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Article

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Challenges of the German-Led Refugee Deal between Turkey and the EU

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Germany and the EU have both taken a far greater interested in Turkey as a so-called strategic cooperation partner since the beginning of the recent refugee crisis:

- The war in Syria has created over 5 million refugees. Last summer, Europe was overwhelmed with these mass population movements. Approximately 1.5 million people entered the EU illegally in 2015.
- According to the FRONTEX, just under 900,000 refugees and irregular migrants crossed the EU's sea borders *via* the Eastern Mediterranean route in 2015.[1]
- Some forecasts predicted the arrival of up to three million in the EU this year.

As a response, the EU led by Germany has attempted to stem the disorderly flow of migrants to Europe and establish a process whereby some limited, legitimate asylum seekers could enter the EU in an orderly manner through resettlement. Turkey, meanwhile, has pursued an 'open door' policy toward Syrian migrants since 2011, hosting over 2.7 million Syrian refugees (as 'guests' in Turkey) with limited international support.

As more refugees have started to flow to Europe, Turkey has been criticised for its inability to manage its borders effectively and for becoming a 'highway' for the transit of refugees, as well as irregular migrants. Facing the most serious refugee crisis in their history since World War II, which has turned into an almost an solidarity crisis for the entire Union, the EU and, above all Germany, have been obliged to cooperate with Turkey in its efforts to respond to the crisis.

The reluctance of many EU countries to accept refugees also played a role in the EU's turning to Turkey.[2]

Why has Germany been leading this initiative?

If we examine Germany's lead in forging a 'refugee deal' with Turkey, the following factors emerge:

- Germany has been carrying the bulk of the refugee burden;
- Against all the odds and despite the opposition that she has encountered to date, German Chancellor Angela Merkel has persisted with her efforts to find a common European solution to the refugee crisis in order to prevent an existential solidarity crisis in the Union;
- Germany wishes to combat xenophobia and anti-immigrant sentiment, which has further strengthened the extreme-right in Germany and in other parts of the EU.

Why Turkey accepted such a deal?

When Turkey's motives for accepting a refugee deal with the EU are called into question, the following issues spring to mind:

- There has been an urgent need for rapprochement with the West, as the country finds itself increasingly isolated in its own highly instable region in which it has become extremely vulnerable to ISIS and Russia;
- In order to curb its economic slowdown, Turkey needs the EU anchor, which creates the impression that the re-vitalisation of the accession process is important;
- Visa-free travel would be especially good for Turkey's domestic politics. This is a 'psychological

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[1] http://frontex.europa.eu/trends-and-routes/eastern-mediterranean-route/.

[2] In September 2015, the EU pledged to relocate up to 160,000 refugees from Italy and Greece to other states in the Schengen area. To date, fewer than 1,000 of them have been resettled, as member states have accepted far below their pledged quotas or have refused to take any refugees at all. Some have even reintroduced border controls, at least temporarily dismantling the Schengen area.

threshold'[3] for the citizens of Turkey, as it would make them feel like recognised citizens of a respected EU partner.
- Although it is not as crucial as the other aforementioned factors, Turkey would welcome additional EU funds to spend on Syrian refugees.

Overview of the refugee agreement between Turkey and the EU and what it has delivered todate

After three summits held between Turkey and the EU since October 2015, negotiations gave rise to into a formal agreement on 18 March 2016.[4] The main components of the agreement include, for example, commitments to:

- Return all irregular migrants crossing from Turkey into the Greek islands after the 20th of March 2016, but before being sent back each person will be entitled to an individual assessment. *There was a sharp decrease in the number of people irregularly crossing the Aegean from Turkey into Greece from 1,150 each day to less than 160 a day in the first two weeks of April. In the first three weeks of the implementation of the deal as of 4 April, 325 irregular migrants were also returned to Turkey.*[5]
- to resettle a Syrian from Turkey in an EU member state (mainly in Germany) for every Syrian readmitted by Turkey from the Greek islands with a cap of 72,000. *The number of people sent back to Turkey under the agreement in April and early May was lower (386) than the number readmitted to Turkey in the first two weeks of March (398), when there was no agreement. So far not a single person who submitted an asylum claim in Greece after 20 March 2016 has been returned to Turkey.*[6]
- To lift the visa requirements for Turkish citizens by the end of June 2016 at the latest, provided that Turkey fulfils all conditions in the visa liberalisation road map by the end of April 2016. *Turkey could not fulfill the conditions regarding the fight against corruption, data protection, judicial cooperation with all member states, enhanced cooperation with EUROPOL and revision of the legislation and practices on terrorism. On the 4h May, however, the European Commission proposed to lift the requirements for Turkish citizens conditional to Turkey fulfilling the remaining criteria.*[7]
- To speed up the disbursement of the initially allocated 3 billion euros to finance the first set of projects and decide on additional funding of 3 billion euros if necessary. *In addition to 1 billion euros from the EU budget, 16 EU member states have now sent in their contribution certificates, covering 1.61 billion euros out of the 2 billion euros pledged for 2016-2017. The first contracts under the Facility (worth 77 million euros in total) were signed on 4 March and the first payments were made on 18 March.*[8] *The first installment has been used mainly for food and to upgrade the Syrian refugee camps, which currently accommodate just 15 percent of Syrian refugees.*
- To revitalize the aceesion process by opening new chapters in the accession negotiations as soon as possible. *Chapter 17, Economic and Monetary Policy was opened at the end of 2015 and Chapter 33, Financial and Budgetary Provisions are expected to be opened by July 2016.*

