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EU – Turkey Agreement on Refugee Crisis

An insight into negotiations and the final
deal as a bargaining process

Master Thesis Project

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Research question: May the EU-Turkey agreement on refugees be explained as a result of a bargaining process between the two parties and how?

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Abstract

From the summer of 2015, Europe and particularly EU is facing the worst refugee crisis since the WWII. Thousands of people have drowned in the Mediterranean Sea on the routes from Libya to Italy and from Turkey to Greece. The civil war in Syria and the rise of ISIS in many countries in Middle East have forced millions of people to leave their homes, searching for better living conditions in different parts of the world and especially in Europe which is one of the most tolerant and democratic societies in the world. The influx of irregular migrants, especially from the Turkish coasts to the Greek islands in the Aegean Sea, was huge and according to the evidence more than one million people passed through this route to Europe last year. The infrastructure of Greece to control the influx and to give temporary settlement to these people was imperfect and a humanitarian crisis started to hit the country. Then, EU decided to act. However, the incomplete common policy on external borders and the unwillingness from some Member States to share the burden of the crisis forced EU to find other solutions.

EU and Turkey reached an agreement on refugees on 18 March 2016. The core of this agreement was the stem of the influx of irregular migrants by Turkey and EU re-energised the relations with Turkey and the accession process in return. This agreement and how the two parties concluded to this is the main subject of this master thesis. However, these negotiations were not easy. Many meetings and negotiations took place before they reached to the final deal. But how did they conclude on this particular agreement? What was the context of these negotiations? In order to find the answer to my researched question, I used the bargaining theory introduced by Thomas Schelling, seeking to find out if this agreement could be explained as a result of a bargaining process.

I investigated the relations between the two parties and I also presented the most important facts about the common policy of EU on external borders. Moreover, I examined the negotiations between the two parties and likewise I compared the final agreement with the last draft proposal by EU. The findings that I discovered were very important and helped me to give the answer to the research question. The key elements, the characteristics and the factors which affect a bargaining process were presented throughout whole process. The result was that this agreement between European Union and Turkey can be explained as a bargaining process through the application of the bargaining theory.

List of Abbreviations

AKP: Adalet ve Kalkınma Partisi / The Justice and Development Party

CEAS: Common European Asylum System

ECRE: European Council on Refugees and Exiles

EEC: European Economic Community

EU: European Union

FRONTEX: Frontières extérieures / European Agency for the Management of Operational Cooperation at the External Borders

FYROM: former Yugoslav Republic of Macedonia

ISIS: Islamic State in Iraq and Syria

JAP: Joint Action Plan

SIS: Schengen Information System

UN: United Nations

UNCHR: United Nations High Commissioner for Refugees

VIS: Visa Information System

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CHAPTER ONE INTRODUCTION

Since last year Europe is facing the worst refugee crisis over last decades. The war in Syria and the destabilization in Middle East made millions of people to leave their home countries, searching for a better future in Europe and in other parts of the world. The refugee flows through Mediterranean Sea and particularly through Aegean Sea has increased significantly from last summer. Greece and Italy have become the entry gates for those people who want to come to Europe. Media exposed daily images of drowned children that shocked the rest of the world and a conversation started on how we can help these people to access Europe without being in a such serious risk of their lives.

This problem revealed another issue for European Union. There is not a coherence common policy on external borders and the Dublin II regulation which implies the procedures of processing asylum requests. This entails that there is inefficiency to handle a crisis of a scale like this. Furthermore, many EU Member States have demonstrated a xenophobic character as they were unwilling to show solidarity to other Member States which had faced this tremendous humanitarian crisis.

Commission and Member States, like Germany and France, decided that they needed to reduce the refugee flows from Turkey to Greece in order to avoid a bigger destabilization of EU coherence. The flows from the coastline of Turkey to Greek islands continued in autumn and winter and everybody was afraid of what will happen when the weather will be propitious again. To achieve that, EU started negotiations with Turkey to reach a deal that it will be in accordance with International Law and the values of EU, but more important to pass the message to the refugees and illegal migrants that the Western Balkan route through Greece is not an easy option for them anymore. On the other hand, Turkey which has in its territory more than two million refugees from Syria, as well as, refugees from other countries (e.g. Iraq and Afghanistan), asked for assistance and a close cooperation with European Union for this issue. During the last months, many meetings took place between the leaders of EU and Turkey. While the negotiations appeared to lead to the achievement of an agreement, a new obstacle was there to stop them. That made the negotiations to look endless and many believed that it will be almost impossible to achieve a deal with Turkey. Nevertheless, the two parties concluded in a deal at the final meeting on 17-18 March 2016 in Brussels.

The focus of my research lies on the bargain between EU and Turkey on this agreement. An interesting dimension of this negotiations was that Turkey tried to take advantage on this process to negotiate other issues beyond the refugee crisis. Some of the requests were accepted by EU while others were postponed for final negotiations in the near future. On the other hand, EU tried to share the burden of the migrants' influx with a third country, promising a set of gifts in order to achieve that. The bargain between the two parts were tough the draft deal changed many times and until the final agreement.

1.1 Problem formulation

In order to investigate how the European Union and Turkey reached this agreement, the research question of the thesis will be:

“May the EU-Turkey agreement on refugees be explained as a result of a bargaining process between the two parties and how?”

1.2 Delimitation

In this sub-chapter, I will explain why this question was chosen in comparison with other research questions which were also interesting and important in this context. As I mentioned before, the purpose of this study is to investigate how the agreement between EU and Turkey could be explained as a bargaining process. Nonetheless, as the subject is comprehensive, it will not be possible to examine every aspect of it. I need to admit, that in order to be fair for the progress of this project without missing something important, I have to examine the whole concept of bargaining process, assessing all the dimensions that contains. Unfortunately, I will not be able to find out what exactly was discussed between the parties and how they reached this deal. Instead, I will try to elaborate on this matter through the transcripts of EU Commission and EU Council, stressing the differences that we can see between the draft agreement before the final meeting and the agreement which they reached on the day of the final meeting.

All the questions had the same starting point- the refugee flows from Turkey to EU and the reaction of EU on this problem. An alternative question was to examine why it has been so

difficult for EU to manage external borders. In this particular question, I had to examine the common policy of EU on external borders and the Dublin II regulations about the asylum seekers. Anyway, I realized if I would stick on this question, I would have to make a project more descriptive, something that it was out of my scope.

Another question that I thought to examine was about why the refugee crisis threaten the cohesion of EU, particularly the whole Europe. A spark about this question was made by my last semester project where I and two other students wrote about terrorism in Europe. To answer this question I would have to deal with the following matters: whether terrorists and specifically members of ISIS come with the refugees and enter in Europe, the radicalization of Islam in Europe and the fact that Muslims who are EU citizens choose to go to Middle East to fight with ISIS and, lastly, with the terroristic attacks in Paris and Brussels in the previous months. I did not choose to deal with this question because I realized that even by exploring a question like this, I would risk to show that the refugees form a potential threat for Europe, a bell that I would not want to ring.

CHAPTER TWO METHODOLOGY

In this chapter of project, I will try to explain the way that I will approach the research question in order to describe and analyse it. Moreover, I will try to describe the plan that I will follow, the methods that will be used to investigate the research problem and I will describe the sources (primary and secondary) of my data collection.

2.1 Synopsis

This Master's thesis is comprised by six chapters: introduction, methodology, theoretical framework, a background chapter, the analysis and conclusions. A brief description of the paper's structure is following.

The first chapter, the introduction, I described the general field of interest before the statement of the problem formulation. This section contains also the subchapters of the abstract and the abbreviation list in order to ease the full understanding of the text.

In Chapter two, the methodology of the study is displayed which contains the structure that I used for the analysis of this thesis. More specifically, in this chapter I will outline the research design of the project, the methods that I will use to approach the research question and the process of data collection.

In chapter three, I will introduce the theoretical framework of bargain theory in order to make a clear interpretation on the research question I will investigate. The idea for this chapter is to try to connect the theory directly to the issue of this project. In addition, it is possible that not every element of the theory would fit with the various aspects of this agreement in practice, but I believe that the bargaining theory will help me to understand better the events that I will investigate and it will give me an asset to get a better view of this process.

Chapter four forms a background chapter to investigate the EU regulations in the field of refugee policy and the relations between Turkey and European Union. This chapter will be divided in two sub-chapters. The first sub-chapter deals with the common policy of EU on external borders and the Dublin II that contains the regulations for procedures that refugees should follow to make a request for asylum in a member state. The second subchapter will be about the relations between EU and Turkey. Moreover, I will also describe the relations between Cyprus and Turkey since Cyprus played a key role on the negotiations process. I decided to use this chapter, as my intentions are about to show the complexity of the nature of a common policy of EU in the area of refugee policy, understanding the social, political and ideological incentives of the EU Member States.

In chapter five, I will present the analytical part of this project. The first sub-chapter will be used for a brief description of today's refugee crisis and how the two parties reached the point to start the negotiations on the agreement. In the next sub-chapter, I will demonstrate the negotiations between EU and Turkey within the last months and how they concluded on this agreement. In the last part of this chapter, I will present the final negotiations and then I will display firstly the draft agreement before the final meeting of the two parts and secondly the official agreement between EU and Turkey. I will apply the theory to show how this agreement could be explaining as a bargaining process in order to answer the question of our problem formulation.

Chapter six consists of the conclusions derived from the project analysis. In this chapter, I will try to give the final answer to the research question.

2.2 Research design

Setting a methodological framework, necessary tools should be used to make an effective analysis. For this master thesis, the research design will be qualitative and it is based on a descriptive and explanatory research. Descriptive research is defined as efforts to explain and explore a topic, giving at the same time information about this specific topic. On the other hand, explanatory research is defined as the primal research into a theoretical or hypothetical idea.

“An explanatory research project is an attempt to lay the groundwork that will lead to future studies, or to determine if what is being observed might be explained by a currently existing theory.” (Kowalczyk D., 2015)

The explanatory research will be more applicable in the part of the project where I will try to assess how the negotiations between the two parties could be explain as a bargaining process. A descriptive research that will be also conducted for this study, specifically in the background chapter where I will provide information related to the subject. I will try to explain what happened in more details, filling the parts that are missing and trying to expand our understanding in this subject.

It is very important to create a good research design because that will lead in a coherent and logical study of the subject and it also ensures that the project question will be addressed properly. I will use the Interpretative technique in this thesis, not only because it is common to employ this technique in a qualitative research, but also because it offers an inclusive understanding of the social world, having as purpose to figure out an interpretation for this social phenomenon. Within the last decades, there has been an increase of the interest and recognition of qualitative methods in social sciences, particularly in the discipline of political science. Even if one would argue that there is a partial overlap between interpretative and qualitative research practices, interpretative research is discrete in its approach to research design, concept formation, standards of assessment and data analysis. (*Bevir and Kedar, 2008*). Analysing and examining the materials I have chosen for the analysis, I will get an insight into understanding the attitudes and approaches of the actors about the EU – Turkey agreement. The interpretative technique would offer a better understanding of the reality, taking and analysing the events as they come and not as they have been planned. The interpretation and

the analysis of the qualitative data will make an excellent framework to disclose the findings and to make coherent conclusions for the project question.

2.3 Data and Materials used

The aim of this project is to investigate, understand and expose the different factors that the project question implies. As this thesis will be carried out through a descriptive and analytical research in order to find out if the agreement between EU and Turkey could be explained as a bargain process and the subject that I deal with is specific, I will focus mainly on the aspects that have a link with European Union and Turkey. I will try to get knowledge through primary and secondary sources for finding useful information and being able to answer the question of this project. The primary sources are the genuine proof or data which are left by the participants or witnesses at the time when the event took place. Examples of primary sources are letters, autobiographies, legal cases etc. In this occasion, I will use as primary data parts from the Treaties of EU, organizational and governmental records and articles that described the events when they happened. As I notice before, I will use also secondary sources. The selected sources are materials which summarize, evaluate and analyse the information contained in primary sources. Secondary sources may include books, textbooks, articles and commentaries. In this case, I will use books, informative websites and journalistic articles. Furthermore, I will use the literature review as secondary source and I will analyse it in this chapter later.

