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The European Migration Crisis: A Pendulum between the Internal and External Dimensions

by Alberto Tagliapietra

ABSTRACT

After the migration crisis that hit Europe in the aftermath of the Arab Spring, the European Union decided to move towards an externalisation approach on the migration phenomenon in order to stop the influx of people headed to the Continent before they reach European shores. The first step on this path was the signing of the EU–Turkey agreement, a deal presented as an emergency solution to the situation that was developing in Europe. After the success of this accord in reducing the number of arrivals, the European Union introduced the Migration Partnership Framework, which fundamentally institutionalised the approach enshrined in the EU–Turkey agreement with five priority countries in Africa – namely, Ethiopia, Mali, Niger, Nigeria and Senegal.

European Union | Migration | Refugees | Mediterranean | Turkey | Africa | Ethiopia | Niger

keywords

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by Alberto Tagliapietra*

Introduction

The migration crisis faced by the European Union can be traced back to the sociopolitical events that took place in the Middle Eastern and North African (MENA) region in 2011. Following the outbreak of the "Arab Spring" uprisings across the region, an increasing number of people decided to move towards Europe.

The situation highlighted EU deficiencies in the field of migration, and placed unprecedented pressure on the mechanisms that the Union had established in this field. The impact of the migration crisis was so severe that it affected the functioning of mechanisms such as the Dublin Regulation and the Common European Asylum System (CEAS). It also led to the partial suspension of the 1985 Schengen free-movement agreement in several countries.

Confronted with this situation, the EU initiated a process of reform of its main tools – notably, the aforementioned CEAS and Dublin Regulation. However, the absence of a strong political will among EU member states slowed down the reform process. In this context, the Union decided to find a solution outside its internal arrangements. It instead focused on external action, trying to develop partnerships with third countries in order to block the migration flows coming, and transiting, from them.

In order to analyse this shift towards the externalisation of the migration phenomenon, this paper is divided into four main sections:
• The first considers the way in which the original internal answer provided by the EU failed to manage the migration flows, focusing particularly on the CEAS and the Dublin Regulation.
• The second section focuses on the first attempt at externalisation, which was embodied in the EU–Turkey agreement.

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- The third part shows how the results of the EU–Turkey agreement played an important role in pushing the EU to try to institutionalise this approach in the Migration Partnership Framework.
- Finally, the fourth section analyses two case studies concerning the application of the Migration Partnership Framework: those of Ethiopia and Niger.

1. The failure of the EU's internal answer

The competences of the EU in the field of asylum and immigration were introduced by the Maastricht Treaty of 1992. This area was enshrined, via Maastricht, in the third pillar (Justice and Home Affairs) and was largely intergovernmental.

Things started to change with the creation of the Area of Freedom, Security and Justice (AFSJ) under the Treaty of Amsterdam, after which the European Commission bore the responsibility of bringing forward proposals on migration and asylum.[1] The Treaty of Amsterdam provided for an initial phase of five years, during which decisions in this field had to be reached via unanimity in the European Council. After this period, in 2005, the Council decided to adopt the co-decision procedure, thus involving the European Parliament too, as standard.

This situation was confirmed by the Treaty of Lisbon, by which asylum and migration policies were brought under Title V of the Treaty on the Functioning of the European Union (TFEU), regulated through the Ordinary Legislative Procedure (OLP).[2] The general provisions relating to immigration and asylum are spelled out in Articles 67(2) and 78(2) TFEU, which respectively state that the EU shall frame a common policy on asylum and immigration based on solidarity between member states,[3] and that this common policy on asylum should ensure compliance with the principle of *non-refoulement* (i.e. not forcing refugees or asylum seekers back to a country in which they are liable to be persecuted)[4] and the Geneva Convention on refugees. Furthermore, in Article 79(1), the Lisbon Treaty provides the legal basis for addressing illegal migration flows through the adoption of measures aimed at preventing illegal immigration and trafficking in human beings. Finally, it is important to stress the importance of Article 80 TFEU, which provides for the principle of solidarity and fair sharing of responsibility – a principle that should be followed in establishing tools to address migration issues.

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[1] Andrew Geddes and Peter Scholten, *The Politics of Migration & Immigration in Europe*, 2nd edition, London, Sage, 2016, p. 155.

[2] Helen Toner, "The Lisbon Treaty and the Future of European Immigration and Asylum Law", in Loïc Azoulai and Karin de Vries (eds), *EU Migration Law. Legal Complexities and Political Rationales*, Oxford, Oxford University Press, 2014, p. 14-40.

[3] Art. 67(2) TFEU.

[4] Art. 78(2) TFEU.

In order to enact the provisions stated in these treaties, the EU began to adopt a number of measures to develop both a common policy on asylum and an effective policy in managing regular migration and tackling illegal migration.[5] Two main tools should be taken into consideration in this regard: the Common European Asylum System (CEAS) and the Dublin Regulation. These tools are also important in understanding the role that the EU had played in creating the migration crisis in the first place. The willingness to create a Common European Asylum System stemmed from the creation of the AFSJ and from its objective to provide a secure EU. The CEAS came into effect in 1999, when the European Council convened in Tampere adopted in its conclusions the objective to create "an open and secure European Union", committed to respect the obligations stemming from the 1951 Geneva convention on refugees.[6]

The CEAS is based on Article 78 TFEU, and is established through three Directives aimed at the creation of minimum standards in the field of asylum: Directive 2003/9/CE (Reception condition directive); Directive 2004/83/CE (Qualification directive); and Directive 2005/85/CE (Asylum Procedure directive).

