The EU-Turkey agreement about refugees and its impact on the implementation of international law: turning a blind-eye to international legal norms in the name of securitization?

Introduction:

The current paper focuses on how the EU interprets and implements international law- as well as parenthetically its own law- concerning the current refugee crisis and how this specific EU attitude influences international law in two ways: first and profoundly in relation to the actual events and to the extent of compliance of the EU with international law; second and in furtherance of the EU compliance with international law, in regards with the potential precedent which is set by the EU implementation of international law in relation to refugees.

The main argument of the paper is that the EU, because of a state-centered security approach to the issue, interprets and implements international law concerning refugees- mainly the Geneva convention- in ways which either directly breach the principles of international law on the matter or at least, even when not contradicting directly international law, necessitate or lead to practices- mainly on behalf of the first entrance states- which deteriorate the living conditions of refugees and the fulfillment of their rights under international law. The relative detachment of the EU from international law concerning refugees could possibly and because of the role of the EU lead to similar interpretations of international law.

In order to reach my conclusions the paper is consisted of a first part referring to how international law is formed and may be influenced by several actors, one of which and with a crucial role can be the EU as well. The second part analyzes the contemporary EU refugee policy, the cornerstone of which is its agreement with Turkey. The third part concludes on the impact of the EU policy on international law and on its implementation.

Part 1: The formation of international law and the EU influence:

Basic characteristics of the formation of international law:

The debate about how international law is formed is already one of the most complicated ones, given the nature both of international law and of the international community on which the primary is built. In this part I will proceed into a brief reference, only to set the framework for the evaluation of the EU role.

1 The background of the current paper lies in how the politics of fear and of state-centered securitization influence the legitimacy of the EU refugee policy and through that international law. I refer to “state-centered securitization”, in distinction from human-centered securitization. These two types do not differ as much in terms of the specific events or conditions which they label as security threats, as concerning the subjects, the interests of whose must be primarily served. Had the human-centered aspect been prevalent, it would have necessitated as primary responsibilities the immediate humanitarian relief of refugees and immigrants as well as the full compliance with international law. The dominance of the state-centered aspect on the contrary leads to a much more defensive attitude on behalf of states towards refugees and their needs, with the potential of compromising international law standards.

2 This is up to a large extent a political issue or at least one lying at the edge between politics and international law.
Through the term formation, I do not refer solely to the “defining moments”\textsuperscript{3} constitutional or not- of international law and the adoption of specific treaties or conventions but also to a continuous- if not perpetual- process, which is comprised both by defining moments as well as by gradual, legal “sittings” and influences, which are inflicted by the variety of international community actors, state and non- state alike,\textsuperscript{4} taking the form both of conventional and of customary law.

The International Court of Justice- ICJ- foresees in article 38 the sources of international law: international conventions, international custom, general principles of international law and judicial provisions.\textsuperscript{5} Most of these sources regarding their development prerequisite the role of the international community various actors and more specifically of those which possess a distinct legal personality, primarily states but also international organizations, such as the EU.

In this sense, international law constitutes a porous and open to continuous change and transformation system, through conventions, treaties as well as through the interpretation and the implementation of norms, which may lead to the creation of custom, under the influence, the acts and the opinio juris of the variety of actors of the international community. The “open- ness” of international law is a direct consequence of the up to a large extent- although not solely- horizontal structure of the international community,\textsuperscript{6} within which states and international organizations play a crucial role.

As the Permanent Court of International Justice in the famous “S. S. Lotus” case held- although at an extent which nowadays could sound undue given the role of the UN and its organs as well as of jus cogens norms: “International law governs relations between independent States. The rules of law binding upon States therefore emanate from their own free will as expressed in conventions or by usages generally accepted as expressing principles of law and established in order to regulate the relations between these CO-existing independent communities or with a view to the achievement of common aims. Restrictions upon the independence of States cannot therefore be presumed.”

Or as professor Greenwood explains, contrary, to domestic legal systems, “There is no “Code of International Law”. International law has no Parliament and nothing that can really be described as legislation. While there is an International Court of Justice and a range of specialised

\textsuperscript{3} Such as for example the adoption of the UN Charter.  


\textsuperscript{5} ICJ, Article 38,

international courts and tribunals, their jurisdiction is critically dependent upon the consent of States and they lack what can properly be described as a compulsory jurisdiction of the kind possessed by national courts. The result is that international law is made largely on a decentralised basis by the actions of the 192 States which make up the international community.”

International law is a unique legal system as it the only one which exists and functions without a sovereign.

In order to comprehend the effect of the EU policies on the formation of international law one needs to take into account the fore-mentioned particularity of international law concerning its development. The above are profound in regards both to international conventions and custom. Concerning the latter, state practice and opinio juris constitute the determinative factors, exemplified by D'Amato in terms of “enforcement action”.

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8 Which in its turn is derived from Briefly speaking and concerning the horizontal nature of the international community, the most obvious reference can be that of article 2 paragraph 1 of the UN Charter, referring to the equal sovereignty- practically- of all states.“The Organization is based on the principle of the sovereign equality of all its Members.” UN Charter, Article 2, par. 1 PCIJ, The case of the S.S. ‘Lotus' (France v Turkey), Publ., Series A, No. 10, at p. 18
The diversity of the actors, exceeding the sole participation of states in the international community constitutes a factor for further pressure towards a de-centralized structure.
Such an absolute position nowadays in favor of a complete state-centered de-centralized community seems rather extreme, in light of several legal as well as political developments. From the powers of the UN Security Council-SC- as well as of several other institutions such as for example of the International Criminal Court and of other ad hoc tribunals to the gradual, widening and deepening legal institutionalization of the international community which may act as such, contrary to the will of specific states and from the proximity of international and national legal orders to the existence of jus cogens as a set of norms binding for all states, even regardless of their will it becomes obvious that states are neither the sole nor the completely sovereign- in Westphalian terms-actors of the international community and that therefore the latter is neither completely de-centralized nor without regulations by binding legal norms, condition which eventually would deprive it of its nature as a community, making it more of an “international society” if not rubble or sum of states. However and despite the fore-mentioned significant developments, still a completely centralized international community, under for example a universal government or statehood, is far from being present. It is on such a basis that still it remains central in international community structures the regulated co-existence of several actors, among which of states as well as of regional organizations. Especially states but also regional organizations remain the most powerful, influential and enjoying a great degree of autonomy, actors. This situation is vividly depicted in the UN SC which on the one hand constitutes a distinct entity with universal authority, while on the other hand is consisted of national states, with some of them, the permanent five- P5- possessing even powers compared to the rest of states, members and not member of the SC alike.
T. M. Franck, The Power of Legitimacy among Nations, (Oxford University Pressm 1990), at pp.196-197
Y. Dinseinstein, The Conduct of Hostilities under the Law of International Armed Conflict, (Cambridge University Press,2004), at p. 5;
9 A. D’Amato, The Concept of Custom in International Law, (1971), at p. 88 Michael Akehurst includes in state practice statements as well.
M. Akehurst, ‘Custom as a Source of InternationalLaw’, 47, BYbIL ,(1977) 1, at p. 3 However, it needs to be taken into account that customs do not change at the will of any state. A differentiation by one state or other international actor does not automatically lead to the change of the equivalent custom. It also does not release such an actor from the binding effect of the custom, since the latter has been created. Here lies the legal
This singularity of international law flows out of the fact that in terms of law producing procedures and concerning the specific acts, constitutional type of provisions do not exist.\textsuperscript{11} While the UN Charter embodies the main guiding principles of the international community as well as its structure regarding collective security and its organs, consisting thus a constitutional document, it lacks the provisions specifying in advance the exact formation of international law.\textsuperscript{12} The important element however concerning the current paper is that state practice, consisted of a combination of the specific acts with the subjective element of the deliberateness of the act and of opinio juris concerning the act may produce custom and therefore international law.\textsuperscript{13}

