

GLOBAL STUDIES INSTITUTE DE L'UNIVERSITÉ DE GENÈVE

COLLECTION « MÉMOIRES ÉLECTRONIQUES »

Vol. 99-2019

**How does the EU engage with third countries
on asylum cooperation?
A comparative analysis of Lebanese
and Turkish cooperation with the EU**

Mémoire présenté pour l'obtention du
Master en études européennes
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Juin 2018

Acknowledgments

I would first like to thank my thesis supervisor, Professor Sandra Lavenex. The door to Professor Lavenex' office was always open whenever I ran into a trouble spot or had a question about my research. She consistently allowed this paper to be my own work, but steered me in the right direction whenever I needed it.

I would also like to acknowledge Maximos Aligisakis as the second reader of this thesis, and I am gratefully indebted to him for his very valuable comments on this work.

Finally, I must express my very profound gratitude to my parents and to my whole family for providing me with unfailing support and continuous encouragement throughout my years of study and through the process of researching and writing this thesis. This accomplishment would not have been possible without them. Thank you.

Federica Parisoli

Table of Contents

Acknowledgments	2
Table of Contents	3
Introductory Remarks	4
Theoretical and Methodological Framework	6
Theoretical Basis	6
Methodological Basis	10

First Chapter

The legal and policy basis of the European Union Asylum System

Introduction	12
1.1. The European Union Asylum Framework	13
1.2. The European Union External Migration Governance	18

Second Chapter

National Asylum Systems: Lebanese and Turkish national and international obligations

Introduction	26
2.1. Lebanese Legislation on Asylum	26
2.2. Turkish Legislation on Asylum	31

Third Chapter

In practice: analysis of EU- Lebanon and EU-Turkey agreements on migration and asylum

Introduction	39
3.1. European Union-Lebanon Agreements	39
3.2. European Union-Turkish Agreements	46

Conclusion	56
Bibliography	62

Introductory remarks

The right to seek asylum is an ancient juridical concept which however has remained controversial to this day. While international Treaties and Conventions institutionalized the standards to be respected in granting asylum, limiting States' discretionary power on the matter, the right to seek asylum and the subsequent granting or refusal of such international protection status remains a matter of state sovereignty.

Europe has historically been a continent of emigration, and only recently has it had to consider issues of immigration and all of its complications. In fact, during the Second World War, important numbers of Europeans found themselves persecuted, starving and fearing for their lives. Their only option: escape. While they set their eyes on their neighboring countries, they were disheartened as they were met with political gridlock. Today, asylum-seekers face similar problems. And the controversial question posed to countries that could potentially provide asylum is whether to open their borders to these people or not. This paper will discuss asylum questions and examine the factors that can influence cooperation between the EU and third countries.

Nowadays, the rhetoric revolving around the extraordinary nature of people's displacement is widely used by Western and Northern states, however, it is important to underline that human mobility is an ancient phenomenon inherent to human nature. Confirming this widely used rhetoric, we experienced an irrational alarmism during the 2015 European refugee "crisis" which, far from being massive if we consider the proportion of newly arrived asylum seekers to the number of European Union (EU) citizens, exposed to the scrutiny of European and international public opinions the shortcomings of the Union asylum system. In fact, while the European Union developed a regional framework regulating asylum and migration, understanding the crucial importance of disposing of clear and homogenized dispositions on the matter, Member States' tried to retain such discretionary power. As a matter of fact, EU Member States' resistance to the EU institutions' efforts in developing a common asylum system resulted in the use of externalization as a coping mechanism in safeguarding the EU's unity.

In this context, Europeanization theories represent the theoretical framework at the base of our research and, as we will present in the following chapter in more detail, the literature on the exportation of EU policies toward EU candidate countries is well established, especially on externalization of the European policies on migration and asylum. This paper will present contradictory theories on the analysis of migration and asylum policy development. On one side, we observe the use of a "one-size-fits-all" approach in the exportation of EU policies while the other side emphasizes the emerging importance of domestic factors of third countries engaged in cooperation with the EU. The chapter focusing on the theoretical considerations of this paper will expand on several theories that have proved the EU's externalization attempts to be more effective when third countries have membership aspirations as the EU disposes of more powerful tools to engender compliance with its policies.

Considering these theoretical premises, narrowing down the scope of our analysis, we will focus on a specific aspect of European Foreign Policy, notably asylum and migration management. This paper aims to understand whether the EU does indeed follow a "one-size-fits-all" approach in its external cooperation on asylum and migration policies and the extent to which the EU takes into account third countries' specificities, notably national asylum legislations as well as their specific association status to the EU.

Therefore, arguing that domestic factors and specifically third countries' asylum legislations, actually do matter in determining the EU's impact on third countries' asylum space, focusing on national legislations in third countries, we will try to prove that the EU engagement with third countries on asylum is greater the more advanced their association status is and the more progressive their national legislations on asylum are.

In order to address our research question, we will therefore compare the national legislations of two countries as case studies. The chosen countries to conduct a comparison on are Turkey, as a candidate country to EU membership and Lebanon, which is a partner of the EU in both the European Neighborhood Policy (ENP) and the European Mediterranean Policy (EMP). Both countries represent strategic priority partners for the EU cooperation on asylum and immigration, an aspect we will further specify when

introducing the methodological basis of our research.

Our analysis will prove that although the EU relatively takes into account national specificities, specifically third countries' internal legislations on asylum and their compliance with the international protection regime, their association status to the EU plays the very discriminant role in determining the successful exportation of EU policies and the effectiveness of the EU externalization of asylum and migration management.

In fact, despite the national asylum framework being rather weak and volatile in both Lebanon and Turkey, the EU disposes of a greater influence on Turkey, which in the context of its accession process to the EU must homogenize its legislations on asylum to EU ones. Toward Lebanon, on the contrary, while the EU maintains a handful incentives in order to make the country comply with its norms, these tools do not represent effective instruments to stimulate the country to conform itself to EU rules.

Therefore, our analysis will partially verify our hypothesis and operationalize the theories we will further expand on in the next section: the EU to some extent, takes into account third countries' national situations specifically in relation to the association status and the EU internal interests. However, national legislations on asylum do not play a fundamental role in determining EU engagement with third countries and the EU impact on the development of more comprehensive asylum rules in partner countries will prove unsuccessful unless membership perspectives are present.

According to our understanding the interest in conducting such an investigation is obvious. Today, the migratory phenomena represent a crucial interest for nation-states around the world. Furthermore, despite migration being inherent to human nature and despite it being rooted in history, at present, the managing of migration and asylum, linked with security aspects by many stakeholders, represent crucial subjects to be addressed.

Furthermore, we believe that our research could be of interest since literature is rather scarce on Europeanization of non-EU member states and in this analysis, we will try and contribute to the development of such research. Moreover, in line with the predominant theoretical approaches focusing on the European side, we believe that our in-depth analysis of third countries' national legislations on asylum and international obligations, could offer a renovated approach which could be further developed through widening the pool of analyzed countries and through the expansion of the scope of the studied domestic policies and preferences going beyond national legal frameworks.

The bibliography on the basis of which we conducted our research is rather rich and diverse. In fact, despite the lack of monographies, probably due to the specificity of the theme and to the impossibility from our side to access contributions in Arabic and Turkish, the literature on the asylum legislations of both analyzed countries as well as the contributions on the relations between the EU and Lebanon and Turkey respectively is very complete.

We mainly used primary sources, consisting of national legislations and regulations as well as international treaties in order to develop the third and second chapter of our analysis. Furthermore, the scientific articles on the specific cooperation between the EU and the two case countries and literature on European externalization approach to asylum are numerous. Amongst the most relevant ones we could mention Fakhoury, "Governance strategies and refugee response: Lebanon in the face of Syrian displacement," "Europeanization of Migration and Asylum Policy: A Critical analysis of Turkish Case" by Karadağ, and Kaya, "Reform in Turkish asylum law: adopting the EU Acquis?". In addition, Nascimbene's article "Refugees, the EU and the "Dublin System" contributed to our understanding of the topic. "Failing forward in EU migration policy? EU integration after the 2015 asylum and migration crisis" by Scipioni and Trauner with his 2016 article "Asylum policy: the EU's 'crises' and the looming policy regime failure" were at the basis of our analysis. On the theoretical approach, the contributions by Bicchi, Lavenex and Uçarer together with Delcour's articles informed our analysis and proved fundamental in order to provide our research with a solid theoretical framework.

Following these introductory remarks, introducing the research question and hypothesis of our analysis as well as the literature based on which we conducted our research, we will proceed to introducing the theoretical and methodological foundation of this study.

Subsequent to the presentation of the theoretical and methodological basis, we will introduce the European Union asylum framework in our first chapter as a fundamental step in understanding the different scope and level of cooperation with third countries on asylum and migration-related matters. In this framework, we will touch upon the most important policy tools at the disposal of the EU in engaging with non-EU countries, a useful basis to understand the following in depth-analysis of the Lebanese and Turkish cases and the cooperation mechanisms used by the EU in engaging with these two countries.

In the second chapter “National Asylum Systems: Lebanese and Turkish national and international obligations,” we will refer to the specificities of Lebanese and Turkish national and international obligations on asylum. We will proceed symmetrically by presenting first the national asylum system of the two analyzed countries and then proceeding to the analysis of the international legal obligations respectively applicable to the two countries. We will in fact touch upon the obligations contained in the 1951 Convention and its 1967 Protocol and then we will analyze the existing relations between the UN Refugee Agency with Lebanon and Turkey. For Turkey, we will also assess the impact of the EU accession process in shaping the national asylum framework.

In the third section, following the analysis of national legislation on asylum which represent the chosen national specificity our analysis focused on, we will analyze the specific agreements concluded between the EU and its Lebanese and Turkish counterparts. This comparison of existing agreements concluded between the EU and the two case-countries will help us identify the practical implications, if any, of the national legislations of partner countries in defining the EU engagement with them which will serve in order to verify or falsify our hypothesis.

Finally, we will provide concluding remarks, summarizing the findings of our research and we will highlight the difficulties encountered in the analytical proceeding. As part of the conclusion, we will also address the limitations of our work and provide some inputs for further research.

Theoretical and Methodological framework

Theoretical basis

As we briefly mentioned in our introductory remarks, our research question is based on the theories relating to the exportation of EU policies and on the Europeanization literature, which is controversial in nature. In fact, as we will expand on the following lines, there does not seem to be a unique explanation justifying the success or failure of the export of EU policies toward third countries, especially non-EU, non-candidate ones.

After having introduced the foundation of the Europeanization theory, we will present the one-size-fits-all approach and Delcour’s approach giving third countries’ domestic preferences a discriminant role in determining the successful exportation of EU policies, which we used in formulating our research question and analytical proceeding.

Europeanization has long been defined as the impact of EU integration and governance on Member States, and only recently has it started to include the impact of the EU on candidate countries without, however, touching upon the impact the EU could have beyond its membership and candidate countries¹.

Schimmelfennig and Sedelmeier distinguish Europeanization of candidate countries in two different dimensions: EU-driven and domestically driven Europeanization. For instance, according to their classification, Europeanization could be driven either by conditionality, notably the use of sanctions and rewards by the EU to alter the cost-benefit calculation of target states or by social learning when target states consider EU solutions appropriate. While we esteem this distinction noteworthy, our research will not operate a differentiation between these two methods leading to Europeanization; we will only consider the effectiveness of conditionality when comparing the Lebanese and Turkish cases.

¹ Schimmelfennig, F., 2012. “Europeanization beyond Europe”. *Living Reviews in European Governance*, 7(1). Accessed 15 March 2018 at <http://www.livingreviews.org/lreg-2012-1>, p. 10.

To this end, it is important to specify that for conditionality to be credible, the EU must be less dependent on or less interested in the transferring of its policies than its partner in order to ensure that rewards will be received only when conditions are met. As argued by Wunderlich, this tension is well exemplified by the case of migration policy convergence between the EU and Morocco, which resulted rather low specifically because the EU bargaining power on the matter was limited by the high dependence on the partner country for such policy implementation².

The study of Europeanization of non-EU Member States and States not eligible for EU membership, remains rather problematic if we consider conditionality as the predominant tool in engendering such domestic transformations in third countries. In fact, while the EU uses the incentive of membership as the main instrument to make applicant countries comply with its rules, the same instrument is not applicable in engaging with states ineligible for EU membership. Understandably therefore, the literature focusing on the impact of the EU beyond Europe is rather rare³.

Despite the scarcity of contributions focusing on Europeanization of non-EU and non-candidate countries, existing studies on the matter define the European Neighborhood Policy (ENP) as the closest case of Europeanization beyond Europe for several reasons. In fact, it targets close neighbors, it covers a broad range of policies and it is based on the explicit commitment of the EU to extend its *acquis* beyond membership. Despite the core principle of ENP being “differentiation”, considering the “joint ownership” at the basis of socialization mechanisms of Europeanization,⁴ the ENP was *de facto* conceived with a EU-centered approach based on top-down political conditionality⁵. Therefore, the ENP resulted inconsistent regarding the expansion of the EU *acquis* and the use of conditionality proved to be ineffective toward neighboring countries.

As a matter of fact, it is accepted that Europeanization has been weak beyond the group of candidates for membership, proving the perspective of membership to be a crucial condition for EU policy transfer toward third countries⁶, considering the adoption of EU rules dependent on accession promises and on the fact that it is specifically the perspective of membership inducing third countries’ governments to consider EU rules as legitimate and to abide by them⁷.

Nevertheless, however relative and weak it may be, it is confirmed that Europeanization of non-EU Member States happens to some extent in the field of asylum and immigration laws as a result of either conditionality or voluntarism while the degree of EU policy transfer depends on the form of institutional affiliation between the EU and third countries which impacts on the intensities in external relations⁸. Such policy exportation beyond the EU membership and candidate countries could also be explained by the very nature of the migratory phenomenon: migration has become an international phenomenon underlying international interdependence; therefore, changes in the policies of one country have implications for immigration policies of others. This is even truer for the EU as a major destination country, its immigration policies necessarily affecting third countries⁹ potentially incentivizing them to adopt “EU-friendly” policies.

For instance, Sedelmeier, confirms the argument according to which Europeanization would be possible beyond EU member states, considering the clarity of the EU’s demands and conditions as important factors in determining the scope and success of Europeanization in non-EU candidate countries. However, Sedelmeier establishes that the credibility and leverage of the EU does not account as the only determinant of third countries’ compliance with EU rules, domestic preferences playing a fundamental role¹⁰.

² *Ibid.*, p. 21.

³ *Ibid.*, p. 5.

⁴ *Ibid.*, pp. 19-20.

⁵ *Ibid.*, p. 20.

⁶ *Ibid.*, p. 21.

⁷ *Ibid.*, p. 7.

⁸ Lavenex S. and Uçarer E., 2014. “The external dimension of Europeanization: The Case of Immigration Policies”. *Cooperation and Conflict*, 39(4), pp. 417-443.

⁹ *Ibid.*, p. 425.

¹⁰ Sedelmeier, U., 2011. “Europeanisation in new member and candidate states”. *Living Reviews in European Governance*, 6(1). Accessed 15 March 2018 at <http://www.livingreviews.org/lreg-2011-1>, pp. 12-17.

It is clear from the very presentation of Europeanization theories the controversial nature they have especially when applied to non-EU non-candidate countries. Furthermore, the puzzling nature of the theories on the exportation of EU rules beyond EU membership is exacerbated by the lack of systemic studies on the matter.

In this context, we believe that the research on the EU-led promotion of democracy, or democratization beyond Europe, can offer some insights into understanding the EU's influence on non-Member States at a broader level, which could be of use in detailing our theoretical framework. According to Youngs' findings, the EU uses two different strategies in promoting democracy in the Mediterranean and East Asia regions, notably through engaging with the civil society and through supporting socialization¹¹.

Unfortunately, however, even the literature on EU democratization efforts beyond Europe agrees on the overall lack of consistency of the EU strategies and on the low impact of the EU on democracy and human rights promotion in non-candidate countries. Interestingly, such ineffectiveness is explained once again, by the impossibility from the EU side to use the promise of membership as the most important incentive for compliance and by the inconsistent use of conditionality, which lowers the EU credibility¹².

Without revolutionizing the aforementioned theoretical basis of Europeanization, the mentioning of democratization theories is therefore useful in order to prove the relevance of considering conditionality as a main factor in determining the successful exportation of EU policies beyond Europe.

In order to respond to our research question investigating whether the EU adopts a one-size-fits-all approach when engaging with third countries or whether it adopts a country-specific approach, Europeanization literature is evidently fundamental. In fact, while EU's attempts to export its policies beyond its borders are a fact, the controversial nature of our analysis concerns the way in which the EU proceeds to the Europeanization of third countries: does it adopt an approach adjustable to all of its partners or does it adapt its strategy considering internal preferences and characteristics of third countries? It is therefore capital to introduce the authors who focus on the critical question of understanding whether the EU has adopted country-specific strategies going beyond the regional framework institutionalized by the ENP¹³ or not.

In their 2008 study, Börzel, Pamuk, and Stahn argue that the EU adopts a two-layered strategy towards its eastern neighbors by using a "one-size-fits-all" approach at the general policy framework level which is complemented by a country-specific component on the ground targeting both third countries' specificities and internal EU interests¹⁴. In this framework, it is important to observe how specific domestic factors result in significant variations in the EU strategies toward those countries. Börzel, Pamuk, and Stahn's text demonstrates in fact how the EU sticks to a single regional approach while it engages at the country level by adapting the strategy to specific contexts and instances¹⁵.

According to the existing literature on development cooperation, the strategy of external actors towards third countries is *inter alia* influenced by the "capacity of government to formulate and implement policies and discharge government functions" and the "form of political regime." This very principle could be applied to other fields of policy transfer, notably to the external relations of the EU toward third countries¹⁶.

While the importance of domestic factors in third countries starts to gain more and more importance as a determinant factor in defining EU strategies and their success, Bretherton and Vogler, argue that the EU tends to "reproduce itself" in its relations with non-EU Member States by addressing patterns of interdependence through "the external projection of internal solutions" as Lavenex put it. Federica Bicchì, building on these contributions, claims that European Foreign Policy remains partially informed by the idea

¹¹ Schimmelfennig, F., 2012. "Europeanization beyond Europe". *Living Reviews in European Governance*, 7(1). Accessed 15 March 2018 at <http://www.livingreviews.org/lreg-2012-1>, p. 12.

¹² *Ibid.*, pp. 11-12.

¹³ Börzel T., Pamuk Y, and Stahn A., 2008. "The European Union and the Promotion of Good Governance in its Near Abroad. One Size Fits All? ". *SFB-Governance Working Paper Series*, No. 18, p. 6.

¹⁴ *Ibid.*, pp. 6-7.

¹⁵ *Ibid.*, p.6.

¹⁶ *Ibid.*, p. 11.

that “our size fits all,” especially in the Mediterranean Region, where the EU has been promoting democracy as a security strategy for the stabilization of the area¹⁷. However, the application of “our-size-fits-all” to the Mediterranean region especially, proves rather shortsighted and cannot fit the diverse regional and country specific contexts¹⁸.

Corroborating the importance of domestic factors, Lavenex and Uçarer’s contribution aiming at analyzing the EU’s external effects on non-EU member states specifically on immigration control policies, asserts that the scope and characteristic of policy transfer from the EU to non-EU Member States does not solely depend on the EU approach, relying on existing relations between the parties, third countries’ domestic situations and the cost of non-adaptation to EU’s policies¹⁹.

Recognizing the analytical approaches described beforehand as only partially impacting on the exportation of EU norms beyond the EU membership, the focus and hypothesis of our analysis build on the theoretical inputs provided by the studies of Laure Delcour whose research, although focused on the Eastern EU neighborhood, could be of use for a more comprehensive analysis of the EU policies impact on third countries.

According to Delcour’s studies, factors such as the interplay between domestic, EU and international factors in implementing ENP policies, should be taken into account when analyzing the diffusion of norms and rules beyond EU borders. The importance of considering domestic factors of target countries is crucial considering the failure of the EU tendency to impose conditionality on partner states despite not providing membership opportunities to them and it is a major shortcoming of EU policy transfer²⁰.

For instance, in the ENP framework, the implementation of the whole policy is dependent on the goodwill of partner countries, which, therefore, cannot solely be considered as EU policies’ targets. Hence, “domestic structures, actors’ preferences, institutional and policy frameworks and administrative capacities are expected to play a much more prominent role in the ENP than they did in the Eastern enlargement”²¹. The “our-size-fits-all” approach is proved shortsighted by the fact that limited consideration for partner countries’ priorities and preferences together with the lack of short-term benefits for them result in ineffective policies lacking the fundamental inclusion of third countries’ domestic actors’ preferences in the making²².

All in all, the European attitude towards third countries and especially the ENP framework should shift its paradigm by decentering the ENP from the EU’s own experience, tailoring it to partner countries’ needs and circumstances instead. In fact, the ENP is based on the EU’s own model, largely ignoring local and regional realities revealing a major gap between partner countries and the EU²³. The experience with the ENP clearly demonstrates that no major reform can be achieved in the European neighborhood without strong local ownership of the process and that the EU’s offer must be tailored to local concerns and specificities in order to be effective. Despite differentiation revealing itself to be the founding principle of ENP, the EU has fallen short of translating it into practice²⁴.

The importance of domestic factors in determining the EU’s impact on its Eastern neighbors inspired our research question and hypothesis which find their basis in this theoretical postulate and build on the different literature we mentioned which progressively recognized the major role of third countries’ specificities in determining the successful implementation of EU policies beyond Europe.

¹⁷ Bicchi, F., 2006. “Our size fits all: normative power Europe and the Mediterranean”. *Journal of European Public Policy*, 13(2), pp. 286-287.

¹⁸ *Ibid.*, p. 299.

¹⁹ Lavenex S. and Uçarer E., 2014. “The external dimension of Europeanization: The Case of Immigration Policies”. *Cooperation and Conflict*, 39(4), p. 417.

²⁰ Delcour, L., 2013. “Meandering Europeanisation. EU policy instruments and policy convergence in Georgia under the Eastern Partnership”. *East European Politics*, 29(3), p. 344.

²¹ *Ibid.*, pp. 346-347.

²² *Ibid.*, pp. 354-355.

²³ Delcour, L., 2015, April. “In need of a new paradigm? Rethinking the European neighbourhood policy”. *Eastern Partnership Review*, 20, p. 5.

²⁴ *Ibid.*, p.6.

We will argue that domestic characteristics in partners are consequent in determining EU successful policy transfer by showcasing such conviction through the specific analysis of national legal frameworks on asylum and through the consideration of the specific accession status Lebanon and Turkey have *vis-à-vis* the EU.

We will launch our analysis by analyzing the instruments used by the EU in cooperation with third countries in order to verify whether the EU adopts a one-size-fits-all approach when engaging with partners. The analysis of the policy tools used in the exportation of EU's policies beyond its membership the tensions and dualities present in theory will demonstrate their applicability in practice. In fact, while developing different instruments to cooperate with distinct partners, the EU displays wider strategies at the regional level, revealing templates and patterns to be followed with the due, limited, adjustments, when engaging with third countries.

Subsequently we will logically continue our proceeding by conducting an in-depth analysis of domestic legislations in the two case-countries in order to determine, through the subsequent analysis of EU-third countries bilateral agreements, whether the EU engagement with partners is framed specifically taking into account national legislations. In fact, through the analysis of the specific agreements concluded between the EU with Lebanon and Turkey respectively, we will have practical validation of our hypothesis, on the basis of the national specificities we decided to focus on.

Our research question on whether or not the EU follows a one-size-fits-all approach in engaging with partner countries will be answered by the study of EU tools of policy exportation and through the analysis of domestic peculiarities on asylum legislations. The descriptive part of our work will then be “implemented” in the final chapter where through the analysis of bilateral agreements we will be confronted with the practical implications of domestic legislations and EU tools in determining the type and effectiveness of EU engagement with partner countries.

Methodological basis

In terms of methodology, we will base our analysis on the comparative case study method. Accordingly, we will compare the national legislations on asylum of the two countries under analysis, determining their national and international obligations on the matter in order to better understand the conclusion of agreements with the EU.

Comparison is a fundamental tool in conducting research, proving very useful in testing a hypothesis when time and resources are rather limited. As described by Lijphart, “the comparative method is the analysis of a small number of cases, entailing at least two observations, yet too few to permit the application of conventional statistical analysis”²⁵. Comparative case studies cover two or more cases in order to produce more generalized knowledge about a specific research question. Such a method involves the analysis and synthesis of the similarities, differences and patterns occurring across the cases under analysis that share a common goal²⁶. Lijphart additionally affirms that the selection of cases constituting the comparison basis of the analysis can be determined by the choosing of “comparable cases” if either they match by many variables that are not central to the study or they differ in terms of the key variables that are the focus of the analysis²⁷.

In the case of our analysis, our selected cases are comparable, matching by many variables while differing by the crucial one for our study. Specifically, we opted to comparatively analyze Turkey and Lebanon for several reasons. First of all, the two countries differ on a major variable, notably their accession status *vis-à-vis* the European Union. On one side, Turkey, as a candidate country to EU membership, according to the

²⁵ Collier D., in Finifter A., ed., 1993. *Political Science: The State of Discipline II*. American Political Science Association, 1993. Accessed 15 March 2018 at <http://polisci.berkeley.edu/sites/default/files/people/u3827/APSA-TheComparativeMethod.pdf>, p. 106.

²⁶ Goodrick D., 2014. “Comparative Case Studies”. *Methodological Briefs: Impact Evaluation 9*, UNICEF Office of Research, Florence. Accessed 8 February 2018 at https://www.unicef-irc.org/publications/pdf/brief_9_comparativecasestudies_eng.pdf, p. 1.

²⁷ Collier D., in Finifter A., ed., 1993. *Political Science: The State of Discipline II*. American Political Science Association, 1993. Accessed 15 March 2018 at <http://polisci.berkeley.edu/sites/default/files/people/u3827/APSA-TheComparativeMethod.pdf>, p. 106.

