

Moldovan, Carmen

Article

Is the EU-Turkey Action Plan an effective or just an apparent solution to the refugee crisis?

CES Working Papers

Provided in Cooperation with:

Centre for European Studies, Alexandru Ioan Cuza University

Suggested Citation: Moldovan, Carmen (2017) : Is the EU-Turkey Action Plan an effective or just an apparent solution to the refugee crisis?, CES Working Papers, ISSN 2067-7693, Alexandru Ioan Cuza University of Iasi, Centre for European Studies, Iasi, Vol. 9, Iss. 3, pp. 195-212

This Version is available at:

<https://hdl.handle.net/10419/198506>

Standard-Nutzungsbedingungen:

Die Dokumente auf EconStor dürfen zu eigenen wissenschaftlichen Zwecken und zum Privatgebrauch gespeichert und kopiert werden.

Sie dürfen die Dokumente nicht für öffentliche oder kommerzielle Zwecke vervielfältigen, öffentlich ausstellen, öffentlich zugänglich machen, vertreiben oder anderweitig nutzen.

Sofern die Verfasser die Dokumente unter Open-Content-Lizenzen (insbesondere CC-Lizenzen) zur Verfügung gestellt haben sollten, gelten abweichend von diesen Nutzungsbedingungen die in der dort genannten Lizenz gewährten Nutzungsrechte.

Terms of use:

Documents in EconStor may be saved and copied for your personal and scholarly purposes.

You are not to copy documents for public or commercial purposes, to exhibit the documents publicly, to make them publicly available on the internet, or to distribute or otherwise use the documents in public.

If the documents have been made available under an Open Content Licence (especially Creative Commons Licences), you may exercise further usage rights as specified in the indicated licence.



<https://creativecommons.org/licenses/by/4.0/>

Is the EU-Turkey Action Plan an effective or just an apparent solution to the refugee crisis?

Carmen MOLDOVAN*

Abstract

European Union and its Member States have tried at least at political level to solve the problem of migrants and refugees inflows coming to Europe from the Middle East through Turkey and Greece. Latest attempts in this regard are represented by the 2015 European Union-Turkey Action Plan and the 2016 Statement of the European Union and Turkey which contained measures aimed to control the irregular migration and human trafficking acts, in accordance with the European Union law and international standards of refugee law. Although the aforementioned acts refer to concrete provisional and extraordinary measures concerning different categories of persons arriving in Greece and applying for asylum and they were actually put in practice by Turkey, their legally binding force is controversial in the context of the recent interpretation of the Court of Justice of the European Union in some similar cases, in which the Court found that the 2016 Statement is not an act concluded by the institutions of the European Union and it is not an agreement legally binding. In other words, it represents a political statement which is excluded from the legality examination of the Court. Although the decision of the Court may be legally correct for procedural reasons, this situation raises questions concerning the commitment of the European Union and its institutions to really analyse and find effective measures regarding persons arriving in the European Union territory and claiming international protection according to international standards. The aim of this paper is to analyse the legal implications of the 2015 Joint Action Plan and the 2016 Statement and their compatibility with the international legal standard of refugees and to show the lack of resilience in adapting to refugee and irregular migration problems, contrary to the European Union values and principles.

Keywords: political statement, legal effects, refugees, migration, jurisdiction

Introduction

Recent cooperation between the European Union or European Union Member States and Turkey concerning irregular migration from Syria and Middle East is based on two arrangements, from 2015 and 2016, both having the aim of reducing this phenomenon and the human smuggling by limiting the access of individuals to Greece and from there to other European Union Member States.

* Carmen MOLDOVAN is Lecturer, PhD at the Faculty of Law, Alexandru Ioan Cuza University of Iasi, Romania; e-mail: carmen.moldovan@uaic.ro.

This aim should be realized by returning all new irregular migrants crossing from Turkey into Greek islands as from 20 March 2016 to Turkey and all the measures should be in accordance with the EU Law and the International Law.

Although the reading of the Action Plan emphasizes that its scope is irregular migration it implicitly affects the persons that could be considered refugees and thus, it raises several issues regarding its compatibility with the 1951 Geneva Convention relating to the status of refugees which sets the basic standards on the legal status of refugees and their international protection to which the States parties may offer extensive rights (Goodwin-Gill, 2014, p. 38-39).

Having in regard that the 1951 Geneva Convention is the *lex specialis* within the international human rights law (Chetail, 2014, p. 703-704) and the general framework of the legal status of refugees and that the persons coming to Europe from Middle East call themselves refugees, the measures undertaken by the EU-Turkey Action Plan should be in accordance with the rules of the 1951 Geneva Convention. For this reason, some terminological remarks are needed.