As argued by Guy Goodwin-Gill, this first "pack" of directives was not enough to create a genuine common asylum system as they did not provide for harmonisation between EU member states.[7] For that reason, after the coming into force of the Lisbon Treaty, the three directives were reformed with the aim of going beyond the minimum-standard approach and providing for harmonisation of asylum procedures in order to create common standards among member states. The results of this reform were not particularly encouraging, as significant differences persisted between member states.

As noted by the Asylum Information Database (AIDA), it is still possible to find significant differences in the time requested to process an asylum application: while in Italy 33 days are needed to decide on an asylum application, in Greece up to 180 days are required.[8] Furthermore, there are EU countries in which being granted asylum status is a far simpler procedure than it is in others. According to an AIDA report, asylum recognition rates in 2016 differed widely between member states – with situations such as that of Germany, in which 71 per cent of applicants

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[5] European Parliament, "Migration and Asylum: A Challenge for Europe", in *Fact Sheets on the European Union*, June 2018, http://www.europarl.europa.eu/RegData/etudes/PERI/2017/600414/IPOL_PERI(2017)600414_EN.pdf.

[6] European Council, *Presidency Conclusions, Tampere European Council*, 15-16 October 1999, https://www.consilium.europa.eu/media/21059/tampere-european-council-presidency-conclusions.pdf.

[7] Guy S. Goodwin-Gill, "The Mediterranean Papers: Athens, Naples, and Istanbul", in *International Journal of Refugee Law*, Vol. 28, No. 2 (June 2016), p. 276-309, https://doi.org/10.1093/ijrl/eew030; Elspeth Guild, "Does the EU Need a European Migration and Protection Agency?", in *International Journal of Refugee Law*, Vol. 28, No. 4 (December 2016), p. 585-600.

[8] Caterina Bove, *Country Report: Italy. 2018 Update*, AIDA, April 2019, p. 34, https://www.asylumineurope.org/node/261; Alexandros Konstantinou and Athanasia Georgopoulou, *Country Report: Greece. 2018 Update*, AIDA, March 2019, p. 42, https://www.asylumineurope.org/node/259.

received protection, and in Hungary, where only 8 per cent did so.[9] The main problem with the CEAS is that, being based on a harmonisation approach through the implementation of directives, it requires states' willingness to cooperate in order to achieve a reasonable degree of harmonisation – a precondition that is not always attained. This context leads migrants to try and submit their asylum applications in countries in which they would face better conditions and where they would more easily be granted asylum-seeker status – a situation that brings us to the second critical issue of the EU asylum system: the Dublin Regulation.

The Dublin Regulation is the result of an agreement between EU member states regarding the management of asylum requests. It was initially stipulated through an international agreement in 1990, recast as EU law in 2003 via Regulation (EC) No 343/2003 and then reformed in 2013 with Regulation (EU) No 604/2013. The regulation tried to create a system that would clearly attribute responsibility for the examination of an asylum request based on the first country of arrival principle, according to which the state that allowed the entry of an asylum seeker into its territory is responsible for examining his/her asylum request. This kind of system poses several problems – in fact, it creates a situation of significant pressure for member states that, by dint of geographical location, are on the frontline of migrants' routes to Europe. This created huge difficulties for a few European countries, as shown by the fact that in 2014 just five member states dealt with 72 per cent of all asylum applications EU-wide.[10] As a consequence of this dysfunction, individual EU member states began to implement unilateral and restrictive asylum policies, failing to respect Article 80 TFEU.

For example, in 2016 Austria introduced an upper limit on asylum admissions of 37,500.[11] In the same year, Germany adopted a number of measures aimed at restricting asylum applications, such as the suspension (for two years) of the right to family reunification and an accelerated denial process with respect to refugee status.[12] Italy also moved towards a tightening of its asylum policy in 2018, through the abolition of residency on humanitarian grounds and introducing a period of detention of from one to five years in cases of illegal border crossing.

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[9] Minos Mouzourakis, *Refugee Rights Subsiding? Europe's Two-Tier Protection Regime and Its Effect on the Rights of Beneficiaries*, AIDA, March 2017, p. 10, https://www.asylumineurope.org/node/2712.

[10] Russell King and Aija Lulle, *Research on Migration: Facing Realities and Maximising Opportunities. A Policy Review*, Luxembourg, Publications Office of the European Union, 2016, p. 13, https://doi.org/10.2777/414370.

[11] Jörg Monar, "Justice and Home Affairs", in Nathaniel Copsey and Tim Haughton (eds), *JCMS Annual Review of the European Union in 2016*, Supplement 1 to *Journal of Common Market Studies*, Vol. 55 (September 2017), p. 103.

[12] Ibid.

2. The shift toward externalisation: The EU–Turkey agreement

The necessity of focusing on an externalising approach had already been declared by Jean-Claude Juncker back in 2014 when, newly appointed as EU Commission President, he set down a list of ten priorities for his presidency.[13] In that document, he explicitly stated the necessity of dealing more robustly with irregular migration – notably, through better cooperation with third countries and also in the field of readmission[14] – making clear the need to also address migration issues through the Union's Common Foreign and Security Policy (CFSP).

