EU Norms in crisis: challenges of the 1:1 scheme of the EU-Turkey Statement for *non-refoulement.*

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Disclaimer:

This document represents part of the author's study programme while at the Institute of Social Studies. The view stated therein are those of the author and not necessarily those of the Institute.

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List of Acronyms

In alphabetical order:

AIDA	Asylum Information Database
APD	Asylum Procedures Directive
CAMM	Common Agendas on Migration and Mobility
CEAS	Common European Asylum System
CEPS	Centre for European Policy Studies
CJEU	Court of Justice of the European Union
DG NEAR	Directorate General Neighbourhood and Enlargement Negotiations
EASO	European Asylum Support Office
ECCHR	European Centre for Constitutional and Human Rights
ECHR	European Convention on Human Rights
ECRE	European Council on Refugees and Exiles
ECSC	European Coal and Steel Community
EDAL	European Database of Asylum Law
EEC	European Economic Community
EFD	European Foundation for Democracy
EMN	European Migration Network
ENP	European Neighbourhood Policy
EPC	European Policy Centre
ESI	European Stability Initiative
EU	European Union
EURA	European Union Readmission Agreement
GAM	Global Approach to Migration
HRW	Human Rights Watch
INGO	International Non-Governmental Organisation
IR	International Relations
MEP	Member of the European Parliament
MSF	Médecins Sans Frontières
MP	Mobility Partnership

MPC	Migration Policy Centre
MPI	Migration Policy Institute
NGO	Non-Governmental Organisation
TFEU	Treaty on the Functioning of the European Union
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees

Abstract

The ‘refugee crisis’ which started around 2011, became more critical in 2015, with over one million people applying for asylum in the EU, and thousands of deaths in the Mediterranean Sea. Thousands more were ‘stuck’ in refugee centres in Greece, Libya or Turkey in what is described as the worst ‘refugee crisis’ since World War II. Applying the Norm ‘Life Cycle’ theory, this study investigates migration policies of the EU with third countries, using the EU-Turkey Statement, of March 2016, as the main case study. This study uses a qualitative approach to explore the normative changes in EU migration policies, in particular looking at human rights norms such as the Geneva Convention and *non-refoulement* that protect the rights and well-being of refugees. This study suggests that norms are not as resilient in times of ‘crisis’ in the EU as human rights norms and standards might imply. Instead, norms slowly shift, undergoing normative changes, as laws and contexts are modified and reformulated following tactical concessions and strategic decision making in response to perceived crisis conditions. This could undermine the EU’s claimed status as a normative actor and soft power.

Relevance to Development Studies

Research on norms has received increasing interest in International Relations studies to understand norm change and political behaviour. Norms play an important role in constructing social behaviour and social reality, setting standards of appropriate behaviour. Within Development Studies, the promotion and diffusion of international norms by ‘external actors’ in local contexts has led to much dispute in the field of international development. Studying norm diffusion and norm change in the context of a supranational institution such as the EU is complicated and wide ranging, yet is vital to understand how the founding norms and principles of the EU undergo pressure when it comes to migration and asylum policies in particular. Justice plays a key role in norm change and how norm ‘slippage’ can be challenged, so that norms are more likely to be upheld.

Key Words

European Union, EU-Turkey Statement, normative change, qualitative approach, Norm Life Cycle theory

Chapter 1- Introduction

1.1. Background

What is called the "Arab Spring" began in 2011 and ended in the on-going Syrian war, which has resulted in millions of refugees worldwide[1]. Over the past decade refugee movements started to decline, but since 2014, rising numbers of refugees and migrants have travelled to Europe, by increasingly unsafe and irregular routes. This is what has been described as the largest 'refugee crisis' since World War II (European Commission 2017a:2)[2]. In 2014, 562 680 migrants applied for asylum in Europe, whilst more than one million migrants did so in 2015 (Eurostat 2016:no pagination). Many thousands of people lost their lives at sea, whilst many more remained in poor conditions in refugee camps in Greece, as well as in detention in Libya, Tunisia, Ukraine and in camps in Turkey and elsewhere.

The European Union (EU), founded on liberal norms and principles, has embedded both the Geneva Convention of 1951 (hereafter the 'Geneva Convention') on the Status of Refugees, and the Protocol of 1967 relating to the Status of Stateless Persons in its shared immigration and asylum policies, as the core of refugee and international law. The Member states claim to abide by Article 18 of the EU Charter of Fundamental Rights (European Union 2000:12) and Article 14 of the Universal Declaration of Human Rights in protecting the 'right to seek asylum' (UN 2015:30**)**. Yet since 2014, the principles and norms have come under close scrutiny amidst the rising influx of asylum seekers arriving on the shores of Greece and Italy- as growing numbers of people crossing Europe to claim asylum exceeded the EU's ability to finding adequate solutions.

In 2015, as a reaction to the rising numbers, the EU consolidated its relations with Turkey in order to find a joint solution to tackle 'illegal' migration and find a durable way to handle the 'refugee crisis'[3]. EU Member States and Turkish counterparts finalised the EU-Turkey

[1]In the past, the definition of "refugee" has been much debated by scholars and by the signatories of the Geneva Convention; often leading to changes or 'narrowing' of the definition (Shacknove 1985:277; Boccardi 2002:2). For the purpose of this report, the definition of "refugee" which is also used according to EU law, the Geneva Convention, and the 1967 Protocol, is as follows: "including any person who is outside their country of origin and unable or unwilling to return there or to avail themselves of its protection, on account of a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular group, or political opinion" (Goodwin-Gill 2008:3; UNHCR 2010:3). An asylum seeker is a person who is seeking international protection as a refugee, or is awaiting the status of 'refugee' in the national asylum procedure in the country where he or she applied (UNHCR 2016b:4).

[2]According to the European Migration Network (EMN) (2012) the rise of 'irregular migration' refers to the unlawful crossing of borders without full compliance with entrance requirements as dictated by that state.

[3]The term 'refugee crisis' has been under much negotiation since the past decades, in particular in the early 90's when the influx of asylum seekers to Europe seemed to increase (Chimni 1998:357). Yet the numbers of refugees are not 'new' thus making it a 'crisis', then, and now, should be placed within a historical perspective and analysed according to the political environment of the past years rather than solely looking at statistics (Mayblin 2014:427).

Statement on 18 March 2016. Under this agreement, a '1:1 scheme', and a hotspot approach were established[4]. All 'new' irregular migrants arriving in Greece would be returned to Turkey after the 20th of March 2016, whilst adhering to international law and the principle of *non-refoulement* (Council of the European Union 2016:no pagination). Under *non-refoulement*, no person is to be forcibly expelled or returned (refouler) to a country where their life might be at risk. As agreed in the '1:1 scheme', a one-for-one policy was established in which the EU would agree to resettle one 'regular' Syrian refugee that had applied for asylum in Turkey in exchange for each 'irregular' Syrian migrant returned to Turkey from Greece (Council of the European Union 2016:no pagination).