Europeanization theory, shall prove more receptive to the EU influence considering the wide range of tools at the EU disposal in order to ensure Turkish compliance with its rules. Lebanon, on the other hand, is part of regional cooperation mechanisms with the EU, notably the ENP and the EMP, and it has important bilateral relations with the Union. However, the EU highly depends on the Lebanese goodwill to implement bilateral policy tools and cannot offer the country incentives other than technical and financial aid, potentially jeopardizing Lebanese engagement in implementing EU policies on its territory.

Lebanon and Turkey, however, despite the difference in association status to the EU, share many commonalities. For instance, they both host large numbers of refugees, they are geographically and geopolitically priority countries for the EU and they both avoided the experience of the “Arab Spring” turmoil on their territories while being indirectly affected by the revolutions, considering the consequent impact of the displacement of persons and the regional instability they created.

The comparison between the two case countries aims at determining whether the EU engagement with Lebanon and Turkey follows a one-size-fits-all approach or whether it is adapted to third countries national asylum legislations and their association status. Therefore, we will assess the EU cooperation based on these two variables.

In order to define the dimension of EU cooperation with Lebanon and Turkey, the cooperation tools at the disposal of the Union will be analyzed in light of the two aforementioned variables. Furthermore, when analyzing the existing cooperation frameworks between the EU with Lebanon and Turkey respectively, we will determine whether the EU takes into account partner countries’ national legislations and third countries’ accession status *vis-à-vis* the EU or not.

The one-size-fits-all theoretical approach we defined in the previous lines will be proved if the EU cooperation with third countries will result not taking into consideration the two chosen variables, proposing a standardized framework for cooperation to both Lebanon and Turkey. On the contrary, if the EU will prove to adapt its externalization strategies to third countries’ specificities, their accession status and their internal legislation on the matter of cooperation, Delcour’s theory on the importance to consider national factors in the export of EU policies will be verified. Evidently, it could also be assessed that only one of the two variables matter in influencing the EU cooperation strategy, which would offer more nuanced findings.

As it is clear from the theoretical and methodological frameworks we presented, the research question at the basis of our contribution is very controversial, considering both Europeanization theories, the EU different strategies in promoting the export of its policies beyond its membership together with the implications of engaging accordingly with two countries such as Lebanon and Turkey representing high-level priorities for the European migration and asylum strategy.

Having presented the theoretical framework which guided our work and the methodology used in our analysis we will now launch the analytical part of our research and start investigating the validity of our hypothesis.

First Chapter

The legal and policy basis of the European Union Asylum System

Introduction

International migration governance often takes place at the regional level, considering that migration flows often display regional patterns; however, nation states have remained central actors in the governance of international migration. This pattern can be observed at the European Union level as well, where many EU policy instruments relating to migration find their origins at either the national or international stage.

Assuredly, at the beginning of the European cooperation, EU institutions were not meant to take away decision-making competences from the national level on migration and asylum related matters. In fact, the Maastricht Treaty instituting the European Union and creating an “ever-closer union among the peoples of Europe” gave the Union certain powers which were classified in three groups, referred to as “pillars”. The first pillar, consisted of the European Communities, providing a framework within which the competences governed by the Treaty were exercised by the Community Institutions. The second pillar concerned the common foreign and security policy laid down in the Title V of the Treaty and finally the third pillar concerned cooperation in the fields of justice and home affairs laid down in the Title VI of the Treaty. Both the second and third pillar provided for intergovernmental cooperation, the only really “communitarian” powers of the Union being the ones referred to in the first pillar²⁸. However, with the progressive communitarization of the EU Justice and Home Affairs (JHA) Pillar, the EU’s role on immigration and asylum has been evolving and EU institutions have gained more and more authority on the matter²⁹.

Notably, cooperation in the field of Justice and Home Affairs began with the establishment of EU citizenship in the Treaty of Maastricht in 1993, which defined it in its third pillar and which Community competence was formally institutionalized with the Treaty of Amsterdam in 1999³⁰.

This development incentivized the European Council to progressively promote a common EU asylum and migration policy through, among others, the establishment of partnerships with countries of origin³¹. Despite this major advancement, however, nation states have remained attached to their sovereign competency on establishing legal migration pathways. In fact, in accordance with the transition period laid down by the Amsterdam Treaty, any decision on legal migration required unanimity in the European Council until *de facto* 2005. At present, the EU *acquis* on asylum and immigration results as a “fragmented tapestry” of intergovernmental treaties, legally non-binding intergovernmental resolutions and conclusion and supranational instruments adopted under the Title IV of the Amsterdam Treaty³².

Despite the difficulties, however, communitarization of asylum and migration policies has been achieved to some extent, characterized from one side by the EU tendency to focus on the deterrence of irregular

²⁸ European Parliament, “Fact Sheet on the European Union”, 2018. Accessed 15 March 2018 at http://www.europarl.europa.eu/ftu/pdf/en/FTU_1.1.3.pdf.

²⁹ Trauner, F., and Wolff S., 2014. “The Negotiation and Contestation of EU Migration Policy Instruments: A Research Framework”. *European Journal of Migration and Law*, 16(1), pp. 4-5.

³⁰ http://www.jeanmonnet.org.tr/Portals/0/scholars_database_thesis/elvan_eda_karaismailoglu_tez.pdf. Accessed March 15, 2018, p. 9.

³¹ Trauner, F., and Wolff S., 2014. “The Negotiation and Contestation of EU Migration Policy Instruments: A Research Framework”. *European Journal of Migration and Law*, 16(1), p. 5.

³² Lavenex, S. and Uçarer, E., 2014. “The external dimension of Europeanization: The Case of Immigration Policies”. *Cooperation and Conflict*, 39(4), p. 427.

migration through outsourcing responsibility to third countries³³, and from the other side by the progressive adoption of regulations and directives to harmonize EU internal policies.

Non-EU states have become important actors in the externalization efforts of the EU migration governance³⁴. The rationale at the basis of such attitude is the need to control the Schengen external borders in order for the common space of freedom of movement to properly function. The attempts of the European Union and its Member States to cooperate with third countries in the field of migration management through using financial and development aids as incentives has not worked as expected in light of the conservative attitudes expressed by the JHA Council on the matter³⁵.

The aim of this first chapter is therefore to analyze the European Union asylum regulations and frameworks in order to understand the externalization tendencies of asylum by presenting the major tools of cooperation and partnership with third countries. The chapter, displaying the very basis of the EU asylum and migration policies, proves indispensable in order to understand on which foundation the engagement of the Union with third countries is based on and to what extent has the EU adopted a one-size-fits-all approach towards third countries or if it has opted for a country-specific strategy.

After this brief introduction, we will subsequently present the European legal framework at the basis of asylum regulations and the EU migration governance characteristics highlighting the most important steps toward communitarization and the major tools of externalization utilized by the Union. The tools at the disposal of the Union in its attempts to transfer relevant policies beyond its borders will provide us with solid grounds on the basis of which we will then, assess their functionality and adaptation to third countries' specificities. In order to do so, our analysis will rely on scientific articles, EU regulations and directives.

1.1. The European Union Asylum Framework

The basis of the EU asylum system

As we introduced previously, the European Union has gradually put into place asylum and migration policies despite national authorities largely remaining in charge of their implementation, a specificity representing a major threat to EU policy effectiveness. The highly divergent recognition rates of the twenty-eight EU Member States demonstrate the lack of policy harmonization within the EU³⁶. This asymmetric situation was further exposed during the 2015 refugee "crisis", during which the EU asylum system revealed itself to be highly fragile and the protection and recognition of refugees and asylum seekers very problematic³⁷.

Despite the shortcomings of the system, the efforts undertaken by the EU institutions in proposing harmonized migration and asylum policies date back in time. Even before acquiring formal competence on migration and asylum related matters, the European Commission and Parliament advocated for a comprehensive approach toward migration and asylum within the EU membership. Starting with a resolution in 1987 on the right of asylum, the European Parliament noted the importance of enhancing economic and political cooperation with third countries in order to stabilize their economies and guarantee the protection of human rights. Furthermore, the Commission, prior to the signing of the Maastricht Treaty, called for the integration of migration related matters in the EU's external policy. The EU institutions' position was formally expressed in the 1994 Commission Communication emphasizing the need to fight the root causes of migration through the integration of asylum and migration policies into the EU's external policies.

³³ Dimitri, A. *Deals without borders: Europe's foreign policy on migration*. Accessed March 15, 2018 at http://www.ecfr.eu/page/-/ECFR-165-DEALS_WITHOUT_BORDERS.pdf p. 2.

³⁴ Reslow, N. 2012. "The Role of Third Countries in EU Migration Policy: The Mobility Partnerships". *European Journal of Migration and Law*, 14, p. 414.

³⁵ Dimitri, A. *Deals without borders: Europe's foreign policy on migration*. Accessed March 15, 2018 at http://www.ecfr.eu/page/-/ECFR-165-DEALS_WITHOUT_BORDERS.pdf , p. 2.

³⁶ Scipioni, M. 2017. "Failing forward in EU migration policy? EU integration after the 2015 asylum and migration crisis". *Journal of European Public Policy*, pp. 9-10.

³⁷ Trauner, F. 2016. "Asylum policy: the EU's 'crises' and the looming policy regime failure". *Journal of European Integration*, 38(3), p. 314.

Despite not being further pursued, these early contributions, reveal the long-standing tendency demonstrated by the EU Commission and Parliament to push for a comprehensive approach to migration even though the Maastricht third pillar did not provide the EU with the formal competences to shape the Council's agenda on the matter³⁸.

At the origin of the difficulties in pursuing substantially cohesive EU asylum and migration related policies lies the Maastricht Treaty signed in 1992. The Treaty, showcasing ineffectiveness from its very signature in dealing with asylum and migration issues, required a strong action from the European Institutions' side in order for effective cooperation to be achieved. Therefore, the Council together with the EU Commission issued an Action Plan at the end of the 1990s which affirmed that "[...] the instruments adopted so far often suffer from two weaknesses: they are frequently based on "soft law", such as resolutions or recommendations that have no legally binding effect. And they do not have adequate monitoring arrangements"³⁹. The dispositions of the Maastricht Treaty, providing for the cooperation on asylum and migration related matters to be initially achieved under its third pillar, notably transgovernmental cooperation, experienced an evolution over the years, gradually resulting in the strengthening of supranational procedures implying a deeper harmonization of the policies reserved to the national scrutiny at the outset⁴⁰.

Realizing the weakness of the third pillar arrangements on migration and asylum related matters, EU Member States decided through the Treaty of Amsterdam "to use European Community instruments in the future by providing "the opportunity to correct where necessary these weaknesses". In fact, in the context of the Amsterdam Treaty, Schengen rules and regulations were incorporated into the EU's legislative framework transferring immigration and asylum together with visas, external border controls and civil law matters from the intergovernmental pillar of "Justice and Home Affairs" to the "European Community" Pillar⁴¹.

The Amsterdam Treaty concluded in 1997, following the Maastricht Treaty, together with the 1999 Tampere European Council, represented rather important inputs to the communitarization of asylum related matters. Yet, both documents strongly stressed the importance of the parallel pursuit of stronger EU external action initiatives. Notably, the Tampere Presidency Conclusions, stressed the need to conclude partnerships with countries of origin as a top priority for the EU in creating a "comprehensive approach to migration addressing political, human rights and development issues in countries and regions of origin and transit"⁴², resulting in new EU regulations and directives on migration policies reaffirming the need to respect the individual right to seek asylum⁴³. Since the Tampere Council Meeting, the external dimension of asylum and immigration policies, has become the most dynamic aspect of cooperation. In fact, the Tampere Council agreed on the need to make migration a horizontal, "cross-pillar" issue in EU external relations while starting to include standard readmission clauses in all the agreements concluded with partners⁴⁴.

Another important step toward the development of a Common European Asylum System (CEAS) is represented by the Temporary Protection Directive, which saw Member States pledge to prevent excessive burden falling on a selected few number of states. This Directive complemented by the European Refugee Fund reveals, however, that the Commission lacks effective power in ensuring the implementation of the solidarity pledged by the EU membership. Despite the absence of real obligations binding Member States,

³⁸ Lavenex, S. 2006, March. "Shifting Up and Out: The Foreign Policy of European Immigration Control". *West European Politics*, 29(2), p. 333.

³⁹ Scipioni, M. 2017. "Failing forward in EU migration policy? EU integration after the 2015 asylum and migration crisis". *Journal of European Public Policy*, 25(9), p. 5.

⁴⁰ Lavenex, S. 2006, March. "Shifting Up and Out: The Foreign Policy of European Immigration Control". *West European Politics*, 29(2), p. 329.

⁴¹ Trauner, F., and Wolff S., 2014. "The Negotiation and Contestation of EU Migration Policy Instruments: A Research Framework". *European Journal of Migration and Law*, 16(1), p. 5.

⁴² Lavenex, S. 2006, March. "Shifting Up and Out: The Foreign Policy of European Immigration Control". *West European Politics*, 29(2), p. 335.

⁴³ http://www.jeanmonnet.org.tr/Portals/0/scholars_database_thesis/elvan_eda_karaismailoglu_tez.pdf, Accessed March 15, 2018, p. 10.

⁴⁴ Lavenex, S. and Uçarer, E., 2014. "The external dimension of Europeanization: The Case of Immigration Policies". *Cooperation and Conflict*, 39(4), pp. 427-428.

the Directive represented the first EU standardization effort providing for the establishment of minimum standards on reception conditions, qualifications for international protection status and procedures to be followed in granting asylum⁴⁵.

After the long evolution of the competences of the EU on migration related matters, which we briefly summarized, three articles on migration and asylum were inserted in the Treaty on the Functioning of the EU (TFEU) following the signature of the Lisbon Treaty. Notably, Article 77§1 established that the Union should develop policies aimed at gradually introducing an integrated management system of external borders. Article 78§1 states, “The Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of *non-refoulement*. This policy must be in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, and other relevant treaties.” Finally, Article 79§1 affirms that “The Union shall develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States, and the prevention of, and enhanced measures to combat, illegal immigration and trafficking in human beings”⁴⁶.

The three quoted articles, representing the very first institutionalization of harmonized asylum and migration standards, rebound on the need for the European Union asylum policies to protect human rights both internally and externally⁴⁷. Having agreed on the Lisbon Treaty text, EU Member States must abide by international obligations effectively protecting human rights of individuals when fighting illegal migration, notwithstanding the challenges related to striking the right balance between the respect of human rights and strengthening the security of EU’s external borders. To this end, respect for human rights should be pursued by the EU membership which should protect the individual right to seek asylum and enjoy protection even when enacting measures restricting access to their territories for those individuals with an irregular status⁴⁸.

Having analyzed the treaties and initiatives at basis of the EU asylum and migration regime, it is clear that despite the acknowledgement of the inefficiencies characterizing the EU dispositions and the EU Commission attempts to promote a serious rethinking of the whole system the decision not to undertake more profound harmonization within the EU but on the contrary, the will to settle for the lower minimum standard blocked numerous policy areas⁴⁹, an exemplification of which is represented by the Dublin regime which we will analyze in the following sub-section.

The Dublin Regime and the attempts to modify it

Having retraced the origins of the asylum dispositions present in EU treaties, it appears necessary to introduce the very basis of the CEAS consisting of four specific directives in addition to the Dublin regime and the Eurodac regulations notably (i) on the reception conditions of applicants for international protection, (ii) on temporary protection, (iii) on the recognition and status of international protection and (iv) on the procedures for obtaining that recognition⁵⁰. Along with the Treaties and Directives we mentioned beforehand, when analyzing the European asylum and migration framework it is fundamental to present the very cornerstone of the EU’s asylum policy: the Dublin Regime, which allocates responsibility for dealing with asylum seekers within the European Union.

⁴⁵ Scipioni, M. 2017. “Failing forward in EU migration policy? EU integration after the 2015 asylum and migration crisis”. *Journal of European Public Policy*, 25(9), p. 7.

⁴⁶ European Union, *Consolidated version of the Treaty on the Functioning of the European Union*, 13 December 2007, 2008/C 115/01. Accessed 15 March 2018 at: <http://www.refworld.org/docid/4b17a07e2.html>, p. 31.

⁴⁷ Gjipali, D. 2017. “The External Dimension of EU Migration Policy”. *Acedemicus- International Scientific Journal*, 15, p. 120.

⁴⁸ http://www.jeanmonnet.org.tr/Portals/0/scholars_database_thesis/elvan_eda_karaismailoglu_tez.pdf. Accessed March 15, 2018, p. 14.

⁴⁹ Scipioni, M. 2017. “Failing forward in EU migration policy? EU integration after the 2015 asylum and migration crisis”. *Journal of European Public Policy*, 25(9), p. 5.

⁵⁰ Nascimbene, B. 2016. “Refugees, the EU and the “Dublin System”. The reasons for a crisis”. *European Papers*, 1, p. 105.

The Dublin Convention signed as an intergovernmental treaty in 1990⁵¹ was incorporated in the EU law framework later on in 2003 under the name “Dublin II Regulation”⁵². The founding principle of the Dublin Regime is that only one member state is responsible for the examination of an asylum seeker’s claim, and normally said responsibility falls to the country of first entry who then becomes in charge of granting the asylum status and the protection guarantees related to it⁵³.

In order to give full implementation to the principles established in the Dublin Regulation, the EU has worked toward the harmonization of the conditions for granting asylum throughout the EU by adopting several regulations. In fact, between 1999 and 2005 the EU produced a series of regulations defining minimum standards in the determination of asylum applications in order to reduce the differences between the asylum systems of different Member States. However, despite the efforts undertaken by the EU since the early 2000s, there is to date no comparable and uniform system within the EU with the outcome of the asylum application highly depending on the country of first entry⁵⁴.

Nevertheless, the discrepancies of national asylum legislations within the EU are far from being the only deficiency of the Dublin System. The shortcomings of the Dublin regime appeared as early as at the end of the 1990s, considering the dissatisfaction voiced by several Member States. The main reason of divergence within the EU was related to the absence of a specific solidarity disposition included in the text of the Regulation, an omission perceived by frontline Member States as overburdening states receiving the large majority of asylum claims⁵⁵. Furthermore, when the 2015 crisis erupted, the Dublin Regime additionally demonstrated various insufficiencies notably on (i) excessively burdening those States situated either at the EU external borders or of applicants’ preferred destinations, (ii) the limited implementation of transfers to the effectively responsible Member State when the application is lodged in a different country (iii) the uneven treatment of migrants and asylum seekers in different countries, problematic concerning human rights respect and (iv) superficial consideration of asylum seekers’ specific situations, imposing a final, irrevocable decision on them⁵⁶.

As we mentioned, the challenges caused by the Dublin System appeared as early as ten years after the entry into force of the Regulation, stimulating the Commission to start exploring the appetite of Member States for a revision of the 1990 Regulation, which appeared to be from the very beginning, highly delicate⁵⁷. However, despite Member States’ resistance, the economic crisis naturally stimulated the recast of EU asylum legislations aimed at going beyond the common minimum standards of the first generation of asylum legislations in order to develop fully harmonized asylum procedures. Such a rethinking process was strongly supported by the Parliament which, together with the Commission, promoted a deeper harmonization of asylum legislations while Member States perceived less urgency to agree on a new set of asylum regulations⁵⁸.

The efforts of the EU institutions, resulted in the 2013 Dublin III Regulation substituting the 2003 regime, which did not profoundly modify the *status quo*, the northern and eastern member states’ positions in the Council opposing any major rethinking of the system⁵⁹. Despite harsh opposition in the Council, an additional attempt to enhance solidarity amongst Member States in dealing with the refugee flows was launched by the Commission proposing a legally binding relocation scheme for asylum seekers, from EU member states with high arrival numbers to EU countries less affected by the influx. Once again, the

⁵¹ Trauner, F. 2016. “Asylum policy: the EU’s ‘crises’ and the looming policy regime failure”. *Journal of European Integration*, 38(3), p. 313.

⁵² Dublin Regulation: 2003/ 343/EC, the ‘Dublin II Regulation’.

⁵³ Trauner, F. 2016. “Asylum policy: the EU’s ‘crises’ and the looming policy regime failure”. *Journal of European Integration*, 38(3), pp. 313-314.

⁵⁴ *Ibid.*

⁵⁵ Scipioni, M. 2017. “Failing forward in EU migration policy? EU integration after the 2015 asylum and migration crisis”. *Journal of European Public Policy*, 25(9), p. 7.

⁵⁶ Nascimbene, B. 2016. “Refugees, the EU and the “Dublin System”. The reasons for a crisis”. *European Papers*, 1, pp. 109-110.

⁵⁷ Scipioni, M. 2017. “Failing forward in EU migration policy? EU integration after the 2015 asylum and migration crisis”. *Journal of European Public Policy*, 25(9), pp. 10-11.

⁵⁸ Trauner, F. 2016. “Asylum policy: the EU’s ‘crises’ and the looming policy regime failure”. *Journal of European Integration*, 38(3), p. 316.

⁵⁹ *Ibid.*

Commission proposal was largely opposed by the majority of the EU membership⁶⁰.

When confronted with the 2015 refugee “crisis” which highlighted the gap between the EU legal asylum system and the national practices of member states, the EU, despite the chronic resistance from several member states, was compelled to engage in a serious process of policy reform. In this context, the Commission proposed a package of reforms under the title “European Agenda on Migration”, including a common list of “safe countries of origin”, plans to install a more efficient EU return policy and strategies to address root causes of migration in Africa.

In its May Communication, the European Commission proposed to trigger the emergency response system envisaged under Article 78(3) TFEU, launching a temporary redistribution scheme for those refugees in clear need of international protection who arrived in Italy and Greece in order to ensure a fairer burden-sharing amongst Member States⁶¹. The Commission’s proposal was followed by the Council Decision of September 14th providing for the relocation of forty thousand asylum seekers among whom, 160,000 should have been relocated in a two-year period under an “emergency relocation scheme”⁶². The emergency relocation scheme was set to become the first step toward a more permanent resettlement policy within the EU. Furthermore, the Commission proposal aimed at ensuring the compliance of the most affected EU member states with the Dublin III Regulation, the envisaged Commission support being conditional on Member States’ compliance with the fingerprinting and registration obligations. In this context, EU agencies such as Frontex, Europol and EASO were meant to support the authorities of frontline member states in fulfilling their obligations under EU law in order to benefit from the proposed relocation scheme⁶³.

Following the May proposal, the September proposition, followed by another Council Decision, provided for the additional relocation of 120,000 applicants from Greece and Italy to the territory of less exposed Member States⁶⁴ respecting a proportion based on GDP, average number of past asylum applications and unemployment rates⁶⁵. This proposal implied that each EU Member State would have been assigned a fixed and obligatory quota of asylum applicants under the surveillance of the Commission⁶⁶. Finally, in December the Commission proposed the establishment of a European Border and Coast Guard in order to support Member States in securing the EU external borders⁶⁷.

Unfortunately, however, in these critical times, the use of the qualified majority in voting on sovereignty-sensitive issues such as the establishment of compulsory relocation quotas, highlighted the extent to which the EU decision-making process on asylum became contested preventing any real modification of the Dublin Regime⁶⁸ leaving the Commission 2015 “European Agenda on Migration” proposal without political

⁶⁰ Trauner, F. 2016. “Asylum policy: the EU’s ‘crises’ and the looming policy regime failure”. *Journal of European Integration*, 38(3), p. 318.

⁶¹ European Union: European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, on A European Agenda on Migration*, 13 May 2015, COM (2015) 240 final, available at on the Establishment of a Joint EU Resettlement Programme, 2 September 2009, COM(2009) 447 final. Accessed 15 March 2018 at https://www.unodc.org/documents/brussels/News/2017_communication_on_the_european_agenda_on_migration_en.pdf, p. 4.

⁶² Trauner, F. 2016. “Asylum policy: the EU’s ‘crises’ and the looming policy regime failure”. *Journal of European Integration*, 38(3), pp. 319-320.

⁶³ *Ibid.*, p. 320.

⁶⁴ European Union: Council of the European Union, *Council Decision 2015/1601 on Establishing provisional measures in the area of international protection for the benefit of Italy and Greece*, 22 September 2015. Accessed 15 March 2018 at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015D1601&from=IT>, p. 88.

⁶⁵ Fontana, I. and Panebianco, S., 2018. “When responsibility to protect ‘hits home’: the refugee crisis and the EU response”. *Third World Quarterly*, 39 (1), pp. 7-8.

⁶⁶ Biermann, F., Guérin, N., Jagdhuber, S., Rittberger, B., & Weiss, M. 2017. *Explaining Uneven EU Integration Trajectories: A Comparison of the Euro Crisis and the Refugee Crisis*. LMU Munich, Manuscript, pp. 12-13.

⁶⁷ Nascimbene, B. 2016. “Refugees, the EU and the “Dublin System”. The reasons for a crisis”. *European Papers*, 1, p. 105.

⁶⁸ Trauner, F. 2016. “Asylum policy: the EU’s ‘crises’ and the looming policy regime failure”. *Journal of European Integration*, 38(3), p. 320.

agreement and with no implementation on the ground⁶⁹.

Notwithstanding the internal difficulties experienced on the acceptance and implementation of the proposals advanced in 2015, the Commission in May 2016 further attempted to modify the existing CEAS. The 2016 proposal, building on Dublin's founding principle regarding the allocation of responsibility to one clearly determined Member State, acknowledged the need to reform the system by simplifying it and enhancing its effectiveness⁷⁰. Specifically, the 2016 Commission's submission aimed at (i) enhancing the capacity to determine the single State responsible for examining the refugee application by removing the cessation of responsibility clause and by speeding up the whole process, (ii) ensuring fair responsibility-sharing amongst Member States by complementing the system with a corrective allocation mechanism which would be activated automatically in case of the asylum seeker applications exceeding one State's capacities and finally (iii) discouraging abuses and preventing secondary movements of the applicant within the EU⁷¹.