The primary sources will be used to find out what happened at the time that the events took place. The secondary sources will be used to provide definitions about the theories that I will use to analyse the project question on how the negotiations can be explained as a bargain process. In addition, it is important to ensure the integrity and the reliability of the materials and the information used in this research. This is the main reason why I will comprise knowledge from official organisations and scholars. Nevertheless, I have to pay attention when I gather the information through internet and governmental resources because some of these may be biased and driven from other interests.

2.4 Literature review

In this sub-chapter, I will represent the literature review on the subject, including the resources I used. The meaning of this chapter is to design and summarize the information on the same topic. I will try to focus on this topic closely because there is a plethora of papers that stress it. Bargaining process is not something new, it is a process closely related when two or more parties negotiate to conclude in an agreement. When one of the parties feel that has the power, asks for more in return to agree in a deal. There is also various information from the literature, considering the background information about the subject. That makes it hard to be oriented in the information pool, much less to sum up about it. However, I found concrete foundation for this project in some articles, books and EU materials.

The book of Thomas C. Schelling "*The strategy of conflict*" gave me a clear view about situations a common interest exists among adversaries but also conflicts are occurred. Some of the concepts that the author explained include the bargaining process, war, threats of war and negotiations. Moreover, he gives an insight into the explanation of game theory and its application in the political system. Another source that I have found in literature and I used to be the "*Political game theory*" by Nolan McCarthy and Adam Meirowitz. This book is an introduction to game theory and shows its applications to the political science. In this book, there are explanations for different theories like choose theory, bargaining theory, probability theory etc. Furthermore, I understand that the methods which are employed in these theories may have many and different applications in several sectors like international relations and comparative politics.

Another book that I used to learn more about the bargaining process is the "*Political Bargaining: Theory, Practice & Process*" by Gideon Doron and Sened Itai. In this book, there is an introduction of political bargaining and it provides a new structure of the modern political science. The content of this book reflects also the practical implementation of political bargaining in the national and international political scene. The sources from European Union were very important tools for my analysis. Particularly, the transcripts from the meetings between the two parties and the general content of EU Treaties and Directives in the topic of the refugee crisis helped me to understand why EU was forced to make a deal with Turkey in this subject and why did not act by itself.

CHAPTER THREE THEORETICAL FRAMEWORK

In this chapter, I will introduce the theoretical framework that I will apply in my analysis. As I have mentioned in the methodology chapter, the theory that I will use is the bargaining theory in political science.

3 Bargaining theory

Bargaining is when two or more parties negotiate for the terms of an agreement. In the past decades, bargaining became a central feature of International relations and the literature has experienced an interesting research, putting it in the forefront of formal work in international relations. As an activity, bargaining has as a central tenet the strategic interdependence of decision-making and this is the reason why most of the literature is based on game theory modelling (*Van der Windt, 2011*).

As I mentioned before, bargaining is a process between at least two actors to reach an agreement. But bargaining is not only met in the field of political science. Its implications vary and we can recognize this process in the field of economics but also in daily life aspects. One broad definition is that *“bargaining is a process, often structured in a rigid legal form, which involves an exchange of some tangible or intangible valued item. Because of the presence of others, the people involved in the process must accept outcomes that are less than ideal for them, or trade one possible favoured outcome for another”* (*Doron & Sened, 2001, p.2*). The mutual desire among individuals to settle down differences in an explicitly or implicitly way, forms the reason that bargain arises. The more intense the current differences are, the greater is the need to find a solution through bargaining.

In our topic, we will deal with the political bargaining. One short definition about political bargaining explains that it is *“a tangible effort made by two or more agents with some conflict of interests to reach an agreement over an authoritative allocation of scarce resources”* (*Doron & Sened, 2001, p.7*). It should be noticed that from the moment bargain is a process, we need to find the factors that affecting this political process. The most important factors that I will explain are: the players, rules of progress, time factor, interdependency, differences of interest, agreed solutions and the methods of enforcement. After, I will describe

and explain the meaning of bargaining power, the characteristics of negotiations and the main components of negotiations (threat and promise) as Thomas Schelling described in his book 'Strategy of Conflict'. Next, I will describe and explain the tacit and explicit bargaining. All the previous concepts will help us to understand better the bargaining process, before proceeding to the chapter of analysis, so to be easier to implement it. At the end of this chapter, there is a sub-chapter that introduces the bargaining theory in relation with the subject of my thesis.

3.1 Factors affecting bargaining process

3.1.1 Players

In a political bargaining the number of players varies, but to make a bargaining situation in political sense, we need at least two actors to be involved. There are exceptions, as well. Brams in 1980 considered God as an actor who makes strategic decisions that affect the human player choices in 'Biblical Games' and 'Super-being' (Brams, 1980). In an extreme case, we can consider all members of a society as actors in a bargaining process. For instance, the process of voting could be viewed as demonstration of political bargaining.

It is very important to identify the number of actors who involved in a bargaining process. The solution will be different if two actors bargaining between them or in front of a third actor. It is possible that additional players can arbitrage or impose constraints that guide the bargaining in a way that it is not in harmony with the two players' interest. In the same way, when a bargaining situation involves two players, cooperation is possible to occur but also not to occur. However, when cases involve more than two players, collaboration is almost always present (Doron & Sened, 2001). Actors could be not only the individuals who want to settle through bargaining, but also organisations of various forms, governments and even states that negotiate with another state, to settle down geographical disputes for example.

3.1.2 Differences of Interest

The aim of political bargaining process is to bridge the existing differences among the actors who are involved. There is a common belief that if the perceive difference by the players over the same good is small, then it should be easier to bridge this gap through bargaining. This is not always true, because it is difficult for someone outside of the process to determine if the difference is small or large. It is also impossible to carry an interpersonal comparison of utilities, which is used to measure the intensity of preference to a given value (*Doron & Sened, 2001*). However, that does not mean that we cannot detect different situations by the conflict of interests. In addition, extreme levels of conflict of interests do not always lead to the collapse of the bargaining process but it is common that through the negotiations, profound differences could lead to faster and satisfied solutions (*Doron & Sened, 2001*).

3.1.3 Interdependency

Interdependency is a necessary condition in bargaining, at least in basic level. The actors who are involved in a bargain situation need to have something in common, that they all recognize it even if their interests are completely different. Interdependency in some sense is universal (*Doron & Sened, 2001*). We can see it in many examples how it exists. From the air that everyone shares and breathes to the ancient times and the relations between the master and the slave. until our days when a state, even the most powerful, has to respect the international order and the sovereignty of others states.

3.1.4 Time factor

An important consideration in bargaining process is time (*Rubinstein, 1982*). Time may serve strategic and tactical considerations. In strategic considerations, the time framework is common to be decided before the start of the bargaining process. Tactically, the actors tend to take steps to speed up or delay the process according to their interests due to the agreed framework. Moreover, time is very important in situations where the players have agreed to

implement the solution at a fixed date, so an agreement should be reached before this date. Time in this point becomes the subject of the bargaining process (*Doron & Sened, 2001*).

3.1.5 Rules of Progress

In any case, the parties need some rules to guide the interaction in order to conclude in a solution (*Doron & Sened, 2001*). In many bargaining occasions, the process starts after the parties have agreed to follow some ground rules. “*That rules may be products of previous bargaining phases, of creative endeavour or they may be an integral part of the ‘culture of negotiations’ that exist in a given society*” (*Doron & Sened, 2001, p. 12*). When bargaining takes place in different cultures the outcomes may be totally different because of the different codes or rules that are followed (*Cohen, 1990*).

Another meaning about the rules of progress is that the actors should first make clear which issues are in the agenda of the negotiations and which are not before the bargaining starts. Moreover, an order of priority is important about the issues are selected to be in the agenda (*Doron & Sened, 2001*). From the moment that the order can be crucial for the outcome of the bargaining process, it is necessary to give extra attention to the individuals and to the procedures that set the agenda of the bargaining (*Doron & Sened, 2001*).

Last about the rules of progress is the way that one player is moving at the time of bargaining. In politics, someone is not usually free to move as he wants because he needs to take into consideration the ‘power’ of the other players (*Doron & Sened, 2001*). Furthermore, a movement has to be compatible with rationality and logic. Someone moves only to be in a better position even if it is in a long-term view.

3.2 Bargaining power

When we speak about bargaining power, bargaining strength or bargaining skill we believe that the more powerful or skilful will take the advantage in a bargaining situation (*Schelling, 1960*). This is true sometimes but when the terms imply that it you get an advantage if you are more intelligent or more skilled, or if you have better financial resources, or you have more physical strength, then sometimes that have a disservice (*Schelling, 1960*). These

characteristics do not always lead to get advantages in bargaining occasions, they have also an opposite value. For instance, if someone come to your house and threat that he will kill himself if you do not give him one hundred Euros, then to avoid that, you will maybe give that amount of money. Even if you had the financial resources and outside of the bargain seemed that you had an advantage, from the moment that you paid the amount, this advantage becomes a disadvantage and the other player takes that he wanted.

Moreover, as bargaining power has been described as the power to bluff and fool someone. In a bargaining process bluffing and fooling are involved but we need to distinguish the two kinds of fooling (*Schelling, 1960*). The first is about when someone try to deceive the facts and the second is about the tact someone follows in bargaining situations. The first case is when you are trying to make someone to believe something. More often it is easier to make someone believe when the facts are true than when something is false (*Schelling, 1960*). But if you want to take the advantage and the facts are not true, you should make them in a way true. About that kind of bargaining power, the commitments play central role. Many times the contractual commitments are not as effective as they seem. *“A contractual commitment is usually the assumption of a contingent ‘transfer cost’, not a ‘real cost’ and if all interested parties can be brought into the negotiation the range of indeterminacy remain as it was. But if the third party were available only at substantial transportation cost, to that extent a truly irrevocable commitment would have been assumed”* (*Schelling, 1960, p. 25*). It is very interesting to understand when and how commitments can be taken. In addition, when we speak about the second kind of fooling (tact), we need to take into consideration the plausibility and the logic of self-commitment (*Schelling, 1960*). For example, a union maybe reduces its own authority in negotiations with the management to put the pressure to the other side in order to achieve their goals. Similarly, when international negotiations take place, the national representatives may be use statements in the media to misrepresent the other side arguments or to take the support of the public opinion so in that way to transfer the pressure to the other side (*Schelling, 1960*). As Schelling explain in his book there are some common characteristics in these situations: *“First, they clearly depend not only on incurring a commitment but on communicating persuasively to the other party. Second, it is by no means easy to establish the commitment, nor is it entirely clear to either of the parties concerned just how strong the commitment is. Third, similar activity may be available to the parties on both sides. Fourth, the possibility of commitment, though perhaps available to both sides, is by no means equally available. Fifth, they all run the risk of establishing an immovable position that goes beyond*

the ability of the other to concede, and thereby provoke the likelihood of stalemate or breakdown” (Schelling, 1960, p. 28).

3.3 Characteristics of the negotiation

In this sub-chapter I will present the structural and institutional characteristics of the negotiation. Some of these characteristics could make the commitment tactic easier or more difficult, or, to be available to one party and not to the other in bargaining occasions (*Schelling, 1960*). The most important of these characteristics are: the use of a bargaining agent, the secrecy vs publicity, the intersecting negotiations, the continuous negotiations, the restrictive agenda, the possibility of compensation, the mechanics of negotiation, the principles and precedents and the casuistry.

3.3.1 Use of Bargaining Agent

When someone use a bargaining agent this could affect the power of commitment in two different ways. The first way entails that the agent could implement instructions that are very difficult or even impossible to change and that instructions are also visible to the other party. Second, a bargaining agent may be bear in as a principal in his own right, with an incentive structure by his own that is different from his principles (*Schelling, 1960*).

