

Burden-sharing or Burden-shifting: Analyzing international cooperation on the EU-Turkey
Statement and its implications for refugee protection

By Frederik R. Lybæk-Jensen

Aalborg University

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Supervisor: Vibeke Andersson

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Abstract

Despite unprecedented levels of forced displacement across the globe, the contemporary international refugee regime is characterized by a lack of collective action and burden-sharing between states. This is the result of a North-South impasse, as Northern states have largely been able to isolate themselves from refugee streams from the global South, and have no formal obligation under international refugee law to contribute towards the protection of refugees on the territory of other states. This collective action failure was overcome, however, when a large spike in Mediterranean crossings in 2015 revealed the limits of European solidarity by exposing weaknesses in the Common European Asylum System and the Dublin System. This prompted the European Union (EU) to initiate the process that eventually culminated in EU member states and Turkey signing the EU-Turkey Statement on March 18th 2016.

This paper draws on various relevant concepts from international relations in order to explain the dynamics that led to successful international cooperation on the EU-Turkey Statement, while also considering the implications of the deal for refugee protection in the EU and Turkey. The deal was, in some respects, a successful case of overcoming the widespread problem of collective action failure in the international politics of refugee protection, and contributed to a substantial drop in crossings from Turkey over the Aegean Sea into Greece. It represents a notable case in which a Southern state was able to use their control over the onward movement of asylum seekers to reverse power asymmetries and overcome the collective action failure resulting from the North-South impasse. Through the leverage it gained from its role as the EU's gatekeeper, Turkey extracted various significant political concessions from the EU.

However, the deal has been criticized from numerous fronts on account of its net effect on refugee protection in Europe, as critics regard the deal simply as a new form of coordinated deterrence policy towards asylum seekers and an externalization of the EU's asylum and border management mechanisms, rather than a case of genuine burden-sharing on international refugee protection. They point to abysmal conditions for migrants and asylum seekers on the Greek islands, issues with considering Turkey a safe-third country and the inadequacy of legal safeguards to prevent the refoulement of individuals who are entitled to international protection.

Keywords: International cooperation, Refugee protection, Burden-sharing, EU-Turkey Statement

List of Acronyms and Abbreviations

1951 Refugee Convention	1951 Convention Relating to the Status of Refugees
1967 Protocol	1967 Protocol Relating to the Status of Refugees
AMIF	Asylum, Migration and Integration Fund
CEAS	Common European Asylum System
CEM	Coercive engineered migration
CEU	Council of the European Union
CFREU	Charter of Fundamental Rights of the European Union
CRRF	Comprehensive Refugee Response Framework
DRC	Danish Refugee Council
EAM	European Agenda on Migration
EASO	European Asylum Support Office
EC	European Council
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EP	European Parliament
EPRSB	European Parliamentary Research Service Blog
ESI	European Stability Initiative
EU	European Union
Commission	European Commission
Eurojust	European Union's Judicial Cooperation Unit
Europol	European Union's Law Enforcement Agency
ExCom	UNHCR Executive Committee

FRIT	Facility for Refugees in Turkey
GNI	Gross national income
IDP	Internally displaced person
IOM	International Organization for Migration
IRO	International Refugee Organization
ISF	Internal Security Fund
MENA region	Middle East and North Africa
NGO	Non-governmental organization
PRS	Protracted refugee situation
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
US	United States
V4	Visegrad 4 (Czech Republic, Hungary, Poland and Slovakia)
VHAS	Voluntary Humanitarian Admission Scheme

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1. Introduction

The world is currently facing unprecedented levels of forced displacement. At 68.5 million, the number of people currently forcibly displaced from their homes across the globe is the highest ever on record (UNHCR, 2018b). Of these forcibly displaced people, 25.4 million are refugees, 3.1 million are asylum seekers, and the remaining 40 million are internally displaced people (IDPs)(ibid.). And with another individual being forcibly displaced every two seconds (ibid.), combined with a steady increase in the duration of displacements¹ and a lack of immediate solutions in sight to the conditions causing these displacements, these figures will most likely only continue to increase in the coming years.

Nevertheless, the contemporary international refugee regime is characterized by a lack of collective action and burden-sharing between states. Currently, 85% of the world's refugees are in the global South² (UNHCR, 2018b), as most of them are unable to travel long distances before submitting their case for asylum. This has also been the case historically, as Northern states - through a combination of geography and policy - have largely been able to isolate themselves from refugee streams from the global South. Meanwhile, whereas a well-established legal and normative framework compels states to respect the norm of asylum, states have no formal obligation under international refugee law to contribute towards the protection of refugees on the territory of other states. This leaves developing countries in relative proximity to refugee-producing states to bear the brunt of refugee protection, with the contribution of Northern states being limited to resettlement of a small amount of the most vulnerable refugees

¹ 13.4 million of the world's refugees are part of so-called 'protracted refugee situations' (PRs), defined by the UNHCR as situations in which refugees have been in exile "for 5 years or more after their initial displacement, without immediate prospects for implementation of durable solutions" (UNHCR, 2009; UNHCR, 2017b, p. 22). While the UNHCR's definition uses the threshold of 5 years for a displacement situation to qualify as 'protracted', most PRs last much longer. As of 2015, the UNHCR estimated the average duration of a PRS to be at 26 years, up from just 9 years in the early 1990s (Milner & Loescher, 2011, p. 3; UNHCR, 2015a, p. 20).

² The terms 'global North' and 'global South' are not used to denote a clear geographical division between north and south, but rather, are used to distinguish between the richer, developed countries (most of which have historically been located on the northern hemisphere) and poorer, developing countries (most of which have historically been located on the southern hemisphere)(Royal Geographical Society, n.d.). In the context of the refugee regime, we can conceptualize the 'North' as the group of more developed states that are outside refugees' regions of origin and can quite effectively manage the entry of migrants and asylum seekers through border control and other political measures (Betts, 2009, p. 13). The 'South', on the other hand, is comprised by "the refugee-producing, transit or first-asylum host states within the refugees' regions of origin" (ibid.).

as well as completely discretionary financial contributions to the protection of refugees; either bilaterally, or to the United Nations High Commissioner for Refugees (UNHCR) and other humanitarian organizations working with refugees in the South.

Developments in recent years, however, seem to indicate that in the future, Northern states may not be able to isolate themselves from refugee streams from the South to the same extent. In 2015, there was a significant increase in the amount of migrants and asylum seekers crossing the Mediterranean into Europe from the Middle East and North Africa (MENA region). More than a million sea arrivals were registered, up from just 216,054 in 2014 (UNHCR, 2018c). There were also tragic human costs associated with this boom in crossings over the Mediterranean, as 3,735 people lost their lives attempting the crossing the same year (Clayton et. al., 2015). According to the UNHCR (2015b), most of those taking the sea route to Europe in 2015 were refugees fleeing “war, conflict or persecution at home, as well as deteriorating conditions in many refugee-hosting countries” (p. 2). This is consistent with the fact that 84% of those crossing into Europe were from the world’s top 10 refugee producing countries; more specifically, around 50% came from Syria, 20% from Afghanistan, and roughly 7% from Iraq (Clayton et. al., 2015). By far the most common route - taken by 873,179 of those making the crossing - was from Turkey over the Aegean Sea and into Greece, also referred to as the Eastern Mediterranean Route³ (ESI, 2018, p. 3).

The large spike in Mediterranean crossings in 2015 was a wake-up call for European policy makers. It revealed the limits of European solidarity by exposing weaknesses in the Common European Asylum System (CEAS) and the Dublin System as the primary mechanisms for distributing asylum seekers throughout Europe, as well as the inadequacy of the deterrence policies through which European states had historically managed to isolate themselves from refugee streams from the South. This prompted the European Union (EU) to initiate the process that eventually culminated in EU member states and Turkey signing the EU-Turkey Statement on March 18th 2016. The deal was, in some respects, a successful case of overcoming the widespread problem of collective action failure in the international politics of refugee protection, and contributed to a substantial drop in crossings from Turkey over the Aegean Sea into Greece.

³ As opposed to the Central Mediterranean Route, which refers to crossings into Italy and Malta, mostly from Libya, but also Egypt and Tunisia (Galos et. al., 2017, p. xiii).

However, the deal has been criticized from numerous fronts on account of its net effect on refugee protection in Europe, with critics regarding the deal as a new form of coordinated European deterrence policy towards asylum seekers and an externalization of the EU's asylum and border management mechanisms, rather than a case of genuine burden-sharing on international refugee protection.

This paper will draw on various relevant concepts from international relations in order to explain the dynamics that led to successful international cooperation on the EU-Turkey Statement, while also considering the implications of the deal for refugee protection in the EU and Turkey. In doing so, the paper seeks to identify some key lessons to be learned from the case of the EU-Turkey statement; pointing to factors allowing the involved actors to overcome their collective action failure, but also critically evaluating the consequences of the specific form of cooperation represented by the deal for those whom the refugee regime is meant to protect; namely refugees. To this end, the paper will be working with the following problem formulation:

How was international cooperation among EU member states and Turkey on the EU-Turkey Statement achieved, and what was the statement's implications for refugee protection in the EU and Turkey?

This question can then be broken down further into the following three research questions, which will inform the structure of the paper's analysis:

- Research question 1: How can we explain cooperation *within* the EU in relation to the EU-Turkey Statement?
- Research question 2: How can we explain cooperation *between* the EU and Turkey in relation to the EU-Turkey Statement?
- Research question 3: What implications did the EU-Turkey Statement have for refugee protection⁴ in the EU and Turkey?

⁴ 'Refugee protection' in this context refers to the ability of refugees to access asylum and, in the longer term, a durable solution to their predicament as defined by the UNHCR. This means either repatriating voluntarily to the country of origin, integrating into the country of asylum, or being resettled in a third country.

The following section will present some key methodological considerations. The theory section will then explain and contextualize relevant terms and theoretical concepts in relation to the case at hand. Then, a short introduction to the case of the EU-Turkey Statement will precede the analysis, where these theoretical concepts will be utilized in order to explain the dynamics behind the EU and Turkey's cooperation on the statement. The second part of the analysis will then evaluate the statement's implications for refugee protection in Europe and beyond. And finally, the paper will be wrapped up with some concluding remarks.

2. Methodology

Traditionally, most research on forced migration has approached the topic from an anthropological or sociological perspective. Such research, for good reason, has focused on and revolved around the experiences and perspectives of those at the heart of the problem of forced displacement; namely displaced people across the globe. While the value of examining and disseminating these perspectives cannot be overstated, this paper seeks to complement such research by exploring the same topic from an international relations perspective; focusing instead on the international politics of refugee protection. Until fairly recently, many of those working within forced migration studies have been highly critical of any research dealing with forced migration that fails to include the perspectives of displaced people. For instance, at the 10th conference of the International Association for the Study of Forced Migration, Landau (2007) found that often "authors focusing on international politics and processes were criticized for not including the voice or experiences of refugees" (p. 345). However, Landau (2007) himself subsequently recognized the immense importance of international politics for the ability of forcibly displaced people to access protection and durable solutions to their predicament, and consequently, the need to study such international political processes. And while this argued knowledge gap on the politics of forced displacement has since been filled considerably⁵, this paper attempts to contribute further to understanding these political processes by examining a contemporary case of international cooperation on refugee policy.

⁵ For a good introduction to a variety of contemporary international relations perspectives on refugee issues, see Betts & Loescher, 2011.

2.1. Research Design

In order to analyze the EU-Turkey Statement, this paper will employ a deductive qualitative approach, guided by a theoretical framework based on the existing literature on international cooperation in the refugee regime. Whereas qualitative research traditionally employs an inductive approach, deriving theoretical ideas exclusively from the collected data, this paper will start off by developing a theoretical framework based on the existing literature, after which this will be applied to the chosen case. First, applying already formulated ideas and concepts from the literature can aid the analysis, and help identify significant themes or categories in the case. Secondly, this allows what Silverman (2014) refers to as *deductive inference*, as it can bring forward any potential inconsistencies between the presuppositions of the existing theory and the case at hand, thus allowing us to test and consequently refine the utilized theory (p. 72).

Some writers have suggested that researchers within the social sciences *can* adopt the research quality criteria that are common in the natural sciences; namely reliability and validity (see e.g. Kirk & Miller, 1986; LeCompte & Goetz, 1982; Mason, 1996). However, this paper will adopt the alternative criteria introduced by Guba and Lincoln (1985), as these are better adjusted to capture the particular features of qualitative research within the social sciences. The rejection of reliability and validity as quality criteria in social research is essentially an epistemological point. Most researchers within the natural sciences adhere to a positivist - or more specifically, realist - view that there is an “external reality”, which sound research can break down into fragmented independent variables and represent objectively and accurately (Bryman, 2012, p. 27-28). Guba and Lincoln (1985), on the other hand, reject the idea of any ‘ultimate truth’, but regard research and theorizing instead as contributions to a never ending “path of understanding” of multiple constructed realities (p. 16).

Instead, Guba and Lincoln (1985) suggest evaluating qualitative research based on its ‘trustworthiness’, which they then further break down into four quality criteria, two of which are particularly relevant in this context; namely *credibility* and *transferability*. If there are multiple constructed realities, then the researcher needs to establish the credibility of their representation

of these. One way to do this, which is especially relevant when using documents as data, is through *triangulation* (see ‘2.3. Documents as Data’). While qualitative research is generally less concerned with the generalization of findings compared to quantitative research, considering the extent to which findings may be transferable to other contexts may still be relevant. This is particularly relevant in the context of this paper, which represents an attempt to draw on theory related to international cooperation on refugee issues in order to illuminate a particular case thereof, while doing deductive inference as mentioned above in order to test the utilized theoretical framework empirically.

2.2. The Case Study

The case of the EU-Turkey Statement is somewhat tricky to fit into the mold of one of the five different types of cases laid out by Yin (2009). At first glance, it may be viewed as a *representative* or *typical* case, in which “the objective is to capture the circumstances and conditions of an everyday or commonplace situation” (Yin, 2009, p. 48). Many aspects of the case are certainly mirrored in other cases of international or regional cooperation within the refugee regime. Yet, there are also certain factors that make the European context unique, as compared to other policies or initiatives related to international cooperation on refugee issues (for more on these, see ‘3.5.3. Asylum, Burden-sharing and Solidarity in a European Context’). Consequently, the case may be categorized as a *representative* case with several elements of an *extreme* or *unique* case (Yin, 2009).

In practice, this entails a careful consideration of the extent to which elements and aspects of the EU-Turkey Statement and the negotiation thereof are dependent on contextual factors that are specific to the European context. While some of the ‘lessons learned’ from the case may certainly be useful in guiding policy in similar contexts, others may not be applicable or useful in outside the political and institutional context of the EU. In other words, it is important to reflect critically on the *transferability* of any conclusions drawn based on this paper’s analysis before applying them to other cases that may have important qualitative differences.