In addition and again in differentiation from national legal systems, where the existence of sovereign possessing the monopoly of legitimate force, makes the implementation of law rather “expectable” and uniform, at least up to the extent that we do not refer to failed or fragile states as well as to states under the rule law, the lack of a global state underlines not only the interpretation but also the actual implementation of international law as a major desideratum and as a factor determining apart from the actual enforcement of law, also and through that, its further development too. It is in this sense that significant part of the debate about international law formation should focus on the role of international actors, mainly through their interpretation and implementation of international law concerning its formation. In other words and in particular, a specific interpretation of international legal norms, possibly not profoundly contrary to international law but still distorted could set the precedent for the gradual erosion of international legal standards.\textsuperscript{14}

On the other hand it is also true that international law neither “works” nor is formulated in a completely and un-checked, de-centralized way. Documents of universal and binding nature such as the UN Charter or the Universal Declaration of Human Rights are considered as decisive moments of constitutional nature.\textsuperscript{15} In addition, the general principles of international law or in other words to uncertainty, the “practicality”, as well as the subjectivity of law - making through custom: the latter can be neither unchangeable, nor constantly changeable.

\textsuperscript{11} D’Amato, \textit{The Concept of Custom in International Law}, at p.91


\textsuperscript{13} “It is perhaps unnecessary, at least at this stage, to enter upon the question of the nature of the rules governing the formation and identification of rules of customary international law, for example, whether such rules are themselves part of customary international law. But as in any legal system, there must in public international law be rules for identifying the sources of the law. These can be found for present purposes by examining in particular how States and courts set about the task of identifying the law”


\textsuperscript{15} After all, what is proposed in the current paper- which is analyzed below- is not that the EU- Turkey agreement produces custom but a specific way to interpret and implement existing law. In this part the scope is to draw a general framework concerning how law is formulated, so that then I can analyze the impact of the EU and of the specific agreement.

jus cogens are binding for all states and actors of the international community, as the Vienna Convention foresees among other documents and analyses, regardless of or even contrary to their will, or domestic legislation, as fundamental and essential norms for the existence of the international community. In this sense, a hierarchical aspect infiltrates international law.

The fore-mentioned centralized aspect of international law, reminds us that international law neither can be altered solely and automatically by any bilateral agreement, treaty, convention, practice or implementation of law, nor is less binding or normative. On the contrary, there are legal norms which may contradict and “de-legitimize” even more widespread practices combined with opinio juris of international community actors such as states.

Still, the de-centralized aspect of international law is persistent and therefore the status of international law should rather be described as hybrid, implicating in parallel, horizontal and vertical functions. In this sense, “While the product of the application of the sources of international law is by definition static, the law-ascertainment criterion need not be so and can evolve with the social practice. In other words, although geared towards a static result, i.e., a snapshot of existing rules at a given time, the social theory of sources depicted above is in itself dynamic as its rules of recognition fluctuate and change along with the practice of law-ascertainment by international law-applying authorities”, with the latter referring not only judiciary authorities but to other actors of the international community as well which implement- or not- international law.

Therefore, when exceeding the pure academic abstraction about international law, the actual, complete and- may one say- “living” international law is formed through the combination of the

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16 For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.”

17 J. Crawford, Creation of States in International Law, (Clarendon Press, 2006), at p. 102


21 J. D’ Aspremont, The Idea of Rules in the Sources of International Law, (2014), 84(1), The British Yearbook of International Law, 52, at p. 78

However, even in the case of jus cogens a form of de-centralized approach infiltrates, concerning a specific interpretation of it which identifies in its formation the belief on behalf of “legal officials (principally states) to be morally important – indeed, morally paramount.”

A. Hameed, Unravelling the Mystery of Jus Cogens in International Law,(1966), 60, American Journal of International Law, 55, at p. 58

Even if such an approach is accepted, although personally I identify jus cogens in the UN Charter, it is obvious that after the fortification of a rule as a jus cogens norm, it is imposed in a centralized and hierarchical way.

21 J. D’ Aspremont, The Idea of Rules in the Sources of International Law, (2014), 84(1), British Yearbook of International Law, 103 at p. 116
legal norms, which after being established as such, possess a vertical role over all of the international community, as well as of their interpretation and implementation at given time and space by the several and different actors of the international community, through horizontal influences.\footnote{Such “influences”, among other things, essentially determine whether international law is enforced when needed, at a given space and time and therefore keep a major part in terms of credibility of international law. Implementation is also crucial for domestic law. After all, without the capacity of implementation the “ought” and essentially the normative character of law ceases to exist. 

M.D.A. Freeman, Lloyd’s, *Introduction to Jurisprudence*, (Sweet & Maxwell, 8th Edition, 2008), at pp. 11-12

The difference of domestic compared to international law is that the latter faces much greater challenges in terms of its implementation and enforcement. For example, international norms concerning genocide did not change after the international community failed to stop the genocide in Rwanda. But who can deny that international law as a living legal system lost a great deal of its credibility because of its non-implementation when it was needed the most? And that this failure possibly influenced the way of thinking of future perpetrators of such acts?}

It is in this hybrid- vertical and horizontal- framework of international law formation, that the EU policies and mainly the EU-Turkey agreement, will be examined concerning their imprint on international law in relation to refugees: do they comply with international law, implementing it up to a satisfying extent, concerning those who need it the most, i.e. the refugees? What kind- if any- of precedent do they set? Before answering this question though, a brief reference follows to the role of the EU as a distinct actor in the international community and in the formation of international law.