The EU regards the EU-Turkey Statement as a 'flagship' of effective planning to deal with the refugee crisis in Europe (Carrera et al. 2017:1**)**, as it has brought down the numbers of people arriving into Greece as well the numbers of people deceased at sea (Boffey 2017) which was "the core rationale" of the Statement (European Commission 2016a). However, the EU-Turkey Statement has been questioned since its logic is political rather than strictly legal (Carrera et al. 2017:7). Questionable conditions have resulted with often overcrowded 'hotspots' on the Greek islands (Konstantinou et al. 2016:15; HRW 2017a). The legal changes that have been made in Greek law to implement the 1:1 scheme have led human rights organisations criticising 'fair' and individual procedures, as well as legal remedies and adherence to the principle of *non-refoulement*. Most importantly, in order for the 'deal' to work, Turkey is considered a 'safe third country' and a 'first country of asylum'. However, the question of whether Turkey can be considered a 'safe third country' was largely 'paralyzing' decisions on returns to Turkey since the summer of 2016. However, as of the 22nd of September 2017 the Council of the State has formally decided that Turkey is indeed 'safe' (EDAL 2017; AIDA 2017). Yet despite this decision returns and resettlement remain low; illustrating other legal and political challenges involved in the 'deal'.

Within the European Union Global Strategy (2016:16) 'principled pragmatism' seems to be increasingly used in foreign policy. Although, the EU presents itself as a normative actor, the 1:1 scheme and the EU-Turkey Statement question this claimed status as a normative character and as a human rights-bearer. Actions by Greek and EU actors to effectively implement the EU-Turkey statement illustrate the rise of forms of pragmatism over normativity, and a preference for Realpolitik in the context of the 'refugee crisis' (Carey and

[4]The European Agenda on Migration introduced the hotspot approach has an extraordinary measure to aid countries with a 'disproportionate migratory pressure' in order to create a mechanism to swiftly identify, register and finger print incoming arrivals and swiftly return those who do not fall under international protection (European Commission 2015a:6).

White 2017:8). The idea of pragmatism versus normativity is what I want to analyse in the 1:1 scheme of the EU-Turkey Statement.

1.2 Objective and questions

International migration is a widely studied topic within the disciplines of Economics, Political Science, Sociology and Demography amongst others. Recently there seems to be a growing interest in applying securitization theory to examine aspects of the migration issue, as migration is often framed as a 'security threat' within the political policy agenda as well as by the wider public.

The EU-Turkey statement was the outcome of months of negotiations and bargaining. The social phenomenon of 'bargaining' and bargaining theory helps to explain how certain agreements are established between two or more actors (Nash 1950:155), to resolve 'conflict' over interests (Lawler and Ford 1995:239). Although realizing that 'bargaining' is an important factor in the relations between the EU, Turkey and the Member States, and securitization theories offer different aspects on migration policies, this thesis will examine the implementation of human rights norms in relation to the 1:1 scheme. It explores the normative dimension of the 'deal' using the Norm 'Life Cycle' theory.

The term Norm 'Life Cycle' theory was first coined by Finnemore and Sikkink (1998:895) to explain how international and national norms evolved in settings amidst wider political changes through the 'cycle' of norm emergence, 'norm cascade' (diffusion) and norm internalisation. Researching norms has become increasingly popular in IR studies. Scholars differ in their research on how norms emerge, diffuse and internalise; illustrating that norms are malleable and norm contestation or (re)negotiation is common. Since Norm Life Cycle research indicates that the 'cycle' may fluctuate, I will use this theory within the 1:1 scheme that is seemingly 'paralyzed' amidst legal and political decision making on return and resettlement.

The two main norms I will be investigating in this specific context, will be *non-refoulement* and the Geneva Convention in which it is embedded. There is currently friction between these norms in the 1:1 scheme under the principle that Turkey is a 'safe third country'. Since these norms have been the key guidelines for refugee law and international migration policies for decades, I want to investigate how these norms 'on paper' were adopted as a core part of the EU's normative character, and how they are implemented in the EU-Turkey 'deal'.

This research will aim to answer the following research question:

What normative changes are experienced in the implementation of the 1:1 scheme of the EU-Turkey Statement?

The following sub-questions will be covered to answer the main research question:

- How is the norm '*non-refoulement'* and the *'safe third country'* principle operationalised in the 1:1 scheme of the EU-Turkey Statement?
- What challenges are being encountered in the EU's political willingness and ability under the EU-Turkey Statement, to adhere to the legal norms and standards of the Geneva Convention?
- What change does the EU-Turkey Statement implementation have on norms governing the EU's migration policies in third countries outside the EU[5]?

This research paper makes use of a qualitative approach, using both primary semi-structured interviews, and secondary reports and documents in order to analyse the norms underpinning policies on paper and policies in practice. By combining observations and experiences from key organisations involved in the process and operationalisation of the EU-Turkey Statement with desk research, this study discovered that EU norms are far from stable in the face of changing contexts in which they are applied. The current controversy around the EU-Turkey Statement and the 1:1 resettlement scheme seriously undermines some of the norms associated with the EU's current asylum regime, especially *non-refoulement* and other conditions of the Geneva Convention. At best, these are enforced 'half-heartedly', or adjusted to produce more 'favourable outcomes' for the EU. The EU is acting more or less as a pragmatic decision-maker rather than according to the strict norms embedded in its internal and external migration governance architecture. It is pragmatic decision-making that is most likely responsible for undermining the functioning and resilience of human rights norms in the EU's refugee and migration policies with third parties, in this case with the Turkish government.

The research paper is organised as follows. Chapter 2 provides contextual background to the research, providing extensive literature on EU's migration policies, human rights instruments, and the EU-Turkey statement. Chapter 3 analyses a few crucial aspects of the Norm Life

[5]By means of clarification: the term 'third country' is used in EU policies and law referring to countries that are not Member States.

Cycle theory and critically reviews literature relevant to the present study. It also discusses the methodology, describing the methods of data collection and general approach used. Chapter 4 and 5 present the findings and analysis of gathered primary and secondary data. Chapter 6 discusses the results relating them back to the Norm Life Cycle theory and the main research questions, after which the research is concluded. Finally, it provides some indications for future research, given the limitations of the current study.

Chapter 2- Critical Review of Relevant Literature

The aim of this chapter is to critically review and evaluate some existing literature on the functioning of the European Union, its migration policies and fundamental human rights instruments, in relation to understanding the impact on such norms of the EU-Turkey statement.