3.3.2 Secrecy vs Publicity

A powerful mean of commitment is the assurance of one’s reputation. It is very important even if you make some concessions about not to lose your reputation because then it will be difficult to maintain your place in the bargaining (*Schelling, 1960*). The original offer and the final outcome it is necessary to be known. Sometimes, if one of the parties has a ‘public’ and the other has not, the second party may try to eliminate this advantage by excluding the ‘public’. But if the two parties fear the possibilities for stalemate or breakdown of the negotiations, then they maybe try to arrange an agreement on secrecy (*Schelling, 1960*).

3.3.3 Intersecting Negotiations

When an individual or a body is engaged or will be engaged in many negotiations and the other one is not, the second one cannot convincingly retain its bargaining reputation (Schelling, 1960). The advantage goes to the first party which can be loosed if they make a concession in this negotiation, because then it will be easy in the other negotiations for the opposite parties to conclude that this body or individual cannot keep its place in a bargaining situation (Schelling, 1960). Wanting to defence against these tactics, you can involve a misinterpretation of the opposite party position or to make an effort the outcome to be incomparably with the original position, or both of them. Furthermore, “*if the subjects under negotiation can be enlarged in the process of negotiation, [...]an "out" is provided to the party that has committed itself; and the availability of this "out" weakens the commitment itself, to the disadvantage of the committed party*” (Schelling, 1960, p. 30).

3.3.4 Continuous Negotiations

There is a special case of intertwined negotiations when the same opposite parties have to negotiate over other objects, together or in the near future. The logic in this case is more delicate. “*If I conceded to you here, you would revise your estimate of me in our other negotiations; to protect my reputation with you I must stand firm*” (Schelling, 1960, p. 30). In situations like this, the party who is threatening to accomplish its commitment, not because of what would gain from this particular threat but because a fulfilled threat strengthens the credibility for future threats.

3.3.5 The Restrictive Agenda

When there is more than one object to negotiate, the agreement to negotiate them at the same time or in separate forums or even at different times is not irrelevant to the outcome, specifically when there is a hidden extortionate threat that could be used only if it can be associated to ordinary and legitimate bargaining occasion. If the subject of the threat could be add in the agenda of the negotiation, then this latent threat becomes effective (Schelling, 1960).

In this case if the threat cannot stand in public, then the publicity itself may prevent its effectiveness. Protection against this kind of threats depends on the inability or refusal to negotiate.

3.3.6 The Possibility of Compensation

An agreement sometimes is maybe dependent on some means of redistributing gains or costs (Fellner, 1949). When an agreement should be reached on a topic which is innately a one-man act, any split of the costs depends on compensation. In this case, the agenda plays an important role because the means of compensation is a concession on another subject. If two negotiations could be brought in a potential relationship between them, then a mean of compensation is available. Otherwise, if they keep separate the negotiations then remains a unified object. Sometimes, when a bargaining situation requires a unanimous agreement, this could be achieved only if several actors bundled together (*Schelling, 1960*).

3.3.7 The Mechanics of Negotiation

There is a number of other characteristics that we should mention, but we will not work out their implications. For example, is it a penalty when someone makes bluffs? Or does the bargaining process take the structure of an auction? Or is it a penalty if someone hire an agent who pretend to be an interested party on the negotiations? When there are many objects to negotiate, are they bargaining in one inclusive negotiation, separately in an order so when they finish with one object to move on to the next, or simultaneously with different agents or different rules? (*Schelling, 1960*). These structural questions are very important to help us understand a bargaining process but as I said we will not focus on these characteristics in this project.

3.3.8 Principles and Precedents

In a bargain it is better to use commitments that are qualitative rather than quantitative, and of course to have some rationale if you want to be convincing. It is very difficult to imagine that someone could make a commitment in numerical scale, except if the number is round.

However, a commitment to the principle of any numerical calculations may provide the base of a commitment. In addition, when someone tries to make something of a commitment, he may put his principles and precedents in jeopardy (Schelling, 1960).

3.3.9 Casuistry

When someone reach a point where concession is an appropriate move, we can see two effects. First, this brings the one actor closer to the position of the opposite party. Second, it affects how the opponent's rates his firmness (Schelling, 1960). Then, concession may be seen like capitulation. It is also very interesting when casuistry is used to release the opposite party from a commitment. In that case if someone show to the opponent that is not committed, then *“one may in fact undo or revise the opponent's commitment. Or if one can confuse the opponent's commitment, [...], one may undo it or lower its value. In these cases, it is to the opponent's disadvantage that this commitment be successfully refuted by argument”* (Schelling, 1960, p. 34-35).

3.4 The Threat

When someone threatens in a bargaining process, the threat is the communication of his own incentives that are designed to impress the other part and to show the automatic consequences of this act (Schelling, 1960). In case that the deter is successfully, it will be beneficial for both parties. However, in a case that one threatens but he is not willing to perform his threat and just wants to deter the other party, communication is not the only thing which is involved. He has a motivation to bind himself to make real the threat, since at the end, the threat wins and not its fulfilment. The efficacy of the threat depends in the acceptance of the other party.

The commitment plays a key role also in this case. How someone can commit himself in an act that he does not wish probably to carry out in the bargain, having this commitment to deter the other party? One way is to bluff the other party that the consequences of his threat will have minor effects in his party. Another way is to pretend that he believes falsely that the costs for his party will be small if he makes real his threats. Furthermore, he maybe pretends

that he has revenge motivation that it is so strong to overcome the damage that he will make to his party (Schelling, 1960). It is not a necessity that the threat will promise a bigger damage to the opposite party than to the party who made the threat. The 'last clear chance' legal doctrine can show us in a better way the commitment problem. This doctrine "*helps to understand some of those cases in which bargaining 'strength' inheres in what is weakness by other standard*" (Schelling, 1960, p. 37). In bargaining situations, the commitment is the way to give the last clear chance to define the outcome with the opposite party, doing it in a way that he appreciates.

Such like techniques are available also to the threatened party. The best way to defence is to make an act before the other party express a threat. In that case, there is no motive or commitment for vengeance. If the person who is threatened can make an agreement and share the risk with others before the threat, then he is unaffected by the threat (Schelling, 1960). Moreover, if he can misrepresent or change his own motivations and show that through this threat he can gain something, then the person who make the threat maybe give up with this threat because it will be costly for him. "*If the person to be threatened is already committed, the one who would threaten cannot deter with his threat, he can only make certain the mutually disastrous consequences that he threatens*" (Schelling, 1960, p. 38). Maybe the best way to defend is to show disbelief or ignorance to the person that threat you. The time should show this disbelief is before the other party make the threat and not before fulfilled the threat. Both commitment and threats have to be communicated (Schelling, 1960).

In bargaining, when there is a threat situation, the commitments are not always entirely clear. Both parties cannot estimate exactly the costs and the gains for the other side when two connected actions are involved in the threat. The communication is not entirely reliable or possible. Some evidence can be communicated directly by the parties whilst other evidence may travel through media, or have to be demonstrated by actions. "*In these cases the unhappy possibility of both acts occurring, as a result of simultaneous commitment, is increased. Furthermore, the recognition of this possibility of simultaneous commitment becomes itself a deterrent to the taking of commitments*" (Schelling, 1960, p. 39).

When a threat is made but fails to deter, then there is a stage before the fulfilment of the threat in which both parties are interesting to undo the commitment. The way they can undo it is based on which of their interests deviate, as different ways of undoing leads to different outcomes (Schelling, 1960). These situations are very tenuous and delicate and even both parts want to undo the commitment, it may be quite difficult to cooperate in undoing it.

The credibility of the threat depends on the fact of the inability of the threatening party to rationalize the way out of the commitment and whether it is visible to the threatened party (Schelling, 1960). If we wish the maximum credibility, it is important to leave little space for judgment when we carrying out the threat. In addition, for making a threat accurate we need to introduce some irrational elements. The threat should refer to acts rather than intensions. *“It must be attached to the visible deeds, not invisible ones; it may have to attach itself to certain ancillary actions that are of no consequence in themselves to the threatening party. [...] Finally, the act of punishment must be one whose effect or influence is clearly discernible”* (Schelling, 1960, p. 40-41).

If we wish to make the threatened acts divisible, we need to modify the acts. If parts of the act could not be undocking, then it is better to left these parts out. Likewise, we have to start a threat with a punishing act that gets bigger in relation with the passage time for decomposing a threat in a series.

3.5 The Promise

“The promise is a commitment to the second party in the bargain and is required whenever the final action of one or of each is outside the other’s control. It is required whenever an agreement leaves any incentive to cheat” (Schelling, 1960, p. 43). The need for promises is not just symptomatic. Of course it is not easy all the time to make convincing promises. However, even if it is difficult to make promises, it is also important because otherwise it will be impossible to strike a bargain. When someone makes a promise in a bargain, the fulfilment of the promise is not always detectable. For instance, there is not an efficient way to detected or measure the compliance if someone sells his vote in a secret election, or an employee promises that he will not take any goods from the inventory. *“The observable outcome is subject to a number of influences, only one of which covered by the agreement. The bargain may therefore have to be expressed in terms of something observable, even though what is observable is not the intended object of the bargain”* (Schelling, 1960, p. 44).

The decomposition tactic is also applying to promises. The reason that makes a lot of agreements enforceable implies the acknowledgment for future potential agreements that otherwise would be eliminated in case that mutual trust disappears (Schelling, 1960). The benefits or value from these future agreements is of greater importance than an instant gain

from cheating in this particular instance. Both parties should be confident that they will not hazard future opportunities by ruining the trust. However, this confidence does not exist always. For this reason, a fragmentary bargain is necessary to cultivate mutual expectations (Schelling, 1960). There is also the possibility that none is willing to trust the other part in a big scale. But if they start bargaining in some minor subjects each one may be willing to risk a minor investment to create a trust tradition between them. *“The purpose is to let each party demonstrate that he appreciates the need for trust and that he knows the other does too. So, if a major issue has to be negotiated, it may be necessary to seek out and negotiate some minor items for ‘practice’, to establish the necessary confidence in each other’s awareness of the long-term value of good faith”* (Schelling, 1960, p. 45). The preparatory bargains not only aid but also other purposes. Bargaining can only happen when at least one of the parties’ make the move to propose a bargain. If both parties have good reason to expect the other to meet in half way because they have successfully bargains at the past, this ‘history’ offers protection against the inference of impatiently (Schelling, 1960).

3.6 Tacit and Explicit Bargaining

In 1960 Thomas Schelling introduced for first time the distinction between tacit and explicit bargaining. A definition about tacit bargaining is as follows: *“Tacit bargaining occurs when interdependent actors perceive a conflict and anticipate each other’s behaviour without open communication. The moves and countermoves tend to be nonverbal and to occur a distance, because the social structure obstructs opportunities to communicate, [...], or fosters too much distrust for actors to use existing channels of communication to deal with conflict openly and constructively”* (Lawler & Ford, 1995, p. 237). There are two different concepts in tacit bargaining. The first is when the two actors have common interests and the second is when they have divergent interests. When the first occurs, then the problem is how to conclude in a beneficial result for both parties without having any communication. For instance, when a couple in a busy mall becomes separated, they need to find a way for tacit coordination in order to reunite (Schelling, 1960). On the other hand, when the two parties have a competition between them, then tacit bargaining includes tactical efforts to achieve an advantage in relation to the other part, or at least to avoid a disadvantage.

Explicit bargaining is different from tacit bargaining for three primary reasons. First, the actors recognize the ‘conflict’ and agree to bargain. Second, the communication between the parties are direct, verbal and open, at least for making offers and counteroffers and temporary compromises until the parties conclude in a deal. Third, the parties are aware of that an eventual compromise/solution is better and the benefits will be greater than having a non-agreement. The goal for this kind of bargaining is that the parties could conclude on a formal and explicit agreement. We can recognize explicit bargaining in international treaties, labour-management negotiations for wages, or even in child custody settlements (Lawler & Ford, 1995).

In our case, we will use the concept of explicit bargaining because the negotiations between EU and Turkey had a direct open channel of communications. So, the tacit bargaining is excluded in this context. Thus, dealing with explicit bargaining:

“Any analysis of explicit bargaining must pay attention to what we might call the ‘communication’ that is inherent in the bargaining situations, the signals that the participants read in the inanimate details of the case” (Schelling, 1960, p. 73).