Firstly, refugees are not migrants, in the sense of the 1951 Convention, as they are forced to leave their country of origin for reasons set by the international rules (Edwards, 2005, p. 328). At most, they may be considered subjects of forced migration (Chetail, 2014, p. 720), a special category of vulnerable persons to whom member States of the Geneva Convention have certain legal obligations.

According to Article 1 of the 1951 Geneva Convention as amended by its 1967 additional Protocol, a refugee is a person who is unable or unwilling to return to his country of origin “owning a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion”. The significant element of refugee's legal status is that they lack protection of their own country, being in an intolerable situation and the refuse of providing protection for them could have severe or even deadly consequences (Weissbrodt, 2008, p. 152-155).

Secondly, Article 31 of the Geneva Convention provides special guarantees for the refugees unlawfully in the country of refuge including the prohibition to impose criminal penalties and to apply restrictions to their right to movement. Consequently, Member States have special negative obligations regarding refugees, taking into account that in many cases, the entry on the territory of the State of the person seeking the international protection of a foreign State is achieved through illegal means (Hofmann and Löhr, 2011, p. 1089).

Thus, there is a need to differentiate between the use of terms refugees, migrants and irregular migrants in connection with the term of international protection in order to establish the legal status

of which different categories of persons enjoy under the rules of international law and to shape the positive and negative obligations incumbent upon Member States.

The measures undertaken by States in order to prevent illegal migration by establishing more restrictive rules with respect to the admission of foreigners on their territory may have as legitimate objective the protection of the rights of its own citizens, public order and security of the territory. This type of measures are related to the sovereign attribute of the State to control the entry of foreigners on its territory, as a limitation of the freedom of movement enshrined in Article 12 of the International Covenant on Civil and Political Rights but they may have legitimacy in relation to migrants and irregular migrants.

The 1951 Convention is quite clear about the content of the rights and obligations of refugees and about the content of the *non refoulement* principle but the situation is different for the content of obligations towards refugees unlawfully in the receiving State and States may have the tendency not to give their full effect. The purpose of adopting the 1951 Convention was not to establish a framework for the State control on migration but to provide protection to those lacking the protection of the State of origin and who are at risk of persecution.

Host governments are primarily responsible for protecting refugees; the 144 parties to the Convention and/or the additional Protocol to the 1951 Geneva Convention are obliged to carry out its provisions. The United Nations Refugee Agency (UNHCR) maintains a ‘watching brief’ and intervenes if necessary to ensure *bona fide* refugees (Storey, 2012, p. 4) are granted asylum and are not forcibly returned to countries where their lives may be in danger.

The Agency seeks ways to help refugees restart their lives, either through local integration, voluntary return to their homeland or, if that is not possible, through resettlement in ‘third’ countries.

The refusal of Member States to comply with the obligations assumed or the tendency to reduce their content is primarily a violation of the 1951 Geneva Convention but also a violation of fundamental rights (including the right to life) which is one of the essential values of the European States.

In this broader context, one may say that only apparently the arrangements made by the European Union and Turkey may create the illusion of trying to solve the irregular migration and human trafficking issues and assisting Syrians seeking asylum. However, their content and the way that they were made public may raise some questions on their legal nature and consequences. In analysing these issues, a short presentation on their provisions and aims would seem useful and this will be made in section 1 of the present paper alongside with the succession of facts.

1. The 2015 Joint Action Plan and the 2016 Statement

On 15 October 2015 (European Council, 2015), the Republic of Turkey and the European Union (EU) agreed on a joint action plan entitled ‘EU-Turkey Joint Action Plan’ designed to strengthen their cooperation in terms of supporting Syrian nationals enjoying temporary international protection and managing migration, in order to respond to the crisis created by the situation in Syria.

The Joint Action Plan aimed to respond to the crisis situation in Syria in three ways, namely, first, by addressing the root causes leading to a mass exodus of Syrians, secondly, by providing support to Syrians enjoying temporary international protection and to their host communities in Turkey and, thirdly, by strengthening cooperation in the field of preventing illegal migration flows towards the European Union (de Marcilly and Garde, 2016).

Following the Joint Action Plan, on 29 November 2015 (European Commission, 2016) the Heads of State or Government of the Member States of the European Union met with their Turkish counterpart and they decided to activate the joint action plan and, in particular, to step up their active cooperation concerning migrants who were not in need of international protection, by preventing them from travelling to Turkey and the European Union, by ensuring the application of the established bilateral readmission provisions and by swiftly returning migrants who were not in need of international protection to their countries of origin.

On 8 March 2016 (European Council, 2016), a statement by the Heads of State or Government of the European Union, published by the joint services of the European Council and the Council of the European Union, indicated that the Heads of State or Government of the European Union had met with the Turkish Prime Minister in regard to relations between the European Union and the Republic of Turkey and that progress had been made in the implementation of the joint action plan.

