding the obligation to individual examination of application on substantive grounds, the prohibition of expulsion to countries where life and liberty are under threat, it becomes evident that both the CJEU and the ECtHR are on the same line.

A final noteworthy case relates Turkeys expulsion practices. In Jabari v Turkey (ECtHR 2000) an Iranian national challenged her deportation back to Iran on the basis that it would violate Art 3 ECHR. The court found that Turkey had failed to rigorously examine her claim and that Turkish authorities not did not conduct a meaningful assessment of her claim. It concluded there was a violation of Art 13 ECHR in that Turkey had failed to respect procedural requirements. It had also failed in that the decision on the return of the applicant was non-appealable, a fundamental obligation that needs to be respected.

From this analysis, several conclusions can be drawn. There exists a clear prohibition to collective expulsion. Furthermore, expulsion to a country where a person’s life is threatened and in risk of inhumane and degrading treatment is strictly prohibited. Application for international protections must be rigorously examined on an individual basis, and it must be examined on substantive grounds rather than procedural grounds, which do not constitute a sufficient reason for refusing to provide international protection or for sending an asylum application to another safe first country or safe third country. Finally, it was shown that Turkey has previously failed to examine applications on an individual basis and has furthermore attempted to practice refoulement without regard for the rights of asylum seekers. A development that has not changed since the Jabari v Turkey judgement by the ECtHR in 2000.

Conclusion

In this conclusion, we will rearticulate our theoretical framework, the findings, and although it is not necessarily the purpose of a research paper, a policy proposal will be put forth. We have examined the legality of the EU-Turkey agreement, an angle that had not yet been investigated in the scholarly literature. Our theoretical framework incorporates a tri-partite analysis examining what obligations arise out of international, European and national legislation regarding international refugee protection. The normative approach employed in this research paper is a human right based approach. As such, we argued that state policies have to be governed with an emphasis on the respect of fundamental human rights which form the basis of an international system of states functioning within a set of principles that are universally accepted, allowing human beings to be treated with dignity. Solidarity and responsibility sharing, enshrined under Art 80 TFEU are an integral part of our normative approach as all EU policies need to be governed by them.

At the international level, our three topics of analysis, non-discrimination, non-refoulement and access to the procedure are well codified. Under the Refugee Convention and the UDHR all three components are present. At the European level, they are equally codified in the ECHR and APD. At the national level, the 2014 TLFIP contains some valuable articles, yet the absence of the obligation to non-discrimination is worrisome. Generally, then, codification of human rights obligations is extensive at all levels of analysis. As mentioned in our methodology, the purpose here is not simply to describe the laws in place, but to provide a moral reasoning equally. A strong codification is clearly welcomed. It shows a true desire to uphold human rights obligations. Our findings present a disturbing picture when it comes to implementation.

The origins of the externalization of the EU migration policies are the result of a dysfunctional system. Whereas the Deal was to relieve the EU of its burden by providing solidarity and responsibility sharing to overburdened countries of first arrival in the EU and asylum seekers through the cooperation with Turkey, the current analysis has shown that it has failed to achieve this goal, as Greece is still increasingly overburdened and asylum seeker fail to see their rights upheld. The higher number of entries into Greece than number of returns is evidence of the failure to provide responsibility sharing with Greece. The main conclusion to be drawn from this analysis is that Turkey cannot be considered a Safe Third Country.

The Deal potentially enables discrimination meaning it is potentially in breach of Article 3 of the Refugee Convention and Article 3 ECHR. Its objective, that of preventing all irregular migrants to enter the EU potentially constitutes discrimination in that it refuses access to the EU's territory to a specific group (irregular migrants). Similarly, only offering temporary protection status to Syrian refugees under Turkish legislation seems to constitute discrimination. As has been shown, irregular entry does not constitute a ground to refuse access to the EU territory. Here, procedural grounds rather than substantive grounds are examined, yet the NS judgement has brought up the obligation of examining substantive grounds. Procedural grounds do not constitute a ground to refuse access, again potentially constituting discrimination. Discrimination is equally a widespread and well documented phenomenon in Turkey. Specific social groups where targeted after the coup equally when university professors, journalist and artists were targeted and detained without charges being held against them. In a country where such practices take place, discrimination is widespread.