EU competences in the field of external action are recognised in Article 2(4) TFEU. These competences are mainly regulated by Article 21 of the Treaty on the EU (TEU), which states that the EU's action on the international level should be driven by the principles that inspired its own creation, development and enlargement, and by Article 24 (TEU). The path towards an externalising implementation of asylum and immigration policy began with the Tampere European Council of 1999. The process was then brought further with the Seville European Council of June 2002, which was mainly focused on a security approach following the 11 September 2001 terrorist attacks in the US. The conclusions of that Council spelled out the necessity of an "integration of immigration policy in the Union's relations with third countries"[15] and envisaged "a systematic assessment of relations with third countries which do not cooperate in combating illegal immigration".[16] This approach was then carried forward with the Hague multi-annual programme, adopted by the European Council in November 2004,[17] which located asylum and immigration issues in the Union's external remit. Between 2014 and 2015, the migration crisis pushed the issue to the top of the political agenda, creating a shared agreement between member states to tighten cooperation with third countries in order to tackle illegal migration.

Before the emergence of the crisis , however, the EU already had at its disposal a number of tools for addressing migration issues in an external context. These tools were encapsulated in 2005 under the so-called Global Approach to Migration (GAM),[18] which was "designed to address all relevant aspects of migration in a balanced and comprehensive way, in partnership with non-EU countries".[19] The

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[13] 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://europa.eu/!CY63mV.

[14] Ibid.

[15] European Council, *Presidency Conclusions, Seville European Council*, 21-22 June 2002, para. 33-36, https://www.consilium.europa.eu/media/20928/72638.pdf.

[16] Ibid., para. 35.

[17] European Council, *Presidency Conclusions, Brussels European Council*, 4-5 November 2004, para. 14-20, https://data.consilium.europa.eu/doc/document/ST-14292-2004-REV-1/en/pdf.

[18] European Commission, *Migration and Development: Some Concrete Orientations* (COM/2005/390), 1 September 2005, http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52005DC0390.

[19] European Commission, *The Global Approach to Migration and Mobility* (COM/2011/743), 18

2011 Global Approach to Migration and Mobility (GAMM) was established on four pillars, focusing on (1) fostering legal migration and well-managed mobility; (2) preventing irregular migration and eradicating human trafficking; (3) maximising the positive impact of migration on development; and (4) promoting international protection.[20]

The GAMM's external migration governance was established in various policy areas at the EU level, including those of migration and asylum, development cooperation, aid and neighbourhood policy as well as the CFSP.[21] Touching on so many policy areas, it was subjected to fund fragmentation – a condition that undermined its functioning.[22] Nonetheless, it was perceived as a successful approach, even if the migration crisis that hit Europe harshly in 2015 showed the weakness of this tool.

The first action to move on from this approach was taken through the launch of the new "Agenda on Migration" in May 2015, which consisted of a hybrid approach between development and externalisation.

The Agenda on Migration, like the GAMM, is based on four pillars.[23] However, while the GAMM focussed on "circular migration" and tried to shift migration from a "brain drain" process to a "brain gain" one, the Agenda on Migration approach is more security-centred. In fact, it is focused on the necessity of addressing the root causes of migration, the reinforcement of borders, and readmission agreements (a competence regulated by Article 79 TFEU). As a result, development objectives were relegated to the background and subjected to the principle of conditionality – an issue that will be addressed later in this paper. At the Valletta Summit of November 2015 with the head of states and governments of various African countries, the EU started to admit its failure in the field of migration and began to stress the need to adopt emergency measures to deal with the crisis.

The Union's first action in an externalisation direction was its agreement with Turkey, concerning the Eastern Mediterranean migration Route.

The agreement, aiming to create a system able to stop migration flows before they reached the EU, entered into force on 20 March 2016 with the objective of tackling the illegal flows that led from Turkey to Greece. A new mechanism (called the "1:1 scheme") was implemented, providing that for every illegal Syrian migrant returned to Turkey from Greece another Syrian would be resettled from Turkey to the EU. As part of the agreement, the Union pledged also to provide Turkey with a total of 6

November 2011, p. 3, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52011DC0743.
[20] Ibid., p. 7.
[21] Nicole Koenig, "The EU's External Migration Policy: Towards Win-Win-Win Approach", in *Jacques Delors Institute Policy Papers*, No. 190 (6 April 2017), p. 4, http://institutdelors.eu/?p=14774.
[22] Ibid.
[23] European Commission, *A European Agenda on Migration* (COM/2015/240), 13 May 2015, http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52015DC0240.

billion euro for the management of refugees. The EU–Turkey deal represented a pivotal point in the Union's response to the migration crisis, marking the point at which European leaders openly started to operate "abroad".

As Figure 1 illustrates, the agreement has clearly achieved its goal of reducing the entry of irregular migrants into Greece. Nonetheless, it has not provided a structural solution to the migration crisis and has raised several questions regarding the conditions that refugees have to face in Turkey and the agreement's compliance with EU and international law. One of these questions is related to the principle of *non-refoulement*,[24] a concept which is defined as "the obligation on states not to send individuals to territories in which they may be persecuted, or in which they are at risk of torture or other serious harm",[25] which must be respected by the EU as stated in Article 78(2) TFEU.

