

Model for Cooperation or Partners in Shame?

Lessons Learnt from the EU-Turkey Refugee Agreement

By Lisa Haferlach, Dahrendorf Research Associate, Hertie School of Governance



Photo: Mustafa Khayat via Flickr <https://creativecommons.org/licenses/by-nd/2.0/>

The EU-Turkey Statement was signed one year ago on 18 March 2016. Although some progress has been made towards achieving the desired goals, the deal still stands on shaky ground. Observers have expressed concern on a number of levels. This paper suggests a path forward that goes beyond using the agreement as a blanket model that prioritises European domestic policy over Turkish stability.

THE STATEMENT AND ITS GOALS

The EU-Turkey Statement¹ outlines that Turkey would obtain visa-free travel, a boost to the stalled EU accession process and up to €6 billion in financial support in return for readmitting refugees and curbing the overall number of migrants reaching EU territory. Rather than offering true relief, however, the deal has merely postponed confronting the realities of forced migration and asylum in Europe. The lack of tangible change and the downward spiral of Turkish democracy has led to a negative feedback loop that casts a shadow on both the agreement and Turkey's bid for EU membership.

THE READMISSION AGREEMENT

A key element of the Statement is the so-called readmission agreement. Intended to provide relief to the overburdened Greek islands and deter refugees from illegally entering the EU, the readmission agreement stipulates that Turkey should receive all new migrants and asylum seekers from Greece who either opt out of the application process for asylum in Greece or who are judged ineligible for protection according to the 'safe third country' concept. The concept states that a person should apply for international protection in the first state

reached that offers sufficient protection and safety. Therefore, by signing the Statement, Europe deemed Turkey de jure a 'safe third country'. In order to relieve any potential bottlenecks in the implementation process, the Commission also released a Communication deeming it sufficient for countries to offer standards of protection that are, at least, similar to those granted by the Refugee Convention.

From a wider perspective, the cloudy framework of the readmission agreement with its addition of Turkey to the list of safe third countries appears to be a calculated risk on the part of EU leaders.² For one thing, Turkey retains a

¹ European Council (2016) EU-Turkey Statement, 18 March. Available from: <http://www.consilium.europa.eu/en/press/press-releases/2016/03/18-eu-turkey-statement/> [Accessed 15 March 2017].

² Collett, E. (2016) The Paradox of the EU-Turkey Refugee Deal [online]. Available from: <http://www.migrationpolicy.org/news/paradox-eu-turkey-refugee-deal> [Accessed 15 March 2017].



Photo: UNDP, Chad Briggs and ECECHO via Flickr <https://creativecommons.org/licenses/by-nd/2.0/>

geographic limitation to its ratification³, so it does not fulfil the protection obligations under the 1951 Refugee Convention. In addition, the current conditions in Southeastern Turkey and the Turkish regime's rising authoritarianism have exacerbated the political and ethnic tensions to the extent that political asylum cases are on the rise.

To put it more strongly, it even looks like an attempt to whitewash the expulsions currently underway in the EU. This seems all the more apparent, considering that the opportunities for returned individuals to take legal recourse before the Court of Justice of the European Union (CJEU) or the European Court of Human Rights (ECtHR) are currently quite limited⁴. So, any fundamental decision judging the deportation to Turkey as unjust or illegal will take time.⁵

The EU's ambiguous interpretation of its legal obligations also makes Turkey less likely to compromise in areas of refugee rights. What is more, the EU effectively jeopardises the refugees'

safety by allowing the Turkish regime to use them as a bargaining chip to push through its own demands. Since the Statement has come into effect, the number of human rights violations towards asylum seekers has increased.⁶

The first returnees under the readmission agreement were taken directly to detention centres and pushbacks of refugees into Syria are being reported.⁷ These developments indicate that the deal is fuelling, rather than alleviating, the mistreatment of refugees due to an unrealistic degree of pressure on Turkey.

THE RESETTLEMENT PROGRAM

The readmission agreement is coupled with a 'resettlement scheme' for selected refugees to transfer legally from Turkey to Europe. It allows for a one-to-one exchange of individuals: for every refugee readmitted by Turkey from Greece, one Syrian refugee in Turkey may enter Europe.

Since its implementation in spring 2016, 838 people have been transferred to Turkey

and as of 17 January 2017, 2,935 refugees have been resettled from Turkey into the EU. These numbers fall far below the stipulated relocation limit of 72,000 refugees from Turkey to Europe. Moreover, in consideration of the more than 2.8 million persons currently seeking transfer out of Turkey, setting the limit of uptake into Europe to such a low number is clearly inadequate.

Nevertheless, proponents of this scheme applaud that it has at least achieved measurable success in abating the flow of refugees into the EU via the Aegean Sea in its first year of operation. Critics claim otherwise. Data analysis has asserted, "The decline in numbers precedes the EU-Turkey agreement"⁸ and is not related to the resettlement scheme.

The post Statement levels of sea route crossings are still too high. Refugee facilities on the Greek islands remain over-occupied to about twice their reception capacity due to the stalling of returns to Turkey and the stopping of transfers to the Greek mainland.

