

THE EXTERNALIZATION OF EUROPEAN BORDERS CONTROL. THE EU-TURKEY AGREEMENT

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The purpose of this paper is to analyze the main events that led to the externalization of the European border between Greece and Turkey after the 2015 “Syrian refugee crisis”. These years have been crucial in the general strategy of externalization of borders control and started a new era of more involvement of EU institutions in managing the asylum seekers flows directed to Europe. The main instrument adopted in 2016 was the agreement with Turkey, a highly controversial tool that attracted the attention of many scholars and analysts and that was eventually institutionalized through the Migration Partnership Framework.

The outbreak of the Syrian civil war in 2011 led to one of the largest refugee crises of the world. Due to the harsh conflict more than 6.6 million Syrians have been forced to flee their homes and abandon the country. The main destinations were initially neighboring countries such as Lebanon, Jordan, and Turkey. From Turkey many of them braved a dangerous sea-crossing to Greek islands and through the Balkan route to arrive to EU territory. Nowadays, Turkey hosts more than 3.8 million Syrian refugees thus becoming the country that hosts one of the highest numbers of refugees in the world. The massive influx of people towards Greek islands overburdened Greece that was unable to cope with new arrivals.

The refugee crisis showed once and for all the failure of European internal tools to manage asylum seekers arrival. According to some scholars the crisis itself can be described as a “Europe’s crisis” since the same instruments that should have been used to manage migration flows contributed to create the crisis in the first place. Two main internal tools must be mentioned: the Common European Asylum System (CEAS) and, in particular, the Dublin Regulation.

The CEAS is based on Directives mainly adopted during the first decade of the 21st century. Directives are not directly applicable, but they must be introduced into each domestic legislation. This means that each Member State can implement Directives differently. However, the CEAS can be effective if every Member State harmonizes its legislation with the ones of the other Members. What we experienced since the beginning of the 21st century is a general lack of political willingness to cooperate to achieve a sufficient degree of harmonization. This context leads migrants to try and submit their asylum application in countries in which they would face better conditions. The Dublin system was firstly adopted with the Dublin Convention in 1990 and then introduced into European law through Regulations – the last one reformed in 2013. It is nowadays the main instrument to determine the Member State responsible to take care of asylum applications once the individual has reached EU territory using “hierarchical criteria” among which the most applied one is the country of first arrival. This tool created huge difficulties for European countries, as shown by the fact that in 2014 just five Member States dealt with 72% of all asylum applications EU-wide¹.

¹ Tagliapietra A., «The European Migration Crisis: A pendulum between the internal and external dimensions», Istituto Affari Internazionali (IAI), 2019.

Consequently, Member States began to implement unilateral and restrictive asylum policies, failing to respect the principle of solidarity and fair sharing of responsibility (art. 80 TFEU).

Confronted with the situation the EU decided to find a solution outside its internal arrangements. Since 2014 cooperation with third countries has become the main answer to the increasing influx of people from the Balkans and from the Greece-Turkey route. During its inauguration speech as new President of the European Commission in 2014 Jean-Claude Juncker said that the European Union needed to deal more robustly with irregular migration, “notably through better cooperation with third countries”. He stressed the need to secure Europe’s borders and to prevent “uncontrolled influx of illegal migrants”². The dramatic experiences and images of asylum seekers arriving in the EU obtained unprecedented levels of political and media attention and put huge pressures on the EU institutions and Member States’ governments to show that they could meet the challenge. Migration policies and especially cooperation with third countries was at the top of the EU political agenda.

In May 2015, the Commission jointly with the European Council adopted the Agenda on Migration, a political document outlining priorities on migration, asylum, and borders policies for the years to come. The document aimed at being comprehensive and joining up the various internal and external policy strands and instrument at EU’s disposal. One of the main pillars of the Agenda was to reduce incentives for irregular migration, save lives, and secure external borders. Afterwards, during the Valletta Summit of November 2015 between EU Members States and all African countries, European institutions admitted for the first time their failure in dealing with migration and the need to adopt emergency measures to deal with the crisis.

Among the instruments to solve the refugee crisis the first that have been used was the externalization of borders control through the EU-Turkey agreement that played an important role in pushing the EU to try to institutionalize this approach in the Migration Partnership Framework.