As I mentioned before, explicit bargaining entails a decision by both parties to consider and seek a compromise solution of their conflict. A definition is that: *“Explicit-integrative bargaining presupposes a structure that creates underlying common goals and facilitates open communication to resolve differences when they arise. In such contexts, actors mutually acknowledge a conflict and have issues that can be interrelated or reshaped. In explicit-integrative bargaining, offers and counteroffers are part of an effort to share information about priorities, but various cognitive heuristics can impede the process of conflict resolution.” (Lawler & Ford, 1995, p. 251).*

Apart from the communication between the parties’, the coordination of participant’s expectations plays key role in this kind of bargaining. *“Most bargaining situations ultimately involve some range of possible outcomes within which each party would rather make a concession than fail to reach an agreement at all. In such a situation any potential outcome is one from which at least one of the parties, and probably both, would have been willing to retreat for the sake of agreement, and very often the other party knows it” (Schelling, 1960, p. 70).* In that case, a potential outcome could be improved by one party that insists, but there is maybe no need for insisting from the moment the other party knows or expects that he will choose to concede rather than to leave without any agreement. The strategy of each party is

mainly driven by what the other party expects to accept or insist. When the parties conclude to a final outcome, the outcome should be at a point from which none expects the other to retreat. But how do their expectations converge and make a negotiation to finish? For this question Schelling propose: *“that it is the intrinsic magnetism of particular outcomes, especially those that enjoy prominence, uniqueness, simplicity, precedent or some rationale that makes them qualitatively differentiable from the continuum of possible alternatives”* (Schelling, 1960, p. 70).

Another issue about explicit negotiations is about that a party should know where to stop when it makes a concession. The meaning out of this is that he needs to control the expectations of the opposite party. If someone makes a concession that is not interpreted as capitulation, there is a necessity of an obvious place to stop. That place could be suggested by a mediator or by any other element that stands out qualitatively the position in comparison with other surrounding positions. If it is not possible to recognise where one has to stop, then the other party would maybe try to force them to a bigger retreat. (Schelling, 1960). For example, if someone was demanding 65 per cent and then recedes to 52 per cent, he could stand in this percent firmly. If he continues receding his per cent and goes to 49 per cent, then the other party will assume that he can keep sliding his percent.

Explicit bargaining is a method of conflict resolution entailing some level of mutual consent and commitment to consider compromise. The mere fact of explicit bargaining suggests that parties see some prospect or need for collaboration. However, with structurally based conflict, the fundamental mixed-motive pressures towards conflict and resolution should remain constant, unless bargaining produces structural changes in the power relationship, (Schelling, 1960). Conflicting issues may get resolved, but they may also continue to arise. this Finally, regarding this kind of bargaining I should add that: *“Explicit bargaining includes manoeuvre, indirect communication, jockeying for position, or speaking to be overheard, or is confused by a multitude of participants and divergent interests, the need for convergent expectations and the role of signals that have the power to coordinate expectations may be powerful”* (Schelling, 1960, p. 74).

3.7 Bargaining Theory in relation with EU-Turkey Agreement

According to the theory that I presented in this chapter, we need to recognize the factors, the characteristics and the key elements which will help us to clarify and explain a negotiation as a bargaining process.

For our case, the agreement about the refugee flows between European Union and Turkey, I will try to describe and investigate how the factors and the behaviour of the two parties could be explained through this process in the analysis chapter. The most important is to find out in which concept we are. That means if we have to examine a tacit or an explicit bargaining. As I mentioned before, I believe that we have to deal with an explicit bargaining and I support that since the communication between the two parties was open and directly from the very beginning of the negotiations. Through the analysis, I will try to find out if this claim is right or not, assessing also other elements that play a key role in this kind of bargaining except from the communication. It is important to investigate whether there is a coordination of the expectations by the parties, because in this way they will probably conclude on a deal by making both concessions rather than having a stalemate. Further, if the actors can recognize the problem and agree that they need to bargain on this problem, this contains a serious element on the bargaining process.

The analysis consists of two parts. First, the negotiations between the two parties and second, the last negotiations and the final agreement in which they concluded. This will help me to see the negotiations from another perspective. Apart from the outcome, I will focus to the procedures and the details of this agreement to see if they can be analysed as a bargain process. It is also important to recognize the bargaining power that each party has and how they used it in order to achieve their targets. Furthermore, it is necessary to investigate, the concept of the commitment and how they communicate these commitments because this will help us to find out if this agreement could be explained by the bargaining theory. The threat and the promise play a crucial role in this process. These two notions should be examining carefully, because without them it will be impossible to characterize the negotiations and the agreement as a bargaining process. Threats and promises could be displayed on the dialogues between the representatives of the parties, but also in the draft and final agreement. In addition, the factors and the characteristics which affect a bargaining process are also essential in our analysis. Some of the factors such as time would be probably more easy to be found. Other aspects of the negotiations, like the restrictive agenda, will be examined carefully to conduct a conclusion.

Without stressing these factors and characteristics, any try of applying the theory will be failed. These are the details that I should focus on, getting an insight into the negotiations between the two parties in order to have strong evidence of that this agreement is an outcome of bargaining process. The bargaining theory seems to be suitable for our question. Through the analysis and the findings that I will investigate, I will try to prove that the agreement between EU and Turkey could be explain as a bargaining process.

CHAPTER FOUR BACKGROUND INFORMATION

In this chapter I will provide background information about the EU – Turkey and Cyprus – Turkey relations to help us understand the way they behaved during the negotiations. Moreover, I will give information about the common policy on external borders by EU and the Dublin II regulations to show why European Union was in need for cooperation with Turkey to stem the migrants' influx.

4.1 EU – Turkey relations

Turkey and European Union have a long shared history. Turkey since 1959 has started the efforts to come more close to EU and to become a full Member State. However, this long history was not easy to be maintained in a good level because many issues appeared that divided the Member States of EU regarding the place that Turkey should take among them. The first act which brought Turkey closer to the European Economic Community, the ancestor of European Union, was on September 1963 when they signed the Association Agreement known as Ankara Agreement (*MFA TR, 2016*). The Ankara Agreement visualised three different stages for the integration between EU and Turkey. These three stages were the preparatory, the transitional and the final stage. After the finalization of the preparatory stage an Additional Protocol was signed in 1970 and put into effect in 1973 which made the obligations of the parties clear. Furthermore, the Ankara Agreement specified that the established partnership would help Turkey's accession to EU (*MFA TR, 2016*). After these agreements, EU - Turkey integration had been put on hold because of the invasion in Cyprus in 1974 and the military coup of 1980 in Turkey (*EurActiv, 2012*).

The next big step was the Customs Union. IT entered into force on January 1996, after a long transitional period. The Custom Union was and still remains an important stage and fundamental dimension of Turkey's integration with EU. The next goal as described in Ankara Agreement was the EU membership for Turkey. A turning point for Turkey's EU membership was the decision to give the "candidate status" to Turkey by the Summit of EU leaders in Helsinki on December 1999 (*EurActiv, 2012*). After this decision and for the next five years, Turkey made huge steps to meet the Copenhagen criteria. The most important steps were about the rule of law, the human rights, the protection of minorities, and the abolition of the death penalty. The last act was a key step so, on December 2004, the European Council decided that Turkey fulfilled the political criteria and the next move was to open the accession negotiations on October 2005 (*EurActiv, 2012*). The practical negotiations on the 35 Chapters of Turkey's accession process started on June 2006. In that process, 13 Chapters had been opened but only one so far has been provisionally closed. Eight out of the twelve remaining Chapters have been blocked because Turkey failed to extend the Ankara Agreement with the new Member States of EU. On July 2005, Turkey signed the new Association Agreement for new Member States but also stated explicitly that by signing the Agreement, the Republic of Cyprus would not be recognized by any means (*MFA TR, 2015*). That was the reason that EU decided on December 2006 to block the Chapters and not to provisionally close any Chapter until Turkey fulfils this obligation. Moreover, on 2007, France declared that would block the opening of negotiations on five Chapters because these Chapters are related directly with the membership (*MFA TR, 2015*). However, France unblocked one Chapter on 2013 and President Hollande stated that France will not block the negotiations' progress. On December 2009, Cyprus decided unilaterally that it will block six more Chapters, preventing them to be opened (*MFA TR, 2015*).

All the previous made the EU – Turkey relations not easy to move forward and the accession process had been on hold. In addition, statements by Germany and France, including Chancellor Merkel and former President Sarkozy, were against of Turkey for being a full Member State and they believed that a better perspective was to work towards to a 'privileged partnership'. This kind of partnership was rejected by the Turkish authorities (*EurActiv, 2012*)., In that period, many arguments arrived for Turkey's accession throughout the EU. The most important was how EU will manage 80 million Turkish citizens who will be able to work and live in EU and if that will bring unattainability to the whole project of the Union. Another argument was about the geographical borders of Europe and that Turkey was not recognized by many individuals as a European country. A last argument was about the religion and cultural

differences but many supported the opinion that EU is a cultural and religious mosaic already and these differences should be irrelevant with the accession process of Turkey (*EurActiv, 2012*).

All these circumstances made the accession process immovable until September 2014 when EU and Turkey announced a “New EU Strategy of Turkey” with aim to establish new communication channels between the two parties. This strategy had three dimensions. First, the “Political Reform Process”, second the “Socio-economic Transformation” and third the “EU Communication Strategy” (*MFA TR, 2015*). The goals for this new strategy were: “*to re-establish the mutual confidence and underline the determination, self-confidence and sincerity of Turkey regards to the EU process*” (*MFA TR, 2015*). After this attempt to re-energize the relations between the two parties, the refugee crisis was arrived and that was the reason for EU and Turkey to come close again.

4.2 Cyprus – Turkey Relations

Cyprus and Turkey have also long history. The main difference in their history compared to Turkey-EU is the series of aggressive activities that led to the invasion of Turkey in the north part of Cyprus in 1974. On August 1960, the Republic of Cyprus was formed under the agreements of Zurich and London, recognizing two communities based on ethnic origin, after five years’ liberation struggle by the Greek Cypriots (*MFA CY, 2006*). These agreements had the role of guarantees for Greece, Turkey and Great Britain, with the latter to retain its two bases on the island. However, intercommunal clashes started between Greek and Turkish Cypriots only three years after the foundation of Cyprus. The problem centres to a series of reforms of the constitution which Turkey and then the Turkish Cypriot community were not accepted. Armed clashes between the two communities started on 1963 and the strained relations maintained until 1967 when the United Nations intervene and sponsored intercommunal talks to reach a settlement. This settlement was held until 1974 (*MFA CY, 2006*).

On 15 July 1974, the military junta in Greece organised a coup to overthrow the government of Cyprus with target to annex the island to Greece. The coup was unsuccessful but gave the ground to Turkey to invade in Cyprus on 20 July 1974 with the excuse to restore constitutional order. Since then, Turkey has not recognized the Greek Cypriot government to

represent the ‘Republic of Cyprus’ (*MFA TR, 2015*). Turkish invasion violated the treaties which it is a signatory, and the international law. Turkey seized 36,2% of the Cyprus territory and the result was about a quarter of the population of Greek Cypriots to become refugees on their own island. Moreover, 1.400 civilians and soldiers disappeared in that period and more than 20.000 Greek Cypriots enclaved in the occupied area (*MFA CY, 2006*). Furthermore, Turkey brought settlers from its territory to the island and that changed the demographics so much that now the illegal settlers are almost double from the original Turkish Cypriots (*MFA CY, 2006*). Since then many UN resolutions demanding the withdraw of foreign soldiers from the island.