The analysis will have two main sections: The first will concentrate on the international politics behind the EU-Turkey Statement, and will have two subsections answering research questions 1 and 2 respectively. The second part of the analysis will answer research question 3 by evaluating the the net effect of the EU-Turkey Statement for refugee protection in the European context. This is based on the normative assumption that facilitating international cooperation within the refugee regime should not be a goal in itself. Under the refugee regime, the goal of any legitimate policy must necessarily be to extend access to protection and durable solutions as stipulated under international refugee law to as many forcibly displaced individuals as possible. Consequently, while this particular case may provide us with valuable knowledge on the facilitation of international cooperation on refugee-related matters, any examination of such a case would be incomplete without an assessment of its practical implications for the intended beneficiaries; namely refugees and asylum seekers.

2.3. Documents as Data

For empirical data, the first part of the analysis on the politics of the EU-Turkey Statement will draw on official documents and statistics from EU institutions and the UNHCR, which will be supplemented with both academic- and journalistic articles. The second part, which will evaluate the statement's implications for refugee protection, will draw on articles and reports by the UNHCR, non-governmental organizations (NGOs), academics and journalists. When using documents as data, it is important to be aware of potential biases in these sources. As Bryman (2012) points out, documents are "texts written with distinctive purposes in mind", and consequently, should not be taken "as simply reflecting reality" (p. 555). For instance, official documents from the EU tend to represent the effect of the EU-Turkey Statement on refugee protection more positively compared to, e.g., independent human rights groups. The simplest way to overcome this is through *triangulation*, which in this context implies validating the utilized documents' claims by cross-checking them across multiple different sources whenever possible (ibid.).

3. Theory

The following section will present and explain some key terms and concepts, which will later be used in analyzing the case of the EU-Turkey Statement, and how some degree of cooperation to solve the mass influx of migrants and asylum seekers across the Aegean Sea was achieved.

3.1. Defining ‘Burden-sharing’

While sometimes used synonymously, it is important to distinguish between the terms *international cooperation*, *burden-sharing* and *responsibility-sharing*. International cooperation is the broadest concept, and may refer to “all forms of coordinated and collaborative action undertaken by states”, in this case within the refugee regime (Betts, Costello & Zaun, 2011, p. 20). However, any form of international cooperation in the refugee regime does not necessarily represent burden-sharing nor responsibility-sharing. States may also cooperate on policies aimed at deterring asylum seekers or otherwise negating their responsibilities towards refugees. Such policies, which relegate the responsibility for refugee protection and the associated costs to other states, may be referred to as *burden-shifting*. In recent years, the term burden-sharing has been rejected in favor of responsibility-sharing, due to the admittedly problematic connotation of the word ‘burden’, that hosting refugees is an inevitable cost for states. However, following Hathaway and Neve (1997), these terms can be useful in distinguishing between the overall contributions by states towards ensuring refugee protection (responsibility-sharing); and contributions by states to the protection of refugees on another state’s territory (burden-sharing)(p. 19).

But *what* is to be shared? In practice, how can states ensure an equitable distribution of the costs related to refugee protection? Noll (2000) identifies three dimensions of burden-sharing on refugee protection; namely (1) physical burden-sharing, or *sharing people* through resettlement or relocation of refugees; (2) financial burden-sharing, or *sharing money* through financial contributions to refugee-hosting states; and finally, (3) *sharing policy* by harmonizing asylum policies across countries (Noll, 2000 as cited in Betts, Costello & Zaun, 2011, p. 21).

Important to note here, however, is that sharing policy is markedly different from sharing people or money, due to the inherently redistributive dimension of the latter two. This is also closely related to the point made above that international cooperation, or perhaps rather *coordination* in this case, does not necessarily entail increased access to protection for refugees, and consequently, does not necessarily represent burden-sharing. For this reason, the sharing of policy will not be included in this paper's formal definition of burden-sharing. However, by no means does this mean that the notion of sharing policy is not relevant to the European context. Quite the contrary, as the harmonization of asylum policies is the essence of the CEAS, which will be examined later. Based on the distinctions above, this paper will adopt the following definition for burden-sharing, as formulated by Betts, Costello and Zaun (2011): "[T]he contribution of states towards supporting refugees who are on the territory of another state through the redistribution of money or people"⁶ (p. 22).

Important to note here, is that while the redistribution of money is a fairly straightforward process, the redistribution of people may be more problematic, as it raises some ethical questions. First, in order to not constitute a human rights violation, resettlement or relocation needs to be voluntary (Thielemann, 2003, p. 260). While this is rarely a problem in cases of resettlement from a country of first asylum in the South to a Northern state, it might complicate physical burden-sharing initiatives seeking to relocate refugees or asylum seekers from one Northern state to another. Second, the UNHCR's resettlement system as currently configured allows states to engage in a practice of cherry-picking refugees for resettlement that may be informed by factors like religion or ethnicity, which are, by law, not legitimate criteria in national asylum determination processes (Betts, Costello & Zaun, 2017, p. 38). And finally, Northern states may use resettlement to "de-legitimate other modes of seeking protection"; most prominently in-country applications for asylum (*ibid.*).

Historically, facilitating burden-sharing within the refugee regime has proved difficult, leading the refugee regime to be characterized by recurring problems of collective action failure.

⁶ Betts, Costello and Zaun (2011) actually apply this definition to the term 'responsibility-sharing'. This paper, however, will instead use the term burden-sharing following Hathaway and Neve's (1997) distinction between burden-sharing and responsibility-sharing.

Next, we turn to possible explanations for this collective action failure in the literature, as well as the related prescriptions for how it might be overcome.

3.2. Refugee Protection as a Public Good

One important contribution to our understanding of the nature of the collective action failure on refugee protection, and how it might be overcome, was Astri Suhrke's (1998) classification of refugee protection as a global public good. The concept of a public good comes from welfare economics, in which public goods are characterized by their *nonexcludability* and *nonrivalry*. The most common example from a national context is street lighting. All members of a particular community have an interest in street lights being provided. However, street lighting is *non-excludable* in that all members of the community will be able to enjoy the benefits of street lights regardless of whether they contributed to their establishment. Furthermore, it is *non-rivalrous* in that one individual's enjoyment of the benefits of these street lights will not inhibit the rest of the community's ability to enjoy the same benefits. This brings us to the central problem that often leads to the underprovision of public goods; namely the potential for *free riders*. Since anyone will be able to enjoy the benefits of street lighting without contributing to it themselves, individuals will be more hesitant to contribute without some reliable expectation that the rest of the community will do the same. In this case, this is ensured by the government of the country in question, which pools the resources of individuals through taxes and provides street lighting and other public goods. When we turn to *global* public goods, however, the problem of collective action failure is much harder to overcome, as there is no 'world government' ready to step in and ensure that global public goods are provided and that individual states contribute to them on an equitable basis⁷.

This leads us to a central issue behind the refugee regime's history of collective action failure. In addition to protecting the rights of refugees, refugee protection provides non-excludable and non-rivalrous benefits to the international community; most importantly by contributing to international order⁸⁹ (Betts, 2009, p. 26-27). In the absence of a world

⁷ For more on (global) public goods, see Barrat, 2008; Boyer, 1993; Kaul, Grundberg & Stern, 1999; Olsen 1965.

⁸ For more on the relationship between refugee protection and international- or regional order, see Lischer, 2015; Loescher, Milner & Newman, 2008; Salehyan & Gleditsch, 2006; Stedman & Tanner, 2003; Zolberg, Suhrke &

government to ensure that all states contribute equitably to the provision of the global public good of refugee protection, states are hesitant to make significant unilateral contributions, choosing instead to free-ride on the contributions of other states. Such situations, where a lack of coordination and collective action leads the involved actors to achieve a suboptimal outcome than would otherwise be possible, represent a recurring feature of the international system.

3.3. International Cooperation in the Refugee Regime as a Prisoner's Dilemma

The dynamic behind these situations of collective action failure has frequently been illustrated using game theory; specifically the analogy of the Prisoner's Dilemma¹⁰. Due to the involved actors' inability to coordinate their strategies, the dominant strategy¹¹ of both actors will be to defect from cooperation. Consequently, the equilibrium outcome in the Prisoner's Dilemma is for both actors to defect, leading to a suboptimal outcome for both actors (see Graphic 1).

		Actor B	
		C	D
Actor A	C	3, 3	1, 4
	D	4, 1	2, 2*

Graphic 1. This table illustrates the Prisoner's Dilemma. The numbers to the left of the commas indicate Actor A's preference ordering from 1 (worst outcome) to 4 (best outcome), while the numbers to the right indicate Actor B's preference ordering. * Indicates the equilibrium outcome (Graphic taken from Betts, 2009, p. 29).

In fact, Suhrke (1998) explicitly draws on the Prisoner's Dilemma in relation to the collective action failure in the refugee regime, but also points to aspects of the refugee regime

Aguayo, 1992. For a critical view on the view of refugees as contributors to international insecurity, see Loescher, 2002.

⁹ The provision of refugee protection produces various other benefits, some of which *are* excludable to some extent. For more on this, and the implications for burden-sharing, see Betts, 2003.

Furthermore, while some of the benefits deriving from refugee protection are indeed non-excludable and non-rivalrous, different states might not benefit equally across regions. As Betts (2009) puts it, "the benefits of refugee protection are more likely to be a regional public good than a global public good" (p. 27).

¹⁰ Due to space constraints, this paper will not provide a detailed description of the analogy behind the Prisoner's Dilemma. For more on the Prisoner's Dilemma and how it relates to collective action between states, see Axelrod, 1984; Hasenclever, Mayer & Rittberger, 1997; Keohane, 1982, 1984; Olson, 1965; Rapoport & Chammah, 1965.

¹¹ In game theory, a dominant strategy refers to a certain course of action that is preferable to one actor regardless of the strategy chosen by the other actor.

where the analogy falls short¹² (p. 403). Instances of collective action failure that fit the mold of the Prisoner's Dilemma can be found in numerous areas of international affairs; including defense, trade and environmental protection. Consequently, a wide variety of scholars have attempted to identify potential ways in which such instances of collective action failure may be overcome. Two answers have gained especial prominence; namely *hegemony* and *international institutions*.

According to the Hegemonic Stability Theory, collective action failure and consequent underprovision of certain global public goods may be avoided or overcome through the actions of a hegemon. First, if the hegemon is willing to provide the global public good unilaterally. Or, secondarily, if the hegemon is able to facilitate cooperation; either through persuasion or, if need be, through coercion (Calleo, 1987, p. 104; Keohane & Nye, 1989, p. 44). One example of this in the refugee regime was the resettling of the Indochinese 'boat people' after 1975, where United States hegemony was important to facilitating collective action in a number of ways (Suhrke, 1998, p. 406+413).

The primary mechanisms for overcoming collective action failure and facilitating international cooperation, however, are international institutions¹³. There are different 'levels' of institutions¹⁴, but for the purpose of this paper, focus will be on issue-specific institutions or *regimes*. Regimes are defined as "sets of implicit or explicit principles, norms, rules, and decision-making procedures around which actors' expectations converge in a given area of international relations" (Krasner, 1983, p. 2). According to Thielemann (2003), there are two principal ways in which regimes may contribute to enhancing cooperation and overcoming collective action failure: (1) The 'cost-benefit' approach; and (2) the 'norm-based' approach (p. 255).

¹² The important ways in which conditions in the refugee regime diverges from the mold of the Prisoner's Dilemma will be addressed later in this section.

¹³ This is not to say that hegemony and international institutions as potential solutions to collective action failure are mutually exclusive. Indeed, international institutions can be an important means through which a hegemon can facilitate the provision of a global public good. For example, the United States played an important hegemonic role in the resettling of those displaced by the Second World War. One of the ways it did so, was by unilaterally establishing the IRO, which later became the UNHCR, and thereby laying the foundation for the refugee regime (Suhrke, 1998).

¹⁴ Reus-Smit (2014) distinguishes between *constitutional* institutions, *fundamental* institutions and *issue-specific* institutions or *regimes* (p. 275-276).

The cost-benefit approach is closely related to the conceptualization of regimes as *utility modifiers*. This builds on the assumption that actors are “self-interested utility maximizers”, who base their actions on a weighing of the costs and potential benefits of the action in question (Levy, Young & Zürn, 1995, p. 304). Thus, by “linking issues that were otherwise not linked”, regimes can help shape relevant actors’ cost-benefit analysis, thereby influencing their behavior (ibid.). They can do so by facilitating repeated interactions around the given issue area among the involved actors over time, thus gradually making these interactions and the associated long-term gains more predictable for states (Betts, 2009, p. 29). Additionally, highly institutionalized regimes can aid the sharing of information and provide surveillance mechanisms to discourage free-riding, as well as reduce transaction costs that may otherwise hamper cooperation (Betts, 2009, p. 29; Levy, Young & Zürn, 1995, p. 304-305). Central to this approach is the assumption that the involved actors’ “preference formation is external to the institutional context in which actors find themselves” (Thielemann, 2003, p. 254). In other words, it is assumed that the involved actors’ ongoing cost-benefit analyses are carried out independently of the given institutional environment.

The norm-based approach, on the other hand, relies on influencing actors’ behavior by institutionalizing the norm of solidarity in the political community in question. This requires actors to break with the cost-benefit logic, and instead act according to the principle of universalization, which entails “acting as they would wish all others to act as well” (ibid., p. 257). Acting according to the norm of solidarity thus precludes free-riding, and can be the motivation for considerable burden-sharing. There are two interrelated dynamics behind this. First, solidarity can represent a guarantee that all actors in the group in question are committed to respecting the outcomes of collective decisions, even in cases where the actions of certain individual actors may not make an “appreciable difference to the overall outcome” (Mason, 2000 as cited in Thielemann, 2003, p. 257-258). Second, solidarity can be seen as a “concern” for the group’s other members, based on which actors will be unwilling to benefit from situations or decisions if they harm other members, or if other members do not benefit equitably (ibid.). Consequently, solidarity can be conceptualized as the commitment by members of a group to act

according to the group's collective decisions, and to enhance the well-being of other members, despite the potential costs associated with doing so.

The cost-benefit approach and the norm-based approach are not mutually exclusive. Rather, they can offer complementary explanations to instances of burden-sharing. Generally, states' contributions towards burden-sharing will be based on some combination of cost-benefit calculations and notions of solidarity. For instance, Thielemann (2003) finds that while notions of European solidarity *was* an important factor in explaining burden-sharing within the EU in connection with the EU response to the Kosovo crisis, the pattern of burden-sharing in this case could not be fully explained without considering states' cost-benefit analyses (p. 270).