2.1 The EU as a normative actor in migration policies

> "The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law" (European Union 2010:28)

The economic predecessors of the European Union, such as the European Coal and Steel Community (ECSC), established in 1951, and the European Economic Community (EEC) founded in 1957, are the building blocks of the European Union that we know today (European Union 2017). The EU is an institution of normative character and is characterised mainly by soft power in which the principles of democracy and the rule of law are said to guide the Union, underpinning its legal and democratic legitimacy (Borchardt 2010:29). The common norms and values of the EU's entity '*acquis communautaire'* and '*acquis politique*' include democracy, the rule of law, liberty and fundamental freedoms as part of the collective identity of the EU and its constituent Member States (Manners 2002:242). A norm can be defined as: "a standard of appropriate behaviour for actors with a given identity" (Finnemore and Sikkink 1998:891). The endorsement of a norm creates a standard or belief system. This belief system or standard forms the basis of structures by which an institution like the EU operates on a daily basis, and guides how different Member States and EU institutions function and operate together under Union law and legal instruments (Borchardt 2010:79).

The Copenhagen Criteria implemented by the EU since 1993 focuses on the membership conditions of "human and minority rights, the rule of law, and stable democratic institutions, as well as a functioning market economy" of Member States (Park 2005:236). This emphasizes the idea of 'Union' based on liberal-democracy, marketization and human rights policies thereby- committing Member States to international law and European law as 'a human rights protector' (Buonfino 2004:45). 'Liberal clubs' (Risse and Sikkink 1999:9) such as the EU, define certain sets of informal and formal standards of behaviour and norms, in

which only other 'liberal democratic states' are able to join on the basis of these criteria and human rights records. Specifically human rights norms help to define appropriate and inappropriate behaviour characteristic of liberal democratic states (Risse and Sikkink 1999:8). The values indicated by the EU Charter of Fundamental Rights such as the rule of law, democracy and solidarity, have been established as the founding and principled values of the Member States (European Union 2010:17), which are promoted within EU Member States as well as abroad, focussing on the promotion of security and protection of fundamental rights according to international law (European Union 2007:11).

In the past, migration policies were largely left to national governments (Zimmermann 1995:59). With the establishment of the first Schengen Accords in 1985 and second in 1990, the first steps towards regulating migration and external borders, whilst eliminating internal border checks were initiated (Zimmermann 1995:59). The Schengen region comes with increased protection of its borders, and countries ultimately maintain the right "to control the entry, residence and expulsion of aliens" (Van Selm 2001:2). The directives and treaties on human rights and refugee law further govern and indicate how countries are allowed to do so under international law without harming people's rights seeking asylum (Van Selm 2001:3). In the early 90's however, signs of dissatisfaction and struggle over immigration policies were already present between the Union and individual Member States; signalling emerging conflicts between national and supranational interests (Lahav 2004:45).

With the establishment of the Maastricht Treaty of 1992, also known as the Treaty on the European Union (which created the EU), the EU had accomplished freedom of movement of goods and people between its Member States in the 'Schengen region'. Stricter rules established for immigration, to combat 'illegal' migration, and to arrange procedures for allocating the 'responsibilities' of each member state for asylum seekers and refugees, were all negotiated. Then the Dublin Convention of 1990 was added, which unlike Schengen, was ratified by all Member States by 1997 (Lahav 2004:43). Revised in 2003 and in 2013, and now known as Dublin III Regulations, it specifies which state is responsible for asylum claims– generally it is the country of first arrival inside the EU (Refugee Council 2002:1) unless in the case of family reunification (Huysmans 2000:756). It is worth noting that some Southern European countries, like Italy, Spain, Greece and Malta, have contested the Dublin principles in recent years over 'unfair' returns from Northern countries (Grant and Domokos 2011). However, the Dublin system remains the 'cornerstone' of the asylum *acquis* and

establishes responsibility within the Common European Asylum System (CEAS) (Maas et al. 2015:19; European Commission 2016b:8). The CEAS, established in 2012 to manage and coordinate asylum procedures and to secure international protection of the EU, is the result of the Tampere European Council Conclusions (1999), The Hague Programme (2004) and the Stockholm Programme (2010). The founding Tampere Conclusions were a 'milestone' in EU's security of justice and home affairs, based on EU's values, creating Union wide policies on asylum and immigration in cooperation with third-countries to combat illegal migration. One aim was to bring about greater stability and protection by tackling 'root causes' of migration and asylum-seeking, such as employment, poverty and war (European Parliament 1999). The Hague Programme, thereafter, became the blueprint for external and internal action around migration, and the basis for international protection and security in the EU (European Union 2009:2).

The Stockholm Programme was the final step in creating a CEAS that would become the legal system governing and regularizing migratory flows within, between and to EU Member States (European Council 2010:5). It also outlined the external dimensions of the Global Approach to Migration (GAM) and bilateral frameworks for strategic migration management programmes externally (European Union 2010:34). External action on security and protection of the stability of the EU is largely based on the security and protection outside the EU's external borders. The functioning of cooperation between the EU and third countries in bilateral or multilateral agreements has become essential since 1997 when the Treaty of Amsterdam made readmissions and returns of third country nationals possible between EU Member States and partner states (Cassarino 2014:136; Bürgin 2013:6; European Union 2010:77). Such returns were to be organised on the basis of responsibility to return failed asylum seekers only to 'safe third country' situations (Refugee Council 2002:2). The European Union Treaties of 2009 Article 8 states:

> "The Union shall develop a special relationship with neighbouring countries, aiming to establish an area of prosperity and good neighbourliness, founded on the values of the Union" (European Union 2010:20)

These values of the EU are thus not only aimed at the entirety of the EU Member States itself, based on the EU's fundamental core values that 'run through its policies', but are also aimed at neighbouring countries (Bulley 2017:54). This is what Lavenex (2004:681) calls 'external governance' through which third non-Member States and partner countries adopt the EU

'*acquis communautaire*' in relation to norms, rules and principles of EU law (Lavenex 2004:681). This moves the 'legal boundary' of governance of the EU beyond 'institutional integration', and instead to 'institutional expansion', as third countries are precluded from membership but included in the cooperation for internal policy making (Lavenex 2004:683). Bulley (2017:59) critically investigates EU's external dimension of the CEAS- arguing that the EU is rather outsourcing 'protection' to refugees abroad, by focussing on state protection of third countries through the EU's *acquis* (Bulley 2017:61). By strengthening sovereignty of third countries on Europe's borders, EU stability is preserved, and in return protection to citizens is provided. According to the European Union Global Strategy on coping with 21st century challenges:

> "We will engage in a practical and principled way, sharing global responsibilities with our partners and contributing to their strengths. We have learnt the lesson: my neighbour's and my partner's weaknesses are my own weaknesses. So we will invest in win-win solutions, and move beyond the illusion that international politics can be a zero-sum game" (European Union Global Strategy 2016:4)

This is most visible within the European Neighbourhood Policy (ENP), focussing on creating a 'ring' of neighbourhood friendliness by using EU's persuasive soft power, and offering financial bilateral agreements in return for controlling irregular migration towards the EU's borders (Rijpma and Cremona 2007:16) and "transforming areas into borderlands" (Limam and Del Sarto 2015:1). The EU is largely thought of as having 'securitized migration' since the 1980's with more restrictive measures (Huysmans 2000:770). The 'extreme politicisation' of migration by the EU, presents the idea to the wider public that migrants are considered a 'security threat' (Léonard 2010:237). Van Houtum and Pijpers (2007:298) illustrate that the fear of the 'Other', influences the political debate surrounding migration, turning the EU in a 'gated community' by protecting the 'comfortable in-side' from outsiders. At the same time, the process of 'extra-territorialisation' demonstrates how the EU polices third country borders to prevent people from coming and find solutions 'closer to home' or returning them from EU territory to 'safe third countries' (Rijpma and Cremona 2007:12).