**International organizations and the EU as subjects of international law:**

In the previous part the formation of international law was examined as porous and continuous and the international law structure, as hybrid, meaning as both horizontal and partially centralized. It was analyzed that international community actors, contribute into the formation of international law. The actors of international community contributing in the formation of international law are not limited only to states. International organizations and among them certainly the EU also possess such a role. This argument is derived from a double basis: the participation of non- state actors in the formation of law and the state-like nature of the EU.

Concerning the first aspect it can be traced on the variety of actors which participate in the international community\footnote{Fourth Report on State Responsibility. UN Doc. A/CN.4/517 (31 March 2001) (Professor James Crawford)} and on which international law applies. The idea of an international community exceeding states concerning its synthesis as well as its subjects, is present in a series of political and legal developments, adopted at the highest level, such as in UN organs\footnote{Additionally, the ICJ decision on the Barcelona Traction Case distinguished between obligations to the international community in general and to separate states. 


decisions.

In addition, in a series of conventions and treaties of ecumenical character the same approach is implied, such as for example in the Universal Declaration of Human Rights-UDHR-where it is ascertained that freedom, justice, and peace are founded in the rights “of all members of the human family”, in the preamble of the UN Charter, founding the UN in the name of the “peoples of the United Nations” or in the International Covenant on Civil and Political Rights-ICCPR. Little doubt there is currently, that the international community perceives itself as more


Another sub-category is comprised of UN SC Resolutions which often are adopted under Chapter VII of the UN Charter, authorizing even the use of force, which attempt to deal with threats not orientating from inter-state conflicts but which entail humanitarian concerns, upgrading them at the level of the collective security system. In this sense they are indicative of a gradual recognition not only of the fact that non-state entities are members of the international community but also of their – at least almost- equal significance to that of states. For example one may refer to the resolutions concerning Bosnia, Haiti, Somalia, E. Timor, Congo, Ivory Coast, Burundi, Cambodia, among other cases.


In addition, reference must be made to other resolutions which directly refer to the peoples, penetrating state borders and sovereignty both inflicting duties on states and indirectly attributing to peoples and individuals an international status as members of the international community. Indicatively, such resolutions can be mentioned the ones in relation to the implementation of the internal dimension of self-determination and to human development.


All these resolutions, “recognize” of the fact that the international community is comprised from a variety of actors. Also, numerous reports about human security and Responsibility to Protect, which all refer to non-state entities as subjects of internationally recognized rights as well as objects of international law, must be taken into account. This last type of documents, while it is not of legal nature sets the political guidelines and in this sense is indicative of the dominant perception about the international community. For example see:


UN GA Res. 64/291, (27 July 2010), Follow-up to paragraph 143 on human security of the 2005 World Summit Outcome,

UN GA, Follow- up to General Assembly Resolution 64/291 on human security, Report of the Secretary-General, (5 April 2012)

25 The Universal Declaration of Human Rights, Preamble

26 UN Charter, Preamble
than a community of states and gradually more as a community of the humankind.  

Critical legal and political documents which have been produced at the international level exceed the idea of a solely state-centered international community, speak in the name of humanity and declare that the international community is comprised by more than states, establishing not solely states but other actors too, as holders of rights and as subjects of international law. This variety of actors refers apart from states also to individuals, collective forms of human organization, institutions, international organizations or even-at least according to some analysts-international NGOs and private corporations.

International organizations possess an upgraded role because of their distinct legal entity, which is derived from the transfer of sovereignty from the national state to international organizations and therefore at the supranational level. In other words, through the process of the legal institutionalization of the international community.

The relationship between international organizations and international law is not unknown. It is by now acceptable that international organizations are bound by international law. Most academics agree on that, given the nature of jus cogens, of custom, the inherence of human rights, as well as because of the conventions parties of which are such organizations and of their own domestic legitimacy.

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28 After all it is the international law as a product up to some extent of inter-state relations which paved the way for the expansion of its field of authority to non-state actors as well. A. Peters, Membership in the Global Constitutional Community, in J. Klabbers, A. Peters & G. Ulfstein eds., *The Constitutionulization of International Law*, (Oxford University Press, 2009), at pp. 159-166

29 Indicatively one may refer to a similar argument presented by S. Huntington.

29 S. P. Huntington, *The Clash of Civilizations and the Remaking of World Order*, at p. 35 (Touchstone, 1996)


30 I distinguish “supranational” from “international” as through the term supranational I attempt to include the international, the transnational and the sub-national phenomena, combined at a level higher than that of national. In this sense, supranationality is qualitatively different from “internationality”, given that the primary is more indicative and inclusive of the synthesis of phenomena, which both concerning the actors from which they orientate and their manifestation transcend states and solely inter-state cooperation and institutions. Therefore, supranationality constitutes a more or less novel development, creating a new type of spacetime at the political sphere, which does not exist solely above the one of nation-states but also besides, in and through them, in a dialectic relationship. It also needs to be mentioned that supranationality is built within the framework of internationality despite the fact that it exceeds it. Supranational in this sense “begins” from the international but moves beyond it. Supranationality also signals a greater degree of impact on state sovereignty than internationality, since the latter is more or less the sum of states while supranationality both in terms of its synthesis and in terms of its formation and function attempts to create an entirety, a wholeness which qualitatively is different compared with distinct, cooperating- or not- actors.


31 K. Wells, Remedies against International Organisations, (2002), at pp. 1-2;

The EU has endorsed the same principle. For example, as the European Court of Justice held in the “Anklagemyndigheden v. Peter Michael Poulsen and Diva Navigation Corp.” case, “As a preliminary point, it must be observed, first, that the European Community must respect international law in the exercise of its power…”32 Again, in the A. Racke case, it held that “It should be noted in that respect that, as is demonstrated by the Court's judgment in Case C-286/90 Poulsen and Diva Navigation [1992] ECR I-6019, paragraph 9, the European Community must respect international law in the exercise of its powers.”33

It is in this framework that states share their law-producing capacity concerning the formation of international law with other actors such as profoundly are international organizations land among the latter, the EU.