The statement specified that the aims were to close down people smuggling routes, to break business models of the smugglers, to protect the external borders of the EU and to end the migration crisis in Europe. These aims were to be achieved by working on two basic principles: returning all new irregular migrants crossing from Turkey into the Greek islands with the costs covered by the European Union and resettling, for every Syrian readmitted by Turkey from Greek islands, another Syrian from Turkey to the European Union Member States.

The statement was followed by communications from the European Parliament, the European Council and the Commission which underlined that the return of the new irregular migrants and asylum seekers from Greece to Turkey was an essential component in breaking the pattern of refugees

and migrants paying smugglers and risking their lives and the temporary and extraordinary nature of such measures.

According to that communication, recent progress had been made in the readmission of irregular migrants and asylum seekers not in need of international protection to the Republic of Turkey under the bilateral Readmission Agreement between the Hellenic Republic and the Republic of Turkey, which was to be succeeded, from 1 June 2016, by the Agreement between the European Union and the Republic of Turkey on the readmission of persons residing without authorisation (2014).

On 18 March 2016, a new statement was published on the Council's website (European Council, 2016) designed to give an account of the results of 'the third meeting since November 2015 dedicated to deepening Turkey-EU relations as well as addressing the migration crisis' between 'the Members of the European Council' and 'their Turkish counterpart' ('the EU-Turkey statement').

This statement reaffirmed the need to break the business model of the smugglers and to offer migrants an alternative to putting their lives at risk and to end the irregular migration from Turkey to the European Union. In this respect, the 2016 statement provided *inter alia*, that all new irregular migrants crossing from Turkey into Greek islands as from 20 March 2016 will be returned to Turkey, in accordance with European Union law and international law, thus excluding any kind of collective expulsion. Once more, the 2016 Statement underlined the temporary and extraordinary nature of these measures.

The main measure provided by the 2016 Statement is that for every Syrian being returned to Turkey from Greek islands, another Syrian will be resettled from Turkey to the European Union taking into account the United Nations Vulnerability Criteria and priority will be given to migrants who have not previously entered or tried to enter the European Union irregularly (European Council, 2016).

2. The legal force of the 2015 Joint Action Plan and the 2016 Statement in the interpretation of the Court of Justice of the European Union

The main issue regarding the measures undertaken by the EU institutions and Turkey is the legal force of the 2015 Joint Plan of Action and the 2016 Statement (Danisi, 2017). In this respect recent proceedings instituted before the General Court of the European Union are relevant, although the result of the interpretation is criticisable.

In the *NF v European Council* Case (General Court, Order of 28 February 2017, T-192/16), a Pakistani national who had fled his country because of fear of persecution and serious harm to his person, entered Greece on March 2016, having the intention to reunite with members of his family, namely, his parents and two of his brothers, residing in the Federal Republic of Germany and to obtain family reunification in that Member State.

He submitted an application for asylum in Greece that was rejected by the Greek authorities, in particular because he explained to them his intention to continue his journey towards Germany. The Applicant claimed that he never intended to submit an asylum application in Greece because of the bad conditions in that Member State and the deficiencies in the implementation of the European Asylum System (EAS) in Greece and that the sole purpose of his application for asylum in Greece was to prevent him being returned to Turkey with, as the case may be, the risk of being detained there or being expelled to Pakistan. Thus, the applicant considers indirectly the EU-Turkey Statement an agreement that exposes them to risks of *refoulement* to Turkey or '*chain refoulement*' to Pakistan or Afghanistan, thereby obliging them to apply for international protection in Greece, against his will.

The Court was requested to annul the agreement between the European Council and Turkey dated 18 March 2016, considering that the EU-Turkey Statement was an act attributable to the European Council establishing an international agreement concluded on 18 March 2016 between the European Union and the Republic of Turkey (Action brought on 22 April 2016, *NF v European Council*, Case T-192/16).

The Applicant alleged that: the agreement between the European Council and Turkey dated 18th March 2016 entitled "EU-Turkey statement, 18th March 2016", is incompatible with European Union fundamental rights, particularly Articles 1, 18 and 19 of the Charter of Fundamental Rights of the European Union; that Turkey is not a safe third country in the sense of Article 36 of Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (Official Journal L 326, 13.12.2005, p. 13-34); that Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (Official Journal L 212, 7.8.2001, p. 12-23) should have been implemented; that the challenging agreement is in reality a binding Treaty or "act" having legal effects for the Applicant and that the failure to comply with Article 218 Treaty on the Functioning of the European Union (TFUE, 2007) and/or Article 78.3 Treaty on the Functioning of the European Union (TFUE, 2007) either together or separately, render the challenged agreement invalid; that the prohibition of collective expulsion in the sense of Article

19.1 of the Charter on Fundamental Rights of the European Union is breached (Action brought on 22 April 2016, *NF v European Council*, Case T-192/16).

