**Arab Spring Testing the Limits of EU's Border Control Regime:**

**The case of Turkey-EU Migration Deal**

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It has been almost a decade since the self-immolation of a street vendor in Tunisia on 17 December 2010 which triggered an expected but unpredicted wave of social upheavals in the Middle East. These massive protests and the following civil war in Syria caught many by surprise, including the European Union (EU) which now shares the sovereignty of nation-states on issues of border control, asylum and migration policies. On the one hand, the EU strives for facilitating freedom of movement inside the Union as well as easing the rules and reducing the red-tape for entering the Union from neighboring countries to obviate erecting new ‘walls’ in Europe (Rehn, 2006). Yet, on the other hand, it aims to provide security through filtering out unwanted goods and aliens, to be free from the security risks they might pose. The EU’s solution to border control and irregular migration has been built on externalization of responsibility and control requiring intensive cooperation with neighboring states. Arab Spring has exposed the EU policies on migration, asylum and border control to a stress test to measure the success of harmonization as well as to reveal the tensions between various Union policies in the post-Lisbon Treaty era. The Union while on the one hand, keeps emphasizing its support for more liberal and democratic governments in its neighborhood, upholding liberal values including the right of asylum, on the other hand increasingly stresses the importance of securing external borders, the link between internal and external security. This paper aims to critically evaluate the policy response of the EU in the field of asylum and border control in the post Arab Spring period. It will juxtapose the Union’s initial reaction to the migratory flows from the south versus the east with the heightened conflict in Syria 2015 onwards.

The article will first provide the framework for analysis, building on securitization and externalization of migration discussions in the literature, which reveals the tension between democracy promotion, externalization of border and migration control as well as the internal security policies of the EU. The following section will focus on the specific measures and methods adopted by the EU to ‘cope’ with the change in its neighborhood in the early years of the crisis. Then the paper will introduce the response to migratory flows on the eastern borders of the Union in 2015 and EU-Turkey migration deal will be discussed as a case study to reveal the inherent complexities and to exemplify the discourse-practice gap regarding migration and the challenge in reconciling humanitarianism and security concerns.

**FRAMEWORK FOR ANALYSIS**

Arab Spring exposed the long-time dilemma of the Union; “how may the ambition of nation-states to control the entry and movement of people be reconciled with liberal standards promoting free markets, open borders and humanitarian values?” (Gammeltoft-Hansen, 2006: 1). It is no secret that European nation-states have been adopting restrictive migration policies particularly since mid-1970s onwards. Interestingly, this period also overlaps with the accentuated efforts for regional integration which culminated in establishing an internal border-free Europe. The Union now shares the sovereignty of nation-states on issues of border control, asylum and migration policies and it wants to liberalize but also strictly regulate its borders. Therefore, as Stefano Bertozzini frames it “[f]inding the correct tools to achieve the objectives of the EU and its external policy while ensuring good border management lie at the heart of the challenges” (2008:2). The Union have been investing into methods to regulate border controls and migratory moves, however, Arab Spring caught it by surprise exposing the limitations of its policies leading to unilateral action of member states going as far as building physical walls.

With the Treaty of Amsterdam and the following Tampere European Council the legal nature as well as practice of border management, migration and asylum policies have been transformed that allows bigger room for Community activism. Amsterdam put forward the goal of establishing the EU as an “Area of Freedom, Security and Justice” (AFSJ) which, since then, has become a key concern of the EU literature as well as EU institutions. Indeed, the Treaty brought a five-year term for the Community within which it should take the necessary steps to achieve this goal. This five-year period was also an expression of the desire to establish this policy field and take necessary precautions before the next round of enlargement that was planned to take place in 2004. In this context, each and every day new ways of surveillance, inspection, legislation, regulation are being produced by European institutions to establish and govern the AFSJ, which has a direct effect on the lives of European citizens as well as third country nationals.

The strategy of the EU in the field of migration, oscillated between finding a comprehensive solution and adopting a border security and containment obsessed strategy. However, differing from European nation states, the EU texts generally refrained from directly linking the issue of migration to security. Particularly the European Commission rather frames the issue as a technical issue to be dealt with better planning and effective management techniques of different sort. Indeed, the border management strategy increasingly focuses on limiting immigration and “bogus” asylum seekers by standardizing control measures around Europe and its periphery, particularly by relying on high-tech surveillance methods and by externalization or ‘extra-territorialization’ of measures of control and policing.

One of the fastest growing arms of JHA policies has been the external dimension, which became a separate policy domain in the last decade. The JHA bureaucracy of member states played a crucial role in formulating the policy and practice since its inception. Also, as the member states proved reluctant to move forward on the legal side of migration the Commission adopted externalization as a deliberate strategy to broaden its remit. Although this field is related to the external relations of the Union it was furthered by the security bureaucracy rather than diplomats, which resulted in a policy field framed in logics of security rather than promoting freedom and mobility (Carrera et al 2012, 2). The EU has been constructing, to borrow Didier Bigo’s (2008) term, a “ban-opticon” like structure. As opposed to a “pan-opticon”, which allows surveillance of all with little effort, in a ban-opticon certain groups are selected as target groups, as potential criminals, as risky groups and are subjected to increased surveillance, whereas movement for the rest is facilitated.

In Europe the group to be the subject of surveillance has become immigrants and asylum seekers. In return for this, by increasingly relying on high technological tools, new methods of surveillance are being developed. Besides European agencies, border control and immigration authorities of Europe’s peripheries are also being incorporated into this system. Therefore, the issue has two dimensions, internal construction of the ban-opticon, particularly around the notion of border management, by relying on new technological developments and secondly its externalization through different techniques of governance which results in governing at a distance. Or to put it in another way; increased surveillance of ‘risky’ groups and pre-emptive approach towards eliminating risk at its source, before reaching the borders of Europe.