Within the legal institutionalization of the international community the EU possesses an advanced role, since it can stand externally, in the international community as a sovereign entity, of federal type, establishing direct, primary and autonomous procedures of law-making, self-legitimization and sustainment,34 which are directly incorporated and applied within the national orders of its member states, indicating a highly developed level of institutional integration, and of statehood functions.35 It combines policies of economic, political and institutional integration and without having to continuously refer to its member-states,36 despite the rather unclear conditions concerning who is or who are, the sovereign internally, in the EU.37

As the EU legal adviser noted at the Sixth Committee of the International Law Commission, “the European Union has legal personality and is subject of international law exercising rights and bearing responsibilities.”38

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34 Characteristically, article 189 of the Treaty of Rome foresees that: “In order to carry out their task the Council and the Commission shall, in accordance with the provisions of this Treaty, make regulations, issue directives, take decisions, make recommendations or deliver opinions. A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States.”
36 That is also the icon which is shaped when taking into account the Foucauldian approach to the state as a superstructure consisted of “gradual, piecemeal, but continuous takeover by the state of a number of practices, ways of doing things, and, if you like, governmentalities.”
37 M. Foucault, The Birth of Biopolitics, translated by G. Burchell (2008), at p. 77
One way for the implementation of the EU role as subject of international law is through treaties, with international organizations and in particular the EU being signatory members.39 Not only it is not doubted that the EU can be a member to international treaties, as is by now the case with more than 1,000 treaties, encompassing a vast number of areas, but even further it is clear that the EU plays a major role in the conclusion of these treaties and the formation of international law.40

Such a role, the EU reserves for itself in relation to custom. Again, the EU legal adviser in front of the ILC held that “international community considers an organization such as the EU as also capable of contributing to the development of international law in other contexts, including the formation of customary international law.”41

There is another aspect of EU influence on international law which is related to the situation under examination and which is derived from the role of the EU within it: the fact that the majority of refugees attempt to reach and reside in EU and more particularly in EU specific member-states means that the EU policies, practically determine whether international legal norms will be implemented or not and up to what extent, in relation to the majority of those who need international law the most. In a way, the EU position concerning the refugee crisis designates up to a large extent the practical efficiency of international law, in the contemporary refugee crisis.

In addition, to its current effect it is also possible that it could set a precedent on how international law must be implemented. Given the self-assumption of the EU as an entity committed to the rule of law, international law and human rights, with a rather extended literature supporting this view, its problematic compliance to international law, could set the precedent justifying a more “flexible” interpretation and implementation of international law by other actors as well.42

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39 That is after all why the Vienna Convention on the Law of Treaties between States and International Organizations and between International Organizations, in article 2 foresees that “treaty” means an international agreement governed by international law and concluded in written form: (i) between one or more States and one or more international organizations; or (ii) between international organizations, whether that agreement is embodied in a single instrument or in two or more related instruments and whatever its particular designation” 1986 Vienna Convention on the Law of Treaties between States and International Organizations and between International Organizations, Article 2


42 Ramses Wessel seems to be making a similar implication. Wessel, Flipping the Question: The Reception of EU Law in the International Legal Order, at pp. 19-20
Last but not least, the EU policies in general and even more in particular have significant effects on its member-states and through them to international law. Concerning the issue under examination, given that states always possess the essential authority to attribute the status of refugee or not and to attribute the subsequent rights to any individual or not, EU policies influence international law through the member-states as well.

**Part 2: Analysis of the EU policy concerning the refugee crisis:**

**The political background:**

In its document of 29.9.2015, under the title “Managing the refugee crisis: immediate operational, budgetary and legal measures under the European Agenda on Migration”, the European Commission characterized the situation which was developing concerning the refugee and migration influxes as “...a test for the European Union”, emphasizing on that: “Every day, thousands of people are forced to flee their homes to escape violence and seek refuge, in their own countries or abroad. The scale of displacement is immense and, as conflicts persist, the numbers are growing. Almost 60 million people are displaced worldwide – the world has not seen so many people fleeing conflict since the Second World War.”

Behind these strong words, a “crisis” approach focusing on the exceptionality of the situation was apparent. Most of the EU member-states and the EU as a whole acceded to the atmosphere, to the mentality and eventually to the politics of crisis, which came to be interpreted in legal ways with significant consequences regarding the compliance to international law and the treatment and the rights of refugees.

It is not the first time that EU policy concerning refugees and migration has been problematic and ambivalent, both in humanitarian terms and concerning its internal cohesion. Characteristically, that was the case with the Dublin Conventions-I and II- and their implementation. Their “first host country” provision, on the one hand was proven dysfunctional because of putting too much pressure on specific states, such as Greece and Italy, while on the

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43 A. Lowe & C. Warbrick, Refugees; Investment Promotion And Protection Agreements; The International Tin Council, (1987), 36(4), British Institute of International and Comparative Law, 924, at p. 925

44 After all as it is accurately stressed: “Certainly individual rights may be established in supranational fora, but their immediate guarantor is the nation-state.”

45 L. Morris, Globalization, Migration and the Nation-State: The Path to a Post-National Europe?, (1997), 48(2), The British Journal of Sociology, 192 at p. 198


It must be noticed though that in the fore-mentioned study, the advantages of the Dublin convention are also stressed, in terms of more equal than in the past, distribution of the burden of receiving refugees among EU member-states. Greece for example is not listed among the most popular destinations for refugees or immigrants.

*Ibid*, at p. 10
other hand has been criticized concerning the respect towards international law about refugees, since “some reports of the European Council on Refugees and Exiles (ECRE) have documented that asylum seekers are sent from one EU country to the other without any one country taking responsibility for the application for asylum, the end result being refoulement to the country of persecution” resulting in the “lowest common European denominator”, concerning refugees' protection.47

Especially since the aftermath of 9/11, migration has been considered at large as a threat to “...the safety, the economic development, and the quality of life of citizens...”.48 In fact migration was becoming a matter of concern in such terms even before 9/11, due to the rise in the numbers of asylum seekers since the '70's.50

The contemporary EU approach bears the “stamp” of EU member-states governments as well as right wing and xenophobic parties. The so-called Visegrad group countries, although not

The fact however that most refugees and immigrants have to pass through these states, combined with the specific states' administrative inefficiencies, as well as stricter controls on behalf of destination states, tended to create from time to time a situation of great masses of immigrants blocked in these states. Especially in the case of Greece, the dysfunction was so severe that a halt of transfers to Greece under the Dublin convention was widely advocated.