During the proceedings, the European Council and the European Commission challenged the legal nature of the 2016 statement and its legal force. The European Council submitted that no agreement or treaty in the sense of Article 218 of the Treaty on the Functioning of the European Union (TFEU, 2007) or Article 2 (1) (a) of the Vienna Convention on the law of treaties of 23 May 1969 had been concluded between the European Union and the Republic of Turkey, taking into consideration the procedure described in Article 218 TFEU for the conclusion of agreements between the European Union and third countries or international organisations.

The 2016 EU-Turkey statement, as published by means of Press Release No 144/16 (European Council, 2016), was, merely "the fruit of an international dialogue between the Member States and the Republic of Turkey and — in the light of its content and of the intention of its authors — [was] not intended to produce legally binding effects nor constitute an agreement or a treaty" (General Court, Order of 28 February 2017, Case T-192/16, paragraph 26). In its view, the meeting of 18 March 2016 was a meeting of the Heads of State or Government of the Member States of the European Union with the representatives of the Republic of Turkey, and not a meeting of the European Council in which that third country had participated (General Court, 2017, Order of 28 February 2017, Case T-192/16, paragraph 27).

Furthermore, the European Council stated that the EU-Turkey statement was issued by the participants in an international summit held, in this instance, on 18 March 2016 in the margins of and following the meeting of the European Council. Therefore, that statement is attributable to the Members of the European Council, which are the Member States of the European Union, and their "Turkish counterpart", since they met in the context of a meeting distinct from that of the European Council and it contends that the EU-Turkey statement cannot therefore be considered as a measure adopted by it (General Court, Order of 28 February 2017, Case T-192/16, paragraph 37).

The Commission submitted that the 2016 statement was a political arrangement reached by the Members of the European Council, the Heads of State or Government of the Member States, the President of the European Council and the President of the Commission and thus not a binding agreement (General Court, Order of 28 February 2017, Case T-192/16, paragraph 28).

In analysing the legal nature of the 2016 Statement, the Court had to establish if the statement, as published by means of the press release, reveals the existence of a measure attributable to the European Council, and whether, by that measure, that institution concluded an international agreement (General Court, Order of 28 February 2017, Case T-192/16, paragraph 46).

The Court considered the set of elements and circumstances which preceded the press release of the 2016 statement and stated that the expression "Members of the European Council" and the term "EU", contained in the EU-Turkey statement should be

“understood as references to the Heads of State or Government of the European Union who met with their Turkish counterpart and agreed on operational measures with a view to restoring public order, essentially on Greek territory, that correspond to those already mentioned or stated previously in the statements published in the form of press releases following the first and second meetings of the Heads of State or Government of the Member States of the European Union with their Turkish counterpart” (General Court, Order of 28 February 2017, Case T-192/16, paragraph 68).

As a consequence, the Court appreciated that the overall context of the publication of the Press Release No 144/16 does not have the meaning of adopting the decision by the European Council as an European Union institution, to conclude an agreement with the Turkish Government and in this way to commit the European Union and thus, the European Council did not adopt any measure that corresponds to the contested one (General Court, Order of 28 February 2017, Case T-192/16, paragraph 69).

Having these arguments in mind, according to Article 236 of the Treaty on the Functioning of the European Union (TFEU), the Court dismissed the action for lack of jurisdiction.

The same arguments were used by the General Court in two similar cases (General Court, Order of 28 February 2017, NG v European Council, T-193/16 and NM v European Council, T-257/16).

At the moment, an appeal is pending that was lodged on 21 April 2017 against the Order of the General Court delivered in the Case T-192/16, NF v. the European Council (General Court, 2017) but there is little doubt that the interpretation of the legal nature of the 2016 Statement would be different mainly because it would be considered a dangerous precedent. Yet the question still remains if the Court will continue to validate political actions and to subordinate legal principles to political will.

3. Critical elements of the General Court`s interpretation in the Order of 28 February 2017

The reasoning of the Court supports the lack of its jurisdiction due to the political nature of the 2016 statement invoked by the applicants and it may seem that the aim is to provide legal arguments

in this matter. Although from a strict procedural legal reasons perspective, the conclusion may appear as justified, from the perspective of general international law, it is criticised in particular for the way in which the Luxembourg Court did not apply the general rule of interpretation of international treaties (Danisi, 2017) enshrined in Article 31 of the Vienna Convention on the law of treaties from 1969, namely, “*in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.*” (Villiger, 2009).

All references to the law of the treaties in this paper are justified by the fact that the Vienna Convention on the Law of Treaties establishes the terminological neutrality on the term of “international treaty”. Article 2 paragraph 1 (a) of the 1969 Vienna Convention defines the term “treaty” as “*an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation*”.