Extra-territorialisation of control worked through several means such as visa policy, readmission agreements, carrier liability, safe third country rule which were implemented through bilateral agreements, enlargement or intermediary instruments like the European Neighbourhood Policy. In a way the Union differentiated between various regions and developed tailor made relations with each by benefitting from different tools. Sandra Lavenex correctly argues that “[i]n contrast to a preventive comprehensive approach addressing the factors which lead people to leave their country of origin, European policies focused on the repression of undesired inflows through externalization” (Lavenex, 2007: 134). This externalization worked with the implicit rationale of “remote control” where the aim has been to shift the locus of control further outside of the Union and its common territory. Schengen Agreements signed in 1990 provided several instruments which became a part of the EU *acquis* as a result of the Amsterdam Treaty. The early coordination of visa policies in the Schengen group, the introduction of carrier liability, in the second half of the 1990s, placing national liaison officers from the home ministries at airports in countries of origin in order to check validity of documents were among these instruments. On the other hand, “second form of early externalisation was the mobilisation of third countries in the control of migration flows to Europe, mainly through the adoption of the ‘safe third country’ rule” (Lavenex, 2007: 134). The Schengen Agreement and Dublin Convention led to the emergence of such a rule. However, it was later on adopted by the Union as well through the Council Regulation no.343/2003 of 18 February 2003 which replaced the 1990 Dublin Convention. Article 3(3) of the Regulation clarified the “safe third country rule”. According to this member states were given the right to deny examination of an asylum claim and to send back the applicant to a third country where s/he would have had the chance to apply for asylum so long as this state is party to international refugee treaties. For this rule to function another crucial tool was needed the “readmission agreements” which would enable European countries to send back these asylum seekers or migrants to the “safe countries”. The EU has been aggressively promoting readmission agreements and mainstreaming this to its foreign relations. However, it is a quite controversial practice for it passes the burden of asylum seekers to poorer countries, putting the protection of refugees in danger.

Although, all these initial remote-control techniques were developed within the intergovernmental Schengen cooperation, they soon became a tool of the Union where JHA policies are supranationalized. At this conjunction, enlargement of the Union has been a defining moment in managing the surrounding of the Union and formulating specific tools and mechanisms to this aim. Especially Central and East European Countries` (CEEC) enlargement deserves particular attention, as major policy tools of externalization related to border management and migration were structured through this process. There are several policy instruments at EU’s disposal to influence the actions of other countries. Indeed, they represent a significant strength enabling the EU to tailor its external cooperation according to the situation of each country. The Commission lists in one of its Communications; bilateral agreements, enlargement and pre-accession processes, European Neighbourhood Policy Action Plans, regional cooperation, individual arrangements, operational cooperation, institution building and twinning, development policy, external aid programmes, international organization and monitoring as examples to these policy instruments (European Commission 2005b, 7). Policies developed in response to the Arab Spring also benefitted from these tools, yet framed in a discourse of partnership.

Just before the turmoil in the southern neighbourhood, the Union has gone through a major constitutional transformation with important institutional ramifications. The Lisbon Treaty was signed on 13 December 2007, and entered into force on 1 December 2009. Lisbon brought fundamental changes in many areas, but particularly for foreign relations and the JHA field for it demolished totally the old pillar structure remaining from the Maastricht Agreement and sought ways to increase the global profile of the EU.

Abolishing pillar structure meant merging of previously separated JHA policies as well as changing decision-making procedures. “With few exceptions, the ‘ordinary legislative procedure’ has been defined as the standard decision-making method in the AFSJ, which has empowered the European Parliament and enlarged the jurisdiction of the European Court of Justice (ECJ)” (Trauner and Carrapico 2012, 8). Another major step taken in the post-Lisbon phase was the division of Directorate General (DG) for Justice, Freedom and Security into two separate DGs; Justice, Fundamental Rights and Citizenship and Home Affairs (Carrera and Guild 2012). However, this division was not the only transformation leading to change of “classical relational power and actor-based architecture in JHA cooperation at Union levels”, the change in decision making procedures, increased involvement of European Parliament, creation of new committees all lead to some sort of confusion, especially in the ownership of follow-up for Stockholm Program- the third multi-annual (2009-2014) JHA program (Guild and Carrera 2012, 4).

In theory, Lisbon supranationalized the JHA, with the potential to limit the room for maneuver of national executives and improve the protection standards for refugees. However, in practice as will be discussed below, during the Arab Spring many of the problems in JHA field proved to be resilient. The increasing emphasis on the link between internal and external security creates the logic where externalization of JHA becomes an integral part of EU’s `global actorness` (Trauner and Carrapico 2012, 2). Another problem is the resentment at the national level against increasing supranationalization; despite the move towards it, with a transition period of five years, it is not always easy to convince the member states to behave accordingly.

An exemplary case illustrating the tendency to `renationalise` or return to the period of intergovernmentalism has been the debates surrounding the Schengen system, which has been challenged through 2011 and 2012 as a result of member states` attempts to limit or apply unlawful exceptions to the right of free movement of persons and the abolition of internal border checks (Carrera and Guild 2012, 12).

Several new institutions were also formed, two of which were; the High Representative of the Union for Foreign Affairs and Security Policy and the office to support the high representative, the European External Action Service (EEAS) which hosts officials from Council and Commission as well as temporarily assigned staff from the Member countries (Monar, 2012). Arab spring was a major test particularly for the High Representative in asserting the influence of the Union in its neighborhood. The EEAS started its operations on 1December 2010 just couple of days before the fire of the Arab Spring was ignited. Catherine Ashton, as the then High Representative paid a visit to Tunisia on 14 February 2011 and declared EU’s ‘willingness to be the strongest ally of Tunisia in its move to democracy.’[[2]](#footnote-2) However, the year 2010 was much about the institutional transformation in the post-Lisbon era and the internal strife among various institutions of the Union. Things were aggravated by the Euro-crisis and the declining interest in the Union by its citizens. Thus, the EU was very much consumed by its internal discussions when a tectonic shift was happening in its neighborhood ignited by a discourse of dignity and freedom, values the EU long defended, but recently traded with stability and narrow interpretations of security.