However, the development of the "corrective allocation mechanism" also known as the "fairness" mechanism, presents critical aspects. In fact, such provision can only be triggered when a Member State experiences disproportionate pressure on its asylum system – considering a threshold of +150% of the State's capacities calculated as a proportion between the GDP and number of inhabitants- such overstretching, is unlikely to be effectively reached⁷². Furthermore, issues are present concerning the protection and respect of fundamental rights of asylum seekers since the proposal contains the possibility of using force to acquire fingerprints. The strengthening of the responsibility for the Member State of first entry *vis-à-vis* the applicant, who remains unable to decide where to file his or her application, as well as the coercive mechanisms proposed to avoid secondary movements remain major matters of concern⁷³.

The picture we depicted summarizes very clearly the incoherencies and discrepancies faced in attempting to creating a cohesive and effective European asylum framework. Nevertheless, in contrast with the internal blockages experienced in the JHA Council on reforming the Dublin System, the external dimension of the European asylum and immigration policies has developed rapidly and become a key focus of cooperation with third countries aiming at engaging countries of origin and transit in the management of migration flows, emphasizing the importance of extraterritorial control⁷⁴. In the following section, we will analyze the instruments of this externalization tendency and the tools utilized by the European migration governance in exporting its practices and principles beyond EU membership.

1.2. The European Union External Migration Governance

When analyzing migration governance policies such as external border control, asylum and immigration dispositions, it is important to mention that they have always represented national sovereignty prerogatives as we showcased by analyzing the long-standing refusal expressed by EU Member States to submit them to the scrutiny of supranational entities. However, despite the rather harsh resistance of EU Member States to share their competences on the matter with EU institutions, the EU has progressively developed an external dimension on migration policies based on values and guided by principles as we mentioned in the previous sub-section. This major development, reached through difficult negotiations, remains problematic considering that the EU treaties do not provide for specific dispositions on the matter besides the TFEU

⁶⁹ Nascimbene, B. 2016. "Refugees, the EU and the "Dublin System". The reasons for a crisis". *European Papers*, 1, p. 105.

⁷⁰ Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), 2 May 2016, COM (2016) 270 final. Accessed 15 March 2018 at [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016PC0270\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016PC0270(01)&from=EN), pp. 3-4.

⁷¹ Nascimbene, B. 2016. "Refugees, the EU and the "Dublin System". The reasons for a crisis". *European Papers*, 1, p. 105.

⁷² *Ibid.*

⁷³ *Ibid.*, p.112.

⁷⁴ Lavenex, S. 2006, March. "Shifting Up and Out: The Foreign Policy of European Immigration Control". *West European Politics*, 29(2), p. 330.

provision imposing the EU action on asylum to being human rights-based and respectful of the principle of solidarity amongst Member States⁷⁵ introduced with the Lisbon Treaty.

The challenges faced by the European Union in developing a coherent and unified migration governance however are not exceptional. In fact, as Philippe Fargues affirmed referring to the absence of international migration regulatory framework, “Migration has become global but there is no global regime to govern the international movement of persons.” The existing international migration regime is indeed complex, multilayered and consists of different types of arrangements while migration law, despite having been codified at the international level to some extent, lacks the international framework ensuring its implementation⁷⁶.

The following lines will be dedicated to the presentation of one of the major EU externalization strategies in dealing with the migratory phenomenon and to the tools used in dealing with migration challenges by cooperating with third countries.

The European Union External Migration Policy

Considering the problematic harmonization of asylum-related policies in within the EU, which we presented in the previous sub-section, Member States started actively looking outside their borders in order to address migration issues. A rather impressive form of externalization of asylum procedures consisted in the mobilization of third countries in the control of migration flows to Europe through the adoption of some forms of safeguards such as the “safe-third country rule”⁷⁷.

As Lavenex argued, the use of extraterritoriality as a major tool of European migration governance should be considered less as a new phenomenon than the continuation of the transgovernmental logic of cooperation. In fact, the European attitude on migration and asylum matters highlights the continuity of migration policies stressing the control and the security aspects of migration. In this context, we can understand from one side, the search for policy solutions beyond the territory of the Union assuming the interest of JHA officials in reaffirming their autonomy *vis-à-vis* the other actors in the domestic and European policy setting. On the other hand, from the perspective of European Institutions, it is understandable how, being less exposed to the electoral pressure Member states’ governments have to deal with, they pursue a more comprehensive approach to migration management than the Justice and Home Affairs Council does⁷⁸.

The European Union’s attempts to export its policies to non-member states, especially neighboring countries, have been conceptualized as “external governance.” On external migration policies specifically, the very aim of the European attempt to widen its area of influence has been the reduction of migration pressure on the EU territory⁷⁹. The cooperation on migration-related matters as a form of external governance promoted and induced by the EU, effectively reinforces European dependency on third countries for the implementation of its own migration policies⁸⁰. This specific factor, as we mentioned in the introduction, is in theory associated with the lowering of EU credibility and consistent implementation of conditionality measures towards partners which become fundamental in securing EU’s external borders.

As a matter of fact, the external dimension has a long history in EU asylum and immigration policies and the early engagement with “safe-third-countries” and candidate countries, reflects the establishment of a pan-European migration regime in which the burden of migration control is shared with non-EU member

⁷⁵ Gjipali, D. 2017. “The External Dimension of EU Migration Policy”. *Acedemicus- International Scientific Journal*, 15, p. 117.

⁷⁶ Trauner, F., and Wolff S., 2014. “The Negotiation and Contestation of EU Migration Policy Instruments: A Research Framework”. *European Journal of Migration and Law*, 16(1), pp. 6-7.

⁷⁷ Lavenex, S. 2006, March. “Shifting Up and Out: The Foreign Policy of European Immigration Control”. *West European Politics*, 29(2), p. 334.

⁷⁸ *Ibid.*, p. 330.

⁷⁹ Wunderlich, D. 2012. “The limits of external governance: implementing EU external migration policy”. *Journal of European Public Policy*, 19(9), p. 1414.

⁸⁰ *Ibid.*, p. 1415.

states. Furthermore, this externalization tendency provided for a stable basis to develop common minimum standards for asylum procedures and refugee definition within the EU⁸¹.

The external dimension of the European asylum and immigration policy was officially embraced at the 1999 Special European Council on Justice and Home Affairs in Tampere. Since then, cooperation with countries of origin and a stronger EU external action became a primary concern of the JHA Council. Already back then, European policies focused on the repression of undesired inflows of migrants through externalization tools, without taking into consideration the strategical impact that the promotion of preventive and comprehensive approaches addressing the root causes of displacement would have had⁸².

The externalization of asylum and migration management has also been defined as “remote control,” shifting the *locus* of migration management further beyond the common EU territory. In this regard, conditionality for membership proved to be an effective instrument in several policy fields and has been used by EU Member States in order to promote strict immigration control standards outside the territory of the Union. Notably the enlargement policies and the decision to make the compliance with the EU and Schengen *acquis* compulsory for candidate countries were used as tools to externalize the immigration control beyond the borders of EU Member States⁸³. It is however important to reaffirm that conditionality as a tool to make partner countries comply with EU demands proved useful *vis-à-vis* candidate countries only, its effectiveness in relation to third countries remaining dubious.

The European Union pursued externalization through engaging with third countries in the control of migration flows to Europe because of the several advantages it brings to the EU despite increasing the Union dependency on non-member states. In addition to the cooperation on border control, relieving the burden from EU Member States⁸⁴, another advantage of the EU external migration policies is the possibility to remove irregular migrants and rejected asylum seekers from the European territory. To this end, the conclusion of readmission agreements with third countries represented an historical instrument the EU used in managing migration that, following the Amsterdam treaty, became a competence of the Community⁸⁵.

The principles of this practice could already be observed in the 1990 Dublin Regulation, while it was further reaffirmed in Art. 3(3) of the Council Regulation no. 343/2003 which replaced the 1990 Dublin Convention. According to the “safe third country” rule, allowed under the Asylum Procedure Directive, Member States are allowed to deny the examination of an asylum claim and to send the applicant back to a third country where he or she would have the possibility to apply for asylum provided the respect of this third country of basic dispositions of international refugee treaties. Following this first step in the externalization of asylum, the EU started concluding readmission agreements with third countries, engaging with non-member states in controlling immigration toward the EU. This approach was endorsed by the Declaration of the Edinburgh European Council, recommending that member states “work for bilateral or multilateral agreements with countries of origin or transit to ensure that illegal immigrants can be returned to their home countries”⁸⁶. Further developed the EU externalization of migration control, is exemplified by the conclusion, since the early 2000s, of mobility partnership agreements⁸⁷ which together with the readmission agreements we will hereafter describe as EU instruments of externalization of migrations.

The externalization of migration and asylum policies at the EU level uses various policy instruments among which incentive-based tools, operational and practical support as well as the development of international law and norms. Third countries, when concluding agreements with the EU on migration and asylum related matters, receive operational and financial aid and facilitations for their nationals to travel to EU⁸⁸. The *modus*

⁸¹ Lavenex, S. 2006, March. “Shifting Up and Out: The Foreign Policy of European Immigration Control”. *West European Politics*, 29(2), p. 335.

⁸² *Ibid.*, p. 334.

⁸³ *Ibid.*

⁸⁴ *Ibid.*, p. 335.

⁸⁵ *Ibid.*, p. 341.

⁸⁶ *Ibid.*, p. 334.

⁸⁷ Trauner, F., and Wolff S., 2014. “The Negotiation and Contestation of EU Migration Policy Instruments: A Research Framework”. *European Journal of Migration and Law*, 16(1), p. 2.

⁸⁸ *Ibid.*, p. 13.

operandi adopted by the Union however, poses several challenges and limits its implementation considering what we already described as highly problematic: the significant dependency on third countries' national preferences⁸⁹.

Having defined the European tendency to adopt externalization tools in the management of migration we will now describe the basis of the ENP and specifically of the Euro-Mediterranean cooperation, notably the differentiated approach used by the Union in order to engage with the southern Mediterranean countries and the policy tools developed in the field.

The characteristics of Euro-Mediterranean cooperation: differentiation

The variation in the treatment of partner countries by the EU can be accommodated by the principle of differentiation, a cornerstone of the European Neighborhood Policy⁹⁰. The principle of differentiation introduced by the ENP through the so-called Action Plans has only reinforced the perception that bilateralism takes precedence over multilateralism and regionalism in Euro-Mediterranean relations⁹¹. The ENP towards the eastern and southern neighbors, opened perspectives for the deeper possible association below the threshold of membership, amongst the partners, expecting cooperation in addressing common security challenges⁹². Furthermore, the ENP included a broader integration strategy mobilizing a wider and diverse set of actors, issues and interests than the foreign policy activities carried out at the level of transgovernmental cooperation⁹³.

While the ENP's formal aim is to improve the balance between the EU and third countries in negotiation giving them more autonomy in JHA cooperation⁹⁴, we can see that its basis does not differ in principle from previous cooperation initiatives. In fact, despite the changes and development, the ENP is based on the EU expectation that partner countries will accept its own structures and values. The main critical aspect of the policy remaining the fact that it could be perceived as further externalizing the control of migration, shifting the boundaries further away from the Union's territory⁹⁵.

When specifically analyzing the EU engagement with Mediterranean countries, it is important to mention that the differentiation principle was already inserted in the Global Mediterranean Policy launched in 1972 considering the peculiarities of the seventeen Mediterranean countries included in the approach⁹⁶. However, the breakthrough in the EU-Mediterranean cooperation came with the launch of the Barcelona Declaration in 1995 aimed at creating a comprehensive multilateral forum for the whole Mediterranean region by establishing the Euro-Mediterranean Partnership (EMP). The Barcelona Declaration included cooperation in three different areas: policy & security, economy & finance and social culture & human. However, the cooperation on political and security matters proved to be more important than the other "baskets" of cooperation from the onset⁹⁷.

Following the Barcelona Declaration, the EU launched the "5+5 Dialogue" with the Western Mediterranean countries in 2001. The Dialogue, representing the most important multilateral cooperation framework in the South, focused on fighting irregular migration and human trafficking while touching upon the issue of immigrant integration and co-development⁹⁸. In this context, the EU has further tried to develop Action

⁸⁹ Wunderlich, D. 2012. "The limits of external governance: implementing EU external migration policy". *Journal of European Public Policy*, 19(9), p. 1415.

⁹⁰ Ovádek, M. and Wouters, J., 2017. "Differentiation in disguise? EU instruments of bilateral cooperation in the Southern Neighborhood". *Working Paper*, Leuven Centre for Global Governance Studies, (187), p. 4.

⁹¹ *Ibid.*, p. 7.

⁹² Lavenex, S. 2006, March. "Shifting Up and Out: The Foreign Policy of European Immigration Control". *West European Politics*, 29(2), p. 344.

⁹³ *Ibid.*, p. 345.

⁹⁴ *Ibid.*, p. 344.

⁹⁵ *Ibid.*, p. 340.

⁹⁶ Ovádek, M. and Wouters, J., 2017. "Differentiation in disguise? EU instruments of bilateral cooperation in the Southern Neighborhood". *Working Paper*, Leuven Centre for Global Governance Studies, (187), pp. 3-4.

⁹⁷ *Ibid.*, p. 6.

⁹⁸ Lavenex, S. 2006, March. "Shifting Up and Out: The Foreign Policy of European Immigration Control". *West European Politics*, 29(2), p. 339.

Plans to support neighboring countries in controlling their borders and accepting the return of irregular migrants found in the EU territories.

It is in 2005, that the EU started reinforcing its efforts to focus on the external aspects of migration by using diplomatic policy tools in order to promote partnerships with non-EU countries⁹⁹. The current EU migration policy, which aims at avoiding immigration by coordinating the Member States' border control, restricting third country nationals' entry requisites and outsourcing the handling of displaced persons to third countries in full harmony with the policy of external migration was launched in 2011 through the Global Approach to Migration and Mobility (GAMM), (COM (2011) 743 Final)¹⁰⁰. The initial aim of the GAMM was to move away from the security-dominated approach to migration adopted by the EU; however, the focus of the Approach was quickly reoriented towards a security-based plan aimed at dismantling smuggling networks¹⁰¹.

In June 2016, the Commission released a Communication to the other EU institutions on establishing a new Partnership Framework with third countries under the European Agenda on Migration (COM (2016) 385 Final). The communication addressed specific migratory challenges and the root causes of migration through the delivery of financial assistance to the countries of origin and transit. Building on past experiences, the Commission stressed the importance of increasing high-level dialogues on migration, extending and innovating financial instruments and intensifying the operational mechanisms to fight against smugglers¹⁰². According to the specific wording of the Communication the aim of the Partnership would be to:

“[...] deliver coherent EU engagement, in which the Union and its Member States act in a coordinated manner. The EU and its Member States should combine their respective instruments and tools to agree compacts with third countries in order to better manage migration’ (page 17). It also restates the conditionality principle under a different name. Each partner country will be the object ‘of a mix of positive and negative incentives’. More precisely, the partnership relations with each country will depend on ‘the ability and willingness of the country to cooperate on migration management’” (page 17).

The Commission, in the last section of the Partnership Framework Communication, set forward the priority countries of origin and transit that will be EU partners, amongst which Jordan and Lebanon were mentioned as being top-EU priorities¹⁰³.

Despite the impressive development of several approaches aiming at enhancing cooperation with third countries on migration related issues, major shortcomings can be retraced in the EU attitude. Notably, the diplomatic tools used by the EU, despite representing important instruments to enhance dialogue with third countries, proved to be ineffective in light of the lack of internal EU cohesion. Furthermore, the security tools displayed clearly avoid addressing the root causes of displacement, risking not tackling the very issue of dismantling migratory routes¹⁰⁴.

Considering the variety and complexity of the root causes at the basis of human displacement and taking into account the different roles played by different countries in the migration routes, the EU should support the creation of tailor-made cooperation partnerships with non-EU countries¹⁰⁵. All in all, despite the existing

⁹⁹ Dimitri, A. *Deals without borders: Europe's foreign policy on migration*. Accessed March 15, 2018 at http://www.ecfr.eu/page/-/ECFR-165-DEALS_WITHOUT_BORDERS.pdf, p. 2.

¹⁰⁰ Attinà, F., 2016. “The Partnership Framework and Migration Compacts. The state of the art”. *TransCrisis*. Accessed March 15, 2018 at <https://fulvioattina.net/2016/12/09/the-partnership-framework-and-migration-compacts-the-state-of-the-art/>, p. 2.

¹⁰¹ Dimitri, A. *Deals without borders: Europe's foreign policy on migration*. Accessed March 15, 2018 at http://www.ecfr.eu/page/-/ECFR-165-DEALS_WITHOUT_BORDERS.pdf, p. 2.

¹⁰² Attinà, F., 2016. “The Partnership Framework and Migration Compacts. The state of the art”. *TransCrisis*. Accessed March 15, 2018 at <https://fulvioattina.net/2016/12/09/the-partnership-framework-and-migration-compacts-the-state-of-the-art/>, p. 2.

¹⁰³ *Ibid.*, p. 3.

¹⁰⁴ Dimitri, A. *Deals without borders: Europe's foreign policy on migration*. Accessed March 15, 2018 at http://www.ecfr.eu/page/-/ECFR-165-DEALS_WITHOUT_BORDERS.pdf, p. 2.

¹⁰⁵ *Ibid.*

rhetoric revolving around the differentiation principle at the basis of bilateral cooperation with southern Mediterranean countries, such a partnership actually only depends on a handful of legal and policy instruments¹⁰⁶ which remain Member States' responsibility¹⁰⁷. In the next section, we will therefore introduce Mobility Partnership and Readmission Agreements which represent the basic tools used by the EU in exporting its migration and asylum policies to Mediterranean countries aiming at externalizing the *locus* of migration control.

Specific tools of cooperation: Mobility Partnership

Mobility Partnerships (MP) launched as policy tools by the European Commission in the framework of the GAMM, are negotiated with third countries "having committed themselves to cooperating actively with the EU on the management of migration flows and that are interested in securing better access to EU territory for their citizens".

Mobility Partnerships, considered as the "main strategic, comprehensive and long-term cooperation framework for migration management with third countries," take the form of legally non-binding political declarations signed between interested EU Member States, the Commission and third countries¹⁰⁸. Mobility Partnerships are concluded with partner countries in order to define a specific framework of cooperation on migration matters, axed along the definition of practical projects that could be implemented¹⁰⁹ by the parties.

While leaving a certain degree of flexibility in terms of the content, the MPs, display a four-pillar structure for cooperation, based on the specific needs and interests of EU Member States and third countries, on (i) managing legal migration and labor markets; (ii) enhancing the nexus between migration and development; (iii) combatting illegal immigration and smuggling while promoting returns and readmission; and (iv) supporting the effectiveness and capacity for international protection of refugees¹¹⁰.

Mobility Partnerships, as non-binding agreements, are based on the possibility to offer legal migration pathways to partner countries and could be considered to be the EU's most sophisticated tool in migration policies towards non-EU states. Through agreeing on MPs third countries commit to combating irregular migration movements towards the EU as a result of enhanced cooperation with the EU border agency. In exchange for third countries' efforts, EU Member States provide opportunities for legal migration from the partner country and commit to facilitate the visa issuance to third countries' nationals¹¹¹.

Despite their potential, Mobility Partnerships have only had partial success, due to the limited commitment demonstrated by EU Member States and the lack of real efforts on ensuring legal migration pathways for third countries' nationals as part of the deal. Furthermore, the EU tendency to dominate the partnership results in the prioritization of the security imperative, engendering the tendency to use a "one-size-fits-all" approach from the EU side which contradicts the differentiation principle and which has proved to be inefficient¹¹².

¹⁰⁶ Ovádek, M. and Wouters, J., 2017. "Differentiation in disguise? EU instruments of bilateral cooperation in the Southern Neighborhood". *Working Paper*, Leuven Centre for Global Governance Studies, (187), p. 8.

¹⁰⁷ Lavenex, S. 2006, March. "Shifting Up and Out: The Foreign Policy of European Immigration Control". *West European Politics*, 29(2), p. 340.

¹⁰⁸ Reslow, N. 2012. "The Role of Third Countries in EU Migration Policy: The Mobility Partnerships". *European Journal of Migration and Law*, 14, pp. 394-395.

¹⁰⁹ Ovádek, M. and Wouters, J., 2017. "Differentiation in disguise? EU instruments of bilateral cooperation in the Southern Neighborhood". *Working Paper* (187), Leuven Centre for Global Governance Studies, pp. 5-6.

¹¹⁰ *Ibid.*, p. 14.

¹¹¹ Dimitri, A. *Deals without borders: Europe's foreign policy on migration*. Accessed March 15, 2018 at http://www.ecfr.eu/page/-/ECFR-165-DEALS_WITHOUT_BORDERS.pdf, p. 4.

¹¹² Ovádek, M. and Wouters, J., 2017. "Differentiation in disguise? EU instruments of bilateral cooperation in the Southern Neighborhood". *Working Paper*, Leuven Centre for Global Governance Studies, (187), p. 6.

Specific tools of cooperation: Readmission Agreements

Another key tool of EU migration cooperation with third countries, is represented by readmission agreements. Partner countries are asked to provide assistance to improve border management, launch awareness campaigns to deter irregular migration and sign agreements allowing the EU Member States to transfer third-country nationals back to their territories. In exchange for these rather important efforts, the EU funds small-scale projects in partner countries, creates circular migration schemes and offers visa liberalization opportunities provided the goodwill of EU Member States¹¹³.

While readmission agreements must comply with the Geneva Convention and its 1967 New York Protocol on the status of refugees, internal EU regulations and treaties on asylum such as the Dublin Convention and the European Human Rights Convention, the possibility for the receiving state to repatriate anyone lacking proper documentation to be in the country is a major win for EU member states¹¹⁴.

The European Commission gained the authority to negotiate and sign readmission agreements on behalf of EU member states once the Treaty of Amsterdam entered into force and readmission agreements have gradually become widely used by the Union in order to combat illegal migration flows and immigration¹¹⁵.

However, clearly enough, the shortcoming of readmission agreements is their asymmetrical nature. In fact, partner countries are expected to meet their commitments while the prospects for them to benefit from EU member states ones are rather limited. Furthermore, the clause imposing on partner countries signatory to readmission agreements, to accept returnees who transited through their territories, nationals of third countries, is rather critical¹¹⁶.

It goes without saying that concluding readmission agreements, serving EU interests solely is a challenging exercise considering that their successful conclusion and implementation depends on the “leverage” at the Commission’s disposal. To address this concern, considering the rather limited incentives that can be offered to third countries in the field of JHA, the Commission created financial instruments aimed at supporting cooperation with third countries and linked association and cooperation agreements with migration control policies as established by the Conclusions of the Seville European Council of June 2002¹¹⁷.

From what precedes, it is evident that both the Readmission Agreements and Mobility Partnerships are policy instruments leading to the externalization of the *locus* of immigration control further away from the EU territory while the granting of asylum remains tied to the territory of the Member States¹¹⁸. The effectiveness of the described tools depending on third countries’ compliance remains dubious considering the low level of incentives and rewards as well as credibility at the disposal of the EU.

Conclusion

As we analyzed European Union migration and asylum policies entered into the EU’s structure through the Maastricht Treaty and they were partially communitarized in the Treaty of Amsterdam. While the cooperation on asylum and migration remained intergovernmental in nature, it became a matter of “common interest”. Following these early developments, the better governance of international migration

¹¹³ Dimitri, A. *Deals without borders: Europe’s foreign policy on migration*. Accessed March 15, 2018 at http://www.ecfr.eu/page/-/ECFR-165-DEALS_WITHOUT_BORDERS.pdf, p. 5.

¹¹⁴ http://www.jeanmonnet.org.tr/Portals/0/scholars_database_thesis/elvan_eda_karaismailoglu_tez.pdf. Accessed March 15, 2018, pp. 12-13.

¹¹⁵ *Ibid.*, p. 14.

¹¹⁶ Dimitri, A. *Deals without borders: Europe’s foreign policy on migration*. Accessed March 15, 2018 at http://www.ecfr.eu/page/-/ECFR-165-DEALS_WITHOUT_BORDERS.pdf, p. 5.

¹¹⁷ Trauner, F., and Wolff S., 2014. “The Negotiation and Contestation of EU Migration Policy Instruments: A Research Framework”. *European Journal of Migration and Law*, 16(1), pp. 17-18.

¹¹⁸ *Ibid.*, p. 4.

has definitively become a priority for the EU which has worked toward the establishment of strengthened cooperation with third countries of origin and transit¹¹⁹.

As we have seen, since the beginning of the 2000s, the EU has agreed upon a range of migration policy instruments with third countries such as Mobility Partnerships and Readmission Agreements remaining committed to guaranteeing a certain degree of differentiation depending on the third countries' specificities¹²⁰. It is, important to stress the determining role of third countries' domestic preferences in deciding whether EU external policies successfully work or not, considering its dependence on third countries' will to cooperate with the Union¹²¹.

It appears from our analysis that the EU despite committing to adopting different attitudes toward third countries in relation to national preferences displayed the tendency to dominate the partnerships imposing its interests without considering partners' ones. Therefore, while we cannot fully confirm the one-size-fits-all postulate the differentiation operationalized by the Union must be critically analyzed in relation to specific cases. Furthermore, the format of both Mobility Partnership and Readmission Agreements follow a template applicable at the broader regional level, making adjustments to specific partners' national characteristics only partial.

As we mentioned, EU migration policies have demonstrated some issues of effectiveness considering the difficulties encountered by Member States in adopting a common legal framework and a clear political objective¹²². Furthermore, as we recalled, the use of conditionality and softer instruments of influence towards third countries with no credible accession perspective impacted on the EU's efforts to export its policies and externalize migration control beyond its borders¹²³.

Having defined the legal basis at the core of the European Union action on migration control and asylum related matters, notably the Treaties of Maastricht, Amsterdam and Lisbon as well as having touched upon the cornerstone of the Common European Asylum System, represented by the Dublin Regulation(s) and attempts undertaken by EU institutions to modifying it; we can now launch our analysis of the specificities of the two countries representing the focus of our research in order to answer our research question.

Having analyzed the European Union perspectives and attitudes towards the externalization of migration pressure beyond the borders of the Schengen space through different tools, we can now turn to the domestic legislations on asylum in both Lebanon and Turkey and analyze the agreements concluded between the parties in order to determine whether, understanding the EU's legal and political stance, cooperation with third countries on asylum related matters depends on third countries internal legislations on asylum or whether it is informed by more general EU's framework for cooperation.