2.2 EU-Turkey relations and the EU-Turkey Statement

Norm institutionalization within the EU plays an important role, and becomes a principle of 'conditionality', in which the EU claims to use human rights norms and liberal democratic principles as conditional norms both for membership and for agreements with third states beyond its borders (Schimmelfennig 2005:113). Turkey first asked to join the EEC in 1959,

and since then many external and internal 'obstacles' have meant there has been no means for Turkey to access EU membership (Dagdeverenis 2014:1). Since 1999 Turkey has again become a 'candidate country', renewing its request to join the EU, and negotiations regarding its accession started in 2005. After this time some of the norms and practices of the EU were said to be exported to Turkey in the form of political, economic and human rights reforms (Müftüler-Baç 2016:1). The European's Commission Report of 2014 about the progress of Turkish 'reform' between 2005-2014 shows that some of these policy reforms have already been successfully implemented in Turkish law (Dagdeverenis 2014:15).

However, uncertainty in the accession talks has led to a setback in progress on Turkish accession (Dagdeverenis 2014:4; Park 2005:247). In this 'stalling' of accession talks, the EU lost much of its leverage over Turkey (Paul and Schmidt 2017), and has led the country further away from meeting EU norms and conditions for membership (Cornell et al. 2012:285). EU Member States have been divided about Turkish accession after the failed coup against President Recep Tayyip Erdoğan in July 2016. The Netherlands in particular strongly opposed further talks **(**EURACTIV 2016). The EU Parliament also voted in a non-binding resolution to suspend Turkish membership both in 2016 as a result of Turkey's ongoing state of emergency and instalment of 'capital punishment' in reaction to the attempted coup (European Parliament 2016a:no pagination), and in 2017 after the Turkish constitutional referendum (European Parliament 2017:no pagination). In return, the Turkish government has threatened the EU repeatedly over not keeping promises under the EU-Turkey 'deal' (Benvenutti 2017:11; Shaheen et al. 2016). Benvenutti (2017:13) critically argues that because the EU's main interest lies in migration control, and Turkey is mainly interested in visa liberalisation and EU accession, disputes in regard to controlling migration could potentially damage the EU-Turkey 'deal', and perhaps also longer-term relationships between the EU and Turkey.

Migratory flows between the EU and Turkey are not a new phenomenon. Rather, for decades now Turkey has been a transit country or country of origin for migration from and between the Balkans, as well as from West Asian and Middle Eastern countries into Europe (Içduygu 2011:1). In the past migration has been an issue of mistrust between the EU and Turkey in regard to controlling 'illegal' migration (Kirişci 2008:21). As part of the condition for membership, the EU has urged Turkey to securitize and control migration within and on its borders, 'Europeanizing' asylum law in the country (Benvenutti 2017:4). Previous readmission agreements with Turkey have been in place since 2003, though they only became

formalized in 2013, and came into effect in 2014 (Bal 2016:15). Yet Turkey fears that EU is 'shifting' rather than 'sharing' the burden of migration (Içduygu and Yükseker 2012:453). In April 2012 Turkey introduced a Draft Law on Foreigners and International Protection that would stand more in line with the EU *acquis* in regard to migration (Kirişci 2014:3), becoming the first domestic law in regulating asylum in the country (Soykan 2012:40).

Since 2011 the Syrian has resulted in five million Syrians fleeing the country, many of whom found refuge in neighbouring countries such as Lebanon, Jordan, Iraq, Kuwait and especially in Turkey. Turkey has had an open door policy (Bal 2016:15), as of July 2017 having nearly 3.2 million Syrian refugees (European Commission 2017b:3). UNHCR (2015) estimated that 400 000 Syrian people arrived in Greece in 2015. And the statistics of 2017 mentioned that 362 753 – mostly Syrian - people arrived over the sea to Greece and Italy in 2016, with 147 217 arriving from the beginning of 2017 to June 2017 (UNHCR 2017a). The largest numbers were from Syria, Afghanistan and Iraq (UNHCR 2017b:3), Nigeria, Eritrea and Sudan, as well as most recently from Yemen (ESI 2017:15). Departures from the Turkish Aegean coasts to the Greece Aegean islands rose drastically from 2013-2014, with 2430 people arriving daily in 2015 (European Commission 2016c:6).

The Dublin Regulations and the Schengen Region came under pressure amidst the heightened influx of people, and rapidly closing borders- showing the 'failing' asylum system of the EU (Benvenutti 2017:9). Since no internal solutions were found between Member States, the focus was shifted to EU's neighbouring countries (Müftüler-Baç 2015:4). This is why the European Commission started negotiations with Turkey in October 2015 on an EU-Turkey Joint Action Plan (European Commission 2015b:no pagination; European Commission 2015c:no pagination), coming into effect in November 2015, and focussing on 'solidary action' in regard to the influx of refugees in Turkey and refugee crossings of the Aegean Sea to enter the EU (European Commission 2015c:no pagination). The EU Commission stated:

> "Together with joint European solutions and the comprehensive implementation of the European Migration Agenda, cooperation between EU and Turkey is key for an effective response to the refugee and migrant challenge. These joint efforts to deal with refugees are part of our global engagement with Turkey as candidate country and as strategic partner" (European Commission 2016d:2)

The new negotiations on 18 March 2016, led to the EU-Turkey Statement, released as a press statement on the shared European Council and Council of the European Union website. The 1:1 scheme would return all asylum seekers that are considered inadmissible for international protection to Turkey, whilst resettling Syrian refugees from Turkey that fall under UN

vulnerability criteria (Committee on Migration, Refugees and Displaced Persons 2016:5). Under the EU-Turkey Statement 3 billion euros funding of aid for development for Turkey will be distributed by the EU under the Facility for Refugees, with an additional 3 billion promised in 2018 once the funding has been spent (Council of the European Union 2016:no pagination). So far, 2.9 billion euros has successfully been allocated to dozens of programmes and projects aiding refugees in Turkey (European Commission 2017b:11). Humanitarian assistance remains a priority as well as the focus on smuggling networks and border control. When the flow of refugees is 'reduced' a Voluntary Humanitarian Admission Scheme would be launched, functioning independently from the 1:1 scheme (Committee on Migration, Refugees and Displaced Persons 2016:5). Besides that, the EU has re-started negotiations for visa liberalisation for Turkish citizens, and will accelerate the progress of accession talks in return for Turkey agreeing to 'clamp down' on the influx of migrants that arrive into Europe from Turkey (Rygiel et al. 2016:316).