**THE EU`S RESPONSE TO THE FIRST WAVE OF MIGRATION IN 2011**

The turbulence in North Africa deepened as peaceful protests evolved into uprisings and civil war in Libya and Syria. Clashes and turmoil inevitably resulted in cross border population movements. North African countries were not only hosting their citizens, but also huge number of migrants and asylum seekers from various parts of Africa. As already explained the EU has been following a policy of gradual externalization, or remote control of migration and border control. Arab Spring pushed this policy under the spotlights. Despite tantalizing news in European newspapers about flooding refugees[[3]](#footnote-3), the number of migrants succeeding to cross over the Mediterranean was extremely low when compared to the overall numbers of displacement in the region. Interestingly, Fargues and Fandrich (2012) reveal that the overall number of migrants coming to Europe did not change due to the Arab Spring during 2011. What has change was the route of irregular migrants. Yet, curbing migration and containing it within the region was a major goal for Member States which in some cases resulted in tragic events in the Mediterranean. In such a context, the Union adopted emergency responses but also tried to plan for medium to long term ones. How far these responses could go beyond security centered concerns by approximating a holistic approach to migration will be elaborated below.

As part of the initial response, plethora of Communications defining the incidents and deciding on the EU’s response was published. On 8 March 2011 High Representative and the Commission adopted a joint communication, *A Partnership for Democracy and Shared Prosperity with the Southern Mediterranean* (European Commission 2011a). This was the first legal document adopted in response to the tectonic changes taking place in the southern neighborhood. The spirit of the text is in line with the need to support the transformation with a ‘more for more’ ie differentiated approach, which basically supports improving ties with individual countries according to their own speed and willingness. The support of the EU is planned to be structured around 3Ms: Money, Mobility and Markets.[[4]](#footnote-4) The EU’s overall approach was first lining up financial and humanitarian aid which is mostly devoted to refugees fleeing war zones as the case in Libya. This is in line with the EU’s overall ‘keeping the refugees where they are’ approach. The Union defined its immediate response in the Commission document as follows:

1. Humanitarian aid of 30 million Euro to be used by the Commission for refugees in Tunisia and Egypt mainly coming from Libya
2. Facilitating consular cooperation and evacuation
3. Frontex joint operations
4. Using EU External Borders Fund and European Refugee Funds
5. High Representatives visit to the region to Tunisia and Egypt
6. Support for democratic transition (European Commission 2011, 3)

However, four problematical areas related to emergency responses; increased surveillance in the borders and FRONTEX operation, helping build capacity to fight irregular migration, dealing with the crises of the Schengen System and finally failing to help refugees deserves unpacking (Carrera et al. 2012).

**BORDER CONTROL AND FRONTEX OPERATION**

The immediate response of the EU to human displacement was driven very much by Eurocentric security concerns defined in a narrow way of preventing people from crossing the Mediterranean Sea. A major measure was intensifying border controls and surveillance, hand in hand with finding ways to exert pressure to newly emerging authorities after the uprisings to cooperate in border control and prevent migration flows. On 20 February 2011, in response to the request of Italy, the EU Border Agency FRONTEX started a Joint Operation EPN Hermes. This operation is articulated as the concrete form of solidarity among member states with the one facing with pressing migratory flows[[5]](#footnote-5). Italy was leading the operation by providing naval and aerial equipment, but it also included experts from ten other member states. The Commission declared its readiness to mobilize further financial assistance “from funds such as the External Borders Fund and European Refugee Fund which amount to EUR 25 million in total” (European Commission 2011a, 4).

The main focus of the Union and FRONTEX operation was to prevent illegal border crossings in the Mediterranean and collect as much data possible to draw accurate risk maps regarding potential routes.[[6]](#footnote-6) Europol also supported Italian law enforcement agencies in identifying potential criminals arriving with migrants (Carrera et al 2012, 5). There have been already various criticisms for the excessive security-oriented framework of FRONTEX operations, the lack of transparency and accountability.[[7]](#footnote-7) Several tragic incidents took place during this mission too.

A worrying practice has for sure been the `push back` operations, which means preventing migrants from reaching the European territories by capturing vehicles in open seas and returning them back to where they left. Readmission and repatriation agreements with the autocrats of the region served this practice for long years. The reason for push backs is to prevent migrants and potential asylum seekers reaching the land, which transforms their legal status and empower the courts against the will of the executive. A famous case of push back, *the Hirsi* case, took place in 2009 where Eritrean and Somali nationals left Libya for Italy, but intercepted by Italian police in international waters and were sent back to Libya. The migrants were made to believe they are being taken to Italy and when realized they were taken back to Libya some rejected and asked for asylum without success. This was enabled by the readmission agreement between Libya, which is not a signatory of 1951 Geneva Convention and Italy. Some of these migrants managed to get recognition from UNHCR for their refugee status, which raises serious concern over the practice of Geneva Convention and its basic clause on *non-refoulement.* Indeed, some managed to bring a legal case in front of the European Court of Human Rights. The Court`s decision was supporting the migrants and was confirming the rights of refugees even in international waters, which for den Hertog (2012, 3) was “denounce[ing] the push back practice”.

UNHCR declared the year 2011 as the deadliest year so far in the Mediterranean. It estimated 1500 similar deaths (UNHCR 2012). Eight years after and much of lip service to saving lives the Mediterranean remains to be a deadly sea. Statewatch boldly reveals the `double standards` in the EU’s approach towards Arab Spring: claiming to welcome the democratic move in the region, while meeting the movement of population linked to it with hostility (Martin 2012). Martin highlights correctly the EU`s approach of reducing the migrants just to statistics and numbers where not all are represented. Total number of migrants, deportations, refugees are recorded, but not necessarily the ones left to die either by drowning in open seas or by returning to `unsafe countries`. There is a clear lack of accountability for the tragic events taking place in the Mediterranean, which has two components lack of clarity and lack of monitoring (den Hertog 2012, 6). It is not necessarily clarified with whom lie the responsibility in situations of distress. FRONTEX claimed to have only a coordination role. Similarly, there is no authority to supervise the humanitarian dimension of the operations. Indeed, “[d]uring the negotiations of the new FRONTEX mandate in 2011, the member states insisted that independent observers would not be allowed in board without their approval” (den Hertog 2012, 7). Therefore, there is a clear logic of secrecy and security dominating operations of FRONTEX. Establishing rule of law in the field of border control and immigration seem difficult than envisaged and the amendments introduced with the Lisbon Treaty has not produced a major change.