Ibid, at p. 11

See in this direction:

ECCHR, M.S.S. Vs Belgium and Greece, no.30696/09, (January 21, 2011)

The Court held that “Regarding in particular the applicant’s transfer from Belgium to Greece, the Court held, considering that reports produced by international organisations and bodies all gave similar accounts of the practical difficulties raised by the application of the Dublin system in Greece, and the United Nations High Commissioner for Refugees had warned the Belgian Government about the situation there, that the Belgian authorities must have been aware of the deficiencies in the asylum procedure in Greece when the expulsion order against him had been issued. Belgium had initially ordered the expulsion solely on the basis of a tacit agreement by the Greek authorities, and had proceeded to enforce the measure without the Greek authorities having given any individual guarantee whatsoever, when they could easily have refused the transfer. The Belgian authorities should not simply have assumed that the applicant would be treated in conformity with the Convention standards; they should have verified how the Greek authorities applied their asylum legislation in practice; but they had not done so. There had therefore been a violation by Belgium of Article 3 (prohibition degrading treatment) of the Convention. As far as Belgium is concerned, the Court further found a violation of Article 13 (right to an effective remedy) taken together with Article 3 of the Convention because of the lack of an effective remedy against the applicant’s expulsion order. In respect of Greece, the Court found a violation of Article 13 taken in conjunction with Article 3 of the Convention because of the deficiencies in the Greek authorities’ examination of the applicant’s asylum application and the risk he faced of being removed directly or indirectly back to his country of origin without any serious examination of the merits of his application and without having had access to an effective remedy. As far as Greece is concerned, the Court further held that there had been a violation of Article 3 (prohibition of degrading treatment) of the Convention both because of the applicant’s detention conditions and because of his living conditions in Greece. Lastly, under Article 46(binding force and execution of judgments) of the Convention, the Court held that it was incumbent on Greece, without delay, to proceed with an examination of the merits of the applicant’s asylum request that met the requirements of the European Convention on Human Rights and, pending the outcome of that examination, to refrain from deporting the applicant.”

ECCHR, Press Unit, “Dublin Cases” Factsheet, (July 2015), (http://www.echr.coe.int/Documents/FS_Dublin_ENG.pdf, access. 3-4-2016)

Similar were the findings of the Court in the Mohammed V Austria, Sharifi and other V Italy and Greece and Tarakhel V Switzerland, cases.

H. Grant & J. Domokos, Dublin Regulation leaves asylum seekers with their fingers burnt, theguardian, (October 7, 2011)


G Karyiotis & S. Patrikios, at p. 43

A. Meyerstein, Retuning the Harmonization of EU Asylum Law: Exploring the Need for an EU Asylum Appellate Court, (2005), 93(5), California Law Review, 1509, at p. 1512
only them, play a leading role in the state-centered approach to securitization of the refugee crisis, calling for closed borders. In their joint statement for migration in their February the 15th, of 2016 summit in Prague, “They expressed their full support for measures adopted at the European Union level with the aim of a more effective protection of the external borders, including reinforced cooperation with third countries while repeating their negative stance on automatic permanent relocation mechanism.” Statements by the Hungarian prime minister are characteristic enough: “We Hungarians are full of fear, people in Europe are full of fear because they see that the European leaders, among them the prime ministers, are not able to control the situation…” Statements by other officials such as from the Polish or Austrian governments were not that different, especially at the aftermath of the Brussels' terrorist attacks.51

Xenophobic, right-wing populist parties took the advantage at the fastest pace of the last decades, especially since last year. Countries such as Hungary, Poland, Netherlands, Sweden, Finland, Denmark, Germany, Austria, France, Italy, Slovakia, Greece, Belgium pose some striking examples of the emergence of far-right and xenophobic if not openly fascist parties, either through significant election results or through their participation in national governments. A new map of far-right movements and parties is drawn within the EU member-states adding further pressure in favor of a state-centered, stricter approach to the refugee crisis.

One of the points all these parties and movements share is that they label refugees and immigrants as a threat, mainly in terms of terrorism, criminality and breaching of cultural homogeneity, necessitating the maximization of state security. While xenophobic and far-right parties or movements differ, the anti-immigrant and anti-refugee rhetoric, taking advantage of deeper social cleavages constitute a “standard recipe” in order to influence public discourse, towards the direction of a state-centered securitization. These two sets of conditions within the EU, indicate the reasons and the extent up to which, the EU agenda on refugee and immigration is formulated on the basis of state interests and concerns.52

51 Al Jazeera, Hungarian PM: We don't want more Muslims, (September 4, 2015)
J. Hugger, Austria threatens to send in troops to stop asylum-seekers, The Telegraph, (February 13, 2016)
Visegrad Group, Joint Statement on Migration, (February 15, 2016)
DW, Poland abandons promise to take in refugees after Brussels attacks, (23.03.2016)
M. Arens, Austria Closes its Borders to Refugees, Center for Research on Globalization, (January 26, 2016),
(http://www.globalresearch.ca/austria-closes-its-borders-to-refugees/5503754, access. 27.03. 2016)
P. Taylor, Europe's populist right targets migration after Paris attacks, Reuters, (November 14, 2015),
(http://uk.reuters.com/article/uk-france-shooting-europe-migrants-idUKKCN0T30YI20151114, access. 27.03.2016)
K. Conolly, Far right and refugee crisis pile pressure on Angela Merkel, theguardian, (March 12, 2016),
(http://www.theguardian.com/world/2016/mar/12/angela-merkel-elections-refugee-crisis-far-right, access. 27.03.2016)
The Economist, The march of Europe's little Trumps, (December 12, 2015)
N. Gutteridge, MAPPED: Shocking march of the far-right across Europe as migration fears reach fever pitch, Express, (Dec. 26, 2015)
Under current circumstances, the pre-existing fear of the “other” and the “stranger” has further intensified, concerning immigration and refugees' influxes on the bases either of terrorist threat or of a threat to standards of living of the citizens of the EU member-states. In such a framework refugees and immigrants are often depicted as “invaders” and the issue is further transferred from the level of social and economic concerns to the one of national security.

Such an approach argues in favor of strict control and minimization of refugees influxes in the EU and primarily in the states the governments of which are pioneers of the xenophobic stance or which can seal their borders. That is the core of the argument: refugees and immigrants endanger state security and therefore they should be confronted primarily as potential or even present dangers to national security, secondarily as threats to the EU as a whole and then- if at all- through the perspective of international law. The EU policy has been decided on such a political font.