On November 1983, the Turkish Cypriot side declared an ‘independent state’ on the occupied territories (*MFA CY, 2006*). This state is only recognised by Turkey until today. Since the invasion of Turkey, UN sponsored talks between the two communities to resolve the problem and to reunite the country. These efforts were not successful mainly of Turkey’s intransigence (*MFA CY, 2006*). The UN effort on 2004 to reach a comprehensive settlement to the Cyprus problem did not succeed. The General Secretary of UN Anan, after many talks and meetings between the two communities and between Greece and Turkey, proposed a plan (Anan plan V). The two communities had separate simultaneous referenda to approve or reject the plan. The Turkish Cypriot side approved the plan by 64.9% (*MFA TR, 2015*). On the other hand, former President of Cyprus Papadopoulos made a campaign and asked from the Greek Cypriots to reject the plan because the final text was not balanced as many last minute demands were introduced by Turkey on security and functionality issues. The Greek Cypriots rejected the plan by 75,8% (*MFA CY, 2006*). This rejection was not about the solution of the Cyprus problem but for the particular plan as Greek Cypriots claimed.

On the same time, Cyprus became a full Member State of EU. The decision of EU to have negotiations for the accession of Cyprus and the final approve was another reason for Turkey for not recognising the right of Greek Cyprus government to negotiate on behalf of the whole island (*MFA TR, 2015*). Moreover, this decision made the EU – Turkey relations more unstable. Turkey accused Cyprus and EU that violated the treaties from which formed the Republic of Cyprus because it was written that Cyprus could not be a member of any international organization of which both Greece and Turkey are not members (*MFA TR, 2015*). Since then, the relations between the two states continued to be strained. Cyprus blocked the accession process of Turkey to EU and on the other hand, Turkey threatened the sovereignty of Cyprus using different ways.

In 2014, the two communities in Cyprus started again interdependent negotiations for all the aspects of the problem. The Joint Declaration stated that “*only an agreed settlement can be subsequently put to separate and simultaneous referenda in the two communities, [...] Any kind of arbitration is excluded*” (MFA GR, 2015). The leaders of the communities restarted the talks on May 2015 and since then they have had many meetings and talks where both sides mentioned the progress that has been conducted from these meetings.

4.3 Common Policy on External Borders

A common policy on external borders management is a necessity for European Union as EU has become a single area without internal borders, the Schengen area. Therefore, EU tries to establish common standards for the control of its external borders and to set an integrated system for the management of these borders. The first step for a common external borders management was made on June 1985 when five Member States (France, Germany, Netherlands, Belgium and Luxembourg) of the European Economic Community signed the Schengen Agreement (Neville, 2016). After five years the Convention for the implementation of the Schengen area was signed and was entered into force on March 1995. Currently, the Schengen area applies on 26 European countries of which 22 are Member States of EU with the most Schengen rules being part of the EU *acquis* (Neville, 2016). The most important achievement is the establishment of an internal market with no restrictions of European citizens’ movement.

About the external borders management, we can detect five categories of measures of the Schengen *acquis* which affect the common policy on this area. First, it is the Schengen Borders Code, which contains the rules on external borders crossing and the conditions of temporary internal border check. Second, from the moment that not all Member States have external borders to control, so they are not affected equally by border flows, EU uses the funds in a way to deduct some of the costs for the Member States which have external borders. Third, we have the measures in relation with the establishment of a central database for migration and border management. Some of them include the Schengen Information System, the Visa Information System and the European fingerprint database. Fourth, we have the measures which designed to avert and penalise the irregular entry and residence. Last, another category contains the measures for operational cooperation in the management of the borders, centred

on FRONTEX which is the European Agency for the Coordination of Operational Cooperation at the External Borders of the Member States (Neville, 2016).

At this point some additional information about The Schengen Information System (SIS), the Visa Information System (VIS) and Frontex will be provided. The aim of SIS is to provide the infrastructure information about border control, the tasks of the police and judicial cooperation. The states which participate can feed ‘alerts’ about missing persons or wanted persons, stolen property and more, and these ‘alerts’ are visible to the police officers and law enforcement officials through a common database that they use (Neville, 2016). The scope of VIS is to enhance the implementation of the common visa policy. Moreover, VIS helps to strengthen the consular cooperation and provides consultations between the states visa authorities. The VIS is connected to all external borders crossing points and to the Member States visa issuing consulates. At the borders, the police officers can check if a person with a biometric visa is actually this person. This can be done through the cross-checking fingerprints with the biometric record attached in the visa. When VIS will reach full capacity, it will become the largest database with biometric records in the world (Neville, 2016). However, to protect the system from attacks, high level security measures are built to protect the database. Europol and law enforcement authorities have access to this database for detecting and investigating serious crimes and terrorist offences (Neville, 2016). Frontex was created in 2004 and one year later, in May 2005, it had become fully operational. The aim of Frontex is to strengthen the cooperation between the Member States of EU for the management of external borders (EUR-Lex, 2016). The main tasks of the Agency are:

- *“Planning and coordinating joint operations and rapid border interventions conducted by the Agency using EU countries’ staff and equipment at sea, land and air external borders;*
- *Coordinating joint return operations of foreign nationals staying illegally in the EU and Schengen countries and refusing to leave voluntarily;*
- *Drawing up common training standards and tool for national border guards;*
- *Carrying out risk analyses (with a view to improving the integrated management of the EU’s external borders);*
- *Assisting Schengen countries requiring increased technical and operational assistance at external borders;*

- *Developing a rapid response capability involving EU Border Guard Teams, as well as a database of available equipment and recourses to be deployed in the event of a crisis situation” (EUR-Lex, 2016).*

From 2011, Frontex has braced its operational capabilities and has a focus to ensure the fundamental rights in its operations (*EUR-Lex, 2016*). Furthermore, it has now surveillance capabilities and the exchange information system between the Agency and the Schengen Member States is designed to enable the sharing of border data almost in real-time (*Neville, 2016*). The creation of Frontex was the first step for a better integrated management on external borders. Since then, many practical steps have been made on this direction. Some examples are the upgrades of the technical infrastructure or the development of rapid response capability. From 2014, and especially from 2015, the great influx of refugees and migrants has launched an operation for patrolling the sea borders between Libya-Italy and Turkey-Greece and that brought together not only staff, but also equipment from different Member States to provide operational support to Greece and Italy. This agency has played and another important role, as well. This role is about the creation of ‘hotspots’. For this scope, three different agencies (Europol, European Asylum Support Office, Frontex) worked together in accordance with national authorities to “*identify, screen and register migrants on entry into the EU, and to organize return operations for those who have no right to stay*” (*Neville, 2016*).

The ongoing influx of migrants and refugees puts pressure for a common management on the borders. The treaty of Lisbon has a provision for a common policy on border management. However, the migrant crisis together with the criticism from some Member States that EU fails to control the external borders made the Commission to take action (*Neville, 2016*). On 15 December 2015, Commission proposed the creation of the European Border and Coast Guard, that have the right to intervene when a Member State cannot control the migratory pressure and puts in a risk the Schengen area, something that was proposed by Frontex five years ago (*Neville, 2016*). This proposal needs to be examined by the European Parliament and the Council before become reality. Moreover, in this proposal included mandatory checks on EU citizens when entering or exiting the Schengen area with purpose to enhance the security against terrorist threats. Another proposal by Commission with regard to the management of external borders was the development of Smart borders. However, the high cost of installing the smart borders in all external borders cross points and the questions about the technical feasibility made the Commission to withdraw the proposal which announced that a new proposal will be brought on table for this issue on 2016 (*Neville, 2016*).

On the field of asylum, the EU has put considerable efforts to have a common policy. Asylum is a fundamental right and was recognized first in 1951 Geneva Convention on the protection of refugees. It is granted to people in need for international protection because they are in danger of serious harm in their own country (*European Commission, 2015*). EU and Member States are committed to have a fair and effective Asylum system for the refugees. Since 1999, EU has been working on a formation of Common European Asylum System (CEAS) to enhance the legal framework. From 1999 to 2005, many legislative measures had been taken to harmonize the minimum standards for asylum. In 2001, the Directive for Temporary Protection gave the chance to EU to build a common response to mass influx (*European Commission, 2015*). In 2008, the European Commission presented a Policy Plan on Asylum with three major targets: “to bring more harmonisation to standards of protection by further aligning the EU States’ asylum legislation; effective and well-supported practical cooperation; increased solidarity and sense of responsibility among EU States, and between the EU and non-EU countries” (*European Commission, 2015*). After that plan, new EU rules have been applied to ensure that the processing’s for asylum seekers are open and fair. The most important of these rules are: First, the revised Asylum Procedures Directive which has as aim the decisions about asylum procedures to be quicker, fairer and have better quality. For people with special needs it provides the necessary support and for unaccompanied minors and victims of torture it provides greater protection. Second, another important rule is the revised Reception Conditions Directive which ensures that the conditions for asylum seekers at the hotspots are humane and that the fundamental rights are totally respected. Third, the revised Qualification Directive clarifies when someone need international protection and consequently, makes the asylum decisions easier to be made (*European Commission, 2015*). Fourth, the revised EURODAC Regulation allows the law enforcement to have access to the fingerprint database of asylum seekers having as aim to detect, prevent or investigate serious crimes and terrorist threats. On last significant rule is the revised Dublin Regulation, also known as Dublin II Regulations (*European Commission, 2015*). This regulation introduced the principle that only one Member State can be responsible for examining an application for asylum. Moreover, it introduced the criteria by which it is identified which Member State is responsible for each asylum application. These criteria are: the principle of family unity, the issuance of residence permits or visas, the illegal entry or stay in a Member State, the legal entry in a Member State and the application in an international transit area of an airport (*EUR-Lex, 2011*).

However, the implementation of this Directive faced many problems. There are three topics of criticism. The first topic is that the Dublin II does not work fairly. This is happening because an asylum seeker should make an application for asylum in the country of arrival. But if he/she wishes to make an application to another Member State, taking the risk of being returned. The second kind of criticism is related to the inefficiency of the Directive to actually work. The State of arrival is responsible for the asylum application but this does not mean that the applicant for asylum wants to apply and stay in this particular State (*Garcés-Mascareñas, 2015*). The result is that many asylum seekers make applications for asylum in more than one countries. That happens because the criteria of Dublin II do not match with the preferences of the applicants. These preferences are linked to personal issues, such as the knowledge of the language or the presence of acquaintances or friends (*Garcés-Mascareñas, 2015*). Except from these preferences, the differences in living conditions, social rights or the chance of finding work between these countries are under consideration. The third criticism denotes that the Dublin II regulations jeopardise the refugees' rights. In 2013, the European Council on Refugees and Exiles (ECRE) published a report which concluded that the examination of asylum applications is not treated with fairness and efficiency by all Member States. Furthermore, the required time to examine an application sometimes may exceed a year and that makes the whole process immovable (*Garcés-Mascareñas, 2015*). Apart from the previous topics of criticism, there is also another problem. Many cases end up to the European Court of Human Rights in Strasburg which is costly and creates uncertainty for the legal basis of the Directive. With all the previous problems and the huge influx of irregular migrants since last summer, it has become impossible for the new asylum seekers to be registered and seek for asylum within these procedures. That was one of the reasons why EU was seeking the cooperation of Turkey to steam this influx.

CHAPTER FIVE ANALYTICAL FRAMEWORK

In this chapter I will present the analysis of this project. First, I will make an introduction about how we reached the point that European Union asked for a closer cooperation Turkey in the field of irregular migrants. After this, I will present the negotiations that followed and the meetings between the two parties. In this sub-chapter. I will show which were the steps and how we concluded to this particular agreement. At the end, I will present

the agreement on refugees' influx and I will apply also the bargaining theory to prove that this agreement is a result of bargaining process.

5.1 Introduction

The refugee crisis is an ongoing problem for Europe in the last two years. Since the civil war started in Syria, millions of people have escaped from this dangerous territory in order to search for better living conditions, a better future. The first countries in which Syrians found a temporary settlement included Turkey, Jordan, Lebanon and Iraq. More than 2.2 million refugees from Syria are living now in Turkey and the majority of them wants to leave come to Europe (*European Commission, 2015*). The problem was not so visible to European countries until the spring of 2015 when refugee flows from Turkey to Greece and from Libya to Italy started to occur in a big scale.