³ This means that only those fleeing as a consequence of "events occurring in Europe" can receive a refugee status.

⁴ Collett, E. (2016) The Paradox of the EU-Turkey Refugee Deal.

⁵ Despite these considerations Greek appellate courts, not satisfied with this sleight of hand, have started contesting the return policy. The result is that many decisions have been reversed on appeal. See Angeliki Dimitriadi (2016) 'The Impact of the EU-Turkey Statement on Protection and Reception: The Case of Greece', Global Turkey in Europe, Working Paper 15. Available from: http://www.iai.it/sites/default/files/gte_wp_15.pdf [Accessed 15 March 2017].

⁶ Amnesty International (2016a) No Safe Refuge: Asylum Seekers and Refugees Denied Effective Protection in Turkey, Research Paper, 3 June. Available from: <https://www.amnesty.org/en/documents/eur44/3825/2016/en/> [Accessed 15 January 2017].

⁷ Amnesty International (2016) 'Turkey: Illegal Mass Returns of Syrian Refugees Expose Fatal Flaws in EU-Turkey Deal', Press Release, 1 April. Available from: <https://www.amnesty.org/en/press-releases/2016/04/turkey-illegal-mass-returns-of-syrian-refugees-expose-fatal-flaws-in-eu-turkey-deal/> [Accessed 15 March 2017].

⁸ Spijkerboer, T. (2016) 'Fact Check: Did the EU-Turkey Deal Bring Down the Number of Migrants and of Border Deaths?', Border Criminologies, 28 September. Available from: <https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2016/09/fact-check-did-eu> [Accessed 15 March 2017].



Photos: Steve Evans via Flickr <https://creativecommons.org/licenses/by-nd/2.0/>

Consequently, refugees trying to get to Europe have sought alternative, but ultimately longer and more dangerous sea routes. According to UNHCR data, the arrivals in Italy began surging in the first half of 2016. The death toll in the first five months of 2016 clearly demonstrates the dangers of such a trend. 2,510 lives have been lost, compared to 1,855 in the same period of 2015.

PLEDGED FUNDS

The €6 billion funds pledged by the EU serve to kick-start an upgrading of refugees' living conditions and integration opportunities in Turkey. However, problems prevail and many obstacles continue to prevent refugees from accessing the labour market, education and health services. The ambivalent categorisation of refugees as 'guests' is also unsustainable, as it incites grievances in the population and has already led to some violent flare ups.⁹

More than 400,000 Syrian children still have no access to education and are at risk of falling into a system of child labour. Within the framework of the employment regulations of January 2016, which serve to grant Syrian refugees limited employment rights,

only about 10,000 work permits have been issued because administrative and mobility restrictions prevail. Meanwhile, in particular the minority populations are apprehensive about government-engineered demographic change, while the broader population increasingly views the refugees as a security threat.¹⁰

Another challenge lies in the accountable and transparent distribution of pledged funds. Granting Turkey allocation authority means there is no oversight by international organisations. One observed consequence of this step has been the skewed availability of funds to municipalities based on political affiliation and loyalty.

CONDITIONS FOR REFUGEES IN TURKEY

Turkey does not have a well-functioning refugee policy. In addition to retaining a geographic limitation to its ratification of the 1951 Refugee Convention on the Status of Refugees, Turkish refugee policy makes a distinction between Syrian refugees and refugees from other conflict zones, such as Iraq and Afghanistan. The status of 'temporary protection', which was

introduced in 2012 for Syrian refugees, establishes a directive prohibiting Syrian refugees, contrary to the Geneva Convention, from applying to UNHCR for subsidiary protection or conditional refugee status. Asylum seekers from other countries fall under the new International Protection and Foreigners Law of 2013. The law has made some important changes in terms of offering greater substantive protection to individuals seeking refuge in Turkey. However, according to an Amnesty International Report, the extent to which the Law on Foreigners and International Protection has taken effect is still unknown due to an institutional capacity gap.¹¹

GREATER COOPERATION IN EU-TURKEY RELATIONS

After years of divergence, the Statement initially constituted a return to a degree of cooperation in EU-Turkey relations. However, by denying its political responsibility and legal obligation as part of the EU accession process to monitor human rights abuses and insist on the rule of law, Europe effectively diminished its own leverage as a democratic anchor in Turkey. Moreover, the EU's reluctance

⁹ Crisis Group Europe Report (2016) Turkey's Refugee Crisis: The Politics of Permanence, Report No 241, 30 November, pp. 11-19. Available from: <https://d2071andvip0wj.cloudfront.net/241-turkey-s-refugee-crisis-the-politics-of-permanence.pdf> [Accessed 15 March 2017].

¹¹ Amnesty International (2016a) No Safe Refuge: Asylum Seekers and Refugees Denied Effective Protection in Turkey.



Photo: UNDP, UN PhotoMark Garten and Chad Briggs via Flickr <https://creativecommons.org/licenses/by-nd/2.0/>

to criticise the Turkish government has had a detrimental effect on the support of democratic forces within Turkish borders. During the negotiation process, evidence arose suggesting serious human rights infringements in the southeast of Turkey. Since the agreement came into effect, Turkey has been the victim of a failed coup d'état that has put the country under a state of emergency. The increasing infringement of freedom of expression and academic freedom remains largely uncontested by Europe, thus consolidating the current government's hold on power.

