NORMATIVE POWER EUROPE AND MIGRATION: COOPERATION WITH THIRD COUNTRIES

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ABSTRACT

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After the Cold War, scholars have focused on the external identity of the European Union where several conceptualizations have been added in the literature. One of the concepts is Normative Power Europe. The NPE means that the Union is able to change the actions of other actors by using 'ideas' that are based on norms and values. According to the definition, the EU acts in line with norms and values as well. Nevertheless, empirical studies related to the NPE have demonstrated that this conceptualization might fall short. Particularly, in the case of migration, the shortcomings of the Union have been visible. However, the cooperation agreements with third countries have received little attention within the NPE literature. This thesis aims to give answers to the question of whether the cooperation agreements with third countries on the issue of migration damage the NPE or not and if so, how. This thesis provides two different cases where the normativity is examined through the agreements between the EU and Turkey, and the agreements between Italy and Libya. The thesis concludes that the NPE has been damaged due to the cooperation agreements with third countries. The rights of migrants, Conventions, and Directives are violated in order to secure the external borders of the Union with the help of undemocratic regimes. The findings of this study also support the view that norms and interests function differently, therefore, these should be separated from each other.

ÖZET

NORMATIF GÜÇ AVRUPA VE GÖÇ: ÜÇÜNCÜ ÜLKELERLE İŞBIRLIĞI

ZEYNEP NUR SARI

AVRUPA ÇALIŞMALARI YÜKSEK LİSANS TEZİ, AĞUSTOS 2020

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Anahtar Kelimeler: AB, Normatif Güç, Göç, Türkiye, İtalya, Libya

Soğuk Savaş sonrasında akademisyenler, literatüre çeşitli kavramsallaştırmaların eklendiği Avrupa Birliği'nin dış kimliği konusuna odaklandılar. Bu kavramlardan biri Normatif Güç Avrupa olmuştur. Normatif Güç Avrupa, Avrupa Birliği'nin, normlardan ve değerlerden oluşan fikirleri kullanarak diğer aktörlerin hareketlerini değiştirebilmesi demektir. Tanımlamaya göre, Avrupa Birliği de normlar ve değerler doğrultusunda hareket etmektedir. Lakin, Normatif Güç Avrupa ile ilgili ampirik çalışmalar bu kavramsallaştırmanın yetersiz kalabileceğini göstermiştir. Özellikle göç konusunda bu yetersizlikler belirgin hale gelmiştir. Fakat üçüncü ülkelerle yapılan iş birliği anlaşmaları Normatif Güç Avrupa literatüründe çok az ilgi görmüştür. Bu tez, göç konusunda üçüncü ülkelerle iş birliği anlaşmalarının Normatif Güç Avrupa'ya zarar verip vermediğini, veriyorsa nasıl sorusuna cevap vermeyi amaçlamaktadır. Bu tez, normatifliği AB ile Türkiye arasındaki anlaşmalar ve İtalya ile Libya arasındaki anlaşmalar aracılığıyla inceleyerek iki farklı vaka çalışması sunmaktadır. Bu çalışma, üçüncü ülkelerle yapılan iş birliği anlaşmaları nedeniyle Normatif Güç Avrupa'nın zarar gördüğü sonucuna varmaktadır. Demokratik olmayan rejimlerin yardımıyla AB'nin dış sınırlarını güvence altına almak için göçmenlerin hakları, Sözleşmeler ve Yönergeler ihlal edilmektedir. Bu çalışmanın bulguları, normların ve çıkarların farklı işlediği, dolayısıyla bunların birbirinden ayrılması gerektiği görüşünü de desteklemektedir.

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I would have loved to spend my last semester on campus with my friends and write my thesis in the library. But COVID-19 has changed our daily habits. During this period, we continued our education online. We sometimes worried about the health conditions of our loved ones. We still haven't been able to return to 'normal'. However, during the extraordinary global pandemic, I managed to write and successfully defend my thesis.

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In Memory of Migrants who Lost Their Lives

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ACP African, Caribbean and Pacific states 15

CAMMS Common Agendas on Migration and Mobility 25

CFSP Common Foreign and Security Policy 10

CSDP Common Security and Defence Policy 26

ECtHR European Court of Human Rights 47

EEC European Economic Community 19

EFTA European Free Trade Association 15

ENP European Neighborhood Policy 19

EP European Parliament 3

EU European Union 2

FRONTEX European Agency for the Management of Operational Cooperation at the External Borders 23

IOM International Organization for Migration 22

ISIL Islamic State of Iraq and the Levant 28

JHA Justice and Home Affairs 19

MENA Middle East and North Africa 52

NATO North Atlantic Treaty Organization 6

NGO Non-governmental Organization 35

NPE Normative Power Europe 4

SAR Search and Rescue 57

SEA Single European Act 19

TCN Third-country National 30

TEU Treaty on European Union 37

TNC Transitional National Council 54

UN United Nations 10

UNHCR United Nations High Commissioner for Refugees 31

USA United States of America 6

USSR Union of Soviet Socialist Republics 1

1. INTRODUCTION

The international migration issue has become visible since the 1990s, with systemic changes such as the collapse of the Union of Soviet Socialist Republics (USSR). On top of that, the gap between the Global North and Global South, unemployment, lack of sufficient resources, climate change, and rising instability in certain regions such as the Middle East have 'pushed' people to search better living conditions. To be more precise, in 1990, the total number of international migrants was 153 million (United Nations 2019). As of 2019, it is estimated that more than 270 million people have left their countries of origin. If it is compared to the total world population, these people are the minority by reaching 3.5 percent (IOM 2019).

The prosperity and stability in the Global North have attracted a considerable amount of people. Furthermore, these countries provide more rights, liberties, and protection. As a result, currently, almost 30 percent of international migrants have been residing in Europe which makes the continent the most migrant-received place in the world (United Nations 2019). However, prior to this date, the migration patterns in Europe have changed over time. During the 1960s and 1970s, countries such as West Germany tried to compensate their workforce deficit by welcoming guest workers from Turkey as well as Greece, Italy, Spain, and Portugal (Ellermann 2013). These recruitment processes and, indeed the migration flows were planned by the related Ministries of sending and receiving states. Besides, it demonstrates that the internal mobility among the European states was common due to the job opportunities in neighboring countries. In other words, the Mediterranean countries' nationals decided to leave their countries to work in other European states. Nevertheless, the Yugoslav Wars and the demise of the Berlin Wall have transformed the migration structure. People affected by the civil war, deteriorated economic conditions, or restrictions on rights and liberties have fled to the nearest countries in the last days of 1989 and early years of the 1990s.

During this period, in contrast to the previous years, the Mediterranean states have become receiving countries. For example, the collapse of the Albanian economy in the 1990s had an impact on Greece and Italy in which massive flows and illegal

border crossings were seen at these countries' borders (Labrianidis and Lyberaki 2004). It was estimated that 200.000 Albanians went to Italy while more than 500.000 Albanians preferred Greece (Labrianidis and Lyberaki 2004). The reasons for this mobilization were geographical proximity and legal employment options as well as the growing informal economy in both countries. Migrants including illegally staying people have fulfilled the demand of the Greek and Italian job markets (Ambrosini 2018), however, the global financial crisis of 2008 and the Eurozone crisis led economies to shrink. The Mediterranean countries were no longer able to welcome economic migrants. In fact, the number of issued work permits to non-EU nationals in Italy dropped from 360.000 to 85.000 within the period of 2010-2013 (Talani 2019). On top of that, the Arab Spring in 2011 and the events afterward have made the Mediterranean one of the most debated regions due to the massive flows of people to the borders of the 'more prosperous and secure' European countries.

In Libya and Syria, the demonstrations turned into a civil war in which people have escaped from violence in order to survive. Syrians have used transit countries by using boats through the Aegean Sea to reach Greece or by foot through the Balkan route to reach Germany. It should be mentioned that Afghans, Iranians, Iraqis have joined this massive mobilization, nonetheless, their numbers were relatively low compared to Syrians. In the case of Libya, both Libyan nationals and Sub-Saharan migrants have acted together to reach European soil. The only way to do this is to cross the maritime border and to land in Malta or the closest Italian islands such as Lampedusa.

As seen, in terms of nationalities, these migrants are from different countries and have different reasons to leave their countries of origin or transit. Some of them want to find a job and some of them seeking protection because of the threats they face. However, these mix flows where asylum seekers, refugees, and economic migrants travel together, lead to a situation where all of them are treated as they are the same. As a result, it is likely that some of them suffer from not having the essential rights for their special situations.

In 2015, this migration 'crisis' reached its zenith point. 1.046.599 people managed to cross the external borders of the European Union (EU) illegally (IOM 2016). While 80 percent of these migrants departed from Turkey to Greece by using the Eastern Mediterranean route, the Central Mediterranean route which refers to the departures from the North African countries to Italy was chosen by 10 percent of the migrants. In the same year, the estimated number of missing people and death in the Mediterranean was 4.054 (Statista 2020) which made the Mediterranean a graveyard.

The situation of the migrants who landed in the Greek and Italian islands has worsened due to the overcrowding, the lack of proper shelter and unhygienic environment. The duration of the examination of asylum applications has taken a long time because of the unexpected influx of migrants. While people have been waiting for their examination results, the new arrivals have increased the pressure on Greece and Italy. This is because, the Dublin Regulation states that the first entry points have to examine the asylum claims, therefore, both countries are responsible for this procedure. On the other hand, the Geneva Convention of 1951 clearly sets the rights of the refugees, and as signatories of the Convention, these states have to provide these rights. Nevertheless, the Greek and Italian officials have not been able to implement the Dublin Regulation and the Geneva Convention properly. Therefore, a relocation system as an illustration of solidarity among the EU members was proposed, however, it failed.

On 16 July 2019, the current President of the European Commission, Ursula von Der Leyen gave a speech in the European Parliament (EP), specifying that the EU needed to revise its migration policies and the solidarity problem had to be solved to assist the most affected Member States. She also highlighted the importance of rules and values:

> "Honourable Members,
>
> The Rule of Law is universal. It applies to all. In the last five years, more than 17,000 people have drowned in the Mediterranean, which has become one of the deadliest borders in the world. At sea there is the duty to save lives and in our Treaties and conventions there is the legal and moral duty to respect the dignity of every human being.
>
> The European Union *can* and *must* [emphasizes added] defend these values. The European Union needs humane borders. We must save but saving alone is not enough. We must reduce irregular migration, we must fight smugglers and traffickers – it is organised crime – we must preserve the right to asylum and improve the situation of refugees, for example through humanitarian corridors in close cooperation with the UNHCR. We need empathy and decisive action" (von Der Leyen 2019).

As seen in the statement, she addressed the shortcomings of the EU on migration and responsibilities of the Member States and the Union regarding the legally binding documents and morality. This part is essential to comprehend how the EU is defined. According to von Der Leyen, the EU holds a 'power' to fulfill its obligations in order to protect its values and norms. This 'ability' might constitute a distinct

characteristic in terms of what kind of power the EU is.

Even though the EU is a peace project and is defined based on norms such as democracy, the rule of law, and human rights, in the case of migration, its policies at the supranational level are controversial. The Commission has concluded formal or informal agreements with transit and sending countries to prevent illegal migration and to regulate the legal ways of entering the EU territory. In fact, even an economic cooperation agreement might have a readmission clause. The same method has been followed by the Member States as well. Therefore, the question which this thesis asks is whether, and if so how, EU cooperation agreements with third countries on the issue of migration damages the discourse on the Normative Power Europe (NPE)? In this thesis, I will argue that the content and the implementation of the cooperation agreements have caused significant human rights violations. In particular, the externalization of migration governance through cooperation agreements hinders the non-refoulment principle which means that people cannot be sent back to a country in which they might face ill-treatment and be threatened. Countries have a responsibility to protect these people in line with the agreements, conventions that are signed. Nevertheless, in order to remove illegal migrants from the EU territory, the Commission and member states have cooperated with authoritarian regimes where repression and undemocratic decisions have been observed. In short, the NPE discourse has been damaged due to the fact that the EU institutions and member states do not implement the Conventions and Directives properly and neglect norms such as democracy, human rights, and rule of law.

I choose two case studies to illustrate, how cooperation agreements decrease the normative image of the Union. To demonstrate this, I will examine the migration agreements between the EU and Turkey. The EU-Turkey Statement of 2016 is an important example of a cooperation agreement to reduce the massive influx of people. Nonetheless, it is a problematic document regarding its content and the implementation stage. Following this, I will focus on the cooperation schemes between Italy and Libya to show that similar problems can also be detected in the agreements between the Member States and third countries. The Italian case is selected due to the fact that the closure of the Eastern Mediterranean Route because of the EU-Turkey 'deal' has led to a diversification of migration routes where the Central Mediterranean Route has become a gateway point. Another reason for this choice is that Greece and Italy are the most affected two Member States by the sea arrivals. Both countries have been severely affected by the global and Eurozone crises. The economic problems have led to the adoption of a discourse in which

migrants[1] are seen as scapegoats, specifically the ones who work in the informal economy. Moreover, their previous migration flows are similar. These Member States were sending countries during the 1970s, nonetheless, the pattern has changed in the 1990s. Within the scope of the thesis, the Commission plays different roles.In the case of Greece/the Eastern Mediterranean Route, the Commission has been an active actor to reduce the number of illegal border crossings. However, in the case of Italy/the Central Mediterranean Route, the Commission has kept in the background and a Member State has undertaken the leading role to manage the migration flows. However, the outcomes of the cooperation agreements in both cases are very similar.

In the next chapter, the literature on Normative Power Europe and the literature on external migration governance will be presented. This chapter will constitute the basis of the main argument and it will also provide the theoretical framework of the thesis.

In the third chapter, a general outlook on EU migration policies will be introduced. The main developments will be analyzed through EU official documents. The aim is to comprehend how the Union approaches the migration issue and what the EU's 'written' objectives are. The evolution of the migration policies and related official documents are essential to capture the notion on the externalization of migration governance.

In the fourth and fifth chapters, I will examine the cases individually. The content of the agreements and their outcomes will be discussed. In terms of the time period of the analysis, the agreements after 1999 are selected due to the fact that prior to that date, the Commission was not able to negotiate migration-related issues with non-EU countries. The thesis will conclude by a discussion of recent developments.

[1]In this thesis, I will use the word 'migrants' including illegal migrants. This is because, due to the complexity of the mix flows, it is hard to distinguish an asylum seeker from a refugee or an economic migrant. Moreover, 'illegal' migrants could enter the territory of a country by using legal ways, however their decision to stay might make them illegal.

2. NORMATIVE POWER EUROPE AND EXTERNALIZATION OF MIGRATION GOVERNANCE

The question of how an actor is described within the framework of 'power' has several answers. Some actors might be considered as hard powers due to their military capabilities and some actors become prominent as soft powers because of their abilities to influence others. However, the emergence of new actors such as the EU, which is beyond the states, has boosted this study field and scholars have developed new types of power.

This chapter will focus on Normative Power Europe literature. The aim is to understand how the Union constructs an identity based on norms and values to distinguish itself from other actors. Furthermore, the literature about the externalization of migration governance will be presented in order to see to what extent the EU maintains its normative power when outsourcing the migration flows.

2.1 Normative Power Europe

In the early years of the 1970s, the European Community completed its first enlargement. Adding the United Kingdom into the equation, the Community was seen as potential power. Due to the new members, the Community was able to alter its structure from a customs union to "a political and economic union" (Duchêne 1973). However, the Community did not have a military force or capabilities, compared to other powers such as the United States of America (USA) and the Soviet Union. This is because, after the world wars, European countries suffered losses in their military power, and their security needs were supplied mainly by the North Atlantic Treaty Organization (NATO). Furthermore, the European integration process has started on the economy which in turn became the focal point of the Community. Thus, during the détente era, Duchêne labeled the Community as a civilian

power that did not rest on military capabilities but could use "the civilian forms of influence and action"(1973).

Within the context of the Cold War, whether actors possessed military force or not was essential to distinguish them in accordance with civilian-military power axes. Nonetheless, the systemic changes after the Cold War have paved the way for new actors and new power conceptualizations regarding what kind of actor the European Union is.

