

[slide 1: title page]

- The presentation today will look at the interplay between EU and Turkey, and I'll argue that both have – in one way or another – legitimized the uncertainty of Syrian migrants
- The information here originates from many different sources: discussions with migrants, meetings with different organizations, training sessions, content analyses, literature reviews and my Master's research.
- Considering the amount of news coverage that we've had on what the EU has coined a 'migration crisis', I'll assume that most of you have a preliminary understanding of what I'll be talking about today.

[slide 2: EU and expressions of the containment paradigm]

- Now, before we get into the interplay between the EU and Turkey – the world's most important refugee-hosting country – I want to spend a bit of time to expand on how the containment paradigm has manifested itself in the EU's migration regime. Let's look at some of the characteristics of the containment paradigm.

[slide 3: paradigms in parallel]

- Through the evaluation of mediatized representations of migrants, testimonials by high-ranking EU official and the character of emerging migration policies, two paradigms can be drawn.
- Unfortunately, because of their diverging characteristics, creating conceptual and practical dissonance, both paradigms work in parallel.
- On one side, we have the containment paradigm of which has been discussed extensively by University of Boston's Susan Akram.
- On the other, we have the migrant solidarity or rights-based paradigm, of which is based on the foundational belief in Human Rights, life with dignity and an appreciation for the notion that forced migrants can contribute positively to the social, cultural and economic development of host countries.

[slide 4: manufactured risk]

- According to Horlick Jones:
 - "... risk analysis might be regarded as not only a product of enlightenment thinking, but also the means to deliver the ultimate enlightenment fantasy: the idea that successive generations will learn more about the world, and so become more able to manipulate it for human gain and contentment."
- Risk analysis, in essence, is the attempt to devise probabilities and models that predict the likelihood of a risk materializing into a catastrophe, crisis or disaster. Evidently, the data gained from risk analysis is used to inform policies of control.
- Sociologist Ulrich Beck questions the tangibility of risk and therefore of risk analysis, claiming that it's largely manufactured, or socially constructed:
 - Risks are always events that are not yet real. Without techniques of visualization, without symbolic forms, without mass media, risks are nothing at all. The sociological point is: If destruction and disaster are anticipated this might produce a compulsion to act. The social construction of a "real" anticipation of catastrophes can become a political force, which transforms the world.

- From political discourse to mediatized narratives across the EU, migrants have effectively been attributed as a risk factor threatening the future European identity.
- Michel Agier, in his book *Managing the Undesirables*, conceptualizes humanity as "(...) two great world categories that are increasingly reified: on the one hand, a clean, healthy and visible world; on the other, the world's residual 'remnants', dark, diseased and invisible" (Agier, 2011: 4).
- So, in a socio-political climate where the consequences of migration are assessed within the frame of worst-case scenarios, there is effectively a significant political force that is pushing towards containment and exclusion.

[Slide 5: strengthening internal borders]

- There's no question that in all of the initiatives that have worked toward the unification of European states, EU citizens have benefitted the most from the Schengen Agreement, which largely abolished internal border controls and opened the way to freedom of movement.
- However, in recent years, it has become apparent that the Schengen system is eroding. This was most apparent in the summer of 2015, at the height of refugee inflow into Europe, where EU Member States such as Austria, France, Germany, Poland and Slovenia have reinstated border controls.
- Why do we build borders? To keep people out. The strengthening of internal borders is yet another manifestation of the containment paradigm.

[Slide 6: externalization of borders]

- For over a decade now, the EU has engaged into multiple activities that work to externalize its borders
- Rodier, within an IFRC publication, characterizes externalization of borders as:
 - (...) the process which uses various methods to transfer migration management beyond national borders [and] in the EU involves transferring responsibility and, in effect outsourcing its immigration and asylum policy by subcontracting controls.
- The EU has done this in two well-documented areas: naval patrol in large bodies of water adjacent to EU territory and through the use of readmission agreements with non-EU countries.

[Slide 7: externalization of borders]

- On this map, you can see a few examples of maritime border monitoring operations. Most are operated by FRONTEX, the European Agency for the Management of Operational Cooperation at the External Borders.
- The mandate of these agencies is effectively to monitor the maritime external borders of the EU, using advanced technologies such as satellite imagery to warn national coast guards that migrants are trying to irregularly enter European waters. Contradictory to **Article 98** of the 1982 **United Nations Convention on the Law of the Sea**, stating that any active vessel has a responsibility to (a) "render assistance to any person found at sea in danger of being lost" and (b) "to proceed with all possible speed to the rescue of persons in distress", the mandate to conduct search and rescue is not properly outlined in the organizational frameworks of these agencies. There is also surmounting evidence by various refugee testimonials and reports by INGO's that they have repeatedly ignored calls of distress.