¹¹⁹ Karadağ, S. 2012. "Europeanization of Migration and Asylum Policy: A Critical analysis of Turkish Case". Accessed March 15, 2018 at http://www.jeanmonnet.org.tr/Portals/0/scholars_database_thesis/sibel_karadag_tez.pdf, pp. 7-8.

¹²⁰ Trauner, F., and Wolff S., 2014. "The Negotiation and Contestation of EU Migration Policy Instruments: A Research Framework". *European Journal of Migration and Law*, 16(1), p. 2.

¹²¹ Reslow, N. 2012. "The Role of Third Countries in EU Migration Policy: The Mobility Partnerships". *European Journal of Migration and Law*, 14, p. 413.

¹²² http://www.jeanmonnet.org.tr/Portals/0/scholars_database_thesis/elvan_eda_karaismailoglu_tez.pdf. Accessed March 15, 2018, p. 12.

¹²³ Sedelmeier, U., 2011. "Europeanisation in new member and candidate states". *Living Reviews in European Governance*, 6(1). Accessed 15 March 2018 at <http://www.livingreviews.org/lreg-2011-1>, p. 29.

Second Chapter

National Asylum Systems: Lebanese and Turkish national and international obligations

Introduction

After the analysis of the European Union's obligations and objectives on asylum and following the definition of the specific and structurally different tools used by the EU in collaborating with third countries in asylum-related matters, we can now focus on the specificities of partner countries. As our research question postulates, this analysis aims at understanding the extent to which EU cooperation with third countries on asylum policies depends on domestic factors, among which we will focus on national asylum legislations and on third countries' association status. To gain insight into this question we will substantially explore Lebanese and Turkish asylum frameworks, proceeding towards a comparative study of their respective national legislations to then use the acquired knowledge in analyzing specific agreements between the analyzed countries and determining the EU's adaptation to national specificities of partner countries.

This chapter clearly shows the interconnected nature of States' relations with the International Community and the UN agencies while domestic priorities play a major role in determining national asylum policies and protection standards. In fact, asylum policies and regulations, being States' prerogatives and the expression of their sovereignty, represent a critical aspect of the international cooperation on the matter. Is it possible for external actors to influence third countries' internal regulations on asylum and if so, to what extent and under which conditions?

In order to respond to this contingent question, we will proceed to analyze national and international obligations of our two case countries, highlighting the major legal instruments adopted to comply with international customary law on protection of refugee populations. To this end we will primarily base our analysis on primary legal sources and their translations when available for the sake of readability.

2.1. Lebanese Legislation on asylum

Lebanon, the largest refugee hosting country, both per capita and per square kilometer, fundamentally lacks consistent national legislations regulating the asylum space while remaining at the margins of the international refugee regime framework. Interestingly enough, the country, despite having actively participated in the establishment of international refugee protection instruments, never abided by them and has strongly resisted any external attempts to influence its national legislation¹²⁴.

In this section, we will first analyze in detail the national instruments available in Lebanon and then try to determine the international protection principles respected in the country in order to understand in the next chapter, whether the EU takes into account national specificities in concluding EU-Lebanon agreements. As we will demonstrate in the following lines, Lebanon substantially lacks national legislation on asylum and only partially implements international customary principles protecting the status of refugees being a non-signatory to the 1951 Convention.

Lebanese National Legislation

Lebanese national legislation on asylum is limited and somewhat superficial. The existing legal provisions guaranteeing the asylum space in Lebanon are rather weak and do not ensure any stability to the growing refugee population present in the country. The 1926 Lebanese Constitution preamble generally affirms that: "Lebanon is ... a founding and active member of the United Nations Organization and abides by its covenants and by the Universal Declaration of Human Rights. The Government shall embody these

¹²⁴ Janmyr, M. 2017, November. "No Country of Asylum: "Legitimizing" Lebanon's Rejection of the 1951 Refugee Convention". *International Journal of Refugee Law*, 29(3), p. 438.

principles in all fields and areas without exception¹²⁵.

In theory, such vague wording could be interpreted as requiring national authorities to enact comprehensive and substantial legislations related to refugees' protection. However, despite the constitution affirming that, "[...]There shall be no segregation of the people, [...] or settlement of non-Lebanese in Lebanon"¹²⁶ the reality in Lebanon is much more problematic for refugee populations.

Despite Lebanon being the country hosting the highest number of displaced persons and refugees, its national government affirms that Lebanon is not a country of asylum, rejecting the local integration of refugees in principle as well as preventing any permanent settlement of foreigners, according to its Constitution¹²⁷.

As mentioned beforehand, the national system regulating refugee status determination (RSD) and ensuring the asylum space is very limited and refugee protection in Lebanon is *de facto* regulated by the 1962 Law Regulating the Entry and Stay of Foreigners in Lebanon and their Exit from the Country¹²⁸. In the absence of a formal and comprehensive domestic legal framework to guide authorities' treatment of refugees, the 1962 Law on Foreigners sets the basis for the national management of refugees and asylum seekers. The text includes limited references to political asylum, which is dealt with in the sixth chapter of the legislation.

Article 26 affirms that:

"[a]ny foreign national who is the subject of a prosecution or a conviction by an authority that is not Lebanese for a political crime or whose life or freedom is threatened, also for political reasons, may request political asylum in Lebanon"¹²⁹.

Article 27 describes the procedure Lebanese authorities should follow in order to grant asylum:

"[...] pursuant to an order made by a committee [...] In the event that the number of votes cast for and against is equal, the chair shall have a casting vote. An order made by this committee is not admissible in law and may not be subject to any claim, even that of abuse of power"¹³⁰.

The impossibility for asylum seekers to contest the Committee decision before the juridical power is worrisome at the very least, but this is not all. In fact, the following article gives the Committee, examining asylum claims the power to arbitrarily "[...] cancel it [asylum claim] at any time or limit it by requiring the person, for example, to remain in a specific place." Finally, Article 31 seemingly introduce the *non-refoulement* principle stating that when a political refugee is deported from Lebanon, he or she will not be returned to a country in which "his or her life or freedom is threatened"¹³¹.

The 1962 Law Regulating the Entry and Stay of Foreigners in Lebanon and their Exit from the Country explicitly reflects the reticence of the Lebanese authorities to host refugees. Refugee protection not being provided for in formal specific legislations, it is provisionally regulated by immigration laws. *De facto*, refugees in Lebanon are treated as if they were foreign nationals, and despite the 1962 Law on Foreigners, containing six articles partially addressing asylum matters, which we analyzed beforehand, major protection gaps arise from the lack of proper legal recognition¹³² of the specific states' obligation *vis-à-vis* refugees. The deficiency of a thorough asylum system entails the promotion of national *ad hoc* policies, which can only provide a

¹²⁵ Lebanese Constitution (1926), as amended to 1995. Accessed 8 February 2018 at: <http://www.refworld.org/docid/44a24a674.html>, p. 3.

¹²⁶ *Ibid.*, p. 3.

¹²⁷ Janmyr, M. 2017, November. "No Country of Asylum: "Legitimizing" Lebanon's Rejection of the 1951 Refugee Convention". *International Journal of Refugee Law*, 29(3), p. 440.

¹²⁸ Saliba, I. 2016. "Lebanon". In *Refugee Law and Policy in Selected Countries*. The Law Library of Congress, p. 214.

¹²⁹ National Legislative Bodies / National Authorities, *Lebanon: Order No. 319 of 1962 regulating the status of foreign nationals in Lebanon*, 2 August 1962. Accessed 8 February 2018 at: <http://www.refworld.org/docid/4c3c630f2.html> , p 5.

¹³⁰ *Ibid.*, p. 6.

¹³¹ *Ibid.*

¹³² Janmyr, M. 2017, November. "No Country of Asylum: "Legitimizing" Lebanon's Rejection of the 1951 Refugee Convention". *International Journal of Refugee Law*, 29(3), p. 440.

temporary and partial recognition and protection to refugees, incrementing the marginalization of this vulnerable group in the already highly fragmented Lebanese society¹³³.

It results clearly from the very brief introduction to Lebanese national legislation on asylum, that basic and fundamental guarantees to refugees are lacking in the country due to the incompleteness and superficiality of national legislation on the matter. The fact that the 1962 immigration law is the most advanced instrument to ensure minimal protection levels to refugees gives us a sense of the unwillingness of the Lebanese authorities to ensure and eventually enlarge the national asylum space which, as of now, is *de facto* inexistent.

In addition to the 1962 Law Regulating the Entry and Stay of Foreigners in Lebanon and their Exit from the Country, refugee protection at the national level is based on the Memorandum of Understanding signed between Lebanon and the UNHCR. The text, which will be explored in the next section, accounts as an instrument that once again emphasizes that refugees in Lebanon are not entitled to remain permanently but must be resettled to third countries¹³⁴, while providing for the acceptance of this *national stand* by the international community and UN agencies.

International Obligations

The non-ratification of the 1951 Convention

Lebanon has actively participated in the establishment of the international refugee regime; however, it has long combatted against its description as a refugee country through rejecting the ratification of the major refugee law instruments. At present, Lebanese participation in the international refugee regime is very limited given that the country refused to ratify the Geneva Convention relating to the Status of Refugees of 1951, its 1967 Protocol¹³⁵ and rejected to ratify the 1954 Convention relating to the Status of Stateless Persons as well as the 1961 Convention on the Reduction of Statelessness¹³⁶.

National authorities justify their refusal by affirming that Lebanon *de facto* already implements on a voluntary basis the provisions of both the 1951 Convention and of its 1967 Protocol. Therefore, according to State Officials, the ratification of the Convention would be redundant considering Lebanese obligations as a member of the United Nations and its ratification of several international human rights instruments¹³⁷. In fact, in spite of not being a signatory of the 1951 Convention the country is bound by the customary principle of *non-refoulement*, defined in the 1951 Convention in its Article 33 as the obligation for states not to “[...] 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”¹³⁸, as well as by the provisions of other international human rights instruments which, although not specifically, provide for some form of protection for refugees. Among those human rights treaties incorporating some of the provisions expressed by the 1951 Convention, ratified by Lebanon, worth mentioning are the 1984 Convention Against Torture, the 1965 International Convention on the Elimination of All Forms of Racial Discrimination, the 1966 International Covenant on Economic, Social and Cultural Rights, the 1989 Convention on the Rights of the Child, and the Arab Charter of Human Rights. Furthermore, Lebanon is a party to the 1966 International Covenant

¹³³ Bidinger, S., Lang, A., Hites, D., Kuzmova, Y., & Nouredine, E., Akram, S. 2014. *Protecting Syrian Refugees: Laws, Policies, and Global Responsibility Sharing*. Boston University School of Law International Human Rights Clinic, p. 29.

¹³⁴ Janmyr, M. 2017, November. “No Country of Asylum: “Legitimizing” Lebanon’s Rejection of the 1951 Refugee Convention”. *International Journal of Refugee Law*, 29(3), p. 455.

¹³⁵ Saliba, I. 2016. “Lebanon”. In *Refugee Law and Policy in Selected Countries*. The Law Library of Congress, p. 213.

¹³⁶ UN High Commissioner for Refugees (UNHCR), *Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights' Compilation Report - Universal Periodic Review: Republic of Lebanon*, April 2010. Accessed 8 February 2018 at: <http://www.refworld.org/docid/4bcd705e2.html> , p. 1.

¹³⁷ Janmyr, M. 2017, November. “No Country of Asylum: “Legitimizing” Lebanon’s Rejection of the 1951 Refugee Convention”. *International Journal of Refugee Law*, 29(3), p. 438.

¹³⁸ UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137. Accessed 19 March 2018 at: <http://www.refworld.org/docid/3be01b964.html> , p. 21.

on Civil and Political Rights and to the 1979 Convention on the Elimination of All Forms of Discrimination Against Women¹³⁹.

The content of those international human rights conventions is incorporated in the national Constitution and prescribe to the Lebanese authorities the application of international standards in order to guarantee the adoption of temporary protection measures enabling the safe admission of refugees, their protection against *refoulement* as well as ensuring the respect of their basic human rights¹⁴⁰. The country's rhetorical efforts spent in order to defend its national positions on the matter focus on the assertion that Lebanon respects basic protection measures to safeguard refugees, making it *de facto* abiding by international refugee law instruments¹⁴¹. However, we must take into account the volatile and uncertain nature of these practices, which without being formally formulated and incorporated in national legislations are susceptible to subjective interpretations causing a structural weakness of the national refugee informal protection system.

Memorandum of Understanding(MoU) between Lebanon and UNHCR

The previous sections alluded to the fact that Lebanon not only lacks formal national instruments dealing with the specific status of refugees, using immigration laws instead, but it has also excluded itself from the international refugee protection regime. However, the Lebanese non-ratification of major international refugee law instruments does not imply the complete absence of cooperation with international actors of the refugee protection field.

Following the breakdown of the 1963 UNHCR-Lebanon "Gentleman's Agreement" which held until the 1990s, the two concerned parties managed to negotiate a more formal deal on their respective obligations and responsibilities in guaranteeing a minimum protection space to refugees¹⁴². Considered as a milestone for a non-signatory State of the 1951 Convention, the Lebanon-UNHCR Memorandum of Understanding (MoU) has long been negotiated and its signing represented a compromise through which Lebanon finally recognized the right of refugees to remain in Lebanon, if not for a limited period of time. Furthermore, the MoU is central in defining the UNHCR role in the country and its cooperation with Lebanese authorities in the field of registration of refugees and in providing them with access to basic services¹⁴³.

The MoU prescribes for Lebanese authorities to grant the UNHCR the right to adjudicate claims for asylum and for the Lebanese Government to issue temporary residence permits to asylum seekers¹⁴⁴. Despite the temporary nature of these residence permits, they represent the only guarantee refugees have to access basic services in the country. The undeniable importance of those documents, representing a considerable improvement for the conditions of refugees in Lebanon, must however be put into context. The nature of the residence documents, in fact, entitles refugees to very limited protection guarantees and services. They represent fundamental documents in order to access services without granting asylum seekers the right to seek asylum or legally stay under refugee status in Lebanon, leaving them in a very challenging position¹⁴⁵.

Normally, those residence permits last for three months, period during which the UNHCR is engaged in reviewing the asylum claims. Once the UNHCR has determined the relevant basis of the claim, the residence permit is extended for an additional six to nine months in order to allow the UN Refugee Agency to find

¹³⁹ Bidinger, S., Lang, A., Hites, D., Kuzmova, Y., & Nouredine, E., Akram, S. 2014. *Protecting Syrian Refugees: Laws, Policies, and Global Responsibility Sharing*. Boston University School of Law International Human Rights Clinic, p. 34.

¹⁴⁰ NRC Lebanon "The Consequences of Limited Legal Status for Syrian Refugees in Lebanon", Part 2, March 2014. Accessed 8 February 2018 at: www.nrc.no/arch/_img/9176603.pdf, p. 8.

¹⁴¹ Janmyr, M. 2017, November. "No Country of Asylum: "Legitimizing" Lebanon's Rejection of the 1951 Refugee Convention". *International Journal of Refugee Law*, 29(3), p. 462.

¹⁴² *Ibid.*, p. 457.

¹⁴³ Centre libanais des droits humains (C.L.D.H.) "Legal challenges faced by refugees from Syria in Lebanon", 2016. Accessed 8 February 2018 at: http://www.rightsobserver.org/files/Legal_challenges_for_refugees_from_Syria_2016_-_web.pdf, p. 13.

¹⁴⁴ Saliba, I. 2016. "Lebanon". In *Refugee Law and Policy in Selected Countries*. The Law Library of Congress, p. 214.

¹⁴⁵ NRC Lebanon "The Consequences of Limited Legal Status for Syrian Refugees in Lebanon", Part 2, March 2014. Accessed 8 February 2018 at: www.nrc.no/arch/_img/9176603.pdf, p. 21.

durable solutions for the refugee, which normally consist in resettlement to a third country¹⁴⁶. However, it is highly unrealistic to envisage that the UNHCR would be able to guarantee resettlement to all the refugees who obtained the temporary residence permit in Lebanon and, even in the best-case scenario, refugees are rarely resettled from Middle-Eastern countries within such a tight timeframe¹⁴⁷.

Furthermore, this MoU poses questions not only on the feasibility of the resettlement commitments imposed on the UNHCR but also on the effective refugee protection it ensures. In fact, it can only be considered as a very first step necessitating further national engagements toward comprehensive legislation on the matter. The wording contained in the preamble of the MoU is particularly worrisome, considering that refugees and asylum seekers are defined as persons “residing unlawfully in Lebanon and submitting asylum applications at UNHCR”. Furthermore, the unwillingness of the State to engage in and allow for a substantial and lawful improvement of the refugee protection status guarantees is clearly sampled in the introduction of the agreement stating that “Lebanon is not an asylum country and the only viable durable solution for refugees recognized under the mandate of UNHCR is the resettlement to a third country”¹⁴⁸. The MoU not only legitimizes the position of Lebanon not to be a country of asylum, but it also helps introduce the “transit-country concept.” The 2003 MoU clearly reaffirms the “transit-country notion” by imposing very strict time limitations to the residence permits while unveiling the link perceived by Lebanon between ratifying the 1951 Convention and becoming a “destination country”¹⁴⁹.

Accordingly, the non-ratification of international refugee law instruments combined with the absence of proper national protection mechanisms are only partially overcome by the Lebanon-UNHCR Memorandum of Understanding. This document, as previously mentioned, while ensuring unprecedented legal assurances to refugees¹⁵⁰, is not enough to eliminate the protection gaps the refugee population has to deal with in Lebanon. The MoU shows a questionable connivance of the UNHCR with the shrinking Lebanese asylum space without enabling the UN Refugee Agency to use its resettlement commitments as a bargaining chip to convince Lebanon to raise its protection standards. Therefore, we cannot properly consider the MoU as a concrete instrument addressing the existing discrepancies between Lebanese refugee policies and international law dispositions¹⁵¹.

Furthermore in 2015, the UNHCR had to suspend its RSD activities at the request of Lebanese authorities. This extraordinary measure adopted following the overwhelming Syrian crisis resulted in the worsening of the already complicated procedures Syrians had to go through to have their residency permit renewed¹⁵².

All in all, analysis shows a rather gloomy picture of what the refugee populations have to cope with on a daily basis. Lebanon has refused to develop comprehensive legislation regulating the residence of refugees on its territory, making it very problematic for such a vulnerable population to reside, access services and integrate in the country. The resistance demonstrated at the national level, in principle refusing the integration and long-term staying of refugees is nothing but the reflection of international ambiguous tendencies adopted by the country. Lebanese authorities remain coherent with their position in refusing the ratification of the 1951 Convention and its 1967 Protocol sustaining that those instruments’ principles are *de facto* already implemented in the country. The 2003 Lebanon-UNHCR MoU represents a major breakthrough for the protection of refugees in Lebanon, unveiling the inexistence of structured and consistent national or international dispositions concerning refugees applicable in the country.

¹⁴⁶ UN High Commissioner for Refugees (UNHCR), *UNHCR Country Operations Plan 2004 - Lebanon*, 1 September 2003. Accessed 8 February 2018 at: <http://www.refworld.org/docid/3fd9c6a14.html>, p. 1.

¹⁴⁷ Lebanon-UNHCR Memorandum of Understanding, November 2003 as per reported by Frontiers Center. Accessed 8 February 2018 at: http://www.frontiersruwad.org/pdf/FR_Public_Statement_MOU_Nov_2003.pdf, p. 2.

¹⁴⁸ *Ibid.*

¹⁴⁹ Janmyr, M. 2017, November. “No Country of Asylum: “Legitimizing” Lebanon’s Rejection of the 1951 Refugee Convention”. *International Journal of Refugee Law*, 29(3), p. 454.

¹⁵⁰ UN High Commissioner for Refugees (UNHCR), *UNHCR Country Operations Plan 2004 - Lebanon*, 1 September 2003. Accessed 8 February 2018 at: <http://www.refworld.org/docid/3fd9c6a14.html>, p. 1.

¹⁵¹ Lebanon-UNHCR Memorandum of Understanding, November 2003 as per reported by Frontiers Center. Accessed 8 February 2018 at: http://www.frontiersruwad.org/pdf/FR_Public_Statement_MOU_Nov_2003.pdf, p. 2.

¹⁵² Fakhoury, T. 2017. “Governance strategies and refugee response: Lebanon in the face of Syrian displacement”. *International Journal of Middle East Studies* (49), p. 687.

The assimilation and management of refugees and asylum seekers as migrants and foreigners in general causes severe questioning on the overall reception system. As for now it appears unlikely that Lebanese authorities will change their attitude toward ensuring a wider asylum space. What is at the core of those political decisions and juridical gaps is the fear Lebanon has to be considered as a destination country by the international community and by populations on the move¹⁵³. Furthermore, it is noteworthy that a number of actors from the civil society and international organizations have filled the gaps of the national government, which supported the delegation of its responsibilities¹⁵⁴ in dealing with refugees in the country. This delegation policy in Lebanon is amongst others based on the high dependency of the country on international funding in establishing refugee reception structures, and the will of donors to inject funding in the country through selected partners rather than through government institutions¹⁵⁵.

We will then see in the next chapter whether the national asylum space present in Lebanon and its status as a “simple” partner country *vis-à-vis* the EU has an impact on the form and content of the agreements concluded between the EU and the Lebanese authorities or not.

2.2. Turkish Legislation on asylum

Turkey has been compelled to develop a national legal framework on asylum since the mid 1990s because of the major crisis in the region and its accession process to the European Union. Turkey as one of the largest refugee-receiving countries of the world, is however still struggling with the acceptance of obligations in this regard.

In this section, we will try to unveil the blurred national framework in place to ensure refugees’ protection guarantees are respected and subsequently we will analyze the international obligations, resistances and pressures at stake for a rather centrally-administrated and strong country.

Turkish National Legislation

The first Turkish regulation dealing with migration and asylum related questions was the 1994 Regulation on Foreigners and International Protection (LFIP). In fact, prior to this Regulation, the national refugee framework consisted of secondary legislations such as decrees and circulars issued by the Council of Ministers to relevant branches of the administration and local governments. For instance, until 1994, the Law on Settlement- law number 2510- promulgated in 1934, was the only legal instrument regulating the formal settlement of aliens in Turkey, establishing that only persons from Turkish descent and culture had the right to migrate and seek asylum in the country. A revised settlement law, passed in 2006, confirmed that “the channel of facilitated formal settlement, which also leads to citizenship in a short period of time is still reserved for the individuals of such a group”¹⁵⁶.

Far from being a complete legal instrument for protection, the 1994 text contains very vague language which favored *ad hoc* interpretation¹⁵⁷, and despite representing the funding ground of asylum protection in Turkey, it has been produced by administrative organs and not promulgated by the national Parliament. Therefore, the 1994 Regulation on Foreigners and International Protection fundamentally lacks statutory protection, and not being enacted as a proper law, it could easily be amended through a counter administrative action¹⁵⁸.

The 1994 LFIP was replaced by a national comprehensive legislation on migration related issues adopted in 2013, allowing persons in need of international protection, who would qualify as refugees if Turkey had not maintained its geographical limitation to the 1951 Convention, to remain in Turkey on a temporary basis

¹⁵³ Janmyr, M. 2017, November. “No Country of Asylum: “Legitimizing” Lebanon’s Rejection of the 1951 Refugee Convention”. *International Journal of Refugee Law*, 29(3), p. 440.

¹⁵⁴ Fakhoury, T. 2017. “Governance strategies and refugee response: Lebanon in the face of Syrian displacement”. *International Journal of Middle East Studies* (49), p. 690.

¹⁵⁵ *Ibid.*

¹⁵⁶ Zeldin, W. 2016. “Turkey”. In *Refugee Law and Policy in Selected Countries*. The Law Library of Congress, p. 258.

¹⁵⁷ Bidinger, S., Lang, A., Hites, D., Kuzmova, Y., & Noureddine, E., Akram, S. 2014. *Protecting Syrian Refugees: Laws, Policies, and Global Responsibility Sharing*. Boston University School of Law International Human Rights Clinic, p. 101.

¹⁵⁸ Kaya, I. 2009. “Reform in Turkish asylum law: adopting the EU Acquis? ”. Robert Schuman Center for Advanced Studies. CARIM-RR (16), p. 5.

until their resettlement¹⁵⁹. The law, adopted by the National Assembly, provides for greater substantive guarantees to people seeking international protection in the country¹⁶⁰. The 2013 LFIP's main objective is to regulate the principles and procedures guiding foreigners' entry into, stay and exit from the national territory while managing the scope and implementation of the protection for asylum seekers in Turkey. Through the new law, the authority to manage asylum proceedings and to govern other protection-related matters shifted to a new agency: the Directorate General on Migration Management (DGMM)¹⁶¹, whose duties, mandate and obligations are determined and defined in the ruling¹⁶². Furthermore, the revised LFIP provides specific definitions of *refugees* defined in its Article 61 as:

“A person who as a result of events occurring in European countries and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his citizenship and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country; or who, not having a nationality and being outside the country of his former residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it, shall be granted refugee status upon completion of the refugee status determination process”^{163 164}.

Despite the definition of refugees being *strictu sensu* limited to European nationals, the 2013 LFIP grants non-European asylum seekers, limited protection guarantees according to the variety of temporary protection status provided for in the regulation notably (i) conditional refugee status and (ii) temporary/subsidiary protection as well as the possibility for victims of human trafficking or humanitarian situations to temporarily obtain a permit. Those categories of individuals are allowed to stay in Turkey until definitive resettlement opportunities to third countries are found¹⁶⁵. To this extent, it is crucial to clearly define the wide spectrum of protection status the Turkish government grants to non-Europeans.

Conditional refugees are defined in Article 62 as:

“A person who as a result of events occurring outside European countries and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country; or who, not having a nationality and being outside the country of former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it, shall be granted conditional refugee status upon completion of the refugee status determination process. Conditional refugees shall be allowed to reside in Turkey temporarily until they are resettled to a third country”¹⁶⁶.