One of the most debated conceptualizations was made by Ian Manners in 2002. He argued that due to the EU's unique structure, the old concepts of power such as military power did not fit with the case of the EU. Instead, he argued, beyond the previous labels, the EU could be considered as a normative power. He defined normative power as the "ability to shape conceptions of 'normal' in international relations" (Manners 2002, 239). Thus, the definition of power in that concept did not rest on the economy or military capabilities but on the power of ideas (Diez 2005). However, it does not mean that normative power is the opposite of military power (Diez and Manners 2007). It was highlighted that an actor might be deterrent in terms of military capabilities, yet it chooses not to rely on them and prefers its norms to change the other actors' way of thinking (Diez and Manners 2007). On top of that, scholars did not reject the concept of civilian power. In fact, it was categorized under the concept of normative power (Diez 2005). This is because both concepts place emphasis on being influential. This feature is also shared by the concept of soft power. Nevertheless, Diez and Manners have claimed that soft power is formalized through the interests of the countries and it becomes a tool for foreign policy. On the other hand, normative power is a theoretical concept in which norms are transferred without being subject to foreign policy objectives (Diez and Manners 2007). In short, normative power is not dependent on the interests of the actors.

Manners highlighted five core EU norms which are peace, liberty, democracy, rule of law and human rights and fundamental freedoms (Manners 2002). These core norms provided an identity for Western European countries to differentiate themselves from the Eastern countries during the cold war era. After the collapse of the Soviet Union, these norms became fundamental criteria to be accepted as a member of the EU, with the help of the Copenhagen Summit of 1993 (2002). In other words, these norms have been institutionalized through legally binding documents in the EU.

According to Manners, in contrast to the traditional empire logic, the EU could transfer its norms in a different way because of its historical past, *sui generis* structure, and its commitment to international law. In order to address the question of

how norms were transferred to other countries, he offered several procedures such as contagion, transference, and overt diffusion. Furthermore, in the article, Manners gave an example to clarify his argument by focusing on the worldwide abolition of the death penalty. Despite the fact that the EU would not gain any benefits, the Union insisted on this issue with reference to human rights in its relations with third countries. In fact, although the EU might have been damaged due to loss of economic relations with certain countries, it kept that policy and affected some countries' view of 'normal'. It was argued that the absenteeism of interest illustrates that the Union sincerely promotes human rights due to the fact that this kind of understanding is already a part of the distinctive identity of the EU (Manners 2002). In addition, the EU was able to transfer its norms due to the lack of physical force compared to other actors (Manners 2006*b*). In other words, using non-military instruments was important to understand how the EU conveys its norms to another country and shapes its behavior.

After the publication of the first article, several scholars have criticized various parts of Manners' arguments. Richard Youngs has argued that norms could be based on interests, or that norms might be embedded into the interests of the Union (2004). Thus, the separation between norms and interests was not easy to do. In effect, actors tend to add their security concerns to other policy areas, aiming to diminish uncertainty in their regions. Besides, Youngs has highlighted that 9/11 was a turning point for the EU due to the fact that since then, it has engaged with other actors by concluding cooperation agreements in security-related topics. Therefore, he concluded that normativity and security concerns could exist at the same time (Youngs 2004). Manners in turn has argued that "interests and norms of normative power are two sides of the same coin" (2011, 242). This is because the norms and values have been mentioned in the Treaties under the name of 'objectives and principles' of the Union. For instance, Article 10 of the Lisbon Treaty indicates that the Union acts in line with the norms such as democracy, human rights, and rule of law when it comes to relations with third countries (*Treaty of Lisbon* 2007). Therefore, according to Manners, interests, and norms could not be separated from each other (Manners 2008).

Nonetheless, in practice, this type of labeling where interests and norms are seen as the same might be problematic. Michelle Pace has given an example to demonstrate this contradiction. In the case of the EU's engagement to the Israeli-Palestine conflict, the EU responded negatively to the results of the election held in the Palestinian territory in 2006 where Hamas which was classified by the EU as a terrorist organization, won the election (Pace 2007). It should be noted that the election was free and fair. However, the EU's refusal to communicate with Hamas demonstrated

that the discourse of NPE sometimes falls short. In fact, it has constituted an example that despite normative discourse, the EU's action is shaped by its self-interests (Diez and Pace 2011). To be clearer, it could be said that the idea and the way of holding an election were in accordance with the norms, nevertheless, the result was contradicted with the 'objectives' of the Union.

It was also argued in the literature that since Normative Power Europe was perceived as an outcome of identity formation this process needed its 'other(s)'. Diez gave an example from the Euro-Mediterranean Partnership to illustrate this 'othering' process. He underlined that the institutionalization of norms under the name of the Copenhagen criteria established the idea that the EU has already met these criteria. Within the Union, member states were seen as the countries that have internalized these norms. As a result, the normative power was only applied to the relations with non-members. Diez explained his argument by analyzing the language used in the agreements. He claimed that the EU was able to define one's identity as an 'other' while building its identity as a normative power (Diez 2005). Thus, firstly, the EU constructs its identity by itself and then labels this identity as normative. This procedure also indicates that the concept of normative power was not formed for the EU, specifically. In previous years, the USA was seen as a normative power as well (Diez 2005). Starting from this, scholars compared the USA and the EU. For instance, Scheipers and Sicurelli provided examples in which the USA plays the role of the European 'other' regarding its commitment to the International Criminal Court and the Kyoto Protocol. While the USA chooses unilateralism, the EU prefers multilateralism. This is because the EU believes in the effectiveness of the rule-based order. Besides, the EU perceives itself as a guardian of international law. The Union binds itself with international law which makes it an actor whose actions could be foreseen (Scheipers and Sicurelli 2007). Therefore, due to this 'specific' feature, it is likely that the EU follows the rules and norms.

In contrast to the mentioned scholars above, the identity of the Union has criticized by other scholars within the framework of NPE. For example, Forsberg has argued that the EU constructs an 'ideal' identity based on normative power (2011). He has acknowledged that the Union pays special attention to international law when it comes to acting. However, in the case of the World Trade Organization, the EU has violated the rules set by the Organization (Forsberg 2011). Furthermore, he has claimed that norms might be replaced by economic concerns as seen in the case of Russia and China, both of which are important economic partners of the EU despite the human rights violations in these countries (Forsberg 2011). These inconsistent behaviors of the Union have been explained by Pace where she has argued that the formation of NPE will be at stake if a clash between several EU institutions

happens due to different interpretations on a certain issue (Pace 2007). As a result, the legitimacy of the Union might diminish in the eyes of other actors (Pace 2007). In other words, disagreement within the EU might give damage to the promotion of certain norms because of the absence of a common policy (Pace 2009).

Pace has also focused on the role of actors within the Union in order to present how normative power is constructed. She found that the Commission is seen as the actor who possesses normative power (2007) even though the European Parliament is very vocal about norms (Lavenex 2019). The reason for this was sought in the fact that the role and the visibility of the EP are limited compared to the Commission.

In 2006, Manners decided to reassess his original article and his arguments because of the ongoing process of militarization in the EU. He accepted that after 2001, the Normative Power Europe was starting to lose its basis due to the 'martial potency' and the initiatives taken by Brussels regarding military capabilities (Manners 2006*b*). However, he also stated that in order to make a contribution to sustainable peace, the EU could join military operations under the United Nations (UN) mandate. This argument was also based on the idea that the UN acts in line with norms. In sum, as long as operations were held to help human security, the EU could maintain its normative power (Manners 2006*b*). Likewise, in the case of counterterrorism, he argued that in order to secure its territory and its citizens, the EU could give importance to military means instead of non-military ones (Manners 2006*a*). The essential point was that the EU had a legitimate reason to participate in military operations or to increase its capabilities. Nonetheless, Manners still identified the Common Foreign and Security Policy (CFSP) as 'the least normative policy' of the EU and stated that the logic of CFSP creates unintended consequences such as 'black holes', 'black sites', and 'black spots' (Manners 2006*a*). This shows that he also conceded that the NPE could prove insufficient in accounting for all aspects of the EU's external action.

The concept of normative power and related EU actions were generally perceived as good due to their reliance on non-military instruments. However, Helene Sjursen has argued that non-military instruments could also result in damages. For example, economic sanctions could deteriorate the situation of the civilians in the targeted country (Sjursen 2006). Therefore, she made a distinction between being a normative power and acting in a normative way, stating that complying with the law is not necessarily an act of normative behavior. As a skeptical, she highlighted that it is hard to understand whether a normative action is good or not. Furthermore, she concentrated on multilateralism. Indeed, multilateralism indicates that parties are willing to bind themselves with rules and laws. However, it is possible that one

of the signatories might choose not to comply with the agreed objectives. In the absence of a deterrent punishment mechanism, the possibility of following the rules could decrease. Most importantly, it shows that multilateralism depends on the actors' attitudes. The balance among the signatories does not remain the same. If one actor decides not to obey the rules, the existing balance between the partners will change.

According to Sjursen, a separation between values and rights should be made because values are shaped by the culture or social context. On the other hand, rights are defined in the constitutions or conventions that are applicable to each individual. However, these EU norms sometimes suffer from a legal foundation (Sjursen 2006). Besides, she drew attention to the possibility that normative power could be based on Eurocentric imperialism (Sjursen 2006).

A neo-realist objection to NPE was introduced by Adrian Hyde-Price who argued that civilian power and normative power fell short of explaining EU action because of the lack of attention on the actors' preferences. According to him, the Union acts as 'the repository for shared ethical concerns', if there is consensus among the Member States (Hyde-Price 2006). In the case of a divergence of interest, members or any one of them could prevent the actions of the Union. Moreover, he argued that the motivation behind the actions might be security-oriented or be based on norms. However, security concerns are always prioritized because they are related to national interests and survival. In other words, norms are seen as 'second-order concerns' (Hyde-Price 2006). He concluded that the EU has both soft power and hard power tools and uses its conditionality to change the existing economic and political structure, for instance in the Eastern European countries. Nonetheless, he claimed that the EU lacks normative power in its relations with neighboring countries due to enforcing its views on certain issues (Hyde-Price 2006), which brings about the question of hegemony.

When taken in a broader context the conceptualization of the EU as a normative power means disagreeing with the idea of colonial practices (Whitman 2013). Nevertheless, Hiski Haukkala has narrowed NPE down to the regional context and argued that in the context of enlargement policy, which is one of the EU normative power tools, the EU could be considered as a regional hegemon. He stressed that norm diffusion is successful if the targeted country recognizes the EU's policies and makes commitments to them. However, this kind of interaction also creates unequal relations among parties (Haukkala 2011). Moreover, even though other actors might be taken into account as normative powers, the EU possesses the discourse of 'Europeanness' by having the right to determine what these norms and values

are (Haukkala 2011). In short, the ability to decide which actions have a basis on norms and values makes the EU a hegemon.

Similar to the discussion of hegemony, sociological institutionalism has pointed out at the Eurocentric component of NPE and its way of norm diffusion. Federica Bicchi has highlighted that the EU's foreign policy incentives lack reflexivity (2006). According to her, regardless of the context, the EU tends to export its 'own' norms and values rather than neutral norms (Bicchi 2006).

Although 'the force for good' was included as a frame for the EU's relations with neighboring countries (Barbe and Johansson-Nogues 2008), the question of what is the legitimate source of its action was yet to be answered. Bickerton responded that NPE should be legitimized through member states and their abilities to 'unite law and democracy' (2011). Manners stated that in order to export norms, legally binding documents such as the UN charters, and conventions should provide a legal basis (2011).

The diffusion of norms is not a one-sided process where the EU Member States or the Union would be the dominant actors. The 'receiving' or 'partnering' country should be willing to accept and to implement the norms as well. For example, to prevent illegal migration, the EU and individual member states have cooperated with the authoritarian leaders. However, in some cases, norms that were agreed upon did not go beyond statements. Based on this, it could be argued that NPE is open to discussion, especially in the case of migration policies (Diez 2013).

As seen in recent works related to NPE, new challenges, such as the Arab Uprisings have resulted in the further questioning of NPE (Diez 2013). This is because increasing instability at the international level has hindered and illustrated the shortfalls of the EU's normative power (Newman and Stefan 2020). Especially in the case of migration governance, the Union approaches the issue as a security problem that has to be solved to ensure the safety of EU citizens (Lavenex 2019). This understanding, however, leads to controversial policies and agreements with third countries, risking further damage to NPE, to which I now turn.

2.2 External Migration Governance

The main ways of deciding who is permitted to enter into a certain territory and who is refused in today's world are through border controls and visa policies. This approach applies to the ones who are outside of the territory. However, a group of people could enter a country illegally. In fact, even though people have legal documents, they might choose to overstay (de Haas 2008), do not obey the visa rules (Ellermann 2008)) or their asylum application could be rejected. Thus, they become 'illegal' aliens. In order to reduce the number of illegal migrants, at the second layer of the migration policies, countries have to cooperate with third parties which are transit and sending countries. This stage forms the external dimension of migration governance.

In this policy area, externalization is not a recent phenomenon (Faist 2019). Since the 1970s, developed countries have tended to regulate migration flows by introducing new policies and concluding bilateral or multilateral agreements with third countries (Boswell 2003). In some cases, a change of policy concerning migration at the domestic level could lead to further developments at the external front. As seen in the example of the EU member states, the decision on the Schengen regime had an impact on the EU's migration policy. Therefore, it could be said that migration is an 'internally-driven external' field (Papagianni 2013).

The development of migration policies vis-à-vis other countries is hence related to restrictive policies adopted by the states. This is because the harder the legal way of entering a territory is, the more likely that people will find illegal ways to cross the border (Castles 2004). As a result, if these illegal crossings are detected, states will send illegal migrants back to the countries of origin or transit. In order to do this, however, states should conclude readmission agreements with the related countries. Otherwise, the deportation process might turn into a collective expulsion.

Readmission agreements are signed between the requesting and the requested parties and are designed to conclude the returning process of the migrants who are residing illegally (İçduygu and Aksel 2014). These are hard to complete (Cardwell 2013) because of the fact that the requested party should be willing to re-admit its own nationals and in some cases, third-country nationals who used its territory as a transit point. It is a heavy burden to carry in terms of the requested party, therefore, it is expected that the requesting party would make compromises during the negotiations.

In general, the benefit of the requesting party is the removal of illegal migrants from its territory. Besides, readmission agreements would decrease the detention costs for them (Cassarino 2007). On the other hand, the benefit for the requested party is to be perceived as a credible actor who binds itself with a legal document. Other benefits could take the form of trade concessions, a quota for foreign workers, development aid, visa facilitation, or visa liberalization. In the case of the EU, especially the visa facilitation and liberalization function as a foreign policy tool to persuade the third country to conclude a readmission agreement (Zaiotti 2016). This approach is seen in the agreements signed with the Eastern neighbors in which countries such as Russia and Ukraine successfully expressed their request for visa liberalization in return for a readmission agreement (Wunderlich 2013). Similar to the instrumentalization of visas, 'mobility partnerships' can also be provided as rewards. These partnerships give temporal permits to a certain group of people to work within the EU, based on the needs of the member states (Carrera and Hernández i Sagrera 2011). These could be offered as an option during the readmission negotiations; however, it should be noted that mobility partnerships are not legally binding.

Castles indicates that migration is rooted in inequalities between developed and developing countries, which makes it a long-standing issue (2004). Indeed, the member states and the Union often mention the 'root causes' and attempt to formulate policies based on the migration-development nexus. Nonetheless, at the EU level, this nexus is understood as a strategy to regulate and to decrease the number of migrants by using development policies as an instrument (Lavenex and Kunz 2008). This interpretation could be found in the Cotonou Agreement where a readmission clause was added (Zaiotti 2016).

The proposed policies might have a development dimension, however, other reasons for migration such as the lack of fundamental rights would become of secondary importance (Zapata-Barrero 2012). For instance, the EU does not focus on democracy promotion or good governance when it concludes agreements with its Southern partners. Stability and predictability in the region are essential for the member states (Youngs 2009), therefore, they tend not to challenge the existing non-democratic regimes in the Southern neighborhood. Moreover, migration policies are designed in such a way that these respond to current problems within a limited period of time (Castles 2004). In other words, the motivation behind migration policies is to bring out an immediate 'solution', in case of an 'emergency'. Therefore, it could be argued that the Union suffers from the lack of well-structured policies.

To be more precise on the EU's external migration governance, Lavenex and Uçarer divide the EU's relationship with non-members into five different categories: close association covering the European Free Trade Association (EFTA) countries, accession association concerning candidate countries, pre-accession association, neighborhood association, and lastly loose association regarding African, Caribbean and Pacific (ACP) states (Lavenex and Uçarer 2004). This categorization is also correlated with to what extent conditionality and Europeanization are observed in a different group of countries. For instance, membership perspective increases the effectiveness of conditionality, therefore, gives a boost to the Europeanization of migration policies in the targeted country and the possibility of a readmission agreement. On the contrary, the lack of membership might make conditionality ineffective. In fact, a 'reverse conditionality' could be seen such as in the case of Morocco where the negotiations have been shaped by the requested country rather than the EU (Cassarino 2007). Besides, these negotiations could suffer from the 'unilateral repressive measures' of the Union (Lavenex and Stucky 2011). This means that the EU has prioritized its own interests without taking into consideration the requests of the partnering countries. In short, the lack of reflexivity during the negotiations has resulted in 'Eurocentric' policies (Zapata-Barrero 2012).