Last summer, Greece and Italy faced a humanitarian crisis so tremendous that it was not on their hands to control it. The arrival rates of refugees and irregular migrants was doubled in comparison with 2014, or even higher for some months (*BBC, 2016*). During the same period (summer of 2015), Greece was in the middle of a political and economic instability. A referendum, the closed banks and the capital controls has switched the Greeks' and Greek government's attention from this problem. After the agreement that was achieved between Greece and Eurozone, everyone understood that another huge problem was already formed. The Greek islands (Lesvos, Chios, Samos, Kos) were filled by refugees and migrants. The conditions for these people were at least inhuman but the flows continued every day. In June 2015, it was the first time that the ministers of Justice and Home Affairs of the Member States of EU started to discuss on this problem. However, EU for one more time in its history was trying to avoid to face 'the problem'. The first decision was made on 14 September 2015, bringing in a temporary and exceptional relocation mechanism that it applicable for 40.000 people, a decision made on a meeting held by the Justice and Home Affairs ministers after the proposal of European Commission (*European Council, 2015*). At the same month, an informal meeting took place for EU leaders where they decided to extend this temporary mechanism for 120.000 persons. In the same meeting, it was the first time that the leaders of EU "called for a reinforced dialogue with Turkey at all levels" (*European Council, 2015*). Before this decision, the President of the European Council Donald Tusk had a first meeting with the Prime minister

of Turkey Ahmed Davutoglu in Ankara to see if there is any change EU and Turkey to cooperate closer in the field of refugee crisis. This is the time where the negotiations between Turkey and European Union started with two major goals: to find a solution to tackle the migration flows from Turkey and to support the refugees that lived in Turkey with humanitarian and financial aid.

5.2 Negotiations between EU and Turkey

In this sub-chapter, I will present the negotiations between the two parts before the final meeting on 17-18 March 2016. In addition, I will try to apply the bargaining theory, which I presented in the theoretical framework, to show how these negotiations could be explained as a bargaining process.

As I mentioned before the negotiations between the two parties started in late September 2015. The first discussions were about how Turkey could help EU to monitor and guard its external borders and in return EU would accept to reenergize the accession process of Turkey to become a Member State of EU, giving also financial aid to Turkey for the refugees that already live in its territory.

After the decision of the European Council to have a dialogue at all levels with Turkey, the two parties had a meeting at the end of September 2015 in New York in the margins of United Nations General Assembly. In that meeting, they decided to continue the joint efforts to find a solution about the influx of migrants in EU (*European Council, 2015*). At the same time the flow from Turkey continued to be extremely high. After that meeting, the president of European Council invites the Turkish President Recep Tayyip Erdogan in Brussels for further discussions on 05 October 2015. In that meeting, the two parties promised to have a closer cooperation to stem the migrant flow from Syria to Europe. There were two major outcomes from that meeting. First, they agreed to made a high-level working group for the migration issue and second, EU had to take into consideration the Turkish concerns to create a safe zone in northern Syria. That would help to decrease the influx from Turkey to Greece (*Barigazzi, 2015*). In the press conference, President Erdogan revealed that: “*In order to solve this crisis we discussed financial assistance, border management, the fight against smugglers, integration policies and visa liberalization*” (*Barigazzi, 2015*). That was the first time that

Turkey made clear and publicly what they asked in return to reach a close cooperation with EU.

The next step of the negotiations was the decision for the EU – Turkey Joint Action Plan on 15 October 2015. That Action Plan was a step for EU and Turkey to support the Syrians who are under temporary protection and includes actions which need to be implemented immediately by both sides. *“The Action Plan, tries to address the current crisis situation in three ways: (a). by addressing the root causes leading to the massive influx of Syrians, (b). by supporting Syrians under temporary protection and their host communities in Turkey (Part I) and (c). by strengthening cooperation to prevent irregular migration flows to the EU (Part II). The EU and Turkey will address this crisis together in a spirit of burden sharing. The plan builds on and is consistent with commitments taken by Turkey and the EU in other contexts notably the Visa Liberalization Dialogue. In both parts it identifies the actions that are to be implemented simultaneously by Turkey and the EU” (European Commission, 2015).*

This JAP is divided in two parts. In both parts, Turkey and EU have specific actions that they need to fulfill. The most notable of these acts for EU are: First, to support Turkey with funds, outside the IPA, and cope with the humanitarian challenges faced in its territory. Second, to ensure that the funds will be used efficiently, that EU Institutions with Turkey will make a comprehensive programming. Third, to inform the people in Turkey who are attending to cross EU borders for the risks linked to irregular departures. Fourth, to support Turkey to compact refugees smuggling. Fifth, to support the cooperation between Member states and Turkey for organizing joint return operations and sixth, to increase the support (financial and political) to Turkey for meeting the requirements for the Visa Liberalization Dialogue. On the other hand, Turkey was obligated to take the follow acts: first, to continue ensuring that refugees and migrants are registered and have the appropriate documents. Second, to adopt and implement policies for the Syrian people to have access to public and health services. Third, to cooperate in order to accept back irregular migrants who are not in need of international protection. Fourth, to alignment the Turkish Visa with the Visa Roadmap requirements. Fifth, to exchange information and to cooperate with EU and its Member states and sixth, to intensify the cooperation with FRONTEX on exchange information (*European Commission, 2015*).

All the previous requirements, were the first steps for a better and closer cooperation between the two parties in the refugee field. However, the implementation of this Joint Action Plan was very slow by both sides. Turkey seemed to play with the time in these negotiations,

something that it will be more clear later. After the decision for the JAP and the delays in its implementation, another meeting took place between the president of Turkey Erdogan and the presidents of European Council and Commission Tusk and Juncker in Antalya on 14 November 2015. Two days before, in an informal meeting of EU leaders in Valletta, they decided to call Turkey for a summit. The meeting between Turkey and EU presidents was important, not only because they decided to make the EU-Turkey Summit later in November, but also because the dialogues where leaked from this meeting shows how Turkey was tough player in this bargaining.

It was revealed that in this meeting EU postponed the EU Progress Report on Turkey and it was published on 8 November 2015, one week after the general elections in Turkey. That move was in favor of the part of president Erdogan. About this subject, president Juncker said: *“Please note that we postponed the progress report until after the Turkish elections. And we got criticized for this delay”* (Papamiltiadou, 2016). The Erdogan’s answer was: *“the delay of the progress report did not help AKP to win the elections. Anyway, the report was an insult. Who prepared this report? How can you come up with this? It’s not the real Turkey. You never came to me to hear the truth. Most Turks don’t want to become members of the EU because of reports like that”* (Papamiltiadou, 2016). Then Juncker answered that: *“the delay of the progress report was done on Erdogan’s request. Why else would we be willing to get criticized for it? I thought you want to be reconciled with the EU. Now I feel deceived, because we have really risen to the challenge. European Conferences were de-continued in 2004, but we believe it is time to reconsider this”* (Papamiltiadou, 2016). However, that was not the only time that Erdogan insulted the EU representatives. Later, when the discussion moved to the financial assistance from EU, Erdogan asked if the proposal would be for three or six billion euro. When Juncker answered that the amount is about three billion, Erdogan said: *“Turkey did not need the EU’s money anyway. We can open the doors to Greece and Bulgaria anytime and we can put the refugees on busses. If you say three billion for two years, no need to discuss further. So how will you deal with the refugees if you don’t get a deal? Kill the refugees?”* (Papamiltiadou, 2016). The answer of president Juncker was: *“if Schengen is gone, then Turkey can have no visa-free deal with the EU. Will have to go bilateral. Turkey holds the key, but if we fail to honor the 5 October deal, we’ll have to look for other solutions”* (Papamiltiadou, 2016). Moreover, Erdogan accused EU that they had not kept a promise to Turkey. *“EU hasn’t done anything for Turkey. The money is for refugees, not Turkey. Moreover, you are using out pre-accession money. It’s really nothing. No chapters at all. We have waited for 53 years. You have*

been mocking us” (Papamiltiadou, 2016). The answer of Juncker on these accusations was “that resources are being amassed, that there is readiness to move on accession, that visa liberalization will be sped up, while noting that these decisions are not easy for the EU to take” (Papamiltiadou, 2016). Furthermore, when Juncker wanted to show the need to conclude on a deal as soon as possible the follow dialogue took place: Juncker: “We are working hard and we have treated you as a prince in Brussel”, Erdogan: “Like a prince? Of course, I’m not representing a third world country” Juncker: “Note that the EU never has 28+1 Summits, but for Turkey, we are ready” Erdogan: “Of course, I would have done the same. But don’t smear it in my face”. (turning to Tusk) “I represent 80 million people. Talk like that from Juncker is disgraceful” and continued: “The EU doesn’t want to have Turkey in the EU I think. But then tell us clearly. That would be a relief. And Juncker thinks his report won the elections? You just want us to keep all the refugees” (Papamiltiadou, 2016).

At this point we can recognize some elements as a bargain process. From all the previous points, we can understand that we should discuss about an explicit bargaining because the two parties recognized that they need to find a solution in a problem which affect both of them and also they had an open and directly communication between them. Moreover, we can recognize some factors in the bargaining process. First, the players who are EU and Turkey, in our case. Second, we can recognize the interdependency because the parties have at least something in common and this is the willingness to find a solution on the refugee’s problem. Third, there are differences of interest, and this is easy to be argued because from the side of Turkey they want to re-energize the relationships with EU and on the other side the main subject is to reduce the flow of irregular migrants in EU. Furthermore, we can see which party has the bargaining power on this negotiation. From the phrase of Juncker that *“Turkey holds the key”* we can understand that Turkey have the upper hand because EU needs her help to manage the problem. Also, it is easy to find the concept of threat, which plays an important role in the bargaining process. The way that president Erdogan addresses to the EU higher representatives is at least insulting. The phrases: *“If you say three billion for two years, no need to discuss further”* or *“We can open the doors to Greece and Bulgaria anytime and we can put the refugees on busses”* or *“So how will you deal with the refugees if you don’t get a deal? Kill the refugees?”* show exactly what is a threat. President Erdogan communicated his own incentives in a way to impress the leaders of EU and show what consequences they will have if he makes his threats real. Even if he was bluffing, not wanting to make his threats real, the way that Juncker answered shows that the deterrent was successful. Another characteristic of

the bargaining process is the continuous negotiations. We can detect that as they organized to negotiate again over different subjects on the same time. Later, I will also try to find and explain more elements of the bargaining theory in this negotiation process.

The next time when the two parties made discussions was in the EU – Turkey Summit on Brussels on 29 November 2015. In that meeting, they decided to work closer on the field of refugees but also it was the first time that the EU leaders confirmed their willingness to re-energize the accession process. The main results of this meeting are follows: first, both sides agreed to have Summits twice a year in a formal and appropriate way. Second, the opening of the chapter 17 on December and the commitment that the Commission will open more chapters in the first quarter of 2016 “*without prejudice to the position of Member states*” (European Commission, 2015). Third, Turkey committed to accelerate the fulfilment of the Visa Roadmap benchmarks, so EU would lift the visa requirements for Turkish citizens in the Schengen area on October 2016. Fourth, the EU will provide continuous humanitarian assistance to Turkey and is committed to supply three billion euro of additional resources. Fifth, EU had to activate the Joint Action Plan to bring order in the migratory flows. A sixth decision for EU was to establish a High Level Economic Dialogue Mechanism and a High Level Energy Dialogue and Strategic Energy Cooperation and lastly, to upgrade the Customs Union. All the previous will need to be taken forward as soon as possible and will be monitored closely (European Commission, 2015). The results of this meeting was crucial because it formed the base for continuous negotiations between the two parties. Moreover, from these results we can see that the use of threats by Erdogan was successful because the EU leaders agreed on the basis of his proposals.

The next steps in this process was first, the European Council on 17-18 December 2015 when the leaders of EU had decided to speed up the actions for the implementation of what they had agreed with Turkey on November and second, the Member States agreement on 3 February 2016 where after the proposal of Commission, the Refugee Facility for Turkey was established. This agreement was about the financial assistance of three billion euro to Turkey. “*The Facility will provide a joint coordination mechanism for actions financed by the EU budget and national contributions made by the Member states, designed to ensure that the needs of refugees and host communities are addressed in a comprehensive and coordinated manner*” (European Commission, 2016). This assistance was linked with the implementation by Turkey of the Joint Action Plan and the reduce of the migrant flows from Turkey to Greece by EU.