3.4. The International Refugee Regime

The international refugee regime is the product of past efforts by the international community to overcome collective action failure on the protection of displaced people, as it was formally established with the purpose of facilitating international cooperation on resettling those displaced by the Second World War. While initial steps towards the establishment of a refugee regime were taken after the First World War, the contemporary refugee regime was not formally institutionalized until the establishment of the UNHCR's predecessor, the International Refugee Organization (IRO), in 1946, and the subsequent adoption of the 1951 Convention Relating to the Status of Refugees¹⁵ (henceforth: 1951 Refugee Convention)(Betts, 2010, p. 17-18; Suhrke, 1998, p. 403). In the strictest sense, the refugee regime comprises the 1951 Refugee Convention and the 1967 Protocol Relating to the Status of Refugees¹⁶ (henceforth: 1967 Protocol), which formally defines the term 'refugee' and lays out the rights to which refugees are entitled; combined with the UNHCR, which is mandated to monitor and ensure the implementation of the 1951 Refugee Convention (Betts, 2010, p. 17-18). These have since been supplemented with a variety of regional agreements on refugee protection, of which one is particularly relevant in the context of this paper; namely the 2004 European Council (EC) Asylum Qualification Directive,

¹⁵ For more on the historical roots of the refugee regime, see Goodwin-Gill & McAdam, 2007; Jaeger, 2001.

¹⁶ The primary contribution of the 1967 Protocol was to remove the time- and space-based limitations on the application of the 1951 Refugee Convention, which was initially limited to only apply to individuals forced to flee due to events occurring in Europe before January 1st 1951 (UNHCR, 2010).

which was subsequently revised in 2011 (see EP & CEU, 2011). Together, these elements comprise the international refugee regime, which - following Krasner's (1983) definition - can be defined as the “implicit or explicit principles, norms, rules, and decision-making procedures around which actors’ expectations converge” in relation to refugee protection.

3.5. Inequities in the International Refugee Regime

While the international refugee regime played an important role in the post-war resettlement process for which it was originally established, it has since been plagued by collective action failure in responding to both large-scale displacements and PRSs¹⁷. There are two important reasons for this: (1) Power asymmetry between Northern and Southern states in the refugee regime resulting from structural features of the international system; and (2) the ‘half-complete’ nature of the refugee regime (Betts, 2009).

Considering geopolitics, and specifically North-South relations¹⁸, is essential to understanding the politics of the international refugee regime. States in the global South receive and host the vast majority of the world’s refugees. More specifically, developing countries today host 85% of the world’s refugees (UNHCR, 2018b). This is due to a combination of geography and policy. Due to Southern states’ greater geographic proximity to refugee-producing countries, states in the global South generally have a much larger amount of asylum seekers entering their territory (Betts, 2009, p. 13). In contrast, Northern states, due to their greater physical distance from refugee-producing countries, have historically been largely isolated from refugee streams from the global South. Moreover, Northern states have further reinforced this by implementing policies aimed at deterring and preventing asylum seekers from ever entering their territory¹⁹, or allowing the return of asylum seekers to ‘safe third countries’²⁰ (Betts, Costello & Zaun, 2017, p.

¹⁷ There have been individual cases where the regime has played an important role in facilitating cooperation on refugee situations. For more on these, see Betts, 2009; Suhrke, 1998.

¹⁸ For more on North-South relations, see Doty, 1996; Duffield, 2001; Fawcett & Sayigh, 1999; Krasner, 1985; Reuveny & Thompson, 2007. For more on the North-South dichotomy in relation to the refugee regime, see Castles, 2004; Chimni, 1998.

¹⁹ Hathaway (1992) talks about *non-entrée policies*, while Goodwin-Gill and McAdam (2007) distinguish between *non-arrival policies* and *non-admission policies*. Gammeltoft-Hansen (2014) uses the term *deterrence policies* to include both of the former categories.

²⁰ The concept of a ‘safe third country’ is particularly important in the context of the EU-Turkey Statement. We shall return to this concept below (See ‘3.5.3. Asylum, Burden-sharing and Solidarity in a European Context’).

31; Thielemann, 2003, p. 261). As a result of these factors, historically, very few asylum seekers from the global South have arrived on the territory of Northern states before applying for asylum.

3.5.1. Asylum in the International Refugee Regime

According to Betts (2009), the refugee regime may be regarded as “half complete” (p. 12). This is because there are important differences in the legal and normative frameworks established in the regime to regulate its two respective core norms; namely asylum, on the one hand, and burden-sharing, on the other. In this context, it is useful to reiterate the conceptualization of burden-sharing as *the obligations of states towards refugees who remain on the territory of another state*, as opposed to asylum, conceptualized as *the obligations of states towards refugees who reach their territory* (Betts, 2009, p. 2-3).

Asylum is underpinned by a fairly strong legal and normative framework, meaning that states are expected to process the cases of any asylum seekers on their territory and grant asylum to those who qualify for refugee status. The norm of asylum was first codified in article 14 of the Universal Declaration of Human Rights (UDHR): “Everyone has the right to seek and to enjoy in other countries asylum from persecution” (UNGA, 1948, p. 2). The 1951 Refugee Convention and later the 1967 Protocol subsequently built on this; introducing a detailed definition of the term ‘refugee’ and further specifying the rights of refugees as well as the obligations held by states in relation to refugees and asylum seekers. The norm of asylum is closely connected with the principle of *non-refoulement*, which was codified in article 33 of the 1951 Refugee Convention, and prohibits the signatory states from returning refugees to places where their “life or freedom would be threatened” (UNHCR, 2010, p. 30). The principle of non-refoulement is a foundational cornerstone of the refugee regime, and is regarded by the UNHCR as “so fundamental that no reservations or derogations may be made to it” (UNHCR, 2010, p. 3). In fact, non-refoulement has been argued to be part of ‘customary’ international law²¹ (Lauterpacht and Bethlehem, 2003). There are, of course, plenty of cases where states have failed their obligations to offer asylum, but generally such cases are the exception. Even Southern states with

²¹ International legal provisions become ‘customary’ international law when broadly observed by states based on an explicit recognition that they constitute law (also referred to as *opinio juris*). For more on ‘customary international law’, see Price, 2004.

relatively weaker state apparatuses have the capacity to interdict or deport asylum seekers. But because the refugee regime heightens the moral and political costs of such actions, they rarely do so (Suhrke, 1998, p. 401).

3.5.2. Burden-sharing in the International Refugee Regime

In regards to states' obligations to contribute towards burden-sharing, on the other hand, there is a much weaker legal and normative framework within the international refugee regime. The Preamble to the 1951 Refugee Convention does have a paragraph in which it is acknowledged that “the grant of asylum may place unduly heavy burdens on certain countries”, and that consequently, “a satisfactory solution” to the plight of refugees “cannot (...) be achieved without international co-operation” (UNHCR, 2010, p. 13). Furthermore, a 1998 conclusion by the UNHCR’s Executive Committee (ExCom) recognized that refugee protection “is best achieved through effective cooperation” between relevant actors “in a spirit of international solidarity and burden-sharing” (UNHCR, 1998). However, while discourses of burden-sharing and solidarity can be identified in the refugee regime, neither the 1951 Refugee Convention nor the UNHCR ExCom’s conclusion placed any formal obligations on states to contribute to the protection of refugees outside their territory. Consequently, while states do make such contributions, either through financial contributions or by offering resettlement slots, they generally do so on a completely discretionary basis; guided not by an altruistic care for human rights, but rather, by their national interests.

There has since been attempts at developing and institutionalizing a normative framework for burden-sharing within the refugee regime. One example was the Convention Plus initiative. Running from 2003 to 2005, the initiative was aimed at facilitating agreement between Northern and Southern states on various complementary commitments towards refugee protection. Commitments by Northern states to make financial contributions and offer resettlement slots were to be made conditional on Southern states’ commitments to facilitate local integration and increased self-sufficiency of refugees in their territory (Betts, 2009, p.

50-51). While generally regarded as a failure²², the Convention Plus initiative did highlight the need for an institutionalized framework for burden-sharing within the refugee regime.

The need for increased burden-sharing is still prominent on the agenda of fora dealing with the refugee regime and refugee-related issues. At the UN General Assembly on September 19th 2016, all 193 UN member states unanimously adopted the New York Declaration for Refugees and Migrants, thereby committing to “a more equitable sharing of the burden and responsibility for hosting and supporting the world’s refugees” (UNGA, 2016, p. 13). This was lauded by the High Commissioner for Refugees, Filippo Grandi, according to whom the declaration marked “a political commitment of unprecedented force and resonance” (UNHCR, 2016b). The key outcomes of the declaration was the development of the Comprehensive Refugee Response Framework (CRRF) as well as two compacts; the Global Compact on Refugees and the Global Compact on Safe, Orderly and Regular Migration, which set out concrete, practical measures for how to translate the CRRF into joint political action by the UN’s member states. However, with the exception of some modest initial commitments²³, whether this new initiative will contribute to overcoming the collective action failure on refugee protection remains too early to tell at this time, as the Global Compact on Refugees was only just approved on November 14th 2018, with the US being the only member state not to vote in favor of the compact (DRC, 2018a)²⁴. Thus, while progress on the compacts is important, and may potentially pave the way for the establishment of a normative framework governing burden-sharing on refugee protection, for now, state contributions to burden-sharing remain entirely discretionary.

Important to note in relation to the two core norms of asylum and burden-sharing is their interdependence. As noted by Suhrke (1998) the norm of burden-sharing acts as an ‘insurance scheme’ safeguarding the norm of asylum (p. 398). This is based on the assumption that states

²² For more on the Convention Plus initiative, and the reasons for its lack of success, see Betts & Durieux, 2007; Betts, 2009, p. 143-174.

²³ On September 20th, the day after the adoption of the New York Declaration, representatives from 47 different UN member states made some initial commitments related to burden-sharing within the global refugee regime at a ‘Leaders’ Summit on Refugees’ co-hosted by the UN Secretary-General and seven UN member states. For more on this, see UNHCR, 2016a.

²⁴ There has, nevertheless, already been at least one attempt within academia at evaluating the potential normative impact of the Global Compact. See Gammeltoft-Hansen, 2017.

will be more willing to offer asylum to large groups of refugees entering their territory, if they can expect other states to contribute to their protection, either through financial contributions or by offering resettlement spaces. Consequently, the lack of obligations for states to contribute to burden-sharing reduces the durability of the norm of asylum and the refugee regime as a whole.

3.5.3. Asylum, Burden-sharing and Solidarity in a European Context

Both the norm of asylum and the non-refoulement principle are highly institutionalized in a European context²⁵ through the Council of Europe and the EU. An important reason for this can be found in the overlap between the refugee regime and the European human rights regime as constituted by the Charter of Fundamental Rights of the European Union (CFREU) and the European Convention on Human Rights (ECHR). The ECHR implicitly prohibits refoulement of refugees by signatory states, which includes all of the Council of Europe's 47 member states. As stipulated by its very first article, the ECHR applies not only to citizens, but to anyone within the signatory states' jurisdiction, including foreign nationals or stateless individuals (Council of Europe, 2010, p. 6). Furthermore, articles 2 and 3 of the convention stipulate the right to life and the prohibition of torture or other "inhuman or degrading treatment or punishment" (ibid., p. 6-7). This has since - through ongoing legal practice - been interpreted as prohibiting the refoulement of any individual to a state where they may be in danger of being killed or subjected to treatment contrary to article 3 of the ECHR. As stated by Ganna Yudkivska, one of the European Court of Human Rights' (ECtHR) judges, while "the principle of non-refoulement is not explicitly laid down" in the ECHR, failure to observe the principle "may amount to a violation of rights guaranteed by the Convention [the ECHR]" (ECtHR, 2017, p. 9). Finally, article 4 of Protocol No. 4 to the ECHR also prohibits the "collective expulsion of aliens"²⁶ (Council of Europe, 2010, p. 37).

²⁵ For an excellent overview of the history behind asylum and refugee policy in the EU, see Boccardi, 2002.

²⁶ The vagueness of the formulation in this article, especially in regards to the meaning of the word "collective" in this context, has since proved problematic. However, subsequent case law within the ECtHR has since served to clarify the meaning of the article. While some have argued that the article simply prohibits the mass-expulsion of large groups of aliens, a 2016 judgement by the ECtHR found that "neither the number of which the group consists nor the link knitting together its members" but rather the *procedure* based on which such an expulsion is carried out, is the central criterion for the application of this article (ECtHR, 2016, p. 119). In other words, what is essential is that the cases of aliens applying for residency (whether through asylum or other channels) are *processed on an individual basis*.

The introduction of the ECHR was significant because in contrast to the 1951 Refugee Convention, it is legally binding for signatory states, and individuals have the opportunity to appeal the rulings of member states' national courts to the ECtHR. If the national court's ruling is found to be in violation of the member state's obligations under the ECHR, the ECtHR can not only overturn the decision, but also direct the member state in question to compensate the plaintiff as well as adjust their national legislation, so as to prevent future violations (Council of Europe, 2010, p. 26; ECtHR, n.d.).

Since the late 1970s, there has been ongoing debate about EU accession to the ECHR. This became a legal commitment for the EU in 2007 under Article 6 (2) of the Lisbon Treaty (EU, 2007, Article 6). However, while all EU member states are also members of the Council of Europe, and have all ratified the ECHR, the EU Court of Justice continues to block the EU's accession to the convention due to conflicts between the ECHR and certain provisions of key EU treaties (Marzocchi, 2018). Despite the hitches in the process of EU accession to the ECHR, the EU *has* codified legal minimum standards through the CFREU, which also entered into force in 2007 with the Lisbon Treaty (EU, 2007, Article 6). Clearly drawing inspiration from the UDHR and the ECHR, many of the rights outlined by the CFREU directly correspond to those from these other documents. One significant deviation from the ECHR, however, is that article 18 of the CFREU actually explicitly reaffirms the norm of asylum, thereby institutionalizing it for all EU member states (EU, 2000, Article 18).

There is one important loophole, however, in EU member states' obligation to offer asylum; namely the concept of a 'safe third country'. In the first paragraph of Article 31 of the 1951 Refugee Convention, which prohibits detaining or penalizing refugees and asylum seekers on the grounds of illegal entry, it is specified that this prohibition applies only to refugees "coming directly from a territory where their life or freedom was threatened in the sense of article 1" (UNHCR, 2010, p. 29). The EU and most of its member states have interpreted this to mean that any individual who has travelled through a safe third country on their way to the EU should no longer be considered a refugee, but rather, an "irregular migrant", and can thus be returned to this 'safe third country'. However, before a member state can apply the safe third country concept they must ensure that "a person seeking international protection will be treated

in accordance” with a list of principles laid out in Article 38 of Directive 2013/32 of the European Parliament (EP) and the Council of the EU (CEU) (2013) in this third country (p. 80). These principles are that this individual’s “life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion”; that they are not at risk of ‘serious harm’ (defined below); that the third country in question respects the non-refoulement principle and the prohibition of removal “in violation of the right to freedom from torture and cruel, inhuman or degrading treatment”; and lastly, that the individual has the possibility to apply for and, if they qualify for it, receive refugee status (*ibid.*, p. 80-81). Furthermore, it is a requirement that cases are dealt with on an individual basis, and that applicants have access to an appeals procedure (*ibid.*). Nevertheless, the EU and its member states have consistently used the safe third country concept to relinquish their obligations to offer asylum and externalize issues related to refugee protection.

