

Articles (Theme)

AN EVALUATION OF THE EU'S MIGRATION POLICIES AFTER ARAB SPRING*

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Abstract

This policy review article discusses the humanitarian challenges posed by Arab Spring against the EU's migration policy. The mass movements following the uprisings throughout the Middle East and the North Africa further highlighted the need for a coherent and comprehensive migration policy for the EU. Hence, migration is at the top of the EU's political agenda more than ever. Since 2011 the EU and member states have faced a dilemma between the security of their own citizens and the rights and security of the people who have asked for protection. In this article, the EU's current migration policy is reviewed from a human security perspective. The question of how the EU's commitment to human rights and security was challenged by the influx of people following the Arab Spring will be attempted to answer here.

Key terms

EU, irregular migration, migration policy, Arab Spring, human security

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ARAP BAHARI SONRASI AVRUPA BİRLİĞİ'NİN GÖÇ POLİTİKALARININ KISA BİR DEĞERLENDİRMESİ

Özet

Bu çalışmada Arap Baharı sonrası artarak devam eden ve özellikle Avrupa ülkelerini hedef alan göç hareketleri ve bu hareketlerin Avrupa Birliği (AB) mülteci ve göçmen politikalarını nasıl etkilediği tartışılacaktır. Bu tartışmanın odağı AB'nin insani güvenlik yaklaşımı ile Birlik sınırlarından giriş yapmaya çalışan ve 2011 yılından beri sayıları giderek artan kaçak göçmenleri durdurmaya yönelik çabalarının çelişen yönleri olacaktır. AB'nin bu çelişkileri aşabilmek ve daha da önemlisi hem AB vatandaşlarının hem de yasal olmayan yollarla AB ülkelerine sığınmaya çabalayan göçmenlerin/mültecilerin hak ve güvenliklerini koruyabilmek için aldığı tedbirler ele alınacaktır.

Anahtar Terimler

AB, göç politikaları, düzensiz göç, Arap Baharı, insani güvenlik

Introduction

In this article the humanitarian challenges posed by Arab Spring against the EU's migration policy will be discussed. The mass movements following the uprisings throughout the Middle East and North Africa further highlighted the need for a coherent and comprehensive migration policy for the EU. Once again, migration has placed at the top of the EU's political agenda. Since 2011 the EU member states as well as the EU have faced a dilemma between the security of their own citizens and the security of the people who have asked for the EU's help. To change the Union's image characterized by ignoring humanitarian crisis originating from the Mediterranean and North Africa, the EU and the member states have channeled financial aid to the region. Particularly, in Syria, the EU together with member states have become the largest donor in the region. With the aid delivered after the donors' conference in Kuwait and the new assistance package, the EU assistance to Syria reached a total amount of €400

million by the end of 2014. The total budget committed by EU as humanitarian assistance now stands over €1.5 billion. Besides the financial aid, the EU and member states delivered ambulances, blankets, heaters and other items for a total value of €2.5 million. Furthermore, a €428 million have been mobilized through other non-humanitarian EU instruments for education, support to host communities and local societies (European Commission of Humanitarian Aid Fact Sheet 2014).

In spite of the EU and member states' commitment to humanitarian aid following the Arab Spring, their scorecard was not promising. The horrific stories of people dying on their way to Lampedusa Island of Italy or the conditions of detention centers where the unauthorized migrants were kept in accompanied by some member states' rigid migration policies have caused controversies about the EU's commitment to rights and security of irregular migrants and asylum seekers. The dramatic rise of migrant death toll on Mediterranean in 2015 has caused further controversy about the "fortress Europe." Following the 800 migrants death in April 2015, the International Organization for Migration (IOM) has predicted that the migrant death toll on the Mediterranean this year could reach up to 30,000s. Against the backdrop of a humanitarian crisis the EU's migration and asylum policy is reviewed here. The question this article will attempt to answer is how the EU's commitment to human rights and security was challenged by the influx of people following the Arab Spring. To do this first of all the EU's post-Arab Spring migration and asylum policy will be referred. Then, the place of human security and migration nexus in the EU's security strategy will be briefly summarized. In the last section the EU and member states' post-Arab Spring efforts to protect irregular migrants' and asylum seekers' rights and security will be reviewed. The article will be concluded with policy recommendations for the EU to improve its migration policies to minimize the security threats unauthorized migrants have been facing.

