

FULYA FELICITY TÜRKMEN

Rethinking the EU-Turkey Re-Admission Agreement from an Ethics of Immigration Perspective

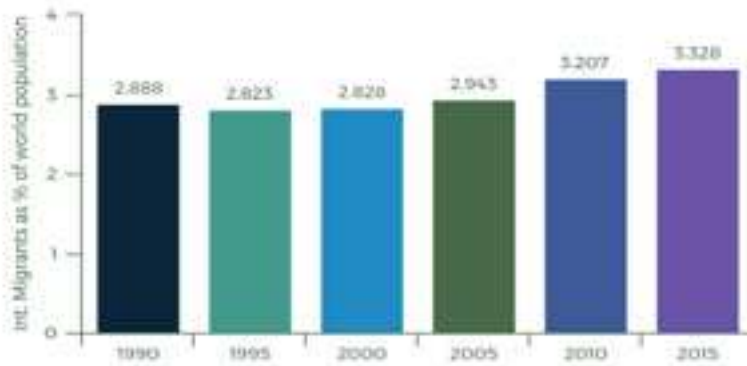
Lane's three 'immovable ideas' – *sovereignty*, *democracy*, and *nationality* – remind us of the ambiguous source of the boundaries that obstruct the free movement of the people and the nature of the nation state system.¹ Migratory movements in a large number challenge these immovable ideas, especially when they are viewed as an "unprecedented migration crisis".² This so-called crisis is framed by comparing the total number of people on the move in the last 10 years. Although it is true that the number of international migrants has risen, so has the world population. Thus, the statistical information on international migrant stock reflects that the total portion of international migrants in the world population has only increased by 0.44%.

Public opinion in the receiving countries is heavily affected by the images of migrant flows, supporting the right wing parties in their perception that the immovable ideas – sovereignty, democracy, and nationality – are in danger. The crux of the matter is not at all if there really is an unprecedented migration crisis and if the numbers of asylum seekers are really exceptional or not: the perception and public opinion as shaped by the narratives on migration concerning the volume of the influx of asylum seekers in receiving countries is as important as actual numbers when it comes to stirring fear and hostility.

1 Melissa Lane, *Philosophical Perspectives on States and Immigration*. Cambridge: King's College 2016, online at: http://www.histecon.magd.cam.ac.uk/docs/lane_migration.pdf

2 Refugee crisis in Europe – European Civil Protection and Humanitarian Aid Operations – European Commission. European Civil Protection and Humanitarian Aid Operations, accessed March 09, 2017. http://ec.europa.eu/echo/refugee-crisis_en.

Table 1: Change in International Migrant Stock (1990–2015)



Source: United Nations Population Division, Trends in Total Migrant Stock

Re-admission agreements as a refined securitization tool and the EU-Turkey Readmission Agreement

As will be discussed, many tools of migration control, including re-admission agreements, coexist with various diplomatic relations, agreements and partnerships. These international organizations (such as the United Nations High Commissioner for Refugees, and the International Organization for Migration) functioned relatively well as long as they were dealing with more individual cases. However, every time they had to deal with a higher number of cases, as during the most recent situation with the Syrian displaced population, they failed to function properly. What is more worrying and alerting about these institutions is that they are not even able to guarantee the supposedly inalienable and basic rights of the people, especially so in times of need and emergency.³

States use these international institutions, humanitarian organizations and policing in all forms as a substitute for their direct involvement. The concepts of migration management and burden sharing mechanisms are also direct consequences of this approach. Today, the discussions favour the ‘securitization of migration’ by increasing the capacity and power of the mechanisms of policing through border police, walls and fences, as well as institutions like FRONTEX. As Huysmans recalls: “The third pillar of Justice and Home Affairs, the Schengen Agreements, and the Dublin Convention most

