

Europe as a Global Actor

Externalization of the EU Asylum and Migration Policies following the Arab Spring Uprisings

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ABSTRACT

History indicates that the response of the European Union towards the migratory pressures has not changed excessively. However, the management of migration and asylum has shifted from the internal dimension towards the external dimension, since the Union, as a supranational actor, has sought to manage these policy areas by building partnerships with third-party countries. The aim of this paper is to elaborate the process of the externalization of the EU migration and asylum policies, particularly following the rise of the Arab Spring in 2011, and its compatibility with human rights norms and standards, and analyze the role of the EU institutions and Member States in establishing a foreign policy and migration nexus. Lastly, the paper will scrutinize the possibility of extra-territorial asylum applications, which can be the ultimate form of externalization in terms of migration and asylum.

Keywords: Externalization, EU, Migration policy, Asylum policy, Irregular migration, Migrants, Asylum-seekers

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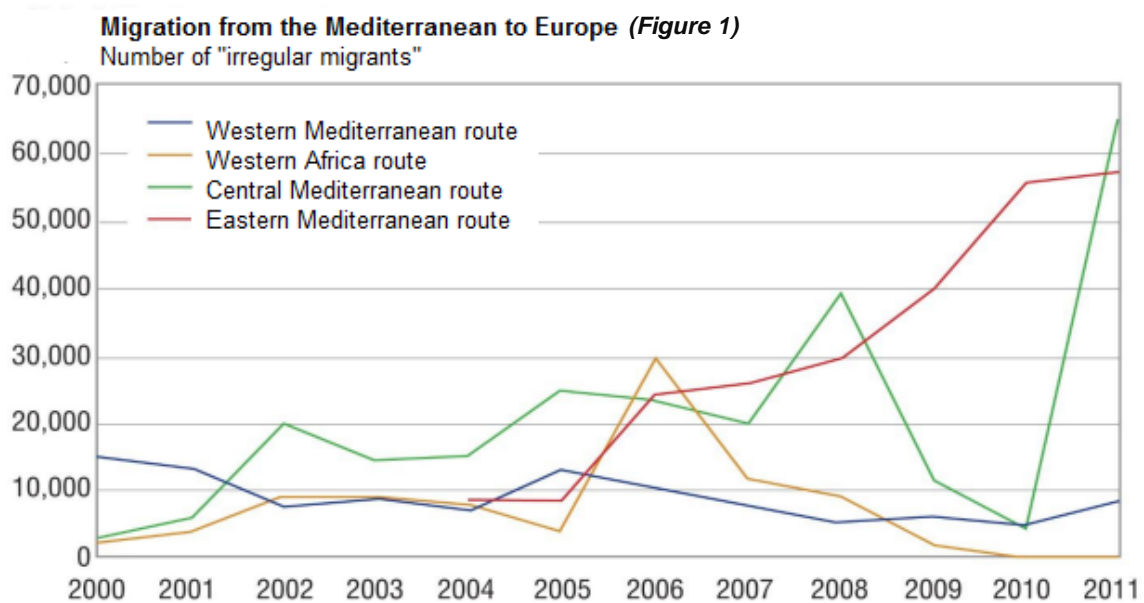
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Introduction

The massive migrant influx through the migratory routes into Europe, from North Africa in the aftermath of the Arab Spring, and from the Middle East due to the civil war in Syria, dragged the EU and its Member States into a dead-lock in terms of finding a feasible and effective solution to handling such flow. Especially in the last two years, the influx has reached tremendous amounts, as well as become a humanitarian crisis at the southern borders of the EU. Following the rise of the Arab Spring which broke out in 2011, 2015 has been the year when the number of irregular migrants crossing to the EU over the main migratory routes reached over one million (FRONTEX 2016a), mainly because of the Syrian civil war. According to the UNHCR, the current number of Syrian refugees registered around the world, predominantly in Turkey, Iraq, Egypt, Jordan and Lebanon, is 4.7 million (UNHCR 2016b), which makes more than half of the total refugee population in the world (Yılmaz Elmas 2016, 198).

Noteworthy that migration to Europe from North Africa has not been accelerated by the Arab Spring (Fargues & Fandrich 2012, 1). More than one million individuals left Libyan territory in the spring and summer of 2011, predominantly to Tunisia and Egypt, of which around 400,000 were Libyans seeking safety abroad and approximately 700,000 were foreign nationals (Carrera et al. 2012, 3). In contrast, the number of individuals that fled North Africa by crossing the Mediterranean to Europe was relatively low. Just after the revolution started in Tunisia and Libya, both countries became points of departure for boats smuggling migrants and refugees into Italy (Fargues & Fandrich 2012, 4). While sea arrivals to Southern Europe from North Africa in 2010 were 9,700; in 2011, this number has reached 70,000 (Figure 1), almost sevenfold of the previous year (UNHCR, 2016a), 45,000 of which have fled from Tunisia and Libya to Lampedusa (Dimitriadi 2016, 7).