Towards a Global Approach to Migration and Asylum

Since most of the EU members have always been among the popular destinations for migrants, migration is considered as one of the most institutionalized policy areas of the EU. By establishing common border management and migration regimes, the EU and its member states have attempted to regulate their external migration policies including the asylum policy. To give an example to this attempt, with the introduction of the EU Blue Card Directive the EU “establishes a fast-track admission procedure for highly qualified migrants and ensures a common set of social and economic rights,” to solve the problem of shortage of qualified workforce in member states (Council Directive 2009/50/EC, 2009). However, when it comes to dealing with irregular migration the EU and its member states have always felt the pressure of balancing rights and security (see Pinyol-Jimenez, 2012; Todeschini, 2012; Düvell and Vollmer, 2011; Huysmans, 2006 and 2000).

In this regard, the tragic event on 3 October 2012 when a boat with over 500 migrants on board sank on their way to Lampedusa marked a milestone in the debates on human security, migration and asylum in Europe. According to the Migration Policy Center’s report, between 1998 and 2013, 623.118 migrants have been found to reach the sea shores of the EU irregularly, an average of 40.000 a year (Migration Policy Center, 2013). To tackle the challenges of irregular migration waves following the Arab Spring, in November 2011 European Commission presented a list of recommendations for a more global approach to migration and mobility. With this Communication (COM(2011) 743 final) Commission proposed a four pillars approach to migration and mobility: (1) Organizing and facilitating legal migration and mobility; (2) preventing and reducing irregular migration and trafficking in human beings; (3) promoting international protection and enhancing the external dimension of asylum policy; (4) maximizing the development impact of migration and mobility (European Commission

2011). The Commission highlighted the need for developing a migrant-centred approach which strengthens respect for fundamental rights of migrants in source, transit and destination countries alike.

Faced with significant increase both in the number of asylum applications and in the unauthorized border crossings following the uprising in the North Africa and Syria, in 2013 the EU has taken immediate action to reconsider its asylum policy too. Within this context, the Common European Asylum System (CEAS) was initiated “to provide better access to the asylum procedure for those who seek protection”. The CEAS consists of directives and regulations that deal with each step in asylum process such as Asylum Procedures Directive, Reception Conditions Directive, Qualification Directive, Dublin Regulation and European Asylum Fingerprint Database (EURODAC) Regulation. With the introduction of the CEAS, fairer, quicker and better quality asylum decisions were aimed (European Commission, 2013a).

Apart from the improvements in migration and asylum policy, the most challenging item in the EU migration and mobility agenda is irregular migration.¹ Irregular migration has been considered as a major, and the most challenging component of the EU migration policy. In 2013, “... 317.840 persons were refused entry to the EU with the vast majority (61%) being refused in Spain... Member States returned around 166.470 non-EU citizens to third countries ... 77.140 persons have been intercepted while crossing illegally the EU borders, with a significant increase ... affecting strongly the Italian coast, in particular due to the worsening of the Syrian crisis” (European Commission, 2014a, s. 4).

Aforementioned, the increase in asylum application as well as the increase in the number of people caught while unauthorizedly entering the EU have forced the EU officials to take urgent steps in dealing with irregular migration and human trafficking. Facing with the tragedies of people who lost their lives in Mediterranean, Task Force Mediterranean (TFM) was set up. The TFM consists of a wide range of measures

including cooperation with third countries, enhancement of legal channels for migration, a clear commitment on resettlement, tackling with trafficking in human beings and human smuggling and the reinforcement of border surveillance for the whole Mediterranean area (European Commission, 2013b). Within the framework of TFM in 2013, Italy launched a search and rescue operation called Mare Nostrum and saved more than 130,000 people, but an estimated 3.500 people still drowned during Mediterranean crossing (Tassinari and Lucht 2015).