[Slide 8: externalization of borders – Push-back's]

- Push back operations are another well-documented practice, being the forcible return of migrants into a territory they are fleeing, typically following an interception at sea.
- Extensive reports by both Amnesty International and Pro Asyl "(...) have cited hundreds of testimonials of refugees and revealed that push-backs in the Aegean Sea by Greek coast guards have been commonplace since 2012"
- There are serious legal implications to push back operations, as they do not conform to various international and European legal standards.

[Slide 9: externalization of borders – Push-back's: Legal implications]

- (Outline some of the legal implications – ON SLIDE)

[Slide 10: externalization of borders – FRONTEX annual budget]

- Amidst the ever-increasing number of documented cases where maritime border control agencies have been out of bounds in respects to international and European law, and have consistently failed to be accountable and transparent on these cases, funding continues to increase.
- Maritime operations

[Slide 11: externalization of borders – Readmission agreements]

- Another means that the EU has externalized its external borders has been through the use of readmission agreement between itself and non-EU countries, or between specific EU Member States and non-EU countries.
- Readmission agreements are address "procedures for one State to return aliens in an irregular situation to their home State or a State through which they passed en route to the State which seeks to return them" (IOM, 2010: slide 3)

[Slide 12: externalization of borders – EU-wide readmission cooperation]

- For over a decade now, the EU authority has been negotiating these agreements with various countries

[Slide 13: externalization of borders – EU member States + non-EU]

- There have been, however, many more agreements between specific EU member States and non-EU countries. Notice how the EU countries that have the most readmission agreements are at the external limit of its continental borders.
- The EU's Global Approach to Migration and Mobility (GAMM), founded in 2005, has inevitably contributed to the rapid increase in readmission agreements, particularly through arrangements such as the Khartoum Process (2014), the Silk Routes Partnerships for Migration (Budapest Process, 2011), the Prague Process (2011) and the Rabat Process (2014)
- Often, readmission agreement clauses have been squeezed into broader bilateral and multilateral cooperation partnerships. In an editorial by the organization Migreurop, a critical reflection was brought forth (and I quote): "the question of whether development assistance is conditional on the "management of migratory flows", and on the fight against irregular immigration, must be asked, now that all developmental aid and even all forms of "economic or commercial cooperation" have hinged upon the negotiation of these objectives" (Migreurop, 2012: 2)

[Slide 14: securitization and technology]

- Another aspect of the containment paradigm has been the framing of migration as a 'security issue'.
- The securitization of migration has led to the development of multi-stakeholder initiatives between the EU and private technology contractors.
- The result has been wide-ranging, from fence technologies implemented at borders such as Ceuta and Mellina – dating back to 2005 – to recent use of unmanned aerial vehicles and satellite imagery to track migrant movement in the Mediterranean basin.

[Slide 15: burden vs. responsibility]

- The characteristics of the containment paradigm can be summarized in the way that European figureheads and mass media have conceptualized migrants as a 'burden' rather than a group of individuals in distress of whom we have a responsibility towards.
- Since 2009, Europe has been facing significant economic challenges. Countries such as Spain, Greece and Italy have been unable to pay off their debts, GDP in some EU countries has dropped significantly and unemployment is an increasing problem.
- As in most areas of the world, EU citizens are looking to their political leaders and the socio-economic structures that perpetuate or rectify these challenges.
- In this climate, where (a) citizens demand accountability and understand that a mass entry of migrants implicates national spending and (b) international organizations such as the UN, IOM and a whole range of INGO's expect the EU to protect forced migrants and abide by international legal standards, it is apparent that political bodies have adopted a 'least-blame' approach to the question of migration.
- In Hood's (2011) typology, the *Architectonics of Blame Avoidance*, he outlines three strategies that governments use to discharge themselves of blame and responsibility.
 - Agency strategies are the "(...) selection of institutional arrangements to minimize or avoid blame" (Hood 2002, 17) through " (...) creative allocation of formal responsibility, competency, or jurisdiction among different units and individuals" (Hood 2011b, 67)
 - E.g. Bureaucratization of European bodies, each responsible for different components of the asylum regime
 - Presentational strategies are the work of highly trained public relations professionals, or spin doctors, which are tasked to shape " ... media debate and public perceptions" (Hood, 2011b: 19). "Central to the presentational strategy is framing, rhetorical and spin-doctoring activity" (Hood 2011a, 73) which is to "selectively emphasize/evaluate certain aspects of a perceived reality" (Hänggeli and Kriesi 2010, 142).
 - E.g. Mediatized representations of migrants
 - Protests in detention centres
 - Resisting arrest
 - Policy strategies implicate the adoption of 'least-blame' policies, " ... by avoiding cases or problems with a high blame risk" (Hood 2011b, 90)
 - E.g. Readmission agreements
- All told, the combination of these strategies amount to blame-avoidance/responsibility-avoidance

[Slide 16: European 'migration crisis' and EU-Turkey cooperation]

- So now that we have an understanding of some of the developments and characteristics of Europe's asylum regime, let's move onto how this plays into its cooperation with Turkey.