Source: UNHCR; Yılmaz Elmas (2016)

Since several issues have been encountered after the rise of Arab Spring in 2011, the times of crises are great indicators and iterations of the EU's collective action problem among its institutions, Member States and leaders, as was in the case of the violent conflict in the Western Balkans during 1990s. The lack of solidarity and cooperation of the EU Member States in migration and asylum has led the Union to seek for other means for the management of migration, by negotiating and cooperating with countries of transit and origin, and the neighboring states at its frontiers.

In the light of these recent developments, the paper will first give details about the institutionalization and externalization of the EU migration and asylum policies, and taking the 1999 Tampere Conclusions and the process afterwards as the focal point. Then the paper will focus on the EU foreign policy and migration nexus, by discussing the reasons lying behind the shift of the EU migration and asylum policies towards the external dimension, and the human rights concerns arising out of the externalization of the management of migratory flows, and giving concrete examples from the agreements concluded between the EU and Member States and the third countries. The paper will also examine the most common means of the EU's externalization of migration control through its institutions, i.e. externalization of border controls, partnerships with third countries by readmission agreements and Mobility Partnerships as tools of soft power, and their compatibility with international and regional human rights standards. Lastly, the paper will discuss the possibility of extra-territorial processing of asylum applications as the ultimate form of externalization.

The paper will adopt an institutional framework in the assessment of these developments, mainly interrogate the role of the EU and Member States on the externalization of the EU migration and asylum policies. Therefore, I identify the EU institutions and Member States as an independent variable, and externalization of the EU migration and asylum policies as a dependent variable.

1. A Brief History: The Externalization of the EU Migration and Asylum Policies

The foundation of the EU migration and asylum policy involves several treaties ratified by the Member States and the 2004 Treaty Establishing a Constitution for Europe, i.e. the Constitutional Treaty, which failed to be adopted due to the Dutch and French referendums (Hobolt & Brouard 2010). The Member States of the EU are also under the obligation to ratify the 1951 Geneva Convention and the 1967 Protocol Relating to the Status of Refugees (the "Geneva Convention"), and comply with its provisions. In addition, candidate countries must adapt to the EU *acquis* on migration and asylum as a condition of membership (Geddes 2009, 25).

The need for extraterritorial control of asylum and migration and the links between migration or asylum policies and development aid or overall economic and political cooperation with countries of origin have been underlined by the European Parliament and the European Commission as early

as 1987 (Triandafyllidou 2014, 9). However, the “external dimension” of the EU migration and asylum policies became a priority in 1999 with the Tampere Council Conclusions (Triandafyllidou 2014, 9), and it was officially embraced only at that time (Lavenex 2006, 333). In the meeting held in Tampere, the European Council agreed to create a Common European Asylum System (“CEAS”), improve the legislative framework of migration and asylum (European Commission 2015a), and contained clear instructions for the Commission to produce recommendations for developing the external dimension of Justice and Home Affairs (“JHA”) (Boswell 2003, 632). The Council also called the Member States for cooperation for the following elements, for the management of migration flows:

- Development of a common EU policy to build partnerships with countries of origin and transit,
- Development, in close co-operation with countries of origin and transit, for the prevention of all forms of human trafficking,
- Mutual technical assistance between the Member States’ border control services, especially on maritime borders,
- Assistance to countries of origin and transit in order to help the authorities of those countries to strengthen their ability to combat human trafficking, and cope with their readmission obligations towards the Union and the Member States (European Council 1999).

Since then, the idea of “partnership with countries of origin” and transit, and “stronger external action” appeared in the work-plan of the JHA Council (Lavenex 2006, 333), and in the Hague Program of 2004 and the Stockholm Program of 2010 (Collyer 2012, 506). Since 2005 “external” aspects of migration policy have been managed through the Global Approach to Migration and Mobility (“GAMM”) (Collyer 2016, 607). The 2007 Lisbon Treaty has also included several clear references to some of the Tampere milestones, some of which have become foundational components of the EU Treaties (Carrera 2011, 245). In 2010, the Stockholm Program, which involved a clear basis further development in asylum and migration matters, was adopted by the Council. The Program enabled the EU institutions to be the primary actor in using all opportunities offered by the Lisbon Treaty to strengthen the European area of freedom, security and justice for the benefit of the citizens of the Union (European Council 2010).

The principle of “safe third country,” which was originated in the 1990 Dublin Convention, has been one of the first forms of the externalization of migration and asylum policies (European Parliament 2000). The 1992 London Resolution reaffirmed the “safe third country principle”, which was surely evading the responsibility of the EU Member States by establishing a territorial exclusion (London Resolution 1992). In 2003, the Dublin II Regulation, which is the successor of the 1990 Dublin Convention, was adopted by the EU Member States, excluding Denmark. After the EU Member States have realized the ineffectiveness of the Dublin II Regulation, they revised and approved the Dublin III

Regulation in 2013, which currently governs the rules implemented in regard to the examination of asylum applications by the Member States.