Legal analysis of the EU contemporary policies:

As an initial remark it must be mentioned that the Treaty on the Functioning of the EU, in article 78 endorses the Geneva Convention and the additional protocol within the EU legal order. In the same article, the EU is committed into the principle of non-refoulement.

The contemporary EU policy on the refugee and immigration crisis was initially set out in the EU “Managing the refugee crisis” document. It described the main goals of the EU policy as following: “The European Agenda for Migration in May set out the need for a comprehensive approach to migration management: tackling the immediate crisis, but also action inside and beyond the EU to reshape how we fulfill our obligations towards those in need of protection, how to help the most affected Member States, to respect EU and international obligations on asylum, to return

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54 T. Faist, at p. 11
56 However, in directive 2013/33/EU, a contradiction between the directive and the Geneva Convention it is supposed to comply with, becomes apparent. The directive in article 8 about detention introduces a series of exceptions to the absolute prohibition according to the Geneva Convention concerning detention on the grounds of illegal entry or presence to safe states territories. In article 10, even imprisonment is legitimised, under certain conditions. The origins of the contemporary EU policies existed already in the cautious and not always efficient compliance of the EU to international law.

Directive 2013/33/EU of the EU Parliament: “Detention of applicants shall take place, as a rule, in specialised detention facilities. Where a Member State cannot provide accommodation in a specialised detention facility and is obliged to resort to prison accommodation, the detained applicant shall be kept separately from ordinary prisoners and the detention conditions provided for in this Directive shall apply.”

Convention Relating to the Status of Refugees, Article 31, “The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.”
those who do not need protection to their home countries, to manage our external borders, and to
direct the root causes motivating people to embark on perilous journeys to Europe in the first
place, as well as looking at Europe's long term need for legal migration.”

While humanitarian responsibilities and internal EU solidarity among its member states
were invoked, a worrying contradiction to these imperatives was incorporated: the provision that
only “…160,000 people in clear need of international protection from the Member States most
affected to other EU Member States…” will be relocated.

The relocation of only 160,000 refugees and asylum seekers, throughout EU member-states,
apart from first entrance states, is highly problematic under international law. Although it remains a
right of each state to admit or not an individual in its territory, the incursion of a quantitative
criterion and limit is ethically ambivalent- to say the least- and legally unjustified.

A basic principle governing international law approach to the attribution of the refugee
status and the rights which flow out of this status is the individualization of the refugee, on the basis
of international law. According to this principle of international law, an individual is attributed or
not the status of refugee and specific rights on the basis of an individual assessment and under the
qualitative criteria which are determined by international law.

Contrary to that, the fore-mentioned EU policy, introduces different, quantitative criteria
under which some refugees- and in fact a small percentage of them- might potentially and in
practice enjoy better conditions of life and fulfillment of heir rights than the rest. The EU instead of
following a policy based on the fundamental legal principles of the equal treatment and of the
individualization of each refugee application, chose to adopt an “arithmetical” approach on the basis
of non-public criteria.

Although, the EU does not through this provision contradicts typically and directly a
specific Geneva convention article, it violates the “spirit” and the imperatives of international law,
interpreting and implementing them in ways which practically deteriorate the already vulnerable
position of refugees and the fulfillment of their rights. In a way and concerning the setting of a legal
precident this could be even more dangerous than a clear violation of international law.

Parenthetically and although it is directly linked to the theme of this paper, it cannot be
overlooked that further breaches to legitimacy can be identified, even under EU own law. Under
nationals who are long-term residents it is foreseen that “the legal status of third-country nationals
should be approximated to that of Member States' nationals and ... a person who has resided legally
in a Member State for a period of time to be determined and who holds a long-term residence

57 EU Commission, Managing the refugee crisis
58 S. Akram,Palestinian Refugees and Their Legal Status: Rights, Politics, and Implications for a Just Solution, (2002), 31(3), Journal of Palestine Studies, 36, at p.36
permit should be granted in that Member State a set of uniform rights which are as near as possible to those enjoyed by citizens of the European Union.”

A quantitative limit such as the one of 160,000 refugees concerning relocation regardless of the potential granting of asylum in a first entrance EU member-state and the subsequent long term, residence is contradictory to the fore-mentioned provision.

Apart from the fore-mentioned directive, another one is indirectly but profoundly breached. The Family Reunification Directive determines that “To protect the family and establish or preserve family life, the material conditions for exercising the right to family reunification should be determined on the basis of common criteria”, as well as that “Special attention should be paid to the situation of refugees on account of the reasons which obliged them to flee their country and prevent them from leading a normal family life there. More favourable conditions should therefore be laid down for the exercise of their right to family reunification.”

Again, the imposition of the 160,000 refugees limit sets the framework or in a way attempts to legitimize the potential violation of the directive. The same findings orientate concerning the rest of the articles of the directive, further determining refugees' reunification.

In addition, in the same document- as well as in the agreement with Turkey- another cause of concern: it is foreseen that “Only national authorities can set up (with the support of EU funding) and manage well-functioning reception infrastructures, provide the direction and the link with key players such as local authorities, social services, law enforcement and the managers of reception facilities.”

The administrative burden is maximized concerning the countries of first entrance, while the rest take on the responsibility to provide help on a more or less voluntary basis but, most important, from a safe distance. Due to that, extended delays concerning the assessment and the response to the refugees' claims take place, together with highly problematic standard livings in refugee camps, deteriorating both their residence and the exercise of their rights.

The EU, therefore and in relation to the fore-mentioned provision, seems willing to compromise its responsibilities under international as well as under its own law, violating also the provisions of the Geneva convention which attributed to the refugees the “migration choice”. On the other hand, this same provision “loads” most of the burden on specific member states and more


The directive in article 3 contains a provision that “This Directive does not apply to third-country nationals who (d) are refugees or have applied for recognition as refugees and whose application has not yet given rise to a final decision;” In this sense and given that even after the potential granting of asylum by an EU member-state, refugees will not have the right to relocate, there is still violation of EU own law.


specifically on the ones which cannot close their borders, such as Greece, widening the chasm within the EU.

The European agenda was followed by the EU-Turkey agreement after two EU heads of states or governments summits, with the conclusive one- up to date- being that of March the 18th of 2016. An evaluation of the agreement is disappointing concerning the fulfillment of EU responsibilities under international law.