[Slide 17: timeline of events]

- Let's start by looking at a timeline of critical events, both within Turkey and in respects to its cooperation with the European Union.
- The Syrian conflict all started in March of 2011, where large groups of Syrian citizens protested the Syrian regime. This was considered as a continuation of the Arab Spring, as seen in other countries such as Tunisia and Egypt.
- Following a military siege of Jisr al-Shughour in Northern Syria, Turkey experienced its first wave of migrants – approximately 2,500
- As migrants continued to arrive in the coming months, as the conflict escalated, Turkey's protectionist policies continued to prevent INGO's from either entering the country or to conduct any operations within the country.
- Now, let's look at specific elements on this timeline

[Slide 18: Dec. 2013: EU-Turkey Readmission Agreement]

- Readmission negotiations between the EU and Turkey began as of 2013
- Within these negotiations, visa liberalization was signed in parallel with readmission agreement
- The available documentation on this agreement indicate that readmission of third country nationals would begin three years after the agreement was established. That would make it effective from December 2016.
- However, as we'll see in the next few slides, this process was accelerated due to the 2015 European migration crisis.
- As part of the visa liberalization process, the EU provided Turkey with a "Roadmap Towards a Visa-Free Regime with Turkey", of which contained 5 areas of work.
- Two of these were related to migration:
 - Migration management
 - Readmission of irregular migrants
- This sent a clear message: control migration and you will have access to the Schengen zone

[Slide 19: October 2014: Law on Foreigners and International Protection - outline]

- In October 2014, a very important piece of legislation was brought into force.
- The Law on Foreigners and International Protection was characterized by some as a historic step for Turkey, as it outlined a clear asylum law.
- It was also very well received by civil society, as it was based on consultations with credible organizations such as UNHCR, researchers and various NGO's. As a result, it incorporated important elements of international asylum law, such as the concept of *non-refoulement*.
- This Law also incorporated the principle of temporary protection, of which Syrian migrants would benefit from, as well as various rights associated to that status:
 - Right to education
 - Access to health services
 - Right to receive a work permit

- This was further guaranteed in January 2016 with a new piece of legislation: *Regulation on the Work Permits for Foreigners under Temporary Protection* (2016)
 - Ability to apply for social assistance
- It also outlined some of the rights and services that should be granted in accommodation and detention centers
- There are, however, implications to consider with this law.

[Slide 20: October 2014: Law on Foreigners and International Protection - implications]

- Temporary protection granted in times of "mass influx" (art.91[1]), of which is decided by the Council of Ministers (art.91[2])
 - Lacks specificity
- Confirms Turkey's responsibility towards the principle of *non-refoulement* (art.4)
 - Multiple reports (Amnesty International, 2016; Human Rights Watch, 2016) have outlined cases of mass expulsion of Syrians back to Syria
- Discord between law and practice
 - Education
 - Discrimination
 - Rejection of applications
 - Health
 - Refusal to treat migrant patients
 - Work
 - 70% of Turkey's economy is informal
 - Limited number of permits issued
 - Following work permits regulation, employers must abide to Turkish labor standards
 - Social Assistance
 - Availability is limited
- Access to accommodation, detention and removal centers
 - Testimonials by Turkish lawyers and reports by national NGO's and INGO's attest that access has not been granted in many instances

[Slide 21: Nov. 2015: EU-Turkey Summit]

- Now we jump forward a bit, to November 2015 near the peak of refugee inflow into Europe.
- At the EU-Turkey Summit, it became clear that the EU-Turkey Readmission Agreement would now be sped up, alongside the visa liberalization process.
- The Readmission Agreement would now become fully-applicable in June 2016, six months earlier than had been previously decided.
- The visa liberalization and accession processes would also be accelerated
- In addition, these meetings resulted in the establishment of the Facility for Refugees in Turkey, a fund that would disburse 3 billion Euro to Turkey to assist in its humanitarian activities.

[Slide 22: Feb. 2016: Turkey declared as 'safe country' - outline]

- Playing into the process of readmission, where migrants can only be sent back to a country deemed safe, the Minister of the Interior for Greece – in conjunction with his French and German counterparts – declared Turkey a 'safe country'.