Since the 1990s, there have also been attempts at institutionalizing burden-sharing in the EU. An important reason for this was the mass influxes of displaced people caused by the conflicts in- and subsequent breakup of former Yugoslavia, which the EU found itself ill-equipped to manage. This spurred a plethora of legislative measures aimed at developing a common asylum system within the EU and ensuring equitable burden-sharing between member states. In 1992, under German Presidency, there was an attempt by the Council to pass a resolution on burden-sharing, which would institute a compulsory resettlement mechanism to (re)distribute refugees across member states according to population size, size of territory and gross domestic product (Thielemann, 2003, p. 260). However, largely due to opposition from the United Kingdom and France, the resolution was not passed until 1995. By this point it had been “watered down” severely, as the compulsory resettlement mechanism had been replaced with vague, non-binding principles to guide burden-sharing in a ‘spirit of solidarity’ (*ibid.*). Despite being complemented by another Council Resolution the following year, the ineffectiveness of these instruments was revealed when member states refrained from calling upon them to facilitate burden-sharing in the EU’s response to the Kosovo crisis (*ibid.*).

Other legislative initiatives from this period were more successful, and have evolved to comprise the contemporary CEAS. Since 1999, the EU has sought to harmonize asylum

procedures, minimum legal standards and reception conditions for asylum seekers across member states. This culminated in the 2004 Asylum Qualification Directive, which not only affirmed the non-refoulement principle for EU member states, but also expanded the scope of protection by introducing subsidiary protection for individuals who may not fit under the strict ‘refugee’ definition of the 1951 Refugee Convention. The directive introduced forms of temporary protection for third country nationals or stateless individuals who, while not qualifying for formal refugee status, “would face a real risk of suffering serious harm”²⁷ if returned to the the country of origin (CEU, 2004, Article 2).

Second, the Dublin Regulation laid down criteria and mechanisms to determine which member state is responsible for examining an asylum application (see EP & CEU, 2013). Because the EU’s single market entails freedom of movement within the Schengen Zone²⁸ and a consequent lack of permanent border controls between member states, there was a need for a system delegating the responsibility for examining asylum applications between member states. In practice, the Dublin Regulation places this responsibility on the member state of first entry, and allows asylum seekers who have moved on from their country of first entry to be sent back to the member state in which they were first registered (Thielemann, 2003, p. 261).

As internal border controls were gradually dismantled within the Schengen Zone, the EU and its member states increasingly recognized the importance of cooperation and coordination on controlling the external borders of the Schengen Zone. This eventually resulted in the 2004 establishment of Frontex (Frontex, n.d.). Frontex’ mandate and capacity has since been gradually expanded, and with a reform in September 2016, Frontex became the official ‘European Border and Coast Guard Agency’, and search and rescue operations were included in its mandate (Frontex, n.d.; Fine, 2018). In September 2018, President Juncker of the European Commission

²⁷ “Serious harm” is further specified in Article 15 of the Directive as comprising “(a) death penalty or execution”; “(b) torture or inhuman or degrading treatment or punishment (...)”; or “(c) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict” (CEU, 2004, Article 15).

²⁸ The Schengen Zone has 26 member states, which largely correspond to the EU’s membership. Of the EU’s 28 member states, six are not members of the Schengen Zone; Ireland and the United Kingdom maintain opt-outs, while Bulgaria, Croatia, Cyprus and Romania are in the process of acceding to the Schengen Zone (Schengen Visa Info, 2018). Additionally, the Schengen Zone also includes Iceland, Liechtenstein, Norway and Switzerland, which are not members of the EU (ibid.).

(henceforth: Commission) proposed a significant expansion of Frontex' capacity, aiming to recruit 8,400 more border guards by 2020, which would bring the total up to 10,000 (Fine, 2018).

A final important element of CEAS was the establishment in the year 2000 of a European Refugee Fund to facilitate financial burden-sharing in relation to refugee protection. Initially, the European Refugee Fund ran from 2000 until 2004, but the initiative has subsequently been continuously renewed. The latest version is the Asylum, Migration and Integration Fund (AMIF), which runs from 2014 to 2020 and has it as one of its principal objectives that those member states most affected by forced migration flows “can count on solidarity from other EU States” (Commission, 2018a). Under the AMIF, all member states (except Denmark) receive basic allocations based on migration data from the early 2010s, which can then be further supplemented with emergency allocations as decided by the Commission (Darvas et. al., 2018, p. 16). The AMIF is then complemented by the Internal Security Fund (ISF). While the ISF comprises two separate instruments, the majority of ISF funds (€2.8 billion out of €3.8 billion) is intended to provide “support for the management of external borders and the common visa policy”²⁹ (ibid., p. 11).

In terms of Noll's (2000) dimensions of burden-sharing, CEAS can be described as an attempt by the EU to share people *by* sharing policy. As pointed out by the Commission in a paper from 2007, harmonization of asylum procedures, legal standards and reception conditions across member states “is bound to reduce those secondary movements of asylum seekers”, and consequently, may “result in a more fair ... overall distribution of asylum applications between Member States” (Commission, 2007, p. 11). While CEAS arguably represents the most institutionalized example of a regional burden-sharing mechanism on refugee protection, the large spike in the number of asylum seekers arriving on Europe's territory in 2015 revealed considerable weaknesses in the system. Consequently, in 2016 the EU initiated a comprehensive reform of CEAS, which was grounded on “principles of responsibility and solidarity” and aimed at addressing the “disproportionate responsibility” placed on certain member states by the current system (Commission, 2016a, p. 2).

²⁹ The rest of ISF funds support “police cooperation, preventing and combating crime and crisis management” (Darvas et. al., 2018, p. 11).

3.6. The North-South Impasse and International Refugee Protection as a Suasion Game

The combination of structural factors and the relative weakness of the legal and normative framework governing burden-sharing results in what Betts (2009) refers to as a North-South impasse; defined as “a situation in which a problem primarily originates in and remains relatively confined to the South while the economic and political means to address the problem are largely held by the North” (p. 33-34). Southern states - due to their geographical proximity to refugee producing countries and their strong normative obligation to provide asylum - do not have much of a choice but to contribute to refugee protection. Northern states, conversely, due to the very limited amount of refugees entering their territory combined with their relatively weak normative obligations towards burden-sharing, are able to contribute to refugee protection on a completely discretionary basis. Furthermore, the lack of obligations for states towards the protection of refugees outside their territory has important implications for Northern states’ refugee policy, as it gives them an incentive “to allocate far more resources to refugee exclusion and deterrence policies than they do to supporting refugee protection in regions of origin” (Betts, 2009, p. 35). Finally, while all cases may not fit neatly into the definition above, the conceptualization as a North-South impasse can certainly be applied in regional contexts as well. Even if they are not part of the global South as such, geographical proximity to a large-scale influx of refugees can put states in a relatively weaker bargaining position in negotiations related to refugee policy (Betts, Costello & Zaun, 2011, p. 30).

Due to these structural inequalities in the refugee regime, Betts (2009) suggests conceptualizing cooperation on refugee protection as a ‘Suasion Game’³⁰ rather than as a Prisoner’s Dilemma. The Suasion Game is more applicable in relation to North-South cooperation in the refugee regime, because it captures the important power asymmetry between the involved actors. Whereas in the Prisoner’s Dilemma, the involved actors are assumed to have the same power and interests, in the Suasion Game, one actor (A) is in a weaker negotiating position and has little choice but to cooperate while the other actor (B) has no immediate interest

³⁰ For more on the Suasion Game, see Hasenclever, Mayer & Rittberger, 1997, p. 50; Martin, 1993, p. 103.

in cooperating and will thus need to be persuaded into cooperation (see Graphic 3). Consequently, the Suasion Game can be represented in game theory terms in one of two ways:

1. The weaker actor (A) has a dominant strategy to cooperate, which the stronger actor (B) can exploit, or;
2. The stronger actor (B) has a dominant strategy to defect, and consequently, the weaker actor (A) is forced to cooperate if it hopes to avoid an even worse outcome in case both actors defect.

		Actor B	
		C	D
Actor A	C	4, 3	3, 4*
	D	2, 2	1, 1

Graphic 3. This table illustrates the Suasion Game. The numbers to the left of the commas indicate Actor A's preference ordering from 1 (worst outcome) to 4 (best outcome), while the numbers to the right indicate Actor B's preference ordering. * Indicates the equilibrium outcome (Graphic taken from Betts, 2009, p. 34).

3.7. Overcoming the Suasion Game Through Issue-linkage

Following this, the weaker actor has two possible courses of action in the negotiation process. First, it may threaten to make the irrational choice of defecting, thereby hurting the stronger actor, but also hurting itself in the process (Martin, 1993, p. 104). In the context of the refugee regime, the weaker actor could defect by refusing to offer asylum to refugees in its territory (Betts, 2009, p. 36). And while the consequent decrease in the availability of refugee protection *would* also hurt stronger actors by adversely contributing to international order, it would arguably hurt the weaker actor considerably more as the effect of refugee protection on international order is likely to be more pronounced within the region in question. Thus, this strategy is not viable due to the high associated costs for the weaker actor.

Secondly, the weaker actor may convince the stronger actor to cooperate by changing the potential payoffs associated with the two possible courses of action, thereby altering the cost-benefit analysis of the stronger actor. This is done through issue linkage³¹, which can take

³¹ For more on issue linkage within international relations, see Aggarwal, 1998; McGinnis, 1986; Stein, 1980.

the form of either *threats* that decrease the payoff from defection, or *side-payments* that increase the payoff from cooperation (Martin, 1993, p. 104). Thus, in situations resembling the Suasion Game, weaker states may induce stronger states to cooperate by making certain benefits potentially accrued by them in other issue areas explicitly conditional on their cooperation:

“A state may not be interested in issue X, and therefore, when this issue is negotiated in isolation the state will have very little incentive to cooperate. But if issue Y, in which the same state has an interest, is introduced to the same formal negotiations, the state may be willing to cooperate, provided a return in relation to issue Y is a condition of its willingness to compromise in relation to issue X” (Betts, 2009, p. 38)

This is closely related to Todd Sandler’s so-called *joint product* model³², which he has developed with various coauthors over the years. Sandler and Forbes (1980) first introduced the idea in relation to defence policy, which fits the mold of a public good, but which produces a variety of different outputs that benefit states differently. In a similar manner, aside from its non-excludable contributions to overall international order, refugee protection also produces various other outputs that benefit states differently, either on a national or regional basis (see Betts, 2003). Following the joint product model, states are more likely to contribute to the provision of a particular public good “if contributing to that public good simultaneously yields subsidiary benefits (joint products) to the contributing state” (Betts, 2009, p. 38). By giving the Northern state an incentive to cooperate, issue linkage also improves the bargaining position of the Southern state in negotiations on refugee policy. In this way, the extent to which the provision of a public good is made conditional on the ability of certain states to derive particular benefits from it, is an important determinant of whether the public good in question will be provided. Consequently, examining the way in which issues are linked in negotiations - and how this affects the bargaining position of the involved actors - is key to understanding how cooperation is achieved in situations resembling a Suasion Game.

³² For more on the joint product model, see Cornes & Sandler, 1996; Sandler & Forbes, 1980; Sandler & Hartley, 1995).

3.7.1. Tactical Linkages vs. Substantive Linkages

We can distinguish between two general types of issue linkage; namely tactical linkages and substantive linkages. Traditionally, most literature on issue linkage has focused on tactical linkages, which “tie together issues that have no substantive rationale for linkage” (Martin, 1993, p. 105-106). Tactical linkages are when issues, which may not have any substantive link, are grouped together and made explicitly conditional on one another in formal interstate negotiations. According to Martin (1993), institutions and the multilateral organizations developed around them play a key role in allowing actors to communicate and make their linking of issues credible (p. 105). As discussed earlier, repeated interactions within an organizational environment related to a particular regime makes it easier to effectively link issues, as it enables actors to develop mutual trust, thereby making any threats or side-payments introduced in negotiations more credible. And while tactical linkages are certainly also relevant in the context of the refugee regime, Betts (2009) points to another type of issue linkage, which he argues is much more important in overcoming collective action failure on refugee issues specifically; namely substantive linkages (p. 40).

Substantive linkages are different from tactical linkages in a number of important ways. In contrast to tactical linkages, substantive linkages requires some kind of *structural connection* between the linked issues, based on which the stronger actor in the Suasion Game can be *persuaded* into cooperating. This is done through *cross-issue persuasion*, which is a form of social influence³³ through which “actor A can persuade actor B that issue area X and issue area Y are linked as a means of inducing actor B to act in issue area X on the basis of its interest in issue area Y” (Betts, 2009, p. 41). For cross-issue persuasion to be successful, however, it presupposes certain *structural-* and *agency conditions*.

First, there needs to be some *structural* connection between the two issues in question. In the absence of some structural link between issue areas X and Y, it is highly unlikely that actor A will be able to persuade actor B to act on issue area X based on its interest in issue area Y. These

³³ The other primary types of social influence are coercion, which relies on the use of force (or threats thereof); bargaining, which relies on tactical linkages; and emulation, which relies on actors imitating the behavior of other actors (Keohane, 2003 as cited in Betts, 2009, p. 40).

structural connections between issue areas can be conceived as either *institutional linkages* or *ideational linkages* (ibid., p. 42). Institutional linkages are a product of the particular institutional design of the cooperation initiative in question. They can take the form of either *internal connections*, referring to connections between issue areas *within* the initiative in question; or *external connections*, referring to connections between issue areas through “the relationship of the overall initiative to wider institutional structures” (Betts, 2009, p. 43). Internal connections bear a resemblance to tactical linkages, as they typically take the form of explicit provisions in cooperation initiatives that make one actor’s contributions formally conditional on some kind of proportional contribution by other involved actors. However, we can still distinguish internal institutional linkages from tactical linkages, in that the side-payments offered in tactical linkages may be related to completely different policy fields outside of the scope of the issue area under negotiation. External connections, on the other hand, are less explicit, as they result from the *nesting*³⁴ of the cooperation initiative in question within a broader institutional structure, whereby any contributions towards this specific initiative will also contribute to the goals of this wider institutional structure.

Ideational linkages are products of the ideas held by the actors involved in a particular cooperation initiative. Ideas are important because they inform actors’ “perception of the causal relationship between two issue areas” (ibid., p. 43-44). Ideas may be held individually by one actor (subjective ideas) or collectively by multiple actors (intersubjective ideas), and are formed and developed through ongoing policy discourses involving states, multilateral organizations, academics and civil society representatives. By influencing actors’ ideas about the connection between their contributions towards issue area X and the potential benefits to be derived in issue area Y as a result of these, ideational linkages can modify these actors’ cost-benefit analyses, and consequently, their behavior. Ideational linkages are different from institutional linkages in that they do not require the link between issue areas to be explicitly laid out in any formal agreement, but rather, they directly integrate connections between issue areas into actors’ perceptions of the potential costs and benefits associated with a particular course of action.

³⁴ Most institutions, regimes and initiatives are *nested* within broader institutional structures, which influences their configuration (Aggerwal, 1998).