After that agreement between the EU leaders, many meetings took place by high level officials of both sides. The information from these meetings was not published so I decided to left them out of the analysis. On 3-4 March 2016, President Tusk went to Ankara and had a meeting with President Erdogan and Prime minister Davutoglu. In this meeting, they decided to arrange a meeting between the EU leaders and the Prime minister of Turkey within next week in Brussels. On the same time, the implementation of the JAP and all the other issues that they have agreed was very slow by both parties, especially from Turkey. The influx of migrants was not reducing, actually it was higher in the first months of 2016, and the only actions taken by Turkey was the fulfillment of some of the benchmarks for the Visa Liberalization (*TRTWorld, 2016*).

However, the most important meeting, until the next one, between EU and Turkey was held in Brussels on 7 March 2016. The need for an agreement was high in that meeting. The Western Balkan route was closed by FYROM and by other countries, like Hungary which had the assistance of Austria. The EU leaders were not on the same page and that made the negotiations even harder. Further, the meeting took place a few days after the Turkish government seized the biggest newspaper in Turkey (*Zaman*) and put it under the control of the government (*Letsch, 2016*). The discussions started in the morning and extended to a working dinner so they could find a solution to an apparent stalemate. In that evening, the Prime minister of Turkey brought to the table six proposals so they could conclude on an agreement. These proposals were formed the previous night in a meeting at the Turkish embassy in Brussels among the Chancellor of Germany Merkel, the Prime minister of Turkey Davutoglu and the Prime minister of Netherlands Rutte, according to the media. In that closed-door meeting, they formed these principals in accordance to a plan that Merkel had tried to introduce as a deal the previous November but then it was rejected by the Turkish authorities (*EurActiv, 2016*). The EU leaders welcomed the Turkish proposals and they asked from president Tusk to work on the details until the next meeting between the parties in Brussels for the second Summit on 17-18 March 2016. These proposals from Turkey which EU agreed to work on them as the main principals of a new agreement are the follow:

- *“To return all new irregular migrants crossing from Turkey into the Greek islands with the costs covered by the EU.*
- *To resettle, for every Syrian readmitted by Turkey from Greek islands, another Syrian from Turkey to the EU Member States, within the framework of the existing commitments.*

- *To accelerate the implementation of the visa liberalization roadmap with all Member States with a view to lifting the visa requirements for Turkish citizens at the latest by the end of June 2016*
- *To speed up the disbursement of the initially allocated 3 billion euros to ensure funding of a first set of projects before the end of March and decide on additional funding for the Refugee Facility for Syrians.*
- *To prepare for the decision on the opening of new chapters in the accession negotiations as soon as possible, building on the October 2015 European Council conclusions.*
- *To work with Turkey in any joint endeavor to improve humanitarian conditions inside Syria which would allow for the local population and refugees to live in areas which will be more safe” (European Council, 2016).*

In these proposals we can detect the differences with regard to the previous agreements. First, Turkey asked to lift the visa requirements not on October 2016 as they had agreed before, but until the end of June 2016. Second, except from the three billion euros for the Refugee Facility for Turkey, they asked for three extra billion euros as funding for the refugees. On the other hand, it is the first time that Turkey took the commitment for accepting back all the irregular migrants (including Syrians) to its ground from Greek islands. Turkey also committed for the resettlement scene that entails that for each refugee that Turkey accepts back, the Member States have to take one from Turkey.

These six principals became the base for the agreement reached on the next meeting on 17-18 March which I will analyze in the next sub-chapter together with the final negotiations between the two parties. At this point, we can also recognize the concept of bargaining process by the following aspects. The time factor was used by Turkey in a tactical way and that is clear from the delay of implementing the previous agreements, waiting for better results on the bargaining. Moreover, the characteristic of possibility of compensation can be detected here as Turkey asked six billion euros to conclude in an agreement. Another characteristic is the secrecy of some meetings derived by the fear to have a stalemate. Another concept about bargain process is commitment. The commitment plays a vital role in the bargaining process. We can see that commitments were available by both parts and that they tried to communicate them to the other party. We can also understand that it was not easy for the commitments taken by both parties to be established because, as I described previously, they changed many times

the content of the agreement. Furthermore, when Erdogan threatened the other party, he established a commitment that made his position immovable and it was very difficult for the other party to concede in everything he asked. At this point, I would like to mention one more characteristic of explicit bargaining that we can identify. This is the willing to find a compromised solution even if they posit different interests, because they believed it is better to find a solution than to conclude without a deal at all. This is visible because they continued to bargain after the Erdogan's threats. We can also see the concept of promise at the last meeting between the two parties. The six principals which mold the ground for the new agreement, are based on the promises of each party. The commitments from one party are outside of the control of the other party to affect the final action.

5.3 Final negotiations and the agreement between EU and Turkey

After the meeting on 07 March and the agreement on the six principles, another round of negotiations began. The president of European Council Tusk had the assignment to finalize the details of the agreement. However, it was not an easy task. Cyprus, as I presented the relationships with Turkey in the background chapter, warned to use veto in the EU-Turkey deal. The problem is stands since 2009, when Cyprus imposed the freeze on key parts of Turkey's EU negotiations for membership, because Turkey failed to honour the agreement with EU to recognize the Greek Cypriot government in Nicosia and allow the Cypriot planes and ships to land and dock in Turkey. President of Cyprus Anastasiades stated for this issue: *"It is a very delicate moment, and at this very crucial moment, they are pushing us into a position to say 'no' to Turkey"* (Spiegel, 2016). This statement forced President Tusk to visit first Cyprus and then Turkey to make discussions about this problem. On 15 March 2016, he went to Nicosia and had a meeting with President Anastasiades where they concluded that the agreement has to be acceptable by all the 28 Member States, no matter big or small. After he went to Ankara for a final meeting before the Summit with the Prime minister Davutoglu. In that meeting, Tusk expressed the concerns of Cyprus and together reconfirmed their willingness to conclude on a deal within the next days (Spiegel, 2016). Except of Cyprus, France and Czech Republic accused Turkey that was trying to 'blackmail' EU for more money and concessions in exchange for concluding to a deal about refugees. The Czech President Zeman stated: *"The EU's original proposal to Turkey was for three billion euros, now Turkey is asking six billion euros and there is talk ... of about up to twenty billion euros. Impolite people like myself call that blackmail"*

(Foster, 2016). In the same style, French officials warned that they will not make any other concessions to the demands of Turkey. To avoid any unpleasant moments, President Tusk stated before the start of the EU-Turkey Summit that: *“The Turkish proposals ... still needs to be rebalanced so as to be accepted by all 28 Member States and the EU Institutions”* (Foster, 2016).

On 17 March 2016, the EU-Turkey Summit started with a meeting of the EU leaders. In that meeting, they discussed the details on the six principals and how Member States will return back to Schengen area in a way that all members will apply fully the Schengen Borders Code. On 18 March the negotiations between the parties started again. In that day, a non-paper was leaked with proposals for an agreement by the EU party. I will now present this non-paper and then the final agreement to detect the differences and how they concluded with this deal at the end.

The non-paper was formed as follows:

“The agreement will be formulated as an EU – Turkey statement. It will take as its basis the principles set out in the statement of 7/3/2016 while adding the following elements:

- *On returns to Turkey: a) This will be a temporary and extraordinary measure which is necessary to end the human suffering and restore public order. b) Migrants arriving in the Greek islands will be dully registered and any application for asylum will be processed by the Greek authorities in accordance with Directive 2013/32/EU. 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. c) Migrants having been returned to Turkey will be protected in accordance with the international standards concerning the treatment of refugees and respecting the principle of non-refoulement.*
- *On resettlement based on 1-for-1 principle: a) Priority will be given to Syrians who have not previously entered the EU irregularly. b) On the EU side, resettlement under this mechanism will take place, in the first instance, by honouring the commitments taken by Member States in the conclusions of Representatives of the Governments of Member States within the Council on 22/7/2015. [Any further need for resettlement will be carried out within the limits and in accordance with the distribution set out in [relocation decision 22/9/2015- non-allocated places]. c) Should the number of returns*

exceed the numbers provided for by these commitments, this agreement will be subject to review.

- *Turkey will take any necessary measures to prevent new routes for illegal migration opening up out of Turkey and into the EU.*
- *Once the irregular crossings between Turkey and EU have come to an end, the Voluntary Humanitarian Admission Scheme will be activated. EU Member States will contribute on a voluntary basis to this scheme.*
- *The EU and Turkey will further speed up the disbursement of the initially allocated 3 billion euros and ensure funding of additional projects before the end of March. Furthermore, the EU will decide on additional[X] billion for the period [Y] for the Turkey Refugee Facility” (Peers, 2016).*

In this non-paper, we can see the differences with the six principles agreed on the previous meeting. Numbers three and four on this non-paper were not existed before. The third proposal was made by EU to pressure Turkey into accepting the deal and additionally, to prevent any other route from Turkey to EU. Except from the sea borders, Turkey has also soil borders with Greece and Bulgaria and EU would not accept just to change the route for the refugees and deal again with the same problem that comes from the same country. The fourth proposal is about how will the resettlement from Member States be performed when the influx comes to an end. EU tried to obligate the Member States to participate in this scheme even if it is voluntary, using this proposal. EU tried also to show to Turkey that the resettlement will continue even if the flows stop. On the other hand, we cannot detect two of the six principals on this draft. The first is about the visa liberalization and the second is about the chapters that will be opened for the Turkish accession process. These two principals were bargaining hard on this day among the EU leaders and between the two parties. Turkey called for opening the accession block chapters in order to help on refugee problem. Cyprus could not accept that if Turkey would not recognize the already internationally recognized Greek Cypriot government at a previous stage. The same occurred regarding the visa roadmap. France warned that the deal will not be accepted if it is not clear that Turkey should meet all the 72 benchmarks of the visa requirements (Foster, 2016). In addition, the first two proposals are in accordance with the six principals but we can see that the description is more concrete. That happened because many voices, from media to UNCHR, raised their questions for the legitimacy of this deal on whether it is in accordance with EU and international laws (Peers, 2016). In the last proposal about the financial assistance from EU we see that they have agreed to provide more money to Turkey

but the amount of financial aid and the period of money distribution was still in negotiations. The bargaining continued during the day and a deal was reached by both sides and it was acceptable by all Member States late at that night.

At this point I will present the final agreement between EU and Turkey as they presented at the EU – Turkey statement on 18 March 2016. This deal had the following additional points:

1. *“All new irregular migrants crossing from Turkey into Greek islands as from 20 March 2016 will be returned to Turkey. This will take place in full accordance with EU and international law, thus excluding any kind of collective expulsion. All migrants will be protected in accordance with the relevant international standards and in respect of the principle of non-refoulement. It will be a temporary and extraordinary measure which is necessary to end the human suffering and restore public order. Migrants 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. Turkey and Greece, assisted by EU institutions and agencies, will take the necessary steps and agree any necessary bilateral arrangements, including the presence of Turkish officials on Greek islands and Greek officials in Turkey as from 20 March 2016, to ensure liaison and thereby facilitate the smooth functioning of these arrangements. The costs of the return operations of irregular migrants will be covered by the EU.*
2. *For every Syrian being returned to Turkey from Greek islands, another Syrian will be resettled from Turkey to the EU taking into account the UN Vulnerability Criteria. A mechanism will be established, with the assistance of the Commission, EU agencies and other Member States, as well as the UNCHR, to ensure that this principle will be implemented as from the same day the returns start. Priority will be given to migrants who have not previously entered or tried to enter the EU irregularly. On the EU side, resettlement under this mechanism will take place, in the first instance, by honouring the commitments taken by Member States in the conclusion of Representatives of the Governments of Member States meeting within the Council on 20 July 2015, of which 18.000 places for resettlement remain. Any further need for resettlement will be carried out through a similar voluntary arrangement up to a limit of an additional 54.000*

persons. The Members of the European Council welcome the Commission's intention to propose an amendment to the relocation decision of 22 September 2015 to allow for any resettlement commitment undertaken in the framework of this arrangement to be offset from non-allocated places under the decision. Should these arrangements not meet the objective of ending the irregular migration and the number of returns come close to the numbers provided for above, this mechanism will be reviewed. Should the number of returns exceed the numbers provided for above, this mechanism will be discontinued.