Faced with significant increase both in the number of asylum applications and in the unauthorized border crossings following the uprising in the North Africa and Syria, the EU has taken immediate action to reconsider its asylum policy in 2013 (Balamir Coşkun 2015, 45). In addition to the Dublin III Regulation and the EURODAC Regulation, which is a fingerprint system identifying asylum-seekers and irregular migrants, the European Parliament and the Council adopted the Asylum Procedures Directive (“APD”) in 2013, which sets out the common procedures for granting and withdrawing international protection for asylum-seekers (European Parliament and European Council 2013), including the provisions for the principle of a “safe third country”.

2. The EU Migration and Foreign Policy Nexus: Security over Norms

In the early years of the European Communities, state sovereignty was of importance for many of the intergovernmentalists, e.g. France, as they were reluctant to vest power to a supranationalist organization. Basically, this tradition has continued in many policy areas within the EU. Until the adoption of the constitutive treaties of the EU, the Union had no competence over migration and asylum, of which the regulation were left in the sole governance of Member States within the EU. However, this highly politicized policy domain that is particularly close to core defining principles of the modern post-Westphalian state, including control over territory and constituency, has been recast and reshaped by the impact of several EU framework directives (Menz 2015, 307). These policy areas then became handled at the intergovernmental level, and now are slightly being tackled in foreign policy (Lavenex 2006, 339), in other words in the “external dimension.” What has driven the EU to tackle migration and asylum in the external dimension? How have the EU migration and asylum policies become externalized by the impact of the EU institutions and Member States?

Above all, the distinction between the internal and external dimensions of the EU asylum and migration policies should be made. Internal dimension of migration and asylum within the EU focused on policy harmonization on the admission of third country nationals, whereas the external dimension has sought to move the countries of origin and transit forward, and engage those countries in the management of migration flows to Europe. The policy instruments and institutions of the EU in the last few decades targeted the externalization of migration control, however, the application of asylum procedures and directives, the grant of asylum remained in the sole responsibility of the sovereign Member States of the EU. Thus the conflict of policies and interests between the EU institutions and the Member States created delays and problems over solidarity among these actors. Although the harmonization of asylum policies were discussed as early as 1989, at a meeting of the European Council

in Strasbourg, there was considerable reticence on the part of Member States to accept Europeanized migration control in practice, as is evident from the delayed implementation of Schengen, which only came into force in 1997 (Menz 2015, 314).

Following the rise of the Arab Spring, of which the first destinations were Tunisia and Libya, that tens of thousands of asylum-seekers have fled to the southern maritime borders of the EU led the Union to strengthen its relations, especially with the North African countries, and develop its policies in this direction (Yılmaz Elmas 2016, 190). In fact, as the Commission highlighted in the GAMM in 2011 the need for the EU to strengthen its external migration policy by setting up partnerships with non-EU countries, the EU has officially begun to discuss the development of a more strategic, efficient and systematic migration policy in its relations with third countries (European Commission 2011, 2).

On the one hand, the instability in North Africa has led to an increase of the so-called “illegal border crossings” into the EU (Pinos 2014, 137), which meant that North African countries, one of the most crucial partners of the EU in tackling irregular migration, started to produce their own asylum-seekers. On the other hand, the EU policy-makers were concerned because of the potentially damaging consequences for externalization as a result of “regime change” in North Africa (Pinos 2014, 137), namely the unexpected overthrow of the authoritarian regimes in the region. In addition to the pressing influence of the Arab Spring in 2011 over the EU migration policy, the civil war in Syria, which broke out in March 2011 and has accelerated in 2012, has dragged the EU into a deadlock (Yılmaz Elmas 2016, 198). Under these circumstances, the lack of cooperation and solidarity and the problem of burden-sharing among the EU Member States in providing international protection to asylum-seekers, and the question of migratory pressures, especially in the aftermath of the Arab Spring, paved the way for migration and asylum policies move towards the “external dimension.” According to Lavenex (2006), the motivation behind the externalization of migration and asylum is more of an identity and security issue: “The conception of uncontrolled migration as a societal and cultural threat and its linkage with other security issues such as organized crime, terrorism or Islamic fundamentalism blurs the distinction between internal and external security and necessarily shifts attention to the external sources of migration and asylum” (Lavenex 2006, 330).