However, the satisfaction of these structural conditions alone is not enough. Since states base their decisions on their *perception* of these structural conditions, successful cross-issue persuasion also relies on the *agency* of one or more actors to create, change and/or communicate these substantive linkages. As Betts (2009) points out, the UNHCR has historically filled this role in the global refugee regime with varying degrees of success (p. 41). However, in cases of regional cooperation initiatives taking place in different institutional environments, another actor (or groups thereof) *can* fill this same role of creating, changing and/or communicating substantive linkages. In the context of this project, we shall refer to such actor(s) as ‘*persuader(s)*’. Institutional and ideational linkages, being products of the institutional design of a particular cooperation initiative and the ideas held subjectively and intersubjectively by the involved actors, may be *created* or *changed* by persuaders through their influence on *institutional design* as well as their *epistemic role* (ibid., p. 45). In addition to these, there might be existing linkages that the persuader(s) cannot create nor change, but which, by *communicating* them through *argumentation* and the *provision of information*, can nevertheless be important in influencing the cost-benefit analyses of certain actors, and consequently, their behavior (ibid.).

4. Analysis

As mentioned earlier, in 2015, there was a sharp increase in the number of migrants and asylum seekers crossing the Mediterranean and arriving on European territory, most of them using the route across the Aegean Sea from Turkey into Greece. The number of arrivals gradually increased during the year, peaking at more than 221,000 in October³⁵ (Clayton et. al., 2015). Before the end of the year, onward movements of migrants and asylum seekers through the Balkans towards Northwestern Europe had led six members of the Schengen Zone to unilaterally reinstall border controls³⁶, and the pressure was mounting on European policy-makers to take some kind of coordinated political action to respond to the situation. After a range of informal consultations amongst EU member states as well as between European and

³⁵ Illustrative of the scale of the boom in arrivals in 2015, this number was higher than the total number of crossings for the whole of 2014 (Clayton et. al., 2015; UNHCR, 2018c).

³⁶ These six members were Austria, Denmark, France, Germany, Norway and Sweden (Greenhill, 2016, p. 317). Initially, these border controls were only temporary

Turkish leaders during the year, in October 2015, the EU and Turkey presented a joint action plan identifying “a series of collaborative actions to be implemented” by the EU and Turkey “to supplement Turkey’s efforts in managing the situation of a massive influx of persons in need of temporary protection” (Commission, 2015b). This joint action plan was then adopted by both parties at a high-level meeting on November 29th 2015 between EU heads of state or government and Turkish Prime Minister, Ahmet Davutoğlu (EC & CEU, 2015).

After two subsequent meetings in the European Council between representatives from EU member states and their Turkish counterparts, in the EU-Turkey Statement of March 18th 2016, both the EU and Turkey (re-)confirmed their commitment to the joint action plan, as well as a range of additional action points aimed at ending “irregular migration from Turkey to the EU”³⁷ (CEU, 2016). The most important elements of the EU-Turkey Statement in relation to this paper can be summed up as follows:

1. Turkey and EU commitment to take joint action to close routes for irregular migration from Turkey to the EU

Both the EU and Turkey committed to take joint action to prevent irregular migration from Turkey to the EU by closing down sea or land routes for “illegal migration” as well as preventing the opening of new routes (CEU, 2016). This included various measures for better informing those in Turkey who may attempt the crossing of the risks associated with doing so; strengthening the capacity of the Turkish coast guard; improving cooperation between Turkish authorities dealing with irregular migration and Frontex as well as individual EU member states’ national migration authorities (Commission, 2015b; CEU, 2016).

2. The ‘one for one’ mechanism

Arguably the most important element of the EU-Turkey Statement - referred to as the “core principle” of the statement by the Commission - is what has become commonly known as the ‘one for one’ mechanism (Commission, 2017). In addition to closing existing routes of

³⁷ Subsequent references to the ‘EU-Turkey Statement’ will thus refer both to the contents of the joint action plan from October 2015 as well as the subsequent joint statement from March 2016.

irregular migration from Turkey to Greece and preventing the opening of new ones, one goal of the EU-Turkey Statement was to discourage crossings over the Aegean Sea by providing for the return to Turkey of any irregular migrants arriving on Greek territory after March 20th 2016. For each Syrian irregular migrant returned to Turkey from Greece, one Syrian refugee from Turkey selected based on the UN's Vulnerability Criteria would then be resettled in EU member states. This part of the statement was built on a previous agreement between the EU and Turkey on readmission of irregular migrants - both Turkish citizens and third country nationals - who had transited through Turkey on their way to the EU's territory. This readmission agreement was signed in December 2013 in conjunction with the launching of the EU's visa liberalization dialogue with Turkey, but due to a delay in its implementation, it did not enter into force until the two parties agreed on the EU-Turkey Statement (Okuy & Zaragoza-Cristiani, 2016, p. 55). With the statement, the EU committed to resettling up to 72,000 Syrian refugees from Turkey; including 18,000 resettlement slots from previous commitments made by member states in July 2015, as well as up to 54,000 additional resettlement slots³⁸ (CEU, 2016). Important to note, is that the statement *does* specify that return procedures must be "in full accordance with EU and international law", and that the principle of non-refoulement must be respected (ibid.).

3. Voluntary Humanitarian Admission Scheme

In addition to committing to the resettlement of Syrian refugees under the 'one for one' mechanism, the EU also committed to setting up a Voluntary Humanitarian Admission Scheme (VHAS) once irregular crossings from Turkey into Greece had been stopped or at least significantly reduced (CEU, 2016). The VHAS has been described by the Council of the European Union as "a system of solidarity and burden sharing with Turkey", through which EU member states will voluntarily admit particularly vulnerable Syrian refugees, who are under temporary protection or with 'conditional refugee status' in Turkey (CEU, 2017). While some progress has been made, e.g. on formulating Standard Operating Procedures for the scheme, as of

³⁸ These 54,000 additional slots, however, were also transferred from existing commitments by member states under EU relocation decisions (Commission, 2016b, p. 5).

the time of writing, the VHAS has still not been activated, despite quite a significant reduction in the number of irregular crossings from Turkey into Greece (ibid.).

4. Visa liberalization for Turkish citizens vis-à-vis all EU member states

In December 2013, the EU initiated a dialogue with Turkey on visa liberalization, which was to proceed based on a ‘roadmap’ of 72 requirements that Turkey would need to fulfill in order for Turkish citizens to be able to travel without a visa in the Schengen Zone (Commission, 2016c, p. 1). These 72 requirements are grouped into five ‘thematic groups’, of which two are particularly relevant in relation to the EU-Turkey Statement; namely ‘Migration management’ and ‘Readmission of irregular migrants’ (ibid.). With the EU-Turkey Statement, both parties committed themselves to accelerating the fulfilment of this roadmap, as the EU committed to lifting visa requirements for Turkish citizens in the Schengen Zone by June 2016, assuming that all the required benchmarks had been met (CEU, 2016). As of the time of writing, however, the process towards visa liberalization remains incomplete. This is, at least in part, due to the coup d’état attempt in Turkey in 2016 (Commission, 2018c). Lastly, this process was further complicated by a report approved by the EP in June 2018, which made progress towards visa liberalization conditional upon the highly sensitive issue of Turkey recognizing Cyprus as an independent country (EP, 2018).

5. EU and member states’ contribution of €6 billion for the establishment and operation of a ‘Facility for Refugees’ in Turkey

With the statement, the EU committed to contributing €6 billion to supporting Syrians under temporary protection in Turkey through the Facility for Refugees in Turkey (FRIT). These funds were to be paid out in two tranches of €3 billion - one for 2016-2017 and one for 2018-2019 - to support projects across the following six priority areas; humanitarian assistance, education, migration management, health, municipal infrastructure, and socio-economic support (Commission, 2018e). For the first tranche, €1 billion came from the EU budget, while member states collectively contributed the remaining €2 billion according to their share of the EU’s gross

national income (GNI)³⁹; for the second tranche, €2 billion came from the EU budget, while €1 billion was contributed by member states (EC & CEU, 2016; EC & CEU, 2018). As of September 2018, all funds from the first tranche have been committed and contracted across 72 different projects, and €1.94 billion have been disbursed so far, whereas only €450 million of the second tranche have so far been committed to specific projects (Commission, 2018e).

6. *'Re-energizing' of Turkey's EU-accession process*

Under the statement, both sides also committed to 're-energizing' the process of Turkey's EU-accession. Turkey has been a candidate country for accession to the EU since 1999, and official negotiations on their accession have been ongoing since October 2005 (Commission, 2018f). Under the statement, the EU agreed to open negotiations on another of the 35 policy fields or *chapters* of the EU *acquis*⁴⁰, which candidate countries need to implement and enforce before they can be admitted as a member of the EU, as well as accelerating preparatory work for the opening of other chapters (CEU, 2016). Progress on Turkey's accession to the EU, however, has since been very limited. Despite Turkey repeatedly reiterating their commitment to the accession process, according to the Commission (2018f), "Turkey has been moving away from the European Union" in terms of their observance of the EU *acquis* (p. 3). Furthermore, the current Commission Presidency has asserted that no new chapters may be opened under the prevailing circumstances (*ibid.*). An important reason for this is the development of the political landscape in Turkey after the 2016 coup d'état attempt (*ibid.*).

7. *Turkey and EU commitment to upgrading the Customs Union between the two parties*

Since 1995, Turkey and the EU have been linked by a Customs Union (Kirişçi & Bülbül, 2017). This allowed goods to move freely across the EU's border with Turkey. The Customs Union is quite limited in scope, however, as it covers neither agricultural products nor services (*ibid.*). With the EU-Turkey Statement, both parties committed to work towards upgrading this

³⁹ Consequently, the biggest contributors for the first tranche were Germany (€427.5 million), the United Kingdom (€327.6 million), France (€309.2 million), Italy (€224.9 million) and Spain (€152.8 million) (EC & CEU, 2016).

⁴⁰ The EU *acquis* refers to the various common rights and obligations to which all EU member states are legally bound.

customs union to be more comprehensive. The widening gap in EU-Turkey relations in recent years, however, have limited progress on upgrading the Customs Union. In fact, due to the increasingly strained relationship between Germany and Turkey, in 2017, German Chancellor Angela Merkel called for the suspension of negotiations on the upgrading of the Customs Union (ibid.).

This sums up the primary elements of the EU-Turkey Statement. Based on the theoretical framework presented earlier, this analysis will attempt to explain how cooperation on the EU-Turkey Statement was achieved despite the history of collective action failure in the international politics of refugee protection. The analysis will examine two dimensions of this cooperation; namely cooperation *within* the EU in relation to the statement, on the one hand, and *between* the EU and Turkey, on the other. Lastly, based on a recognition that any research on cooperation within the refugee regime would be incomplete without it, the final part of the analysis will be an evaluation of the implications of the EU-Turkey Statement for refugee protection in the EU and Turkey.

4.1. Explaining International Cooperation on the EU-Turkey Statement

Before analyzing cooperation on the EU-Turkey Statement, first we need some additional contextual background on the case as it relates to the theoretical framework developed earlier (see ‘3. Theory’). Many of the general terms and concepts related to international cooperation and burden-sharing on refugee protection are readily applicable in a European context. First, the conceptualization of refugee protection as a public good, albeit with certain excludable joint-product benefits, is not context-specific, and is just as applicable in a European context as it is globally. Similarly, the view of states as utility-maximizing actors who generally base their decisions on a rational cost-benefit analysis, but who may also be influenced by institutionalized norms and principles, is also readily applicable both to EU members states as well as Turkey.

With some minor modifications, we can also apply Betts’ (2009) concept of a North-South impasse on refugee protection. This includes his distinction between Southern states and Northern states, who - due to differences in their geographical proximity to refugee influxes

as well as in the legal and normative framework underpinning the respective norms of asylum and burden-sharing - occupy very different positions within the refugee regime. However, the context of the EU-Turkey Statement is somewhat unique in this respect, as we can conceptualize it as having both an *internal* Southern state (Greece⁴¹) and an *external* Southern state (Turkey). These are then juxtapositioned with a group of Northern states; comprising all EU member states that generally do not have large numbers of migrants and asylum seekers arriving directly on their territory. However, even among these Northern states there are important differences, as Germany and Sweden host much larger numbers of refugees than the rest, largely because they applied much more liberal policies on immigration and asylum in the early stages of the boom in arrivals over the Mediterranean. Since this distribution of migrants, refugees and asylum seekers across the states involved in the negotiation of the EU-Turkey Statement is an important determinant of the interests based on which they negotiate, this is a dimension that calls for further examination.

Generally, Greece and Turkey occupy similar positions in relation to refugee protection in Europe, including in the specific context of the EU-Turkey Statement. While neither of the two are part of the global South in a general sense⁴², both do fit the mold of a Southern state in the context of the North-South impasse on refugee protection. Both are in relatively greater geographical proximity to refugee producing countries compared to the EU's (other) member states, particularly those in Northwestern Europe. This includes Syria, with which Turkey even has a physical border. Due to their geographical proximity to Syria, both Greece and Turkey had very high numbers of Syrian refugees and asylum seekers arriving on their territory in recent years as the conflict in Syria continued to displace high numbers of people. As of September 2018, Turkey was hosting 4 million refugees, 3.6 million of them from Syria (Commission, 2018e, p. 1).

Despite this, the position of Greece is also slightly different from Turkey in one important way. While immense numbers of migrants and asylum seekers arrived on Greece's

⁴¹ Outside the context of the EU-Turkey Statement, which deals only with irregular migration across the Aegean Sea into Greece, the EU's other 'frontline' member states (Italy, and arguably also Spain) could also be conceptualized as intra-EU Southern states.

⁴² The World Bank (n.d.) classifies Turkey as an upper-middle income country, while Greece is classified as a high-income country.

territory in 2015, many of these initially moved onwards towards Northwestern Europe. This sparked the chain of events that eventually resulted in the EU-Turkey Statement. However, prior to- and simultaneously with the negotiation of the joint action plan and statement with Turkey, there was a series of political developments and initiatives within the EU that should also be examined in order to get the full picture of international cooperation on the EU-Turkey Statement.

4.1.1. Explaining Cooperation *Within* the EU in Relation to the EU-Turkey Statement

Arguably the most important aspect of the EU-Turkey Statement is that it represents a case of cooperation between a community of Northern industrialized states and a Southern refugee hosting state, which has historically been difficult to achieve. Nevertheless, it is also important to look at how the statement was negotiated between the EU's 28 member states, which occupy substantially different structural positions, and consequently, have diverging interests in relation to refugee policy and migration management. Many of the policies and initiatives examined in this section were introduced prior to the EU-Turkey Statement, and thus, were not explicitly related to the statement. Nevertheless, these elements of intra-EU burden-sharing in relation to migrants and asylum seekers crossing the Aegean Sea into Greece should be scrutinized, as they were important prerequisites for the viability of the EU-Turkey Statement.