The non-refoulement obligation is equally breached under the Deal. A breach of Article 33 of the Refugee Convention, Art 4 ECHR and Art 4 TFLIP. A first example hereof is the wall that Turkey is building on its border with Syria aimed at keeping asylum seekers out. Refusing access to one's territory constitutes refoulement. From the human rights perspective applied in this research paper such a practice is unacceptable. Another breach of the refoulement principle lies in the danger of chain refoulement. Turkey has the ability to conclude readmission agreements of its own with countries it deems an STC. Yet, this poses the risk that Turkey designates countries as safe which in reality are not safe, meaning they fail to comply with essential principles of human rights, ultimately sending refugees back to a country where their life is at risk. Thus, asylum seekers being refused entry into the EU, are sent back to Turkey, which then sends them onward to another country, ultimately resulting in the inability of asylum seekers to have their claims examined at any stage of the procedure. Finally, NGOs have documented return practices by the Turkish government constituting refoulement. Here, indefinite detentions are used as a means to obtain forced signatures for voluntary returns. Such practices are in violation of international and European law.

Finally, access to the procedure, although well codified in international and European law, seems to be absent in Turkish legislation. Refugee reception centres in Greece are overcrowded and this, in combination with a lack of sufficient expert result in an inability for many asylum seekers to access the international protection procedure potentially in

violation of Articles 14 and 15 APD and Art 25 of the Refugee Convention. The return of irregular migrants equally denies them of the ability to access the procedure under the Deal. The situation in Turkey is similar with overcrowded reception centres and insufficient expert staff.

The analysis has uncovered that Turkey actively engages in refoulement practices, that it discriminates against refugees and against its own population, and fails to provide adequate access to the procedure. It is thus in breach of Art 38 APD paragraphs a) b) c) d) and e) and cannot be constituted a Safe Third Country. The Deal is therefor in breach of European Law. Inhumane living conditions, insufficient training of experts and forced detentions in Turkey threaten refugees' life and liberty. They are also at risk of harm as forced returns are often accompanied by beatings. It becomes evident then that our hypothesis has held and Turkey cannot be considered a STC. It is not in compliance with the requirements for it to constitute a STC, as the Deal is in violation of international and European law. Human rights obligations are not respected and solidarity and responsibility sharing is absent.

This research papers policy recommendation calls, based on the analysis on this research paper, for the abolition of the EU-Turkey Agreement as Turkey is not an STC. Under this proposal, the EU must step up its efforts of solidarity towards and between the MS. To that goal, the most important task is the resettlement of asylum seekers currently in hotspot on the Greek islands insufficiently equipped to treat teat those resulting in inhumane conditions for them to live in. Solidarity as a core principle should be stepped up. MS should show efforts and willingness to host those resettled asylum seekers within their respective countries and treat the application there to take the immediate pressure of the hotspots in Greece. This would address the immediate needs of asylums seekers. Another important step is increasing the number of experts currently deployed in hotspots on the islands in allowing for a more efficient and quicker determination of the merits of asylum seekers currently in Greece. Providing for adequate reception facilities with enough place to host asylum seekers throughout the EU and increasing the number of experts on the hotspots on the Greek island are two essential components of this track

The creation of readmission agreements with third countries is highly questionable. This research has shown that it is possible for the EU to create such countries that it designates STC, but that in practice show a failure to uphold human rights standards. The EU-Turkey Deal constitutes a violation of European law. Turkey cannot be considered a safe country for refugees and with a refugee population of nearly 2.8million people who

are currently at risk of inhuman and degrading treatment, discrimination and refoulement, efforts to address this need to be stepped up in order to deconstruct Turkeys status as an STC and show true solidarity and responsibility sharing in the EU as well as towards asylum seekers.