The definition of the term treaty is completed by the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations of 1986. According to Article 2 par.1 (a) from the 1986 Convention

“‘treaty’ means an international agreement governed by international law and concluded in written form: (i) between one or more States and one or more international organizations; or (ii) between international organizations, whether that agreement is embodied in a single instrument or in two or more related instruments and whatever its particular designation;”.

The definitions of the term “treaty” given by the Vienna Conventions cover a multitude of formal (called treaty, convention, protocol, declaration, charter, pact, statute, agreement) or less formal types of acts (exchange of notes, note verbale, exchange of letters, agreed minutes) and the Vienna Conventions do not require any particular form or elements, in case of a dispute regarding the existence of a treaty or its legal status, the criteria used to determine the nature of the document and its effects are the actual terms and the particular circumstances in which it was made (Fitzmaurice, 2014, p. 167).

The general rule of interpretation of international treaties enshrined in Article 31 of the 1969 Vienna Convention is considered customary international law (Fitzmaurice, 2014, p. 179).

According to Article 47 of the Treaty on European Union (TEU, 2007), the European Union has its own legal personality and it is an independent legal entity (Adam *et al.*, 2015, p. 14-15). As such, the European Union enjoys a *treaty-making power* meaning the capacity to enter into treaties

(Crawford, 2012, p. 179) and has the ability to conclude and negotiate international agreements in accordance with its external commitments, become a member of international organizations, join international conventions, such as the European Convention on Human Rights, stipulated in Article 6 (2) of the TEU. Hence, the questions and controversies on the international legal status and personality (Wesel, 1997, p. 109-129; de Schoutheete and Andoura, 2007) of the European Union have been clarified.

The General Court did analyse the context in which the 2016 statement was released and made public through press release its content (General Court, Order of 28 February 2017, Case T-192/16, paragraphs 8-9), but failed to establish the purpose and the objectives of the statement. Moreover, these were not the essential elements of the analysis.

Instead the Court focused on the institutions of the European Union that were involved in this process, without taking into consideration the context of cooperation relations between the European Union as an independent actor (Danisi, 2017) and Turkey since the beginning of the refugee crisis. Nevertheless, it is true that no compromise was concluded following the 2016 statement between the European Union and Turkey, but in the context of cooperation with Turkey in the solving the afflux of refugees and irregular migration issues, the Court did not clearly indicated if the measures envisaged by the 2016 Statement were legally binding or not (Danisi, 2017). Moreover, the Court did not exclude the existence of an informal international agreement, but said that the Statement is an agreement between States without performing a real analysis of the capacities of the European Union, its institutions and those of the Member States in concluding international agreements (General Court, Order of 28 February 2017, Case T-192/16, paragraph 70).

The conclusion of the general Court was that neither the European Council nor any other institution of the EU decided to conclude an agreement with the Turkish Government on the subject of the migration crisis. Consequently, 'In the absence of any act of an institution of the EU, the legality of which it could review under Article 263 TFEU, the Court declares that it lacks jurisdiction to hear and determine the actions brought by the three asylum seekers.

By applying principles of international law, the General Court of the European Union could have found the arguments to qualify the 2016 Statement as an act of the European Union and thus admitting the possibility for the legality of such an act to be examined by the Court.

4. The compatibility of the 2015 Joint Action Plan and the 2016 statement with the general international law status of refugees

Although the reading of the 2015 EU-Turkey Action Plan (European Commission, 2015) and of the 2016 Statement (European Council, 2016) emphasizes that their declared aim is to put an end to irregular migration from Turkey to the European Union and to break the business model of the smugglers by returning all new irregular migrants crossing from Turkey into Greek islands as from 20 March 2016, their provisions actually have implications to the legal status of refugees.

These acts implicitly affect the persons that could be considered refugees and thus, they raise several issues regarding its compatibility with the 1951 Geneva Convention relating to the status of refugees which sets the basic standards on the legal status of refugees and their international protection to which the States parties may offer extensive rights.

The European Union legal order formally promotes the respect of human rights as an essential value since the Charter of Fundamental Rights of the European Union (2012) is part of European Union positive law yet a legitimate question appears concerning the compatibility between the provisions of the EU-Turkey statements and the European values.

Even if the EU-Turkey Action Plan and Statement are to be considered compatible with the European Union legal rules and principles, it should be noted that they do not offer a complete answer to the refugee's situations as their stated scope is the illegal migration coming to Europe from Turkey. As a consequence, persons coming to Europe from other countries are left outside these measures and may be more vulnerable to abuse.

Besides the collective formal (or informal? taking into consideration the interpretation of the General Court from 2017 General Court, Order of 28 February 2017, Case T-192/16, paragraph 38) measures undertaken by the European Union at an institutional level, individual measures undertaken by Member States in restricting the access of persons claiming the status of refugee on their territory are put in place. Such approach has serious implications and may be considered a disproportionate restriction on the respect of the right to free movement and indirectly a failure to respect the fundamental right to life, taking into consideration that according to 1951 Geneva Convention (Cantor, 2015, p. 81-82) relating to the status of refugees States assumed positive and also negative obligations towards persons claiming the status of refugee.

