Legitimization of uncertainty: The shaky fate of Syrian migrants in Turkey and Europe

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PART 1
EU and expressions of the containment paradigm

source: Wikimedia Commons, undated
Paradigms in parallel

Containment paradigm (Akram, 2015)
- Risk-based
- Strengthening internal borders
- Externalization of borders
- Securitization and technology
- ‘Burden’ sharing
- Exclusion

Conceptual and practical dissonance

Migrant solidarity paradigm
- Rights-based
- International law
- Family reunification
- Responsibility sharing
- Life with dignity
- Inclusion

source: J. Hilton

source: N. Parent
Manufactured risk

Risks are always events that are not yet real. Without techniques of visualization, without symbolic forms, without mass media, risks are nothing at all. The sociological point is: If destruction and disaster are anticipated this might produce a compulsion to act. The social construction of a “real” anticipation of catastrophes can become a political force, which transforms the world.

(Beck, 2009: 292-293)
Strengthening internal borders

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source: J. Hilton

source: Tasch and Nudelman, 2016
Externalization of borders

(...) the process which uses various methods to transfer migration management beyond national borders and in the EU involves transferring responsibility and, in effect outsourcing its immigration and asylum policy by subcontracting controls.

(Rodier, 2013: 7)
Externalization of borders

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Border control maritime operations (selected)

- Hera: Hera II: 2006; 2007 (FRONTEX)
- Indalo: JO EPN Indalo: 2011; 2015 (FRONTEX)
- Operation Sophia: 2015 (EUNAVFOR Med)
- Joint Operation Triton: 2014 (FRONTEX)
- Poseidon Sea: 2014 (FRONTEX)
- Military deployment: 2015 (NATO)
Externalization of borders

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Push-back’s

The forcible return of migrants into a territory they are fleeing, typically following an interception at sea.

source: G. Moutafis, via Pro Asyl, 2013
Externalization of borders

Push-back’s: Legal implications

Charter of Fundamental Rights of the European Union, 2000
- Article 18:
  - The right to asylum shall be guaranteed (...)
- Article 19 (1):
  - Collective expulsions are prohibited

1951 Convention Relating to the Status of Refugees
- Article 33 (1):
  - No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

UN Convention Against Torture, 1987
- Article 3 (1):
  - No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture

The Universal Declaration of Human Rights, 1948
- Article 14 (1):
  - Everyone has the right to seek and to enjoy in other countries asylum from persecution.

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Frontex annual budget (Euro, Millions)

2016

source: J. Hilton

source: Frontex, multiple years

Maritime operational activities

All other operational activities
Readmission agreements

(...), agreement which addresses procedures for one State to return aliens in an irregular situation to their home State or a State through which they passed en route to the State which seeks to return them.

(International Organization for Migration, 2010: slide 3)

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EU-wide readmission cooperation with non-EU countries

- Sri Lanka: 2004, 2005
- Russia: 2006, 2007
- Georgia: 2008, 2009
- Ukraine, FYROM, Bos. And Her., Montenegro, Serbia, Moldova: 2010
- Pakistan: 2011

source: J. Hilton
source: European Commission, 2016a
Externalization of borders

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Readmission-related agreements between EU Member States and non-EU countries

source: J. Hilton

source: European University Institute, undated
Securitization and technology

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Burden vs. responsibility

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Architectonics of Blame Avoidance (Hood, 2011)

Agency Strategies

Presentational Strategies

Blame Avoidance

Policy Strategies
PART 2
European ‘migration crisis’ and EU-Turkey cooperation

source: Flesier, undated
Timeline of events

Mar. 2011: Syrian Arab Spring

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Jun. 2011: Military siege of Jisr al-Shughour in Northern Syria [2,500 Syrians flee to Turkey]