Throughout 2015 and early 2016, more than a million migrants and asylum seekers arrived on Greek territory, and as of May 2018, Greece is hosting more than 60,000 refugees and migrants (UNHCR, n.d.). This brings us to one difference between Greece and Turkey, which is highly important to understanding the power dynamics behind the EU-Turkey Statement. In theory, the EU's Dublin Regulation should mean that Greece incurred the responsibility for processing the asylum claims of all asylum seekers who are registered on their territory. Thus, the situation in Europe fits the mold of a Suasion Game. Greece (and other frontline member states) is obligated to register asylum seekers arriving on their territory, process their case for asylum and offer protection to those who qualify for it. The rest of the EU's member states, on the other hand, have no legal obligation to contribute to the protection of refugees outside their

territory beyond the vague formulations in the international and European refugee regimes calling for solidarity between the member states, as well as general notions of solidarity between EU member states. This leaves Greece in a weak bargaining position relative to the EU's other member states, whose contributions to sharing Greece's burden of refugee protection are almost completely discretionary. Mirroring Betts' (2009) terminology in describing collective action failure between North and South on refugee protection, some authors have also described an "impasse" within the EU "due to its member states' clashing interests and their inability (or unwillingness) to find a common solution" (Toygür & Benvenuti, 2017, p. 1).

		Actor B (NW EU)	
		Burden-sharing	Leave resp. to Greece
Actor A (Greece)	Offer asylum	4, 3	3, 4*
	Refuse asylum	2, 2	1, 1

Graphic 4. This table illustrates intra-EU cooperation in relation to the EU-Turkey Statement as a Suasion Game. The numbers to the left of the commas indicate Greece's preference ordering from 1 (worst outcome) to 4 (best outcome), while the numbers to the right indicate the preference ordering of non-frontline member states, most of which are located in Northwestern Europe. * Indicates the equilibrium outcome. (Based on the matrix from Betts, 2009, p. 34).

In practice, however, most of those arriving in Greece in 2015 moved onward towards states in Northwestern Europe through the 'Western Balkans route' before applying for asylum⁴³. In the period from January 2015 to December 2017, where Frontex registered 1,109,968 illegal border-crossings across the Eastern Mediterranean route, only 118,260 asylum applications were lodged in Greece, amounting to just 10.7% of those making the crossing (Darvas et. al., 2018, p. 17). Part of the reason for this was that Greek authorities simply did not have the capacity to

⁴³ Furthermore, several rulings between 2011 and 2014 by both the ECtHR and the EU's Court of Justice barred EU member states from returning asylum seekers to Greece under the Dublin Regulation on account of the inadequate reception conditions there (Guild et. al., 2016, p. 49). This effectively debilitated the Dublin Regulation, a fact that was not lost on top EU Officials. At an official press conference held by the Commission in May 2016, the EU's Commissioner for Migration, Home Affairs and Citizenship, Dimitris Avramopoulos, made the conclusion that the "old Dublin" had "died" (ECtHR, 2017, p. 21). In December 2016, however, the Commission recommended a resumption of returns to Greece under the Dublin Regulation starting from March 2017 (Greek Council for Refugees, 2018). Throughout 2017, Greece received 1,998 requests for returns by other member states, of which they accepted 71 (ibid.). As of February 2018, however, only two individuals had actually been returned (ibid.).

register, identify and shelter so many people. In response to the increase in crossings over the Mediterranean and the tragic human costs associated with it⁴⁴, the EC called a special meeting on April 23rd 2015. This initiated the process of formulating a ‘European Agenda on Migration’ (EAM), which was then presented by the Commission on May 13th (Commission, 2015a). The need to alleviate strains on the EU’s ‘frontline’ member states through burden-sharing initiatives was a recurring element of the EAM. The most prominent examples of this was the introduction of the ‘hotspot approach’ as well as a temporary relocation mechanism “to ensure a fair and balanced participation of all Member States to this common effort” (ibid., p. 4).

The hotspot approach was the EU’s attempt at addressing Greece and Italy’s inadequate capacity to meet their obligations under the Dublin Regulation by setting up facilities for the initial reception, identification, registration and fingerprinting of the immense number of migrants and asylum seekers crossing the EU’s external borders and arriving on the territory of these states (Mentzelopoulou & Luyten, 2018, p. 2). Experts from the European Asylum Support Office (EASO), the EU’s Law Enforcement Agency (Europol), Frontex, the EU’s Judicial Cooperation Unit (Eurojust) and other relevant EU agencies were then deployed to these hotspots to provide the requisite technical assistance to the relevant national authorities (ibid.). However, the five hotspots established in Greece with a total capacity of 6,458 (as of May 2018) remain highly inadequate, as they actually host a total of 15,201 individuals (as of May 2018) in practice; more than double their capacity (ibid., p. 3). The implementation of the hotspot approach is an important factor for the implementation of the EU-Turkey Statement. With the statement, the hotspot facilities were converted into what EU documents refer to as “closed centres”, and what others have categorized as essentially ‘detention facilities’, in which migrants and asylum seekers are detained so that those not qualifying for protection status may be returned to Turkey under the ‘one for one’ mechanism (ibid., p. 4; Amnesty International, 2017, p. 8-10). The hotspot approach also entailed an introduction of an ‘admissibility process’ for any new asylum seekers arriving on the Greek islands. Since returning asylum seekers without examining their cases individually first would constitute mass expulsions, which are illegal under both European and international law, in April 2016, Greece introduced a law to “fast-track”

⁴⁴ Just in the month of April 2015, 1,222 people - the highest monthly number on record - lost their lives attempting the crossing (IOM, 2018).

asylum procedures on the Greek islands (Toygür & Benvenuti, 2017, p. 5). This meant that before they could submit their asylum claim in Greece, asylum seekers⁴⁵ would have to go through an admissibility assessment to see if they should be immediately returned to Turkey (ibid.). There have been numerous critiques leveled at the hotspot approach and its implications for refugee protection and the human rights of migrants and asylum seekers. We shall return to these later (see ‘4.2.3. Management of Irregular/Illegal Migration or Refoulement of Refugees?’).

Combined with the inadequate reception capacity in Greece, another reason so many migrants and asylum seekers were initially allowed to pass through Greece and the states in the Western Balkans was the ‘open-door’ policies of Germany and Sweden. Anticipating that it might spark some degree of solidarity-induced burden-sharing within the EU, in the fall of 2015, Chancellor Merkel announced that Germany would welcome up to one million refugees in 2015⁴⁶ (Greenhill, 2016, p. 326). Despite initial indications that their intake would even exceed this amount⁴⁷, this did not fully materialize, as Germany registered 441,800 new asylum seekers in 2015 (Eurostat, 2016b, p. 1). While it did not reach the threshold of one million, Germany *was* the EU’s leading provider of refugee protection in 2015, as 35% of all new asylum seekers in the EU as well as almost half (148,200 out of 333,350) of those who were granted protection status in the EU in 2015 were registered in Germany (Eurostat, 2016a, p. 3; Eurostat, 2016b, p. 1). Sweden initially employed a similarly liberal policy on refugees, receiving 12% (156,100) of all applications throughout 2015, and accounting for more than 10% (34,500) of positive decisions on the granting of protection status in the EU in 2015 (Eurostat, 2016a, p. 3; Eurostat, 2016b, p. 1). The liberal national policies on admission of asylum seekers put forward by Germany and Sweden can be seen as contributions towards physical burden-sharing within the EU by allowing asylum seekers from Greece to relocate by themselves. However, in the face of intensifying

⁴⁵ Initially, the admissibility process was only applied to Syrian asylum seekers, but later, the use of the procedure was expanded to also include other nationalities (Toygür & Benvenuti, 2017, p. 5).

⁴⁶ In her appeals for a common European solution, Chancellor Merkel repeatedly invoked notions of solidarity. In August 2015, for instance, she declared that “[i]f Europe fails on the question of refugees ... it won’t be the Europe we wished for” (The Economist, 2015).

⁴⁷ Initially, Germany put the official figure of registered asylum seekers at 1.1 million. This figure was later adjusted downward considerably as it was found that some had been registered twice while others had moved onward to other EU member states (Al Jazeera, 2016).

political pressure both from other EU member states as well as domestically, both the German and the Swedish governments were eventually forced to reverse course, abandoning their open-door policy in favor of border control and other deterrence policies (Crouch, 2015; Petzinger, 2018). This was the result of a political agitation strategy employed by Turkey to extract concessions from the EU, to which we shall return later (see '4.1.2. Explaining Cooperation Between the EU and Turkey in Relation to the EU-Turkey Statement').

Due to the scale of these onward movements towards Northwestern Europe, in October 2015, President Juncker of the Commission convened a 'Leaders Meeting' on refugee flows along the Western Balkans route where leaders representing Albania, Austria, Bulgaria, Croatia, Germany, Greece, Hungary, Macedonia, Romania, Serbia and Slovenia all agreed on a 17-point Action Plan on managing these flows (Commission, 2015c). This was the first step of a gradual closure of the Western Balkans route. Countries along the route began unilaterally erecting fences and stepping up border controls, thereby redirecting and eventually trapping many migrants and asylum seekers in transit countries like Macedonia, Serbia and Bosnia as the route was closed almost entirely by January 2016⁴⁸ (EPRSB, 2016; Fruscione, 2018).

The closing of the Western Balkans route created a 'bottleneck' effect in Greece, as migrants and asylum seekers continued to arrive in large numbers, but were unable to move onwards to other EU member states. This left Greece to bear a disproportionately large share of the burden of processing the asylum claims of asylum seekers crossing the Aegean Sea. This was the problem that the other provision related to burden-sharing in the EAM - namely the EU Emergency Relocation Mechanism - aimed to solve, or at least alleviate. While progress on relocations was initially slow⁴⁹ and the 21,999 individuals relocated under the mechanism amounted to only 33% of the number initially planned⁵⁰, the relocation mechanism can be regarded as a fairly successful case of physical burden-sharing (Mentzelopoulou & Luyten, 2018,

⁴⁸ Onward movements did continue, albeit on much smaller scale. In the first half of 2018, however, there was a new increase in movements along the Western Balkans route (see UNHCR, 2018a).

⁴⁹ By January 2016, less than 500 refugees had been relocated under the mechanism (Toygür & Benvenuti, 2016, p. 3).

⁵⁰ Only individuals of nationalities that have an asylum recognition rate of 75% or above were eligible for relocation under the EU's Emergency Relocation Mechanism (Mentzelopoulou & Luyten, 2018, p. 5). Based on this criteria, 66,400 were expected to be eligible for relocation under the mechanism at its inception (UNHCR, 2018a). Due to the significant decrease in the number of asylum seekers arriving in Greece in 2016 and 2017, however, this number turned out to be much lower (Commission, 2018d, p. 17).

p. 5; UNHCR, 2018a). According to the Commission (2018d), as of May 2018, 96% of those eligible for relocation under the mechanism had been relocated as most member states fulfilled their pledges under the mechanism (p. 17). However, this was not without resistance from certain member states, as the Czech Republic, Hungary, Poland and Slovakia, also known as the Visegrad Four (the V4⁵¹), were vocal opponents of any mandatory quota system (Toygür & Benvenuti, 2016, p. 2). Three of these states (all but Slovakia) were later referred to the EU's Court of Justice by the Commission for not complying with their legal obligations under the relocation mechanism (Mentzelopoulou & Luyten, 2018, p. 7).

Finally, there were aspects of the political initiatives in the EU in response to the 2015 influx that can be conceptualized as financial burden-sharing. As part of the EU's Emergency Relocation Mechanism, for instance, Greece and Italy received considerable funding from the EU and its other member states through the AMIF, while each of the other member states received €6,000 for each person they relocated from Italy or Greece (Thielemann, 2018, p. 75). By the end of 2017, slightly more than €4.5 billion had been allocated under the AMIF, nearly €442 million of which was allocated as emergency assistance (Darvas et. al., 2018, p. 49-50). By the end of 2017, Greece had received 11.3% of basic allocations and 31.7% of emergency assistance under the AMIF (ibid., p. 18). As for the ISF, more than €2.6 billion had been allocated by the end of 2017, of which slightly more than €301 million represented emergency assistance (ibid., p. 51-52). Of this, Greece received 14.6% of basic allocations and 18.6% of emergency assistance (ibid., p. 18).

This sums up the primary elements of intra-EU cooperation in relation to the EU-Turkey Statement. But how can we account for this? Can we ascribe it to a successful altering by the EU of individual member states' cost-benefit analyses; to shared notions of solidarity between the EU's member states; or rather to some combination of the two? In terms of the norm-based rationale, Germany and Sweden's very liberal policies on asylum can be seen as attempts to appeal to notions of intra-EU solidarity. The EU as a whole, and especially the Schengen Zone, creates interdependence between EU member states on issues related to migrants and refugees.

⁵¹ The V4, also known as the Visegrad group, was formed in 1991 to further its members' integration into the EU, but were also highly aligned in their approach to the 2015 influx of migrants and refugees (Toygür & Benvenuti, 2016, p. 11).

This, combined with the de facto ‘deactivation’ of the Dublin Regulation, catalyzed some degree of burden-sharing within the EU in relation to the 2015 influx. However, the lack of support from the rest of the EU’s member states towards these policies showed clearly the limits of intra-EU solidarity, as the V4 in particular showed a disregard for these notions of solidarity. Seen from a cost-benefit perspective, the EU and its member states acted because Greece’s lack of capacity to register and shelter arriving asylum seekers - combined with the Western Balkans route being open - resulted in onward movements towards Northwestern Europe of asylum seekers, which the majority of member states viewed as a cost rather than a benefit. Consequently, the action taken initially by the EU and its member states was primarily focused on reducing these onward movements by closing the Western Balkans route and introducing the hotspot approach, rather than alleviating the pressure on Greece while honoring their obligations under the refugee regime. However, as this approach proved inadequate and the pressure on Greece continuously increased, the EU and its member states turned to Turkey as a gatekeeper in an attempt to externalize the management of this flow of migrants and asylum seekers.