Although the 2016 Statement was not considered an act of the European Union, it raises several issues regarding its compatibility and of other related acts, in particular the 2015 Joint Plan Action,

with the 1951 Geneva Convention which sets the basic standards on the legal status of refugees and their international protection to which the States parties may offer extensive rights.

The measures undertaken by the EU-Turkey Action Plan and Statements are contrary to the 1951 Geneva Convention. Firstly, refugees are not migrants, in the sense of the 1951 Convention, as they are forced to leave their country of origin for reasons set by the international rules. At most, they may be considered subjects of forced migration (Casanovas, 2003), a special category of vulnerable persons to whom member States of the Geneva Convention have certain obligations. Secondly, Article 31 of the Geneva Convention provides special guarantees for the refugees unlawfully in the country of refuge including the prohibition to impose penalties and to apply restrictions to their right to free movement (Goodwin-Gill and McAdam, 2007, p. 448).

It is true that the European Union as an international legal entity that holds international personality and the capacity to conclude international treaties is not a part of the 1951 Geneva Convention on the status of refugees, but its Member States are parties to this Convention. Consequently, Member States have special negative obligations regarding refugees, taking into account that in many cases, the entry on the territory of the State of the person seeking the protection of a foreign state is achieved through illegal means (Hansen, 2014).

If the different acts (action plans, statements) concluded with Turkey are to be considered namely as acts of the Member States, the incompatibility issue between these acts and the provisions of the 1951 Geneva Convention still remains.

Hence, there is a need for the European Union regulations to differentiate between the use of terms *refugees*, *migrants* and *irregular migrants* in connection with the term of international protection in order to establish the legal status of which different categories of persons enjoy under the rules of international law (Betts, 2010) and to shape the positive and negative obligations incumbent upon Member States. The purpose of adopting the 1951 Convention was not to establish a framework for the State control on migration but to provide protection to those lacking the protection of the State of origin and who are at risk of persecution (Cancado-Trindade, 2006).

The measures undertaken by States in order to prevent illegal migration by establishing more restrictive rules with respect to the admission of foreigners on their territory may have as legitimate objective the protection of the rights of its own citizens, public order and security of the territory and are related to the sovereign attribute of the State to control the entry of foreigners on its territory, as a limitation of the freedom of movement. However, they may have legitimacy in relation to migrants and irregular migrants, but not to persons claiming international protection and the refugee status.

The 1951 Convention is quite clear about the content of the rights and obligations of refugees and the content of the *non refoulement* principle (Harvey, 2015, p. 49) but the situation is different as for the content of obligations towards refugees unlawfully in the receiving State and States may have the tendency not to give their full effect. The refusal of Member States to comply with the obligations assumed or the tendency to reduce their content is primarily a violation of the 1951 Geneva Convention but also a violation of fundamental rights (including the right to life) which is one of the essential values of the European States.

The arrangement between European Union and Turkey is often called the 'EU-Turkey Deal' but its continuance may be questionable because of the rhetoric of the Turkish President against Europe and the measures undertaken in Turkey after the 2016 military coup consisting in suspension of application of human rights as a result of the suspension of the European Convention on Human Rights (1950). Yet there is a widespread opinion that the arrangement between the European Union will last due to its pragmatic nature for both European Union and Turkey (Dempsey, 2017). Both parties are co-interested in realising the term of the arrangement as Turkey seeks the financial benefits from the European Union which has committed to pay to Turkey 3 billion Euros

As statistics show, a total number of 8817 Syrian refugees were resettled from Turkey to the European Union Member States after 4 April 2016 (European Commission, 2017), a number that is very small compared to the total number of Syrian refugees of over 4 million persons reported by the UNHCR in 2015 (UNHCR, 2015) and the total number of over 5 million persons reported until August 2017 (UNHCR, 2017).

Conclusions

The refugee crisis has seriously shaken the European Union and the European Union Member States as the massive influx of persons caused distress and finally showed the incapacity of the European Union institutions and Member States to find a reasonable solution in applying the International and European rules and to adapt to this phenomenon.

The European approach in this regard is inconsistent and contradictory with the international status of refugees and their implications emphasize the fragmentation of the applicable rules in assuring the minimal international legal protection of refugees.