³ Amnesty International, The Human Cost of Fortress Europe: Human Rights Violations Against Migrants and Refugees at Europe’s Borders, Report 2014, online at: http://www.amnesty.eu/content/assets/Reports/EUR_050012014__Fortress_Europe_complete_web_EN.pdf

visibly indicate that the European integration process is implicated in the restrictive migration policy and the social construction of migration into a security question.”⁴

These efforts have been furthered by the establishment of The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX)⁵ Huysmans further notes that even the critics of this securitization framework cannot avoid using security-centred language, because this is now the common ground for debates.⁶

Marchetti, by focusing on the Mediterranean and specifically Italian case, mentions prevention and externalization as the common signatures of preventive refoulement.⁷ Preventive refoulement is an instrument to be used mostly in cases of “increasing mixed flows and a multiplication of the forms of protection”, where and border management stretches into foreign lands thanks to tools such as readmission agreements.

Kasperek’s remarks on an interview with a FRONTEX officer about the place of FRONTEX in the European Union’s migration management is worthy of attention. The officer states that FRONTEX “does not deal with migration, they deal with border management.”⁸ How is it possible to consider migration a phenomenon distant and separate from border management? This statement showcases one aspect of the ethical defects of reframing migration by distancing it from moral and humanitarian spheres. As Carens argues, states are morally obliged to reduce and combat irregular migration and prevent the entrance of people who cannot be described as refugees. However, some are still able to cross borders even in spite of border management measures. The ways of handling of these cases and defining the “moral constraints” are far from irrelevant, as “many of the measures designed to reduce irregular migration also prevent refugees from arriving and many of those who wind up in an irregular status arrived as refugee claimants but had their claims denied.”⁹

4 Jef Huysmans, *Migration and the Politics of Security*, in: *Minorities in European Cities* (2000), pp. 179–189.

5 Frontex/Origin (homepage presentation), n.p., n.d., online at: <http://frontex.europa.eu/about-frontex/origin/>

6 Jef Huysmans, *The politics of insecurity: fear, migration and asylum in the EU*. London: Routledge 2008.

7 Preventive refoulement refers to practices used to prevent the irregular migrants’ physical access to countries in which they can proceed to asylum application processes and refugee status. According to Marchetti, readmission agreements are among the instruments used for preventive refoulement, coupled with other solutions such as mixed patrol and cooperation with private security firms at the borders in some cases (Libya, Morocco, Algeria). In this way, the EU goes beyond its physical borders and creates artificial expanded borders.

8 Bernd Kasperek, *Borders and Populations in Flux: Frontex’s Place in the European Union’s Migration Management*. In: M. Geiger, A. Pécoud (eds.), *The Politics of International Migration Management. Migration, Minorities and Citizenship*. London: Palgrave Macmillan 2010, pp. 119–140.

9 Joseph Carens, *How should we think about the ethics of international migration?*, in: *EUI Forum Paper* (2014), pp. 1–4.

This reframing process on securitization of immigration is a gradual and on-going one, as the Schengen agreement began transforming the structure of the borders of the EU and attention has shifted towards the management and surveillance of external borders. As Marchetti elaborates: “The European Union defines itself as a ‘Common Space of Freedom, Security and Justice’; a space to be defended in order to guarantee these prerogatives. The EU’s external borders are becoming areas of tension and conflict. Because it becomes more difficult to control or expel migrants once they are inside the EU, for the member states the challenge lies in preventing their entry or at least in limiting it as much as possible, and they resort to repression or deterrence if necessary.”¹⁰

The effort of limiting the number of asylum applications manifests itself in the form of readmission agreements. In short, readmission agreements foresee the return of persons who reside in a country ‘illegally’ and the acceptance of these persons by their country of citizenship or a third country – usually regarded as the safe country. As such, these persons may or may not be the citizens of the receiving country and they might even be stateless persons. Readmission agreements are considered the most viable option for regulating migratory movements between member states and non-member third states. Mostly, readmission agreements are tied to further treaties or other types of agreements and they both affect and are affected by the political relations and environment surrounding the agreeing parties. In addition, readmission agreements also entail political and diplomatic relations and negotiations between parties. This feature of readmission agreements might make them ethically indefensible, as the migrants’ basic human rights become secondary considerations among other bargaining chips on the table during the negotiation processes.