Since the Treaty of Amsterdam, the European Commission is able to negotiate readmission agreements with third countries if the member states give their mandates. The first negotiations for readmission agreements at the supranational level were started in 2000, covering Morocco, Sri Lanka, Russia, and Pakistan (Cited in Trauner and Kruse 2008). However, as seen in Table 2.1, in the case of Russia and Pakistan, the negotiations took more than five years and the Commission has been criticized due to its slowness to conclude an agreement (Kruse and Trauner 2008).As of 2020, the number of readmission agreements in effect is seventeen (see Table 2.1).

Table 2.1 Existing Official Readmission Agreements at the EU level

Country	**Year of Entry in Force**
Hong Kong	2004
Macao	2004
Sri Lanka	2005
Albania	2006
Russia	2007
Ukraine	2008
North Macedonia	2008
Bosnia and Herzegovina	2008
Montenegro	2008
Serbia	2008
Moldova	2008
Pakistan	2010
Georgia	2011
Armenia	2014
Azerbaijan	2014
Turkey	2014
Cape Verde (Cabo Verde)	2014

Source: (European Commission N.d.) Note: Hong Kong and Macao are special administrative regions of the People's Republic of China.

This table provides a list of all the 'formal' readmission agreements in effect between the Commission and the non-member countries. As understood, at the EU level, the Southern neighborhood countries are not signatories of these agreements. Nonetheless, it does not mean that cooperation on the issue of migration is absent with these countries.

The Commission or the member states could sign a police cooperation agreement and/or a memorandum of understanding where 'fighting' against illegal migration is considered as a fundamental aspect of the cooperation. Nonetheless, these are informal agreements. Instead of concluding a formal readmission agreement, the Union has preferred this way because of the fact that readmission agreements are not welcome by the Southern neighborhood countries. Furthermore, even if both parties decide on an informal cooperation agreement, the officials in North African and Middle Eastern countries try not to publicize the deal. This is because, they refrain from the domestic reaction and being seen as a 'vassal' of Western countries (Cassarino 2007).

Another reason for informal agreements is that the process is faster compared with formal agreements (Smeets and Beach 2020). According to the Treaty of Lisbon, formal agreements regarding migration have to be approved by the EP. Other European institutions could be involved in different stages as well. However, it is a long process and the negotiations between the main actors are already tough. In order to avoid this time-consuming and complex process and to respond to the requirements of the third parties, informal agreements have also become a visible part of the EU's external migration governance over the years. Moreover, the cost of defection is low, and informal agreements are open to renegotiation (Cassarino 2007). However, it should be noted that due to the lack of formality, the implementation of the agreements rests on the willingness of the requested country (Ellermann 2008) and the credibility of the requesting party (Zaiotti 2016). These agreements could be used as leverage by the third countries after their entry in force. In other words, it is possible that third countries would be more demanding.

In general, migration agreements might cause unintended consequences. The concluded agreement can lead to the 'chain refoulment' (Wunderlich 2012). This refers to the situation in which migrants might face the danger of being sent back to the 'transit' countries where the possibility of sending back to their countries of origin is higher. Similar to this, in some cases, migrants have never managed to reach targeted countries, and they would be sent back to the places where they started their dangerous journey if they are detected on the road. Hyndman and Mountz claim that it is a practice of 'neo-refoulment', defined as a "geographically based strategy of preventing the possibility of asylum through a new form of forced return different from non-refoulement" (2008). This definition also points out the fact that differentiation between asylum-seekers and migrants has to be made. Within the Asylum Procedures Directive, third-country nationals can apply for international protection or refugee status in member states. However, because of mixed flows (Haddad 2008), asylum seekers are seen as people who try to cross the border illegally or are treated as economic migrants even though their main aim is to get protection. Therefore, their right to claim asylum is negatively affected.

Migration is a shared competence subject and it fell under the first pillar of the Union until the abolishment of the pillar system. Although migration was categorized as a Community pillar issue, due to the nature of the subject, migration remains intergovernmental and the decisions are made based on qualified majority voting.

Each member has its own objective on migration, and each one of them is affected by the flow of people at different degrees. Therefore, the policies adopted at the EU level can be described as 'the lowest common denominator' (Lavenex 2001). These policies

often fall short of responding to the needs of frontier member states such as Italy and Greece. Thus, these member states attempt to conclude bilateral agreements with third countries without the involvement of the Commission. Papagianni states that if the outcomes of the agreements at the EU level would be in line with their national interests, frontier member states would prefer the EU to act (2013). Otherwise, they seek ways to cooperate with third countries on their own and are opposed to the actions of the Commission.

To conclude, the literature indicates that in the case of the EU, neither the problems related to migration nor the externalization of migration policies is new. If we approach the literature on the EU's external migration governance from a Normative Power Europe perspective, problems regarding credibility, unequal relationships, lack of solidarity among the members, and the Eurocentric approach become more visible.

In order to be a normative power, it is expected that all related actors act together. However, the divergence of interests and different interpretations led to the externalization of migration governance where third countries whether these states respect human rights or not, are the counterparties of the cooperation agreements. Thus, the credibility of the Union as a normative power might decrease. Moreover, the credibility issue shapes the relationship between the EU and third countries in terms of fulfilling the promises. If one of the parties could not manage to respond to the requests of the other actor, the agreements could be turned into leverage. On top of that, the difference between norms and interests as primary drivers is highlighted. As seen in the literature, the negotiations and implementation of these cooperation agreements are shaped by the interests of countries. Although Manners did not separate norms and interests, the cooperation agreements demonstrate that in practice, these might function differently or could contradict with one another. To be clearer, the objectives of the member states might cause unexpected outcomes that could further damage the normativity of the EU, to which I turn in the following chapters.

3. THE ASSESSMENT OF THE EU DOCUMENTS ON MIGRATION

The Single European Act (SEA) was a highpoint for economic integration of the then European Economic Community (EEC) members. With the help of the SEA, internal borders were abolished, and the free movement of capital, goods, people, and services was introduced. The 'people' part of the SEA, however, led to an unexpected outcome relating to the question of external borders and their control. What would be regulations for border security? How would the Member States control the flow of people coming from non-members? What about illegal entrances? In order to respond to these questions, the EU developed several policies such as the implementation of the Schengen Regime for non-EU nationals. Nevertheless, the external dimension of the migration policies is a subject where each country still perceives several national threats and pursues different interests. This situation creates divisions among the member states. While some countries may give more importance to human rights, others care about the level of security within the Union. Therefore, it has been hard to formulate a common policy in this area.

In this chapter, I will try to present the evolution of migration policies at the EU level by focusing on cooperation with third countries. The EU can negotiate agreements with its partners with regards to both legal and illegal migration within the context of Justice and Home Affairs (JHA) as well as in the framework of the foreign policy initiations such as the European Neighborhood Policy (ENP). However, within the scope of the thesis, I will mention the developments in JHA. A general outlook of the externalization of migration through official documents will provide a framework to understand how the EU tries to regulate the migration flows and what the official policies are.

3.1 Main Developments in the Justice and Home Affairs

European countries have been receiving migrants since the early years of the 1960s, and at the beginning, they welcomed these people as guest workers or victims who needed protection (Joly 1996). Starting with the 1970s, however, member states have discussed problems related to migration and have established several intergovernmental institutions such as the Ad Hoc Group on immigration which was under the competence of the Trevi group. The Trevi group was formed in the 1980s when European countries began to adopt more restrictive policies with regards to migration (Joly 1996). The duty of the Ad Hoc Group was to prepare a draft about the common asylum system of the Union. The proposed draft was accepted in 1990, and later on, it was called the Dublin Convention/Regulation (Noll 2000). Currently, the third version of the Convention is in effect.

The Dublin Convention regulates the application process of asylum seekers and the obligations of the member states. The Convention clearly states that if an individual enters one of the members' territory by using illegal ways, the first entry point of her/him has to examine the claim (The Council of the European Union 2008*b*). Under special conditions, the responsible country for the application could be changed. For instance, if the asylum seeker has a family member in one of the member states, he or she can apply to this specific member state. Nonetheless, the general rule of the Convention creates a situation in which the Southern and Eastern Members carry the burden in the case of migration flows due to the geographical positions and migration routes. Therefore, in order to respond to massive flows, two things are to be required: solidarity among member states or cooperation with a third country. In other words, other member states should accept to cooperate on the resettlement or relocation mechanism to reduce the pressure on the Southern and Eastern members. Otherwise, the receiving members could share their burden with non-Member states by concluding formal or informal agreements with them, which means the externalization of migration governance. At the EU level, however, the external dimension of migration governance remained weak during the 1990s because of the fact that the Union had not developed a well-functioning system for its Justice and Home Affairs yet.

The famous pillar structure of the EU established by the Maastricht Treaty led to the creation of the third pillar named the Justice and Home Affairs in which the decisions related to internal affairs, including migration were subjected to the intergovernmental approach. The reason for intergovernmentalism in the area of

JHA was the fact that giving a mandate to EU institutions to deal with these issues meant that member states would lose their sovereign rights (Anderson, den Boer, and Miller 1994). In other words, since migration is a 'sensitive' topic, member states might resist the pooling of sovereignty in this policy area (Fabbrini 2013). On top of that, in the 1990s, the collapse of the Eastern bloc and the dismantling of Yugoslavia increased the number of people who wished to reach the nearest member states. This influx resulted in restrictive migration policies and demonstrated that the existing pillar structure did not function as the Union wished.

In 1997, the Treaty of Amsterdam altered the structure of the third pillar, and migration became a community pillar issue where the European Commission has extensive powers. It can be argued that the reason for such change was the failure of the previous structure in which sufficient policies could not be formed within the intergovernmental framework (Levy 1999). Also, it should be noted that the level of instability in neighboring countries increased and the EU was under pressure in terms of the number of people coming to its borders. This pressure has created the fear of being invaded (de Haas 2008) and most importantly, migration policies have become an internal security subject (Huysmans 2000). As a result, the Treaty of Amsterdam also enabled the emergence of an area of freedom, security, and justice in the EU (Ceccorulli 2014).

In order to establish that area, the European Council held a special meeting in Tampere in 1999. This was also one of the first formal attempts to form the external dimension of the JHA, especially by concreating on the issue of migration (D'Avanzo 2012). In terms of the content, the European Council gave importance to legally binding documents, stating that the EU "fully committed to the obligations of the Geneva Refugee Convention and other relevant human rights instruments" and the principles such as 'non-refoulment', while developing a common policy regarding migration (The European Council 1999). The reason for the creation of the Area of Freedom, Security, and Justice and the need for common policies was specified as the following:

> "The European Union has already put in place for its citizens the major ingredients of a shared area of prosperity and peace: a single market, economic and monetary union, and the capacity to take on global political and economic challenges. The challenge of the Amsterdam Treaty is now to ensure that freedom, which includes the right to move freely throughout the Union, can be enjoyed in conditions of security and justice accessible to all. It is a project which responds to the frequently expressed concerns of citizens and has a direct bearing on their daily lives. This freedom should not, however, be regarded as the exclusive

> preserve of the Union's own citizens. Its very existence acts as a draw to many others world-wide who cannot enjoy the freedom Union citizens take for granted. It would be in contradiction with Europe's traditions to deny such freedom to those whose circumstances lead them justifiably to seek access to our territory. This in turn requires the Union to develop common policies on asylum and immigration, while taking into account the need for a consistent control of external borders to stop illegal immigration and to combat those who organise it and commit related international crimes. These common policies must be based on principles which are both clear to our own citizens and also offer guarantees to those who seek protection in or access to the European Union" (The European Council 1999).

The projected migration policies aimed to reduce the impact of the 'root causes' of migration. The European Council focused on the development policies to increase the living standards in the countries of origin and also emphasized the need for improvement in human rights. This approach shows that the Union was aware of the structural problems in the sending regions, therefore, it prioritized long-term solutions to minimize the 'push factors' such as unemployment. Nonetheless, the member states neglected the importance of the 'pull factors' which make these countries very attractive destinations.

According to the Presidency Conclusions, third countries and readmission agreements with countries of origin and transit would play significant roles in order to complete the process of return (The European Council 1999). The aim, indeed, was to reduce the number of illegal migrants within the EU territory. At the same time, the European Council also intended to dissuade possible illegal migrants by offering information campaigns in which available legal opportunities to go to European countries mentioned. Besides, member states focused on the migration-development nexus and deduced that the more a country would be developed, the fewer people would leave their countries of origin.

In Tampere, the European Commission has gained the competence to make recommendations; however, there was no common perspective on the issue of migration among the Directorate Generals (Boswell 2003) which was resulted in suggestions ranging from readmission agreements to controlling external borders by patrolling in the Mediterranean. In fact, even though migration has been embedded in human history, there is no consensus on the definition of a migrant in the international arena. For instance, according to the EU, it is expected that individuals have to spend at least one year in one of the Member States or EFTA countries to be considered as migrants (European Migration Network N.d.). On the other hand, the International Organization for Migration (IOM) states that a migrant is "a person

who moves away from his or her place of usual residence, whether within a country or across an international border, temporarily or permanently, and for a variety of reasons" (IOM N.d.). This definition includes refugees and asylum seekers as well. However, as understood, the Union prefers a narrower definition and sets a specific requirement for migrants.

The new political environment where several European capitals faced terrorist attacks such as in Madrid in 2004 led the previous conclusions to be expanded. Therefore, five years later, in 2004, the Hague Programme was initiated by the European Council. This programme was designed to ensure that member states and the Union would respect the rights of citizens as well as the people who were in need by implementing the European Convention on Human Rights, the Charter of Fundamental Rights of the Union and the Geneva Convention of 1951 (The European Council 2005).

As mentioned earlier, for the refugees, the Geneva Convention drew the legal basis for their rights. However, the Convention of 1951 also indicates that certain individuals are not able to get refugee status. People who committed crimes such as rape, or war criminals are exempted from this status under the Convention (UNHCR 2011). Interestingly, the European Convention on Human Rights applies to all people regardless of their previous crimes. To be specific, a criminal act committed in a country of origin or transit would not be an obstacle for an individual if this person asks protection in one of the member states. Thus, scholars have discussed that due to the comprehensiveness of the European Convention on Human Rights, the Union provides a broader protection scheme with regard to refugee status (Duffy 2008). As seen in the Hague Programme, this interpretation might be applicable. On top of that, with the Hague Programme, the European Council has promoted the full implementation of the Geneva Convention in the transit countries and countries of origin (The European Council 2005).

Furthermore, to prevent new flows, the importance of border security was underlined, stating that "the control and surveillance of external borders fall within the sphere of national border authorities" (The European Council 2005). It illustrated that even though the existence of common external borders was accepted by the EU, each member state was responsible for securing its own borders, and indirectly, securing the external borders of the Union. Nevertheless, the creation of the European Agency for the Management of Operational Cooperation at the External Borders (FRONTEX) in 2004 shows that member states would be 'supported' by this Agency to increase their capabilities with the help of the 'technical and operational assistance' to protect the external borders (The Council of the European

Union 2004).

The European Commission and the High Representative prepared a paper with reference to the Hague Programme in 2005. In that paper, they proposed a global approach to migration where three Mediterranean countries were prioritized: Algeria, Libya, and Morocco (The Presidency of the European Council 2005). These countries would be important partners to prevent illegal migration, therefore, the Union wanted to start negotiations on readmission agreements and action plans. According to the Commission, the partnership was essential in the case of migration (European Commission 2007). Thus, the African Union and Sub-Saharan countries were also included in the cooperation scheme through political dialogues and the Cotonou Agreement which was a part of the Union's development policy. Again, the EU maintained its understanding of migration-development nexus, indicating that in the long term, it would be beneficial for both the Union and the partnering countries (European Commission 2007). In the short term, FRONTEX would be responsible for preparing risk analysis and feasibility reports on monitoring and surveillance capabilities. However, as mentioned above, FRONTEX was established to give assistance to member states if needed. Thus, its role was relatively limited (Demmelhuber 2011).