Externalization of the EU migration and asylum policies predominantly involved repression of the irregular migrants and asylum-seekers prior to their arrival at the external borders of the EU, by introducing strict border patrols and controls, adopting readmission agreements with countries of origin or transit, and building partnerships with these countries. According to Boswell (2003), as with externalization, prevention was also seen as a form of international cooperation that could at least partly compensate for the deficiencies of domestic migration control (Boswell 2003, 625). European Neighborhood Policy (“ENP”), for instance, aimed both preventing migration flows as well as

externalizing their management and control to the neighboring countries before irregular immigrants reach the EU's external borders (Triandafyllidou 2014, 7) by building partnerships with these countries. As part of the ENP, the EU's enlargement policy through Eastern Europe, and Mobility Partnerships with its neighbors or transit countries, e.g. Cape Verde (2008), Morocco (2013), Tunisia (2014) and Jordan (2014) (European Commission 2016), have always been part of strengthening the "fortress Europe" while keeping the irregular migrants away from the external borders and promoting legal migration and attracting the young and educated generations of these countries by introducing several programs, e.g. student exchange programs, Erasmus+ projects, etc. As the negotiations are carried out by the Commission and finalized by the Council, the collective action problem encountered among the EU Member States seems to be lifted.

Whereas Lavenex (2006) argued that in contrast to a preventive approach addressing the factors which lead people to leave their countries of origin, European policies focused on the repression of undesired inflows through externalization (Lavenex 2006, 334). For example following the unrest in Tunisia in 2011, Italy has granted 25,000 temporary visas to Tunisians arriving to Lampedusa island (Koff 2014, 1) as it was unable to handle the issue on its own under the increasing pressure. The Ministers of Interior and Justice of Italy accused the EU of a lack of solidarity (Richey 2012, 413). In response, France immediately blocked the trains carrying Tunisian migrants at the French border (The Guardian 2011), the EU Member States agreed to temporarily reintroduce internal border controls (Dimitriadi 2016, 7), and the Union has accelerated its talks with third countries with regard to increasing the cooperation of the management of migration flows, where the carrots ensuring cooperation have included EU visa facilitation agreements and privileged labor quotas (Gammeltoft-Hansen 2011, 278). The EU's concerns also led to the externalization of the handling of non-EU migrant inflows to Italy, including FRONTEX patrols, emergency financial help, deportation coordination, EU negotiations with Tunisia to reach a readmission agreement, and political assistance in convincing other Member States to receive migrants (Fargues & Fandrich 2012, 7).

From its very beginning European integration has been firmly rooted in a shared commitment to freedom based on human rights, democratic institutions and the rule of law (European Council 1999). As migration and asylum has begun to be handled in foreign policy, a question whether the EU's strategy towards third countries in building cooperation in these policy areas contradict with the universal norms of the Union could be raised. The question of contradiction may arise in two different levels: At the intergovernmental level, while the EU builds cooperation with third countries that are inclined to authoritarianism, i.e. North African countries and Turkey, and at the supra-national level, while the rights of asylum-seekers are ignored by the EU's actions through the externalization of migration control.

As Richey (2012) argues, the deals with third countries that are charged with attempting to reduce irregular migration and asylum-seeking by externalizing the handling of migrants in a way that would expose them to serious mistreatment and possible denial of asylum-seeking rights under international conventions (Richey 2012, 410). At the supra-national level, externalization potentially conflicts with the principle of non-refoulement, that prohibits the Contracting States not to return or expel a refugee to a country where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion (Geneva Convention, art. 33/1), as it involves cooperation with governments with different human rights situations. This also contravenes some of the founding values of the EU, particularly “respect for human rights” that is embedded in the EU treaties. As Demmelhuber (2011) argues, “by externalizing security cooperation the EU contradicts its policies in the fields of democracy promotion, rule of law, and human rights which are based on the EU’s self-perception as a normative power” (Demmelhuber 2011, 813). Tocci and Cassarino (2011) also assert that the EU and its Member States started to prioritize means of cooperation on migration/border management over and above the enforceability of universal norms on human rights and refugee protection (Tocci & Cassarino 2011, 8). Therefore, with the issue of externalized migrant handling through imposing strict border controls and adopting readmission agreements with the countries of origin and transit, the EU faces hypocrisy charges carrying negative perceptions for its normative power.

At the intergovernmental level, the dichotomy between the EU’s perception as a normative power and its foreign policy towards third countries as regards the externalization of migration control arises out of the EU’s denial of the political and legal situation in the countries which it cooperates with. Until the Arab Spring, the EU had increasingly turned a blind eye to the underlying fragility of the regimes of North Africa that it cooperated with, while pursuing its interests in migratory domains (Tocci & Cassarino 2011, 9). It showed that in terms of the EU’s foreign policy towards the North African countries, security takes precedence over democracy promotion and democratization always remained as a secondary objective in the region, as the EU was initially not very concerned about the authoritarian regimes in these countries. However, this has been partly reversed in the aftermath of Arab Spring, as the EU have initiated talks with the new governments of North African countries, i.e. Libya, Tunisia, Morocco and Egypt, for the promotion of universal values, such as democracy, rule of law and human rights (European Commission 2016c, 2; European Council 2013, 3; Fargues & Fandrich 2012, 5), somehow endeavored to tackle the root causes of migration in and maintain its relations with these countries as regards trade, fight against terrorism, etc.