Readmission agreements also draw attention to how the physical borders of the EU are expanding by way of constant controlling, detention and surveillance on the outside of external borders. It has been observed that the main purpose is to shift the management of migration outside of the country, ideally to third countries and neighbouring states in order to retain the immigrants as close as possible to their countries of origin. By doing so, the main function of preventive refoulement coincides with the states’ basic aim: preventing large numbers of asylum applicants in Europe. In line with this aim, readmission agreements are structured in ways to prompt third countries to accommodate the migrants in support of the EU member states. While it is justifiable and understandable that nation states would take increasing measures to prevent irregular migration, the strict dichotomy between categories of migrants, i.e., refugees and

10 Chiara Marchetti, *Expanded Borders: Policies and Practices of Preventive Refoulement in Italy*, in: *The Politics of International Migration Management*, London: Palgrave Macmillan 2010, pp. 160–183.

economic migrants for most cases, obstruct the legal pathways open to many “genuine” refugees in need at the very early stages of asylum applications. This drives many more to using dangerous and irregular routes.

Throughout the years, the EU has come up with several strategies to deal with the flow of irregular migration. Re-admission agreements are part of these strategies. The EU determined a joint sending back procedure from mid-1990s onwards. There are currently almost 20 countries with whom the EU has signed re-admission agreements on a bilateral basis.

Table 2: Readmission Agreements concluded with Third Countries

Country	Entry into force of the agreement	Country	Entry into force of the agreement
Cape Verde	1 December 2014	Bosnia & Herzegovina	1 January 2008
Turkey	1 October 2014	FYROM	1 January 2008
Azerbaijan	1 September 2014	Ukraine	1 January 2008
Armenia	1 January 2014	Russia	1 June 2007
Georgia	1 March 2011	Albania	1 May 2006
Pakistan	1 December 2010	Sri Lanka	1 May 2005
Moldova	1 January 2008	Macao	1 June 2004
Serbia	1 January 2008	Hong Kong	1 March 2004
Montenegro	1 January 2008		

The re-admission agreement between Turkey and the EU was signed in December 2013, and became partially effective in October 2014. Due to the rising numbers of asylum applications and irregular crossings in 2015, the EU asked Turkey to constitute the agreement fully. As a result of the negotiations, it is planned that the Joint Action Plan, which was agreed on in November 2015, would come into force from June 1, 2016. According to the statement, all new immigrants crossing from Turkey to the Greek islands whose asylum applications are rejected or who did not have legal applications for asylum in the first place will be returned to Turkey as of March 20, 2016. The one for one principle, an important part of the statement, indicates that for each Syrian returned to Turkey, one Syrian who fulfils the UN vulnerability criteria will be resettled from Turkey into the EU, giving priority to those who did not try to enter EU through irregular ways previously.

It is obvious that even the additional numbers for resettlement are highly limited when compared to the total number of displaced Syrians (nearly 5 million) and the total Syrian asylum applications in Europe (nearly 885,000). It is doubtful whether

the current quotas of the scheme would suffice even for family unifications, as a EU statement released in 2016 asserts:¹¹ “By Member States in the conclusions of Representatives of the Governments of Member States meeting within the Council on 20 July 2015, of which 18,000 places for resettlement remain. Any further need for resettlement will be carried out through a similar voluntary arrangement up to a limit of an additional 54,000 persons”¹²

Turkey is obliged to take any measures necessary at the land and sea borders to avoid further illegal entrance and cooperate with the neighbouring states for this purpose. It is indicated in the agreement that the process of lifting visa requirements for Turkish citizens will be stimulated and expected to be finalized in June 2016. Turkey will fulfil its part by making necessary adjustments for setting the ground and the EU will accelerate the process of disbursement of 3 billion Euros for facilities for refugees in Turkey. Until the end of 2018, the EU will also contribute by raising extra funds. A revival of Turkey’s accession process to the EU by accelerating the opening of the new chapters was also included in the statement. In addition, changes to Turkey’s anti-terror legislation were attached to this package, tied to the visa liberalization processes mentioned in the EU-Turkey Statement.¹³

Is the EU-Turkey re-admission agreement ethically defensible?