The deterioration of Turkey's rule of law and the lack of a sustainable and lawful solution to the 'refugee crisis' has cast a shadow on two sensitive and controversial topics in the public view – refugees and Turkish EU membership – thereby creating a negative cycle of mutual criticism and rejection. With the worrisome levels of public distrust and the current state of affairs on both sides of the line, some analysts have argued that the deal risks jeopardising Turkey-EU relations as a whole.¹² With a more consistent approach from those within the EU dealing with Turkey, the agreement could be turned

into an opportunity for cooperation.

LESSONS LEARNT AND POLICY SUGGESTIONS

Ultimately, Europe's concessions could exacerbate the already deteriorating overall conditions for Turkish citizens and lead to an even more drastic internal situation in Turkey.

In order to avoid this, the EU needs to show some courage. Its fear is paralysing European reaction. Critically, it is making it more difficult by the day to engage with the pro-European civil society in Turkey that feels increasingly left alone. As a result, a rising tide of Euro-scepticism in Turkey can be observed that is being instrumentalised by the Turkish government. Instead, greater dialogue is needed with the Turkish population, which can serve as a motor to rebuild mutual trust. Only joint work on the level of civil society actors will give rise to such a rapprochement. The following policy suggestions serve to highlight the most important steps needed:

1. SUPPORT TURKEY IN DEVELOPING A SUSTAINABLE POLICY ON REFUGEES

The conflicts in the region beg for a more permanent national dialogue on refugee integration. It will be essential to support Ankara in giving refugees long-term perspectives that include clearly defined steps and conditions for a meaningful integration into the host community. This policy must cover not only Syrians, but all migrant groups in Turkey. To ensure that refugees' rights are secured during the asylum process, Turkey should allow international oversight of refugee welfare.

2. TRANSPARENT AND SUSTAINABLE USE OF FINANCIAL SUPPORT

Funds should be largely channelled towards sustainable resilience mechanisms that allow for a long-term strategy in the fields of refugee access to education and jobs and support for local economic development that is to the benefit of host communities. Here is an area that European actors could advance by developing national economies, spearheading initiatives that benefit equally refugees and locals, as well as bolstering the national economy. This will also form a counterpoint against the fraying political consensus concerning

¹² Şenyuva, Ö. and Üstün, Ç (2016) 'A Deal to End "the" Deal: Why the Refugee Agreement is a Threat to Turkey-EU Relations' German Marshall Fund of the United States: On Turkey, 5 July. Available from: <http://www.gmfus.org/publications/deal-end-%E2%80%9Cthe%E2%80%9D-deal-why-refugee-agreement-threat-turkey-eu-relations> [Accessed 15 March 2017].



Photo: ECECHO, Chad Briggs and UNDP via Flickr <https://creativecommons.org/licenses/by-nd/2.0/>

refugees in the region. But the EU needs to insist on consultation and transparency in the use of the funds, as well as the involvement and independent operation of international NGOs.

3. OPEN LEGAL ROUTES AND IMPLEMENT AN EFFECTIVE RESETTLEMENT SCHEME TO UNDERMINE TRAFFICKERS

The only effective way to stop the risks of irregular immigration is to provide viable legal routes of migration. The agreement has been unsuccessful in introducing a mechanism to deter refugees from undertaking more risky routes. The EU urgently needs to offer support that would allow for reception centres in Turkey and Greece to make swift decisions on asylum applications. The EU could consider installing its own reception centres in Turkey. Such a measure would allow Europe to regain control over the situation and monitor its development. It could even curb anti-refugee sentiment among the Turkish and European populations and

make Europe less prone to Erdogan’s blackmailing.

4. ENSURE POLITICAL STABILITY

Not least, the reliance on readmission agreements threatens the overall stability of Europe’s partners in the Syrian neighbourhood. As new agreements are being brokered with Libya, Lebanon and Jordan, the EU needs to critically reconsider its approach.

In light of the erosion of political stability in Turkey over the past year, it is urgent that Europe creates consistent policy measures now. While many argue that the EU must set aside the debate on the continuation of the accession process if President Erdogan’s bid for a presidential system passes in a referendum in April of 2017, a more successful strategy to secure Turkey’s stability may be to opt for an even tougher approach. More painful for Erdogan than ending the talks would be a cut of existing privileges. This could include curtailing the customs union or pronouncing travel warnings to tourists. Such an approach, while radical, would not have

to mean the end to cooperation on refugees.

This policy paper is based on the workshop “The Refugee Deal – challenges and opportunities” held on 16 March 2016 at the Hertie School of Governance. The opinions expressed in this policy paper are entirely those of the author and do not represent the positions of the workshop participants.

CONTACT US

www.dahrendorf-forum.eu

Gesa-Stefanie Brincker, Project Manager
Hertie School of Governance
brincker@hertie-school.org

Louise Ingledow, Project Manager
LSE Ideas, London School of Economics
l.ingledow@lse.ac.uk