As another component of irregular migration approach, the EU has interlinked return policy with readmission and reintegration policies as integral parts of the EU's Global Approach to Migration and Mobility. The legal framework for the EU-wide return policy is adopted in Return Directive. The aim of the Return Directive is "to ensure that the return of third country nationals without legal grounds to stay in the EU is carried out effectively, through fair and transparent procedures that fully respect the fundamental rights and dignity of the people concerned" (European Commission, 2014b, s. 3). Within the context of the Return Directive, some basic conditions have set regarding the detention of returnees. Even though the Directive does not regulate conditions for detention in detail, it is underlined that detainees should be treated in a "humane and dignified manner" with respect for their fundamental rights and in compliance with international law.

Another issue that the EU has been prioritizing is the conclusion of readmission agreements. The EU Readmission Agreements impose reciprocal obligations on the parties to readmit their nationals and, under certain conditions, third country nationals and stateless persons. Since 1999, twelve readmission agreements, mostly with non-member states of Europe including Balkan states and Turkey, have entered into force.

To summarize, even though the EU has been working on developing a comprehensive approach on migration since 1999, mass movements of people following the uprising in the Middle East and North Africa have pushed the EU officials to take

concrete steps to improve the harmonization of admission conditions and to develop legal measures and practical cooperation to prevent irregular migration flows. Since 2011, while introducing the renewed systems for migration and asylum, the EU has also actively engaged in cooperation with the third parties regarding return and readmission processes. By developing a global approach to migration, the EU has meant to strengthen its political dialogue and operational cooperation with non-EU countries on migration issues since the EU has recognized the fact that irregular migration requires global and regional action.

As reviewed here, following the Arab Spring the EU has faced a migration crisis with grave implications on human security (Park, 2015). Hence, it has prioritized tackling with migratory pressures more effectively by highlighting fundamental human rights. The following section evaluates implications of EU's revised migration policies on a rights and security nexus, since the question of to what extent the EU succeeded balancing human rights and the security of migrants seeking the protection of the EU.

European Security Strategy, Human Security and Migration

Since the publication of United Nations Development Program's report in 1994, human element has become a recurrent theme in international security debates. Protection of rights and security of humans has driven the policies of some international actors including the EU. By placing human rights in all policy areas, the EU has committed to the enhancement of human security. In European Security Strategy Document (2003) poverty, hunger, malnutrition, pandemics, diseases, and the destruction of social infrastructure and threats to fundamental rights and freedoms are also listed as security threats together with regional conflicts, terrorism, WMDs, state failure and organised crime. A quick reading of the human security concept shows us that all the human related aspects introduced in European Security Strategy in 2003 and developed in following security and strategy documents are clear indicators of the EU's official

commitment to human security. Given the fact that human security relates to much more than security from violence and crime, the EU's pledge in introducing the means and ways to protect security of people's livelihoods (economic, food, environment or health security) underlines the Union's human security approach.

The EU's journey with the concept of human security has started with the report entitled A Human Security Doctrine for Europe by a Study Group lead by Professor Mary Kaldor (Study Group on Europe's Security Capabilities, 2004). In this report, three cases were made to argue why the EU should develop a human security agenda.

- Moral case which is based on the argument of common humanity and the belief that Europe, as a rich power, is obliged to contribute to this common humanity.
- Legal case which is inspired by Articles 55 and 56 of the UN Charter's call for the promotion of universal respect for human rights and the EU's Constitutional Treaty that explicitly recognised the EU's obligation to abide by these principles.
- Enlightened self-interest case that argues as Europe cannot be secure if others around the world are not, thus links insecurity abroad to possible negative repercussions at the EU (Study Group on Europe's Security Capabilities, 2004).

By embracing a human security agenda, the EU has aimed to enhance its prestige and strengthen its actorness in international community. Within this context, the EU sees human security as a framework for how policy-makers and the European public view issues of external security as well as how the ideas, values, interests and goals of EU ingrained in external relations.