Subsidiary protection is granted according to article 63 to:

“A foreigner or a stateless person, who neither could be qualified as a refugee nor as a conditional refugee, shall nevertheless be granted subsidiary protection upon the status determination because if returned to the country of origin or country of [former] habitual residence would: (i) be sentenced to death or face the execution of the death penalty; (ii) face torture or inhuman or degrading treatment or punishment; (iii) face serious threat to himself or herself by reason of indiscriminate violence in situations of international or nationwide armed conflict; and therefore is unable or for the reason of such threat is unwilling, to avail

¹⁵⁹ Bidinger, S., Lang, A., Hites, D., Kuzmova, Y., & Noureddine, E., Akram, S. 2014. *Protecting Syrian Refugees: Laws, Policies, and Global Responsibility Sharing*. Boston University School of Law International Human Rights Clinic, pp. 103-104.

¹⁶⁰ *Ibid.*

¹⁶¹ *Ibid.*, p. 103.

¹⁶² Zeldin, W. 2016. “Turkey”. In *Refugee Law and Policy in Selected Countries*. The Law Library of Congress, p. 263.

¹⁶³ “Refugee rights Turkey. 2016. International protection procedure in Turkey rights and obligations questions & answers”. Accessed 8 February 2018 at <http://www.mhd.org.tr/images/yayinlar/MHM-38.pdf>.

¹⁶⁴ *Turkey: Law No. 6458 of 2013 on Foreigners and International Protection* [Turkey], 4 April 2013. Accessed 8 February 2018 at: <http://www.refworld.org/docid/5167fbb20.html> , p. 64.

¹⁶⁵ Zeldin, W. 2016. “Turkey”. In *Refugee Law and Policy in Selected Countries*. The Law Library of Congress, p. 262.

¹⁶⁶ *Turkey: Law No. 6458 of 2013 on Foreigners and International Protection* [Turkey], 4 April 2013. Accessed 8 February 2018 at: <http://www.refworld.org/docid/5167fbb20.html> , pp. 64-65.

himself or herself of the protection of his country of origin or country of [former] habitual residence¹⁶⁷.

The relatively clear definition of subsidiary protection represents a major development considering that prior policies classified those individuals who did not qualify for refugee status as “guests”¹⁶⁸. Despite Turkey not formally recognizing it, the concept of subsidiary protection is inspired by the definition reported in the EU Qualification Directive (2011/95/EU)¹⁶⁹ proving some degree of Europeanization of asylum policies in the country. Notwithstanding the lack in substance of formal guarantees on the respect of the *non-refoulement*¹⁷⁰ principle, the 2013 LFIP can be considered as a benchmark, being the first law of its kind in the country, sustaining the efforts to fill the legal gaps in the national protection system providing basic services and assistance to asylum seekers¹⁷¹.

Following the humanitarian situation taking place in the neighboring Syria, in October 2014, the Turkish government published the Temporary Protection Regulation (TPR)¹⁷² granting provisional protection to all persons fleeing from Syria¹⁷³ as per Article 91 of the 2013 LFIP¹⁷⁴. The TPR Article 7 defines temporary protection as:

“[...] The protection status granted to foreigners who were forced to leave and are unable to return to their countries, arriving at or crossing our borders in masses or individually during such period of mass influx, for the purpose of seeking urgent and temporary protection and whose international protection claims cannot be assessed individually”¹⁷⁵.

The regulation *de facto* embodies the basic elements set out in both the UNHCR 1994 Report on International Protection, describing for the first time a temporary protection scheme as well as the principles established in the EU Temporary Protection Directive(2001/55/EC)¹⁷⁶. The Turkish TPR is based on three founding principles: (i) maintaining an open-door policy for all Syrians, (ii) respecting the *non-refoulement* principle and (iii) entitling Syrians with unlimited right to stay in Turkey¹⁷⁷. According to the 2013 LFIP provisions establishing the influence of the Council of Ministers in deciding on protection status, Turkey provides Syrians with many of the services which would normally be ensured to persons benefitting from international protection guarantees including shelter, food and access to health services¹⁷⁸.

Considering the persistency of a rather important gap between the legal provisions and their implementation on the ground, the TPR does not represent the right instrument to address such inconsistency remaining secondary legislation, and as such not providing the legal certainty that a temporary protection law could have guaranteed. Furthermore, the TPR drafting exercise specifically avoids imposing obligations on the State stressing that assistance and services will be provided as feasible and according to resources¹⁷⁹.

¹⁶⁷ *Ibid.*, pp. 65-66.

¹⁶⁸ Zeldin, W. 2016. “Turkey”. In *Refugee Law and Policy in Selected Countries*. The Law Library of Congress, p. 263.

¹⁶⁹ Skribeland, Ö. G. 2016. “A critical review of Turkey's asylum laws and practices, Seeking Asylum in Turkey”. *Norwegian Organisation for Asylum Seekers (NOAS)*, p. 14.

¹⁷⁰ Bidinger, S., Lang, A., Hites, D., Kuzmova, Y., & Nouredine, E., Akram, S. 2014. *Protecting Syrian Refugees: Laws, Policies, and Global Responsibility Sharing*. Boston University School of Law International Human Rights Clinic, pp. 106-107.

¹⁷¹ Soykan, C. 2012. “The New Draft Law on Foreigners and International Protection in Turkey”. *Oxford Monitor of Forced Migration*, 2 (2), p. 42.

¹⁷² Zeldin, W. 2016. “Turkey”. In *Refugee Law and Policy in Selected Countries*. The Law Library of Congress, p. 259.

¹⁷³ Bidinger, S., Lang, A., Hites, D., Kuzmova, Y., & Nouredine, E., Akram, S. 2014. *Protecting Syrian Refugees: Laws, Policies, and Global Responsibility Sharing*. Boston University School of Law International Human Rights Clinic, p. 107.

¹⁷⁴ *Turkey: Law No. 6458 of 2013 on Foreigners and International Protection* [Turkey], 4 April 2013. Accessed 8 February 2018 at: <http://www.refworld.org/docid/5167fbb20.html> , p. 93.

¹⁷⁵ National Legislative Bodies / National Authorities, *Turkey: Temporary Protection Regulation*, 22 October 2014. Accessed 10 February 2018 at: <http://www.refworld.org/docid/56572fd74.html> , p. 3.

¹⁷⁶ Bidinger, S., Lang, A., Hites, D., Kuzmova, Y., & Nouredine, E., Akram, S. 2014. *Protecting Syrian Refugees: Laws, Policies, and Global Responsibility Sharing*. Boston University School of Law International Human Rights Clinic, p. 102.

¹⁷⁷ *Ibid.*, pp. 104-105.

¹⁷⁸ *Ibid.*, p. 104.

¹⁷⁹ Skribeland, Ö. G. 2016. “A critical review of Turkey's asylum laws and practices, Seeking Asylum in Turkey”. *Norwegian Organisation for Asylum Seekers (NOAS)*, p. 24.

All in all, the picture we reported demonstrate that Turkish national asylum system is rather weak considering that protection statuses available under national law fail to provide individuals with a sufficient degree of predictability and long-term prospective concerning their stay in the country. The most worrisome weakness of Turkish asylum space is in fact the persistence of major gaps between the *de jure* and *de facto* protection of asylum seekers and refugees¹⁸⁰, a reality which is dependent on the limited international obligations Turkey has to respect and which will be the main focus of the following section.

International Obligations

Limitations to the 1951 Convention ratification

At the international level, Turkey is party to the main United Nations, ILO and Council of Europe Conventions including the 1951 United Nations Refugees Convention and its 1967 Protocol, the Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the European Social Charter¹⁸¹. According to Article 90 of the national Constitution:

“[...] In the case of a conflict between international agreements, duly put into effect, concerning fundamental rights and freedoms and the laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail”¹⁸².

Therefore, in theory there is nothing preventing national authorities from implementing international provisions on asylum and asylum seekers are *de jure* entitled to demand the protection of their rights before Turkish Courts in accordance with international legislations¹⁸³. Being signatory to the Universal Declaration on Human Rights, Turkey should effectively recognize the right to seek asylum as provided for in its Article 14 paragraph 1:

“Everyone has the right to seek and to enjoy in other countries asylum from persecution”¹⁸⁴.

However, Turkey’s instrument of ratification of the 1951 Convention on the Status of Refugees, as hinted when describing Turkish national legislation on asylum, limits the scope of this major international instrument to European asylum seekers, although clearly the majority of asylum claims received in the country come from non-Europeans.

Despite having signed the text of the UN’s newly created Convention in 1951, the ratification process took Turkish authorities more than ten years and it was finally completed in March 1962, limiting the application of the Convention “only to persons who have become refugees as a result of events occurring in Europe”¹⁸⁵.

Turkish adherence to the geographical limitation expresses its long-standing resistance to integrate non-European refugees in the local society¹⁸⁶ and is justified by national authorities’ discourse highlighting the “challenging experiences in the region”¹⁸⁷. It is clear that subsequently full-fledged refugee status is available to a handful number of individuals and that the set of social and economic rights to which asylum seekers

¹⁸⁰ *Ibid.*, p. 13.

¹⁸¹ Kaya, I. 2009. “Reform in Turkish asylum law: adopting the EU Acquis? ”. Robert Schuman Center for Advanced Studies. CARIM-RR (16), pp. 4-5.

¹⁸² *Constitution of the Republic of Turkey*, 7 November 1982. Accessed 10 February 2018 at: <http://www.refworld.org/docid/3ae6b5be0.html>.

¹⁸³ Kaya, I. 2009. “Reform in Turkish asylum law: adopting the EU Acquis? ”. Robert Schuman Center for Advanced Studies. CARIM-RR (16), p. 5.

¹⁸⁴ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III). Accessed 10 February 2018 at: <http://www.refworld.org/docid/3ae6b3712c.html>.

¹⁸⁵ Zeldin, W. 2016. “Turkey”. In *Refugee Law and Policy in Selected Countries*. The Law Library of Congress, p. 261.

¹⁸⁶ Bidinger, S., Lang, A., Hites, D., Kuzmova, Y., & Nouredine, E., Akram, S. 2014. *Protecting Syrian Refugees: Laws, Policies, and Global Responsibility Sharing*. Boston University School of Law International Human Rights Clinic, p. 101.

¹⁸⁷ Kaya, I. 2009. “Reform in Turkish asylum law: adopting the EU Acquis? ”. Robert Schuman Center for Advanced Studies. CARIM-RR (16), p. 5.

and refugees are legally entitled to is far from being sufficient and fundamentally lacks implementation on the ground.

Turkish relations with UNHCR

Fortunately, the disposition providing for the status of “refugees” to be *strictu sensu* reserved to European asylum seekers is only partially implemented. In fact, thanks to the possibility for the UNHCR to operate and conduct RSD in cooperation with the Turkish authorities, the applicability of the geographical limitation is less strict in practice than in law¹⁸⁸.

The presence of the UNHCR in Turkey dates back to 1960 and according to the 1994 Council of Ministers Regulation, the UN Agency is in charge of conducting refugee status determination activities for those populations recognized as refugees from the Turkish government but who will not be resettled within its borders, due to the application of the geographical reservation to the 1951 Convention¹⁸⁹. Consequently, refugee status in Turkey is jointly determined by the UNHCR and the Turkish Ministry of Interior, provided that accepted non-European refugees do not integrate locally but resettle to third countries instead¹⁹⁰. It is interesting to note that UNHCR presence and ability to work in Turkey is slightly different compared with its presence in the other countries of the region. Notably, the UNHCR operates *through* the Turkish government; a peculiarity underlying the strength of the central control exerted over migration and displaced populations. Furthermore, no trace of an official Memorandum of Understanding between Turkey and the UNHCR can be found. The lack of official public documents related to the respective obligations of national authorities and the UN Refugee Agency is consistent with the Turkish tendency towards opaque migration and refugee policies. As a matter of fact, the only available document on the Turkey-UNHCR relationship is a letter from 1960¹⁹¹ in which the Turkish Prime Minister enables the UNHCR to establish a representation in the country¹⁹².

Regardless of its rather ambiguous role at the national level, the UNHCR seems to support Turkish policies and regulations, notably the Temporary Protection Regime which we presented in the previous section. The UN Refugee Agency supportive attitude may depend on its *de facto* central role in the national asylum system despite its very limited and weak legal position¹⁹³.

Turkey accession process to the European Union and EU influences

The intensification of relations between the EU and Turkey and the emphasis put by the Union on external action in the development of common immigration policies have led to stronger cooperation in this area¹⁹⁴. The accession process to the European Union has certainly played a fundamental role in incentivizing the Turkish government to develop a comprehensive asylum system. As a candidate for EU membership, Turkey is in fact expected to adapt its asylum system, adopting the EU *acquis*¹⁹⁵.

Therefore, starting from 1999, when Turkey reached a turning point in its process for accession to the European Union, the country started introducing new laws. According to the 2001 Accession Partnership Document (APD) produced by the Council of the EU, alignment in the field of asylum should be ensured,

¹⁸⁸ Zeldin, W. 2016. “Turkey”. In *Refugee Law and Policy in Selected Countries*. The Law Library of Congress, pp. 261-262.

¹⁸⁹ Bidinger, S., Lang, A., Hites, D., Kuzmova, Y., & Nouredine, E., Akram, S. 2014. *Protecting Syrian Refugees: Laws, Policies, and Global Responsibility Sharing*. Boston University School of Law International Human Rights Clinic, p. 99.

¹⁹⁰ Zeldin, W. 2016. “Turkey”. In *Refugee Law and Policy in Selected Countries*. The Law Library of Congress, p. 262.

¹⁹¹ National Legislative Bodies / National Authorities, *Turkey: Prime Minister letter of 22-07-60 authorizing UNHCR to name a Representation in Turkey*, 22 July 1960. Accessed 10 February 2018 at: <http://www.refworld.org/docid/3f4df3e24.html>.

¹⁹² Bidinger, S., Lang, A., Hites, D., Kuzmova, Y., & Nouredine, E., Akram, S. 2014. *Protecting Syrian Refugees: Laws, Policies, and Global Responsibility Sharing*. Boston University School of Law International Human Rights Clinic, p. 100.

¹⁹³ Soykan, C. 2012. “The New Draft Law on Foreigners and International Protection in Turkey”. *Oxford Monitor of Forced Migration*, 2 (2), p. 45.

¹⁹⁴ Lavenex, S. and Uçarer, E., 2014. “The external dimension of Europeanization: The Case of Immigration Policies”. *Cooperation and Conflict*, 39(4), p. 419.

¹⁹⁵ Kaya, I. 2009. “Reform in Turkish asylum law: adopting the EU Acquis? ”. Robert Schuman Center for Advanced Studies. CARIM-RR (16), p. 2.

activities aiming at the lifting of the geographical limitation to the 1951 Convention will be initiated and asylum status granting as well as access to basic services will be provided to refugees and asylum seekers¹⁹⁶.

The Turkish government, created a special task force in order to comply with the EU *acquis*, producing the “Strategy Paper on Activities Foreseen in the Field of Asylum within the Process of Turkey’s Accession to the European Union” in 2003. Furthermore in 2005, an Action Plan on asylum and migration was adopted, aiming at improving the national asylum legal framework¹⁹⁷ at the request of its counterpart through making national asylum system compatible with the EU *acquis*. In 2008, a revised Action Plan was published providing for the creation of a formal asylum law by 2012¹⁹⁸. However, despite recognizing the need to create a national comprehensive legislation on asylum, the National Action Plan does not include any reference to the application of the principle of *non-refoulement*¹⁹⁹, showcasing once again the resistances of the central Turkish authorities to limit its sovereignty on asylum matters, even when its membership to the EU is at stake.

Another problematic matter regarding the export of EU asylum policies and norms towards the candidate Turkish state concerns the lifting of the geographical limitation to the 1951 Convention which would account as the most revolutionary step toward the creation of a comprehensive asylum space in the country. On the matter, Turkey is committed to lifting it only once full membership will be achieved²⁰⁰, using the lifting of the geographical limitation as a bargaining chip *vis-à-vis* EU’s unilateral demands.

Building on the theoretical premises we introduced at the very beginning of our study, the Turkish case represents a critically important test to determine the impact of Europeanization in candidate countries. First of all, it is important to highlight that EU’s priority in convincing Turkey to abide by its *acquis* is the need to enforce border control and migration management, the interest in promoting human rights and asylum reforms beyond EU’s borders remaining secondary²⁰¹. As defined by Guild in fact, the EU externalizes its internal security projects towards candidate countries affecting their approach towards migration²⁰². Therefore, it is clear that considering EU’s dependence on Turkish good border-management and migration control the Union’s credibility, resulting in an inconsistent use of conditionality, could suffer also considering the uncertain timeframe within which adaptation will be rewarded and taking into account the unclear promise for membership²⁰³.

All in all, we can affirm that major development at the national level has been achieved on the promulgation of regulations and legal frameworks dealing with asylum. Those efforts have been produced by a correlation of international pressures and national necessity to deal with increasing numbers of refugees.

However, those timid improvements did not represent a definitive turning point for Turkey to finally unleash the geographical reservation to the 1951 Convention or to bridge the gap between the *de jure* and *de facto* implementation of the new dispositions. Not even the promise to finally join the EU gave Turkey the incentive to recognize non-Europeans as refugees. On the contrary, it served the central government to reaffirm its strength, independence and negotiating advantage even *vis-à-vis* the European Union.

Having depicted in details the national asylum framework implemented in Turkey, we will hereafter consider the implications of the strategic role of Turkey for the EU efforts in externalizing migration, the candidate status of the country together with its vague national asylum framework in determining the EU’s conclusion of agreements with the country. In the Turkish case, not only national legislations but more importantly its

¹⁹⁶ *Ibid.*, p. 9.

¹⁹⁷ Zeldin, W. 2016. “Turkey”. In *Refugee Law and Policy in Selected Countries*. The Law Library of Congress, p. 259.

¹⁹⁸ Kaya, I. 2009. “Reform in Turkish asylum law: adopting the EU Acquis? ”. Robert Schuman Center for Advanced Studies. CARIM-RR (16), p. 10.

¹⁹⁹ *Ibid.*

²⁰⁰ *Ibid.*, pp. 14-15.

²⁰¹ Karadağ, S. 2012. “Europeanization of Migration and Asylum Policy: A Critical analysis of Turkish Case”. Accessed 15 March 2018 at http://www.jeanmonnet.org.tr/Portals/0/scholars_database_thesis/sibel_karadag_tez.pdf, p. 11.

²⁰² Lavenex, S. and Uçar, E., 2014. “The external dimension of Europeanization: The Case of Immigration Policies”. *Cooperation and Conflict*, 39(4), p. 432.

²⁰³ *Ibid.*, pp. 432-433.

accession process will prove to play a determinant role in defining the degree and type of EU's engagement with the country.

Conclusion

Following our in-depth analysis of the Lebanese and Turkish legislations on asylum we can compare our findings, highlighting the major differences and peculiarities displayed by the two countries which will be of use when approaching the practical implications of national legislations in the conclusion of agreements with the EU.

Lebanon, as we mentioned beforehand, is non-signatory to the 1951 Convention and its 1967 Protocol; therefore, it does not have to comply with international major rules of protection. However, the country has to abide by international customary principles notably *non-refoulement* and other dispositions, which are applicable to refugees as Lebanon has ratified several international treaties. The country's skeptical attitude toward the 1951 Convention is justified on one side by the fact that national authorities claim their *de facto* compliance with the relevant dispositions, making the formal ratification of the Convention redundant, and on the other side by the fear of being identified as a destination country when ratifying the international instrument. However, this resistance of the national authorities does not imply the complete isolation from the international community in protecting refugees.

In fact, the UNHCR is allowed to work in the country according to its mandate, and such cooperation has been formally finalized in 2003 with the signing of the Memorandum of Understanding between Lebanon and the UN Refugee Agency. This agreement represents the backbone of the Lebanese reception framework considering that national legislation on the matter is scarcely developed. As a matter of fact, Lebanon's only legislative act dealing with asylum is the 1962 Law on Foreigners, a migration law in fact, which contains few articles on asylum specifically. According to Lebanese legislation, the term refugee refers solely to asylum seekers present in its territory, who will be granted asylum status to third countries through resettlement.

On the impact of the EU on Lebanon, the fact that we did not mention it in the relevant section clearly confirms the fundamental lack of direct efforts carried out by the Union in making Lebanese authorities conforming with its rules. Despite historical links with Lebanon, their geographical proximity and Lebanese strategical role as major origin and transit country for migrants, with no membership perspective there does not seem to be such a phenomenon as the Europeanization of Lebanon²⁰⁴.

Summing up the non-ratification of the 1951 Convention on the Status of Refugees and the inexistence of national specific legislation on the matter, we can affirm that major protection gaps persist in the country for the growing refugee population. Notably, the limited access to services and to basic protection guarantees make it very hard for refugees to settle in the country, which is highly committed not to facilitate or endorse any kind of integration of these populations in the national society.

On the other hand, Turkey, as we analyzed in the previous section, has ratified the 1951 Convention. Nonetheless, it has insisted on maintaining a geographical limitation, granting full refugee status to European nationals only. Such limitation is very critical considering that Turkey receives asylum application from non-European nationals mostly.

However, over the years, the country developed a system granting some kind of protection to non-Europeans through the Law on Foreigners and International Protection. The disposition grants temporary protection status to specific categories of people. However, serious questions remain open on the effective implementation of such dispositions and on their uniform application throughout the country. For instance, the fact that asylum space is granted through secondary legislation is not ideal considering that protection could be restrained by any other contrary administrative act. In the Turkish case-study, we noticed that some incentives to enlarging and securing the asylum space in the country were given thanks to the influence of the European Union which encouraged the candidate country to finalize some internal reforms on the matter. The influence of the European Union, of which limited traces could be found in framing Lebanese

²⁰⁴ *Ibid.*, pp. 433-434.

internal legislation on asylum, will be further analyzed in the next chapter when comparing bilateral EU-third countries treaties.

Notwithstanding some advancement in providing for temporary protection opportunities, the situation of refugees in Turkey remains critical, lacking *de facto* implementation of basic guarantees on the ground and avoiding the full and long-term integration of such a population in Turkish society.

The differences between the two countries are clear; however, some major convergences can be drawn. In fact, despite one country not being integrated in the formal international protection framework and the other partially abiding by it, both of them are dealing with significant numbers of asylum seekers and refugees in their territories. Neither Lebanon nor Turkey is willing to envisage long-term solutions and integration for the refugee populations, and both states are dealing with this issue through incomplete and superficial legislative measures that do not provide enough guarantees to those vulnerable populations. Furthermore, the two countries also share the preference for *ad hoc* approaches, which substitute the development of a more structured and stable system of reception.

The European Union does not seem to significantly influence Lebanese authorities in improving legislations on asylum while the EU does play a role in Turkey, where reforms were undertaken in order to comply with the EU Acquis on Migration and Asylum. This is of course dependent on the different status the two countries have *vis-à-vis* the EU: Lebanon is a third country inserted in the European Neighborhood Policy while Turkey is a Candidate State to Accession.

Therefore, framing our analysis in light of our research question, considering the rather weak asylum systems of both countries we can assume that whether the EU will prove to adopt a differentiated approach towards the two countries, national legislations will not account as the explicative variable of such an attitude. At this stage, we could affirm that leaving aside political and geopolitical implications, which are not the object of this study, the European Union exerts a deeper influence on a country more sensible to its leverage, in light of its accession status and which has ratified international instruments.

While we will further expand on whether the approach adopted by the EU in dealing with the two countries could be summarized as “one-size-fits-all” or whether it considers country-specific legislations and peculiarities, it appears already from this section that the accession status is a relevant factor in determining EU’s engagement with third countries’, their national legislation on asylum not representing a determinant factor for a successful EU policies’ export.

Third Chapter

In practice: analysis of EU- Lebanon and EU-Turkey agreements on migration and asylum

Introduction

The following chapter aims at analyzing the specific agreements in place between the European Union with both Lebanon and Turkey in order to determine whether the national legislations and policies discussed beforehand played a role in shaping the content and format of EU cooperation with the analyzed third countries on asylum-related matters.

Firstly, we will analyze the EU-Lebanon cooperation framework aimed at determining whether the Lebanese non-compliance with international instruments of refugee protection together with its status as a third country *vis-à-vis* the EU affects the engagement method used by the European Union: a context-specific approach or a broader encompassing strategy. The same rationale holds true for the analysis of the EU agreements with Turkey while considering, however, the distinctive status Turkey has *vis-à-vis* the EU as an accession candidate. We will make use of several primary sources and some secondary literature to understand the implications of the different phases of cooperation amongst the parties.

The analysis does not claim to be completely exhaustive from a historical point of view, but targets only the sources relevant to the understanding of the agreements concluded by the parties on migration and refugee matters. Nonetheless, there is a need to introduce some basic historical cooperation mechanisms in order to enable the readers to appreciate the basis on which the cooperation on migration builds upon.

3.1. European Union- Lebanon Agreements

The European Union Member States had historical ties with Lebanon, especially France, and formal cooperation between the Union and Lebanon dates back to the 1960s, when the two parties concluded a Trade and Technical Cooperation Agreement; yet, in regard to migration matters, the two parties began to cooperate at the onset of the 2000s in the framework of the European Neighborhood Policy. Lebanon became one of the sixteen countries with which agreements were concluded in light of the newly designed ENP²⁰⁵.

More recently, Lebanon has emerged as a state that could “keep migrants away” from the West, becoming a strategic partner for the European Union. Therefore, the EU has scaled up its partnership with the Lebanese authorities on security and migration matters considering the significant refugee movement toward the continent. The Lebanese government has welcomed this renewed cooperation, which has allowed for extra equipment and funding in return for a more vigilant border management and reception of refugees²⁰⁶, while the European Union has pursued a more realist agenda focused on its own main interest of securing its external borders²⁰⁷.