2.3 The Geneva Convention and non-refoulement

In 1951, European countries became a forerunner in drafting the Geneva Convention, ratified in 1954, defining the Status of Refugees, rights and standards for people fleeing persecution within Europe. However, being primarily drafted in Europe, it excluded non-Europeans and 'Third World' refugees, not visibly being of 'concern' in the early post-war years (Chimni 1998:355). Chimni (1998:357) calls this the "myth of difference" which was created in Europe's refugee policies between non-European and European refugee flows; and led to a more political 'self-serving', selective and 'closed refugee regime' after the Cold War. Mayblin (2014:428) argues that EU countries, in particular the UK, have always had a 'systematic exclusion' policy from the Geneva Convention onwards. The author critically discusses that the EU signatories, intentionally excluded non-European refugees and human rights in colonies as they long opposed the broadening of the territorial clause of the Geneva Convention or the definition of "refugee" (Mayblin 2014:437). It was only with the 1967 Protocol defining the Status of Stateless Persons that the 'geographical limitation' was removed, thereafter making the Geneva Convention and the 1967 Protocol independent international wide instruments for refugee protection (Chimni 1998:351; Jastram and Achiron 2001:126). The UNHCR defines the Geneva Convention as:

> "Both a status and rights-based instrument and is underpinned by a number of fundamental principles, most notably non-discrimination, non-penalization and *non-refoulement"* (UNHCR 2010:3)

Every State, whether signatories or not, has the obligation to adhere to article 33 of the Geneva Convention, under international law, the principle of *non-refoulement* (Jastram and Achiron 2001:14; UNHCR 2010:233). *Non-refoulement* is a "cornerstone of refugee protection" under international law, and is also protected in Article 19 of the Charter of Fundamental Rights of the European Union (European Union 2000:12). *Non-refoulement* is therefore both a legal principle, embedded within national law and accepted, and also has: "the status of a norm of customary international law" (Van Selm 2001:22). It is stated that:

> "No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment" (European Union 2000:12)

Although Turkey ratified the Geneva Convention and 1967 Protocol, a 'geographical limitation' remains; keeping the non-European exclusion in place. Studies claim that Turkey fears to become EU's 'dumping ground' (Kirişci 2008:21; Kirişci 2014:2), which is why the country uses the 'geographical limitation' as a trump card for leverage (Kaya 2009:23) until full membership has become more visualised (Içduygu and Yükseker 2012:448). The Law on Foreigners and International Protection that was successfully adopted in 2014, does regulate the stay and exit of asylum seekers in the country; and was praised by the EU Commission (Kilberg 2014) and the UNHCR (UNHCR 2013). Article 91 of the Law, states that foreigners who are fleeing their country and are unable to return could be provided with temporary protection (Republic of Turkey 2014:93). Additionally, on 13 October 2014, the Temporary Protection Regulation was created for Syrians specifically due to the ongoing conflict in the country- to ensure i.e. access to the labour market (European Commission 2016c:14)[6]. For non-Syrians such 'temporary protection' under the International Foreigners Law is still under discussion (European Commission 2016e:4). According to an EU report, Syrians returned under the 1:1 scheme are said to be granted temporary protection by the Turkish authority (European Commission 2016c:10), and human resources such as access to health care, education and employment for Syrian and non-Syrian asylum seekers are being improved (European Commission 2016c:17).

[6]Article 62 defines non-Syrians and non-Europeans as 'conditional refugees', who may reside in Turkey temporarily until third country resettlement is organised (Republic of Turkey 2014:64), or under Article 63 as 'subsidiary refugees' who are foreigners or stateless, unable or unwilling to return due to threat of life, and are neither considered refugees nor 'conditional refugees' (Republic of Turkey 2014:65).

Although under the 2014 Law on Foreigners of the Republic of Turkey in Article 4 (Republic of Turkey 2014:20) *refoulement* is prohibited, a report by Amnesty International (2016a:5) indicated that people are collectively being sent back or expelled from rapidly closing Turkish borders. Turkey rejects all allegations as such, indicating no push-backs have taken place (European Commission 2016c:10). Interception at Turkish borders, detention, violence and pushbacks by force are not uncommon according to Human Rights Watch (HRW 2015). Most recently in the summer of 2017- Turkish soldiers were expelled from the army by the Turkish authority after having physically assaulted Syrian refugees on the border (McKeran 2017). In a report by Amnesty International in 2015, Greek coast guards have also been accused of sending people back to the Turkish borders without a formal asylum procedure (Amnesty International 2015:58). These events critically influence the debate of the 1:1 scheme on whether Turkey can be considered 'safe' in the process of the 'one-for-one' policy, and questions both Greece and Turkey in adhering to *non-refoulement* in the past years.

2.4 The 'safe third country' principle

In 1989 in the 40th session of the executive committee of UNHCR on 'irregular migration issues', the following conclusion was reached on the need for 'control' of irregular migration and secondary movements between countries without the authorization of the national authorities:

> "Where refugees and asylum-seekers nevertheless move in an irregular manner from a country where they have already found protection, they may be returned to that country if they are protected there against *refoulement*" (UNHCR 1989)

According to one study, the language around 'safe third country' has evolved over the past decade (Van Selm 2001:7). The 'confusion' and vagueness of the term 'safe third country', has often led to disparities in the use of this expression by different Member States (Van Selm 2001:16). In 1991 the UNHCR provided new background information on using the 'safe third country' principle as a means of creating shared protection responsibilities in asylum claims, and as means to also provide "clearer identification of those in need of protection" (UNHCR 1991). The aim of the 'safe third country' provisions are to foster international burden sharing amongst signatories of the Geneva Convention, and to prevent secondary movement between countries on the part of asylum seekers (Moreno-Lax 2015:670). In the case of 'first country of asylum' where protection is provided, and a country where protection could have been provided in the last country of 'connection', the principle of 'safe third country' can be

applied[7] (Van Selm 2001:7; Moreno-Lax 2015:669; Jastram and Achiron 2001:133). On the basis of these principles applications can be found inadmissible (Fernández Arribas 2016:1099). Member States are able to use these principles by law according to the Asylum Procedures Directive (APD) (European Union 2013:80), and several had their own national lists of 'countries of origin' deemed as 'safe'[8] (Van Selm 2001:19; Moreno-Lax 2015:696). Since 2015, the EU has strived to create common EU lists of safe countries of origin to speed up asylum procedures and returns (Orav and Apap 2015:2; European Commission 2015d:no pagination), aiming to make these principles national legislation (European Commission 2016:18).

Since the operationalization of the EU-Turkey Statement in March 2016, both Greece and Turkey have rapidly changed their legal frameworks in order to be able to implement the 1:1 scheme without delay (European Commission 2016f:no pagination). The prerequisites of Article 36 'first country of asylum', only require 'sufficient protection' in that country as a refugee, and adherence to *non-refoulement.* In regard to accessing whether a third country provides 'sufficient protection', countries 'may', and are not obliged to, apply Article 38 'safe third country' prerequisites which has a wider notion of 'safety' (UNHCR 2016a:3; European Union 2013:80).