Figure 1 | 2016 monthly arrivals to Greece and Italy
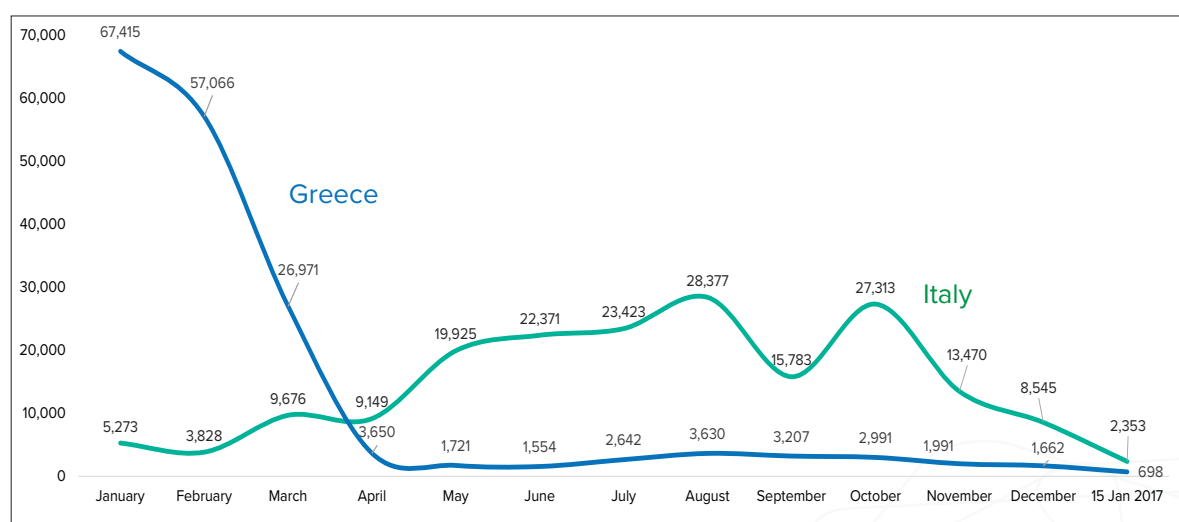
Source: UNHCR Bureau for Europe, *Weekly Report Key Figures Mediterranean*, 20 January 2017, p. 1, https://data2.unhcr.org/en/documents/download/53108.

This issue was raised in the context of the EU–Turkey agreement[26] due to the wording about returning "all new irregular migrants" to Turkey, that raised doubts about compliance with the principle of *non-refoulement*, and the perception of Turkey as a safe third country to which return migrants.[27] When the Commission

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[24] UNHCR Executive Committee, Conclusion No. 58 (XL) 1989: *Problem of Refugees and Asylum-Seekers Who Move in an Irregular Manner from a Country in Which They Had Already Found Protection*, in United Nations General Assembly Document No. 12A (A/44/12/Add.1), p. 11-13, https://undocs.org/A/44/12/Add.1(SUPP).

[25] Guy S. Goodwin-Gill, "The Right to Seek Asylum: Interception at Sea and the Principle of Non-Refoulement", in *International Journal of Refugee Law*, Vol. 23, No. 3 (October 2011), p. 444.

[26] EU-Turkey Statement, 18 March 2016, https://europa.eu/!Uk83Xp.

[27] Roderick Parkes, "Nobody Move! Myths of the EU Migration Crisis", in *Chaillot Papers*, No. 143 (December 2017), p. 107, https://www.iss.europa.eu/node/2189.

was asked by the European Parliament whether it considered Turkey a safe third country, its answer was vague – claiming that "in accordance with the Asylum Procedures Directive, the application of the concept of safe third country is subject to national rules".[28]

The issue, as stated by the Commission, is regulated by the Asylum Procedure directive – particularly Article 38(1), which states that "Member States may apply the safe third country concept only where the competent authorities are satisfied that a person seeking international protection will be treated in accordance with [certain specified] principles".[29] As a consequence, it is possible for a member state to reject an asylum claim as inadmissible if the third country satisfies a number of criteria such as that "life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion" or "the possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Geneva Convention".[30] Many suggest that Turkey does not fit the definition of a safe third country for asylum seekers; in fact, as Amnesty International stresses, Turkey does not always fulfil its responsibilities towards refugees or asylum seekers.[31]

For example, at the end of 2015 an increase in the number of deportations and occurrences of physical violence against Syrian asylum seekers trying to enter into Turkey was registered – as denounced by Human Rights Watch in 2018.[32] Even the European Ombudsman criticised the EU–Turkey deal, claiming that "the Commission should carry out a human rights impact assessment of the Agreement".[33] Another issue is that Turkey maintains a geographical limitation (despite having ratified the 1951 Geneva Refugee Convention), whereby it recognises the status of refugee only to people coming from Europe while providing only for a conditional refugee status to those coming from outside Europe.[34] Moreover, it is often reported that Turkey's authorities refuse asylum applications without proper

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[28] Answer given on 31 July 2017 by Mr Avramopoulos on behalf of the Commission to the Parliamentary question E-003110-17 of 3 May 2017, http://www.europarl.europa.eu/doceo/document/E-8-2017-003110-ASW_EN.html.

[29] Directive 2013/32/EU of 26 June 2013 on common procedures for granting and withdrawing international protection, https://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:32013L0032.

[30] Ibid.

[31] Amnesty International, *Turkey 'Safe Country' Sham Revealed as Dozens of Afghans Forcibly Returned Hours after EU Refugee Deal*, 23 March 2016, https://www.amnesty.org/en/latest/news/2016/03/turkey-safe-country-sham-revealed-dozens-of-afghans-returned.