Bibliography

Primary Sources

Treaties and Conventions

European Union, *Consolidated Version of the Treaty on the European Union,* 13 December 2007, 2008/C 115/01, available at: http://www.refworld.org/docid/4b179f222.html (Accessed 18 November 2017)

European Union, *Consolidated Version of the treaty on the Functioning of the European Union,* 13 December 2007, 2008/C 115/01, available at: http://www.refworld.org/docid/4b17a07e2.html (Accessed 18 November 2017)

European Union: Council of the European Union, *Directive 2013/32EU of the European Parliament and of the Council of 26 June 2013 on common procedure for granting and withdrawing international protection (recast)*, 29 June 2013, OJ L. 180/60 – 180/95; 29.6.2013, 2013/32/EU, available at: http://www.refworld.org/docid51d29b224.html (Accessed 19 November 2017)

European Union: Council of the European Union, *Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member States responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast)*, 29 June 2013, OJ L. 180/31-180/59; 29.6.2013, (EU)No 604/2013, available at: http://www.refworld.org/docid/51d298f04.html (Accessed 18 November 2017)

Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5, available at: *http://www.refworld.ord/docid/3ae6b3b04.html* (Accessed 28 November 2017)

UN General Assembly, *Universal Declaration of Human Rights,* 10 December 1948, 217 A (III), available at: http://www.refworld.org/docid/3ae6b3712c.html (Accessed 12 December 2017)

UN General Assembly, *Convention Relating to the Status of Refugees,* 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137 available at: http://www.refworld.ord/docid/3be01b964.html (Accessed 5 December 2017)

Turkey: *Law No. 6458 of 2013 on Foreigners and International Protection* (Turkey), 4 April 2013, available at: http://www.refworld.org/docid/5167fbb20.html (Accessed 15 November 2017)

Case Law

Jabari v. Turkey, Application No. 40035/98, Council of Europe, European Court of Human Rights, 11 July 2000.

M.S.S. v. Belgium and Greece, Application No. 30696/09, Council of Europe, European Court of Human Rights, 21 January 2011.

N.S. v. Secretary of State for the Home Department and M.E. (C 493/10) and others v. Refugee Applications Commissioner, Minister for Justice, Equality and Law Reform, C-411/10 and C-493/10, European Union: Court of Justice of the European Union, 21 December 2011

Shafari and Others v. Italy and Greece, Application No. 16643/09, Council of Europe, European Courts of Human Rights, 21 October 2014.

Soering v. The United Kingdom, Application No. 14038/88, Council of Europe, European Court of Human Rights, 7 July 1989.

T.I. v. The United Kingdom, Appl. No. 43844/98, Council of Europe: European Courts of Human Rights, 7 March 2000.

Secondary Sources

Books

Coleman, Nils. (2009) *European Readmission Policy: Third Country Interests and Refugee Rights.* Leiden: Martinus Nijhoff Publishers.

Den Heijer, Maarten. (2012) *Europe and Extraterritorial Asylum.* Oxford, UK. Hart Publishing.

Grimmel, Andreas and My Giang, Susanne. (2017) *Solidarity in the European Union: A Fundamental Value in Crisis.* Hamburg, Germany. Springer.

O'Nions, Helen. (2014) *Asylum – A Right Denied: A Critical Analysis of European Asylum Policy.* Nottingham, UK. AGHATE.

Noll, Gregor. *Negotiating Asylum: The EU Acquis, Extraterritorial Protection and the Common Market of Deflection.* The Hague, The Netherlands. Kluwer Law International.

Zaun, Natasha. (2017) *EU Asylum Policies: The Power of Strong Regulating States.* UK, Oxford. Palgrave Macmillan, Springer.

Journal Articles

Andrijasevic, Rutvica. (2010) Deported: The Right to Asylum at EU's External Borders of Italy and Libya. *International Migration.* Vol 48 (1) 148-175.