Challenges

Although very high hopes have been desperately pinned to the EU-Turkey deal, it has raised a number of question marks. It is fairly often referred to as controversial and there is little faith that this cooperation will work. Let us take a look at the challenges to be addressed with this deal if it is not to be reduced to pseudo solutions.

The first challenge is related to the institutional capacity of Greece to implement the deal. The task is even more difficult now that the United Nations High Commissioner for Refugees (UNHCR) has withdrawn some of its support from the Greek islands in protest against the transformation of certain refugee arrival points into detention facilities.[9]

The second challenge concerns the doubts regarding the legality of the agreement. For the refugee agree-

[3] The then Prime Minister of Turkey, Ahmet Davutoğlu made this statement immediately after striking a refugee deal with the EU on 18th of March 2016. http://www.karar.com/gundem-haberleri/davutoglu-ab-ile-tarihi-anlasmayi-degerlendirdi-psikolojik-esik-asildi-81895#.

[4] EU-Turkey Statement, 18 March 2016, The European Council, http://www.consilium.europa.eu/en/press/press-releases/2016/03/18-eu-turkey-statement/.

[5] European Commission Press Release: "Managing the Refugee Crisis: Commission Reports on Implementation of EU-Turkey Statement", 20 April 2016

[6] European Stability Initiative Newsletter, "Sailing in the Dark – 300 with a Mission – Visa, Terror and The Aegean Refugee Agreement", 19 May 2016.

[7] See also European Commission, *Third Report on Progress by Turkey in Fulfilling the Requirements of Its Visa Liberalisation Roadmap,* COM(2016) 278 final, 4 May 2016.

[8] European Commission Press Release: "Managing the Refugee Crisis: Commission Reports on Implementation of EU-Turkey Statement", 20 April 2016.

[9] REUTERS, "UNHCR Says Won't Work in Greek 'Detention Centres' in Swipe at EU-Turkey Deal", 23 March 2016, http://uk.reuters.com/article/uk-europe-migrants-greece-unhcr-idUKKCN0WO0S3.

ment to be legal, Turkey has to be recognised as a safe third country, but it is not accepted as such by some institutions like the UNHCR[10] and the Council of Europe.[11] Turkey does not apply the 1951 UN Convention Relating to the Status of Refugees to refugees coming from countries outside of Europe and has a weak and rapidly deteriorating record on human rights. This makes the country questionable as a 'safe third country'. Furthermore, Amnesty International claims that mass returns of Syrians from Turkey to Syria have begun.[12] In addition, there is a dangerous trend towards the reversal of public sentiment in the country towards its 'Syrian guests'. According to a new poll by the German Marshall Fund, 81 percent of Turks think that the migrants have failed to integrate well into society, while 68 percent believe that the government needs to take a more restrictive attitude to refugees.[13]

The third challenge concerns the one-to-one scheme. Under the terms of the 'one in, one out' scheme, Ankara is allowed to send one Syrian refugee to Europe only after it accepts a different Syrian refugee that has been returned to Turkey from Greece. Even if the EU does resettle 72,000 refugees through this swap, there is no legal obligation for Europe to take more, and, if the number is exceeded, the deal will be discontinued. Germany, which is expected to accept 15,000 refugees, hopes to create a 'willingness'-coalition with its EU partners, who accept refugees voluntarily. Such partners, however, have been thin on the ground and such a voluntary distribution seems more unlikely after the terrorist attacks in Paris and Brussels.

The fourth challenge is the possibility that migrants may try to reach EU countries *via* other means, as they see longer term-perspective in the EU. This has already started, with an increase in the number of migrants who are choosing Italy as a route to EU.

The fifth challenge is related to the pledge on visa liberalisation. In this context one should bear in mind that the EU has not committed itself to opening the way for visa free travel *via* waiving Turkey's obligations: it has promised to speed up the process conditional to Turkey's fulfillment of all 72 conditions of the 'Visa Liberalisation Road Map' that was accepted by all parties at the end of 2013. Furthermore, the public in Turkey has received little information about the decision-making process in the EU regarding visa-free travel, which has to be approved by the Council of Ministers and European Parliament. In its report where it proposed to lift the visa requirements if Turkey meets all the conditions, the European Commission draws attention to the aforementioned remaining criteria. The President of Turkey and other high level officials have already declared that 'revision of the legislation and practices of terrorism'[14] can not be accepted by the country and have signalled that Turkey may end up not implementing the re-admission agreement, in which case the whole deal would collapse. Hence the way the recent stance of the EU is presented to the citizens of Turkey is that the EU is not delivering on its commitments to Turkey regarding visa-liberalisation. This seems to be quite counter-productive. Turkey's refusal to change its legislation and terrorist practices is regarded as a further indication of the country moving away from the fundamental rights and rule of law dictated by the European Parliament, which stopped working on the visa liberalisation with Turkey.[15] In addition to all these factors, the 'suspension clause' included in the European Commission's abovementioned report by France and Germany exacerbates the risks of the visa-liberalisation process.