[7]Under Article 38 of the APD the applicant applying for international protection can challenge the principle of 'safe third country' (European Union 2013:80). An application is unfounded under Article 32 when a person does not qualify for international protection, and inadmissible under Article 33 when a person has found or could have found asylum, thus falling under 'first country of asylum' and 'safe third country' (European Union 2013:79).

[8]Article 36 of the APD states that people who are either a national of that country or were previously 'residing' in that country fall under the principle of 'safe country of origin' (European Union 2013:80).

Chapter 3- Theorisation and Methodology

This chapter applies the Norm Life Cycle theory as an analytical framework for this research. In debating whether Turkey is harming the principle of *non-refoulement* or can be considered a safe third or even first country of asylum, it is important both to critically evaluate the Norm Life Cycle theory, and to understand how this theory 'works' for analytical purposes. I will discuss how other researchers have used this theory for analysis of their data in previous studies. Moreover, this chapter also looks into the method used for the present study, describing the procedures of data collection and analysis, as well as the risks and ethical considerations.

3.1 Norm Life Cycle Theory

Norms involve standards or beliefs of proper and appropriate behaviour, and can be both regulative and constructive (Finnemore and Sikkink 1998:891) as well as constraining and constitutive (Checkel 1997:489). Norms set levels of 'oughtness' (i.e moral imperatives) and define, albeit vague, principles of appropriate behaviour against norm-breaking behaviour (Finnemore and Sikkink 1998:892) [9].

In their article "International Norm Dynamics and Political Change", Finnemore and Sikkink specifically look into how ideas become norms, and how norms influence political behaviour- to bring about political changes in domestic and international politics (1998:888). The authors developed the norm 'life cycle' approach specifically to investigate this process (Finnemore and Sikkink 1998:895), noting that previous research in International Relations often overlooked the impact of norms and normative changes over time (Finnemore and Sikkink 1998:899). As shown in Table 1, Finnemore and Sikkink explain that the Norm Life Cycle has three broad stages: 1) norm emergence, 2) 'norm cascade', and 3) internalisation. In the first phase, norm entrepreneurs let norms 'emerge' by bringing a certain issue to light and relating it with motives of idealism, empathy, commitment and altruism (Finnemore and Sikkink 1998:897). Through organisational platforms, norm entrepreneurs (e.g. professional advocates and NGOs, politicians, media, academics, religious leaders) build or propose policies, and change policies according to the emerging norms of appropriate or desirable behaviour. Norms are 'framed' in order to 'compete' with other existing norms or normative

[9]Finnemore and Sikkink (1998:891) note that there is an important difference between norms and institutions which often lead to interchangeable and confusing use in norm research by constructivists and sociologists. Norms and institutions may refer to the same 'rules and practices of appropriate behaviour'. However, the difference relies on the 'single standard' of a norm versus the 'collection of practices and rules' that are interrelated in an institution.

frameworks arising in a 'contested normative space', in which the overall and relative appropriateness of these norms are evaluated (Finnemore and Sikkink 1998:897). It is here that norms may eventually lead to a tipping point where a 'mass of critical (non)state-actors' have adopted the norms, due to the persuasiveness of the norm in the existing normative framework, leading to the a 'cascading phase' of the given norm or norms (Finnemore and Sikkink 1998:897). This second phase, through the mechanism of socialization and demonstration, involves norms becoming more widely accepted and 'socialized', being adopted by norm followers for reasons of esteem, reputation, domestic and international legitimacy (Finnemore and Sikkink 1998:902). In the third and final phase of the Norm Life Cycle, the 'internalisation phase', a norm becomes fully embedded in the policies of a given set of state and policy actors and takes on a 'taken for granted' quality, through socialization, and comes to be accepted as the 'minimum standard' that is generally considered acceptable (Finnemore and Sikkink 1998:904). These three stages make up the complete Norm Life Cycle theory or approach.

	Stage 1 **Norm emergence**	**Stage 2** **Norm cascade**	**Stage 3** **Internalisation**
Actors	Norm entrepreneurs with organisational platforms	States, international organisations, networks	Law, professions, bureaucracy
Motives	Altruism, empathy, ideational, commitment	Legitimacy, esteem, reputation	Conformity
Dominant mechanisms	Persuasion	Socialization, institutionalization, demonstration	Habit, institutionalization

Table 1. Stages of norms (Finnemore and Sikkink 1998:898)

International and domestic norms are intertwined, so that norms that emerge on a domestic level can eventually become internationally institutionalized, or the other way round, depending on the direction and processes involved in the stages of the 'life cycles' of such norms (Finnemore and Sikkink 1998:893). A complete Norm Life Cycle is not self-explanatory or automatic however, as norms do not always reach a 'tipping point' that leads to wider normative changes influencing policy-making (Finnemore and Sikkink, 1998:895).

The authors argue that the reactions towards human rights violations, will lead to 'cognitive dissonance', causing the actors to change their actions towards norm-confirming behaviour (Finnemore and Sikkink 1998:904) even though this is often out of self-interest (Finnemore and Sikkink 1998:912). Mostly, the authors indicate how norm emergence is closely related to rational game theoretic, and social strategic decision making, in which norms are selected and considered 'utile' to reach certain goals; illustrating how bargaining is involved in the social construction of behaviour (Finnemore and Sikkink 1998:911).

The Norm Life Cycle helps to explain how the human rights such as the Geneva Convention was drafted, in the Cold War era the 1967 Protocol was adopted, and both instruments spread among a mass of critical actor; today signed by 164 countries. However, it is interesting to note that during the second phases of 'socialization' and 'internalisation', which seem to characterise the present situation being considered in this study, human rights violations that break existing norms may be taking place. This indicates that the third phase of the cycle should not to be 'taken for granted', especially in regard to sensitive policy areas such as migration and asylum policies. Considering that Turkey has a 'geographical exclusion' on the Geneva Convention, the internalisation element of the Norm Life Cycle in relation to refugee's human rights is even less self-explanatory than the EU might wish to claim. Which is why it is vital to understand the (strategic) decisions made in the context of norm adhering behaviour to see to what extent and how the EU is trying – or failing - to uphold its human rights framework in the context of the EU-Turkey Statement, itself the outcome of pressures resulting from the refugee crisis.