The global approach on migration was revised in 2011 due to the Arab Spring. Mobility partnerships were added to this framework as one of the main aspects of EU migration policies. These mobility partnerships would allow for the mobility of people and fulfill the needs of EU countries whose societies were aging (European Commission 2011). These were the outcomes of a so-called trade-off between legal migration and illegal migration (Reslow 2017). It means that in return for readmitting illegal migrants, the third-country nationals could be recruited as workers within EU territory for a limited period of time. Therefore, the Commission has used mobility partnerships in a very pragmatic way in order to make non-EU countries to persuade readmitting illegal migrants (Papagianni 2013). It illustrates that even though the Commission claims that the outcome of the agreements would be 'mutually beneficial' (European Commission 2011), the cooperation agreements with third countries are generally perceived as imbalanced partnerships (Cassarino 2007). Related to that, criticism could be made that the Commission's objectives are Eurocentric. In fact, it was stated that "the Global Approach should, therefore, reflect the strategic objectives of the Union better and translate them into concrete proposals for dialogue and cooperation" (European Commission 2011). Thus, the Union neglects the incentives and the willingness of the non-member states. Although candidate countries are eager to conclude readmission agreements in return for full membership, countries such as those covered under the ENP would not signal

the same level of willingness (Cassarino 2007). To solve the reluctance of the possible partnering countries, the Commission presented another framework called Common Agendas on Migration and Mobility (CAMMS) in which both parties would continue to cooperate; nonetheless, their cooperation would be limited and non-binding until the EU and the partnering country would be ready to conclude a mobility partnership (European Commission 2011).

To prevent illegal migration, except readmission agreements, visa facilitation or liberalization, and mobility partnerships, it was underlined that "the EU should continue to give priority to transfers of skills, capacity, and resources to its partners" (European Commission 2011). This statement indicates the importance of third countries' capabilities in terms of coast guards and the necessary equipment for patrolling at the border. The Union would provide traineeships, financial support, and equipment to the third countries to ensure that countries of origin and transit would prevent and detect the illegal border crossings. For instance, in 2018, the EU decided to allocate 140 million Euros to Morocco to improve its border security mechanism (European Commission 2019*a*).

The shipwrecks, the deaths, and missing bodies in the Mediterranean led the Commission to adopt a new agenda. As a result, the Global Approach on Migration and Mobility evolved into the European Agenda on Migration in 2015. The Union accepted that previous policies could not deliver the proper solutions. In the Agenda, it highlighted that in order to maintain its status as a 'safe haven' for migrants and as an 'attractive destination' for white-collar workers, the range and content of the policies should be expanded and evaluated:

> "We need to restore confidence in our ability to bring together European and national efforts to address migration, to meet our international and ethical obligations and to work together in an effective way, in accordance with the principles of solidarity and shared responsibility. No member state can effectively address migration alone. It is clear that we need a new, more European approach. This requires using all policies and tools at our disposal – combining internal and external policies to best effect. All actors: Member states, EU institutions, international organisations, civil society, local authorities, and third countries need to work together to make *a common European migration policy* [emphasis added] a reality" (European Commission 2015*b*).

On the one hand, this statement points out the lack of solidarity and the burden-sharing problem within the EU. On the other hand, it demonstrates that the EU seeks ways to cooperate with other actors in line with international laws and regu-

lations. Therefore, it could be argued that because of the lack of willingness among member states to act collectively, the Union tries to build close relationships with third parties, including third countries, to achieve its own objectives.

In the Agenda, four decisions were taken related to the external dimension of migration governance. First, the Regional Development and Protection Programs would be introduced in several countries and the scope of existing operations such as the one in Lebanon would be expanded. The main areas of the program were defined as North Africa and the Horn of Africa. Second, a pilot project would be launched in order to provide the necessary information about migration to the people in sending countries. A center would be opened in order to "provide a realistic picture" about the dangers of illegal migration and about the legal ways to reach EU countries (European Commission 2015*b*). In addition, a resettlement mechanism and voluntary return programme would be added to the project. Third, a connection between the Common Security and Defence Policy (CSDP) and border security was formed. The EU mentions that current operations in Africa could be used for capability building in partner countries. Lastly, financial assets to help third countries that have received a considerable number of migrants would be available.

To address and to reduce the root causes of migration, the Union would support those countries that are in need by offering development cooperation. The humanitarian assistance of up to 1 billion Euros would be a component of the cooperation to achieve the long-term goals of the EU, which is to minimize the effects of poverty, unemployment, and instability in the sending regions.

The cooperation with third countries is not limited by return policies and assistance projects but also covers the capability building in order to secure the borders of the non-EU states. In dealing with human trafficking and smugglers, third parties play an essential role due to the fact that most of the networks are based in other countries rather than the EU (European Commission 2015*b*). Therefore, joint operations and investigations were requested by the Commission.

Based on similar objectives and policies mentioned above, one year later, the Commission presented another document concerning the migration issue. It highlighted that to deal with the 'new normal', cooperation with third countries should be deepened and agreements should be designed on a country-by-country basis (European Commission 2016*a*). The main goals of cooperation were summarized as "saving lives at sea, increasing returns, enabling migrants and refugees to stay closer to home and, in the long term, helping third countries' development in order to address root causes of irregular migration" (European Commission 2016*a*). As understood, the externalization of migration governance in such a way would lead to the creation

of 'buffer zones' around the borders of the EU. Moreover, keeping refugees and migrants in the nearest countries and concluding agreements with these states were perceived as a method in which the EU could easily detect positive results like in the case of the EU-Turkey Statement (European Commission 2016*b*). Hence, it could be argued that the Union in practice continued to give importance to immediate solutions by concluding agreements with non-safe countries and that this ran the risk of contradicting its main principles such as respecting human rights.

In sum, external migration governance has been developing over time in response to changing regional and global developments. Nonetheless, migration is an area that both the Commission and the Member States share competences. This leads to a situation in which the migration issue remains still relatively intergovernmental. Each member state prioritizes its own objectives, and this is reflected in the documents at the supranational level where the agreed policies are not able to effectively respond to current flows. Thus, it can be stated that the externalization of migration policies is a result of national interests (Papagianni 2013) as well as the complex structure of the EU institutions.

Although the EU provides several frameworks to non-EU countries to cooperate on this issue, the content of the documents demonstrates that the partnerships have generally underlined the objectives of the European countries. The interests of the transit countries or countries of origin are neglected, and these countries are perceived as passive actors. The EU tries to solve the problem by focusing on the migration-development nexus. Nonetheless, it is unknown whether the outcomes of these long-term policies would solve the issue or not. In the short term, cooperation agreements with third countries are thus perceived as a vital component of external migration governance. However, this Eurocentric approach creates buffer zones, causes human rights violations, and significantly hampers the claims to normativity by the EU, which is discussed over the two cases in the following two chapters.

4. COOPERATION BETWEEN THE EU AND THIRD COUNTRIES: THE CASE OF THE EU AND TURKEY

Turkey has a long history with the European Union, starting from 1959 when Turkey made its first application for associate membership to the then EEC. The legal basis of the relationship between these two parties was formed with the Ankara Treaty in 1963. Apart from being a candidate country, Turkey's relations with European countries also have an immigration dimension because of the fact that Turkish citizens were recruited as guest workers in Europe during the 1960s and 1970s. Moreover, after the military takeover in 1980, the number of asylum seekers increased due to political reasons (İçduygu and Aksel 2014). On top of that, geographically, Turkey functions as a bridge between the countries of origin and European countries. The turmoil in the Middle East and the collapse of the USSR made Turkey a transit country for economic migrants, asylum seekers, and refugees in the 1990s. The Arab Uprising intensified the instability in the region and led to new conflicted areas such as Syria. Besides, at that time, the Islamic State of Iraq and the Levant (ISIL) was gaining territories in Iraq and Syria (Lehner 2019). Therefore, many people fled from these countries which led to the biggest migration movement after the Second World War.

The Mediterranean has become a place where people have been trying to reach better living conditions through illegal ways. While some of them managed to reach Europe, others died during this dangerous journey. Besides, the survivors now are facing terrible conditions on the Greek Islands due to the lack of proper facilities, hygiene, and security. The examination of asylum claims lasts long, and this situation has resulted in overcrowding on the islands as well. In short, Greece has been failing to fulfill its duties towards the migrants, and it could not protect the external borders of the EU. Therefore, the member states and the Commission sought ways to solve this problem.

Prior to the 2010s, Turkey and Greece had concluded a bilateral readmission agreement. However, at the implementation stage, there were only a few achievements. This agreement fell short and it showed that a more comprehensive agreement with

a more credible actor was needed, which led the EU-Turkey Statement.

In this chapter, I will first focus on the official readmission agreement between Turkey and the EU. Then I will discuss the conditions under which the Commission and the member states wanted to conclude another agreement with Turkey. I will also discuss how the so-called EU-Turkey deal is problematic from a normative perspective. Lastly, the current situation on the border will be discussed.

4.1 The Official EU-Turkey Readmission Agreement

After the declaration of Turkey's candidate status in 1999, the Accession Partnership with Turkey was presented in 2001. As a candidate, Turkey is obliged to adopt the EU acquis and to make necessary adjustments. With regard to migration, in the Accession Partnership, the Council of the European Union stated that Turkey should comply with the acquis as well as the *practices* such as readmission in order to prevent illegal migrants (The Council of the European Union 2001*a*). This indication of "practices" in the document has paved the way for the negotiations for a readmission agreement between Turkey and the EU.

The Commission wrote a draft in 2003 and sent an invitation to Turkey in order to initiate the negotiations. Nonetheless, Turkish officials did not respond to this request (European Commission 2003). At that time, they approached this proposal negatively because of the fact they thought that Turkey would be a 'dumping ground' for the EU's unwanted migrants (Kirişçi 2004). Moreover, the credibility of the EU officials in the eyes of Turkish policymakers was low due to past experiences in which Turkey had been treated differently (Kirişçi 2004).

In return for the reluctance of the Turkish side, the Commission decided to change its strategy by focusing on the member states. The Commission convinced the member states to use their own contacts to start the readmission negotiations. Also, during that time, the accession negotiations were about to start, therefore, the Commission politicized this process by creating a relation between accession and readmission (Coleman 2009). Thus, Turkey accepted the Commission's invitation and both sides started the negotiations on the readmission agreement in 2004.

This whole process lasted ten years because of the fact that the Commission could not present a tangible offer to the Turkish side. Turkish officials insisted that visa lib-

eralization for Turkish citizens should be provided. Otherwise, they thought that the meaning of the readmission agreement would be outsourcing migration governance (İçduygu 2011). However, the EU side did not respond to this request positively even though Turkish officials gave examples from visa facilitation agreements with Bulgaria and Romania. The Commission emphasized that Bulgaria and Romania had implemented the readmission agreements first, and then based on their performances, they were exempted from the list of countries that needed visas (Coleman 2009). In other words, according to the EU officials' argument, a fully implemented readmission agreement would be the first step towards visa liberalization and not the other way around. This attitude was not welcome by the Turkish side as seen in the statement of the then Foreign Minister Ahmet Davutoğlu: "... written decision for written decision, implementation for implementation" (Quoted in İçduygu and Aksel 2014).

The readmission negotiations were heavily affected by the slow pace of accession negotiations. This is because the Turkish decision of not to implement the customs union agreement to Cyprus resulted in vetoes in several chapters of accession negotiations. One of the chapters that were blocked by Cyprus was Chapter 24 which is Justice, Freedom, and Security. This chapter covers migration-related issues, therefore, it was at the center of the negotiations for the readmission agreement. Nonetheless, this unilateral decision of Cyprus froze the process. Even if Turkey had agreed to sign the readmission agreement, it was unknown whether Cyprus would lift its veto or not (Bürgin 2012). Concisely, similar to the Commission's previous action, this time a member state politicized the negotiations.

Another problem was related to readmitting third-country nationals (TCNs) and stateless persons. In the early years of the 2000s, Turkey had a liberal visa regime towards its neighbors. In theory, by using Turkey as a transit country, a person could enter the territory of the EU without authorization. Thus, the EU side wished to conclude an agreement in which all the TCNs would be included in the groups of people that could be sent back (Coleman 2009). In response to that, Turkish authorities expressed that only TCNs who had residence permits in Turkey could be readmitted. Nonetheless, the Commission's request regarding the TCNs did not change and was reflected in the final proposal in 2012. Moreover, the Commission maintained its position on the possibility of visa liberalization. In short, both sides were hard bargainers who insisted on their objectives.

Furthermore, despite the fact that Turkey is one of the signatories of the Geneva Convention of 1951, the geographical limitation clause draws the line on who can be considered as a refugee and not. Turkey only applies the refugee status to people

coming from the members of the Council of Europe. Hence people who are from Syria, Iraq, Afghanistan, etc. suffer from the lack of sufficient rights and protection. For these nationals, the only option is to apply to the United Nations High Commissioner for Refugees (UNHCR) office in Ankara in order to get international protection status. However, if their application results are positive, they would be resettled outside of Turkey (Kirişçi 2004). Therefore, these nationals have tended to use Turkey as a transit country and continue their journeys towards European countries (İçduygu and Aksel 2014). As a result, the European Union Council decided that Turkey should lift its geographical limitation (The Council of the European Union 2008*a*). On the other hand, in the eyes of Turkish officials, the geographical limitation was a 'right' which protected the country from the massive flow of people (Kirişçi 2004). It should be noted that Turkey is surrounded by unstable neighbors and has faced several flows such as Iraqis escaping from the Saddam regime.

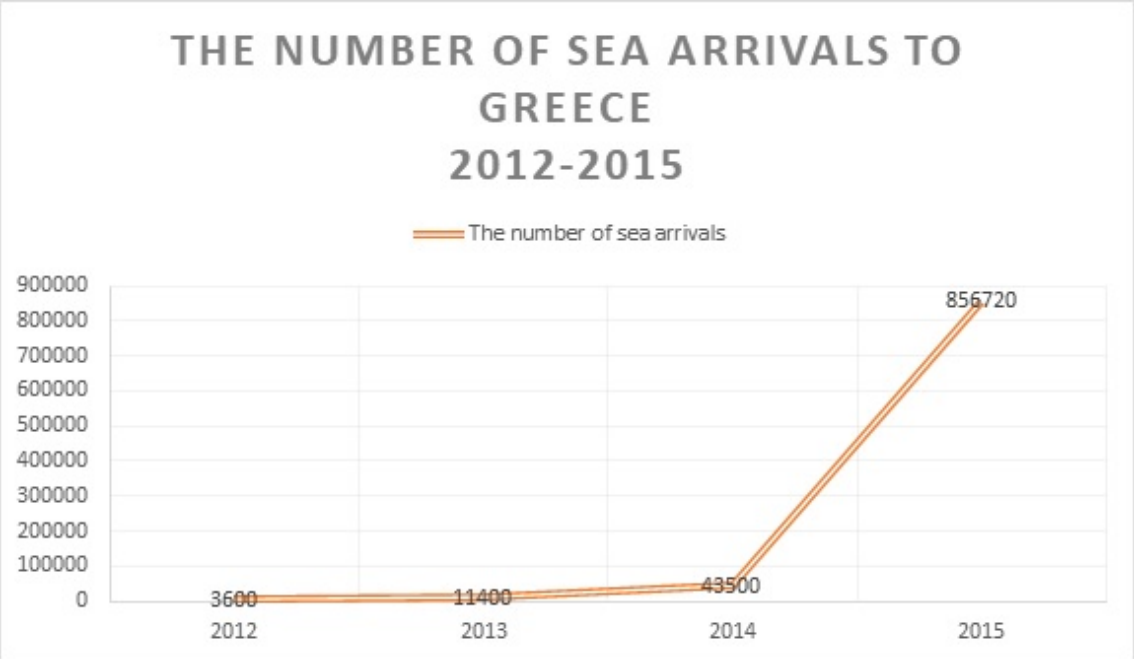
At the end of the negotiations, both sides decided to sign the readmission agreement in December 2013. Turkey accepted that it would readmit its own nationals as well as the TCNs who had stayed in the European Union's territory illegally. However, the process of readmission regarding the TCNs would be applicable three years later. Furthermore, the EU would provide financial resources and technical assistance to ensure that Turkey would increase its capacity building (*Agreement between the European Union and the Republic of Turkey on the readmission of persons residing without authorisation* 2014). Besides, a roadmap for visa liberalization was presented before the readmission agreement. However, one of the requirements of this document was the ratification and effective implementation of the readmission agreement (European Commission 2013). Taken into consideration the two sides' objectives, it could be said that although the Commission had wanted to see the readmission agreement first and then it might arrange a document for the visa liberalization, it had to prepare a roadmap in order to convince Turkey to sign the agreement. Moreover, even though it was stated that Turkey might lift its geographical limitation until 2012 (European Commission 2006), there was no such change regarding this issue.