In this section, we will focus on the agreements concluded between the EU and the Republic of Lebanon and their implications on migration and asylum cooperation. We will, therefore, propose an analysis of several agreements, highlighting the major priorities in order to monitor the evolution of a consequent partnership between the two parties. In line with the main purpose of this contribution we will then determine whether the cooperation between the EU and Lebanon was affected by the previously examined

²⁰⁵ Pace, M., Seeberg, P., & Cavatorta, F. 2013, September. “The European Union's Democratization Agenda in the Mediterranean: a critical inside-out approach”. *Democratization*, 16 (1), p. 12.

²⁰⁶ Fakhoury, T. 2017. “Governance strategies and refugee response: Lebanon in the face of Syrian displacement”. *International Journal of Middle East Studies*, (49), p. 693.

²⁰⁷ Pace, M., Seeberg, P., & Cavatorta, F. 2013, September. “The European Union's Democratization Agenda in the Mediterranean: a critical inside-out approach”. *Democratization*, 16 (1), rpg. 6.

national dispositions on asylum or whether the EU discounted them in its relations with a non-EU and non-candidate country.

The EU-Lebanon Association Agreement (AA)

In January 2002, the European Union and its Member States concluded an Association Agreement with the Republic of Lebanon seeking to highlight the historical links and common values between the two parties in order to establish stable relations based on reciprocity, solidarity, partnership and co-development²⁰⁸. The Association Agreement represents the formalization of strong relations between the EU and Lebanon and it entered into force in its entirety in 2006 only, after the 2005 Lebanese Government approval to its country's participation in the European Neighborhood Policy framework.

Specifically, the Association Agreement contains a chapter on "Dialogue and Cooperation in the Social Field," that covers, as Article 64 develops, "[...] issues related to: (i) the living and working conditions of migrant workers, (ii) migration, (iii) illegal immigration and (iv) schemes and programmes to encourage equal treatment between Lebanese and Community nationals, mutual knowledge of cultures and civilizations, the furthering of tolerance and the removal of discrimination"²⁰⁹.

While the wording remains rather vague, the cooperation on migration between the two parties is further explained in the chapter on "Cooperation for the prevention and control of illegal immigration." In fact, Article 68 outlines a cooperation preventing and controlling illegal immigration by, for instance, committing to readmit nationals illegally present on the Lebanese territory and vice versa. Article 69 deepens such cooperation by opening the possibility to negotiate bilateral agreements regulating specific readmission of the respective nationals and "[...] if deemed necessary by any of the Parties, [negotiating] arrangements for the readmission of third country nationals"²¹⁰.

In the 2002 Association Agreement, social cooperation dispositions, among which we find few specific articles on migration, represent a rather minor number, the focus of the whole document being very clearly oriented toward trade and financial cooperation. However, it is important to put the 2002 Association Agreement into context. The EU-Lebanon Association Agreement was concluded as part of the EU's Mediterranean policy and it is one of a series of similar texts establishing partnerships between the EU and several States of the Southern bank of the Mediterranean Sea, representing therefore only one aspect of a wider EU strategy toward the Mediterranean region as a whole.

The 2007 Action Plan

Following the entry into force of the 2002 European Union-Lebanon Association Agreement, the Lebanese Authorities in cooperation with the EU produced a document aiming at implementing the commitment undertaken by the parties in the Association Agreement: the Action Plan. We will hereafter proceed to describe the evolution of the commitments undertaken by the parties and analyze the advancement or stagnation of the implementation of the obligations concerning migration-related issues as provided for in the Action Plan.

The 2007 Action Plan is the first of its kind and followed the entry into force of the AA in 2006. The Action Plan was published in January 2007, giving new impetus to bilateral relations in the framework of the European Neighborhood Policy. This political document covering a timeframe of five years, aimed at laying out the strategic objectives of the cooperation between the two Parties while encouraging Lebanese national reform objectives and further integrating them into European and social structures²¹¹.

The Action Plan, signed one year after the end of the 2006 Lebanese-Israeli War, underlined the important objective of restoring Lebanon's full sovereignty and territorial integrity while committing to finding

²⁰⁸ Euro-Mediterranean agreement establishing an association between the European Community and its Members States, of the one part, and the Republic of Lebanon, of the other part, Brussels, 18 April 2002, p. 6.

²⁰⁹ *Ibid.*, p. 51.

²¹⁰ *Ibid.*, p. 55.

²¹¹ European Union, "European Neighboring Policy, EU-Lebanon Action Plan", 2007. Accessed 18 February 2018 at https://ec.europa.eu/sites/ecas/files/lebanon_enp_ap_final_en.pdf, p. 1.

solutions to the Palestinian refugee issue. The priorities laid out in the document reflect those agreed upon in the AA. For the purpose of our analysis, it is significant to mention that the Action Plan gave particular relevance to the establishment of:

“[...] a comprehensive human right strategy, including protection of rights of minorities, marginalized populations and non-citizens” and of an “improved cooperation on the management of migratory flows and dialogue on visa issues”²¹².

Furthermore, the Action Plan determines that the two parties will:

“Start developing a comprehensive protection system, in line with international standards, to process and follow up on asylum applications”²¹³.

From the content of the text we examined, it seems that the EU influence on Lebanese position on refugee status is rather weak, at this point in time, considering that despite the abovementioned timid dispositions, the 2007 Action Plan, does not include the word *refugee* except when referring to Palestinian populations, unveiling the main purpose of the document: cooperating on migration and border management primarily which seems not to be undermined by Lebanese weak national legislations on asylum.

The 2013-2015 Action Plan

Following the Arab Spring uprisings, the European Union perceived the urgency of developing a new approach toward neighboring countries with the goal of enhancing rapid development, substantial reforms and consolidate healthy democracies. This revised EU approach, which was designed in collaboration with third countries amongst which Lebanon, was based on mutual accountability and shared commitments to the universal values of human rights, democracy and the rule of law²¹⁴.

The second EU-Lebanon Action Plan, developed within the framework of the ENP, was designed to cover a timeframe of three years during which the parties agreed to focus on a limited number of commonly-determined, priority objectives. Furthermore, in order to support the full implementation of the commitments agreed upon in the Association Agreement, the 2013-2015 Action Plan defines benchmarks and indicators outlining the specific process and tools leading to the achievement of each priority objective providing for the specific steps enabling progress assessment²¹⁵.

Amongst the priorities outlined in the document, the one that is most relevant to our study concerns “Human rights and protection of vulnerable populations, including Palestinian refugees, by legislation or other adequate measures and targeted actions”. In order to achieve such a goal, the 2013 Action Plan provides for:

“ The improvement of the status and living conditions of vulnerable populations, including refugees, ‘displaced persons,’ asylum seekers, stateless persons, domestic workers, migrant workers, disabled, each according to their specific status; commitment to the principle of non-refoulement, of refugees and asylum seekers according to the UN Convention Against Torture and other cruel, inhuman and degrading treatment, and according to international custom; and monitoring of the implementation of non-refoulement”²¹⁶.

The indicators that will be taken into account in monitoring the improvements and advancements of the commitments contained in the Association Agreement are “[...] legislative, regulatory, or other measures and targeted actions taken: asylum conditions and protection of refugees/displaced persons improved in line with international standards including through the MoU currently being negotiated with UNHCR; aggregate data on the processing and follow up of asylum applications; situation of stateless persons re-

²¹² *Ibid.*, p. 3.

²¹³ *Ibid.*, p. 19.

²¹⁴ European Union, “Action Plan for EU-Lebanon Partnership and Cooperation 2013-2015”, 17588/13 EU-Lebanon ENP Action Plan 2013-15, 2013. Accessed 18 February 2018 at http://www.europarl.europa.eu/cmsdata/124080/action_plan_for_eu-lebanon_partnership_and_cooperation_2013-2015_en.pdf, p. 1.

²¹⁵ *Ibid.*, p. 2.

²¹⁶ *Ibid.*, p. 6.

examined²¹⁷.

The relevance of the 2013-2015 EU-Lebanon Action Plan to the extent of our study is the fact that, for the first time, Lebanon accepted a language stressing the importance of improving the standards and living conditions of vulnerable populations, including refugees. In fact, as we mentioned beforehand, the previous Action Plan did not even include the words *refugee* or *asylum seeker*, the only reference to refugee status strictly allowed being in relation to Palestinians. Furthermore, the references made in the text to the need for Lebanon to improve national legislation on asylum according to international standards represents, at least in theory, the breaking down of one of the major taboos the EU-Lebanon relations²¹⁸ had been subject to.

Finally, in the 2013 Action Plan, specific dispositions are agreed upon concerning Palestinians and their protracted presence in the Lebanese territory, recognizing the importance of broadening their employment opportunities while coherently with the previous Action Plan, enhanced cooperation on migration management and on prevention of illegal migration is recognized as a priority for the Parties²¹⁹.

This 2013-2015 Action Plan represented a fundamental step in the EU-Lebanese relation on migration considering that it was the first document in which a clear reference to refugees and asylum seekers was made, independent of their nationality. The Action Plan reflected mutual commitments in order to ensure the improvement of the Lebanese asylum space, the promotion of legal reforms in Lebanon and finally, it focused on the need for the EU to develop a robust legal aid system²²⁰.

Initiatives undertaken in response to the Syrian situation

In order to allow for a better understanding of the following cooperation initiatives undertaken between the EU and Lebanon it is central to mention the international response to the Syrian situation and its implications for Lebanon. As a matter of fact, in 2015 the international community composed of a wide range of stakeholders together with the Lebanese Government launched the Lebanese Crisis Response Plan (LCRP) aimed at adopting a coordinated approach to receiving Syrian refugees. The document sought to ensure humanitarian assistance and protection for the vulnerable Syrians, strengthening the capacity of local actors in delivering services and enhancing the resilience of Lebanese hosting communities. The LCRP wished to emphasize the role of the Lebanese government in leading the response while reaffirming the country's preference for the voluntary return of displaced Syrians as the only viable durable solution for the displaced population²²¹.

The first Lebanese reaction to Syrian mass displacement has been typical considering Lebanon national context which is characterized by weak institutionalism, competing political strategies and informal transactions among the elites. Therefore, on one hand, the State's policy of delegating refugee management to local and international actors has yielded positive outcomes in terms of social cohesion. On the other hand, the absence of monitoring and central ownership has resulted into uncoordinated refugee reception strategies²²² resulting in inconsistent cooperation on the ground²²³.

Considering the protracted nature of the Syrian displacement, the London Conference was held in 2016. This additional initiative, brought together States' Officials, UN Secretary General and the leadership of other International Organizations as well as representatives from the civil society in order to renew the International Community's engagement in improving the situation on the ground. The main aim of the Conference was for participants to pledge their financial support for the protracted Syrian crisis, while

²¹⁷ European Union, "Action Plan for EU-Lebanon Partnership and Cooperation 2013-2015", 17588/13 EU-Lebanon ENP Action Plan 2013-15, 2013. Accessed 18 February 2018 at http://www.europarl.europa.eu/cmsdata/124080/action_plan_for_eu-lebanon_partnership_and_cooperation_2013-2015_en.pdf, p. 6.

²¹⁸ *Ibid.*

²¹⁹ *Ibid.*, p. 7.

²²⁰ *Ibid.*

²²¹ Fakhoury, T. 2017. "Governance strategies and refugee response: Lebanon in the face of Syrian displacement". *International Journal of Middle East Studies*, (49), p. 691.

²²² *Ibid.*

²²³ *Ibid.*

voicing great appreciation to the Lebanese authorities for the hospitality given to Syrians fleeing their home country, despite national economic difficulties²²⁴. As a matter of fact, the international community generally praised the country's "generosity and resilience" and despite some criticisms from experts defining the Lebanese response as "the policy of non-policy," Lebanese open-border approach and its general respect of the principle of *non-refoulement* are commendable²²⁵.

Specifically, during the Conference, Lebanon called on the International Community to maintain its commitment to support Lebanese efforts, while launching a new vision of the national strategy to manage the temporary and ongoing stay of Syrians. Lebanon voiced its commitment to find a balanced solution, cautious of international obligations of *non-refoulement* focused on "anticipating the safe return of Syrian nationals to their home country, in order for them to contribute effectively in the reconstruction and economic development of Syria"²²⁶.

As we will analyze in the following sections, the London Conference "commitments" are institutionalized by the Lebanon-EU Partnership Priorities and Compact, making this few preparatory lines noteworthy.

The 2016-2020 Lebanon-EU Partnership Priorities

In 2015, the European Union proposed the Revised European Neighborhood Policy focusing on the implementation of a new phase of engagement with third countries enhancing the sense of ownership of the process by both sides. This new approach is exemplified by the "partnership priorities" format, which represents the key point of reference for the development of partnerships through the agreement on a limited set of targeted priorities²²⁷. According to this new way of working promoted by the EU, the EU and Lebanon have agreed to consolidate their historical partnership through jointly defining a set of priorities for the period 2016-2020 with the aim of strengthening Lebanese resilience and stability while trying and addressing the protracted situation caused by the Syrian conflict²²⁸.

The Document published in 2016 "Lebanon-EU Partnership Priorities, A renewed EU-Lebanon Partnership (2016-2020)," focuses on the common challenges faced by the two Parties linked to the Syrian crisis and aims to uphold Lebanon as a model of moderation for the entire region. The Partnership Priorities, while focusing on addressing urgent challenges, represent a continuum with the historical cooperation between the EU and Lebanon²²⁹.

Amongst the agreed upon priorities, which should be considered as interlinked and mutually reinforcing, are: (i) Security and countering terrorism, (ii) Governance and Rule of Law, (iii) Fostering Growth and Job Opportunities, (iv) Migration and Mobility and (v) Mechanisms for dialogue and mutual coordination²³⁰.

It is interesting to note that on the fourth priority "Migration and Mobility" the two Parties negotiated a joint declaration launching a Mobility Partnership aimed at enhancing cooperation in migration and mobility matters in order to enable Lebanon to strengthen its capacities to manage both regular and irregular flows of migration with a particular focus on ensuring that the nexus between migration and development is

²²⁴ Republic of Lebanon, 2016. Lebanon Statement of Intent (Final). *SUPPORTING SYRIA & THE REGION*. London.

²²⁵ Fakhoury, T. 2017. "Governance strategies and refugee response: Lebanon in the face of Syrian displacement". *International Journal of Middle East Studies*, (49), pp. 692-693.

²²⁶ Republic of Lebanon, 2016. Lebanon Statement of Intent (Final) . *SUPPORTING SYRIA & THE REGION*. London.

²²⁷ Council Decision on the Union position within the Association Council set up by the Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Lebanon, of the other part, with regard to the adoption of EU-Lebanon Partnership Priorities and annexed Compact.

²²⁸ The EU-Lebanon Association Council, Decision No 1/2016 of the EU-Lebanon Association Council agreeing on EU-Lebanon Partnership Priorities, Brussels 11 November 2016. Accessed 18 February 2018 at <http://www.consilium.europa.eu/media/24224/st03001en16docx.pdf>, p. 3.

²²⁹ *Ibid.*, p. 1.

²³⁰ The EU-Lebanon Association Council, Decision No 1/2016 of the EU-Lebanon Association Council agreeing on EU-Lebanon Partnership Priorities, Brussels 11 November 2016. Accessed 18 February 2018 at <http://www.consilium.europa.eu/media/24224/st03001en16docx.pdf>, pp. 4-10.

reinforced²³¹. However, at present, despite the Commission's commitment to advance the negotiations on the EU-Lebanon Mobility Partnership²³², a format used by the EU in its relations with other Middle-Eastern Countries and which we analyzed in the first chapter, have not yet been finalized and, therefore, this specific point of enhanced cooperation only exists on paper²³³.

In addition to those priorities, the two parties agreed on the importance of “face[ing] the humanitarian crisis with a comprehensive approach.” To this extent, both Lebanon and the EU agreed on the fact that the only sustainable long-term solution for refugees and displaced persons from Syria into Lebanon is their safe return to their country of origin when conditions for such a return are met. Therefore, the parties agreed to strengthen their cooperation in order to both improve the conditions in Syria and advocate for Lebanese interests to be taken into account in international fora. Lebanon furthermore committed to implementing the new approach launched at the London Conference on managing the temporary and ongoing stay of Syrians displaced into its territory to mitigate the pressure of the Syrian mass influx on the country without being prejudicial to neither the interests of the country and of the Lebanese citizens nor to the refugees' needs²³⁴.

2016 EU-Lebanon Compact

In 2016, when the EU and the Republic of Lebanon agreed on the “Partnership Priorities” they also negotiated an annex to it: the “Compact” aimed at guiding the two parties' efforts to improve the living conditions of both Syrian refugees in Lebanon and other vulnerable populations amongst which Lebanese hosting communities. Through the Compact, the EU proposed a comprehensive support package combining several policy elements within EU capacities, building on the Partnership Priorities. The Compact, intends to bolster EU-Lebanon cooperation over the period 2016-2020, supporting the stabilization of the country, providing a safe environment for refugees and displaced persons from Syria, increasing the resilience of the Lebanese national structures and allowing for their needs to be addressed in an effective, dignified and fair manner²³⁵.

On the financial side, the Compact includes a minimum EU contribution to Lebanon of 400 million Euros for the year 2016-2017 and additional funds that will be made available for the remaining years of the Compact's timeframe. This funding is independent from the bilateral funds already planned to be provided to the Country and it will be used amongst other to support the Lebanese strategy “reaching all children with education 2016-2021”²³⁶.

It is important to note that Lebanese authorities committed to try and ease the temporary stay of Syrians who fled the war through continuing to find ways to facilitate the streamlining of regulations governing their stay according to Lebanese laws. The weakness of the Compact remains the fact that it does not establish any binding commitment for the two parties, representing a declaration of intent more than anything else while avoiding any reference to the integration of Syrian refugees in Lebanese society²³⁷.

Without changing the Lebanese positions in considering the Syrians who fled the war as displaced persons and without denying Lebanese strategic goal to reduce their number and ensure their safe and full return to

²³¹ *Ibid.*, p. 9.

²³² European Commission, *Second Progress Report: First Deliverables on the Partnership Framework with third countries under the European Agenda on Migration*, COM (2016) 960 final, 14.12.2016. Accessed 18 February 2018 at https://eeas.europa.eu/sites/eeas/files/second-progress-report-1_en_act_part1_v11.pdf, p. 9.

²³³ Seeberg, P. 2017, June. “The Syrian Refugees in Lebanon and the EU-Lebanon Partnership Compact – New Strategies, Old Agendas”. *Videnscenter Om Det Moderne Mellemøsten*, pp. 2-3.

²³⁴ The EU-Lebanon Association Council, Decision No 1/2016 of the EU-Lebanon Association Council agreeing on EU-Lebanon Partnership Priorities, Brussels 11 November 2016. Accessed 18 February 2018 at <http://www.consilium.europa.eu/media/24224/st03001en16docx.pdf>, p. 3.

²³⁵ EU-Lebanon Partnership, The Compact. Accessed 18 February 2018 at <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/lebanon-compact.pdf>, p. 1.

²³⁶ *Ibid.*

²³⁷ Seeberg, P. 2017, June. “The Syrian Refugees in Lebanon and the EU-Lebanon Partnership Compact – New Strategies, Old Agendas”. *Videnscenter Om Det Moderne Mellemøsten*, p. 3.

Syria²³⁸, this Compact represents a *prise de conscience* from the Lebanese side on the importance of committing to addressing the mass influx. On the EU side, while major gaps on implementable measures remain present in the text, it is certain that the ambitions behind it are relevant. In fact, several EU interests are at stake in Lebanon: first of all, the ideal result of the activities proposed in the context of the Compact would be for Lebanon to continue hosting large numbers of refugees so that a minimal number would continue their journey toward Europe and finally, the security dimensions are significant considering that the migration crisis constituted a clear field of cooperation between the two partners²³⁹.

Following the analysis of the formal cooperation between the European Union and Lebanon on asylum and migration related matters, we can safely affirm that the relations between the two parties are a cornerstone for the EU management of migration despite Lebanese incomplete asylum system. Initiated formally through the launching of the European Neighborhood Policy, the EU and Lebanon concluded an Association Agreement, touching upon the cooperation for the prevention and control of illegal immigration through amongst other the implementation of a readmission agreement between the two parties. However, financial cooperation and trade were the very reasons for the conclusion of such an agreement.

In 2007, the Action Plan signed between the EU and Lebanon aimed at implementing the commitments undertaken by the two parties in the AA. The Action Plan represented an important turning point considering that the Lebanese government agreed on developing a comprehensive protection system, in line with international standards, to process and follow up on asylum applications. Nevertheless, both the Association Agreement and the Action Plan represent rather weak instruments, their declaratory nature not allowing for serious implementation on the ground. It is after the 2011 Arab Spring that the EU, in the framework of the renewed ENP, launched a new approach toward its neighboring countries. In this light, the EU and Lebanon signed a second Action Plan covering the years 2013-2015 focusing on a limited set of agreed priorities.

Once the Action Plan achieved its expiration, the EU proposed a new format of cooperation with Lebanon through the establishment of the “Partnership Priorities” and its annex the EU-Lebanon Compact. The focus of cooperation presented in both of those new instruments is of course, the mass influx of Syrian refugees in Lebanon. The compelling interests of the two parties respectively the EU will to ensure that Lebanon manages its borders avoiding the displacement of those Syrian populations toward Europe, and the Lebanese commitment to ensure the respect of the interests of hosting communities while advocating for the need to create the conditions for voluntary return, clearly impose cooperation from the two sides.

From what we have analyzed, the importance of the cooperation between the EU and Lebanon is plain; two parties pushed by different interests are aware of the benefits of a stable cooperation. Despite the EU not trying too hard to make Lebanese legislation on asylum become more comprehensive, or its inability to do so, the cooperation between the two parties has not stopped.

Probably in view of the fact that Lebanon is *only* a third country, inserted in the neighboring policy of the EU, without any vocation to accession, the EU could not influence the country’s legislations on asylum. Despite this lack of legislative influence, the EU provision of both funding and technical assistance represents a major asset in the relations between the two parties. Very rationally and realistically, the EU and Lebanon found a common ground for cooperating on asylum-related matters because of the EU need for a reliable neighbor, capable of managing its borders and preventing asylum seekers to continue their journey toward Europe, and Lebanese need for funding and development aid.

The specific national legislation on asylum which as we previously analyzed is incomplete at best, did not prevent the EU from engaging with Lebanon. On the contrary, Lebanon has always been inserted in the Neighborhood and Mediterranean policy of the Union. In this context, having an informed understanding of national legislations, we can confirm that our hypothesis is partially verified in the Lebanese case. In fact, while the accession status seems to play a relevant role in framing the EU-third countries cooperation, the

²³⁸ EU-Lebanon Partnership, The Compact. Accessed 18 February 2018 at <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/lebanon-compact.pdf>, p. 1.

²³⁹ Seeberg, P. 2017, June. “The Syrian Refugees in Lebanon and the EU-Lebanon Partnership Compact – New Strategies, Old Agendas”. *Videnscenter Om Det Moderne Mellemøsten*, pp. 4-5.

internal factor we focused on, notably national legislative framework on asylum, does not play a discriminant role. Notably, having analyzed the Lebanese case, it is clear that the EU adopts a regional strategy, only partially adjustable to the specific partner country's preferences.

The conclusion of Association Agreements, Action Plans and Partnership Priorities Document between the EU and Lebanon, are in fact to be considered as part of the wider EU ENP strategy. The Union proposes a template to partner countries, a predetermined format in the framework of which, national preferences can be partially taken into account. As presented in the theoretical part, therefore, in practice as well, there is no unique explication to the EU's export of policies which could be largely assimilated to a "one-size-fits-all" strategy leaving some margin of maneuver to be adapted to national specificities.

We will now analyze the Turkish case and comparatively draw conclusions considering the distinctive association status possessed by the country.

3.2. European Union-Turkey Agreements

The relations between Turkey and the European Union started half a century ago, when in 1959 Turkey sought cooperation with the European Economic Community (EEC). The formal cooperation between the two parties was realized in the framework of the Ankara Agreement signed in 1963 and which according to its preamble was meant²⁴⁰:

"[...]to ensure a continuous improvement in living conditions in Turkey and in the European Economic Community through accelerated economic progress and the harmonious expansion of trade, and to reduce the disparity between the Turkish economy and the economies of the Member States of the Community"²⁴¹.

Following the implementation of the Agreement providing for the establishment of a progressive "Custom Union" between the parties formally set up in 1995, Turkey filed its application to join the EEC in 1987. Ten years after Turkish application, it was defined as eligible to join the EU and at the Helsinki Summit in 1999 the European Council gave Turkey the status of candidate country on the basis of the Commission's recommendations. However, it was only two years later, in 2001, that the European Council adopted the EU-Turkey Accession Partnership Document (APD) consisting in a roadmap for Turkey's accession to the EU²⁴². According to the APD, Turkey was expected to adopt EU's restrictive migration policies while committing to respect international standards of refugee protection²⁴³.

Turkish authorities, adopted the National Program for the Adoption of the Acquis (NPAA) in order to align national legislations to EU regulations. In the same year, the Commission decided to increase the deployment of funding supporting the Turkish efforts to align with the EU Acquis through the pre-accession instrument (IPA)²⁴⁴.

While membership talks started in 2004, the European Council having declared Turkey sufficiently fulfilling the criteria for opening accession consultations, the real negotiations were launched in 2005. Complications shortly arose following Turkey's refusal to apply the Additional Protocol of the Ankara Agreement to Cyprus, which resulted in the freezing of the whole accession process. Since then, discussions on sporadic chapters of the accession negotiations were held in 2010, 2013 and 2015 without significantly advancing the

²⁴⁰ Delegation of the European Union to Turkey, "EU and Turkey's History". Accessed 22 February 2018 at <https://www.avrupa.info.tr/en/eu-and-turkeys-history-711> .

²⁴¹ Ankara Agreement, Agreement Establishing an Association Between the European Economic Community and Turkey (Signed at Ankara, 1 September 1963). Accessed 22 February 2018 at <http://www.gif.org.tr/Documents/AB/1963%20ANKARA%20Agreement.pdf>, p. 1.

²⁴² European Commission, "European Neighborhood Policy and Enlargement: Turkey". Accessed 22 February 2018 at https://ec.europa.eu/neighbourhood-enlargement/countries/detailed-country-information/turkey_en.