3.2 Research on norm contestations and norm changes

Other Norm Life Cycle research has suggested that the cycle of a norm is not as 'fixed' or 'linear' as the research by Finnemore and Sikkink (1998) suggests and instead explore the 'contested space' in which norms exist. This subsection reviews a few studies on norm contestation and norm change. Van Kersbergen and Verbeek (2007:218) argue that even though the EU is both a supranational and an intergovernmental policy, mechanisms to enforce norms in the EU remains a problem, in which 'battles over norms' are bound to arise. Vagueness of a norm is often intentional, in order to create greater domestic or international political consensus, as interpretations of appropriate and inappropriate behaviour are less divisive if left relatively open rather than too narrowly defined (Van Kersbergen and Verbeek 2007:222). A study by Faleg (2012:163) examines how since the 1990's norm compromises

through the cooperation of three 'epistemic communities' (expertise based networks of experts): 1) security policy, 2) development cooperation, and 3) democracy have influenced the development of EU policies. During the process of 'norm making' and 'norm taking', intense multi-level socialization, knowledge sharing and the influence of multi-organisational actors of these epistemic communities determined how norms were innovated, selected, diffused and eventually persisted (Faleg 2012:175). The practical evolution of the norm however, still shows practical gaps; due to 'fuzziness' of the norm, and a bureaucratic supranational versus national division between EU institutions and Member States, as well as a lack of capacity building (Faleg 2012:178). It is important to understand the complexity and levels of how ideas and interests are implemented in policy making within the EU. Since scholars have critically argued the debates surrounding the broadening of the Geneva Convention, and EU and national migration policies have changed over the past decades, it is reasonable to assume that consensus over norms between different actors, or what is perceived as appropriate behaviour is not always likely; or can shift in governmental policies.

In another study, Krook and True (2012:109) argue that it is precisely the 'vagueness' and ambiguity of norms that leaves 'leeway' for the elements of interpretation and internalization of norms. The authors have come up with a discursive approach to analyse norms as processes, to understand how different actors and environments mediate or change the "patterns, adaptation and implementation" of original norms (Krook and True 2012:108). In their study on gender equality, advocacy and norm diffusion, they also conclude that norms are unstable, and that the language used, degree of clarity, and the use of any given norm is 'extended or challenged' over time (Krook and True 2012:117). They also find evidence of continuous 'trial and error' taking place over the normative versus the functional aspects of the norm among different actors involved (Krook and True 2012:117). In regard to gender mainstreaming, the authors conclude that a norm can transform due to continuous contestation between the 'internal' dynamism that is linked to the 'vagueness' of the norm, and the 'external' dynamism, or the external normative environment in which the norm must operate (Krook and True 2012:122).

Sandholtz and Stiles (2008:324) argue that existing norm disputes and contestations must always be seen in historical perspective, in which norms continuously reverse or advance in a life cycle linked to previous norms disputes. Norm changes as such, should not only take the external normative environment into account, but also the 'timing' of (global and domestic) events that can play a crucial role in influencing norm changes and norm diffusion (Kelley

2008:246). Similarly in an article on international norms against wartime plunder, Sandholtz (2008:103) explains that norms are in constant development, and are never 'finished'. In general, social rules and normative frameworks lead to disputes triggered by actions, precisely *because* they are not set in stone, due to incompleteness and internal contradictions (Sandholtz 2008:105) most likely leading to change through normative argumentation and persuasion of actors (Sandholtz 2008:109). In his article on norm cycles change, the author discusses how norms will change with the broad agreement of actors, or remain in contestation if not (Sandholtz 2017:no pagination). The author states:

> "The outcome of norm disputes and arguments is always to modify the norms, making them stronger or weaker, clearer (or more ambiguous), more specific (or less), broader (or narrower). The cycle of norm change has thus completed a turn, and the modified rules establish the norm context for subsequent actions, disputes, and arguments" (Sandholtz 2017:no pagination).

Previous research is important to the present study, since the provision of 'sufficient protection' and 'safeness' are ambiguous terms, possibly complicating or 'weakening' the implementation of human rights in the local context. It also helps to explain the importance of the normative environment; since the existing circumstances in Greece and Turkey are continuously being debated in regard to their 'internal' versus the 'external' dynamism of the norms being applied. Although it is beyond the scope of this paper to look into Greek asylum policies more thoroughly, it is important to take into account that Greece has long led a securitization policy towards migration since the influx of migrants in the 90's (Karyotis 2012:391). A study by Swarts and Karakatsanis (2013:108) illustrates how the securitization of migration in the past (i.e. defining migrants as a threat and national security issue), towards an attempt of de-securitization (i.e. attempt to reverse back to 'normal' politics) and social integration policies of 'legal' migrants in the country, has still largely manifested in anti-migrant public opinion. What is expected as appropriate behaviour or normative within societies thus also shifts over time, and is particularly influenced by how certain issues are framed in politics. This is important to take into account when looking at how norms are applied as the normative environment may adapt as well.

3.3 Research on the localization and socialization process of international norms

The papers reviewed in this subsection look into the complicated process of internalizing international human rights norms in the local context. Acharya (2004:241) argues similarly to Krook and True about how the life cycle of a norm is dynamic, and encompasses a process of

progressive norm diffusion that is quite fluid and unpredictable (Acharya 2004:252). The author focuses on the process of 'localization' or 'idea transmission' when foreign 'global' norms are adapted, transformed or integrated, and successfully 'converge' (or not) with local norms in the local context involving local actors (Acharya 2004:241). Acharya refers to 'strengthening and broadening' the norm (Acharya 2004:247), since norms may adopt new dimensions without changing completely. This is important to appreciate in the current context, and may help explain how norm language gradually shifts in order to fit the normative framework in the context of the refugee crisis or when the EU is faced with other, similar situations.

Risse (1999:530) focuses on the norm diffusion life cycle of human rights and how such rights norms are internalized and practiced on the ground, through a combination of argument and moral persuasion (or what he terms 'argumentative rationality') (Risse 1999:533). 'Rhetorical action' plays an important role in argumentative behaviour, since it emphasises the 'persuasiveness' of an argument by defending an action according to validity and appropriate behaviour in a given setting. Risse discusses a 'spiral model' of norm institutionalization in norm-violating countries. Although the first step is often 'denial' of norm violations, this phase is often followed by dialogue and rhetoric, before (tactical) concessions are made through more argumentative behaviour, eventually leading to the institutionalization of a particular norm or set of norms, through changes in domestic law (Risse 1999:538). Preconditions of space and a 'common lifeworld' are needed between actors or international institutions for argumentative rationality to be able to take place, since it should be based on a normative framework of some shared values and norms (Risse 1999:534). One question might be whether this assumption holds for the EU and Turkey.

The above mentioned is of interest for the present study as the EU as a normative actor is defending its actions and defending the EU-Turkey statement, by applying the 'safe third country' principle in regard to Turkey. The morality argument in this aspect is very important, as many (non)state actors urge the Union to comply more effectively with human rights norms. The power relations between the EU as a whole and its individual Member States, such as Greece, are important to take into account in the current setting, when it comes to exploring patterns of argumentative behaviour and concessions made in the midst of possible norm-violating behaviour.