Barbulescu, Roxana. (2016) Still a Beacon of Human Rights? Considerations on the EU Response to the Refugee Crisis in the Mediterranean. *Mediterranean Politics.* 1-8.

Gray, Harriet. (2013) Surveying the Foundations: Article 80 TFEU and the Common European Asylum System. 34: 175-193.

Haddad, Emma. (2008) The External Dimension of the EU Refugee Policy: A New Approach to Asylum? *Government and Opposition.* 43(2): 190-205.

Hampshire, James. (2015) Speaking with one voice? The European Union's global approach to migration and mobility and the limits of International migration cooperation. *Journal of Ethnic and Migration Studies.* Vol 42(4) 571:586.

HUertas Moragas, Jezus Fernandez and Rapoport, Hillel. (2015) Tradable Refugee-Admission Quotas and EU Asylum Policy. *CESifo Economic Studies.* Vol 61(3): 638-672.

Icduygu, Ahmet and Aksel, B. Damla. (2014) Two-to-Tango in Migration Diplomacy: Negotiating readmission Agreement between the EU and Turkey. *European Journal of Migration and Law.* Vol 16: 337-363.

Karageorgiou, Eleni. (2016) Solidarity and sharing in the Common European Asylum System: The Case of Syrian Refugees, European Politics and Society. *European Politics and Society.* 17(2): 196-214.

Lambert, Helene. (2009) Transnational Judicial Dialogue, Harmonization and the Common European Asylum System. *International and Comparative Law Quarterly.* 58(3): 519-543.

Lang, Iris. (2013) Is There Solidarity on Asylum and Migration in the EU? *Croatian Yearbook of European law and policy.* Vol 9: 1-14.

Langford, Lillian. (2013) The Other Euro Crisis: Rights Violations under the Common European Asylum System and the Unravelling EU Solidarity. *Harvard Human Rights Journal.* 26: 217-264.

Mason, Richey. (2013) The North African Revolutions: A Chance to Rethink European Externalization of the Handling of Non-EU Migration Inflows. *Foreign Policy Analysis.* 9: 409-431.

McDonough, Paul and Tsourdi, Evangelia. (2012) The "Other" Greek Crisis: Asylum and EU Solidarity. *Refugee Survey Quarterly.* 31(4): 67-100.

McNamara, Frank. (2013) Member State Responsibility for Migration Control with Third States – Externalisation Revisited. *European Journal of Migration and Law.* 319-335.

Menz, George. (2014) The promise of the principal-agent approach for studying EU migration policy: The case of external migration control. *Comparative European Politics.* Vol 13(3): 307-324.

Memisoglu, Fulya and Ilgit, Asli. (2016) Syrian refugees in Turkey: multifaceted challenges, diverse player and ambiguous policies. *Mediterranean Politics.* 1-23.

Mitsilegas, Valsamis. (2014) Solidarity and Trust in the Common European Asylum System. *Comparative Migration Studies.* 2(2): 181-202.

Morgades-Gil, Silvia. (2015) The Discretion of States in the Dublin III System for Determining Responsibility for Examining Applications for Asylum: What Remains of the Sovereignty and Humanitarian Clauses After the Interpretations of the ECtHR and ECJ? *International Journal of Refugee Law.* 27(3): 433-456.

Nanopoulos, Eva. (2012) Trust Issues and the Common European Asylum System: Finding the right balance. *The Cambridge Law Journal.* 72:276-280.

Nollkaemper, Andre. (2013) European Asylum Policy: Oscillating Between Shared and Individual Responsibility. 107: 361-364.

Okyay, Asli and Zaragoza-Christiani, Jonathan. (2016) The Leverage of the Gatekeeper: Power and Interdependence in the Migration Nexus between the EU and Turkey. *The International Spectator.* Vol 51 (4): 51-66.

Paoletti, Emanuela. (2011) Power Relations and International Migration: The Case of Italy and Libya. *Political Studies.* 59: 269-289.