As human security is also about personal, community and political security, the root causes of migration; the security of migrants en-route Europe and their rights and security when they arrive at the EU are considered as main aspects of human security. As was the case with Arab Spring, "it is usually 'man-made' crises that are considered

an urgent threat to the core of values and the system of the EU as a polity” (Kaldor, 2007, s. 273-288). Insecurity has penetrated into the EU borders as when Tunisia, Egypt, Libya and Syria had been affected by the social and political unrests since 2011. The EU had substantially been affected in terms of irregular migration and thriving terrorist or criminal networks. Hence, political and social unrest in the region has been seen as a security threat for the EU. According to the enlightened self interest argument for human security, the safety of EU citizens will ultimately be safeguarded when the root causes of security are addressed and tackled both within and outside the EU. The security continuum linking the internal and external security dimensions has led the EU to give greater attention to the issues of Justice and Home Affairs like asylum, immigration and border management. Accordingly, throughout the EU there has been an increase in internal activities related to border management and control, immigration, counter-terrorism and organised crime. As enlightened self-interest requires the EU has been involved in different policy areas outside the borders of the union to promote human rights, rule of law, democracy and good governance, thus the EU has externalized the concept of human security.

Linking enlightened self-interest with the moral and legal arguments, existential threats to human security in the EU’s neighborhood has been considered as a justification for humanitarian interventions and externalization, or globalization, of irregular migration. Aforementioned the continuum of internal - external security has required a comprehensive approach that integrates Justice and Home Affairs policies with external action. As a result, policy issues like migration and asylum have found their place at the heart of human security debates both internally and externally. To avoid further deterioration of the EU’s moral case regarding vis-a-vis its commitment to human security as a global actor, there is a need to re-address the human security as something external to the Union. Faced with the refugee crises following the political instabilities in Middle East and North Africa, the EU has found a chance to restore the

perception of human security as something external. Given its experience in integrating values and principles of human security into its domestic and international policies, the EU has potential to interlink the external and internal dimensions of human security by providing means and ways to protect rights and security of irregular migrants and asylum seekers who are in need of the EU's protection. This is an ample opportunity for the EU to change the image of "Fortress Europe" and reclaim its soft power position in international community.

The EU, Arab Spring, Irregular Crossings over Mediterranean and Human Security

As underlined in Frontex migratory routes map "the biggest entry route for migrants into the EU is via international airports. Most of those who currently reside in the EU illegally, originally entered in possession of valid travel documents and a visa" (Frontex, 2015). Besides international airports, sea routes, particularly the ones over Mediterranean, is the second most preferred route to the EU. Five out of eight migratory routes defined by Frontex are Mediterranean crossings (See Map of Main Migratory Routes into the EU). Among the five Mediterranean crossing routes, only Western African route from Senegal and Mauritania into the Canary Islands saw a steady decrease in the number of migrants arriving between the years 2008 and 2014 as a result of the strengthening of border control activities following the signing of bilateral agreements between the Spanish authorities and those of Mauritania and Senegal (Frontex, 2015).



Map 1. Main Migratory Routes into the EU

As defined by Frontex, the Eastern Mediterranean Route is the main passage used by irregular migrants, mostly Afghans, Somalis and Syrians, crossing through Turkey to the EU via Greece, southern Bulgaria or Cyprus. Since 2008 this route increasingly became one of the biggest migratory routes. The number of migrants using this route accounts for approximately 40 percent of the EU total. Following the crisis in Syria, numbers climbed at 57.000 illegal border crossings along the Turkish frontier in 2011. Similarly in 2014 number of migrants, mainly Syrian refugees, arriving to the Greek islands and Bulgaria from Turkey reached up to 50.830 (Frontex, 2015).

The Central Mediterranean route covers the migratory flows from Northern Africa to Italy and Malta. Until 2010, before Arab Spring, by offering good job opportunities for migrant workers Libya was absorbing the majority of African migrants before they were traveling to the EU. With the civil unrest erupting in Tunisia and Libya, in 2011 there was a massive rise in the number of migrants along this route. In 2011 over 64.000 migrants arrived at Lampedusa and Malta. From January to March 2011 over 20.000 Tunisians arrived at Lampedusa and between March and August 2011 the number of Sub Saharan Africans arriving at Lampedusa, Sicily and Malta reached 40.000. In 2014 the numbers reached a peak again (by October 2014 it was 170.760); these

were mainly Syrians, Eritreans and Somali nationals. The dramatic conditions of the overcrowded migrant boats ended up with thousands of migrants lost their lives near Lampedusa since October 2013 (Frontex, 2015).