The impact of the great influx of migrants and refugees towards Europe and the difficulties in providing a prompt and legal reaction by the European Union and the European States were anticipated by international personalities such as Kofi Annan, former United Nations Secretary

General in words that should determine us and the European political institutions to reflection and actively search of an appropriate solution to this situation. His opinion on the principles that should guide the finding of effective solutions reads as follows:

"The scale of the current crisis is testing the unity and solidarity of Europe and its institutions. But it should not prevent Europe from taking the necessary steps to ensure that all refugees and migrants who arrive on its shores are protected and assisted. We believe that Europe's leaders can rise to this challenge by adopting and implementing policies and practices that respect international law and reflect Europe's commitment to human rights and the dignity of the individual." (Annan, 2015).

In this light, solving the so called refugee crisis in Europe should imply more transparent decisions and must actively and effectively assist those persons coming to Europe in search for protection taking seriously into consideration the legal framework established by international law.

Recent statistics from the United Nations Refugee Agency (UNHCR, 2017) and European Asylum Support Office (EASO, 2017) show a decline in the number of refugees and migrants heading to Europe in the first half of 2017, but there is doubt that this a result of the EU - Turkey cooperation. Although the 2015 Joint Plan Action and the 2016 Statement may seem necessary from a pragmatic point of view, they still are criticisable from the legal perspective having in mind the rules and principles of international refugee law and also the system and principles provided by the European Union law regulating the status of asylum seekers, refugees and migrants. It appears that an objective of collective security is more important than the legal principles that the European Union and its Member States embraced, one of them being the right to find asylum (Gil-Bazo, 2015, p. 5).

References

- Action brought on 22 April 2016 – NF v European Council (Case T-192/16): retrieved from <http://curia.europa.eu/juris/document/document.jsf?text=&docid=181014&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=403633>).
- Adam, S., Hammamoun, S, Lannon, E., Louis, J.-V., Neuwahl, N. and White, E. (2015), *L' Union européenne comme acteur international*, Bruxelles: Editions de l'Université de Bruxelles.

- Agreement between the European Union and the Republic of Turkey on the readmission of persons residing without authorisation (2014), *Official Journal of the European Union*, L 134, p.3.
- Annan, K. (2015), *Refugee crisis in Europe: An open letter*, Statements 2015, retrieved from <http://www.kofiannanfoundation.org/mediation-and-crisis-resolution/refugee-crisis-in-europe-an-open-letter/>.
- Betts, A. (2010), Towards a 'Soft Law' Framework for the Protection of Vulnerable Irregular Migrants, *International Journal of Refugee Law*, 22(2).
- Cançado Trindade, A. A. (2006), *International Law for Humankind: towards a new jusgentium. General Course on Public International Law*, Hague Academy of International Law Collected Courses, 316, Leiden/Boston:Martinus Nijhoff Publishers.
- Cantor, D. J. (2015), Reframing Relationships: Revisiting the Procedural Standards for Refugee Status Determination in Light of Recent Human Rights Treaty Body Jurisprudence, *Refugee Survey Quarterly*, 34.
- Casanovas, O. (2003), La protection internationale des réfugiés et des personnes déplacés dans les conflits armés, *Recueil des cours de l'Académie de droit international de la Haye*, 306.
- Charter of Fundamental Rights of the European Union*, Official Journal of the European Union, C 326/391, 26.10.2012
- Chetail, V. (2014), Armed Conflict and Forced Migration: A Systematic Approach to International Humanitarian Law, Refugee Law, And International Human Rights Law, in: Clapham, A. and Gaeta, P. (eds.), *The Oxford Handbook of International Law in Armed Conflict*, Oxford: Oxford University Press.
- Convention relating to the Status of Refugees*, 189 UNTS 150, 28 Jul. 1951 (entry into force: 22 April 1954).
- Crawford, J. (2012), *Brownlie's Principles of Public International Law*, Eight Edition, Oxford/New York: Oxford University Press.
- Danisi, C. (2017), *Taking the 'Union' out of 'EU': The EU-Turkey Statement on the Syrian Refugee Crisis as an Agreement Between States under International Law*, retrieved from <https://www.ejiltalk.org>.
- de Marcilly, C. and Garde, A. (2016), *The EU-Turkey Agreement and its implications. An unavoidable but conditional agreement*, European issues no. 396, 14th June 2016, retrieved from <https://www.robert-schuman.eu/en/doc/questions-d-europe/qe-396-en.pdf>