This readmission agreement between the EU and Turkey became effective in 2014 and it is still valid. However, problems concerning implementation have emerged. This is because the visa requirement had not been lifted for Turkish citizens although it is one of the ultimate rewards for the Turkish side within the context of the outcomes of the negotiations. With regard to this, Turkey refused to readmit the TCNs (European Commission 2018*b*). This situation and the tragic events that happened in 2015 led to another agreement between the two sides whose legal status and content have been heavily criticized.

4.2 The EU-Turkey Statement

The number of illegal border crossings increased due to rising instability in the Middle East, and the summer of 2015 became a turning point in terms of migration governance. In 2014, the number of detected illegal migrants was 43.500 in total (UNHCR 2015). Within the first six months of 2015, however, sea arrivals to Greece reached 68.000. Suddenly, during the summer, the number went up to 856.720.

Figure 4.1 The number of sea arrivals to Greece, 2012-2015



Source: (UNHCR 2015, 2020*a*)

One of the reasons for this sharp increase was that during the summer, the weather conditions were favorable for the use of boats (Dimitriadi 2018). This situation led to the expansion of the smuggling industry in Turkey where people who intended to seek refuge in countries such as Germany and Sweden perceived that they could have a chance to reach better living conditions. Furthermore, migrants could not cross the border through land due to the closure of the Balkan route. Hungary, for instance, decided to seal its borders with Serbia and Croatia (BBC 2015). Thus, in order to reach the EU territory, the migrants had to change their ways of arrival which meant that they have started using the maritime border.

These flows not only consisted of Syrians but also Afghans, Iraqis, and Iranians. These groups were also mixed in terms of their different legal statuses. Some of

them were refugees and some of them wished to claim asylum (Geddes and Scholten 2016). The complexity regarding nationalities and different types of migrants as well as the unexpected rise in the number of arrivals slowed down the examination of the applications in Greece. During that time, due to the economic crisis and its ongoing impacts, the related institutions could not afford the new staff to accelerate the process. Instead of hiring new people, they got help from non-governmental organizations (Dimitriadi 2016). On top of that, although rejected asylum seekers have a right to make an appeal, at that time the Appeals Committee's members were not appointed. Therefore, the cases piled up (Dimitriadi 2016).

Furthermore, it should be noted that at the beginning of the migration crisis, Germany decided to suspend the Dublin Convention for Syrian migrants to reduce the pressure on the frontier member states such as Greece (Deutsche Welle 2015). It was a 'unilateral' and 'voluntary' action made by a member state (Thielemann 2018). Nevertheless, a more 'planned' action was needed at the EU level to respond to this emergency. Thus, in June 2015, the European Council agreed on a relocation mechanism where 40.000 migrants would be transferred from Italy and Greece to different member states within two years (The Council of the European Union 2015). Migrants would be re-settled based on a system where the GDP, population, the level of unemployment, and the number of migrants that already settled in a member state would be taken into consideration (Guild, Costello, and Moreno-Lax 2017). However, the relocation mechanism did not function effectively because of the lack of solidarity among members (Dimitriadi 2018). For instance, countries such as Hungary and Poland did not comply with the decided mechanism (European Commission 2017*b*). Besides, even if all member states accepted this system, due to the duration of the process and the new flow of people, the relocation mechanism would have been fallen short. Due to these reasons mentioned, the Greek islands have turned into overloaded detention facilities.

In the light of these developments, Turkey and the EU agreed on the Joint Action Plan in September 2015. The Action Plan established a mechanism in which both parties share responsibilities in order to prevent illegal migration and to improve the conditions of Syrians in Turkey, for example by providing the right to work (European Commission 2015*a*). This demonstrates that if the push factors decreased, it was expected that Syrians would continue to reside in Turkey. Therefore, in order to prevent a movement towards the EU territory, the rights of Syrians, and their ability to access social services became one of the main objectives.

In return, the EU offered technical and financial assistance to ensure that Turkey could implement the agreed decisions (European Commission 2015*a*). However,

these 'rewards' were almost the same with the incentives provided by the Commission within the framework of the official readmission agreement. The only difference was that the Action Plan was specific to Syrians and could not be applicable for migrants who had a different nationality.

4.2.1 Implementation

On 18 March 2016, the EU and Turkey re-confirmed the Joint Action Plan. According to the EU-Turkey Statement;

- starting from 20 March 2016, Turkey would accept all illegal migrants from the Greek islands, regardless of their nationality;
- a 'one for one' mechanism would be set for the resettlement of Syrians;
- if the Turkish side fulfills the requirements mentioned in the roadmap for visa liberalization, the visas would be lifted for Turkish citizens;
- the EU would provide 3 billion euros to finance the projects for refugees and an additional 3 billion euros could be given;
- a revision of the Customs Union would be considered;
- in order to re-energize the accession negotiations, chapter 17 (Economic and Monetary Union) and chapter 33 (Budget) would be opened (European Council 2016).

As specified in the Statement, Greek officials with the help of UNHCR would take applications of refugees and asylum seekers and examine these individually. If migrants do not apply for asylum or their applications are rejected, they will be sent back to Turkey (European Council 2016). Nonetheless, it would not mean a collective expulsion since the examination of applications would be done on a case by case basis. Also, with the effort of Germany, a new mechanism was prepared for the resettlement of Syrians. EU countries would accept up to 54,000 Syrians, in return for Turkey's acceptance of illegal migrants from Greece. The resettlement of Syrians would be made in line with the 'one for one' system in which for each Syrian who would be sent back to Turkey, EU members would accept one Syrian in Turkey. As of 2020, almost 27.000 Syrians were accepted from Turkey in order to be resettled in different member states (European Commission 2020).

However, the statement and the implementation of the decisions have been problematic in many ways. First, the roadmap for visa liberalization consisted of several conditions, such as the revision of the Anti-Terror Law. Turkish officials state that the EU does not demand such things from Latin American countries when the Commission negotiates with them (Smeets and Beach 2020). This different treatment was not welcome by the Turkish authorities.

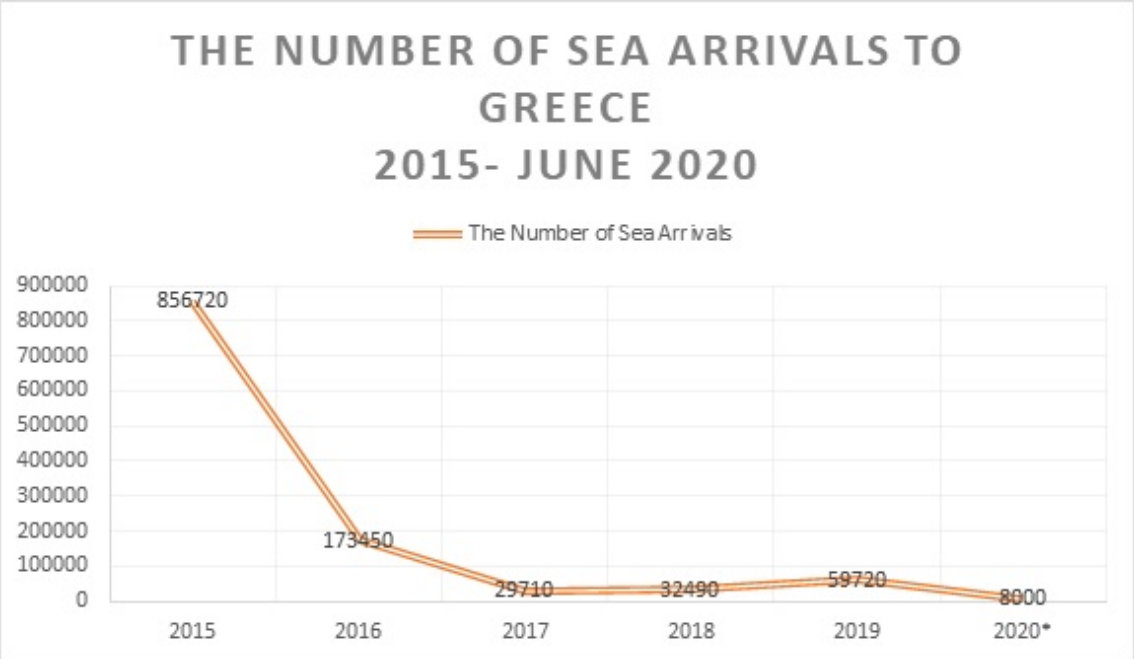
Furthermore, Turkish officials preferred to receive financial support from the Union to the Turkish government and official institutions. They would like to be in charge in terms of deciding on how to spend the allocated money. Nonetheless, the Union insisted that 3 billion euros would be given to the related UN institutions and non-governmental organizations (NGOs), based on the projects they would present (Pitel and Barker 2016). This approach of the EU was frequently criticized by Turkish President Erdoğan: "These administrators come here, tour our camps, then ask at the same time for more projects. Are you kidding us? What projects? We have 25 camps running. You've seen them. There is no such thing as a project. We've implemented them" (Pitel and Barker 2016). Besides, Turkish officials have often complained that 1.85 billion out of 3 billion euros were received from the EU within the first two years (Deutsche Welle 2018*a*). This demonstrated that the Union did not meet expectations of rapid delivery.

Lastly, the least significant reward for Turkey was the opening of the new chapters due to the fact that even though France lifted its vetoes, Cyprus maintained its vetoes on several chapters(Smeets and Beach 2020). The accession negotiations have been stagnant since 2006. On top of that, instead of full membership, alternatives such as 'privileged partnership' and 'differentiated integration' were being discussed (Müftüler-Baç 2017). Thus, the opening of the new chapters was not appreciated as much as in the previous years. In fact, this situation created an asymmetrical relationship between Turkey and the EU in which functionalism plays an essential role (Saatçioğlu 2019). This means that in order to achieve its migration-related objectives, the EU continues to cooperate with Turkey despite democratic backsliding in Turkey. The Union's need for a fully implemented cooperation agreement has resulted in the creation of new leverage where Turkish officials have been able to use the statement as a tool for bargaining with the EU. For instance, Turkish President Erdoğan stated that "we can open the doors to Greece and Bulgaria anytime and put the refugees on buses" (Agence France-Presse 2016), referring to the Joint Action Plan of 2015 and the promised 3 billion euros.

The return procedure of the TCNs began on 4 April 2016. The first group of people consisted of different nationalities and none of them claimed asylum in Greece

(European Commission 2016*d*). Therefore, in line with the Statement, they were sent back to Turkey. Nonetheless, Greek officials have struggled with the return process. As mentioned by the Commission, within the framework of the EU-Turkey Statement, 1.908 migrants were sent from the Greek Islands to Turkey (European Commission 2019*b*). It illustrates that Greece has needed more staff to accelerate the examination of asylum claims and to complete the return process of people whose applications have been rejected.

Figure 4.2 The number of sea arrivals to Greece from 2015 to June 2020



Source: (UNHCR 2020*a*)

The Commission argued that this statement accomplished 'concrete results' due to the activities of the Turkish Border Guard (European Commission 2018*a*). As seen in Figure 4.2, patrolling in the Aegean Sea resulted in a sharp decrease in the number of unauthorized border crossing, therefore, it could be argued that this statement has indeed been successful in preventing illegal migration. Nonetheless, its legal status and the results of the implementation are questionable from a normative perspective.

4.2.2 Problems of Legality

Article 2 of the Treaty on European Union (TEU) states 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. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail" (*Consolidated version of the Treaty on European Union* 2008).

Moreover, in Article 6 of the TEU, it is stated that:

> "The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties" (*Consolidated version of the Treaty on European Union* 2008).

As seen in both articles, human rights and the Charter of the Fundamental Rights of the European Union are placed at the core of the Union. The EU associates itself with the mentioned values and binds itself with the Charter. Nonetheless, as Smith claims, a 'perceived threat' might change the dynamics within EU law (Smith 2019). The so-called 'migration crisis' and the EU-Turkey Statement is an example of her argument. For instance, as seen in the case of NF versus European Council, which was examined by the General Court of the European Union, a Pakistani who applied for international protection by reaching Greece on 19 March 2016 (one day after the Statement) faced the violation of non-refoulment principle due to the EU-Turkey Statement (Moldovan 2017). In theory, Syrians in Turkey are under temporary protection, and therefore, cannot be sent back to their country; nonetheless, the non-refoulment principle is not applicable for non-Syrian migrants. If a non-Syrian illegal migrant is sent back to Turkey, Turkey could send him/her back to his/her country of origin. Therefore, even if the actual actor who sends these individuals to their homelands is not the EU, the Union violates the non-refoulment principle indirectly due to the Statement. This is because it is known that Turkey maintains its geographical limitation, yet the Union decided to prevent illegal migration by concluding a 'deal' in which the 'respected' values of the EU were in question.

In terms of legal status, regarding the case of NF versus European Council, the decision made by the General Court of European Union was that the meeting on 18 March 2016 was concluded with the participation of the heads of states and governments of the member states and Turkish representatives, thus this statement would not be considered as an agreement between Turkey and the European Council. In the 'press release' of the EU-Turkey Statement, the word choice, the use of the European Council as a counterparty, was seen inappropriate by the General Court. However, the Court also decided that the word 'European Council' referred to each member state who agreed with the Statement (The General Court 2017). Also, the Court preferred not to decide on whether the EU-Turkey statement was legally binding or not. It was declared that this subject was beyond the Court's competence (Batalla Adam 2017). It should be noted that before the Court's decision, the European Commission mentioned that this was a political statement rather than an international agreement (Moldovan 2017). Moreover, the Commission emphasized that 'one for one' mechanism and the return process of TCNs would be based on the readmission agreement between Greece and Turkey of 2004 and the official EU-Turkey readmission agreement of 2014 (European Commission 2016*c*). Nevertheless, this explanation only clarifies how counterparties would accept the TCNs. The question of whether the Statement is a legally binding document or not is not answered. In sum, the General Court has avoided declaring the legal status of the Statement. From the Commission's point of view, the statement should not be counted as an agreement. As a result, although complying with the agreements and respecting the rule of law are essential components of the Union, the EU institutions do not define the Statement.

If it is an agreement that binds both parties, the consent of the EP is absent. As seen in literature, formal agreements regarding the migration issue have to be concluded in line with the ordinary legislative procedure in which the Commission has to share the power with the EP. Indeed, the Commission might choose informal agreements that have resulted in skipping some of the steps and actors. However, whether the agreement is formal or not, the Commission is in contradiction with the Union's own procedure with regards to the EU-Turkey Statement.

4.2.3 The Safe Third Country Concept

Another controversial aspect of the Statement is the concept of the safe third country. Although the concept of safe third county is related to EU law, the implementations and decisions would be made by the Member States (Lehner 2019). To be clear, at the EU level, migration-related directives set the minimum standards and provide a general framework. Therefore, in theory, X member state could declare a non-EU member country as a safe country with reference to the general requirements at the EU level while another member state does not consider this third country as safe. These diverse implementations are derived from the lack of integration in migration policies (Thielemann 2018).

Indirectly, the Statement identifies Turkey as a safe country for migrants to be returned (Kfir 2018). However, the Greek authorities did not make a declaration in which Turkey was considered as a safe country for all migrants (Lehner 2019). Furthermore, according to the Statement, the examination of applications would be completed on a case by case basis. This means that the results of the cases might change from person A to person B. In fact, in some cases, the Greek Appeal Committee has decided that Syrians should not be sent back to Turkey, due to the fact that temporary protection is a limited status compared to refugee status and that there is no guarantee that the non-refoulment principle would be applied (Batalla Adam 2017). Therefore, within the context of the Statement, for some groups of people, Turkey is seen as a safe third country, and for the rest, this concept is not suitable. In other words, the safe third country concept would be applied at the individual level.

According to Directive 2013/32/EU, a safe third country must fulfill the following requirements:

- life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion;
- there is no risk of serious harm as defined in Directive 2011/95/EU (Recast Qualification Directive);
- the principle of non-refoulment in accordance with the Geneva Refugee Convention and Protocol is respected;
- the prohibition of removal, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law, is respected; and

- the possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Geneva Refugee Convention and Protocol (The European Parliament and and The Council of the European Union 2013).