The sixth challenge is related to the financial assistance to be provided by the EU to Turkey. Unfortunately, there is a misperception in Turkey that the money will be given to Turkish authorities in bulk to spend on refugees, rather than distributed on a project basis. The EU's insistence on project-based funding is

[10] Financial Times, "UN Warns on Legality of EU Deal to Return Migrants to Turkey", 6 March 2016, https://next.ft.com/content/cf5c1c3a-e21d-11e5-9217-6ae3733a2cd1.

[11] Parliamentary Asssembly of Council of Europe, *PACE Raises Human Rights Questions over EU-Turkey Migrant Deal,* 20 April 2016, http://www.assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=6132&lang=2&cat=".

[12] Amnesty International, *Illegal Mass Returns of Syrian Refugess Expose Fatal Flaws in EU-Turkey Deal*, https://www.amnesty.org/en/press-releases/2016/04/turkey-illegal-mass-returns-of-syrian-refugees-expose-fatal-flaws-in-eu-turkey-deal/

[13] Seufert, G. (2016), "Turkey as Partner of the EU in the Refugee Crisis" SWP Comments, German Institute for International and Security Affairs, January.

[14] What is demanded here by the EU is the following: "Turkish legislation on terror is drafted in a way that seems to allow for an overly broad application of the term of terrorism. This is problematic because if terrorist offences are not defined precisely and relate to crimes of a significant level of severity, they may entail serious restrictions upon human rights and fundamental freedoms. The principle of proportionality, enshrined in European and international law should also be enshrined in Turkish legislation", and "in addition to legislation, attention needs to be paid to courts' interpretation of anti-terror legislation. Participants in demonstrations have been convicted for being members of a criminal or a terrorist organisation even though a link with the organisation was not demonstrated. There were also frequent restrictions on freedom of expression and media, freedom of association and impunity. The recurring arrests and prosecutions of journalists and academics on terrorist-related charges, including the provision on 'making propaganda for a terrorist organisation' have a detrimental effect on freedom of expression and lead to self-censorship, as noted by the Commissioner for Human Rights in his recent statements on Turkey".

[15] EU Observer: "EP Stops Work on Turkey Visa Waiver", 10 May 2016.

mispresented to the Turkish public as reflecting its financial reluctance co-operate with Turkey to improve the Syrians' situation.

The seventh challenge involves the revival of Turkey's accession process to the EU. Although the EU has expressed its intention to accelerate the accession process by opening some new Chapters, this does not seem likely to happen in reality. A real revival of the accession process depends on three factors:

- Domestic developments in Turkey; especially in the areas of the rule of law and the status of fundamental freedoms as prioritised in the enlargement strategy;
- The politics of enlargement in key EU states and the future of the European project itself; and
- A resolution of the Cyprus issue.

The Chapter that was opened at the end of December 2015 had to be opened nine years ago when the EU's German Presidency invited Turkey to present its negotiation-position document, after stating that there was no opening benchmark for Turkey to initiate negotiations in this Chapter. After Turkey presented its negotiation-position document, this Chapter was included among the five Chapters that were blocked by French President Nicholas Sarkozy because of their direct bearing on membership. The Chapter that is expected to be opened, Chapter 33 on Financial and Budgetary Provisions covers the rules concerning the financial resources necessary for funding of the EU budget after membership. Hence it does not play a crucial role in accession negotiations. Whereas, the crucial chapters in the aceesion process like Chapter 23 (Judiciary and Fundamental Rights) and Chapter 24 (Justice, Freedom and Security) remain unilaterally blocked.

The eighth challenge concernsthe ambiguous part of the agreement that is "to work with Turkey in any joint endeavour to improve humanitarian conditions inside Syria". Some scholars claim that Turkey might try to use its leverage regarding the refugee crisis to compel the EU to set up safe zones in Syria.[16]

Conclusion

The so-called refugee deal was necessary, despite the many challenges that it involved. Turkey is vital in dealing with the migration/refugee crisis, and no other EU member state would have been willing to lead negotiations, if Germany had not volunteered. If the deal can be implemented properly, it might very well represent a breakthrough in the crisis and create a relationship built on trust between Germany, the EU and Turkey that can also pave the way for cooperation in other areas. Cooperation, however, requires trust and, despite the official press statements, mutual trust between the parties appears to be rather low, as demonstrated in this paper. This fact complicates such Germany-Turkey cooperation efforts significantly.

[16] Özkan, B. *Is Erdoğan Holding Europe Hostage?,* 24 May 2016, https://de.scribd.com/document/313596154/Is-Erdo%C4%9Fan-Holding-Europe-Hostage.