As the last Mediterranean crossing route Western Mediterranean route refers to the sea passage from North Africa to the Iberian Peninsula and the land route through Ceuta and Melilla. Generally the route is used by Algerian and Moroccan nationals and Sub Saharan Africans attempting to reach Spain, France and Italy hidden in trucks and containers on ferries. Even though Spanish authorities strengthen its border control in the area to reduce the migratory pressure along this route, years 2011-2013 saw increasing numbers of migrants crossing the Spanish land borders with Ceuta and Melilla. By the end of October 2014 the numbers reached up to 7840 (Frontex, 2015).

As stated in Frontex Annual Risk Analysis report of 2014, “detections of illegal border-crossing along the EU’s external borders sharply increased between 2012 and 2013, from approximately 72.500 to 107.000, ... an annual increase of 48% ...” (Frontex, 2014, s.7). According to the Frontex data in 2013 a large increase in illegal border-crossings by Syrians on the Eastern Mediterranean route and a steady flow of migrants departing from North Africa (Libya and Egypt) putting their life at risk to cross the Mediterranean Sea were observed (Frontex, 2014). Reflecting the dire situation in Syria, between 2012 and 2013 most detections were of Syrians which represented almost a quarter of the total illegal border crossings. Furthermore, Syrians were at the top of the list of nationalities to request international protection with 50.096 applications (in 2010 it was 4.488) reported to the Frontex by Member States.

Obviously, the sharp increase in irregular crossings over Mediterranean and following the Arab Spring have triggered debates within the EU on irregular migration and the rights and security of migrants. Among the migrants who seek refugee from the EU, Syrians are the most vulnerable ones. The EU has seen this as a humanitarian crisis and has sought solutions to overcome this crisis. To deal with security and

humanitarian risks arising from irregular migratory flows the EU needed ability and capacity to provide consistent and timely measures.

Aware of the human security risks arising from unauthorized migration flows the EU has taken several measures such as strengthening border surveillance and checks along the external borders to detect trafficking in human beings and migrants trying to avoid border checks by hiding in vehicles etc. Furthermore, by notifying the Directive 2011/36/EU of the European Parliament and of the Council dated 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, all member states have pledged to end trafficking of human beings within the borders of the EU. This is an important step in the EU's commitment to human security since political and social instabilities in any geography may provide fertile grounds of operation for the illegal gangs of traffickers as we have experienced during the Arab Spring. Particularly Syrians who were desperate to flee from Syria and Sub Saharan Africans who were forced to leave Libya during the civil unrest were victimized by traffickers. By establishing early identification systems and harsh penalties for traffickers the EU and member states have shown their commitment to human security of the trafficked persons.

Another issue that the EU is pledged to ease the migrants' insecurities is the process that deals with asylum applications from regions which are suffering from civil wars and political instabilities. According to Frontex Annual Risk Analysis Report of 2014, many Syrians illegally crossed the EU borders before applying for asylum (Frontex, 2014). Still, the number of asylum applications of Syrians was twice as high as the number of detections of illegal border-crossing. In this context, some member states have given limited number of entry and residence rights to Syrians on the basis of a temporary humanitarian admission program.

Lastly, the procedure to decide legitimacy of asylum applications and the asylum seekers' conditions at the reception centers during the period between the application

and decision are highly prone to insecurities. By revising the Dublin Regulation to harmonize the member states' evaluation of asylum application and to establish more concrete criteria the EU shows its dedication in asylum seekers' security. In this renewed regulation there exists a strong emphasis on the fundamental rights. Accordingly, the regulations has now a clause that gives asylum seekers right to challenge the decisions where transfers would not be in compliance with their fundamental rights and there was the risk of inhuman or degrading treatment.

In fact, dealing with increasing numbers of migrants requires more resources both in terms of human resources and budget. Besides developing border controls and surveillance capacity throughout the EU, specialist teams were assigned for Task Force Mediterranean and the European Asylum Support Office. To deliver the requirements indicated in renewed migration and asylum regulations the EU and its members states require trained personal and extra budget. Furthermore, the improvements in the conditions of reception and detention centers are also part of the extra budget that needs to be allocated. In this regard, for the period of 2014 - 2020 the EU established an Asylum, Migration and Integration Fund and allocated € 3.137 million, which is approximately half of the total home affairs funds.