As mentioned previously, the non-refoulment principle is problematic in the Turkish case. Nevertheless, the European Commission indicates that it is sufficient that Turkey is one of the signatories of the Geneva Convention. From the Commission's point of view, no requirements related to geographical limitation is needed (Baxevanis 2018). However, other requirements are also not completely met. Syrians have indeed gained several rights and liberties under the temporary protection status and the Geneva Convention specifically emphasizes the rights of refugees. However, even Syrians who obtain more rights than non-Syrian groups cannot go to another city without necessary documents. Their freedom of movement is subjected to the permits given by Turkish officials (Batalla Adam 2017). Furthermore, as reported by Amnesty International, in deportation centers, refugees' right to counsel to their lawyers are violated, and some of them are sent back to their countries of origin (Amnesty International 2016).On top of that, after the failed coup attempt on 15 July 2016, the state of emergency was declared, and the rights of Turkish citizens were restricted. This period lasted two years with several extensions where the Turkish government extensively used the decrees having force of law in order to eliminate formal ways of policymaking and expel people who were affiliated with the Gulen movement as well as many scholars and bureaucrats who were opposed to the current government (Çınar 2018). Due to the worsening condition in terms of rights and liberties, the number of Turkish asylum seekers who have applied to European countries has increased. As of 2018, Germany received more than 15.000 applications from Turkish citizens including diplomats and civil servants (Deutsche Welle 2018*b*). Indeed, it should be mentioned that oppression and the restrictions on rights and liberties in Turkey dated back to the previous years. Especially the year of 2011 has been seen as a turning point because of the fact that the AKP won the general election for the third time by gaining 49.8 percent of the votes (Özbudun 2014). After 2011, the regime has evolved to competitive authoritarianism (Esen and Gumuscu 2016) in which the elections are held; but other requirements of democracy such as the rule of law are damaged.

4.3 Recent Developments

'Opening of the borders' or the possibility of 'revision' has been used by Turkey to warn the EU on various occasions (Kingsley 2017). With regard to the dialogue for visa liberalization, some argue that the Union does not want to conclude this process (Tamkin 2017). Therefore, it might be argued that the implementation and the future of the Statement have always been dubious due to the attitudes of both sides.

After the Russian airstrikes in Idlib where at least 33 Turkish soldiers died, on 28 February 2020, it was declared that Turkey would no longer be able to keep the migrants in. In response, the Vice-President of the Commission, Margaritis Schinas, referring to the sudden decision of Turkey, said that "nobody could blackmail and intimidate European Union" (Schinas 2020). In contrast to his statement, for instance, the Dutch officials stated if the EU decided to provide more financial support to Turkey, they would accept it (Özkan 2020). This shows that the effectiveness of the Statement is important and some of the members are ready for the allocation of additional money to keep migrants out of the EU territory. This is because, due to rising xenophobia across European countries, the far-right and populist parties have gained votes and increased their seats in national parliaments as well as in the EP. In order to be reelected, the current ruling parties have tended not to strengthen these parties' hands on the migration issue and prefer continuing to cooperate with third countries.

EU officials met with Turkish authorities in Brussels on 9 March 2020, and it was highlighted that the EU-Turkey statement would be valid in the eyes of the EU (VanOpdorp 2020). However, the border between Greece and Turkey is still open which means that Turkey unilaterally suspended the 'deal'. Furthermore, Turkish President Erdoğan recommended that Greece should open its borders as well. This is because, for migrants, Greece is a transit country to reach other EU member states (Aksu and Özen 2020). In other words, migrants do not intend to remain in the territory of Greece.

The Turkish Minister of Interior, Süleyman Soylu, declared on Twitter that within the first week of the decision, more than 140.000 people reached Greece by crossing Evros (Soylu 2020). The Greek side did not confirm the number and did not allow migrants to enter into Greek territory. It has been accused of using disproportionate force on migrants (Berberakis 2020), and some footages in which two migrants were shot by the Greek border guards were released (Human Rights Watch 2020*b*). In

addition, it was mentioned that more than 32.000 people were arrested by the Greek authorities (Hockenos 2020). Besides these arrests, Greece suspended the application of asylum. This decision might result in the violation of the non-refoulment principle due to the fact that in the absence of the right to seek asylum, migrants would be considered as 'illegal aliens' and could be sent back to Turkey. The UNHCR disagreed with this decision and underlined that Greece could not take such action without any legal basis (UNHCR 2020*c*). On the other hand, the Commission prepared a document in which the Greek decision on asylum was examined within the legal framework. Nonetheless, this document has not been published, therefore, its content remains unknown (Nielsen 2020*a*). Besides, Greece did not accept any asylum applications until 1 April. In fact, the suspension decision was renewed due to COVID-19. As of July 2020, it is possible to claim asylum (Human Rights Watch 2020*a*).

When Greece did not accept new asylum applications, according to the New York Times, Greece has expelled more than 1.000 migrants by taking them from the detention camps to the boats to be left at sea (Kingsley and Shoumali 2020). The Greek authorities rejected this allegation; however, the Turkish coast guard has reported similar incidents in which migrants were found at sea, close to the Turkish territorial waters (Republic of Turkey Ministry of Interior, the Turkish Coast Guard Command 2020*a*,*b*).

Migrants beaten by the Greek guards began to apply to the European Court of Human Rights (Anadolu Agency 2020). Nonetheless, despite the videos, reports of several NGOs, and journalists, the EU turned a blind eye to these human rights violations at its borders. Instead of warning or punishing Greece, the President of the Commission announced that Greece would receive 700 million euros, necessary equipment, and staff to protect its borders which are also the EU borders (Rankin 2020). Nevertheless, after three months, the EP decided to push the Commission for an investigation to examine the accusations related to violent events at the Greek-Turkish border. If the Greek officers used violence against migrants and operationalized the 'push-backs', the EP demanded that Greece should be punished through sanctions (European Parliament 2020). The Greek officials have not accepted the allegations and called these as fake news and 'Turkish propaganda' (Nielsen 2020*b*).

In conclusion, the formally concluded readmission agreement between Turkey and the EU did not function as expected due to unfulfilled promises. Thus, the Union sought a way to arrange a new 'deal' in order to prevent illegal migration.

Although the rule of law and human rights are in the DNA of the Union's normative identity, there are several 'cracks' (Magen 2016) concerning the EU-Turkey Statement. First, the related EU institutions such as the General Court did not describe what the Statement referred to. As a result, the legal status of the Statement is vague. Since its legal status is unidentified, whether parties are bonded by the agreed objectives or not is unknown. Besides, the Statement was not concluded within the formal framework of the Union in which the EP has to give its approval.

Furthermore, regardless of its legal status, the context and the implementation of the Statement contradict international law and human rights in general. Turkey does not lift its geographical limitation; therefore, for certain groups of people, Turkey cannot be considered as a safe country. Even if Turkey lifts the geographical limitation, it does not meet the criteria to be a safe third country according to the Directive. European Commission and the member states have been aware of the problems, nonetheless, they kept sending migrants back to Turkey. As a result, the Union violated its own Safe Third Country Directive as well as the non-refoulment principle by causing the chain-refoulment in which certain groups of people could be returned to their countries of origin through Turkey. By doing so, even though, the EU emphasizes the importance of the Geneva Convention of 1951 in its official documents, as seen in the case of the EU-Turkey Statement, the EU did not follow the rules.On top of that, the recent decision of suspension of the right to claim asylum in Greece and the use of force at the border by the Greek officers are illustrations of violation of human rights. Despite footages and reports of several NGOs, Greece faced no consequences for its actions. In fact, the Commission has decided to support this member states to 'secure' the external borders of the Union.

The EU institutions have been critical about Turkey and democratic backsliding there. However, even after the declaration of the state of emergency in 2016, the Commission continued to cooperate with the Turkish officials to reduce the migration flows while the EP favored the suspension of accession negotiations due to the 'disproportionate repressive measures' taken by the Turkish government during the state of emergency (European Parliament 2016). It demonstrates that although in the NPE literature, the Commission comes to the forefront to represent the Union as a normative power, the Commission has contradicted the values and principles by seeking ways to maintain the EU-Turkey Statement in order to ensure that the external borders would be protected. The EP, on the other hand, has taken a strong stance against Turkey; however, it does not have the power to suspend the accession negotiations. In the case of the Greek-Turkish border where migrants have faced ill-treatment by the Greek officials, the EP has demanded a comprehensive investigation while the Commission was silent about the accusations. In short, the

EP gives particular importance to norms, nevertheless, the Commission prioritizes the interests of the Union. In order to reduce the number of illegal migrants and maintain the existing cooperation scheme, the Union contradicts with its values and principles when it comes to Turkey.

5. COOPERATION BETWEEN MEMBER STATES AND THIRD COUNTRIES: THE CASE OF ITALY AND LIBYA

The relationship between Italy and Libya dates back to the early years of the 20th century when the Kingdom of Italy won the war against the Ottoman Empire. After the war, Libya became a colony of Italy. However, Italian control over Libyan territories ended following the defeat of Benito Mussolini. In 1951, Libya declared its independence. The newly independent country has been too important to lose in the eyes of the Italian authorities (Varvelli 2010). Therefore, Italy adopted a 'friendly' approach towards Libya. In fact, after the expulsion of the Italian community, Gaddafi decided to nationalize the oil companies operating in Libya. One of these companies was the Italian energy company, ENI. In order to maintain its operations, the company accepted to form a joint venture with the Libyan National Oil Corporation (Colafrancesco 2012). This is because, during the 1970s and 1980s, the energy issue shaped the relationship between these two countries due to the fact that Libya is a resource-rich country in terms of oil and natural gas, and its geographical vicinity to Italy reduces the costs of transportation.

During the 1980s and the 1990s, the reputation of Libya worsened due to its affiliation with terrorist groups and attacks such as the West Berlin discotheque bombing (Kamel 2016). In response, the UN with its resolutions 748 and 883, adopted sanctions on Libya, including the prohibition of selling arms (United Nations Security Council 1998). The UN was not the only actor who took a stance against Libya. The USA put trade restrictions vis-à-vis Libyan goods and services (The White House 1986) and the European Economic Community imposed diplomatic sanctions (Zoubir 2009). Interestingly, Libyan oil was not included in these sanctions owing to the Italian and German efforts (Colafrancesco 2012). However, overall, these sanctions resulted in the isolation of Libya from the international arena.

The EU initiated new policies towards non-EU Mediterranean countries, starting with the Barcelona Process in 1995. This process pointed out the 'common challenges' that occurred within the post-Cold War context and set multilateral arrangements among signatories (Barcelona Declaration 1995). One of the common

challenges was migration. Nevertheless, Libya was not added to this framework and the relationship between Libya and the EU remained undeveloped. The 'icebreaker' was Italy who to protect its borders from the unwanted flow of people, starting from the 1990s.

In this chapter, I will examine this unique case in which a member state plays a significant role to prevent illegal migration into the EU, regarding the Normative Power Europe discourse. First, I will mention the cooperation agreements between Italy and Libya before the Arab Spring. Also, the EU's involvement in these cooperation schemes will be explained. However, it should be noted that the EU is not the main actor, thus, its action could be considered as complementary to that of Italy. Lastly, the recent events after the fall of the regime will be discussed.

5.1 The First Decades: Controversial Agreements

Traditionally, migrants have been using Italy as a transit country to reach more developed EU member states such as Germany. The Italian officials were aware of that situation, therefore, they preferred not to stop these people (Ambrosini 2018). Nevertheless, Italy had to implement the adopted rules under the Dublin Convention in which first entry points are obliged to examine asylum claims (The Council of the European Union 2008*b*). The Dublin Convention, however, creates a burden on the specific member states whose borders are also the Union's external borders. These countries such as Italy face a considerable amount of asylum applications compared to the other member states, especially in times of rising instability in the neighborhood. On top of that, the lack of solidarity among member states meant that the voluntary relocation system could not provide a solution. Therefore, in order to cope with irregular migration, Italy has chosen to sign bilateral cooperation agreements with third countries.

In the case of Italy and Libya, the formal dialogue addressing migration started with the Joint Communication in 1998 (Dottori and Paoletti 2014). Two years later, the Memorandum of Intent was signed in order to enhance the cooperation scheme on migration (Paoletti 2010). However, the content of the Memorandum was not limited to migration, but also included drug trafficking, terrorism, and organized crime (Giuffré 2012). This illustrates that Italian officials adopted a security discourse on that matter and that they established a connection between illegal activities and

immigration. Nevertheless, at the implementation stage, the Memorandum of Intent fell short (Paoletti 2010). The reason is that the Gaddafi regime expected to receive a formal apology from Italy due to the colonial past (Colafrancesco 2012), however, it did not happen until 2008.

During the period of 2000-2007, both countries maintained their dialogue, yet no formal agreements were concluded (Paoletti 2011). In 2003, informally, they agreed that they would share information on the flow of people and the necessary equipment would be provided by Italy to Libya to reduce the number of migrants. However, at that time, the EU's arms embargo on Libya was in effect and Italy was not able to provide certain equipment such as surveillance cameras. Therefore, Italy played an active role in the lifting of the sanctions in order to deliver the equipment (Lutterbeck 2006). In 2004, the Union decided to abolish the sanctions, thus, the Italian officials managed to fulfill one of the objectives regarding the informal agreement of 2003. Nonetheless, it should be noted that the informal agreement was not published, therefore the full content of it is not known by academics, researchers, or the public in general (Paoletti 2011). Besides, the Italian National Parliament did not ratify the agreement (Paoletti 2010). It could be argued that this approach has damaged Italy's reputation as a full democracy and a core EU member state due to the lack of the Italian Parliament's approval and the unpublished content of an informal agreement. Because of the unknown content, the accountability was in question as well. In fact, in 2005, the European Parliament criticized the 'secret' contents and pointed out to the fact that despite the absence of a readmission agreement between these two countries, Italy sent hundreds of people back to Libya, a country which did not sign the Geneva Convention of 1951 (European Parliament 2005). The European Court of Human Rights (ECtHR) declared its concerns as well (Longhi 2009). However, beyond condemnations, no formal procedure to punish Italy was started off.

Throughout the first decade of the 2000s, the European Commission tried to be an active player, saying that a dialogue mechanism should be formed "to build up mutual understanding, through concrete but transparent co-operation on all issues related to illegal immigration" (European Commission 2004). To achieve this objective, in 2003, the Commission and Libya conclude a cooperation agreement; however, in order to be implemented, both sides had to take necessary steps. First, Libya had to sign and demonstrate its commitment to the Geneva Convention of 1951 to protect the refugees by providing their rights. Second, the Libyan regime did not allow the operations of UNHCR, therefore, the Commission requested that Libya should give permission to UNHCR and recognize its competence on related issues such as resettlement (European Commission 2004). If Libya fulfilled the

requirements, cooperation could begin by focusing on training, capability building, asylum management, and creating awareness about the dangers of illegal migration. However, it did not come into force due to the fact that sanctions had not been lifted and Libya did not sign the Geneva Convention.

It should be mentioned that between the years of 1999 and 2004, the previous Italian Prime Minister, Romano Prodi was the President of the European Commission. He was known as a supporter of European integration and an advocator of multilateralism (Brighi 2007). He would like to see the creation of the EU body on foreign policy in which all policies concerning the external relations would be run, and he also favored collectively protected borders (The Economist 2002). Therefore, the eagerness of building a dialogue between the Union and Libya was not surprising.

While the EU tried to strengthen its relationship with Libya, Italy secured its energy-related interests by signing an agreement with Libya in which ENI's operation would last until 2047 (Colafrancesco 2012). On top of that, both sides reached an agreement on border security in 2007 when the second Prodi government was in the office. According to the new agreement, Italy would provide six patrol boats, and Libyan officials would use them to secure its coastal area to prevent illegal entries to Italy (Paoletti 2011). Also, joint patrols and traineeships for related guards would be planned. In short, at that time, Italy decided to strengthen Libya's capabilities in terms of the coast guard.

The turning point was the Treaty on Friendship, Partnership, and Cooperation signed in 2008 in Tripoli. The main idea of the Treaty was to open a new chapter in the relationship by apologizing for colonial activities. To do so, Italy agreed on paying 5 billion dollars within a 25-year framework. Moreover, scholarships would be provided for Libyan students (Attanasio, Pittau, and Ricci 2010). In return, Libya would cooperate with Italy on the issue of migration. However, the way of migration management led to the so-called 'push-back' policy (Torresi 2013).

5.1.1 The Push-Back Policy and the Violation of Conventions and the EU Directive

The 'push-back' policy means that coast guards do not give permission to the boats to reach the shores, and people on boats, even if they need international protection or they intend to claim asylum, cannot land in the place of destination. In other words, if the guards notice them on the sea, their chance to obtain legal status as refugees or asylum seekers would decrease, and they would be sent back. As understood from the process, this policy violates Article 32 of the Geneva Convention of 1951 because of the fact that people cannot claim asylum or obtain refugee status due to collective expulsion (UNHCR 2011). Directly, it ignores the non-refoulment principle by practicing 'neo-refoulment' in which migrants could not have a chance to use their right to apply for protection, and they immediately are returned while they are on the road. Therefore, it was labeled as "a dirty agreement to allow Italy to unload migrants in Libya" (Longhi 2009).