[32] Human Rights Watch, *Turkey Stops Registering Syrian Asylum Seekers*, 16 July 2018, https://www.hrw.org/node/320295.

[33] European Ombudsman, *Decision in the Joint Inquiry into Complaints 506-509-674-784-927-1381/2016/MHZ against the European Commission Concerning a Human Rights Impact Assessment in the Context of the EU-Turkey Agreement*, 18 January 2017, https://www.ombudsman.europa.eu/en/decision/en/75160.

[34] Seçil Paçaci Elitok, "Turkey's Migration Policy Revisited: (Dis)Continuities and Peculiarities", in *IAI Papers*, No. 18|16 (October 2018), https://www.iai.it/en/node/9600.

examination.[35] This situation prompted three asylum seekers, entered illegally in Greece and faced with the possibility of being returned to Turkey if their request for asylum was rejected, to bring to the Court of Justice of the European Union (CJEU) an action for annulment against the agreement. The Court found that the accord was not, in fact, an EU agreement but rather an intergovernmental one between EU member states and Turkey. As a consequence, according to Article 263 TFEU, the CJEU lacks the jurisdiction to review its legitimacy.[36]

Taking into consideration the negotiations leading up to the agreement, this finding makes a controversial point. In fact, during the negotiations the EU included the deal in the context of Turkey's path towards EU membership – and, moreover, in all the meetings, institutions such as the Commission (even if just partially) and the European Council were involved in the negotiations.[37] Furthermore, in the European Council press release through which the agreement was announced, it is clearly stated that the "EU and the Republic of Turkey [have] decided to end irregular migration headed to the Union".[38] The press release clearly refers to the EU, not to its member states. Taking into account these elements, the CJEU asked both the European Council and the Commission about their role and how the statement was arrived at. In response, the European Council denied that the EU had concluded an agreement on the basis of Article 218 TFEU (which regulates the competence of the Union to conclude international agreements) and specified that the statement was the result of "an international dialogue" between Turkey and EU member states.[39] The Commission added that the package of measures to adopt as a result of the application of the statement "show[s] only a political commitment rather than generating any legally binding effect".[40] As a result, for the CJEU, "the European Council, as an institution, did not adopt a decision to conclude an agreement with the Turkish Government in the name of the European Union".[41]

The Court added that "even supposing that an international agreement could have been informally concluded", the Statement is an agreement between States.[42]

It is important to note that even viewing the agreement in this perspective, it continues to pose issues. In fact, as some scholars have argued, considering

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[35] Orçun Ulusoy, "Turkey as a Safe Third Country?", in *Border Criminologies*, 29 March 2016, https://www.law.ox.ac.uk/node/12866.

[36] Court of Justice of the European Union (CJEU), *Order of the General Court (First Chamber) in Case T-192/16, NF v European Council*, 28 February 2017, http://curia.europa.eu/juris/liste.jsf?num=T-192/16&language=en.

[37] Carmelo Danisi, "Taking the 'Union' Out of 'EU': The EU-Turkey Statement on the Syrian Refugee Crisis as an Agreement between States under International Law", in *EJIL: Talk!*, 20 April 2017, https://www.ejiltalk.org/?p=15173.

[38] Ibid.

[39] Ibid.; CJEU, *Order of the General Court in Case T-192/16*, cit., para. 27.

[40] Carmelo Danisi, "Taking the 'Union' Out of 'EU'", cit.

[41] CJEU, *Order of the General Court in Case T-192/16*, cit., para. 70.

[42] Ibid., para 72; Carmelo Danisi, "Taking the 'Union' Out of 'EU'", cit.

the statement as being established between member states (in the name of the Union) and the Republic of Turkey would represent a violation of the principle of autonomy, [43]on which EU law is based. On the other hand, considering the agreement as having been established between the EU and Turkey would imply a violation of Article 218 TFEU and of the principle of sincere cooperation (Article 13(2) TEU), since the European Parliament was completely left out the negotiations.

In conclusion, as Enzo Cannizzaro maintains, it seems that the General Court has bent the authority of the European judicial system to the demands of realpolitik,[44] as the EU–Turkey agreement is perceived as a fundamental step in resolving the migration crisis.

3. The normalisation of externalisation: The Migration Partnership Framework

After the adoption of the Agenda on Migration and of the EU–Turkey agreement, the European Union continued its path toward externalisation, adopting the Migration Partnership Framework (MPF) in 2016, especially aimed at some priority countries in Africa. The EU–Turkey agreement, now considered a statement that established "new ways to bring order into migration flows",[45] created a precedent for the EU and raised expectations about the creation of new agreements of this kind. This is particularly important because after the EU–Turkey deal, the migration path to Europe from North Africa burgeoned in 2016: according to the United Nations High Commissioner for Refugees (UNHCR), the Central Mediterranean route was taken by 181,436 migrants in 2016, as against 153,842 the year before.[46] The situation push further the EU in the direction of an externalisation process that enshrines deterrence and readmissions, making them the primary objectives of the Union's relationship with third countries. The Commission presented the MPF as a tool that should help to find a solution to the crisis through immediate and measurable results,[47] further shifting the focus towards the African context, following the direction indicated by the Valletta Summit.