According to Triandafyllidou (2014), enlisting the cooperation of third countries means to some extent some policy transfer concerning human rights standards (Triandafyllidou 2014, 10). However, as

Fargues and Fandrich (2012) argues, a tension still exists between the EU's heightened focus on democracy promotion and the EU's and its Member States' external aspects of migration policy (Fargues & Fandrich 2012, 13). As in the case of Turkey, in the course of the negotiations between the EU and Turkey for the readmission agreement of 18 March 2016, the EU refrained from commenting on the creeping authoritarianism in Turkey in the last few decades. It is very questionable that the EU have sought to revive the accession process with a country which it severely criticizes at various fora in terms of human rights violations, the rule of law, suppression of the opposition and dealing with minorities. In the annual report on Turkey adopted by the European Parliament on 14 April 2016, it raised the Union's concerns about the worsening of the situation of human rights and freedoms in the country, including the freedom of the press, hostilities against the Kurds, and so forth (European Parliament 2016a). Though recently the reticence of the Union on the political and legal situation in Turkey has changed, as the Parliament advised on a temporary freeze on EU accession talks with Turkey (European Parliament 2016b).

3. The Forms of the Externalization of Migration Control

In the previous section, the reasons lying behind the shift of the EU migration and asylum policies towards the external dimension and human rights concerns arising out this shift have been discussed. In addition to the variety of the policy actors involved, the external dimension of the EU migration policy's institutional framework is characterized by a profound variety of instruments (Papagianni 2013, 289), i.e. readmission agreements, visa facilitation, visa liberalization, and etc. In this section of the paper, the most common means of the EU's externalization of migration control through its institutions, i.e. externalization of border controls, partnerships with third countries by readmission agreements and Mobility Partnerships, and their compatibility with international and regional human rights standards will be scrutinized.

3.1. Externalization of Border Controls

The EU has established a variety of autonomous agencies with some role in migration management, from knowledge generation to active involvement in policing (Collyer 2016, 613). Indeed, the regulation of the EU's borders has lately become very militarized, especially in the Mediterranean through FRONTEX (Benam 2011, 192). The establishment of FRONTEX, the EU's supranational border agency which is based in Warsaw, in 2004 has bolstered the externalization of border controls since it involved an enhanced cooperation in terms of the management of migration flows between the countries of origin, the country of destination within the Union and the EU Member States which supported FRONTEX operations by providing resources (European Council 2004).

Triandafyllidou (2014) defines border controls as fencing measures as they actively target and detect illegal migrants in order to arrest and then expel them (Triandafyllidou 2014, 10) prior to or in the course of their arrival at the external frontiers of the EU. This sea-bound 'non-arrival measure' also includes FRONTEX delegations in various third countries' ports and airports in order to crack down on potential illegal migrants (Demmelhuber 2011, 818).

By 2009, FRONTEX and its operations partners were showing success in reducing the irregular migrant flows along the Central Mediterranean and West African routes (Richey 2012, 410). Though with the collapse of Gaddafi regime in 2011, the migrant arrivals have almost stopped, after 2013, due to the escalated violence in Libya, the influx in the Central Mediterranean have reached over 170,000 as the migrant smugglers made use of the failed state and the lack of effective law enforcement (FRONTEX 2016b).

Externalization of border controls is severely criticized as they pave the way for the denial of the rights of asylum-seekers and irregular migrants. As the EU's external migration policy is still often perceived as primarily focusing on the externalization of border controls, it is not accompanied by appropriate human rights guarantees (Papagianni 2013, 295). Richey (2012) argues that border patrols that prevent irregular migrant departure from and interdict migrants en route in the third countries' territory increase the likelihood of denying legitimate irregular migrants and asylum-seekers' access to safe haven for lodging claims (Richey 2012, 419). In addition, as the irregular migrants and asylum-seekers are forcibly returned to their point of departure, which are possibly problematic in terms of the protection of human rights, the EU's compliance with the principle of non-refoulement is also debatable.

Noteworthy that the border guards and police officers, seconded to FRONTEX by the EU Member States, remain legally under the command of the respective national government, and FRONTEX does not have independent enforcement capacity (Menz 2015, 317). Therefore, the responsibility from the actions of FRONTEX through national governments arising out of human rights violations of refugees and asylum-seekers can be attributed to both the EU and the governments who conduct FRONTEX operations.

3.2. Partnerships with Third Countries: Tools of Soft Power?

In addition to the EU's externalization of border controls, the Union also moves the countries of origin and transit forward in order to suppress the arrival of irregular migrants and asylum-seekers to its external borders. Especially in the last two decades, the evolution of cooperation on immigration control, and, in particular, the greater involvement of third countries, has been formidable (Lavenex 2006, 337). However, engagement of third countries in managing migratory flows is sort of a gambling:

if successful, it reduces the burden of control at their immediate borders and increases the chances of curtailing unwanted inflows before they reach the common territory (Lavenex 2006, 337). Therefore, this kind of an externalization aims the repression of undesired flows, rather than adopting a preventive approach.