**COOPERATION ON BORDER CONTROL**

A simultaneous emergency measure of the EU was pushing the newly formed authorities in the neighbourhood to cooperate in preventing irregular migration, through various partnership agreements and financial aid. Such agreements are closely linked to the above mentioned `push back` practices. Most of the times European countries ask for permission to patrol the national waters of the country in question. Again a major policy tool has been the readmission agreements, which proved to be more difficult to sign with the new regimes in the region. Faster than the EU itself, several member countries signed bilateral agreements with MENA countries. Italy signed an `accelerated repatriation` agreement with Tunisia on 5 April 2011. The agreement was built on Italy`s 200 million Euro worth of aid and credit and Tunisia`s help in preventing further irregular flows and readmitting returned migrants. A similar agreement was also signed between Italy and the National Transitional Council of Libya on 17 June 2011. Italy efficiently benefitted from these agreements and returned 13000 migrants between January and July 2011 (Carrera et al 2012, 6). As can be expected these agreements and repatriations received huge criticism from NGOs as it was disputable if these repatriations are in line with international protection norms, especially the *non-refoulement*  principle.

The EU followed suit and its immediate reaction was to seek bilateral agreements through offering financial aid in return for more ‘vigorous’ border control and cooperation. This can be seen as part of its challenge to stay relevant during the turbulence, but also a continuation of its general policy of externalization. Arab Spring revealed a clear tension between the Union`s policy: keeping `home` safe, ie protecting the borders by preventing illegal immigrants arriving the shores of Europe versus protecting the potential refugees and democracy promotion in these Arab states.

Carrera argues that the EU’s challenge was (and still is in view of Syria) to stay ‘relevant’ when facing a dramatic change in its neighbourhood, by proving that it is ‘doing something’ (Carrera, 2011) and linked to that is the second challenge which is its capacity. Sergio Carrera clarifies what he means by capacity:

first, to provide common policy responses beyond (in)security-related agendas and in full compliance with the rule of law and fundamental rights standards; and second, to address the implications of the reactions by certain European leaders on the reintroduction of internal border controls and anti-immigration policies. The political climate across Europe is currently not the most favourable one in which to address these dilemmas. Several EU member state governments are retreating into nationalism and populism in their politics of migration (2011: 1).

Therefore staying relevant had two dimensions; inside the Union and outside regarding its external relations. The EU`s response evolved on several fronts; while the newly functioning EEAS and the High Representative worked on supporting democratization through conditional financial aid and signing of partnership agreements, FRONTEX was given the mission to assist southern countries in patrolling the Mediterranean Sea. Another effort to stay relevant was to interfere in the Schengen row taking place between member states.

**FIXING THE SCHENGEN GLITCH?**

Achieving a common external border by removing internal borders has been a major goal of the Union. AFSJ has been built mostly around the Schengen regime which has been in practice slightly less than two decades. There are 22-member countries that are part of the Schengen, plus 4 non-members: Iceland, Norway, Switzerland and Liechtenstein. The main logic behind the Schengen Agreements is the idea of solidarity and trusting the ability and capacity of `gate-keeper` countries on the outer borders of the Union. This is guaranteed through legislative harmonization and standardization. For some, this has put extra burden on the shoulders of the countries guarding the external borders. This is what was argued by Italians and Greeks as well during the Arab Spring.

Italy, when faced with an increasing number of migrants arriving to its Lampedusa Island, started to issue “temporary residence permits for humanitarian protection to undocumented North African immigrants from Tunisia who arrived in Italy before 5 April 2011” (Carrera et al 2011, 1). This temporary residence permits would enable immigrants to travel freely within the Schengen land. Yet, Italian move has stirred debate and created resentment in the case of France, which has started spot border checks in its border with Italy and denied immigrants entering France with this permit. Feeling of solidarity in other parts of the EU not with Italy but with France was being expressed. A vivid example came from the Netherlands where the Prime Minister was asking the immigrants that might have benefitted from the Italian decision to leave the country (Carrera et al 2011, 2).

A common criticism has been the lack of coherence and solidarity in the response of the EU to the Arab Spring. Without doubt a clear case at hand is the row between Italy-France over free travel of immigrants, which is correctly named by Carrera et al (2011) as the `race against solidarity`. The Union adopted the common Schengen Borders Code in 2006 and it has been practiced since then. SBC already had certain safeguard clauses for introducing spot checks that can be utilized in cases where security and/or public order is endangered. However, in the Italian case, France`s re-introduction of spot checks on its border with Italy can not necessarily be categorized under these headings (Pascouau 2012). Therefore, there are various dimensions to this dispute; legal dimension ie if Italian action and French reaction are legally legitimate and also political dimension that should take into account the principles Schengen System was build up on: solidarity and fair sharing of responsibility (Carrera et al 2011, 2).

Leaders of both France and Italy adopted a strategy of escalation by carrying the issue to the EU level and during a press conference on 26 April 2011 they demanded the interference of the EU for a `strengthened governance of the Schengen area`. They claimed they will submit a written letter soon. President of the Commission, Jose Manuel Barrosso provided a response in three days that agreed with the demands. Then came the response of the Union of adopting a `Schengen Governance` package which is

based on a communication and two legislative proposals. The first proposal concerns enlarging the criteria allowing the reintroduction of internal border controls[…]The second aims to change the Schengen evaluation mechanism which ensures the application of Schengen rules by Member States (Pascouau 2012,7 ).