The negotiation of the Statement was carried out into two extraordinary EU-Turkey summits both held in Brussels in 2015. The first on the 5th of October with Turkey’s President Recep Tayyip Erdogan, and the second on 29th of November with Turkish Prime Minister Davutoglu. After this second summit the Joint Action Plan between the EU and Turkey was adopted with the promise of further negotiations. Finally, on the 18th of March 2016, during the European Council meeting an agreement was reached, and the Statement entered into force.

The Statement was based on the so-called “1:1 scheme” according to which Syrian asylum seekers must be pushed back towards Turkey unless they asked for protection in Greece. If their asylum requests are rejected, they will be deported to Turkey. For each asylum seeker sent back to Turkey, another Syrian asylum seeker will be transferred from Turkey to the EU territory through humanitarian channels. According to the agreement Turkey must prevent Syrian asylum seekers to leave its territory and treat them according to international standards of protection of human rights.

² Jean-Claude Juncker, A New Start for Europe: My Agenda for Jobs, Growth, Fairness and Democratic Change. Political Guidelines for the next European Commission, Strasbourg, 15 July 2014, https://ec.europa.eu/info/sites/info/files/juncker-political-guidelines-speech_en.pdf.

For the EU, the main objective was to prevent migrants and asylum seekers from reaching Europe's shores through a mechanism of containment of migrants in Turkey. However, the agreement gave Turkey significant political leverage to extract concessions, including visa-free travel to EU countries for Turks, and most importantly, the revival and acceleration of talks regarding Turkey's entry in the EU. Moreover, Turkey was given a total amount of 6 billion euros to manage Syrians kept within its territories.

The Deal marked a turning point in the externalization strategy of the EU. As some scholars said, it can be considered as a sort of experiment that allowed the EU to test how close to the edge it can go. It has demonstrated that the inevitable human cost is a price Member States are willing to accept if it means to create the illusion that migration can be somehow stopped. Its ambiguous nature contributes to create confusion and highlights how controversial the statement is. In fact, even if it was negotiated into EU headquarters, the Court of Justice of the European Union stated that the agreement is not an EU agreement concluded according to EU law, but merely a political statement between Member States' governments and Turkey. Consequently, it is not mandatory, and the same Court of Justice lacks its jurisdiction³. As many jurists commented, the Statement is possibly not in compliance with EU founding principles. First, the agreement assumes that Turkey can be considered as a "safe third country" hence the principle of "non-refoulement" is respected. However, since the entry into force of the agreement, many NGOs denounced the systematic violations of human rights in refugee camps and at the border with Greece. Consequently, Turkey is far from being a safe third country, but neither EU institutions nor Member States have ever even threatened Turkey to suspend the Deal. Second, all asylum seekers that manage to arrive to Greek shores are constrained to stay in camps on Greek islands and Greece is forced to cope with them alone.

According to a report concerning the implementation of the agreement after 4 years, arrivals effectively decreased. Since March 2016 there has been a drop of 94% of arrivals to Greek shores⁴. The EU's primary objective to stop immediately the inflow of migrants was eventually reached. However, according to many scholars there have been two major trade-offs. The European Union demonstrated to be ready to close an eye to all the violations of human rights committed by Turkish authorities to secure its borders creating a sort of moral dilemma. Furthermore, Turkey proved EU's dependency on its cooperation and more than once used migrants as a leverage to pursue its own interests. For example, in March 2020 after many threats Turkey opened its borders with Greece allowing huge numbers of asylum seekers to arrive to Greece that was forced to declare the state of emergency. By now the EU is completely dependent on Turkey with the result of a shift of power from the EU to Turkey that is now able to negotiate from a stronger position. Considering these two moral and political dilemmas I believe that the agreement was not so successful as it has been depicted by Member States and EU institutions.

³ Danisi, «Taking the 'Union' out of 'EU': The EU-Turkey Statement on the Syrian Refugee Crisis as an Agreement Between States under International Law».

⁴ European Commission report, «EU-Turkey statement four years on», March 2020. https://ec.europa.eu/home-affairs/sites/default/files/what-we-do/policies/european-agenda-migration/20200318_managing-migration-eu-turkey-statement-4-years-on_en.pdf.

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