4.1.2. Explaining Cooperation *Between* the EU and Turkey in Relation to the EU-Turkey Statement

As mentioned previously, Turkey fits the role of a Southern state in the context of the international politics of refugee protection. Sharing a physical border with two of the world’s primary refugee-producing states, namely Iraq and Syria, Turkey has a history of hosting refugees on its territory. Since the outbreak of civil war in Syria in 2011, more than 12 million Syrians have been forcibly displaced; 6.5 million inside Syria as IDPs, while the remaining 5.6 million have crossed Syria’s borders as refugees (Council on Foreign Relations, 2018). The majority of these (more than 3.6 million) are currently in Turkey (Commission, 2018e). While Turkey *is* party to the 1951 Refugee Convention, they maintain the original geographical limitation to the convention. This means that they apply certain restrictions on the right of non-European to seek asylum in their territory. Upon approval of their application, Turkey gives non-European asylum seekers the title of “conditional refugee”, which allows them to stay in Turkey temporarily until the circumstances that forced them to flee have changed, or until the

UNHCR grants them official refugee status, making them eligible for resettlement in a third country (Sari & Dinçer, 2017, p. 59-60). This is not to say that Turkey has always honored their obligations to offer asylum completely, as they have on multiple occasions been criticized both by the EU and by human rights groups for not opening certain parts of their border to people fleeing the civil war in Syria, and even for allegedly deporting Syrian refugees, including women and children, back to Syria (Johnston, 2016; Amnesty International, 2016; Carrié & Al Omar, 2018). The extent to which Turkey respects the norm of asylum is among the most important factors determining whether it can be considered a safe third country to which asylum seekers may be returned, and thus, will be examined in more detail later (see ‘4.2.3. Management of Irregular/Illegal Migration or Refoulement of Refugees?’). While they have not done so without deviation, these criticisms indicate that there is an expectation from most of the international community, including the EU, that Turkey will respect the norm of asylum. And being the country that hosts the most refugees in the world, they generally do so despite these deviations. Consequently, Turkey fits the role of a Southern refugee hosting state in the Suasion Game model as they have large numbers of asylum seekers arriving on their territory, to whom they have a strong legal obligation to offer asylum, making this their dominant strategy. The EU, in contrast, have no obligation to contribute to the protection of refugees on Turkey’s territory, beyond completely discretionary financial contributions through the UNHCR and commitments to resettlement, meaning their dominant strategy is to leave the responsibility for protecting these refugees to Turkey.

		Actor B (EU)	
		Burden-sharing	Leave resp. to Turkey
Actor A (Turkey)	Offer asylum	4, 3	3, 4*
	Refuse asylum	2, 2	1, 1

Graphic 5. This table illustrates cooperation between the EU and Turkey in relation to the EU-Turkey Statement as a Suasion Game. The numbers to the left of the commas indicate Turkey’s preference ordering from 1 (worst outcome) to 4 (best outcome), while the numbers to the right indicate the EU’s preference ordering. * Indicates the equilibrium outcome. (Based on the matrix from Betts, 2009, p. 34).

While these features are similar to the situation of Greece, as mentioned previously, one important difference is that Turkey is not part of the EU's Dublin Regulations. Thus, prior to the introduction of the EU-Turkey Statement, EU member states were generally unable to do much to counteract onward movements of migrants and asylum seekers to their territory by returning asylum seekers to Turkey. This allowed Turkey to use what Betts, Costello and Zaun (2017) refer to as 'waive-throughs' (p. 32), which closely resemble what Greenhill (2016) calls coercive engineered migration (CEM). Greenhill (2016) defines CEM as "cross-border population movements that are deliberately created or manipulated by state or non-state actors in order to induce political, military and/or economic concessions from a target state or states" (p. 320).

Turkey's President, Recep Tayyip Erdoğan, explicitly threatened the EU that Turkey was willing and able to use CEM on multiple occasions. In leaked minutes from a meeting attended by both Erdoğan and Commission President Juncker and EC President Tusk in November 2015, Erdoğan was quoted as making the threat that Turkey could "open the doors to Greece and Bulgaria anytime and ... put the refugees on buses", and asking the top EU officials: "So how will you deal with refugees if you don't get a deal? Kill the refugees?" (Kambas, Coskun & Baczynska, 2016). In a later speech in February 2016, Erdoğan confirmed that he had made this threat, saying: "I am proud of what I said. We have defended the rights of Turkey and the refugees. And we told them [the Europeans]: 'Sorry, we will open the doors and say goodbye to the migrants'" (AFP, 2016). In the same speech, he asserted that Turkey did "not have the word 'idiot' written on [their] foreheads" and urged European policy-makers to not "think that the planes and the buses are there for nothing" (ibid.). Turkey's approach, according to Okay and Zaragoza-Cristiani (2016) was to continually make the EU aware "that its immunity to the migratory consequences of the Syrian conflict were largely being contained thanks to Turkey's gatekeeping, while sending a clear message that it was on the verge of giving up this role" (p. 55).

While Erdoğan's threats were explicit and clear, whether we can regard the boom in arrivals of migrants and asylum seekers in Greece in 2015 as evidence that Turkey actually used CEM is debatable. On the one hand, one could regard the drastic and immediate fall in arrivals⁵²

⁵² See '4.2.1. Reduction of Dangerous Sea Crossings'.

after the two parties agreed on the EU-Turkey Statement as evidence that Turkey had the capacity to control its border to a much larger extent than it was doing previously. On the other hand, a wide range of factors, not all of which are under Turkey's control, contribute to irregular onward movements towards Europe. The point, however, is that threats of CEM are often as effective as actual CEM, because both rely on making the domestic and/or international political costs of non-compliance with the challenger's (Turkey in this case) demands high enough that the target (the EU, collectively and as individual member states, in this case) will concede. This can be done through two different, but not mutually exclusive, approaches.

Capacity swamping relies on manipulating the ability of (the) target state(s) to receive a certain number of migrants and/or refugees, whereas *political agitating* relies on manipulating the willingness of (the) target state(s) to do so (Greenhill, 2016, p. 321). The central idea behind capacity swamping is simply to overwhelm the physical and/or economic capacity of the target state(s) thereby putting not only the incumbent government, but the overall stability of the state as a whole at risk. Political agitating, as the name indicates, relies instead on challenging the social and political cohesion of the target state, as issues related to migrants and refugees "tend to split societies into (at least) two mutually exclusive and often highly mobilized groups: the pro-refugee/migrant camp and anti-refugee/migrant camp" (ibid., p. 322). In the case of a supranational political entity like the EU, political agitating can be particularly effective as its effects can be twofold; splitting not only individual member states' societies into 'pro/anti camps', but also the EU as a whole (ibid.).

Turkey's use of CEM relied on a combination of capacity swamping and political agitation. In fact, the use of CEM to overwhelm the capacity of Greece to meet their obligations under the Dublin Regulation to receive, shelter and process the cases of any asylum seekers arriving on their territory led to significant strain on the Schengen Zone, thereby assuming the character of political agitation, as it split the EU into three camps with differing views on how to handle the influx. One group, comprising Germany, Greece, Italy and Sweden, were proponents of responding to the influx by sharing the burden of refugee protection across the EU. Greece and Italy, whose geographic proximity to the source of the influx left them to shoulder a disproportionate burden, supported burden-sharing as this would alleviate the pressure put on

them by the influx. Germany and Sweden, whose domestic political landscape (initially) allowed much more liberal immigration/asylum policies, called for burden-sharing across the EU in a spirit of solidarity, an approach for which they first paved the way by taking large numbers of asylum seekers from Greece and Italy. Another group was the V4, where there was a high level of hostility towards migrants and refugees domestically, including with their governments, and who were wholly unwilling to contribute to intra-EU burden-sharing in response to the influx, as they were quick to close (and even fortify) their borders and made essentially no contribution to the EU's Emergency Relocation Mechanism⁵³. Lastly, the rest of the EU's member states found themselves somewhere in between the pro- and anti-burden-sharing camps, as they made some contributions to these intra-EU burden-sharing initiatives, albeit quite limited compared to those of Germany and Sweden.

The effectiveness of Turkey's attempt at using CEM for political agitation of the EU was not lost on top EU officials. This is perhaps best exemplified by EC President Tusk's assertion in January 2016, as several members of the Schengen Zone were setting up border controls, that the EU had two months to "save Schengen" (Euronews, 2016). On top of this, Turkey's use of CEM also worked through political agitation in the domestic politics of the EU's individual member states. The best examples of this was when both Germany and Sweden, largely due to domestic political pressure on the incumbent governments caused by shifts in public opinion, eventually changed course after initially employing very liberal immigration/asylum policies (Greenhill, 2016, p. 326). This effectively killed any hopes for the comprehensive solidarity-induced burden-sharing approach that Germany and Sweden attempted to lead the way for, leading the EU's policy in relation to the influx to be characterized instead by "buck-passing" and "beggar thy neighbor policies" (ibid., p. 324).

Turkey's use of (threats of) CEM can essentially be viewed as an example of them communicating an ideational link to the EU between refugee protection and border control in Turkey, on the one hand, and the scale of irregular onward movements of asylum seekers from Turkey to the EU, on the other hand. By communicating this link, and their willingness to take

⁵³ Though generally less vocal in their opposition to burden-sharing than the V4, Denmark may also be included in this group. Denmark is not part of CEAS and made no contribution to the EU's Emergency Relocation Mechanism (CEU, 2004, p. 15). Nor had they resettled any refugees under the 'one for one' mechanism as of March 2017 (Toygür & Benvenuti, 2017, p. 7).

advantage of it by using CEM against the EU, Turkey was able to increase the perceived costs for the EU of not conceding to their demands. This, in turn, greatly increased Turkey's bargaining position relative to the EU, significantly altering the power dynamics of the Suasion Game. As Okyay and Zaragoza-Cristiani (2016) put it, with their use of CEM, Turkey "increased its leverage by demonstrating that it had the capability and the power to discontinue gatekeeping" for the EU (p. 63). This resulted in a situation where - contrary to the presuppositions of Betts' (2009) theory on collective action failure in the refugee regime - the EU was forced to introduce side-payments in other political issues under negotiation between the two parties in order to incentivize *Turkey* to cooperate on stopping irregular onward movements of asylum seekers to the EU.

We can see this in the forms of issue-linkage that can be identified in the EU-Turkey Statement. The statement contains three examples of tactical linkages or side-payments made by the EU to Turkey in order to incentivize Turkey to cooperate on the statement. These are the EU's commitments to visa-liberalization for Turkish citizens travelling in the Schengen Zone, the re-energizing the process of Turkey's accession to the EU, and the upgrading of the Customs Union with Turkey. In addition to these, the €6 billion committed by the EU to supporting Syrian refugees in Turkey can also be viewed as a side-payment from the EU to Turkey for increasing control on their border and accepting the return of irregular migrants from Greece. This latter commitment, however, also builds on an ideational link held intersubjectively by both the EU and Turkey that better conditions for refugees and asylum seekers in Turkey would lead to less irregular onward migration from Turkey to the EU⁵⁴. For the EU, this increased the perceived benefit of this support to the Facility for Refugees in Turkey by linking it directly to alleviating push factors behind these onward movements. For Turkey, this commitment from the EU to some degree of financial burden-sharing decreased the perceived costs of cooperating on the EU-Turkey Statement. However, despite these indications that Turkey was in the stronger bargaining position relative to the EU, we can also identify certain institutional linkages in the

⁵⁴ The Commission has also highlighted this ideational link in relation to member states' contributions to resettlement, arguing that it allows them to "fulfil both the imperative to help those in need of international protection and to reduce the incentives for irregular migration" (Commission, 2018d, p. 19).

EU-Turkey Statement that were important in incentivizing EU member states to cooperate on the statement.

The ‘one for one’ mechanism, for instance, represents an clear example of an internal institutional connection. By making the resettlement of Syrian refugees from Turkey to the EU conditional on the return of irregular migrants from Greece to Turkey, the mechanism attached two perceived benefits - namely alleviation of the pressure on Greece’s reception capacity as well as deterrence of future potential onward movements from Turkey to Greece - to the perceived cost of resettling Syrian refugees in EU members states. In addition to this, the ‘one for one’ mechanism also had an important external institutional connection due to the way it was nested in the broader refugee regime, specifically the UNHCR’s Resettlement Programme. With the EU-Turkey Statement, the EU committed to resettling up to 72,000 Syrian refugees from Turkey. However, EU heads of state or government required the ‘one for one’ mechanism to function “within the framework of ... existing commitments” (Commission, 2016b, p. 5). Consequently, of these 72,000 resettlement spaces, 18,000 were taken from existing resettlement commitments by EU member states under the UNHCR’s resettlement system (ibid.). This allowed these pre-existing resettlement commitments under the UNHCR’s system to be counted as resettlement commitments under the EU-Turkey Statement, thereby arguably making it easier to elicit the additional resettlement spaces needed from EU member states. The remaining 54,000 resettlement places were unallocated places transferred from existing relocation decisions by the EU (ibid.). By basing the ‘one for one’ mechanism on existing commitments, the EU decreased the perceived costs associated with the EU-Turkey Statement by member states, thereby making cooperation more viable.

Finally, the EU-Turkey Statement was also nested in wider political negotiations with Turkey in important ways; including Turkey’s EU-accession process, the visa liberalization dialogue and a pre-existing readmission agreement between the two parties. This was made explicit in the 2015 joint action plan between the EU and Turkey, part of which would “build on the visa liberalisation dialogue, the visa roadmap and the provisions of the EU-Turkey readmission agreement” (Commission, 2015b). This was informed by a clear institutional link between Turkey’s asylum-, migration- and border management systems and their visa

liberalization dialogue with the EU. Improvements in these systems are explicit requirements in the roadmap for the visa liberalization dialogue, yet such improvements would also contribute to Turkey's ability to stem the irregular onward movement of migrants and asylum seekers to the EU (ibid.). Consequently, the EU was able to frame financial contributions by EU member states towards improving these systems in Turkey as a win-win situation: Such contributions would benefit Turkey by furthering the visa liberalization dialogue, while at the same time benefiting the contributing EU member states by potentially reducing onward movements from Turkey to the EU. This nesting of the statement in wider political negotiations that are not related to refugee protection can be seen as an example of what McConnachie (2017) has identified as "a fundamental shift in asylum policy, from a principle-based approach to a political bargain" (p. 190).

In terms of agency, both Germany and the Commission have played important roles in communicating linkages to the involved actors, albeit not always to a sufficient degree. In the initial stages of negotiating a common EU response to the mass influx of migrants and asylum seekers in 2015, and later, the EU-Turkey Statement, German Chancellor Merkel's government played a key role. While never explicitly mentioned in negotiations, the initial joint action plan and the EU-Turkey Statement was based on a plan developed by the European Stability Initiative (ESI) entitled the 'Merkel Plan', which was published in October 2015 (ESI, 2015; Toygür & Benvenuti, 2016, p. 4). Later, however, as the V4 began to show increasing hostility to the German leadership behind the efforts towards a common European approach, Merkel took a backseat, while Turkish Prime Minister, Ahmet Davutoğlu, and Commission President Juncker took on leadership roles (ibid.). Juncker and the Commission, in particular, played an important role in communicating the linkages between refugee protection and border control in Turkey and irregular onward movements from Turkey towards Europe to the EU's member states.

In summary, the EU-Turkey Statement represents a quite successful example of (threats of) CEM being used by Turkey to extract political concessions from the EU. As the EU failed to facilitate adequate burden-sharing internally, they sought instead to shift this burden by turning to Turkey as a 'gatekeeper' to whom they could externalize the management of these onward

migration flows of asylum seekers. This gave Turkey the leverage to extract various concessions from the EU in wider political issues within which the EU-Turkey Statement was nested. However, the statement also contained examples of issues being linked in such a way as to decrease the perceived costs of participation for the EU's member states. As they were communicated through the agency of Germany, Turkey and the Commission, these linkages were important in overcoming the EU's collective action failure and facilitating international cooperation in relation to the 2015 mass influx of migrants and asylum seekers to the EU. However, as mentioned previously, all cooperation does not necessarily qualify as burden-sharing, and may in fact have an adverse impact on the protection of refugees. Thus, any comprehensive evaluation of the EU-Turkey Statement must also examine its net effect on the protection of refugees in the EU and Turkey.