- 3. Turkey will take any necessary measures to prevent new sea or land routes for illegal migration opening from Turkey to the EU, and will cooperate with neighbouring states as well as the EU to this effect.*
- 4. Once irregular crossings between Turkey and the EU are ending or at least have been substantially and sustainably reduced, a Voluntary Humanitarian Admission Scheme will be activated. EU Member States will contribute on a voluntary basis to this scheme.*
- 5. The fulfilment of the visa liberalization roadmap will be accelerated vis-à-vis all participating Member States with a view to lifting the visa requirements for Turkish citizens at the latest by the end of June 2016, provided that all benchmarks have been met. To this end Turkey will take the necessary steps to fulfil the remaining requirements to allow the Commission to make, following the required assessment of compliance with the benchmarks, an appropriate proposal by the end of April on the basis of which the European Parliament and the Council can make a final decision.*
- 6. The EU, in close cooperation with Turkey, will further speed up the disbursement of the initially allocated 3 billion euros under the Facility for Refugees in Turkey and ensure funding of further projects for persons under temporary protection identified with swift input from Turkey before the end of March. A first list of concrete projects for refugees, notably in the field of health, education, infrastructure, food and other living costs, that can be swiftly financed from the Facility, will be jointly identified within a week. Once these resources are about to be used to the full, and provided the above commitments are met, the EU will mobilise additional funding for the Facility of an additional 3 billion euros up to the end of 2018.*
- 7. The EU and Turkey welcomed the ongoing work on the upgrading of the Custom Union.*
- 8. The EU and Turkey reconfirmed their commitment to re-energise the accession process as set out in their joint statement of 29 November 2015. They welcomed the opening of Chapter 17 on 14 December 2015 and decided, as a next step, to open Chapter 33*

during the Netherlands presidency. They welcomed that the Commission will put forward a proposal to this effect in April. Preparatory work for the opening of other Chapters will continue at an accelerated pace without prejudice to Member States' positions in accordance with the existing rules.

9. *The EU and its Member States will work with Turkey in any joint endeavour to improve humanitarian conditions inside Syria, in particular in certain areas near the Turkish border which would allow for the local population and refugees to live in areas which will be more safe.*

All these elements will be taken forward in parallel and monitored jointly on a monthly basis'' (European Council, 2016).

Next, I will present the differences between the non-paper and the final agreement. In the first additional point we can see some important differences. It starts with the date of the implementation of the agreement. It stated that the implementation will be in accordance the EU and international laws and collective expulsion is excluded from this agreement. Moreover, regarding the procedure for asylum they added the word 'individually' and that will be in cooperation with UNCHR. It is also stated that Turkey and Greece should cooperate and take the necessary steps to ensure the functioning of the agreement, a new extension that can be seen in the last four lines. At the end, they declared that the cost of the return operation will be covered by EU. Many of the differences were detected about the questioning of the legal base of the agreement. The references about UN, international law or UNCHR had been made to show the commitment that all the procedures will be legitimate. The word 'individually' was added for this reason and also because the Asylum Procedures Directive declares that all applications about asylum should be examine individually (UNCHR, 2016). The part about the Greek – Turkey cooperation and the presence of officials on the other country is a breakthrough in the existing framework of Greek – Turkey relations.

The second point implies also important modifications from the non-paper proposal. The core 1-for-1 remained but the need to take into consideration the UN Vulnerability Criteria was added and that all the actors will cooperate with UNCHR to monitor the implementation. Furthermore, connected to the priority, they added the word 'tried' to exclude more asylum seekers from the first phase of the implementation. Another difference is that in the final deal they talk with numbers for the resettlement scheme. At the end, we can detect that when the

numbers are exceeded this mechanism will stop, in contrast with the non-paper where it was stated the mechanism will be reviewed.

The third point that was added from EU and it did not exist on the six principals remained in the final deal with an addition point that Turkey will have to cooperate with the neighbouring states.

Similarly, for point four, it remained in the final agreement but with a huge difference. In the non-paper it was displayed that when the influx would come to an end, the Scheme will be activated but the agreement says when ‘are ending or at least have been substantially and sustainably reduced’. The second statement is closer to the real world because it will be very difficult, even impossible, to stop once and for all the migration flow.

The fifth point, was not included in the non-paper but it was in the six principals. This point refers to the visa liberalization for Turkish citizens. It is clear that the proposal from Turkey to lift the requirements until the end of June was approved by the EU but the phrase “*that all benchmarks have been met*” was added. That was a requirement from France to approve the deal, as I mentioned previously. Moreover, it was stated that Turkey should fulfil the rest of requirements by the end of April in order to the process to be continued.

The sixth point is about the financial assistance. Again, the proposal from Turkey for additional funds has been accepted by EU. However, an important difference from the non-paper and the six principals is that EU will provide the additional three billion euros to the Facility for Refugees in Turkey, only when the previous 3 billion euros will have been used. In addition, the disbursement of the current funds will be speed up and projects for the refugees will be identified by both within a week. That was a strong commitment from EU to show that there will not be any delay in the financial support to Turkey.

The seventh point was neither in the six principals or in the non-paper. This point however is just a statement for the working progress in the field of Custom Union and it does not imply that anything should be implemented by both sides at this time.

The eighth point was negotiated more than any else of this agreement. In the non-paper it was absent but it was one of the six principals. We can see that Turkey succeeded to open one more Chapter (33) but failed to re-open the blocked chapters by Cyprus. For opening this Chapter. President Hollande made a concession and revoked the block of France in this particular Chapter. Both the President of Cyprus Anastasiades and the Greek Prime minister

Tsipras thanked President Hollande for his move, on the remarks, so now all the Member States can agree on this deal (*Sigmalive, 2016*). Moreover, except from the opening of Chapter 33, the EU leaders decided to continue the accession process and to work with Turkey on opening more Chapters in the future.

The last point, which was also in the six principals, differs on the location of the certain safe areas. On the final agreement it was displayed that these certain areas will be near the Turkish borders, unlikely with what was stated in the six principals, so areas inside Syria without certain restrictions. This last point of the deal will not be vital for the rest of the agreement as the creation of safe zones inside Syria, even near with the Turkish border, is not an easy task and could not be implemented only by Turkey and EU. They need an international coordination under the auspices of United Nations.

At this point, I will examine the last negotiations and the final deal to conclude if this agreement could be explained as a result of a bargaining process. One of these elements is the coordination of expectation. We saw that the two parties had different interests but through the bargaining they conclude to a deal. The coordination of interest is also visible when Prime minister Davutoglu brought the six principals on the table of negotiations. In these principals we saw for first time the Turkish side to commit in the vital for the other party proposals, accepting to take back the irregular migrants and the 1-for-1 resettlement scene. Another factor is the time. Turkey used the time in a tactical way before. Now, in the first lines of the agreement, there is the fixed date of starting the implementation of the deal. This is a strategic use of time factor, by both sides, because they agreed to start the implementation on a fixed date. Moreover, we meet again the characteristic of secrecy. On 7 March 2016, the meeting in the Turkish embassy in Brussels before the Summit was behind closed-doors and the participants avoided to make any remarks about this meeting. As I mentioned before, Cyprus and France played an active role in the negotiations, affecting for the future of the agreement. They negotiated the parts of the proposals about the accession process of Turkey. In that moment the players were not only EU and Turkey, but also Cyprus and France. Then, France made a concession to avoid a stalemate. Here, one can recognize the characteristic of casuistry as the two parties came closer and concluded to the deal after this concession. In addition, the factor of rule of progress and the restrictive agenda are also applicable in these negotiations because the core of the issues in which they were bargaining remained the same. Furthermore, the characteristic of principles and precedents is visible in this process. Even if the qualitative commitments are better than quantitative ones, there is an exception when it is about round

numbers. The financial assistance by EU is a round number (6 billion euros), so this characteristic is also presented. Last but not least, the concept of explicit bargaining is displayed. As we saw previously, the main characteristics have been recognized. The most important proof is that they concluded on an explicit formal mutual agreement, making both concessions to reach a deal, merely because both parties believed that a compromise was better than no agreement at all.

Tomas Schelling and the bargaining theory changed the way that we can see and investigate the elements and the factors that affect the parties in a negotiation. It makes more clear, what we need to detect and also to understand in a bargaining process. The book *Strategy of Conflict* and especially the chapter with the title 'An essay on Bargaining' is the fundamental base of the bargaining theory. The distinction between tacit and explicit bargaining is very important for understanding in which context we are moving. Furthermore, the explanation of the bargaining power and the importance of commitment (promise and threat) can give us the appropriate tools to examine a bargaining process. The characteristics and the factors which affect a bargaining process are also very important and help us to detect in a comprehensive way if what we examine could be explained with this theory.

In our question, it helped me to recognise the context of the negotiations (explicit bargaining, because they recognized the problem and had open communication to conclude in a compromise deal) and the fundamental concepts of promise and threat (the commitments they used and how they communicated them) that the parties used to achieve their goals. Moreover, it was easy to argue on who had the power and how this power was used in the negotiations through bargaining theory (Turkey holds the key as Juncker said). Other important tools offered by bargaining theory are the characteristics and the factors which affect a bargaining process. Through these factors and characteristics, it was more facile to understand when and how a negotiation can be characterized as a bargaining process. Some factors such as time can be used in two different ways (strategic by both parties, tactical by Turkey), but other factors like the differences of interest are crucial in bargaining theory (Turkey re-energised the accession process and EU stopped the huge influx of irregular migrants in its territory). The same applies about the characteristics. Some of them, such as continuous negotiations and secrecy vs publicity are key elements in this theory and some others like possibility of compensation are important but not mandatory to be concluded if the negotiations do not operate in a bargaining process. In our case the possibility of compensation was detected by the six billion euros that EU will grant to Turkey. The continuous negotiations were detected by the fact that the two

parties will negotiate again in the near future on other issues, whereas the secrecy can be detected by the numerous meetings that took place behind closed doors and without any information to the public. Another characteristic that was detected in our case is the restrictive agenda (the core of the issues that they negotiated remained the same from the beginning until the final agreement). Summarizing the importance of the bargaining theory in relation with our question, we can see that this theory was a suitable choice to show whether the agreement between EU and Turkey was a bargaining process. The findings that I presented previously in this chapter can confirm this allegation.

CHAPTER SIX CONCLUSIONS

Taking into consideration the information that was gathered and examined in this project, we can conclude that the agreement between European Union and Turkey on refugees could be explained as a bargaining process. The explicit bargaining was the context in which these negotiations took place and made the final agreement possible. The findings that I presented in the analysis chapter show us that were the key elements, the characteristics and the factors that existed throughout the whole process in this agreement. Generally, from this bargaining process and the negotiations between the two parties we can see that both sides took what they were seeking at the end. EU will not have to deal with the growing irregular migrant flows from Turkey and on the other side, Turkey succeeded to re-energize the relation with EU whilst the government in Ankara is accused for violations of human rights and freedom of press. This deal offered to Erdogan a new legitimacy in the international political scene. Both parties concluded that it was better to make a compromise than not a deal at all. EU promised a set of gifts to Turkey for cooperating with an active role in preventing the influx of migrants in return. That role could be summarised as containing the refugees on Turkish ground (*Toygür İ. & Özsoz M., 2016*). Moreover, the disputes among the Member States of EU about the Schengen area and the internal checks seems to be reduced, at least for now. On the other hand, Turkey seems that tried to convert this crisis into an opportunity to set their rules in a cooperation with the EU. We can find many of the requirements formulated (before and during the negotiations) at the final agreement, so one could say that is a successful deal for Turkey at some extend. Nonetheless, both parties demonstrated their willingness to find out a deal about

the refugees' influx. However, the ultimate test for the efficacy and implementation of this agreement will be obvious in the next few months of 2016.

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