Jul. 2012: ICRC declares Syria in a state of Civil War

July. 2012: ICRC declares Syria in a state of Civil War

Sep. 2012: ICRC declares Syria in a state of Civil War

June 2011: Military siege of Jisr al-Shughour in Northern Syria [2,500 Syrians flee to Turkey]

April 2013: Law on Foreigners and International Protection [adopted]

April 2013: Law on Foreigners and International Protection [adopted]

Dec. 2013: EU-Turkey Readmission Agreement

Dec. 2013: EU-Turkey Readmission Agreement


Sept. 2013: Law on Foreigners and International Protection [in force]


Nov. 2014: Law on Foreigners and International Protection [in force]

Nov. 2014: Law on Foreigners and International Protection [in force]

Nov. 2014: Law on Foreigners and International Protection [in force]


Feb. 2015: Law on Foreigners and International Protection [in force]

Feb. 2015: Law on Foreigners and International Protection [in force]

Mar. 2015: Law on Foreigners and International Protection [in force]

Mar. 2015: Law on Foreigners and International Protection [in force]

April 2015: Law on Foreigners and International Protection [in force]

May 2015: Law on Foreigners and International Protection [in force]

July 2015: Law on Foreigners and International Protection [in force]

July 2015: Law on Foreigners and International Protection [in force]

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Aug. 2015: Chancellor Angela Merkel suspends Dublin rules

Aug. 2015: Chancellor Angela Merkel suspends Dublin rules

Sept. 2015: Chancellor Angela Merkel suspends Dublin rules

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Oct. 2015: Chancellor Angela Merkel suspends Dublin rules

Oct. 2015: Chancellor Angela Merkel suspends Dublin rules

Nov. 2015: EU-Turkey Summit

Nov. 2015: EU-Turkey Summit

Dec. 2015: EU-Turkey Summit

Dec. 2015: EU-Turkey Summit

Jan. 2016: Regulation on the Work Permits for Foreigners under Temporary Protection

Jan. 2016: Regulation on the Work Permits for Foreigners under Temporary Protection

Feb. 2016: Turkey declared as ‘safe country’

Feb. 2016: Turkey declared as ‘safe country’

Mar. 2016: EU-Turkey Action Plan

Mar. 2016: EU-Turkey Action Plan

April 2016: EU-Turkey Action Plan

April 2016: EU-Turkey Action Plan

July. 2016: Turkish President Erdogan discusses possible citizenship for Syrians

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European Migration Crisis
Dec. 2013: EU-Turkey Readmission Agreement

- Visa liberalization signed in parallel with readmission agreement
- “The provisions related to the readmission of any other third country nationals (...) will enter into forced only three years later” (European Commission, 2013a)
  - Entry into force: December 16 2016
- Included the “Roadmap Towards a Visa-Free Regime with Turkey” [5 pillars] (European Commission, 2013b)
  - Document security
  - Migration management
  - Public order and security
  - Fundamental rights
  - Readmission of irregular migrants
October 2014:
Law on Foreigners and International Protection  [in force]

Outline

- “(...) hailed as a ‘historic step’ forward (…)” (FIDH, Migreurop and EMHRN, 2014)
- Opens the door to temporary protection, applicable to Syrians
- Guarantees certain rights for those under temporary protection
  - Education
  - Health
  - Work
    - Further accessible following the Regulation on the Work Permits for Foreigners under Temporary Protection (2016)
- Social assistance
- Cooperation with international protection procedures (e.g. Geneva Convention)
- Outlines services available and rights within accommodation and detention centers
October 2014:
Law on Foreigners and International Protection  [in force]

- Temporary protection granted in times of “mass influx” (art. 91[1]), of which is decided by the Council of Ministers (art. 91[2])
- Confirms Turkey’s responsibility towards the principle of non-refoulement (art.4)
- Discord between law and practice
- Access to accommodation, detention and removal centers
Nov. 2015: EU-Turkey Summit