First, it is clear that the parties to this agreement are failing their obligations under the Refugee Convention.¹⁴ In addition to the states’ specific responsibilities towards displaced people in need of help, the modern nation state system and the eurocentric asylum system inherently create and fail displaced populations on a regular basis. The asylum system proved to be no longer effective following the Nazi era and its aftermath. These historical events lead to the establishment of the UNHCR and the Geneva Convention as the vital foundation of an international refugee protection system. Thus, the definition of the refugee remains very narrow, despite efforts made during the creation of the 1967 protocol. The expectation of refugees to prove their status in

11 United Nations High Commissioner for Refugees (UNHCR), UNHCR Syria Regional Refugee Response, online at: <http://data.unhcr.org/syrianrefugees/regional.php> (accessed March 01, 2017).

12 European Council – Council of the European Union, EU-Turkey statement, 18 March 2016, online at: <http://www.consilium.europa.eu/en/press/press-releases/2016/03/18-eu-turkey-statement/> (accessed January 18, 2017).

13 Cf. EU-Turkey visa deal on brink as Erdoğan refuses to change terror laws, in: *The Guardian News*, 06. 05. 2016, online at: <https://www.theguardian.com/world/2016/may/06/erdogan-turkey-not-alter-anti-terror-laws-visa-free-travel-eu> (accessed 01 August 2017).

14 <http://www.unhcr.org/1951-refugee-convention.html>

ways resemble the reflections of the “original refugees of World War II.”¹⁵ Although the world has been faced with many different forced migration events and patterns, each with their own unique characteristics, these are not reflected much in the standard tools and definitions of the international asylum system. This situation also paves the way for states to manoeuvre around the legal and humanitarian obligations in accordance with their changing concerns and interests in the arena of global politics. The expense of such moving and shifting comes in the shape of human lives. As a recurrent theme, carrying the flag of humanitarian norms and values as pillars of support and strength of human rights around the globe may merely mean having some moral constraints on “rational” actions. History proves that as long as we live in nation states, stateless people and refugees will be parts of our lives and that it is they who will suffer most the injustices and hardships of the world, being seen as “the vanguard of their peoples.”¹⁶

Second, we are facing an objectification of the refugees as parts of further political interests and deals. This was demonstrated by the effects of the to and fro between the EU and Turkey on Syrian refugees.¹⁷ These two aspects of the EU-Turkey readmission agreement put it in an ethically indefensible position. Beyond Human Rights was written as an answer to Hannah Arendt’s *We Refugees* a decade ago: it retains its relevance on the issue of the refugees’ vague and vulnerable positions in host communities. The hidden effects of the decline of the nation state and the decay of traditional political structures can be observed through the condition of the refugees. Their situation reflects both the current limitations and future possibilities of the political communities and requires a re-evaluation of the fundamental conceptions of the political – the man, the citizen and human rights. “If we want to be equal to the absolutely new tasks ahead, we will have to abandon decidedly, without reservation, the fundamental concepts through which we have so far represented the subjects of the political and build our political philosophy anew starting from the one and only figure of the refugee.”¹⁸

Why do refugees have such power to reveal the tautologies and malfunctioning in the modern nation state system? Agamben’s explanations on this issue are enlightening in that he points out a more structural and fundamental problem behind the relationship between state, citizens and non-citizens. The figure of the refugee sheds light on the nation state by ‘breaking the identity between the human and the citizen and that between nativity and nationality, it brings the originary fiction of sovereignty to cri-

15 Gallya Lahav, *The Global Challenge of the Refugee Exodus*, in: *Current History* 115 (2016) 777.

16 Hannah Arendt, *Imperialism*, in: *The Origins of Totalitarianism*, Washington: Harvest Books 1985 (1st edition: New York Harcourt, Brace & World 1966).