3.2.1. The Principle of Safe Third Country

Another form of externalization is the mobilization of third countries in the control of migration flows to Europe, mainly through the adoption of the principle of “safe third country” (Lavenex 2006, 334). Von Heldorff (2015) argues that the reason that the EU Member States have adopted this rule to which migrants can be sent back automatically, is to minimize the number of potential asylum-seekers (von Heldorff 2015, 5). Originally, the determination of a third country as safe and the concomitant conclusion of readmission agreements focused on countries neighboring the Union (Lavenex 2006, 334), such as Turkey as a country of transit, and then it was extended beyond Europe.

According to the APD adopted by the EU, Member States may consider an application for international protection as inadmissible if a country which is not a Member State is considered as a safe third country for the applicant, pursuant to Article 38 (European Parliament and European Council 2013, art. 33(2)). Therefore, the existence of a safe third country from which irregular migrants and asylum-seekers have passed through will result in the inadmissibility of an application by an asylum-seeker.

According to article 38 of the APD, a “safe third country” is a country where (a) the life and liberty of the people concerned are not threatened by virtue of their race, religion, nationality, membership in a particular social group or political opinion; (b) there is no risk of serious harm with regard to torture and cruel, inhuman or degrading treatment, the death penalty, etc. (as defined in Directive 2011/95/EU); (c) and (d) the principle of non-refoulement in accordance with the Geneva Convention, and the prohibition of the removal of migrants to their country of origin, where the people concerned would face torture et al., are respected; and (e) the possibility exists for the migrant to request refugee status and, if found to be a refugee, to receive protection in accordance with the Geneva Convention (European Parliament and European Council 2013, art. 38). Once a non-member State is determined as a safe country, the return of asylum-seekers, who arrived in the EU by passing over that country, through readmission agreements will be on the basis of article 38 of the APD. However, it is very doubtful whether the countries determined as a safe third country, e.g. Turkey, fulfills all conditions set out in the APD.

3.2.2. Readmission Agreements

Readmission agreements aim cooperation on the return of irregular migrants and asylum-seekers, whose asylum application is rejected or manifestly unfounded, to their country of origin or the country

that they have transited through. The agreements stipulate that the contracting parties have to take back their own nationals who have entered or stayed illegally in the other country as well as nationals of non-contracting parties or stateless persons who have illegally entered or stayed on their territory, subject to certain conditions (Lavenex 2006, 341).

Readmission agreements became of significance for the first time with the Conclusions of the Edinburgh European Council in 1992, where the Council discussed “the question of migratory pressures” and recommended the twelve Member States “to work for bilateral or multilateral agreements with countries of origin or transit to ensure that illegal immigrants can be returned to their home countries” (European Council, 1992). The first such agreement was concluded in 1991 between the Schengen states and Poland (Lavenex 2006, 334). Since 1999, which is the milestone for the externalization of the EU’s migration and asylum policies, twelve readmission agreements have entered into force (Balamir Coşkun 2015, 46), some of which have been tied to visa facilitation arrangements, particularly with the countries in the EU neighborhood (Cholewinski 2000, 165), e.g. Russia, Ukraine, Turkey, and the Western Balkan countries.

Together with the principle of “safe third country”, readmission agreements merely elevates the responsibility from the EU Member States in providing international protection to asylum-seekers, by establishing a territorial exclusion. As Dimitriadi (2016) argues, there is a major concern for partner countries, as these agreements impose significant burdens on them in terms of receiving and returning third-country nationals (Dimitriadi 2016, 5). As such agreements burden the other party, i.e. countries of origin and transit, rather than the EU, the Union has created a new budget line to support “cooperation with third countries in the area of migration” (Lavenex 2006, 341). Member States collectively contribute to this budget that are used for funding the establishment of refugee facilities in the third countries and the cost of returns under readmission agreements.

Especially following the outbreak of the Arab Spring in Tunisia and Libya in 2011, the Canary Islands, Malta, Lampedusa and Linosa, and after the outbreak of Syrian civil war, the Aegean islands have been the major destinations of the asylum-seekers and irregular migrants (Triandafyllidou 2014, 8). Since migration could not be stopped at the gates of these destinations, the EU and its Member States ought to seek strategies which would see their borders “externalized” towards the neighboring North African countries (Pinos 2014, 134). Officially there is no readmission agreement signed between the EU and North African countries after 2011 (European Commission 2015b). Instead of the EU acting on behalf of its Member States, Member States, such as Italy and Spain, quickly began to set up readmission agreements for the return of irregular migrants with post-revolution transitional authorities, e.g. Libya, Morocco and Tunisia. As a result of these agreements, over 13,000 migrants were returned between January and July 2011 (Carrera et al. 2012, 6). However, due to Member States’ reluctance to make

real concessions to partner countries, such as offering legal avenues of migration to their citizens, tools for externalizing migration have failed to curb irregular migration or halt the loss of life on Europe's borders (Dimitriadi 2016, 2).