The importance of this incidence comes from the clear pull for different directions by member states and the Commission. While the necessity of adopting extra-ordinary measures during extra-ordinary times is appreciated, the bigger question of who decides if an incidence is an extra-ordinary one was a source of contention. The Commission wanted to become the decision making authority while the Member States resented. In the end, the legal framework has not been altered dramatically, implementation of exceptional measures still remained closely linked to a threat to public policy and security considerations. However, it should be remembered that this was not a simple case of interpreting procedures differently, but a fundamental test for `political legitimacy of the Schengen border regime within and outside of Europe`[[8]](#footnote-8). The discussions raised the issue of punishing failing member states through sanctions and exclusion if necessary, which challenges the whole solidarity discourse beyond the Schengen system. Carrera et al correctly reminds that

[t]he scope of the case goes beyond an anecdotal example of the temporary reintroduction by an EU member state of internal border controls in the Schengen area. It rather needs to be interpreted as a tangible instance of repressive policy responses emerging in a context of widespread anti-immigration and xenophobic political discourses expressed by certain EU national leaders, which artificially link human mobility (and especially that labelled as `illegal immigration`), with insecurity and criminality[…]It also affects the EU`s foreign relations because of the message being sent from these EU member states about the kind of solidarity that the countries and populations in North Africa experiencing democratic uprisings and violence can expect from the EU (Carrera et al 2011, 3).

**REFUGEES AND THE CREATION OF `BUFFER ZONES`**

The last emergency response of the Union was about refugees who have been the most vulnerable group during the Arab Spring. This is the area the EU`s failure was most evident. Although European leaders expressed support for democratization demands in the southern neighbours, the dominant concern quickly transformed to `flooding migrants` and protecting borders. A discourse of anti-immigration, reaching sometimes levels of xenophobia quickly surfaced, which made it difficult to differentiate refugees from migrants and thus lend a hand to genuine asylum seekers. The major method the EU tried to handle the issue of asylum was through increasing the capacity of the countries in the region via controversial Regional Protection Programmes (RPP).

In December 2011 a RPP in North Africa was launched by the Commission. UNHCR was a partner in this initiative. The idea behind it is that the UNHCR will determine people in need that qualify for international protection and the EU will facilitate the resettlement of these people in European countries. The Union will also provide humanitarian aid to set up camps in the region and meet the needs of refugees. This way it manages to contain asylum seekers in the region and deals with the issue far beyond its borders. The idea of RPP was nothing new to the Union. As early as in February 2003 UK government proposed the idea of creating regional protection zones and centres for processing asylum claims. As the main motive behind this proposal was not necessarily protecting refugees but preventing them arriving to European countries, the idea at the time received mixed reactions from member states and severe criticism from human rights NGO[[9]](#footnote-9). It was put on hold for a short period and made a comeback in a year and was endorsed in November 2004 by the European Council with the Hague Programme. The idea was sugar coated in a way to enable the Union contribute in a more effective international protection and providing durable solution at the earliest stages of tragedies. A Communication in 2005 clarified the content of RPP to be implemented with UNHCR (European Commission 2005) and followed the common logic of the Union: providing funding and aid in return for cooperation of the host country. The idea behind RPPs was approximating three durable solutions: repatriation, reintegration and resettlement. An EU wide repatriation scheme was also foreseen which could not be materialized.

The Arab Spring pushed particularly two severe cases of refugee flows: as a result of the war in Libya and the on-going civil war in Syria. One million people have been estimated to run away from the war in Libya, among which only 25.000 managed to reach Europe. As for Syrian refugees the number of uprooted people of concern to the UNHCR estimated to be around 5 million[[10]](#footnote-10). Out of this five million a little over one million reached European countries. Through the RPP in North African refugees are “successfully” contained in their region, creating enormous strain for host countries. However, a major goal of durable solution, resettlement to 3rd countries did not take place. The Commission organized a `pledge conference` in May 2011 to hearten the member states for accepting more refugees without much success. In return for this conference couple of member states volunteered to host 300 refugees from Malta and around 700 refugees from Libya and neighbouring countries. This was a major source of shame and failure for the Union. The numbers in this case speak for themselves. “In the course of 2010, about 5000 refugees were resettled in the EU as a whole. This compares to the approximately 75.000 refugees resettled in the US the same year. Indeed, EU member states altogether currently accept fewer resettled refugees than Canada alone” (European Commission 2011c, 15). The Commission does not have any power or instrument to push member states honor their international promises. Things got only worse after the late arrival of Arab Spring to Syria leading to a protracted civil war.

**LONG TERM MEASURES**

As explained above most of the emergency measures of the Union were geared towards preventing the arrival of migrants either through setting up of RPPs or by providing financial aid to host countries to better protect their borders by implementing capacity development programs. The very first legal document adopted was the Commission Communication envisioning a new `Partnership for Democracy and Shared Prosperity with the Southern Mediterranean` launched in March 201 and it was approved by the European Council on its meeting on 11 March 2011. This initial response of the Commission prepared by the High Representative`s office adopted a broader perspective on the change and expressed its support for democratic transition in the region. `Tackling the challenges of mobility` was just one section among others. It set forth three pillars on which the partnership for democracy and prosperity should be build:

1. democratic transformation and institution-building, with a particular focus on fundamental freedoms, constitutional reforms, reform of the judiciary and the fight against corruption
2. a stronger partnership with the people, with specific emphasis on support to civil society and on enhanced opportunities for exchanges and people-to-people contacts with a particular focus on the young

sustainable and inclusive growth and economic development especially support to Small and Medium Enterprises (SMEs), vocational and educational training, improving health and education systems and development of the poorer regions (European Commission 2011a).

The Commission makes it clear that “[t]here is a shared interest in a democratic, stable, prosperous and peaceful Southern Mediterranean” (European Commission 2011a). Indeed, the Commission documents adopt an excited and ambitious language asking for a ‘qualitative step forward in the relations with the EU and its Southern neighbors.” It is quick enough to offer its support on a conditional basis of conducting reforms to be defined through “Partnership for Democracy and Shared Prosperity” initiative built on a differentiated approach.

The document also highlights the importance of ‘people to people’ contact but puts forward as the increased border control capacity as the prerequisite. It states that “[a] key element in [concluding mobility partnerships] is the strengthening of capacity building in the Mediterranean countries on borders/migration/asylum and more effective law enforcement cooperation to improve security throughout the Mediterranean” (European Commission 2011, 6).