17 See „Erdogan threatens to ‘open the gates’ for refugees in EU dispute.“ *Financial Times*. <https://www.ft.com/content/6d87e404-a693-11e6-8b69-02899e8bd9d1>.

18 See Agamben, *ibid.* p. 90.

sis.¹⁹ The human and the citizen are fused in such a way that we cannot separate many dualisms which have a place in the body of the citizen of the nation state. Only in the bare humanness of the refugee can we see what is left after the entitlements of nationality and citizenship are gone. This is why our understanding must revolve around refugees. In time, the modern nation state has become incapable of representing some groups or individuals who live within its territory. As Borren argues:

“The contradiction of the nation state consists of its constitutive principle of legal equality and its factual inability and unwillingness to treat stateless people (and aliens in general) as legal persons because of its equally constitutive principle of sovereignty.”²⁰

Moreover, all citizens enjoy some rights when they are abroad with respect to their national rights. Refugees lose these rights and are hence left alone in the international arena without having a friendly (foreign) nation state’s support mechanism of international legal protection to lean on in other lands. As has been demonstrated, the number of friendly foreign nation states have been dwindling with respect to the Syrian displaced population. Preventive mechanism such as re-admission agreements are curbing the possible legal ways in which asylum applicants can follow the more regular paths for migration, as Campbell agrees: “In effect, asylum applicants are subjected to extensive forms of social and legal discrimination, they are increasingly denied access to asylum procedures and to the courts, they are heavily penalized for illegally entering a country to seek asylum, valid asylum claims are blocked and/or prevented from being filed and they are removed to a country where their life may be at risk.”²¹

All of these arguments illustrate that plurality and visibility are at the core of human dignity and good publicity requires recognition, participation and publicity. Today, refugees still suffer from a lack of positive public visibility through their “nakedness of being human.” as Arendt describes.²² In recent times, the ‘humanitarian’ focus has been on the principle of non-refoulement and limited protection against refoulement. Other achievements gained through refugee conventions have been greatly neglected. The narrower the scope of protection, the greater the separation of the refugees’ life from ‘human possibilities’. Perhaps this is why we, the people living under the roofs of modern nation states, need to take a moment in history to consider the world through

19 Agamben, Giorgio. “Beyond Human Rights” in *Means without end: notes on politics*. Minneapolis: U of Minnesota Press, 2000.

20 Marieke Borren, *Towards an Arendtian Politics of In/visibility*, in: *Ethical Perspectives* 15 (2008) 2, p. 215.

21 John R. Campbell, *Asylum vs. sovereignty in the 21st century: how nation-states breach international law to block access to asylum*, in: *International Journal of Migration and Border Studies* 2 (2016) 1.

22 Arendt, *Imperialism*, .p. 299.

the lens of stateless people and refugees. In order to assure that refugees have human agency to realize themselves, the world's states need to expand the safe and legal means to enter into the EU and other countries and act in the spirit of solidarity with the main receiving and neighbouring countries (Jordan, Lebanon and Turkey) by conducting effective and adequate resettlement programs, enact family reunification schemes, issuing more humanitarian and other visas (such as for cultural exchange and education) and providing more capacity. Moreover, more emphasis should be placed on the solutions (temporary and circular forms) that lie between "full-asylum status with all facilitations and benefits" and mere rejections and blockages on the way to the applications.

Finally, if there really is a crisis, it is a crisis of failing to respond or a moral failure of ignorance – this is, indeed, not unprecedented. The world has failed people on the move and in need before, and it appears that the same patterns are being followed again with refined policies and mechanisms: excluding people who in fact can simply be classified as *genuine* refugees and asylum applicants.

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