The rationale behind the establishment of the MPF is that external migratory pressure is becoming the "new normal", requiring a more coordinated and

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[43] Enzo Cannizzaro, "Denialism as the Supreme Expression of Realism. A Quick Comment on NF v. European Council", in *European Papers*, Vol. 2, No. 1 (15 March 2017), p. 251-257, http://dx.doi.org/10.15166/2499-8249/120.

[44] Ibid., p. 257.

[45] European Commission, *Establishing a New Partnership Framework with Third Countries under the European Agenda on Migration* (COM/2016/385), 7 June 2016, p. 2, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52016DC0385.

[46] UNHCR Operational Portal, *Mediterranean Situation: Italy*, https://data2.unhcr.org/en/situations/mediterranean/location/5205.

[47] European Commission, *Establishing a New Partnership Framework with Third Countries under the European Agenda on Migration*, cit., p. 2.

structured approach that should, in order to squarely face the issue, prioritise mobility policy.[48] The MPF has two aims: in the short run, to save lives in the Mediterranean and increase returns to countries of origin and transit; in the long run, to address the root causes of irregular migration and forced displacement, and improve opportunities in countries of origin. The ultimate objective of this tool, according to the Commission,

> is a coherent and tailored engagement where the Union and its Member States act in a coordinated manner putting together instruments, tools and leverage to reach comprehensive partnerships (compacts) with third countries to better manage migration in full respect of our humanitarian and human rights obligations.[49]

The MPF aims to unite all actions of the EU member states with third countries in order to achieve a joint and coordinated approach, drawing them under a collective EU banner.[50] This new approach can be viewed as an admission of failure on the part of the GAMM to curb migration flows – not least, because it remained a tool mostly guided by the specific national migration interests of each member state.[51] The MPF involves a mix of political, aid and security engagement by the EU and member states, adapted to each country's context with a focus that shifts over time in response to changes in that context.[52]

This approach embeds migration objectives within the EU's external policy and puts pressure on it through funding mechanisms and positive or negative incentives for cooperation.[53] The Union has also created new types of financial funds (so-called "trust funds") in order to pool EU and member states' resources. One example is the European Union Emergency Trust Fund for Africa (EUTF), which until now has been provided with 4.1 billion euro – half coming from the EU's budget and the other half from member states.[54]

At the time of writing, the MPF has been implemented in five priority countries: Ethiopia, Mali, Niger, Nigeria and Senegal. These nations were identified as "priority" for their crucial role as countries of origin and transit. The MPF aims to succeed in its objective of reducing the flows by supporting these countries

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[48] Ibid., p. 5.

[49] Ibid., p. 6.

[50] Elizabeth Collett and Aliyyad Ahad, "EU Migration Partnerships: A Work in Progress", in *MPI Reports*, December 2017, p. 4, https://www.migrationpolicy.org/node/16046.

[51] Matthieu Tardis, "European Union Partnerships with African Countries on Migration. A Common Issue with Conflicting Interests", in *Notes de l'IFRI*, March 2018, https://www.ifri.org/en/node/14687.

[52] Clare Castillejo, "The EU Migration Partnership Framework. Time for a Rethink?", in *D.I.E. Discussion Papers*, No. 28/2017, p. 7, https://www.die-gdi.de/discussion-paper/article/the-eu-migration-partnership-framework-time-for-a-rethink.

[53] European Commission, *Establishing a New Partnership Framework with Third Countries under the European Agenda on Migration*, cit., p. 6.

[54] Matthieu Tardis, "European Union Partnerships with African Countries on Migration", cit., p. 15.

through strengthening borders, expanding the proportion of unauthorised migrants who are returned, and addressing the root causes that motivate migrants to leave in the first place. Moreover, the EU understood that it was impossible to consider a cooperation similar to that which it had with Turkey with countries such as Libya. Therefore, it shifted the European border *de facto* deep within sub-Saharan Africa.[55]

One important aspect of the MPF is that while it takes into account the interests of the EU and of its member states, this attention is not sharply focused on the interests of third countries. In fact, not all of the African countries involved in the MPF are able to respect their obligations and, as Elizabeth Collett and Aliyyad Ahad have noted, not all of them want to hinder their inhabitants' mobility as this can be an unpopular decision domestically.[56]

The MPF also has internal issues. It is crucial to the success of this initiative that EU member states act together through common objectives, as they have access to sources of influence and leverage not available to the EU itself.[57] Yet, member states have varying interests with regard to migration from Africa, which are also shaped by their historical ties.[58] This can pose problems – not least, because inconsistencies between EU member states can weaken the image of the Union as a credible actor. Alongside these issues, the main problem related to the MPF is the use of conditionality. This approach has been already adopted by the Union in order to enforce a respect of fundamental rights and good governance in third countries. The idea was that a country involved in EU programmes should ensure respect for human rights in order to obtain European funds. With the MPF, this arrangement was changed in a "less for less" approach – according to which, if a country is not collaborating sufficiently on the reduction of migration flows, the Union should move the money where there is greater cooperation.[59] The result has been a substantial shift in the European approach, which now prioritises the reduction of migration flows instead of development aims. This approach is clearly stated in the communication establishing the MPF, which asserted, "neighbourhood, development and trade are not the only policies that are relevant to support the compacts. No policy areas should be exempted from this approach. All EU policies [...] should in principle be part of a package, bringing maximum leverage to the discussion".[60]

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[55] Ibid.

[56] Elizabeth Collett and Aliyyad Ahad, "EU Migration Partnerships: A Work in Progress", cit., p. 1.