Some of its controversial provisions are that: “All new irregular migrants crossing from Turkey into Greek islands as from 20 March 2016 will be returned to Turkey. This will take place in full accordance with EU and international law, thus excluding any kind of collective expulsion. All migrants will be protected in accordance with the relevant international standards and in respect of the principle of non-refoulement. It will be a temporary and extraordinary measure which is necessary to end the human suffering and restore public order...For every Syrian being returned to Turkey from Greek islands, another Syrian will be resettled from Turkey to the EU taking into account the UN Vulnerability Criteria. A mechanism will be established, with the assistance of the Commission, EU agencies and other Member States, as well as the UNHCR, to ensure that this principle will be implemented as from the same day the returns start. Priority will be given to migrants who have not previously entered or tried to enter the EU irregularly...Turkey will take any necessary measures to prevent new sea or land routes for illegal migration opening from Turkey to the EU, and will cooperate with neighboring states as well as the EU to this effect.”

The agreement met fierce and well sustained criticism in terms of the respect of the EU to international, as well as its own law. The point which refers to the return of all new irregular migrants crossing from Turkey into Greek islands seems to imply a collective expulsion, violating EU Charter and the ECHR. The United Nations High Commissioner for Refugees has already expressed his deep concern over the agreement, concerning its legitimacy under both international and European law, exactly because of this point.

While the rest of this provision attempts to ease the fear about collective expulsion, it does so only under the pre-condition that the Greek administration will be proven capable of dealing with the mass of applications for asylum. However, both the history of the Greek administrative capacities and the burden of the current influx, despite the promises for technical help on behalf of the EU create conditions for long delays and poor living conditions which is the case up to now. Even worse, the specific provision seems to imply what it does not clearly say, meaning the collective expulsion, as an at least acceptable behavior, to which the EU could maybe turn a blind

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62 European Council, EU-Turkey statement, 18 March 2016,
64 UNHCR, UNHCR’s reaction to Statement of the EU Heads of State and Government of Turkey, 7 March, (March 8th, 2016), (http://www.unhcr.org/56de9e176.html, access. 28.03.2016)
eye.

In the same point, Turkey is recognized as a safe third country, meaning as “...a non-EU
country where an asylum-seeker can apply for asylum and be granted access to asylum procedures
and reception conditions in line with international and EU law.”65

According to article 33 of the Geneva Convention, “No Contracting State shall expel or
return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life
or freedom would be threatened on account of his race, religion, nationality, membership of a
particular social group or political opinion.”66

According to article 38 of the of the EU Asylum Procedures Directive, the standards for a
third country to be recognized as safe are that “ life and liberty shall not be threatened on account of
race, religion, nationality, membership of a particular social group or political opinion; there shall
be no risk of serious harm -i.e. death penalty; torture or inhuman or degrading treatment; or a
serious threat to the applicant’s life due to indiscriminate violence in situations of conflict; the
principle of non-refoulement in accordance with the Geneva Convention shall be respected; and the
possibility shall exist for the applicant to claim refugee status and to receive protection in
accordance with the Geneva Convention.”

In paragraph 2(c) it is also foreseen that “The application of the safe third country concept
shall be subject to rules laid down in national law, including:rules in accordance with international
law, allowing an individual examination of whether the third country concerned is safe for a
particular applicant which, as a minimum, shall permit the applicant to challenge the application of
the safe third country concept on the grounds that the third country is not safe in his or her
particular circumstances. The applicant shall also be allowed to challenge the existence of a
connection between him or her and the third country in accordance with point (a).”67

However and contrary to the recognition of Turkey as a safe third country, as Peers and
Roman comment: “First, Turkey ratified the 1951 Geneva Convention and its 1967 Protocol, but
maintains a geographical limitation for non-European asylum-seekers, thus recognizing refugees
originating only from Europe (i.e. from countries which are members of the Council of Europe).
The geographical limitation provides the first barrier to accessing asylum in the country. Moreover,
Syrians represent a particular case. They were at first received as ‘guests’ and then subject to a
temporary protection regime, formalised by a Regulation on Temporary Protection only in October

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66 Convention Relating to the Status of Refugees, Article 33
AND OF THE COUNCIL of 26 June 2013 on common procedures for granting and withdrawing international
protection (recast), Article 38, (29.6.2013)
The basic idea behind the temporary protection regime is to host Syrians until the conflict is over and then possibly let them return to their country of origin. As such, Syrians have a right to reside in the country but are denied the prospect of a long-term legal integration. They have access to limited rights compared to asylum-seekers in the ‘normal’ procedure, in particular as concerns access to education for children and access to employment. Secondly, Turkey should respect the principle of non-refoulement, a prohibition on returning a person to a place where he or she faces a risk of persecution, torture, or inhuman or degrading treatment. However, several reports suggest that Turkey has engaged in refoulement and push-back practices throughout the years 1990s and 2000s. Thirdly, in Turkey asylum-seekers and migrants in general, face a number of obstacles which may increase their risk of serious harm. In particular, Turkey has a record of treating asylum-seekers and refugees harshly in detention: episodes of torture or inhuman or degrading treatment have been reported by NGOs...and condemned by the ECtHR in a series of judgments.

Serious allegations by refugees concerning their treatment by Turkish authorities cannot be simply overlooked. Apart from the provisions of international law, further notice must be made in relation to EU own law. In paragraph 42 of its directive Directive 2013/32/EU of the European Parliament and of the Council it held that “The designation of a third country as a safe country of origin for the purposes of this Directive cannot establish an absolute guarantee of safety for nationals of that country. By its very nature, the assessment underlying the designation can only take into account the general civil, legal and political circumstances in that country and whether actors of persecution, torture or inhuman or degrading treatment or punishment are subject to sanction in practice when found liable in that country.”

In addition and despite the even more serious concerns which have been raised following the attempted coup in Turkey, the EU is persistent in treating Turkey as a safe third country, for profound political reasons. Therefore, on such a basis the attribution of the status of safe third country to Turkey is unjustified. Contrary to the Geneva Convention, Turkey- as well as Greece and other EU member states- have detained refugees for the sole reason that they are refugees and are forced to cross borders illegally.

The distinction between legal and illegal arrivals- without clearly excluding refugees-raises
suspicions about the denial to refugees of their rights on the basis of a possible illegal entrance to
the host- country, despite the fact that this must not be a reason limiting their rights as refugees,
according to international treaties.72

The other point of the agreement, foreseeing that “For every Syrian being returned to Turkey
from Greek islands, another Syrian will be resettled from Turkey to the EU taking into account the
UN Vulnerability Criteria” is equally controversial. The criteria for such a trade- off are -to say the
least- vague. It is not clear under what criteria some refugees will return to Turkey, while others will
remain in Greece or even further travel to their desired destinations, such as Germany.