- de Schoutheete, P. and Andoura, S. (2007), *The Legal Personality of the European Union*, *Studia Diplomatica*, LX(1).
- Dempsey, J. (2017), *A selection of experts answer a new question from Judy Dempsey on the foreign and security policy challenges shaping Europe's role in the world*, retrieved from <http://carnegieeurope.eu/strategieurope/72634>.
- Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (*Official Journal of the European Communities*, L 212, 7.8.2001, p. 12-23)
- Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (*Official Journal of the European Communities*, L 326, 13.12.2005, p. 13-34).
- Edwards, A. (2005), Human Rights, Refugees, and The Right 'To Enjoy' Asylum, *International Journal of Refugee Law*, 17(2).
- European Asylum Support Office (2017), *Latest Asylum Trends, June 2017*, retrieved from <https://www.easo.europa.eu/sites/default/files/Latest-Asylum-Trends-June2017%20final.pdf>
- European Commission, *EU-Turkey Joint Action Plan 2015*, retrieved from http://europa.eu/rapid/press-release_MEMO-15-5860_en.htm
- European Commission, *Managing the Refugee Crisis. EU-Turkey Joint Action Plan: Implementation Report*, retrieved from https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/managing_the_refugee_crisis_-_euturkey_join_action_plan_implementation_report_20160210_en.pdf.
- European Commission (2017), *Operational implementation of the EU-Turkey Statement*, retrieved from https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/press-material/docs/state_of_play_-_eu-turkey_en.pdf.
- European Council, *EU-Turkey Statement 2016*, retrieved from <http://www.consilium.europa.eu/en/press/press-releases/2016/03/18-eu-turkey-statement/>.
- European Union-Turkey statement, 18 March 2016, Press release 114/16 of 18 March 2016, retrieved from <http://www.consilium.europa.eu/en/press/press-releases/2016/03/18-eu-turkey-statement/>.

- Fitzmaurice, M. (2014), The practical working of the Law of Treaties, in: Evans, M.D. (ed.), *International Law*, Fourth Edition, Oxford/New York: Oxford University Press.
- Gil-Bazo, M.T (2015), Asylum as a General Principle of International Law, *International Journal of Refugee Law*, 27(1).
- Goodwin-Gill, G. S. and McAdam, J. (2007), *The Refugee in International Law* (3rd Edition), Oxford/New York: Oxford University Press.
- Goodwin-Gill, G.S. (2014), The International Law of Refugee Protection, in: Fiddian-Qasmiyeh, E., Loescher, G., Long, K. and Sigona, N. (eds.), *The Oxford Handbook of Refugee and Forced Migration Studies*, Oxford: Oxford University Press, 2014.
- Hansen, R. (2014), *State Controls: Borders, Refugees, and Citizenship*, in: Fiddian-Qasmiyeh, E., Loescher, G., Long, K. and Sigona, N. (eds.) *The Oxford Handbook of Refugee and Forced Migration Studies*, Oxford/New York: Oxford University Press.
- Harvey, C. (2015), Time for Reform? Refugees, Asylum-seekers, and Protection Under International Human Rights Law, *Refugee Survey Quarterly*, 34.
- Hofmann, R. and Löhr, T. (2011), Requirements for Refugee Determination Procedures, in: Zimmermann, A., Machts, F. and Dörschner, J. (eds.), *The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol: A Commentary*, Oxford University Press.
- International Covenant on Civil and Political Rights*, 999 UNTS 171, 16 December 1966 (entry into force: 23 March 1976).
- Order of the General Court of 28 February 2017 — NF v European Council*, Official Journal C 232, 27.6.2016, Case T -192/16.
- Order of the General Court* (First Chamber, Extended Composition), 28 February 2017 In Case T-192/16, NF v. The European Council, ECLI:EU:T:2017:128, retrieved from <http://curia.europa.eu/juris/document/document.jsf?jsessionid=9ea7d2dc30d6c52cc2b9efb3498dbd3ddef8d41935f0.e34KaxiLc3qMb40Rch0SaxyMb10?text=&docid=188483&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1043813>.
- Protocol relating to the Status of Refugees*, 606 UNTS 267, 31 Jan. 1967 (entry into force: 4 October 1967).
- Storey, H. (2012), Armed conflict in Asylum Law: The “War-Flaw”, *Refugee Survey Quarterly*, 31(2).

- UNHCR, (2017), *Operational Portal. Refugee Situations*, retrieved from <https://data2.unhcr.org/en/situations/mediterranean>.
- UNHCR (2015), *Total number of Syrian refugees exceeds four million for first time*, retrieved from <http://www.unhcr.org/news/press/2015/7/559d67d46/unhcr-total-number-syrian-refugees-exceeds-four-million-first-time.html>.
- UNHCR (2017), *Syria Regional Refugee Response*, retrieved from <http://data.unhcr.org/syrianrefugees/regional.php>
- Vienna Convention on the Law of Treaties*, 23 May 1969 United Nations, Treaty Series, 1155, p. 331 (entry into force: 27January 1980).
- Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations*, 21 March 1986 A/CONF.129/15 (Not yet in force).
- Villiger, M. E. (2009), *Commentary on the 1969 Vienna Convention on the Law of Treaties*, Leiden/Boston: MartinusNijhoff Publishers.
- Weissbrodt, D. (2008), *The Human Rights of Non-citizens*, Oxford: Oxford University Press.
- Wesel, R. A. (1997), The international legal status of the European Union, *European Foreign Affairs Review*, 2.