Papagiani, Georgia. (2013) Forging an External EU Migration Policy: From Externalization of Border Management to a Comprehensive Policy? *European Journal of Migration and Law.* Vol 15:283-299.

Peers, Steve. (2015) Reconciling the Dublin System with European Fundamental Rights Protection and the Charter. *Academy of European Law.* 15: 485-494.

Reslow, Natasja and Vink, Maarten. (2014) Three-Level Games in EU External Migration Policy: Negotiating Mobility Partnerships in West Africa. *Journal of Common Market Studies.* Vol 53 (4): 857-874.

Tawat, Maham. (2016) Towards an Ever Closer Union? Refugee Policy and Social Cohesion in Eastern EU Members States. *East European Politics.* 1-8.

Trauner, Florian. (2016) Asylum Policy: the EU's 'Crisis' and the looming policy regime failure. *Journal of European Integration.* 33(8): 311-325.

Vranken, Jan. (2012) Exciting Times for Legal Scholarship. *Law and Method.* 2(2): 42-62.

NGO Reports

Amnesty International, (2016) *No Safe Refuge: Asylum Seekers and Refugees Denied Effective Protection in Turkey.*

Amnesty International, (2015) *Europe's Gatekeeper: Unlawful Detention and Deportation of Refugees from Turkey.*

Dutch Council for Refugees, (2016) *The DCR/ECRE desk research on application of a safe third country and a first country of asylum concepts to Turkey.*

Human Rights Watch, (2016) *Silencing Turkey's Media: The Governments Deepening Assault on Critical Journalism.*

Human Rights Watch, (2017) *In Custody: Police Torture and Abductions in Turkey.*

Medecins Sans Frontieres, (2017) *One Year On From the EU-Turkey Deal: Challenging the EU's Alternative Facts.*

Refugee Rights Turkey (2015) Country Report: Turkey. *Asylum Information Database.* Ed: European Council for Refugees and Exiles

United Nations Human Rights Commissioner, (2017) *Desperate Journey's: Refugees and migrants entering and crossing Europe via the Mediterranean and Western Balkan routes.*

Miscellaneous

Carrera, Sergio; Guild, Elspeth; Merlino, Massimo and Parkin, Joanna. (2011) A Race against Solidarity: The Schengen Regime and the Franco-Italian Affair. *Centre for European Policy Studies.* 1-27.

European Union, European Commission. (2017) Common European Asylum System. Available at: https://ec.europa.eu/home-affairs/what-we-do/policies/asylum_en Last Modified 20/12/2017.

European Union, European Parliament Briefing. (2015) EU Legal framework on asylum and irregular migration 'on arrival' - State of Play. 1-10.

European Union, European Commission Communication. (2008) Policy Plan on Asylum: An Integrated Approach to Protection Across the EU. 1-12.

European Union, European Parliament (2010) What system of burden-sharing between Member States for the reception of asylum Seekers – Study. Ed: Thielemans, Eiko. Williams, Richard. Boswell, Christina.

Hatton, Timothy. (2012) Asylum Policy in the EU: The Case for Deeper Integration. *Northface Discussion Migration Paper.* No. 2012-12.

Human Rights Watch. (2016) Turkey: Open Borders to Syrians Fleeing ISIS. April 14. Available at: https://www.hrw.org/news/2016/04/14/turkey-open-borders-syrians-fleeing-isis (Accessed December 14).

Nunez Vaquero, Alvaro. (2013) Five Models of Legal Science. Available at: http://journals.openedition.org/revus/2449#tocto2n5 (Accessed December 12).

Smith, Helena. (2017) 'Welcome to Prison: winter hits in one of Greece's worst refugee camps. *The Guardian.* December 22. Available at: https://www.theguardian.com/world/2017/dec/22/this-isnt-europe-life-greece-worst-refugee-camps (Accessed December 23).

United Nations High Commissioner for Refugees. (2009) Observations of Greece as a Country of Asylum.

United Nations High Commissioner for Refugees (2014) Greece as a Country of Asylum.