4.2. Implications of the EU-Turkey Statement for Refugee Protection

While examining the politics of the EU-Turkey Statement can give us valuable insights on how collective action failure within the refugee regime may be overcome, any examination that fails to consider the impact of such agreements on the forcibly displaced would be incomplete. While the statement quite effectively achieved its goal of reducing crossings from Turkey to Greece across the Aegean Sea, it has been subjected to significant criticism by academics, human rights groups and other refugee protection advocates, who argue that the deal has had a variety of problematic implications for refugee protection in the EU and Turkey. This section will assess the implications of the EU-Turkey Statement for refugee protection in the EU and Turkey.

4.2.1. Reduction of Dangerous Sea Crossings

The ending of “irregular migration from Turkey to the EU” was among the primary goals of the EU-Turkey Statement (CEU, 2016). While arrivals had already started to drop prior to the EU-Turkey Statement due to the coming of colder weather, the number of arrivals have remained significantly lower than in previous years after the implementation of the statement. Since the start of implementation of the statement, there has been a daily average of 80 arrivals in Greece,

down from a daily average of 6,360 arrivals in the month of October 2015 (see Graphic 6)(Commission, 2018b, p. 1).



Graphic 6. This graphic illustrates the number of migrants and asylum seekers arriving on Greece’s territory after crossing over the Aegean Sea from Turkey in the period from October 2015 to February 2018 (Graphic taken from Commission, 2018b, p. 1).

While the direct causal relationship between this drop in arrivals and the introduction of the EU-Turkey Statement has been disputed by some (see Spijkerboer, 2016), it is hard to deny that the correlation between the introduction of the EU-Turkey Statement and the sharp decline in sea arrivals in early 2016 is indicative of some degree of causality.

Important to note, is that despite this substantial reduction in crossings along the Eastern Mediterranean Route, 2016 saw the highest number of total recorded deaths in the Mediterranean at 5,141 (IOM, 2018). Combined with the lower number of total crossings, this meant that 14 in 1,000 of those crossing in 2016 lost their lives⁵⁵ (Carling & Hagen-Zanker, 2018). The Central Mediterranean Route is by far the most deadly, accounting for 4,581 of the 5,141 deaths in the Mediterranean in 2016 (IOM, 2018). Galos et. al. (2017) have also found that individuals using the Central Mediterranean Route are considerably more vulnerable to human trafficking and exploitation (48%) compared to individuals using the Eastern Mediterranean Route (31%)(p. 29). Taking all this into account, while the goal of reducing irregular migration from Turkey to the EU was achieved, the EU’s framing of the EU-Turkey Statement as an attempt to “break the business model of ... smugglers” (CEU, 2016) and prevent deaths caused by onward movements

⁵⁵ This proportion has continued to increase as 18 in 1,000 died in 2017, and 24 in 1,000 died in the first six months of 2018 (Carling & Hagen-Zanker, 2018).

to the EU seems hollow in the absence of a more concerted effort to address the high number of deaths along the Central Mediterranean Route⁵⁶. As pointed out by Haferlach and Kurban (2017), in the absence of "safe and legal routes for people in need of international protection to enter EU territory and seek asylum ... refugees will continue to opt for the alternative, but ultimately longer and more dangerous sea routes" (p. 85).

4.2.2. Expansion of "Safe and Legal Pathways" to Europe

In their research on the US' approach to managing irregular immigration from Mexico, Clemens and Gough (2018) found that while the expansion of legal migration channels will not curb irregular migration on its own, when combined with enforcement of deterrence policies and strict border control, it *can* contribute to a notable reduction in "unlawful migration" (p. 5). The Commission (2018d) has also recognized the importance of creating and expanding 'legal pathways' to "provide a safe and legal alternative to irregular migration to the EU" (p. 7).

In terms of its contributions to physical burden-sharing, however, the commitments of EU member states under the EU-Turkey Statement were modest to say the least. First, the EU member states' heads of state or government refused to make any new commitments towards resettlement with the statement, and demanded that the 'one for one' mechanism was based on existing commitments towards resettlement or relocations. The EU heeded this demand, and a considerable amount of EU member states' existing resettlement commitments (18,000) under the UNHCR's resettlement system were counted as part of the EU's resettlement commitments under the 'one for one' mechanism. Furthermore, the additional 54,000 resettlement spaces committed to by the member states under the mechanism were transferred from existing commitments under EU relocation decisions. Finally, the EU' choice to make these commitments conditional on the returning of "irregular migrants" to Turkey has been criticized

⁵⁶ The expansion of Frontex' capacity and the inclusion of search and rescue operations in their mandate could be argued to represent such an effort. However, Fine (2018) argues that Frontex' operations are more concerned with "the protection of borders rather than the protection of lives", pointing to the example that when the EU launched Operation Triton in 2014 Frontex patrols were limited to "within 30 miles of Italy's coast, even though the majority of rescues take place much closer to Libya". Furthermore, Amnesty International (2018) has characterized the EU and its member states' policies in relation to the Central Mediterranean Route as "a vicious cycle of closure and externalization that is exacerbating rather than solving problems" (p. 22).

from numerous fronts due to concerns over its implications for refugee protection, which we shall return to below.

Despite the lack of ambition in the EU's commitments to resettlement under the EU-Turkey Statement, they have not managed to live up to these, as only 18,379 Syrian refugees have actually been resettled from Turkey under the 'one for one' mechanism as of December 2018 (Directorate General of Migration Management, 2018). One important reason for this is that courts in Greece have blocked many returns to Turkey, arguing that Turkey was not a safe third country, and that returnees would thus be at risk of refoulement (Alfred & Howden, 2018). Consequently, as of June 2018, only 2,231 individuals had been returned from Greece to Turkey since March 20th 2016 (Mentzelopoulou & Luyten, 2018, p. 4). A considerable portion of these (601 out of 2,164 as of March 14th 2018), however, were returned under a bilateral readmission protocol between Greece and Turkey, and thus, can not be attributed to the EU-Turkey Statement (Commission, 2018d, p. 7). Since this bilateral protocol was suspended in June 2018, returns to Turkey have been proceeding at a still slower pace (Mentzelopoulou & Luyten, 2018, p. 4).

While it is commendable that a considerable number of Syrian refugees have been resettled in the EU despite the slow rate of returns from Greece to Turkey, the EU's contribution to resettlement is highly inadequate in light of the current resettlement needs in Turkey. According to the UNHCR (2018d), less than 1% of Turkey's total refugee population was submitted for resettlement in 2016, while in 2017, this number was even lower at less than 0.6% (p. 1). When considering the UNHCR's (2018d) estimate that at least 10% of Syrians in Turkey - who make up the vast majority of the country's total refugee population - are in need of resettlement, the contribution of the EU-Turkey Statement to physical burden-sharing between the EU and Turkey is negligible.

4.2.3. Management of Irregular/Illegal Migration or Refoulement of Refugees?

The EU-Turkey Statement has been subject to significant criticism from numerous fronts on account of its (potential) consequences for the protection of refugees and the human rights of migrants, refugees and asylum seekers generally. Many have argued that the framing of the issue as one of migration management rather than refugee protection, and the resulting policy of

strengthening border controls, detaining asylum seekers and ‘fast-tracking’ asylum-procedures has had grave implications for the protection of the concerned migrants and asylum seekers’ human rights. As Guild et. al. (2016) put it:

“[T]he language of ‘crisis’ transformed the appellation of people from “refugees” (which would soon be recognised) into “illegal immigrants” who were committing criminal acts by travelling through the Schengen border control-free area” (Guild et. al., 2016, p. 48).

This criminalization of refugees and asylum seekers was highly problematic as it opened the door for arbitrarily detaining and deporting these individuals to Turkey - where they may be at risk of refoulement - without instituting the proper safeguards to protect rights of these individuals.

With the introduction of the hotspots approach and the EU-Turkey Statement, reception facilities were converted into what the EU referred to as ‘closed centers’, but which others have classified as essentially detention facilities (Amnesty International, 2017, p. 8). This, many have argued, constitutes a violation of Article 31 of the 1951 Refugee Convention, which prohibits states from detaining and/or penalizing refugees for illegal entry or presence on their territory (see Amnesty International, 2017; Guild et. al., 2016). This is consistent with the decisions of the UNHCR as well as a broad range of humanitarian NGOs to suspend most of their activities at these centers with reference to their opposition to mandatory detentions (Amnesty International, 2017, p. 8). Detention in these facilities has also been criticized on account of the conditions in the facilities, which a wide variety of humanitarian NGOs and human rights groups described as “abysmal” in a joint letter to the Prime Minister of Greece calling for an end to the containment policy (Human Rights Watch, 2017).

However, by drawing on the safe third country concept and declaring any individuals arriving on Greece’s territory after crossing the Aegean Sea to be ‘irregular migrants’, even when they intend to apply for asylum in Europe, the EU and its member states have consistently defended the policy of detaining and returning these individuals to Turkey. Consequently, the labelling of Turkey as a safe third country was essential for the functioning of the ‘one for one’ mechanism, and thus, for the viability of the EU-Turkey Statement as a whole. However, there

has been ongoing disagreement - particularly after the 2016 coup d'état attempt and the subsequent degradation of democratic institutions - on whether Turkey can actually be considered a safe third country for refugees and asylum seekers.

Worries that refugees and asylum seekers returned to Turkey are at risk of refoulement have been expressed from multiple fronts. Ten days before the EU-Turkey Statement was released, at a ceremony at the EP's Chamber in Strasbourg marking International Women's Day, the UN's High Commissioner for Refugees, Filippo Grandi, expressed his concerns over "any arrangement that would involve the blanket return of anyone from one country to another without spelling out the refugee protection safeguards under international law" (Grandi, 2016). François Crépeau, the United Nations Special Rapporteur on the Human Rights of Migrants, in his address at a dialogue between judges of the ECtHR in January 2017, also expressed concerns over potential violations of the non-refoulement principle under the EU-Turkey Statement (ECtHR, 2017, p. 12). Aygenc and Orpen (2018), in an examination based on the EU's own legal framework governing asylum procedures found that "Turkey does not qualify as a 'safe third country' making it an unfit destination for the asylum seekers to be returned".

There is empirical evidence to support these arguments that Turkey cannot be considered a safe third country. This includes the previously mentioned reports of Syrian refugees being deported from Turkey back to Syria (Amnesty International, 2016; Carrié & Al Omar, 2018). The risk of refoulement for non-Syrians being returned to Turkey is even greater. Until September 2017, only 5 percent of non-Syrians returned to Turkey from Greece under the EU-Turkey Statement had been given the opportunity to apply for asylum in Turkey, and just two were actually granted asylum (Alfred & Howden, 2018). Furthermore, over two thirds of returned non-Syrians were eventually deported back to their country of origin by Turkey (ibid.). Based on concerns over whether Turkey can be considered a safe third country, national courts of multiple EU member states (specifically Germany, Greece and Italy) have blocked returns to Turkey (Alfred & Howden, 2018; ECtHR, 2017, p. 21). It is very difficult, however, to conclusively label Turkey as a(n) (un)safe third country, as this must necessarily be based on an evaluation of the particular situation in the country at a given time. One can assert, however, that given the volatile situation for refugees and asylum seekers in Turkey, especially after the 2016

coup d'état attempt, having the returning of individuals to Turkey as the core principle of the EU-Turkey Statements is highly problematic seen from a human rights perspective.

As Filippo Grandi pointed out when the statement was still under negotiation, despite the continuous attempts by the EU and most of its member states to frame the issue as one of managing irregular migration flows, the 2015 mass influx to the EU *was* a refugee movement, as the vast majority of those who arrived came from the world's top 10 refugee producing countries (Grandi, 2016). This was echoed by Guild et. al. (2016), who pointed out that as “persons seeking international protection” these people were entitled to “the full application of the 1951 Refugee Convention and its 1967 Protocol, the EUCFR and the CEAS” (Guild et. al., 2016, p. 48). While on paper, the EU *did* stress repeatedly that the EU-Turkey Statement was to take place within the bounds of these legal instruments, in practice, this was not always the case. As Fine (2018) puts it, the response of the EU and its member states to the large influx of refugees and migrants in 2015 has been based on a “cold logic of *raison d'état*, which privileges the protection of state borders over the protection of people's lives”. A formulation closely resembling Danish Refugee Council's Secretary General, Christian Friis Bach, who in March 2018 referred to deplorable conditions for migrants and asylum seekers on the Greek islands as “a result of policies that prioritize protection of borders over the protection of people” (DRC, 2018b).

5. Conclusion

Greenhill's (2016) description of the EU's asylum/migration policy as characterized by "policy schizophrenia" is rather fitting in certain ways. When the EU's CEAS was initially developed, most member states were reluctant to make any formal commitments to physical burden-sharing in common responses to future influxes. Consequently, the agreed solution was to harmonize asylum procedures, legal standards and reception conditions between member states as much as possible, as this was expected to lead asylum seekers to automatically relocate themselves across member states on a more or less equitable basis. However, as the CEAS came under pressure due to the large influx in 2015, most EU member states resorted to 'buck-passing' and burden-shifting, leaving the frontline states of Greece and Italy to bear the brunt of the burden of responding to the situation. Two states, namely Germany and Sweden, did attempt to lead the way for a common European response based on solidarity and burden-sharing. But as this response failed to materialize, they too lent their support to approaching the influx as an issue of migration management; the solution being to strengthen control of the EU's external borders and externalizing the issue to Turkey.

Turkey used the leverage it gained from its role as the EU's gatekeeper to extract various political concessions from the EU. While it is hard to determine whether the large influx in Greece in 2015 was the result of a deliberate use of CEM by Turkey, this was a notable case in which a Southern state was able to use their control over the onward movement of asylum seekers to reverse power asymmetries and overcome the collective action failure resulting from a North-South impasse. There is certainly some merit to the Commission's claim that the EU-Turkey Statement "showed that international cooperation can succeed", as it contained examples of both tactical and substantive issue-linkage being used relatively successfully to enhance cooperation between the involved parties (as cited in Amnesty International, 2017, p. 6). However, any evaluation of the statement would be incomplete without pointing to the problematic implications of the statement for refugee protection on several fronts. A wide variety of international organizations, including the UNHCR, human rights groups as well as humanitarian NGOs, have raised concerns about the legality of the deal under both European and

international law. They have pointed to unacceptable conditions for migrants and asylum seekers on the Greek islands, issues with considering Turkey a safe third country and the inadequacy of legal safeguards to prevent the refoulement of individuals who are entitled to international protection. In a world with unprecedented levels of forced displacement, the EU and the rest of the global North will need to move beyond cooperative deterrence, burden-shifting and externalization of migration management, and show genuine commitment to the “shared responsibility to manage large movements of refugees and migrants ... through international cooperation” to which they have committed in the New York Declaration (UNGA, 2016, p. 2-3).

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