The long term measures on migration focused mostly on establishing `mutually beneficial` partnerships with the countries of the region in question. The idea of an incentive based approach, or as commonly called `more for more` approach is defined as the preferred method. This is a continuation of the Union`s old carrot and stick policy. Here the carrot is financial aid, increased cooperation in economy and trade. The document underlines migration as a key priority and proposes ways to `manage it well`. Again the Union oscillated between adopting a narrow security focused approach of limiting migration and adopting a broader perspective on migration and its reasons. The latter, however, was more elaborate in the Communication presented jointly by the Commission and the High Representative*.*

During the European Council meeting on 24 March 2011 the Commission was asked to reflect on plans to `manage migration` by developing capacities (Carrera et al 2012, 9). In return for this call, the Commission prepared the Communication on *the Dialogue for Migration, Mobility and Security.* Carrera et al (2012, 9) highlights the difference in tone, approach and priorities of different Commission documents and claims that it has a lot to do with which DG prepare it. As is the case with `Dialogue` Communication which is prepared by DG Home Affairs the language shifts from a cooperative to a more security oriented one. This might be partly due to the demand the Commission was responding. The Justice and Home Affairs Ministers stated on 24 March 2011 that

[t]he dialogue should first instance focus on the identification and promotion of measure which can contribute in a concrete and effective way to the prevention of illegal migration, to the effective management and control of their external borders, to the facilitation of the return and readmission of irregular migrants and to the development of protection in the region or those in need, including through regional protection programmes (European Council 2011a).

The Council, thus, defines the priorities for the Union and only at the bottom of hierarch it mentions the possibility of facilitating people-to-people contacts through instruments like mobility partnerships.

This idea of partnerships was further clarified with the new version of *Global Approach to Migration and Mobility (GAMM)* published in November 2011. GAMM tried to bring migration out of its security focus and adopt a comprehensive approach, emphasizing the generally overlooked dimensions, such as development, legal migration and the rights of migrants (European Commission 2011b). As the major policy instrument Mobility Partnerships are endorsed.

GAMM is prepared with a very conscious language, both promoting Euro-centric benefits but also highlighting the need for protecting the rights of migrants. The remit of GAMM is built on four pillars: legal migration and mobility, irregular migration and trafficking in human beings, international protection and asylum policy and maximizing the development impact of migration and mobility (European Commission 2011, 6). GAMM also endorses and highlights the importance of RPPs. As already mentioned, the idea behind RPPs is gradual transformation of people in need to other countries. However, in practice we witnessed that it did not work and this resulted in a shameful situation for the EU members in admitting asylum seekers. Norway on its own accepted more refugees than the total of EU-27. Therefore, RPPs function in a way leaving the whole burden in the poorer neighbors of conflict zones and help to prevent people crossing to Europe, ie a de facto solution for migration control.

GAMM further clarifies the aim of the EU as “…systematically …move[ing] towards strong, close partnerships that build on mutual trust and shared interests, paving the way for further regional integration” (European Commission 2011, 8). How far the Union approximates this aim is disputable. Carrera et al (2012) correctly underline the non-dialogical nature of the partnership the Union tries to sign with its neighbors right after the Arab Spring, to which readmission agreements are a crucial precondition. Mobility partnerships were introduced as the panacea for moving away from security emphasis towards adopting a more dialogical and comprehensive approach to mobility the first round of partnerships fall short of this claim. It is possible to trace the heavy emphasis on border control and increasing the capacity of the partner country to be able to access to labor migratory channels (Carrera et al, 2012). Despite a new emphasis on democracy building in the region, the Union`s approach to migration seem not to have changes from its traditional trajectory (Fargues and Fandrcih 2012). The difference of mobility partnerships has been only in discourse by “provid[ing] a more favorable framework for the EU to pursue its traditional external policy agenda (readmission and countering irregular migration) utilizing the discourse of development, partnership and mobility promoted by the Global Approach, without altering its traditional policy goals” (Carrera et al, 2012: 12).

**THE SECOND ROUND: EU’S RESPONSE TO INCREASED FLOWS IN 2015 AND ONWARDS**

As the EU was working to regulate the migratory flows from the south, when the clashes intensified in Syria migratory pressure moved to the eastern borders. The increasing migratory flows in 2015 and 2016 “presented the European Union with a transnational (and existential) crisis in a policy area that had not been constructed to manage fast paced change. Deep political dissent and complex divisions of power between EU institutions, as well as between Member States” slowed the Union, in responding leading to deeper tensions (Collet and Le Coz, 2018: 1).

During this period plethora of initiatives have been discussed in various EU summits, some of which included third countries such as Turkey which will be discussed further below. In an effort to mobilize and show solidarity with the frontline states and outside countries an initiative of the Union has been setting up a temporary relocation system. According to the Dublin system, the first country of entry would be responsible for processing the asylum claims, however this new relocation system aims to bring in new criteria to distribute the burden. Dublin regime was oft critiqued for leaving the burden on the shoulders of border states, though this initiative Commission was hoping to build a more equitable burden sharing mechanism.

On the basis of the Commission’s initiative, the member states adopted a Resolution on relocating from Greece and Italy 40,000 persons in clear need of international protection of 22 July 2015, which was complemented on September 3rd by an additional Council Decision on the temporary relocation of 120,000 asylum seekers from Greece and Italy. EU member states had also committed themselves in July 2015 to resettling over 22,000 people from outside Europe (Carrera et al, 2015: 5).

In practice many of these slots were not filled due to the reluctance of member states in resettling refugees. Increased loss of life on Central Mediterranean route triggered the preparation of a ten point plan drafted by DG Home staff. This evolved to the *European Agenda on Migration* published in May 2015 as a communication from the Commission. “The key innovation in the agenda document was its proposal to create a set of ‘hotspots’. Vague in its articulation, the broad goal was to bring EU agencies to work on the ground with frontline Member States to identify, register, and fingerprint incoming migrants.” (Collet and Le Coz, 2018: 10).

Up until 2015 migration crisis was seen mostly as a crisis for Italy. During the summer of 2015 migratory flows moved to east from Turkey to Greece. A major response was setting up hotspots in Italy and then in Greece to help these countries process new arrivals and prevent backlogs of applications. These required coordination between EU agencies, national and local governments, civil society organizations and international agencies. Frontex, Europol and EASO staff were stationed in member states and helped with identification fingerprinting and registration of migrants. The Union also adopted a Regulation providing a common list of safe third countries. These included candidate countries to which migrants could be returned.