The Italian officials tried to legitimate this policy, stating that Libya was defined as a safe country and signed the 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa (Giuffré 2012). Nonetheless, the scope of the Convention of 1969 was limited compared to the Geneva Convention because of the fact that the Convention of 1969 was designed to address the problems in a specific region which was Africa. Besides, in order to be classified as a safe country, this specific state has to sign the Geneva Convention of 1951 according to the EU directive (The European Parliament and and The Council of the European Union 2013). Furthermore, in the Convention of 1969, it is stated the signatories are obliged to cooperate with UNHCR (UNHCR 1969). However, the Libyan regime rejected the existence of refugees in the 2000s, claiming that these people were economic migrants (Joffé 2011). The Libyan officials also demonstrated their disapproval of the UNHCR-led activities. Since there was no formal agreement between Libya and the UNHCR, all operations done by the Organization were seen 'illegal', therefore, the UNHCR had to close its office in Tripoli (Rossi 2010). On top of that, despite the insistence, Libya did not sign the Geneva Convention of 1951.

Related to the 'push-back', the European Court of Human Rights examined the claims of migrants who were sent back to Libya with reference to the previous agreements between the two countries and the 2008 Treaty. As seen in the case of Hirsi v Italy:

> "The applicants alleged that their transfer to Libya, where refugees and asylum-seekers were granted no form of protection, exposed them to the risk of being returned to their respective countries of origin: Somalia and Eritrea. They claimed that various reports by international sources attested to the existence of conditions in both those countries which breached human rights" (European Court of Human Rights 2012).

The Court accepted the migrants' arguments on that matter and concluded that even though it was Italy's responsibility to assess people's claims to whether they could obtain legal status or not, Italy violated Article 3 of the European Convention on Human Rights by sending these migrants to Libya (European Court of Human Rights 2012). As a result, Italy was convicted to pay 15.000 Euros and the expenses of the case (Polchi 2012).

After the ECtHR's decision in 2012, the interim government in Italy welcomed the conclusion, however, the minister of interior who served during the expulsions, Roberto Maroni, said that he would do the exact same thing in order to protect Italian citizens, and added that the ECtHR was politicized and its decision was political (Polchi 2012). It should be noted that during his term, he also declared that the 'push-back' policy should be an example for all member states to prevent irregular migration (Povoledo 2009). In short, the former officials such as Maroni adopted an approach that was based on the security of the Italian citizens. Nonetheless, the 'push-back' policy has created a trade-off between 'protecting Europe' and 'protecting migrants' (Carling and Hernandez-Carretero 2011). In fact, 'protecting Europe' by adopting restrictive measures and concluding informal agreements have ultimately resulted in the human rights violations of migrants.

5.1.2 The Commission's Attempt to Cooperate with Libya: A Framework Agreement

Apart from the actions of the Italian government, the European Commission requested a mandate in order to start the negotiations on a framework agreement with Libya on behalf of the EU in 2008. The endpoint of the negotiations would be a Free Trade Agreement between the EU and Libya, deepening of the existing economic relations and making Libya an integral part of the global trade. That attempt was seen as a 'historic decision' (European Commission 2008). Negotiations for the framework agreement started in 2008, after the Treaty on Friendship, Partnership, and Cooperation between Italy and Libya. During the negotiations,

trade, energy, investment, and the creation of a free trade area were seen as vital components of the framework agreement in the eyes of the Libyan officials. This is because, despite being a resource-rich country, Libya suffered from an underdeveloped economy due to the sanctions. On the other hand, the EU emphasized that one of its 'key areas of interest' was migration (European Commission 2009). Libya as a transit country has faced mass flows of people from Sub-Saharan countries to its shores. Sometimes, these people found smugglers or were captured by smugglers (human trafficking) which resulted in an emergency in the Mediterranean region. Consequently, the need for cooperation on migration was emphasized. The Commission declared that the Union provided funding to the projects of UNHCR, the Italian Ministry of the Interior, and the IOM in Libya and was planning to provide a further 20 million Euros (European Commission 2009). The role of the Commission was limited to allocating needed financial assets to related actors who had already operated in Libya and offering assistance for the adoption of comprehensive border security objectives.

As a part of the negotiations of the framework agreement, on 4-5 October 2010, the Commission and Libya agreed to cooperate on the issue of migration where both sides would make an effort to upgrade the conditions in the countries of origin (European Commission 2010). This illustrates that the migration-development nexus was deployed by the Commission in the case of Africa in which Libya also suffered from the massive flow of people coming from relatively poor Sub-Saharan countries. The Commission would also help Libya to increase its capabilities to protect its borders with neighboring countries and its shores to prevent illegal migration. Moreover, it was stated that a visa facilitation process might be offered to Libyan citizens (European Commission 2010). However, this framework agreement has never been concluded.

As stated by Michele Comelli, the Italian governments have been very critical about the EU's position on the issue of migration (2011). Italian officials have argued that illegal migration should be solved at the EU level instead of being left to the efforts of frontier countries (Comelli 2011). As seen in the chapter, there were several attempts to conclude a cooperation agreement with Libya; however, the offerings of the Commission were generally financial assets that had been provided by the Italian officials to the Libyan authorities. The possibility of visa facilitation was new, nevertheless, due to the regime change in Libya, it remained on paper.

The critical approach of the Italians, in some cases, took the form of a threat. In some cases, criticism would take the form of a threat. For example, when a spokesman from an EU institution requested an explanation about the expulsions,

the then Prime Minister Berlusconi responded that the spokesman and the commissioners should not talk about it, and if they insisted, Italy would block the workings of the EU (Hooper 2009). This example also demonstrates that while several actors such as the EP and the ECtHR could criticize the wrongful acts of Italy, the Commission failed to do so. Furthermore, the Commission could not provide a proper solution to the problem (Miranda 2011) and the Arab Spring made Italy and the EU more vulnerable than in previous decades in terms of migration.

5.2 After the Arab Spring: New Agreements

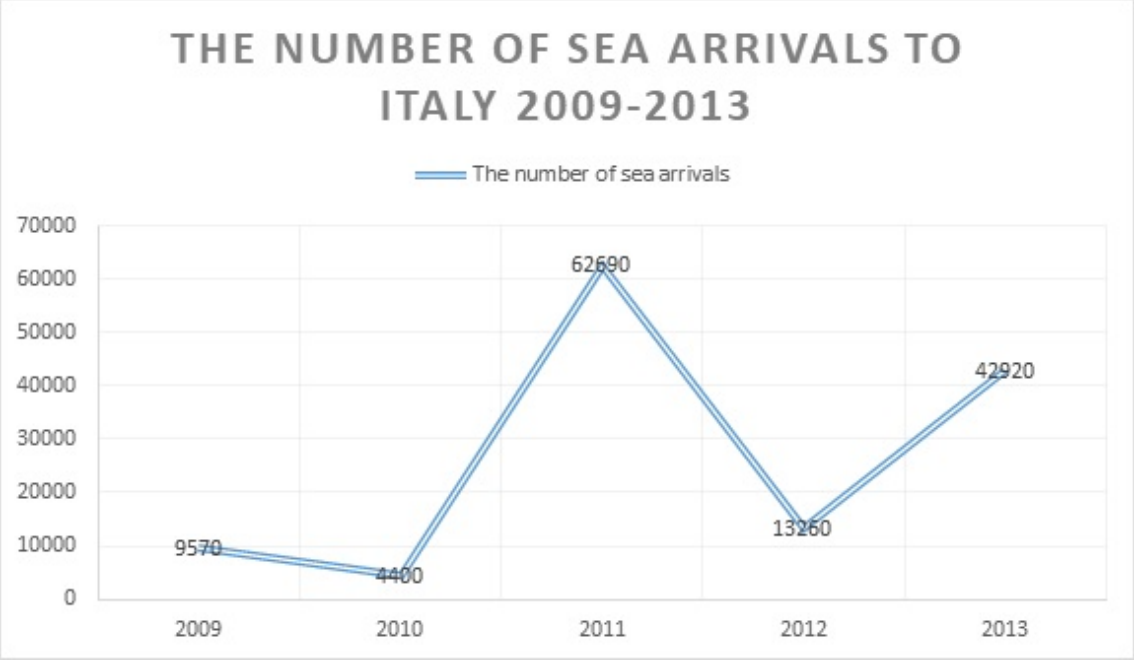
The Arab uprisings led to a flow of people to the nearest islands on the Mediterranean. This was foreseen by Qaddafi, but he used it as a threat, stating that if he lost power, "there would be no one to stop them [migrants] anymore" (BBC 2011*b*). Indeed, the Italian officials acknowledged that Libya was a stable country thanks to Qaddafi (Varvelli 2010). Both sides could maintain a dialogue if an unexpected situation occurred. However, this opportunity no longer existed after the fall of the regime in Libya.

Although Italy hesitated to participate in the NATO-backed operations in Libya, the existing agreements were suspended in February 2011 (Torresi 2013). This suspension decision covered migration-related cooperation as well. Nonetheless, the worsening situation in the Middle East and North Africa (MENA) region led to an increase in the irregular border crossings, and people have started to land in the Italian islands, especially in Lampedusa. Italy realized that it could not handle such mass migration and requested the implementation of the temporary protection under the Council Directive adopted in 2001 (Comelli 2011). This Directive was designed to:

> "establish minimum standards for giving temporary protection in the event of a mass influx of displaced persons from third countries who are unable to return to their country of origin and to promote a balance of effort between Member States in receiving and bearing the consequences of receiving such persons" (The Council of the European Union 2001*b*).

However, this request was rejected and then Italy began to issue temporary residence permits to people coming from North African countries between 1 January and 5 April (European Commission 2016*e*). As a result, Italy was accused of damaging the Schengen System. This is because, through this permit, these people enjoyed free movement within the Schengen zone. In response, in order to prevent unwanted flows, France re-introduced the internal border with Italy. Furthermore, in April 2011, the then French president Nicolas Sarkozy and the then Italian Prime Minister Silvio Berlusconi penned a letter, stating that the limited capability of the Member States to protect the external borders against new flows created problems concerning the Schengen regime. They expressed the need for revision of the Schengen Treaty in order to maintain its existence (Traynor and Hooper 2011). Later on, the inability of Italy to take the necessary measurements in the face of a 'crisis' was heavily criticized. For instance, Sarkozy presented an idea, arguing that if a member state could not control the external borders, this state should be sanctioned (Carrera 2012). As understood, Italy not only was left alone to deal with the migration pressure but was also seen as an unsuccessful member state in terms of the protection of borders.

Figure 5.1 The number of sea arrivals to Italy from 2009-2013



Source: (Fargues 2017)

As seen in Figure 5.1, the earlier cooperation schemes were successful in preventing unauthorized people from Libya. Nonetheless, the Arab Spring increased the number of illegal maritime border crossings, exceeding 60.000 people in 2011. In order to return to the previous situation, when the Transitional National Council (TNC) declared itself as a legitimate body in Libya, Italy recognized this claim and intended to establish a relationship with it (BBC 2011*a*). First, in June 2011, both sides agreed on a memorandum of understanding in which these two countries would continue their cooperation on migration and would respect the previous deals concluded during the Gaddafi era (Frenzen 2011). This indicates that despite the collapse of the regime in Libya, Italy did not change its way of 'protecting' its borders by relying on the Libyan officials and the capability of the Libyan Coastal Guard.

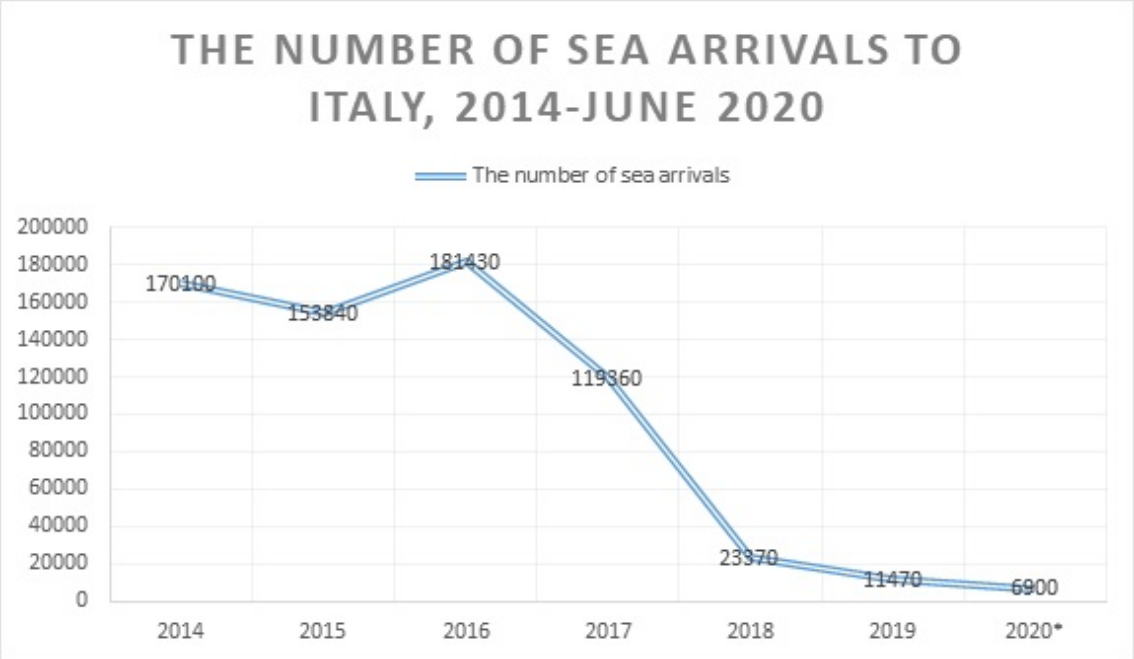
Cooperation with Libya was needed, therefore, in 2012, the Tripoli Declaration was released. According to the declaration, the Libyan coast guard and police officers would be trained; borders would be monitored and protected; lastly, voluntary return opportunities would be promoted (Statewatch 2012). Nonetheless, as the UNHCR emphasized, this declaration did not respond to the question of how asylum seekers and refugees would be protected (UNHCR 2013). In fact, when the conflict between two sides in Libya intensified and entered a new era in the summer of 2014 (Morone 2017), the TNC was not able to implement the decisions.

Between 2011-2013, most of the arrivals originated from Tunisia rather than Libya, and these people received humanitarian protection status in line with the Italian law (Fontana 2019). However, after 2013, the migration route as well as the nationalities of migrants have changed. The ongoing civil war in Libya intensified in 2014. Thus, Sub Saharan migrants have started to flee from Libya by using illegal ways. These people had left their countries of origin because of political and economic reasons, and they perceived Libya as a final destination. However, the current situation led to a secondary movement to reach a safer place. The number of people who decided to use the Central Mediterranean route reached 42.925 in 2013 (Fargues 2017). Unfortunately, the number of deaths at sea has increased as well due to shipwrecks of overloaded boats.

In order to prevent these losses, Italy introduced Operation Mare Nostrum (Our Sea) in 2013. It indicated that there was a humanitarian shift in migration governance. This is because the operation aimed to save the people in the Mediterranean. However, the operation was not welcome by some member states, for instance, the United Kingdom. The British officials claimed that the existence of such operations would increase the number of illegal migrants because they would know that they

would be rescued (Andersson and Keen 2019). Furthermore, some have argued that the real intention was to send the rescued people back to countries such as Libya (Morone 2017). Nonetheless, the Mare Nostrum was replaced by 'a more conservative' joint operation under the mandate of FRONTEX in 2014 (Ambrosini 2018). The new operation named Triton was formulated to protect the external borders of the Union, yet it was a complementary action to help countries which faced massive flows, by providing additional equipment such as helicopters and staff (FRONTEX N.d.). Also, Operation Triton was running nearby the Libyan coastal area (Toaldo 2015). Ironically, the Operation did not have sufficient vessels and failed to save the lives of migrants at sea (Cusumano 2019).

Figure 5.2 The number of sea arrivals to Italy from 2014 to June 2020



Source: (UNHCR 2020*b*)

5.2.1 The Memorandum of Understanding of 2017 and Legality Problem

In February 2017, Italy and the TNC signed a new memorandum of understanding. In this memorandum, the Treaty of Friendship, Partnership, and Cooperation of 2008 and the Tripoli Declaration of 2012 were referred to as the basis of cooperation. Italy accepted that technical and financial support would be given to TNC in order to fight against human smugglers and to prevent illegal migration. In return, it would be expected that the Libyan officials strengthen border control and

be open to work with the international organizations in the country (*Memorandum of understanding on cooperation in the fields of development, the fight against illegal immigration, human trafficking and fuel smuggling and on reinforcing the security of borders between the State of Libya and the Italian Republic* 2017). The Union was pleased with the Memorandum (The Council of the European Union 2017). However, this memorandum attracted several criticisms.