In addition, previously suppressed irregular migrant flows transiting the Mediterranean reorganized to cross over Turkey to Greece (Richey 2012, 420). With the increasing control in the Central and Eastern Mediterranean, many of the migrant smugglers shifted their route to Eastern Mediterranean, by passing over Turkish-Greek land and maritime borders (FRONTEX 2016b). As the influx from this border has increased incrementally after the break out of the Syrian civil war, all eyes have turned to Turkey and resulted in the conclusion of the EU-Turkey readmission agreement of 18 March 2016.

In the field of readmission, the EU and its Member States have reinforced cooperation with Southern Mediterranean countries and Turkey, regardless of whether the latter respect the rights and dignity of readmitted persons (Tocci & Cassarino 2011, 8). Therefore, readmission agreements have been heavily criticized for the lack of proper protection of human rights, in particular in the case of transit countries where the EU has no way to check how the countries of transit treat the migrants (Papagianni 2013, 295). The deported migrants through readmission agreements are brought into detention camps in transit countries or at the external borders of the EU where they wait for further resettlement to their countries of origin (Demmelhuber 2011, 818). Several NGOs and international organizations, such as the UNHCR, have criticized the conditions of detention centers due to the systematical human rights violations against refugees, arising out of long detention periods, e.g. in the Aegean Sea and at the Greek-Turkish land border (Global Detention Project 2014), or exposure to arbitrary and indefinite detention in conditions described as "abysmal" and "unacceptable", e.g. in Libya (Global Detention Project 2013). In addition, observers argued that the EU externalization efforts in Libya helped bolster the creation of "one of the most damaging detention systems in the world" (van Aelst 2011).

The EU's externalization strategy could also be criticized for ignoring repressive practices of autocratic regimes and chaotic states as regards the means for managing migrants, or records of willful violation of human rights (Richey 2012, 419). For example, as Turkey still implements the Geneva Convention with a geographical restriction, non-European asylum-seekers are only under temporary protection status, which limits their access to certain rights and services, and provides a very limited protection. In addition, several cases were brought against Turkey at the ECtHR as it has been accused of abusive detention conditions, illegal deportations and lack of facilities (Osso 2016, 10). The same case is also applicable to Libya, which has not signed the 1951 Refugee Convention, does not operate a national asylum system, and has a track record of abuse, detention and forced return of migrants as well as asylum-seekers (Gammeltoft-Hansen 2011, 274). All of these conditions and critiques bring into the question whether the EU's and Member States' partnering countries in the externalization of migration

control can be determined as safe third countries and well enough for the return of refugees and asylum-seekers.

3.2.3. EU Mobility Partnerships

After the rise of Arab Spring, the EU initiated dialogues on migration, mobility and security with the new administration in Tunisia and new governments in Egypt and Libya (European Commission 2011) within the scope of its global approach to migration and asylum. The renewal of the 2006 Global Approach to Migration and Mobility focused predominantly on North African countries, given that the tumultuous Arab Spring had served as an impetus for the revival of irregular migration (European Commission 2011). Emphasize was placed not only on the conclusion of the readmission agreement and the fight against irregular migration, but on partnership, development and facilitation of circular migration to enable exchange and reinforce tools for regional protection (von Helldorff 2015, 4).

In terms of facilitation of legal immigration and fighting against illegal migration while promoting capacity building, the objectives of the Mobility Partnerships are similar to the 1999 Tampere Conclusions. Within the framework of the Eastern and Southern neighborhood agreements, the Commission initiated “mobility partnerships” with countries such as Belarus, Morocco and Tunisia which offer liberalized or facilitated visa regulations for travel to the EU and limited labor migration in exchange for cooperation on border management and readmission agreements (Menz 2015, 315).

With the increasing competence of the Commission’s over the areas of foreign policy and migration policy, the EU acts on behalf of its 28 Member States. According to Benam (2011), the institutions of the EU, particularly the European Commission, depict the issue of migration as a technical problem to be tackled by keeping the unwanted out and at the same time easing the transfer of *bona fide* travelers and goods (Benam 2011, 195). Within the scope of the Mobility Partnership between Morocco and the EU in 2013, for instance, the EU promised for visa free travel between Morocco and the Schengen zone for all Moroccan nationals (Collyer 2016, 615), and at the same time engaged Morocco to tackle migration routes, including maritime routes, to fight illegal migration and combat human trafficking and smuggling into Europe (European Council 2013). As a result, the EU blocks illegal migration by repressing the irregular migrants before they reach the external borders of the Union, and promotes legal migration through granting visa liberalization or visa facilitation to the countries of origin or transit.