Another initiative of the Commission have been adopting an EU Action Plan against smuggling (COM(2015) 285, EU Action Plan on Return COM(2015) 453 and a Recommendation on Common Return Handbook. A major emphasis of all these documents have been cooperation with third countries on readmission. Building onto previous operations in the Mediterranean, Operation Sophia to combat people smuggling and prevent loss of lives on the Mediterranean was announced as a result of Council meeting on 18 May 2015. The operation had three phases focusing surveillance and assessing smuggling networks, searching and if necessary diversion of suspicious vehicles and disposal of vessels and related assets, preferably before use, and to apprehend traffickers and smugglers. The Union had an initial budget of 11 million Euros for the operation, which eventually was extended the following two years. Unfortunately, Operation Sophia could not succeed in preventing human loss on the Mediterranean. “Less than a month into 2018, more than 200 people have already died or gone missing at sea, according to IOM” (PBS, 2018).

Along with shuffling of funds to support strained member states, the Commission also proposed a European border and coast guard (EC, 2015). This foresee strengthening Frontex’s competencies and evolving it to a functioning European border and coast guard mechanism. The agency would have two ultimate goals, standardizing EU border management standards and supporting frontline states operationally (Carrera et al 2015, 11). “The model running the Agency would work on the basis of liaison officers who would be sent or seconded by the Agency to the EU member states’ concerned. They would be fully integrated into the national authorities’ work and information systems, so that the Agency would be informed ‘in real time’” (Carrera et al, 2015: 12). On 18 December 2015, the [European Council](https://en.wikipedia.org/wiki/European_Council) supported the proposal and after a vote by the [European Parliament](https://en.wikipedia.org/wiki/European_Parliament), the European Border and Coast Guard was officially launched on 6 October 2016 at the Bulgarian external border with Turkey.

During October 2015 a series of high-level meetings were convened that led to adoption of collective action plan and a 17 point plan for operational measures for the Western Balkans migration route. The action plan covered topics like permanent exchange of information, limiting secondary movements of migrants, supporting refugees and providing shelter, tackling smuggling and increase efforts to manage borders. The last item suggested finalizing and implementing an EU-Turkey Action Plan. One of the most controversial moves of the Union has been signing the EU-Turkey deal, which was celebrated by the EU agencies as the panacea to all migration problems, whereas criticized by almost all humanitarian agencies for disregarding EU’s obligations emanating from international and European law.

**EU TURKEY MIGRATION DEAL**

Members of the European Council and representatives from Turkey met three times from November 2015 to March 2016 in the heights of the migrant crisis. This was a period of disorder and terrorism in Turkey, where bombs exploding in Istanbul and Ankara were raising concerns about the porous nature of Turkish borders and the integrity of the state. On November 29, 2015 both parties agreed on a joint action plan that was announced by the Commission on 15 October 2015.

The joint action plan claimed to address the crisis in three ways: tackling the root causes leading to the massive influx of Syrians, assisting Syrians under temporary protection and their host communities in Turkey and enhancing cooperation to prevent irregular migration flows to the EU (Commission, 2015). The plan had a reference to burden sharing on the side of the Union and Visa Liberalization Dialogue for Turkish citizens to be executed simultaneously. It also foresaw establishing an EU-Turkey high level working group on migration to follow through the implementation.

Through the plan the EU committed 3 Billion to support Syrians in Turkey. The money would be available through the EU Trust Fund for the Syrian crisis to enable flexibility and speed for releasing the funds, which Turkey negotiated for. The EU also committed itself in working with Turkish authorities in identifying the priority areas. It proposed a comprehensive joint needs assessment to design the actions to be taken as well as deploying a FRONTEX liaison to Turkey, supporting cooperating between Turkey and member states in organizing joint return operations and supporting the country’s capacity to combat migrant smuggling by reinforcing Turkish Coast Guard’s surveillance capacity. Turkey also expressed its intention to set up cooperation with Bulgaria and Greece to prevent irregular migration across land borders, accelerate procedures to readmit irregular migrants, align Turkish visa policy with the Union, continue fighting to dismantle criminal smuggling networks by increasing operational cooperation with EU agencies, intensify exchange of information with FRONTEX and member states and to deploy a liaison officer to Europol.

For [European] leaders the objective was clear: to find a way to prevent unchecked arrivals into the European Union. The fact that a group of 28 states with increasing divergent interests was able to find consensus speaks to the level of concern that leaders have for their own domestic political futures in a context of rising populism. However, the deal has also unveiled a paradox for European Union that has spent several decades preaching its own high asylum standards to neighboring countries. To achieve its self-imposed goal- a significant reduction in arrivals and an increase in returns to Turkey- policymakers will have to drastically cut legal corners, potentially violating EU law on issues such as detention and the right to appeal (Collett, 2016).

On March 18, 2016 both parties take stock of developments related to action plan and celebrated developments like Turkey opening its labor market to Syrians, introducing new visa requirements for Syrians and other nationalities, increasing security efforts on its borders and coasts, EU starting the disbursement of 3 billion Euros for projects and starting conversations on visa liberalization and revitalizing accession talks. They then agreed on further measures to be adopted. The agreement in March 2016 brought new layers to the action plan. One of the most controversial of them was returning all-new irregular migrants arriving to Greek islands back to Turkey after March 20th. This was defined as a ‘temporary and extraordinary measure’ that needed to be taken to end human suffering and restore public order. The idea of ‘blanket returns’ led to a lot of backlash from humanitarian circles. Even the UN criticized the plan of sending migrants to Turkey in exchange of financial and political rewards (The Guardian, 2016). However, the Commission argued

[m]igrants arriving in the Greek islands will be duly registered and any application for asylum will be processed individually by the Greek authorities in accordance with the Asylum Procedures Directive, in cooperation with UNHCR. Migrants not applying for asylum or whose application has been found unfounded or inadmissible in accordance with the said directive will be returned to Turkey (EC 2016).