²⁴³ Karadağ, S. 2012. "Europeanization of Migration and Asylum Policy: A Critical analysis of Turkish Case". Accessed March 15, 2018 at http://www.jeanmonnet.org.tr/Portals/0/scholars_database_thesis/sibel_karadag_tez.pdf, pp.21-22.

²⁴⁴ European Commission, "European Neighborhood Policy and Enlargement: Turkey". Accessed 22 February 2018 at https://ec.europa.eu/neighbourhood-enlargement/countries/detailed-country-information/turkey_en.

accession process²⁴⁵, the Turkish refusal to lifting the geographical limitation on the 1951 Refugee Convention remaining the most critical aspect of harmonization attempts²⁴⁶.

Despite the relevance of the historical implications of the European Union relations with Turkey, in the interest of our research we will not study in details the rich set of cooperation agreements between the two parties. Having set the ground on the historical and controversial nature of the cooperation between the European Union and Turkey, in this section we will focus on the agreements the two parties concluded on migration and asylum matters only, after having described two elements central to the negotiations between the two parties: the 2013 EU-Turkey Readmission Agreement and the Visa Liberalization Dialogue.

Readmission agreements

Readmission agreements are normally associated with migration policies, intending to facilitate the return of those foreigners who do not have the right to legally stay in a third country. In line with the EU Return Directive entered into force in 2008, EU Member States as well as Norway, are required to either regularize the status of or issue a return decision to, any third-country national illegally staying in their territory; for instance, asylum seekers whose applications have received a negative response or migrants who do not have the right to stay in the country. However, the EU Directive alone cannot achieve its aims since cooperation with countries of origin or transit is essential in order to carry out returns. Therefore, the EU has been actively negotiating with origin and transit countries readmission agreements, offering important incentives to third countries, in order to enhance this type of cooperation²⁴⁷.

Since 2003, negotiations on the EU-Turkey Readmission Agreement have been on the table; however, they were only signed a decade later by the EU Commissioner for Home Affairs, Cecilia Malmström, and the Turkish Minister of Interior²⁴⁸. The main objective of the EU-Turkey readmission agreement is to establish procedures for rapid and orderly readmission by each side of the persons who entered and reside in the territory of the other side irregularly²⁴⁹. The Readmission Agreement, on a fully reciprocal basis, stipulates that for instance, Turkey is required to readmit every third country nationals who transited through Turkey on his or her way to the EU and “who do not or who no longer, fulfill the conditions for entry to, presence in, or residence in”²⁵⁰ the EU. While EU countries have to continue examining individual asylum claims, the Asylum Procedures Directive allows EU-Member States to deem an asylum application inadmissible when the asylum seeker could have received protection in a third safe country or when the asylum applicant already received protection in a third country, notably the first country of asylum. In those circumstances, provided the existence of a readmission agreement with a safe-third country or with the first country of asylum, the applicant can be returned to such a State²⁵¹.

Leaving aside the questions arising from the EU Asylum Procedure Directive²⁵², the implementation of the Readmission Agreement is clearly overburdening an already stretched and ambiguous asylum system. Considering the responsibilities, the Readmission Agreement imposes on Turkey, the country has been concluding readmission agreements with countries of origin in order to relieve pressure from national reception capacities. It could appear that Turkey ultimate intention is in fact, to create a chain of readmission agreements based on Turkey’s acceptance of returnees from EU countries while subsequently returning

²⁴⁵ *Ibid.*

²⁴⁶ Karadağ, S. 2012. “Europeanization of Migration and Asylum Policy: A Critical analysis of Turkish Case”. Accessed March 15, 2018 at http://www.jeanmonnet.org.tr/Portals/0/scholars_database_thesis/sibel_karadag_tez.pdf, p.22.

²⁴⁷ Skribeland, Ö. G. 2016. “A critical review of Turkey's asylum laws and practices, Seeking Asylum in Turkey”. *Norwegian Organisation for Asylum Seekers (NOAS)*, p. 38.

²⁴⁸ European Commission Press Release, Brussels, 16 December 2013. Accessed 22 February 2018 at http://europa.eu/rapid/press-release_IP-13-1259_en.htm.

²⁴⁹ *Ibid.*

²⁵⁰ European Union and The Republic of Turkey Agreement on the readmission of persons residing without authorization. Accessed 22 February 2018 at [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22014A0507\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22014A0507(01)&from=EN), p. 1.

²⁵¹ Skribeland, Ö. G. 2016. “A critical review of Turkey's asylum laws and practices, Seeking Asylum in Turkey”. *Norwegian Organisation for Asylum Seekers (NOAS)*, pp. 39-40.

²⁵² *Ibid.*, p. 39.

those individuals to their countries of origin or transit²⁵³. This “return chain” leads to potential major human rights and international law breaches that could imply the legal responsibility of all the countries involved in the process. However, those human rights issues did not prevent Turkey from concluding readmission agreements with Syria, Greece, Kyrgyzstan, Romania, Ukraine, Pakistan, Russia, Nigeria, Bosnia and Herzegovina, Yemen, Moldova, Belarus and Montenegro in 2016²⁵⁴.

Finally, we can safely affirm that the Readmission Agreement between Turkey and the EU is controversial on the implicit acceptance from the EU of Turkey as a safe place for refugees. According to EU law, a country must fulfill several criteria in order to qualify as a “safe third country.” Notably, it must enable asylum seekers to request refugee status and to receive protection on the national territory, respect the principle of *non-refoulement* and prohibit the expulsion in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as defined by international law. Considering those provisions and having analyzed Turkish asylum framework, it appears rather dubious that Turkey could be considered as a safe country for refugees²⁵⁵. However, despite the safe third country argument, the readmission agreement represented a fundamental negotiation ground for the two parties to scale up their cooperation.

The Visa Liberalization Dialogue

Another important component of EU-Turkey relations is represented by the Visa Liberalization Dialogue which followed the negotiations of the Readmission Agreement. The Visa Liberalization Dialogue, launched in 2013 parallel with the signature of the Readmission agreement, was crucial at that time as it was its inclusion in the EU-Turkey Statement. According to the Dialogue, aiming at eliminating the visa obligation imposed on Turkish nationals travelling to the Schengen area, visa liberalization will be achieved once the criteria and priorities set out by the “roadmap towards a visa-free regime with Turkey” are respected. This document lists the requirements to be fulfilled by Turkey in order to allow the Commission to present a proposal based on solid grounds to the Council and the Parliament to amend the Council Regulation (EC) No 539/2001²⁵⁶ listing the third countries whose nationals must be in possession of visas when travelling to the EU and those whose nationals are exempt from that requirement²⁵⁷.

The roadmap toward a visa-free regime with Turkey contains five basic obligations with seventy-two criteria. The main areas in which Turkey will have to undertake legislative and administrative reforms in order to establishing a secure environment for visa-free travel are: (i) document security, (ii) migration and border management, (iii) public order and security and (iv) fundamental rights²⁵⁸. The Roadmap contains *inter alia* the obligation to effectively implement the EU-Turkey Readmission Agreement in order to guarantee border and migration management while ensuring the respect of basic human rights and the conducting of asylum procedures in line with international standards²⁵⁹.

The visa liberalization process represented the *conditio sine qua non* to convince Turkey to implement the readmission agreement, which could be suspended if the visa obligations are not implemented toward Turkish citizens in a reasonable timeframe²⁶⁰. The Commission through the Instrument of Pre-Accession

²⁵³ *Ibid.*

²⁵⁴ Skribeland, Ö. G. 2016. “A critical review of Turkey's asylum laws and practices, Seeking Asylum in Turkey”. *Norwegian Organisation for Asylum Seekers (NOAS)*, p. 39.

²⁵⁵ *Ibid.*, p. 40.

²⁵⁶ Sonmez, P., & Kirik, H. 2017. “Turkish-EU Readmission Agreement: A Critique of EU-Turkey Migration Dialogue”. *Security Strategies Journal*, 12(25), p. 11.

²⁵⁷ COUNCIL REGULATION (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, 2001R0539 — EN — 18.10.2013 — 008.001. Accessed 22 February 2018 at

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2001R0539:20131018:EN:PDF>, p. 1.

²⁵⁸ European Commission, “Roadmap towards a visa-free regime with Turkey”. Accessed 22 February 2018 at https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-is-new/news/news/docs/20131216-roadmap_towards_the_visa-free_regime_with_turkey_en.pdf, p. 1.

²⁵⁹ European Commission Press Release, Brussels, 16 December 2013. Accessed 22 February 2018 at http://europa.eu/rapid/press-release_IP-13-1259_en.htm.

²⁶⁰ Sonmez, P., & Kirik, H. 2017. “Turkish-EU Readmission Agreement: A Critique of EU-Turkey Migration Dialogue”. *Security Strategies Journal*, 12(25), p. 11.

Assistance (IPA), committed to supporting the implementation of legal reforms and the building of administrative capacities deemed to be useful to comply with the Roadmap. However, the Commission's assessment of Turkish compliance with the dispositions of the roadmap²⁶¹, carried out three times to date, have not resulted in the lifting of visa obligations for Turkish nationals²⁶².

2015 EU-Turkey Joint Action Plan

Turkey has historically been a country of asylum. More recently, since the breakout of political turmoil in its near abroad the country has started to receive thousands of asylum applications each year²⁶³. The continuous influx of people seeking refuge from the worn-torn region of the Middle East made Turkey become the country hosting the highest number of refugees of the world. The implications of the important presence of refugees in Turkey have clear consequences for the European Union which²⁶⁴ proposed the draft text of the "EU-Turkey Joint Action Plan" on the 15th of October 2015. The Plan was designed in order to strengthen the cooperation between the two parties in terms of both supporting Syrian nationals enjoying international temporary protection and managing migration to respond to the crisis²⁶⁵ while helping Turkish host communities.

The Joint Action Plan defined three ways to respond to Syrians' displacement: (i) addressing the root causes leading to the massive influx of Syrians, (ii) supporting Syrians under temporary protection and their host communities in Turkey and through (iii) strengthening cooperation to prevent irregular migration flows to the EU. The monitoring of the implementation of the Joint Action Plan would be assessed by both the EU Commission and High Representative as well as by the Turkish President, who established a EU-Turkey high-level working group on migration²⁶⁶.

A month after the Joint Action Plan was designed, during the EU-Turkey Summit, the Heads of State of the EU Member States met with their Turkish counterpart, deciding to formally activate the Plan, while deciding on additional measures to be adopted concerning migrants not in need of international protection. To this extent, the two parties decided to implement the bilateral readmission dispositions determined in the readmission agreement and started returning those migrants who were not in need of international protection to their countries of origin²⁶⁷.

The European Union in the context of the Joint Action Plan committed to providing additional financial aid to Turkey, liberalizing short stay visas to Turkish nationals and to the relaunching of negotiations on Turkey's accession process to the EU, frozen since 2006. Notably on the financial aid matter, major criticisms were raised considering that the Action Plan, as a political declaration based on the principle of *do ut des*, appeared to be a rather weak legal foundation to justify the additional budgetary contributions to Turkey. As a matter of fact, the 3 billion Euros pledged by the EU followed a special procedure to be deployed, without passing through the EU Parliament approval stage, being provided through Member States' budgets in order to avoid any kind of impartial control on the maneuver²⁶⁸.

²⁶¹ European Commission Press Release, Brussels, 16 December 2013. Accessed 22 February 2018 at http://europa.eu/rapid/press-release_IP-13-1259_en.htm.

²⁶² Sonmez, P., & Kirik, H. 2017. "Turkish-EU Readmission Agreement: A Critique of EU-Turkey Migration Dialogue". *Security Strategies Journal*, 12(25), p. 12.

²⁶³ Kaya, I. 2009. "Reform in Turkish asylum law: adopting the EU Acquis?". Robert Schuman Center for Advanced Studies. CARIM-RR (16), p. 8.

²⁶⁴ European Commission, "European Neighborhood Policy and Enlargement: Turkey". Accessed 22 February 2018 at https://ec.europa.eu/neighbourhood-enlargement/countries/detailed-country-information/turkey_en.

²⁶⁵ Moldovan, C. 2017. "Is the EU-Turkey Action Plan an effective or just an apparent solution to the refugee crisis?". *CES Working Papers*, IX(3), p. 198.

²⁶⁶ European Commission - Fact Sheet "EU-Turkey joint action plan", 15 October 2015. Accessed 22 February 2018 at http://europa.eu/rapid/press-release_MEMO-15-5860_it.htm.

²⁶⁷ Moldovan, C. 2017. "Is the EU-Turkey Action Plan an effective or just an apparent solution to the refugee crisis?". *CES Working Papers*, IX(3), p. 198.

²⁶⁸ De Marcilly, C., & Garde, A. 2016, June. "The EU-Turkey Agreement and its implications. An unavoidable but conditional agreement". *Fondation Robert Schuman, European issues*, (396), p. 4.

On the Turkish side, the Government committed to limiting the arrivals on its territory through closing its borders with Syria and suspending the right to obtain visas for Syrian nationals coming from Lebanon and Jordan while further engaging in the full implementation of the LFIP²⁶⁹. Furthermore, Turkey in line with the Joint Action Plan accepted to keep the refugees already present on its territory improving their reception and registration conditions in collaboration with the EU. Finally, Turkey accepted to implement several bilateral agreements with both transit and origin countries in order to ensure the readmission of irregular migrants while further cooperating with Frontex in order to fight against smugglers enhancing the control of its borders²⁷⁰.

The focus of the Joint Action Plan being to combat illegal migration, implicitly affected the persons that could be considered as refugees, raising major questions on its compatibility with the 1951 Convention Relating to the Status of Refugees and the basic standards it sets on the legal status of refugees²⁷¹.

2016 EU-Turkey Statement

Building on the 2015 EU-Turkey Joint Action Plan, on March 18th, 2016, the EU and Turkey produced a statement to end the irregular migration flows from Turkey toward the EU²⁷². The statement, harshly criticized by civil society organizations and human rights defenders, aims at stopping irregular flows but it also intends to introduce a relocation mechanism through the “backdoor,” providing for the relocation of 72,000 Syrian refugees from Turkey to the EU on a voluntary basis²⁷³, a EU commitment that should not be underestimated.

The main elements of this statement, which has long been abusively called “agreement,” are the return to Turkey for all the migrants who did not qualify for the refugee status and who arrived in Greece from March 20th as well as the “1 for 1” mechanism. According to this 1 for 1 principle, for each Syrian returned to Turkey from the Greek Islands, the EU will accept the relocation of one Syrian living in Turkish camps²⁷⁴. Turkey, on its side, committed to engage in doing everything in its power to avoid the creation of any other illegal migration route in exchange for the lifting of the visa obligations for Turkish citizens, provided that all the criteria established in the roadmap are met by June 2016²⁷⁵. The EU further committed to opening the accession negotiations on Chapter 33 on financial and budgetary provisions, which in accordance with the statement started on June 30th²⁷⁶ of the same year.

In order for the EU-Turkey statement to be implementable, both Greek and Turkish legislation had to be modified. In fact, the Greek legislation must recognize Turkey as a “safe third country” while Turkey legislation must grant effective access to asylum procedures to any individual in need of international protection²⁷⁷. The return of all the irregular migrants from Greek Islands to Turkey will be exerted according to international and EU law commitments and will serve as a powerful deterrent to future migrants²⁷⁸ and smugglers.

²⁶⁹ European Commission - Fact Sheet “EU-Turkey joint action plan”, 15 October 2015. Accessed 22 February 2018 at http://europa.eu/rapid/press-release_MEMO-15-5860_it.htm.

²⁷⁰ Teule, C. 2017. “ « Accord » UE-Turquie : le troc indigne”. *Plein droit*, 3(114), p. 24.

²⁷¹ Moldovan, C. 2017. “Is the EU-Turkey Action Plan an effective or just an apparent solution to the refugee crisis?”. *CES Working Papers*, IX(3), p. 196.

²⁷² Council of the EU, Press Release 144/16, 18/03/2016. Accessed 22 February 2018 at

<http://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/pdf>.

²⁷³ Biermann, F., Guérin, N., Jagdhuber, S., Rittberger, B., & Weiss, M. (2017). *Explaining Uneven EU Integration Trajectories : A Comparison of the Euro Crisis and the Refugee Crisis*. LMU Munich, Manuscript, pp. 21-23.

²⁷⁴ Teule, C. 2017. “ « Accord » UE-Turquie : le troc indigne”. *Plein droit*, 3(114), p. 24.

²⁷⁵ De Marcilly, C., & Garde, A. 2016, June. “The EU-Turkey Agreement and its implications. An unavoidable but conditional agreement?”. *Fondation Robert Schuman, European issues*, (396), p. 6.

²⁷⁶ European Commission - Fact Sheet “Managing the Refugee Crisis, EU-Turkey Statement” Brussels, 4 October 2016, Progress Report September 2016.

²⁷⁷ Teule, C. 2017. “ « Accord » UE-Turquie : le troc indigne”. *Plein droit*, 3(114), p. 24.

²⁷⁸ Moldovan, C. 2017. “Is the EU-Turkey Action Plan an effective or just an apparent solution to the refugee crisis?”. *CES Working Papers*, IX(3), pp. 195-196.

Charging Greece of major operational efforts, the statement boosted the cooperation between Greek and Turkish authorities who acted quickly in order to ensure the operationalization of the so-called agreement²⁷⁹. Notably Greece introduced a new law in April 2016 containing the principle of “third safe country” and “first country of asylum” in order to facilitate quick and individual asylum procedures to be carried out. Turkey, few days after Greece adopted the new law, modified its legislation in order to enable returned Syrians to access temporary protection regime, despite their “illegal departure” from Turkish territory. Despite those legal adjustments, the main concern remains the effective protection measures available in Turkey²⁸⁰ and the legal basis of both the content and the format of the statement²⁸¹.

To this extent, the statement has been analyzed by the Court of Justice of the European Union (CJEU) through a proceeding that highlighted its controversial legally binding nature. The Court, in fact, determined that the Statement represents a political act that does not account as a legal agreement concluded by the EU institutions²⁸². According to the judgment of the CJEU, the statement is a document aimed at preventing irregular migrants from reaching the EU while establishing a resettlement mechanism based on the transfer of one vulnerable Syrian from Turkey to the EU “for every irregular Syrian being returned to Turkey from Greek Islands.” Therefore, the Court conclusion confirmed the European nature of the statement in the sense that it was a EU Member States-Turkey “agreement” which never put any legal obligations on the EU institutions²⁸³.

All in all, the EU-Turkey statement has allowed the EU to experiment the most effective strategies allowing to strike the right balance between responsibility and solidarity, to ensure resilience in order to face future crises while combating the migratory pressure by eliminating pull factors and secondary movements. Despite the statement might be respecting international and EU obligations, fighting abuses and supporting frontline Member States²⁸⁴, it has however been criticized on the basis that it may create the illusion of trying to solve the irregular migration and human trafficking issues and assisting Syrians seeking asylum²⁸⁵ without providing any long-term solutions.

Despite the harsh criticisms received, the EU channels, confirmed that the Statement delivered results notably in breaking the business model of smugglers exploiting migrants and refugees while decreasing the numbers of deaths at sea²⁸⁶. Effectively, even the UNHCR data confirms that a month after the implementation of the statement, the arrivals in Greece had dropped by 90%²⁸⁷. Furthermore, according to the EU, the pace of resettlement from Turkey to Greece based on the 1 for 1 mechanism is considerably advanced compared to the returns from Greek Islands a trend which has put additional pressure on the reception facilities of Greek Islands while remaining clearly insufficient considering the 72,000 resettlement places initially pledged by the EU. On the other clauses of the statement providing for the establishment of a humanitarian admission scheme and the reopening of the accession process little progress has been achieved²⁸⁸. Also, with regards to the visa liberalization commitments, the EU Commission proposed to the European Parliament and the Council of the European Union to lift the visa requirements for Turkish

²⁷⁹ Teule, C. 2017. “ « Accord » UE-Turquie : le troc indigne”. *Plein droit*, 3(114), pp. 24-25.

²⁸⁰ *Ibid.*, p. 25.

²⁸¹ De Marcilly, C., & Garde, A. 2016, June. “The EU-Turkey Agreement and its implications. An unavoidable but conditional agreement”. *Fondation Robert Schuman, European issues*, (396), p. 7.

²⁸² Moldovan, C. 2017. “Is the EU-Turkey Action Plan an effective or just an apparent solution to the refugee crisis?”. *CES Working Papers*, IX(3), pp. 207-208.

²⁸³ Danisi, C. “Taking the ‘Union’ out of ‘EU’: The EU-Turkey Statement on the Syrian Refugee Crisis as an Agreement Between States under International Law”. *EJIL Talk*. Accessed 22 February 2018 at www.ejiltalk.org/taking-the-union-out-of-eu-the-eu-turkey-statement-on-the-syrian-refugee-crisis-as-an-agreement-between-states-under-international-law/.

²⁸⁴ Teule, C. 2017. “ « Accord » UE-Turquie : le troc indigne”. *Plein droit*, 3(114), p. 26.

²⁸⁵ Moldovan, C. 2017. “Is the EU-Turkey Action Plan an effective or just an apparent solution to the refugee crisis?”. *CES Working Papers*, IX(3), p. 197.

²⁸⁶ *Ibid.*, p. 198.

²⁸⁷ UNHCR data. Accessed 22 February 2018 at <https://data2.unhcr.org/en/situations/mediterranean/location/5179>.

²⁸⁸ European Commission - Fact Sheet “Managing the Refugee Crisis, EU-Turkey Statement” Brussels, 4 October 2016, Progress Report September 2016.

nationals, amending the Council Regulation (EC) No 539/2001²⁸⁹, understanding that Turkey will fulfill as a matter of urgency, as agreed on 18th March, the outstanding benchmarks of its Visa Liberalization Roadmap²⁹⁰. However as of today, no further progress has been achieved toward the liberalization of travelling to the EU for Turkish nationals despite Turkish fulfillment of 65 out of the 72 benchmarks provided for in the Dialogue.

Despite the aim of the statement being the breaking of the business model of the smugglers, offering migrants alternative pathways in order to reach Europe, its implications are much more controversial. It would seem that the promises advanced by the EU when negotiating the statement could not be respected in practice considering the substantial lack of solidarity and burden sharing experienced within the EU.

After thorough analysis of the agreements signed over the years between the European Union and Turkey on migration, we can confirm that the European Union's influence on Turkish national legislations and policy is rather important while it is counterbalanced by the Turkish strategic position in securing EU external borders.

The accession process Turkey has been a part of since the late 1980s, certainly represents an important factor in encouraging Turkey to engage with the EU and to comply with EU legislations. However, we should not underestimate the important bargaining chips Turkey can use when negotiating with the European Union. Especially starting in 2015 when the refugee crisis hit an unprepared EU, the strategic importance of reinforcing the partnership with Turkey became clear in Brussels.

As we mentioned in the previous sections, the 2015 Joint Action Plan as well as the 2016 EU-Turkey Statement represent the importance the two parties reciprocally attach to each other, pushed by different interests. The two documents, as well as the EU-Turkey general cooperation on migration-related matters is based on the need from the EU side to ensure that its South-Eastern neighbor manages its borders, preventing the departure of migrants and asylum seekers, while Turkey, understanding its strategic importance for the EU security, negotiates further mobility liberalizations for its citizens and further commitment to advance in the accession process in exchange for its role as “guardian” for the Schengen space.

While both the 2015 Joint Action Plan and the 2016 Statement may seem necessary and justifiable from a pragmatic standpoint, they remain controversial from the legal perspective if we take into account the rules and principles of international refugee law and the EU's principles and regulations on asylum, refugees and migrants. It is very clear how the EU in its cooperation with Turkey aimed at achieving collective security disregarding to some extent the legal principles the EU and its Member States embraced, notably the right to find asylum²⁹¹.

Especially concerning the EU-Turkey statement it is unfortunate to assess that the EU did not try to ensure the legality of the deal and did not put in place any kind of monitoring of Turkish commitments on the treatment of refugees and migrants. Furthermore, the EU could have pushed for Turkish elimination of the geographical limitation to the 1951 Geneva Convention as a condition for the establishment of the cooperation²⁹² which was not done.

Despite Turkish obligations toward the adoption of the EU *acquis* on migration and asylum, the country realized its strategic importance in containing migrants and asylum seekers from reaching Europe and

²⁸⁹ COUNCIL REGULATION (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, 2001R0539 — EN — 18.10.2013 — 008.001. Accessed 22 February 2018 at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2001R0539:20131018:EN:PDF>.

²⁹⁰ European Commission Press release, Brussels 4 May 2016. Accessed 22 February 2018 at http://europa.eu/rapid/press-release_IP-16-1622_en.htm.

²⁹¹ Moldovan, C. 2017. “Is the EU-Turkey Action Plan an effective or just an apparent solution to the refugee crisis?”. *CES Working Papers*, IX(3), p. 208.

²⁹² Peers, S. “The final EU/Turkey refugee deal: a legal assessment”. *EU Law Analysis, Expert insight into EU law developments*. Accessed 22 February 2018 <http://eulawanalysis.blogspot.ch/2016/03/the-final-euturkey-refugee-deal-legal.html>.

therefore it used such asset as a bargaining chip in relating to the EU. In fact, Turkish legislation on asylum, as we mentioned in the previous chapter is far from being complete and in line with EU obligations.

However, this national specificity did not stop the EU from deeply engaging with the country, by making important financial concession and promises in relation to the accession process to Turkey. The cooperation between the parties is very unique however, this specificity, does not depend on national legislations. Turkey, in fact is treated as a candidate country, every agreement being specifically negotiated for the Turkish case.

The accession status therefore seems to play a discriminant role in ensuring that the EU takes into account national specificities despite weak and incomplete national legal frameworks. While the EU uses the accession process as its bargaining chip, it has given a lot of importance to Turkish strategic positioning. In fact, in addition to financial aid, the EU committed to resettle asylum seekers to EU territories, which represent an important concession to Turkish authorities. While the tools used by the EU toward Turkey are very specific, readmission agreements also are used. In the Turkish case, therefore we can confirm that the EU adopted a specific approach regardless of the opaque asylum framework present in the country.