4. Prospective Policies? The Possibility of Extra-Territorial Processing of Asylum Applications

In the previous sections, the reasons lying behind the externalization of the EU's migration and asylum policies, and forms of externalization have been detailed. In this section of the paper, the possibility of extra-territorial processing of asylum applications, which can be the ultimate form of externalization as its realization might constitute a "fundamental departure from the traditional system of refugee protection" (Lavenex 2006, 343), will be discussed.

In mid-2000s, the idea of creating extra-territorial asylum reception centers where asylum-seekers would be detained while their claims would be assessed, without thus accessing the EU territory, was pushed forward by Britain, Germany and Italy (Papagianni 2006). Eventually such reception centers in third countries were not created (Triandafyllidou 2014, 9), but has been served as an idea in various times and at different levels including the international level, the EU level and Member States level.

The extra-territorial processing of asylum claims have come of importance for the first time in 1986 at the international level, when Denmark proposed a draft resolution in the UN General Assembly, and advocated its idea as an EU Member State during the Danish Presidency of the Council in 2001 (Léonard & Kaunert 2016). A similar initiative aimed to outsource migration control and move the accommodation and even processing of asylum-seekers outside of Europe came in the form of former British Prime Minister Blair's proposal to the Council meeting in Thessaloniki in 2003 (Menz 2015, 316). The German Ministers of Interior Otto Schily in 2004, and Thomas de Maizière in 2014, too, asserted the idea of creating "safe zones" in North Africa, where applications for asylum would be processed (Léonard & Kaunert 2016). Nevertheless, in practice, there has not yet been any extra-territorial processing of asylum claims by the EU.

Extra-territorial processing of asylum applications also became of significance at the Member State level: Italy's agreement with Libya on the establishment of a reception center for prospective asylum-seekers and irregular migrants (Lavenex 2006, 343) aimed creating reception centers in which asylum-seekers would effectively be detained before they reach the Union's territory while their claims are assessed. This has been the very first attempt by an EU Member State in realizing the last stage of the externalization of migration control by creating an off-shore asylum processing center.

Though the impetus was preventing migrant smuggling and trafficking and reducing the loss of lives, the legality and in particular the creation of such camps would contravene the non-refoulement principle set out in the Geneva Convention. In addition, as Leonard and Kaunert (2016) argues, the creation of such camps would shift the responsibility onto other states (Léonard & Kaunert 2016), as

in the readmission agreements, and merely burden the countries where the camps are created and elevates the responsibility of the EU and Member States providing international protection.

Conclusion

In the light of the recent developments in the contemporary refugee “crisis”, the paper mainly argued how the EU asylum and migration policies are externalized, and the compatibility of this externalization process with the human rights standards. Firstly, I discussed that over the years, the EU institutions and Member States have begun to share the competence over the migration and asylum policies, and these policy areas are now in a way being tackled in the EU foreign policy. Then I asserted that the lack of cooperation and solidarity and the problem of burden-sharing among the EU Member States in providing international protection to asylum-seekers, and the question of migratory pressures, especially in the aftermath of the Arab Spring, paved the way for migration and asylum policies move towards the “external dimension.”

Thirdly, I argued the approaches that the EU adopted through the externalization of migration control. Preventive approach addresses the factors which lead people to leave their countries of origin, e.g. building partnerships with the countries of origin and transit under the EU Mobility Partnerships, whereas the repressive approach aimed suppression of undesired inflows through externalization, e.g. FRONTEX patrols, deportation coordination, EU negotiations to reach readmission agreements. I also discussed whether the EU’s strategy towards third countries in building cooperation in outsourcing the management and control of migration and asylum contradict with the universal norms of the Union. I asserted that at the supra-national level, externalization contradicts with the principle of non-refoulement, and some of the founding values of the EU, particularly “respect for human rights” that is embedded in the EU treaties. At the intergovernmental level, the dichotomy between the EU’s perception as a normative power and its foreign policy towards third countries as regards the externalization of migration control arises out of the EU’s denial of the political and legal situation in the countries which it cooperates with.

Lastly, I elaborated the forms of the externalization of migration control, i.e. externalization of border controls, partnerships with third countries, including the principle of safe third country, readmission agreements and EU Mobility Partnerships, and their compatibility with international and regional human rights standards. I argued that together with the principle of “safe third country”, readmission agreements merely elevates the responsibility from the EU Member States in providing international protection to asylum-seekers, by establishing a territorial exclusion. I also argued that though the idea of extra-territorial processing of the asylum applications has been served at different levels by various

political actors, it would not be a solution for the management of migratory flows into Europe, as in the case of readmission agreements.

To sum up, history indicates that the reaction of the EU towards the migratory pressures has not changed. Under the pressure of the recent migratory flows after the outbreak of Arab Spring and the Syrian civil war, the EU has sought to manage migration and asylum by building partnerships with third-party countries, as it has done so before the contemporary refugee crisis. As the management of migration and asylum has slightly shifted from the internal dimension towards the external dimension, it brought further concerns on the rights of refugees and asylum-seekers seeking for international protection.

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