Existing EU law enables return under two cases, the migrant either does not apply or even if they apply they do not qualify for asylum. In this case they would be considered irregular migrants and can be returned to Turkey or any other country if there is an existing readmission agreement. Implementing the readmission agreement with Turkey, hence was crucial for the EU action plan to be materialized. Turkish bureaucracy for years defended signing the readmission agreement with the EU only with full membership. Internal political turmoil and excessive political pressure on bureaucracy led to Turkey signing the readmission agreement without really getting anything substantive in return. The second case where migrants can be returned is when people apply for asylum but are determined to passed through what is considered a third safe country meaning a country they could have applied for protection and receive protection. The discussion relating to Turkey was centered around if the country can actually be designated as safe (Collett, 2016). Again, a country going through the turbulence of a failed coup attempt leading to the purge of hundreds of thousands of people was quite rightly questioned by humanitarian circles if it could be classified as a 3rd safe country.

The second action item of the statement of March 2016 was about admitting one Syrian refugee from Turkey in exchange for returning an irregular migrant from Greece back to Turkey. The purpose of this clause was not self-evident to many humanitarian agencies, though the Union claimed this would activate resettlement mechanisms to which member states committed. However, those would be people who did not try to cross the border to EU illegally and the total number could not be more than 72.000. After being returned to Turkey migrants are being fingerprinted, registered and go through medical checks. Then they are sent to ‘reception and removal centers’ founded with EU money in Ankara, Erzurum, Izmir, Gaziantep, Kayseri, Van and Kirklareli, which then they would be deported to their home countries. UNHCR stated that it was not a party to the EU-Turkey deal and it would not be involved in returns or detention. Similarly four other aid agencies (IRC, Medicine San Frontier, Norwegian Refugee Council and Save the Children) said they would not help implementing the deal as blanket returns are against the existing international law.

In return for Turkey curbing the migrant flow and admitting irregular migrants back, the Union offered to have visa liberalization for Turkish citizens by June 2016. Although migratory flows were curbed according to EU publications almost %90, the promise of visa liberalization has not been realized after four years. Ankara was asked to fulfill 72 benchmarks to achieve visa liberalization and she has fulfilled 65 of them. Yet, two out of seven remaining criteria continue to be hurdles that Turkey needs to tackle. The first is the EU’s demand from Turkey to modify its anti-terror law. This became quite a sensitive issue after a failed coup attempt as well as PKK bombings across the country. The other issues are related to achieving a deal with the European Police Service (Europol), and regulations on the protection of personal data with priority.

Despite the sharp decrease in the numbers of migrants reaching Europe after a year, the agreement continued to receive important criticism. For instance, according to Amnesty International

Over the last year European leaders have sought to portray the EU-Turkey deal as a success, with some even touting it as a model to be replicated elsewhere. To these leaders, the only thing that matters is that the number of irregular arrivals to Europe has fallen significantly, even in the short term. Other parts of the deal – for instance the promise of a meaningful, safe and legal way out of Turkey – largely remain unfulfilled. As of 27 February 2017, the number of Syrian refugees transferred from Turkey to EU member states was 3,565 – a number made even more negligible when contrasted against the 2.8 million Syrians currently in Turkey (Amnesty International, 2017).

**CONCLUSION**

This article examined the EU`s response to the Arab Spring particularly on the issue of migration and border control. The EU has been going through important institutional transformation since the signing of the Lisbon Treaty and was caught by surprise with the uprisings in the south similar to any other member of international society. However, Arab Spring proved to be an important test case for the EU as it challenged its capacity to act together, sustain the main principles of solidarity among the member states when faced with emergency situations and upholding its humanitarian values it claims to defend. Unfortunately, the short-term emergency measures of the Union were very much driven by the narrow Euro-centric security thinking. A home security mentality was at work. Four major areas examined in the article, FRONTEX operations and increased surveillance on borders, building capacity to `fight` irregular migration, fixing problems of the Schengen System and the situation of refugees, all attest to that. The situation particularly regarding asylum seekers reveals the incompetence of the Union in convincing member states to act in line with the liberal values of the Union. Despite the rhetoric of `biblical exodus`, the total number of migrants arriving in the EU in 2011 remained pretty much the same compared to previous years. Most of the displacement remained within the region of turbulence, leaving the burden on the shoulders of countries going through revolutions. When there were increased migratory pressure in 2015 the Union faced even increased challenges including ability to act together and even legitimacy. Many of the Western Balkan countries started to erect walls between members and potential members. The Union in an effort to stay relevant and retain its legitimacy in the eyes of European citizens convened rounds of meetings, published various documents and finally reverted back to short term planning and signing a migratory deal with Turkey, whose legality was in dispute, to curb the flow.

The Union oscillated between adopting a broader democracy promotion perspective and narrow European security emphasizing border control. GAMM has been a vital initiative, yet, there is a gap between discourse and practice. One explanation could be from an institutional habitat perspective which stresses the fact that the major actor in the external dimension of migration and asylum issues, despite the existence of High Commissioner and EEAS, is still DG Home Affairs that have a different ‘mentality’ compared to diplomats. DG Home Affairs` priorities are based more on security calculations rather than a more open dialogue or an integrated approach for migration. This claim is even more valid for the home affairs officials of member states whose main priority is reinforcing external borders. Institutional competition within the DGs of the Commission as well as newly formed EEAS is evident. As a result, mobility is still very much framed as insecurity and dialogue is more like a monologue where EU dictates its own preferences to the region. Conflicting aims of different policies of the EU became more evident with the Arab Spring. Euro-med policies has been defending to improve democracy and when there was such a process the EU’s major preoccupation was limiting physical interaction with the region, suppressing mobility in the Mediterranean, trying to reach agreement with new governments or people in power to limit migration. This kind of approach reveals EU as a self-interested ‘ordinary’ power not a normative one and limits its ability to diffuse change. The EU-Turkey deal also embodied the symbolic shift in the EU’s international protection policies, where it adopts a territorial notion of asylum and works to erect physical barriers for accessing the EU territory.

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