[Slide 23: Feb. 2016: Turkey declared as 'safe country' - implications]

- This happened in February of 2016, at a time that was very questionable due to Turkey's social climate.
- In recent months, relations between Turkey and its Kurdish minority were increasingly deteriorating. There had been bombings and armed insurgency. Effectively, the Kurdish Peace Process was collapsing.
- Simultaneously, the Turkish government had conducted multiple crackdowns on academics due to a petition they had signed denouncing some of the military activities that were occurring in the South East – specifically, in regards to attacks on citizens and the application of curfews in various areas. The response to incarcerate some of these academics, through the use of raids, was evidently a breach of international law concerning freedom of expression.
- Lastly, and most importantly in respects to law, is that declaring Turkey a 'safe country' would be irrelevant in providing legal backing for the readmission of irregular migrants, as the concept of 'safe country' only applies to the nationals of that country (i.e. Turks). What they wanted to do is actually to consider Turkey a 'safe third country' – a classification applicable to migrants – but they could not because of Turkey's retention of its geographical limitation to the 1951 Geneva Convention
- However, irrespective of the inadmissibility of this declaration to the migrant context, this narrative persisted. Actually, it continues to persist.

[Slide 24: Mar. 2016: EU-Turkey Action Plan]

- Dec. 2013 readmission agreement is fast-tracked
- Irregular migrants arriving to the Greek islands after 20 March 2016 will be sent back to Turkey
- 'One for one' (1:1) arrangement
 - "For every Syrian returned to Turkey, another Syrian will be resettled from Turkey to the EU"
 - Maximum of 72,000, but possible extensions with the "Voluntary Humanitarian Admission Scheme"
- Turkey will strengthen security on sea and land routes
- Additional 3 billion Euro added to Refugee Facility for Turkey
- Denounced as problematic and possible illegal by notable agencies: UNHCR, Medecins Sans Frontieres, International Rescue Committee, Norwegian Refugee Council, Save the Children, Amnesty International, Human Rights Watch, and many others. Let's explore some of these implications.

[Slide 25: Readmission from the EU to Turkey]

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

- “A country can be considered to be a first country of asylum for a particular applicant if:
 - (a) He or she has been recognised in that country as a refugee and he or she can still avail himself/herself of that protection; or
 - (b) He or she otherwise enjoys sufficient protection in that country, including benefiting from the principle of *non-refoulement*, provided that he or she will be readmitted to that country.
 - In applying the concept of first country of asylum to the particular circumstances of the applicant, Member States may take into account Article 38(1).”
- Article 38 of Asylum Procedures Directive (recast)
 - “Member States may apply the safe third country concept only where the competent authorities are satisfied that a person seeking international protection may be treated in accordance with the following principles in the third country concerned:
 - (b) There is no risk of serious harm as defined in Directive 2011/95/EU;
 - (c) The principle of *non-refoulement* in accordance with the Geneva Convention is respected;
 - (e) The possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Geneva Convention”

[Slide 26: Sufficient protection in Turkey?]

- APD does not define ‘sufficient protection’
- According to UNHCR (selected):
 - “No risk of persecution within the meaning of the 1951 Convention or serious harm in the previous state;
 - No risk of onward *refoulement* from the previous state;
 - Compliance, in law and practice, of the previous state with relevant international refugee and human rights standards, including adequate standards of living, work rights, health care and education. (...)” (UNHCR, 2016: 3)
- Considering the information provided in this presentation, suggesting that Turkey meets these standards is extremely questionable. This view, supported by a large number of local, national and international organizations, is not a matter of subjective judgment, but rather one based on law and verified by experiences in the field. Issues such as wide-scale child exploitation, extended migrant detention with no access to legal services, regular breaches of human rights in respect to freedom of assembly, thought and expression, a well-documented record of collective expulsions and the systematic denial of access to rights such as education, health and work come to mind.

[Slide 27: Quote by Collett]

- Elizabeth Collett, Director of the Migration Policy Institute has said that:
 - *The high price tag of the E.U.-Turkey deal has sent a message to other non-E.U. countries that their cooperation on migration is a commodity that is rapidly increasing in value, as well as a message to major refugee-hosting countries – the vast majority of which are developing countries – that their responsibilities to the vulnerable and displaced are optional and can be outsourced.*

- The most striking example of how this has materialized has been with the Kenyan government's announcement that it will be shutting down Dadaab Refugee Camp – the largest refugee camp in the world – and potentially sending back its residents to their home country
- The EU-Turkey agreement has undeniably set a worrying precedent.
- I want to close by saying something quite simple. Host communities and migrants share many of the same uncertainties: homelessness, unemployment, availability of healthcare services, access to high quality education, etc. However, through the various legal, political and cooperation arrangements discussed in this presentation, it becomes apparent that uncertainties of migrants have been undeniably legitimized. Now, Syrians are largely in a state of limbo, either living in Turkey – a country that we cannot necessarily trust to guarantee protection and access to basic services – or cooped up in various processing and detention centers across the EU. Effectively, their fate should be considered shaky.