Therefore instead of equality under international law, unequal treatment is established,
ethico- political issues emerge as well as- and even worse- a black economy. Even worse, the
principle of non- refoulement is in fact and in practice violated, given the status of Turkey, which to
say the least raises serious concerns in terms of its status as a safe third country.

As for the fore-mentioned trade- off, it will take place solely between Greece and Turkey. In
this sense on the one hand refugees from Syria who were unlucky and found themselves for
example in Lebanon are arbitrarily and contrary to international law excluded from the possibility to
be relocated into the EU, contrary to their co- patriots. On the other hand and given that no other
obligatory provisions are foreseen, the trade- off between EU and Turkey is limited in fact mainly
between Greece and Turkey. Again, most of the administrative burden as well as of the refugee and
immigration influxes which is directed towards the EU is contained within Greece, in an unequal
way in relation to other EU member- states, compromising the fulfillment of international legal
standards.73

Last but not least, the same agreement differentiates between the refugees arriving up to the
20th of March of 2016 and the ones after that date. Where is this criterion based though?No change
in the conditions on the ground generating the refugee influxes took place after that date. It is again
an arbitrary in legal terms decision which practically creates different categories of refugees, with
some of them potentially finding themselves at a better position than the rest, simply because they

72 C. M. Peter. Rights and Duties of Refugees under Municipal Law in Tanzania: Examining a Proposed New

73 The EU data speak for themselves: “The number of people arriving irregularly to the EU from Turkey is still
high for this period of the year when winter conditions were expected to contribute to a decrease in the number of
arrivals. More specifically, in the reporting period (i.e. from 1 February to 2 March):The total number of irregular
migrants who have reached the EU by sea and land (i.e. via Greece and Bulgaria) was 56 887 until 29 February. Most of
them i.e. 56 335 or 99% crossed the Aegean Sea to the Greek islands. The daily average of irregular crossings to Greece
was 1 943 until 29 February, 19 to Bulgaria and the total was 1 962. On a weekly basis, irregular arrivals to Greece
were on average 13 358..The total numbers of irregular arrivals from Turkey to Greece in September, October,
November, December 2015, January and February 2016 were respectively 147 639, 214 792, 154 381, 104 399, 61 602
and 56 335. For the same months the corresponding daily averages were 4 921 persons, 6 929,5 146, 3 368, 1 987 and 1
943.”

EU Commission, European Union Preparatory Acts, REPORT FROM THE COMMISSION TO THE
EUROPEAN PARLIAMENT AND THE COUNCIL EU-Turkey Joint Action Plan - Third implementation report,EU:
COM(2016) 144 Celex No. 516DC0144, (February 10, 2016)
were lucky enough to leave their countries earlier.

**Conclusions:**

Even before the contemporary crisis, there were indications that the immigration and refugees' influxes were already confronted over time by the EU rather through national state security perspective than under international law standards, in controversial under international law terms. Apart from some controversial provisions of Dublin conventions, one could refer to the opt-outs of EU member-states from the conventions themselves. In the contemporary crisis, the same type of attitude by member-states reached the level of a further breach to the righteous core of the EU: the Schengen treaty.

The prevalence of national state security concerns has been projected on the EU decisions regarding the current crisis, having serious implications on the extent of the EU compliance to international law. What the EU refugee policy in the contemporary crisis does is to violate the principles and the spirit of international law.

On the one hand, EU policy reverses the legal precedent of the individualization of the refugee, according to international law, as well as EU law, through the imposition of arbitrary quantitatively and geographically defined criteria, leading to the division of refugees in groups which face different treatment. What should be considered as an “anomaly” in international legal and humanitarian terms and from the prism of the lack of protection a person who is not protected by his or her nationality, is now considered as an anomaly from the prism of national security which is supposedly threatened by refugees and immigrants.

On the other hand, even where there is no direct violation of international law and of its principles, the whole concept of EU policy leads to procedures which are slow, overlapping, confusing and degrading of refugees in terms of their living conditions and subsequently human dignity. Contrary to what the EU itself had in the past attempted to confront, namely risk to rights instead of actual violations, now the EU policies both violate rights and put them at risk. In this sense EU policies actually and potentially violate international law concerning refugees. Even when

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76 S. Akram, Palestinian Refugees and Their Legal Status: Rights, Politics, and Implications for a Just Solution, (2002), 31(3), *Journal of Palestine Studies*, 36, at p.36
77 EU Parliament & EU Council, REGULATION (EU) No 604/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), Official Journal of the European Union, (29.6.2013), para. 19, article 5
not directly, they are implied and indirectly inflicted on refugees' rights and international law.

There is another potential consequence though: the EU sets up to some extent a precedent concerning the interpretation of international law on this topic. The EU has presented itself as a force committed to the rule of law and human rights. It is characteristic that in article 1a of the Lisbon Treaty provides that “The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.”80

In the same treaty, in article 2, the EU drew its approach to the world as focusing the promotion of peace, of EU values, “... security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter.”81 The Treaty on EU, in article 49 establishes that “Any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union”.82

EU is profoundly self-presented as a global beacon of human rights and democracy,83 within the greater framework of human security.84 That is also how a part of the rest of the international community up to a significant extent comprehends the EU.85 By adopting such a position and in a rather convincing internationally way, the EU accepts a great deal of responsibility. When it adopts a policy which distorts the principles of international law and while it is true that EU refugee policy cannot directly alter international law and more specifically the Geneva Convention, in a way and up to some extent could potentially “legitimize” similar interpretations and implementations of international law by other actors- states or international organizations.

There is a bleak reference to the EU ethical and value-based stance: “...the historical problem of the EU lies neither in the rigidity of its mission nor in its having become stale or exhausted but in an abiding failure to treat seriously enough the development of a deep and distinctive purpose and set of guiding principles.”86 The latest EU policies on the refugee crisis

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80 EU Lisbon Treaty, Article 1a
81 Ibid, Article 2
82 Treaty on the European Union, article 49
83 However, it is also true that the EU has been criticized for a double-standard approach differentiating between its calls concerning human rights towards non EU member states and EU member states, with the latter “enjoying” up to some extent a hands-off approach by the EU.
84 G DeBurca, The Road Not Taken: The European Union as a Global Human Rights Actor; at p. 682
86 G DeBurca, The Road Not Taken: The European Union as a Global Human Rights Actor; at p. 649
87 N. Walker, The Philosophy of European Union Law, in A. Arnulf & D. Chalmers, The Oxford Handbook of
unfortunately seem to confirm such allegations.