- Follow-up to conclusions by the European Council (15.10.2015) that “(...) the accession process needs to be re-energized” (European Council, 2015)
- EU-Turkey readmission agreement “(...) will become fully-applicable from June 2016” (European Council, 2015)
- Visa liberalization will be complete by October 2016
- Refugee Facility for Turkey is established, amounting to 3 billion Euro
Feb. 2016: Turkey declared as ‘safe country’

- Announced by Greek Interior Minister Panayiotis Kouroublis
- Result of a meeting with Interior Minister’s Bernard Cazeneuve (France) and Thomas de Maiziere (Germany)
Collapse of the Kurdish Peace Process

- ‘Human Rights violations

- ‘Safe country’ only applicable to nationals (country of origin), not refugees or asylum seekers

Feb. 2016: Turkey declared as ‘safe country’

source: Weaver, 2016

Mar. 2016: EU-Turkey Action Plan

### Outline

- Dec. 2013 readmission agreement is fast-tracked
- Irregular migrants arriving to the Greek islands after 20 March 2016 will be sent back to Turkey
- ‘One for one’ (1:1) arrangement
- Turkey will strengthen security on sea and land routes
- Additional 3 billion Euro added to Refugee Facility for Turkey
- EU and Turkey agree to accelerate visa liberalization process, (complete by June 2016)
- EU commits to re-energize to accession process
Readmission from the EU to Turkey

- Readmission is articulated as legitimate by the EU Commission
  - Article 33 (2) of Asylum Procedures Directive (recast)
    - “Member States may consider an application for international protection as inadmissible only if:
      a) Another Member State has granted international protection;
      b) A country which is not a Member State is considered as a first country of asylum for the applicant, pursuant to Article 35;
      c) A country which is not a Member State is considered as a safe third country for the applicant, pursuant to Article 38 (…)

Source: Directive 2013/32/EU

Article 35 of Asylum Procedures Directive (recast)
“A country can be considered to be a first country of asylum for a particular applicant if:
- (a) He or she has been recognised in that country as a refugee and he or she can still avail himself/herself of that protection; or
- (b) He or she otherwise enjoys sufficient protection in that country, including benefiting from the principle of non-refoulement, provided that he or she will be readmitted to that country.

In applying the concept of first country of asylum to the particular circumstances of the applicant, Member States may take into account Article 38(1)."

Article 38 of Asylum Procedures Directive (recast)
“Member States may apply the safe third country concept only where the competent authorities are satisfied that a person seeking international protection may be treated in accordance with the following principles in the third country concerned:
- (b) There is no risk of serious harm as defined in Directive 2011/95/EU;
- (c) The principle of non-refoulement in accordance with the Geneva Convention is respected;
- (e) The possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Geneva Convention”

Source: Directive 2013/32/EU
Sufficient protection in Turkey?

- APD does not define ‘sufficient protection’
  - According to UNHCR (selected):
    - “No risk of persecution within the meaning of the 1951 Convention or serious harm in the previous state;
    - No risk of onward refoulement from the previous state;
    - Compliance, in law and practice, of the previous state with relevant international refugee and human rights standards, including adequate standards of living, work rights, health care and education. (…)” (UNHCR, 2016: 3)
The high price tag of the E.U.-Turkey deal has sent a message to other non-E.U. countries that their cooperation on migration is a commodity that is rapidly increasing in value, as well as a message to major refugee-hosting countries – the vast majority of which are developing countries – that their responsibilities to the vulnerable and displaced are optional and can be outsourced.

- Elizabeth Collett
  Director, Migration Policy Institute

source: Alfred, 2016
THANK YOU

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References [1]


References [2]

- UNHCR, (2016). Legal considerations on the return of asylum-seekers and refugees from Greece to Turkey as part of the EU-Turkey Cooperation in Tackling the Migration Crisis under the safe third country and first country of asylum concept. [online] Available at: http://www.unhcr.org/56f3ec5a9.pdf [Accessed 18 September 2016]