First of all, none of the National Parliaments were included in the process (Guttry, Capone, and Sommario 2018). It was an informal agreement between Italy and the TNC, one of the self-claimed authorities in Libya. Second, this cooperation scheme enables that the rescued migrants would be returned to Libya, similar to the 'push-back' policy of the 2000s. Due to this action, migrants do not have a choice but to remain in Libya, and in some cases, in Libyan detention centers which are known for their inhuman conditions including torture, sexual harassment, and slave trading (Camilli 2017). It should also be noted that some of the detention centers were constructed by the help of Italy in line with the agreements signed during the Gaddafi era (Torresi 2013). Moreover, these detention centers are partially funded by the EU (European Commission 2017*a*), therefore the EU shares "the responsibility for the unlawful containment of refugees and migrants in centres where unconscionable abuses take place" (Amnesty International 2018). Lastly, the Libyan Supreme Court ruled that the TNC did not have the right to sign this Memorandum and refused its implementation (Andersson and Keen 2019). In other words, the legality of the Memorandum is vague. Nevertheless, Italy has provided traineeships, equipment, and financial assets to the TNC in order to ensure that illegal maritime border crossings would decrease (Andersson and Keen 2019).

5.3 Recent Events

Despite its controversial content and outcomes, the Memorandum of 2017 was renewed in 2019. According to the Italian authorities, the renewal was a necessary action to prevent illegal migration and to reduce human smuggling (Tondo 2019*a*). While the Commission turns a blind eye on this renewal, this decision was perceived as an example of "how far EU governments are prepared to go to keep refugees and migrants from Europe's shores" (Amnesty International 2020). Nonetheless, the condemnations of NGOs could not dissuade Italy from concluding similar informal agreements. In the absence of deterrent punishment at the EU level, Italy is likely

to maintain its objective and practices. In fact, the previous coalition government consisting of the Movimento Cinque Stelle and Lega Nord (June 2018-September 2019) went too far on migration governance.

In 2019, Italy passed a law regarding the activities of the NGO ships in the Mediterranean. The Search and Rescue (SAR) operations of the NGOs were considered as one of the 'pull' factors, therefore, according to the new law, these ships were not allowed to use Italian territorial waters (Geddes and Pettrachin 2020). It means that indirectly, migrants were pushed towards other countries, namely Libya. As seen in the case of Sea-Watch 3, a German NGO rescue ship, the Italian officials had a strong stance on that matter. The captain of the Sea-Watch 3, Carola Rackete, saved 40 people and decided to take these people to the nearest 'safe' place which was Lampedusa. Italian officials did not give permission to the ship; however, the captain entered the territory. Due to this decision, she was arrested (Tondo 2019*b*). This situation was condemned by several NGOs such as Amnesty International (2019) and Human Rights Watch (2020*c*). However, the EU institutions remained silent.

Similarly, Italian officials refused to open the country's ports to the Italian coast guard vessel which rescued migrants. They only allowed the migrants to land after concluding the negotiations with member states on which country would be willing to accept these people (Deutsche Welle 2019). Recently, this event became an investigation subject where the then Minister of Interior, Matteo Salvini, has been accused of blocking the disembarkation of the rescued migrants. Nevertheless, he claimed that "I just did what the Italian people asked me to do" (Tondo 2020). In doing so, he tried to legitimate his decisions when he was the Minister of Interior, by relying on popular support. Furthermore, he also added that the 'closed ports' policy where Search and Rescue ships could not disembark in Italian ports has paved the way for saving of 'billions of euros' that would be used in the job creation for Italians (Salvini 2019).

His immunity was lifted for similar cases in which the rescued migrants could not land in Italian territory for a while. The latest case related to a ship of the Spanish NGO called Proactiva Open Arms. One of the SAR ships of this NGO rescued a group of migrants in 2018. However, the Libyan officials demanded that these people have to be delivered to the Libyan coast guards. It means that the Libyan officials would take the migrants in order to be placed in one of the detention camps in Libya (Human Rights Watch 2018). Thus, the ship crew refused this demand and tried to enter Italian territory. However, due to the rejection, this ship, which was full of rescued people, had to wait for 19 days to disembark (BBC 2020). On top

of that, the decision of not to handing over migrants to Libyan coast guards was interpreted as a criminal act in the eyes of Italian prosecutors, therefore, the crew faced charges (Human Rights Watch 2018). Nevertheless, as of 2020, Salvini would be on trial because of blocking the entrance of this ship.

To summarize, starting from the 1990s, Italy has been involved in scandalous agreements and violated the right to claim asylum or receive international protection by preventing migrants' landing on its territory. Even when migrants managed to reach the Italian Islands, they would be sent back. Italian officials attempted to legitimate this action, by claiming, for example, that Italy could refuse the entry of illegal migrants and that this is not considered as collective expulsion (Andrijasevic 2010). In some cases, the safety of Italian citizens was used to justify these cooperation agreements. This also demonstrates that illegal migration was seen as a criminal action in which migrants might be threats to internal security. In fact, in Italy, if an illegal migrant was detected, he or she could be prisoned up to four years (Acosta Arcarazo and Geddes 2013). Moreover, in the eyes of the Italian authorities, Libya has never only been a transit country. The cooperation agreements have included other subjects such as the energy issue which makes Libya an important partner. Hence, especially prior to the Arab Spring, Gaddafi benefitted from these cooperation agreements. For instance, because of the sanctions, the Libyan economy was isolated; however, Gaddafi managed to lift these sanctions in return for cooperation on migration with Italy. An authoritarian regime such as Libya has gained leverage over the EU and in this case, over a member state. While Gaddafi enjoyed this cooperation scheme, the EU institutions and Italy contradicted with their democratic values as well as their respect for human rights.

In order to respond to the massive influx of migrants, Italy requested the implementation of the Council Directive on temporary protection at the beginning of the Arab Spring. However, this request was rejected. The divergence of interest among members has pushed Italy to approach the Libyan authorities to sign new cooperation agreements on migration. Moreover, as explained in this chapter, the EU could not engage with Libya due to the fact that the relationship between the two suffered from a lack of formal connection up to 2004. Later, the Union's efforts to arrange a formal agreement with Libya was not concluded because of the Arab Spring. As a result, the EU helps Italy through financial assistance and most importantly, it participates in the existing scheme among Italy and Libya. By doing so, the Union also shares the responsibility of human rights violations in the Mediterranean.

Within the framework of NPE, it is expected that member states fulfill the requirements of Copenhagen criteria where norms and values were formalized. However,

as seen in this chapter, Italy, despite the Directives and international agreements, could conclude cooperation agreements with a third country where there is an ongoing civil war and, therefore is not a safe place for migrants to be returned. Indeed, before the civil war, due to the existence of an authoritarian regime and not being a part of the Geneva Convention of 1951, Libya was not a safe country at that time, too. Besides, Italian officials interpreted the safe third country concept with regard to its interests. These illustrate the shortcomings of the NPE discourse at the state level. On top of that, except individual Court cases with regard to the 'push-backs' and 'closed ports', at the supranational level, Italian officials did not face trials. In the absence of a punishment mechanism or infringement procedure, it is likely that Italy would not act in line with the norms by approaching non-democratic third countries and concluding controversial agreements.

6. CONCLUSION

Human beings have immigrated from one place to another for centuries. People have decided to leave their countries of origin due to economic, political, and environmental problems. Also, migrants could be forced to leave their homes as happened during the Second World War in which some of the Jews escaped from genocide. This traumatic event led countries to sign the Geneva Convention relating to the Status of Refugees in 1951 in order to secure the rights of the people who would face human rights violations in their countries of origin, thus establishing the international legal grounds to protect the people who are in need. The signatories were obliged to provide protection and several rights to refugees. Nonetheless, in contrast to refugee status, the definition and the rights of migrants are mainly regulated by nation-states rather than a higher institution. In other words, the definition of who constitutes a migrant has been changing from one country to another or even from today to tomorrow. The lack of a common definition makes migrants vulnerable. Furthermore, since the rights of refugees are set, countries who want to prevent unwanted flows have tended to avoid the responsibilities which fall under the Convention, and therefore, perceiving these people as economic migrants even though people's intention is to receive protection.

One of the strategies to keep migrants out and send the illegally residing people back is to conclude an agreement with a transit or a sending country. This indicates the externalization of migration governance. However, it is a controversial policy area in which the outcomes of it might damage the normative characteristics of the parties. This is because, instead of official readmission agreements, countries have tended to conclude cooperation agreements that are outside of legal frameworks. This means that the approval of certain institutions such as the European Parliament or national parliaments, as mentioned in the chapters, is absent. Moreover, informal agreements are not legally binding, therefore, the implementation is dependent on the willingness of the requested countries and the credibility of the requesting states. Lastly, the content of these cooperation agreements might lead to violations of human rights.

In this thesis, in order to emphasize the problems of cooperation agreements on migration with third countries, I have examined two cases: the cooperation agreements between the EU and Turkey and the cooperation agreements between Italy and Libya. I have approached these cases from the Normative Power Europe perspective to answer the question of whether the externalization of migration governance through these agreements hinder the Normative Power Europe, and if so, how. I have argued that the content, the status of these agreements and their operationalization have had a seriously adverse impact on the situation of migrants, therefore, the NPE is damaged.

Ian Manners conceptualized normative power as an actor who could define the 'normal' based on the internalized core norms which are peace, liberty, democracy, rule of law, and human rights and fundamental freedoms. He presented the EU as an example of his theory because of the unique structure of the Union, its historical background, and its emphasis on international law. Nevertheless, the concept of Normative Power Europe has been criticized by scholars. Especially, the question of how interests and norms function under the NPE has heavily studied. Although Manners did not separate these two things, in the literature, scholars illustrated that the objectives of the Union could harm the normative power due to the fact that in order to achieve the goals, the EU and member states could make decisions that challenge the core norms of the Union. Similarly, in the external migration governance literature, scholars point out the problems of cooperation agreements on migration, illustrating that legal ways of concluding an agreement are avoided and human rights violations could be detected in the contexts of these cooperation agreements. Also, in this thesis, it is seen that the interest of the Commission and Italy is to prevent illegal migration and the ways of achieving this goal might not be in line with norms. Thus, this study agrees with these scholars who claim that norms and interests should be taken into consideration separately.

In the EU official documents, the Union approaches the migration issue as a problem originated from the gap between developed countries and developing countries. Thus, migration policies are designed to address the needs of sending countries' economies. Indeed, the worsening economy is one of the reasons for migration, nevertheless, the EU does not notice the fact that another reason for migration is the attractiveness of the member states. This attractiveness is not limited by economic prosperity but also includes rights, liberties, social services.

After the Arab Spring, scholars have analyzed the externalization of migration governance. Nonetheless, they focus on one specific agreement or make a comparison between two different cooperation agreements concluded by two different member

states. In this thesis, different from the examined cases, I have tried to analyze how the Commission and a member state conclude a cooperation agreement with a third country within the context of the NPE. This is because, the normative power is understood as an ability owned by the Commission; however, the Union is composed of member states and according to the treaties, member states have to oblige to be in line with the norms and values of the EU. Besides, migration is a shared competence policy area. Therefore, rather than only examining the cooperation agreements at the EU level, I have added a case study on Italy which is one of the founding members of the Union and has faced migration flows due to its geographical location. I have found that as seen in the formal readmission negotiations between the Commission and Turkey, the EU insists on its own objectives, fails to provide tangible incentives. The lack of 'rewards' and 'reflexivity' reduce the possibility of a formal agreement and demonstrate how Eurocentric these negotiations are. Moreover, the requested country might not see the Union as a credible actor. In the case of Turkey, the reward which Turkey has demanded was visa liberalization. However, the roadmap and the negotiations have signaled that Turkey is treated differently. Furthermore, the credibility of the Union decreased due to the problems with the accession negotiations. As a result, the balance between these two actors has changed. This means that at the implementation stage, Turkey has gained leverage.

The EU has concluded cooperation agreements (formal and informal) with Turkey even though as a candidate country, Turkey, could not manage to fulfill the Copenhagen criteria and democratic backsliding is observed. This illustrates that the Union has prioritized the prevention of illegal migration over democracy which is one of the core norms mentioned in the NPE.

A similar pattern could be seen in the case of Libya where an authoritarian regime achieved its demands by using cooperation agreements as leverages. For instance, the Italian officials made efforts on the lifting of sanctions on Libya in order to send the needed equipment. Likewise, Italy did not challenge the status quo in Libya due to the fact that the existing regime was successful to reduce the illegal crossings. However, it contradicts the fact that Union and the member states act in line with the norms in their external affairs. As understood, democratic values in these targeting countries are neglected in order to solve the massive influx of migrants.

Second, there is a presupposition that all of the member states have internalized core norms and values. Nevertheless, if we consider the cooperation agreements between Italy and Libya, it can be argued that some members fall short of respecting these norms. As mentioned in the previous chapter, in some cases, the content of

the agreements has remained a secret. There is no formal readmission agreement between these two parties and they generally prefer reaching agreements in the shape of a Memorandum of Understanding in which Italy would provide the necessary equipment and financial assistance to Libya, in return for Libya to increase its activities in the Mediterranean to prevent the flow of people.

Moreover, Italy has not obeyed the Directives where the requirements of a safe third country are set. In the Directive, it is clearly stated that a safe third country has to be a signatory of the Geneva Convention of 1951. However, despite the warnings, Libya did not sign the Convention of 1951. In fact, the activities of the UNHCR was seen illegal in the eyes of Libyan officials, therefore, in 2010, the UNHCR was expelled from Libya. Yet, Italy has continued to send migrants back to Libya.

The Geneva Convention is problematic in the case of the EU-Turkey Statement as well. Turkey has no intention to lift its geographical limitation, thus, certain groups of people could be returned to their countries of origin if they are sent from Greece to Turkey, which means the violation of the non-refoulment principle. Moreover, the temporary protection status provided to Syrians does not cover the whole rights in the Geneva Convention of 1951. Even though Syrians benefit from certain social services and have more rights compared to other nationals such as Afghans, they could face some limitations.

Additionally, although there is a court decision on the wrongful act of Italy regarding the 'push backs', the main EU institutions did not punish Italy for it, and currently, the same action is repeated with the new agreement with Libya. Similarly, at the Greek-Turkish border, Greek officers have used force on migrants and even killed at least two people. Furthermore, there are reports indicating that Greece also follows the Italian strategy, the 'push-back' policy, by sending boats to Turkish borders. In sum, Greece and Italy do not act in line with the norms of the Union, nonetheless, the Commission does not take a stance towards these two countries as well.

Furthermore, although the Union emphasizes the rule of law and human rights in its documents and constructs its identity based on them, in both cases, there are serious violations of both of these norms. Without a legal basis, Greece could not suspend the right to seek asylum. Besides, the 'push backs' indicate that the non-refoulment principle is not implemented despite the Geneva Convention of 1951.

These 'black holes' have harmed both the migrants and the Normative Power Europe. The controversial and non-binding informal agreements have become a way to deal with the so-called migration 'crisis'. In order to protect the external borders, despite the wrongful acts of the member states, the Union supports the most

affected countries by providing more staff, equipment, and financial assets. It shows that 'protecting Europe' is becoming an important objective despite the reported human rights violations. In fact, the President of the Commission, Ursula von der Leyen, denied the accusation related to the recent events at the Greek-Turkish borders, stating that "the personnel deployed by Frontex have not witnessed the use of live ammunition by the Greek law enforcement authorities and the Agency did not receive any serious incident report that would substantiate the allegations in this regard" (Published by Tineke Strik on her twitter account, von Der Leyen 2020). In short, in the case of migration, the interests of the actors have outweighed the norms.

It should be noted that even if these migrants are not considered as refugees or asylum seekers, they have to be protected with regard to human rights. Nevertheless, as seen in the thesis, that obligation falls short and it is likely that the lack of deterrent punishment mechanism would increase these violations that are contradicted with the NPE:

> "The Rights of Man, after all, had been defined as "inalienable" because they were supposed to be independent of all governments; but it turned out that the moment human beings lacked their own government and had to fall back upon their minimum rights, no authority was left to protect them and no institution was willing to guarantee them" (Arendt 1973, 291-292).

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