[57] Stefan Lehne, "Upgrading the EU's Migration Partnership", in *Carnegie Articles*, 21 November 2016, http://ceip.org/2g8QDdU.

[58] Clare Castillejo, "The EU Migration Partnership Framework. Time for a Rethink?", cit., p. 8.

[59] Ibid., p. 13.

[60] European Commission, *Establishing a New Partnership Framework with Third Countries under the European Agenda on Migration*, cit., p. 9.

The European Union is thus promising funds and investment in exchange for cooperation on the EU's migration goals, under the threat of reducing funds in response to non-cooperation. For example, the EUTF for Africa is strongly contingent on judgements about the cooperation of a country with the Union when allocating funds.[61] This raises several issues. Removing support for fragile states can contribute to worsening the situation in those countries, with the risk of triggering larger flows of migrants towards the EU. Additionally, the adoption of such a modus operandi could significantly undermine the right to asylum, making it more difficult for people eligible for asylum protection to reach a safe place and lodge an asylum request. More broadly, as more than a hundred NGOs stated in June 2016, "this new Partnership Framework risks cementing a shift towards a foreign policy that serves one single objective, to curb migration, at the expense of European credibility and leverage in defence of fundamental values and human rights".[62]

The idea of leverage, using development funds to force governments in Africa to keep their citizens at home, actually contravenes some provisions of the EU's treaties – for example, Article 3(5) TEU, which states that "in its relations with the wider world, the Union shall [...] contribute to peace, security, the sustainable development of the Earth, [...] free and fair trade, eradication of poverty and the protection of human rights [...]". Moreover, section (b) of Article 21(2) TEU states that the Union shall "consolidate and support democracy, the rule of law, human rights and the principles of international law". Conditionality risks weakening not just human-rights protection but also the obligation to favour free and fair trade. In fact, the Commission also declared that migration cooperation should be considered in the evaluation of trade preferences under the Generalised Scheme of Preferences Plus (GSP+)[63] – a tool that should allow vulnerable developing countries to pay fewer or no duties on exports to the EU, thus giving them vital access to the EU market and contributing to their economic growth.

This process of subordination of free trade to the curbing of migration would also be incompatible with section (e) of Article 21(2) TEU, which states that the Union shall "encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade". Furthermore, according to Fabian Willermain, the MPF puts countries with a poor record on human rights and governance in a strong position to bargain with the Union, risking the perpetuation of a cycle of abuse and repression.[64] In conclusion,

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[61] Clare Castillejo, "The EU Migration Partnership Framework; Time for a Rethink?", cit., p. 13.

[62] Joint NGO statement ahead of the European Council of 28-29 June: *NGOs Strongly Condemn New EU Policies to Contain Migration*, June 2016, https://euromedrights.org/publication/ngos-strongly-condemn-new-eu-policies-to-contain-migration.

[63] European Commission, *Establishing a New Partnership Framework with Third Countries under the European Agenda on Migration*, cit., p. 9.

[64] Fabian Willermain, "The European Agenda on Migration, One Year on. The EU Response to the Crisis Has Produced Some Results, but Will Hardly Pass Another Solidarity Test", in *IEMed Mediterranean Yearbook 2016*, p. 139, https://www.iemed.org/publicacions/historic-de-publicacions/anuari-de-la-

it is clear that the logic behind the MPF is the same as that underpinning the EU–Turkey agreement, according to which, as Nula Frei and Constantin Hruschka maintain, the closer that migration controls can be placed to the "source" of migration, the less likely it will be that migrants reach European territory and that legal consequences result.[65]

4. The application of the Migration Partnership Framework: The case of Ethiopia and Niger

After the adoption of the MPF, the Commission began to produce periodic progress reports analysing the results of this new tool. In this section, the cases of Ethiopia and Niger will be taken into consideration – first of all because they are both priority countries for the MPF, and second because they present different peculiarities. Ethiopia is one of the most important hosts for migrants in the Horn of Africa region, while Niger is among the most crucial transit countries. Analysing these two cases can help us to understand how the MPF works in two very different contexts.

Niger represents one of the most important transit countries for migration flows directed towards Europe. According to the International Organization for Migration (IOM), over 400,000 migrants transited through Niger in 2016,[66] and three-quarters of all African migrants arriving by boat in Italy in recent years transited through its central region of Agadez.[67] The country also represents one of the most important partners of the European Union in the region and one of the most successful examples of the MPF approach. MPF initiatives in Niger have focused mainly on security-related issues such as strengthening border management, combating smuggling and reintegrating returnees.[68]

The apparent success of the MPF in the country is due to the fact that its objectives are aligned with those of the EU. Niger, being a transit country, is keen to collaborate with the Union in order to reduce the flows of migrants that cross its borders.[69] In this context, Nigerien authorities have also stepped up border control

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mediterrania/sumaris/iemed-mediterranean-yearbook-2016.

[65] Nula Frei and Constantin Hruschka, "Circumventing Non-Refoulement or Fighting 'Illegal Migration'?", in *EU Immigration and Asylum Law and Policy Blog*, 23 March 2018, https://eumigrationlawblog.eu/?p=1879.

[66] International Organization for Migration (IOM), *IOM Niger 2016 Migrant Profiling Report*, August 2017, p. 9, http://gmdac.iom.int/node/324.