Besides allocating a special budget for migration and asylum, the EU has accelerated the conclusion of readmission negotiations. Most recently a readmission agreement was signed with Turkey. Generally, readmission agreements include provisions related to the readmission of the nationals of the EU Member States and the signatory state, and to the readmission of third country nationals and the stateless persons who entered into, or stayed on, the territory of either sides directly arriving from the territory of the other side. With the enforcement of readmission agreements the EU has aimed burden sharing with its partners in terms of irregular migratory movements, particularly unauthorized ones. Even though, thorough the readmission agreements the EU aims at sharing the burden of increasing numbers of irregular

migrants and asylum seekers, it is crucial for the EU to ensure that the partner states have sufficient infrastructure and humane conditions to accommodate those resent unauthorized migrants. In this regard, human rights networks like Euro-Mediterranean Human Rights Networks, raise their concerns about readmission agreements by highlighting the fact that most of the readmission agreements including the one between the EU and Turkey undermines the respect of the rights of regular and irregular migrants, refugees, and asylum seekers. Hence, they have urged the EU not to implement any readmission agreement until the full respect of rights of migrants and refugees can be guaranteed at all stages of the readmission procedure.

Conclusion and Policy Recommendations

Facing with growing migratory, mostly irregular, flows following Arab Spring the EU has found itself struggling to balance internal security and human security of the migrants. The mass movements from the Middle East and the North Africa has urged the EU to finalize the development of the Union's migration and asylum related procedures between 2011 and 2013. Given the humanitarian responsibility of people lost their lives while crossing Mediterranean, the EU has put more emphasis on the human security in its migration and asylum policies as reviewed in this brief. Besides the documentation of policies and regulations aiming at overcoming the insecurities that migrants and asylum seekers faced, the EU needs to prove its sensibility in practical side of the policies and regulations. Here a couple of recommendations are listed for the EU to achieve its human security commitment regarding the implementation of migration and asylum policy:

First of all, EU officials and documents including Frontext reports and documents should stop referring unauthorized migrants and asylum seekers as illegal migrant since the term "illegal" cause prejudices about migrants. Instead of illegal, as is used in several EU documents the terms undocumented or irregular could be used.

Dropping the term 'illegal' would reflect the EU's sensitivity for the circumstances of migrants and to their dignity as human beings.

The second issue is the engagement of all EU member states in the implementation of the migration and asylum policies as drafted by the EU officials. The member states that serve as the gates for Mediterranean migratory routes including Italy, Spain, Greece and Bulgaria, are economically the weakest links of the EU. Hence, it is not realistic to expect the same level of sophistication of infrastructure and resource allocation to deal with migratory flows from all member states. In this regard, the EU has to commit more resources and knowhow to the members like Italy, Greece, Spain and Bulgaria which process almost half of the all irregular migrants.

The third issue that is also mentioned before is the role of third parties which signed readmission agreements with the EU. For the EU it is also crucial to ensure irregular migrants who will be returning to the states they stayed on its territory before their departure from the EU that they will be treated well and their rights would be respected by the authorities of these states.

Last but not least, all the member states have to be committed to become considerate for the rights and security of the migrants regardless of their status. It is also crucial for the member states to respect and implement the regulations as suggested by the relevant EU legislations. Nobody would like to see some member states' undermining the fundamental rights such as the freedom of movement. The actions such as the closing down of borders by France and Denmark in 2011 as a result of the Arab Spring, when migrants arrived in Italy, they were given papers and allowed to travel to France. To change the perception of European States not taking serious initiative to provide shelter to those in need of international protection, member states has to give up pursuing inward-looking and security oriented policies vis-a-vis the mass movement of migrants from the Middle East and North Africa.

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¹ Undocumented Migration Glossary (2008) defines irregular migrants as people who are liable to be deported for matters related to immigration status, including those who: enter by avoiding immigration inspection (often using smugglers); enter using false documents (wittingly or unwittingly); overstay visas or violate visa conditions (including students working more hours than permitted); have a rejected asylum claim but remain in the country; have no papers (i.e. their passport has been destroyed or taken by an employer); have applied for asylum elsewhere.