Conclusion

After having analyzed the different agreements concluded by the European Union with Lebanese and Turkish authorities, we can try and underline the main differences and similarities of the approaches the EU used to enhance partnerships with third countries on asylum-related matters, drawing a final answer to our research question.

The European Union's relations with Lebanon have a long history and the partnership between the two parties has become strategically central following the 2011 turmoil in the Region when Lebanon's "containment" role has become necessary to the EU. The cooperation on migration-related issues began formally with the conclusion of the 2002 Association Agreement in the framework of the European Mediterranean Policy. In this context, the two parties negotiated a readmission agreement and agreed on enhancing cooperation in the field of combating illegal migration. The Association Agreement clearly oriented toward the improvement of the financial and trade cooperation between the parties was followed by the 2007 Action Plan. The document, conceived in line with the ENP objectives, aimed at operationalizing the commitments undertaken in the AA while enhancing the cooperation on migration and border management. The document refers to the need for Lebanon to develop a comprehensive protection system in line with international obligations while the EU does not seem to have neither the leverage nor the tools to push Lebanese authorities to engage in this internal legislative reform process. The following 2013-2015 Action Plan defined a more rigid framework for cooperation providing for indicators and benchmarks to be periodically assessed. The relevance of this second action plan is notably that Lebanese authorities, for the first time, accepted language referring to the need to improve the living conditions of vulnerable populations amongst which refugees. In 2016 after the realization of the protracted nature of the Syrian crisis deeply affecting Lebanon and following the revision of the ENP, the EU and Lebanon agreed on Partnership Priorities. In this document, the two parties agreed on strengthening their cooperation in order to improve the reception conditions of Syrians while supporting hosting communities. Annex to the Partnership Priorities document the two parties agreed on the 2016 EU-Lebanon Compact through which the EU engaged with Lebanon proposing a comprehensive support package to the country.

In the context of a deepening partnership between the two parties it is nevertheless important to note that the political leverage exerted by the EU when advancing legislation reform proposals to Lebanon was not strong enough to convince national authorities to widen the national asylum space. In fact, the EU's attempts to open conversations on the standards of protection for refugees were rejected by Lebanon, unwilling to engage in such negotiations²⁹³. Furthermore, the fragmented domestic political landscape in Lebanon as well as the influential role of Hezbollah have determined a rather cautious approach of the EU, from one side in need of the cooperation of Lebanese authorities while hesitating on the level of engagement with them from the other.

The national legislation on asylum, which we analyzed in detail in the previous chapter, did not prevent the EU from engaging with the partner country despite it having a weak asylum regime. The EU strategy

²⁹³ ALEF & PAX, Policy Brief, July 2017, p. 3.

towards Lebanon respond only partially to the differentiation mechanism. In fact, the agreements concluded between the parties do not differ in substance from the ones concluded by the EU with other countries in the region and can be understood in light of the ENP and EMP strategy. Therefore, while we found that the EU adapts to some extent to the needs and preferences of national authorities, Lebanese asylum legislation was not considered as a determinant factor in defining the agreements, the EU security interests seeming to matter most.

With regards to Turkey, the relations between Brussels and Ankara have an even longer and deeper history than the ones with Beirut. Notably, in 1995 Turkey filed its application to join the EEC and four years later it was granted the status of candidate country by the European Council. Turkey's status *vis-à-vis* the EU is rather unique compared to its neighboring countries and, being a candidate country to enter the Union, Turkish authorities demonstrated to be more subject to the influence of the EU on modifying the national legislation on asylum.

Despite the Turkish efforts undertaken in order to comply with the EU *acquis*, the EU-Turkey relations have proved complicated due to several challenges notably on the increasing migratory pressure²⁹⁴. In fact, despite the implications of the candidate status of the country, as we analyzed in the previous section, the negotiating power of Turkey should not be underestimated considering the strategic implications for the Union of the Turkish cooperation. The strength of Turkish authorities in negotiating with the EU could be spotted in the negotiations for the readmission agreement. While the EU managed to make Turkey sign the deal, Turkish authorities made its implementation conditional on the starting of negotiations on the Visa liberalization. The liberalization of short-term visas for Turkish nationals pending Turkish fulfillment of the requirements contained in the roadmap, is a constant element of the EU-Turkey agreements on migration which we could identify as the conditionality applied by the EU.

Considering the important numbers of refugees hosted in Turkey and the security and strategic implications for the EU, in 2015 the two parties signed a Joint Action Plan aimed at strengthening the cooperation between the parties while supporting Syrian nationals enjoying international temporary protection and improving the managing of migration flows. The cooperation included amongst others, scaling up of financial contributions from the EU side to support Turkish management of refugees and border controls. Finally, in 2016 Turkey and the EU concluded a statement in order to stop irregular migration flows to Europe. The Statement was harshly criticized by the civil society and contested on its very legal basis, though it contained some important measures, notably the 1 for 1 mechanism. The EU, in fact, committed to resettle a refugee living in Turkish camps for every returned illegal migrant who entered Greece through Turkey. The resettlement provision inserted in the statement is a rather important concession from the EU side considering the tense internal climate on resettlement mechanisms.

The EU-Turkey Statement, exemplifies the long-lasting challenge affecting EU migration policies: member states are unwilling to undertake responsibility in managing migration within and beyond the EU and therefore the EU promotes solutions implying the reliance on third countries. Furthermore, the tendency of EU member states to privilege security-oriented approaches, aiming at closing the external borders of the Union avoiding addressing the instabilities at the border proved inefficient in managing the displacement of people²⁹⁵.

Despite Turkish national legislation on asylum not being compatible with the EU *acquis*, and despite the engagement of Turkish authorities in adopting EU rules on asylum being still pendent, the EU engaged with Turkey on a different level compared with Lebanon. In fact, EU-Turkey agreements are very unique and do not follow the one-size-fits-all strategy. However, this tailor-made strategy is not due to national legislations but on the contrary, to the accession status of Turkey and the geopolitical strategic importance it has to the EU.

All in all, considering the main differences of the two third countries analyzed in this contribution we can affirm that the EU engagement is deeper depending the accession status of its partners while the internal

²⁹⁴ http://www.jeanmonnet.org.tr/Portals/0/scholars_database_thesis/elvan_eda_karaismailoglu_tez.pdf. Accessed March 15, 2018, p. 21.

²⁹⁵ Dimitri, A. *Deals without borders: Europe's foreign policy on migration*. Accessed March 15, 2018 at http://www.ecfr.eu/page/-/ECFR-165-DEALS_WITHOUT_BORDERS.pdf, p. 9.

legislation on asylum does not seem to prevent Brussels to engage with third countries. The EU exerts a deeper influence on Turkey than on Lebanon considering that it could promise to reopen negotiations on the accession process in exchange for Turkish better border management and externalization of asylum. Lebanon, less implicated in the EU policies can safely refuse pressures on widening its national asylum space.

However, as we noticed the partnership of the EU with third countries is not imbalanced as one could imagine. In fact, the EU found itself to be more and more dependent on the goodwill of southern neighbors to cooperate on migration related matters, allowing them to be in the position to demand more proving conditionality to be only partially useful. We noticed therefore that if a third country can demonstrate its resilience *vis-à-vis* EU pressure, it can exert significant power on determining the bargaining chips the EU could offer²⁹⁶.

²⁹⁶ Dimitri, A. *Deals without borders: Europe's foreign policy on migration*. Accessed March 15, 2018 at http://www.ecfr.eu/page/-/ECFR-165-DEALS_WITHOUT_BORDERS.pdf, p. 7.

Conclusion

This study sought to understand whether the EU adopts a one-size-fits-all approach toward third countries or whether it considers national specificities in engaging with partners, on the basis of specific theories of Europeanization and EU policy export.

The findings of our research confirm the theoretical characteristics we highlighted in the very first part of this analysis. In fact, effective and successful Europeanization does not follow a unique strategy; on the contrary, it follows a mixture of the two aforementioned approaches by partially taking into account national peculiarities of third countries in the context of a broader regional approach. The patterns observed in this study suggest that the EU only partially takes into account national specificities when engaging with partner countries, framing the partnership in the framework of broader regional-cooperation mechanisms. Furthermore, while national legislations in third countries proved not to be determinant factors in defining the type of EU engagement with partners, their association status represents a fundamental factor influencing the different strategies adopted by the Union.

After the analysis of the EU's legal framework and policies on asylum related matters, the study of our two case-countries' national legislations and the screening of specific agreements concluded between the EU with Lebanon and Turkey respectively, we can respond thoroughly to our research question.

As we mentioned in the first chapter of our research, the European Union has faced important difficulties in developing common and harmonized asylum policies. In fact, Member States visibly prefer to keep migration and asylum cooperation at an intergovernmental level without delegating responsibilities on the matter to EU Institutions.

Despite the sovereignty-sensitive issue represented by asylum, EU Institutions have succeeded in implementing important efforts in order to strengthen the harmonization of asylum policies among Member States while enhancing cooperation with the countries of origin and transit. This progress is indicative of international migration becoming an EU priority.

As a matter of fact, the externalization efforts conducted by the EU proved to have a more consequent impact than state-level attempts to homogenize asylum policies. As we witnessed, two of the most widely used instruments at the disposal of the EU in engaging with third countries are Mobility Partnership and Readmission Agreements, which play a fundamental role in cooperating on migration related matters. Their effectiveness and utility have laid the foundation for this approach to be used as a sort of template in managing similar, future situations. Both of these tools were designed in order to guarantee a certain degree of differentiation taking into account third countries' specificities while displaying a standardized format. Although publically the EU affirms its commitment to adapt and adjust to partner countries' preferences, in practice it displays the tendency to dominate its partnerships by imposing its interests without considering its partners'.

In reality, the inconsistent use of differentiation when engaging with third countries is not the only shortcoming of EU's externalization efforts. The EU's exportation of its policies and agreements are handicapped in so far as they highly depend on third countries' goodwill in implementing them, and it is complicated further when accounting for the impact that not having EU membership aspirations can have.

Hence, from the onset of this study, it became clear that at the very least it is not possible to fully confirm the one-size-fits-all postulate. Notwithstanding, the differentiation operationalized by the Union must be critically analyzed in relation to specific cases. Having defined the legal basis at the core of the European Union action on migration control and asylum related matters, as well as having touched upon the cornerstone of the Common European Asylum System, represented by the Dublin Regulation(s) and attempts undertaken by EU Institutions to modify it; we proceeded to analyze the specific legal asylum frameworks of the two countries representing the focus of our research in order to answer our research question and determine whether or not the EU's cooperation with third countries on asylum-related matters depends on their internal legislation on asylum.

The analysis of the legislations of both Lebanon and Turkey represented an important step of our analytical proceeding. Focusing on national asylum-related legislations gave us the advantage of working with a matter closely associated with state sovereignty, thus this area provided us with an appropriate litmus test to evaluate the EU's strategy in engaging with its partners. That is to say, whether or not the EU takes into account its allies domestic preferences – in this case relating to asylum – when defining cooperation.

The analysis depicted a rather gloomy picture for asylum seekers and refugees in both Lebanon and Turkey. The former, for instance, is not a signatory to the 1951 Convention and does not have to abide by the major norms on protection, although it is bound to complying with the customary principle of *non-refoulement*. The resistance demonstrated by Lebanese authorities is explained by their fear that by ratifying the Refugee Convention, the country could be identified as a destination country for refugees, a scenario which Lebanon is determined to avoid at any cost. While refugees are defined in Lebanon as persons who will receive the protective status in a country other than Lebanon, Lebanese authorities have signed a MoU with the UNHCR allowing the UN Refugee Agency to work in the country. Hence the role of the UNHCR in Lebanon is fundamental in ensuring basic guarantees to asylum seekers considering that not only has Lebanon not ratified the 1951 Convention, but its only legal instrument dealing with asylum is its 1962 Law on Foreigners, a migration law containing few articles on asylum specifically. However, despite UNHCR work in the country, major protection gaps persist, making protection guarantees for the growing refugee population very limited.

Turkey, on the other side, has signed the 1951 Convention while, however, maintaining a geographical limitation granting full refugee status to Europeans only. Despite this major *de jure* shortcoming, *de facto* the country developed a national system granting some kind of protection to non-Europeans through the Law on Foreigners and International Protection. Nevertheless, the fact that asylum space is ensured through secondary legislations is rather worrisome. Discounting the relatively opaque asylum legislation present in the country, the EU deeply engaged with the candidate state, pressuring national authorities to finalize some internal reforms on the matter.

All in all, what resulted from the analysis of the asylum space in both Lebanon and Turkey is that the two countries, while displaying distinctive characteristics on both the asylum legislations and on the association status they have *vis-à-vis* the EU, also present some commonalities. For instance, neither Lebanon nor Turkey is willing to envisage long-term solutions and integration for the refugee populations, and both states are dealing with this issue through incomplete and superficial legislative measures that do not provide enough guarantees to those vulnerable populations. Furthermore, the two countries also share a preference for *ad hoc* approaches, which substitute the development of a more structured and stable system of reception.

While the EU does not seem to influence Lebanese authorities in modifying their national dispositions, it does play a role in Turkey. This difference is due to the different status the two countries have *vis-à-vis* the EU: Lebanon is a third country inserted in the European Neighborhood Policy while Turkey is a Candidate State to Accession.

From what we analyzed it appears that considering the rather weak asylum systems of both countries, whether the EU will prove to adopt a differentiated approach towards the two case-countries, national legislations will not account as the explicative variable of such a strategy. In fact, our analysis provides strong evidence on the fact that the EU exerts a deeper influence on countries that are more sensitive to its leverage in regard to their accession status and which have ratified international instruments of refugee protection. In other words, the accession status of third countries seems to play a relevant role in determining the EU's approach, while national legislation on asylum does not seem to be relevant in determining the European Union's type of engagement.

After having conducted the in-depth analysis of national legislations we proceeded to study the existing agreements between the EU and Lebanon and Turkey respectively in order to verify whether the EU actually adapted to the distinctive legislative frameworks in concluding agreements with partner countries or whether it disregarded such characteristics.

The European Union-Lebanon cooperation did not seem to be affected by the rather incomplete national asylum framework present in the country; on the contrary, it has further developed following the Arab Spring uprising, which made Lebanon a strategic partner for containing the influx of migrants to the EU.

Evidently, the EU only partially took in consideration Lebanese national specificities, its actions towards Lebanon being in line with the wider EU neighborhood and Mediterranean strategies. Differentiation seemingly only partially accounts for the EU's engagement with Lebanese authorities, characterized by the use of tools at the disposal of the Union for engaging with Mediterranean countries in general. In studying the agreements concluded between the parties, therefore, it became evident that Lebanese asylum legislation was not considered as a determinant factor in defining the content and format of the concluded agreements, the EU engagement depending on broader regional strategies.

As for the Turkish case, the EU, considering the candidate status held by the country, adopted a tailor-made strategy in concluding agreements with the country, despite its national legislations on asylum being very weak. Turkey's status in regard to the EU is rather unique compared to its neighboring countries and, being a candidate country to enter the Union, Turkish authorities demonstrated to be more subject to the influence of the EU on modifying the national legislation on asylum in light of the ongoing accession process.

While the Turkish bargaining power in relation to the EU should be highlighted, especially with regards to migration and asylum matters, the use of conditionality by the EU side was more consistent than compared with the Lebanese case. In fact, promises of membership being on the table, the EU disposed of a wider set of tools in making Turkish authorities comply with its requests. However, the use of conditionality demonstrated some inconsistencies, considering the EU's dependence on Turkish goodwill in implementing agreements related to the containment of migration towards Europe. Accordingly, the relation between the parties seems to be more peer-to-peer one than a EU-led cooperation – this is demonstrated by the important concessions made by the EU to the candidate country. The promise to resettle one Syrian from Turkish camps for every illegal migrant present in Greece returned to Turkey is a completely new condition highlighting the strategic importance of Turkey in defining the EU migration strategy.

Despite Turkish national legislation on asylum not being compatible with the EU *acquis*, and despite the engagement of Turkish authorities in adopting EU rules on asylum still pending, the EU engaged with Turkey on a different level compared with Lebanon. Visibly, EU-Turkey agreements are unique and do not respect the one-size-fits-all strategy. However, this EU approach does not seem to be due to national legislation specificities but solely to the accession status of Turkey and its strategic importance for the Union.

Having defined the tools used by the EU in cooperating with Lebanon and Turkey respectively and considering the comparative nature of our analysis it is capital to summarize the findings and assess the commonalities and differences retraced during the analysis of EU specific cooperation framework with Lebanon and Turkey. The analysis of the findings needs to be conducted in light of the theoretical basis we built our study on notably the one-size-fits-all approach from one side, and Delcour's theories on the importance of third countries' domestic factors, in this case specifically, third countries' national legislation on asylum and their accession status to the EU from the other side.

As we confirmed, while the two countries display different accession status to the EU, Lebanon being a third country for the EU and Turkey being a candidate to accession, both of those two countries' legislations on asylum, despite being different, do not substantially implement international accepted norms of refugee protection. Therefore, if verified, Delcour's theory on the capital importance of adapting EU instruments of cooperation to third countries' specificities, would only consider the distinctive status held by the two partner countries, their internal legislations on asylum, being weak in both cases, not playing a discriminant role.

In order to respond to our research question, the comparison was articulated according to the EU instruments of cooperation with Lebanon and Turkey respectively and it addressed the question of understanding whether, as cooperation proved to be different, it was influenced by both or either one of the two chosen variables: national legislation on asylum and third countries' accession status to the EU.

On EU-Lebanon cooperation, it appeared from our research that the partnership was defined in line with a broader EU strategy towards its neighboring countries especially its Mediterranean neighbors. In this context, the existence of a specific regional framework for cooperation leaves little space to adapt to third countries' specific preferences and characteristics. In fact, the Action Plans, Partnership Priorities document and the Compact must be understood as instruments the EU developed in the framework of regional strategies in order to try and respect the differentiation principle, enounced in the ENP. However, these

instruments could only partially be modified and adapted to the specific partner countries' needs being the product of a EU-centered strategy.

The reality of the existing instruments of cooperation between the EU and Lebanon therefore, does not fully respect neither the one-size-fits-all approach nor Delcour's theory. The EU cooperation with Lebanon can be defined as following a mixture of the two theories. In fact, it only partially takes into account the third country's specificities, being defined at a broader regional level and having to respect the rationale at the basis of it.

Furthermore, the incentives at the disposal of the EU in order to make Lebanon comply with its requests – sometimes rather demanding on migration policy- are rather limited. Although technical, financial and humanitarian aid provisions from the EU side represent a rather solid basis of the long-lasting cooperation between the parties, the EU high dependency on Lebanese strict implementation of the clauses of the different agreements strengthen Lebanon negotiating power. Furthermore, the inexistence of any credible perspective for membership results in a rather weak use of conditionality from the EU side, which rely on the goodwill of Lebanese authorities for the implementation of the cooperation agreements.

The cooperation between the EU and Turkey is rather differential. In fact, as we analyzed in the last chapter of our study, the agreements in place between the two parties do not respond to broader regional cooperation frameworks, being uniquely and exclusively negotiated between the two interested parties. This is of course due to the accession status held by Turkey enabling the EU to adapt to the partner's preferences and to adopt tailor-made agreements. Nevertheless, some more generally conceived tools of cooperation with third countries are used by the EU in cooperating with Turkey such as the Readmission Agreement and the Mobility Partnership which cannot totally meet Turkish specific characteristics, being designed for broader cooperation frameworks.

All in all, however, it is evident that the EU instruments for cooperation with Turkey are tailor-made, context-specific and bilaterally designed with Turkish counterparts solely, in order to find the lowest minimum denominator to strike the right balance between EU's and Turkish' respective interests.

In the Turkish case, it is evident that Delcour's theory on the importance of considering third countries' national preferences, is perfectly fit to describe the type of cooperation between the EU and Turkey. Delcour's theory relevance in defining the EU cooperation strategy with Turkey, is largely due to the distinctive status of Turkey *vis-à-vis* the EU as a candidate state to accession.

The specific accession status of Turkey is also at the basis of a more consistent and credible use of conditionality from the EU side in order to make the country abide by its rules. However, the use of conditionality is not as smooth and straightforward as one could imagine. The EU is in fact, highly dependent on Turkey's implementation of cooperation agreements on migration related matters in order to secure its external borders, therefore the use of conditionality is not fully consistent. Furthermore, the use of conditionality *vis-à-vis* Turkey suffers from a lack of credibility: the long and unstable membership negotiations have not resulted in the accession of Turkey yet, despite the costly demands advanced by the EU in order to make membership a reality, resulting in the mistrust from the Turkish side of the EU commitment to effectively granting it the membership status.

The comparison between the two countries existing agreements for cooperation with the EU on migration, in relation to EU instruments took into account two variables: partner countries' national asylum legislations and third countries' accession status to the EU.

After thorough analysis of the cooperation tools used by the EU it results that they adapt to third countries' association status, disregarding national legislations. As a matter of fact, both countries display rather weak and incomplete asylum frameworks, a specificity neither resulting in the freezing of cooperation with the EU nor distinctively influencing the use of specific cooperation tools from the EU side. Therefore, it appears that only the specific association status held by third countries affects the EU choice of distinctive cooperation instruments.

Therefore, as cooperation with the two partners is sensitively differential, we must acknowledge that the EU partially takes into account third countries' specificities when defining cooperation instruments beyond

membership. Notably, the fact that Turkey and Lebanon hold substantially different association status to the EU, impacts on the cooperation framework used by the EU. In fact, with Turkey the EU negotiates agreements on a fully reciprocal basis, aiming at fitting the parties' different interests and characteristics. With regards to Lebanon on the contrary, the EU only partially takes into account specific national characteristics, proposing cooperation tools which are generally defined at the broader regional level allowing for smaller adaptations to specific contexts.

All in all, neither the one-size-fits-all approach nor Delcour's theory proved verifiable in the specific context of our research, the EU adopting an approach not totally reproducing neither of the aforementioned theories. In fact, while a specific strategy is designed toward candidate countries, some national specificities such as internal legislations are not considered in proposing cooperation frameworks. With third countries, we cannot fully sustain the use of a one-size-fits-all approach because although minimal, space for adaptation to third countries' specificities is present in the framework of broader regional cooperation schemes.

The analysis we conducted on EU obligations, third countries national asylum framework and the practical conclusion of agreements between the EU and partner countries confirms that the EU engagement is deeper depending the accession status of its partners while their internal legislations on asylum do not seem to prevent Brussels from engaging with third countries. The EU clearly exerts a deeper influence on Turkey than on Lebanon considering that it could promise to reopen negotiations on the accession process in exchange for Turkish better border management and externalization of asylum. Lebanon, less implicated in EU policies, can conversely feel free to refuse pressures on widening its national asylum space.

Hence, we noticed that as different authors postulates, the EU adopts a partially differentiated approach towards third countries while using instruments conceived in the framework of broader regional external strategies for cooperation. Toward candidate countries, the engagement of the EU is more tailor-made, the accession status of partner countries seeming to play the determinant role in defying the EU's strategy for cooperation. All in all, national legislation on asylum proved not to be the discriminant factor in determining the EU's type of approach to third countries, their accession status playing the more fundamental role.

Ultimately, our research partially verified our hypothesis. As we demonstrated through the analysis of national legislation on asylum and the subsequent conclusion of EU-Lebanon and EU-Turkey agreements on migration and asylum related matters, domestic factors do actually matter in defining the EU's strategy towards third countries. However, considering the cooperation with the two analyzed countries it is their accession status *vis-à-vis* the EU that determines a tailor-made and specific approach to be adopted by the Union. In fact, the two countries, both displaying rather weak asylum legislations, benefit from different treatment by the EU in light of the different status they hold: EU-Lebanon agreements are framed in the context of broader regional cooperation strategies, only partially recognizing the specificities of the country, while EU-Turkey agreements are very specific and context-specific mainly in reason of the candidate status held by the partner.

As we conclude, we believe it is important to recognize the shortcomings of this analysis and acknowledge possibilities for improvement in the prospect of further research.

While we decided to focus our analysis on third countries' national legislations on asylum as our independent variable to identify national specificities in order to determine whether the EU follows a one-size-fits-all approach or a differentiated one, we recognize that this sectorial choice limits the overall understanding of the topic and may result in biasing our results. Future research could benefit from conducting a broader analysis, confronting not only national legislations on asylum, but also the geopolitical implication and the governance structure of third countries. Furthermore, we could have operated a more systemic historical analysis on the evolution of the cooperation between the EU and partner countries, which could have informed in a more thorough way our analysis.

As we specified in our theoretical chapter, and as it is reflected in our work, we only considered conditionality in analyzing the exportation of EU policies beyond Europe. This choice, made for the sake of length and focus of our research, limited our work to some extent. Analyzing the socialization characteristics of Europeanization in non-EU non-candidate countries in detail may provide an additional element to this study.

Finally, when conducting our background research, we realized that linguistic barriers were not negligible in retracing reliable, updated and thorough sources. Not being able to access the totality of literature in Arabic and Turkish and having to rely on the translation of relevant documents, without being able to verify their quality, represented an important challenge, which was partially surmounted by researching reliable translations.

Considering the limits we enounced beforehand, we believe that all in all, the research we conducted provides a rather complete picture of the subject analyzed, offering further opportunities to widen the scope and target of the study. In fact, it would be interesting to conduct a broader study in order to expand the pot of variables analyzed at the country level, providing a more complete picture of the strategies used by the EU in exporting its policies on asylum and migration-related matters. Additionally, it could be of use to analyze a wider set of third countries in order to verify the implications of internal factors in determining whether the EU adopts a one-size-fits-all approach toward partner countries or not at a larger scale.

At the broader level, it would be interesting to analyze in the long-term, whether the currently negotiated Global Compact on Refugees and the Global Compact on Safe, Orderly and Regular Migration will have an impact on EU's strategies in engaging with third countries on asylum and migration-related matters as well as the impact those two international non-binding documents will have on transit and origin countries, provided that they will accept the final texts.

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