[67] Daniel Howden and Giacomo Zandonini, "Niger: Europe's Migration Laboratory, in *News Deeply. Refugees Deeply*, 22 May 2018, https://www.newsdeeply.com/refugees/articles/2018/05/22/niger-europes-migration-laboratory.

[68] European Commission, *Fourth Progress Report on the Partnership Framework with Third Countries under the European Agenda on Migration* (COM/2017/350), 13 June 2017, p. 3, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52017DC0350.

[69] Ibid.

and enforcement action against trafficking in human beings.[70] Another reason for the apparent success of the MPF is that Niger is one of the poorest countries in the region, and so it is willing to increase its take-up of funds that the Union has to offer for migration projects through the EUTF, which has allocated 139.9 million euro for projects in the country in 2016[71] – making it one of the main beneficiaries of the fund.[72] It seems that Niger is a country in which the "more for more" approach works,[73] making it a showcase of how the EU and its member states can combine the various instruments and tools available to them in a comprehensive manner.[74] Nonetheless, the fact remains that measures undertaken in the field of security and migration control are at the forefront of this approach, while provisions concerning regular migration and the resettlement of refugees are lacking.[75]

The case of Ethiopia is a more difficult one. The country is under great pressure from migration flows coming from Eritrea, South Sudan and Somalia, and already hosts a large number of refugees. The EU's cooperation with Ethiopia in readmission has been noticeably weak, with a registered total of only 145 irregular migrants returned from Europe in 2016.[76]

A major difference with the case of Niger is that Ethiopia's and the EU's interests are not aligned. In fact, while the Ethiopian Government was expecting support in job creation and legal migration the EU proved disappointing in these fields,[77] focusing instead on enhancing cooperation in the field of returns and readmission. For its part, the EU attributes its low level of engagement in development and job creation to the uncooperativeness of the Ethiopian authorities on returns.[78] The case of Ethiopia is a clear example of the weakness of a "more for more" approach. In fact, for the Ethiopian Government, which relies on a large amount of remittances and on the aid of countries such as China, the funds offered by the European Union do not represent enough of an incentive to cooperate more fully.

Confronted with this lack of cooperation, the Union decided to shift to negative incentives, delaying planned EUTF development and trade-cooperation initiatives.

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[70] Ibid., p. 4.

[71] European Commission, *EUTF Africa 2016 Annual Report*, March 2017, p. 22, https://ec.europa.eu/trustfundforafrica/sites/euetfa/files/eutf_2016_annual_report_final_en.pdf.

[72] European Commission, *Partnership Framework on Migration: Commission Reports on Results and Lessons Learnt One Year On*, 13 June 2017, http://europa.eu/rapid/press-release_IP-17-1595_en.htm.

[73] Clare Castillejo, "The EU Migration Partnership Framework. Time for a Rethink?", cit., p. 22.

[74] European Commission, *Fourth Progress Report on the Partnership Framework with Third Countries under the European Agenda on Migration*, cit., p. 3-4.

[75] Olivia De Guerry and Andrea Stocchiero, P*artnership or Conditionality? Monitoring the Migration Compacts and EU Trust Fund for Africa*, Brussels, Concord Europe, January 2018, p. 22, https://wp.me/p76mJt-2u9.

[76] European Commission, *Fourth Progress Report on the Partnership Framework with Third Countries under the European Agenda on Migration*, cit., p. 8.

[77] Clare Castillejo, "The EU Migration Partnership Framework. Time for a Rethink?", cit., p. 26-32.

[78] Olivia De Guerry and Andrea Stocchiero, *Partnership or Conditionality?*, cit., p. 31.

This decision worsened the situation and hardened the position of Ethiopia, which did not want migration and returns to be the top priority in its discussions with the EU. The case of Ethiopia thus clearly shows the limits of the MPF approach, whereby a country that already hosts around 1 million refugees is threatened with the use of negative incentives in order to force cooperation on returns and readmissions.

Conclusions

Is the EU moving towards a "new normal" in the migration field? The answer seems to be yes. Since 2015, the Union has mobilised unprecedented diplomatic means to put migration partnerships with African countries at the centre of its relations with Africa. This shift can be seen first of all in the fact that the Juncker Commission defined migration as a top priority. In addition, in the document presenting the MPF external migratory pressure was addressed as the "new normality" – for which reason, it is argued, it requires a coordinated EU response with third countries.

The migration crisis was a watershed moment for the Union, marking a shift in its perception of a phenomenon that consequently blurred the boundaries between the internal and the external dimension. It is also important to note that the inability of its member states to address migration flows through solidarity and burden sharing has played a major role in pushing the EU to search for a solution based on externalisation. However, as can clearly be seen in the MPF approach, the Union risks focusing too much attention on a security-driven logic, ignoring the underlying causes of migration such as underdevelopment, unemployment, poverty and instability.

If the EU wants to develop a comprehensive approach to effectively manage migration, it should not prioritise security-related issues but should address the underlying causes of migration. This means that the Union should focus on a so-called "triple win" approach, in which the interests of migrants, countries of origin and the Union itself are intertwined. This will be possible only through a balance between the EU's need to reduce migration flows, origin countries' development necessities and migrants' own necessities – particularly through the opening of legal pathways for people entitled to apply for asylum, in order to let them reach safety. The only result of the current approach, mainly based on conditionality and on the outsourcing of the EU's obligations, is to risk undermining the Union's development and human-rights principles, endangering both its role as a human-rights enforcer and its international credibility.

Updated 3 June 2018

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