3.4 Data collection and generation

In order to create a thorough understanding of the norms, principles and values that the EU uses in its internal migration governance and especially in its external migration governance with Turkey, I have investigated many written reports and conducted interviews. By looking into the Treaty on the Functioning of the European Union, The Lisbon Treaty of 2009 and the Maastricht Treaty of 1992 I have come to understand the fundamental principles and values that are said to be enshrined in the European Union. To understand the human rights regime of the EU and international refugee law, documents such as the Charter of Fundamental Rights of the European Union, the Geneva Convention and the 1967 Protocol, as well as reports and background information by the UNHCR were vital. The norms underlying these documents were investigated over time.

In order to better appreciate the creation and existence of the Common European Asylum System (CEAS) I have looked into its founding predecessors such as the Tampere Conclusions of 1999, the Hague Programme of 2004 and the Stockholm Programme of 2010 which all preceded the creation of the CEAS in 2012. Other important documents such as the European Neighbourhood Policy (ENP) and the European Readmission Agreement (EURA) have also been analysed to help with understanding certain strategies of migration governance in relation to third countries outside the EU, including Turkey. Furthermore, the Dublin III Regulations were analysed to provide substance to observations about the functioning of the CEAS and other asylum procedures in practice, as used by the EU. Press releases, reports, and documents of the European Commission, the European Council, the Council of the European Union, the European Ombudsman as well as court cases of the Court of Justice of the European Union (CJEU) will be used throughout the analysis in the chapters that follow. Moreover, the seven progress reports published thus far by the EU Commission on the implementation of the EU-Turkey Statement were useful for background and statistical information on the subject. My research also included an extensive review of literature on migration policies in the EU, on EU and Turkey relations, and on the EU-Turkey statement. Other humanitarian reports provided supplementary empirical evidence and case studies.

Primary data was generated from nine different interviews of between an hour and an hour and a half. Interview respondents were selected and sampled in order to create a thorough background on the EU-Turkey statement with different perspectives of the respondents on the current policy. One participant of the European Council on Refugees and Exiles (ECRE) was unable to have an interview and thus answered the semi-structured interview questions on

paper. Interviews were either conducted in person or via Skype, and all interviews were in English. I used semi-structured questions to enable the conversation to open up for personal inputs, new discussion points and additional questions that might arise, using the questions as a guideline.

3.5 Data analysis

To answer the question of how the EU-Turkey 'deal' has challenged some of the claimed fundamental norms of the EU as laid out in law and principles, including in the Geneva Convention, it is necessary to combine different methods in order to analyse the different discourses and perspectives that may arise. I will use a qualitative research approach, and will use both primary sources by conducting semi-structured interviews and secondary 'desk work' sources in order for me to answer my main research question. Qualitative research, analysing documents and semi-structured interviews are preferred over quantitative methods, as the purpose of the study is to examine how the "social construction of realities" emerges from different perspectives, relations and processes (Flick 2007:2). This is also closely related to the norm debate in the current study, as norms are considered constitutive and constraining of nature (Checkel 1997:489) creating social reality and interests, whilst in return being constructed through social interaction (Van Kersbergen and Verbeek 2007:220).

By conducting a policy analysis, I am ensuring some 'triangulation' in the qualitative research process, in relation to the theoretical framework of the Norm Life Cycle. Triangulation requires the technique of combining various methods, data sources, investigators or theories. For qualitative research in particular, this helps to increase the validity of findings (Yeasmin and Rahman 2012:156). According to Yin (2003:99) data and methodological triangulation for case studies research can increase the validity research by using mixed methods and various data sources. In regard to the current study, norms are subjective and may be used 'differently' in different contexts. Thus triangulation is useful to look into different views and information sources of both policy makers and those who practice it; giving a complete idea of the differences in data sources and perspectives.

3.6 Risks and ethical considerations

Most importantly to note is that even though opinions of the interviewees might closely relate to the organisations they are associated with, questions were answered on their personal account. Four respondents will remain anonymous throughout the research findings which is why they will be referred as: 'lawyer legal NGO', and 'human rights advocate humanitarian

INGO'. Since the respondent of the European Asylum Support Office (EASO) and the European Commission official of Directorate General Neighbourhood and Enlargement Negotiations (DG NEAR) did not want to be named in the paper, these interviewees will be referred as 'Employee EASO' and 'EU Commission official'. Due to technical issues, a Skype interview with the EASO respondent was not possible, which is why the interview was held over the phone. Consent of recording and quotation was asked to all interviewees. Transcripts were sent to all interviewees to be reviewed prior to citation in this research paper.

Chapter 4- Empirical Findings: A manipulation of legal norms?

The following two chapters report the findings of the semi-structured interviews and the desk research. The chapters are organised as follows. The main objective of the study was to find out how the Geneva Convention and *non-refoulement* are applied in the 1:1 scheme, and what challenges are encountered in this process. The first chapter focuses on a legal perspective, whilst the second chapter focuses on a political perspective of normative change and norm implementation in the 1:1 scheme and in the EU's external migration policies; using the Norm Life Cycle theory throughout. The quotes by the interviewees are italicised and identified with each respondent accordingly.

4.1 'Something had to be done'

Since the EU-Turkey Statement was concluded by the 28 EU heads of state alone (Collett 2016), the Article 216 in the Treaty of the Functioning of the European Union (European Union 2010:144) stating that agreements are 'binding upon institutions of the Union' is not considered applicable to this agreement. Article 188N in the Treaty of Lisbon (European Union 2007:98) and Article 218 in the TFEU (European Union 2010:83), state that the EU Parliament should be "immediately and fully informed at all stages of the procedure" and that Parliament is allowed to further deliver its opinion prior to its endorsement for any treaty or agreement. However, Carrera et al. (2017:5) illustrate that authorship of the EU-Turkey Statement makes none of the EU institutions accountable, causing its 'legality' to be questioned as the EU Parliament has been bypassed in decision making (Carrera et al. 2017:2). The 'deal' is a political agreement between the EU Member States and Turkey in which the EU Commission, European Council, and the Council have no further official involvement or ownership (Carrera et al. 2017:7).

Dr. Murat Seyrek, senior policy advisor at the European Foundation for Democracy (EFD), illustrates the lack of 'legal accountability' of the 'deal':

> *"It is more like a gentlemen's agreement that 'the EU will do this and Turkey will do that'" (Murat Seyrek, EFD)*

Specifically the EU's underlying and fundamental values such as the 'rule of law' and 'democracy' as stated in Article 1a of the Treaty of Lisbon (European Union 2007:11) are not included, which play a crucial role as stated in Article 10a on internal and external action

taking. Looking at the Norm Life Cycle theory, these norms embedded in Treaties could be considered 'internalised'. Yet the very law in which these norms are embedded, was bypassed; which undermines the third phase of the cycle in this aspect. Mostly, it undermines the norms within the Treaties on which the EU bases its self-image internally and externally. It has also affected the CJEU, as it does not have the right nor the jurisdiction to decide upon the lawfulness of the statement (General Court of the European Union 2017:no pagination). Even though the Statement is considered legally binding (AIDA 2017), it does question who is held accountable for law compliance and the adherence to fundamental human rights obligations (European Ombudsman 2017).

In regard to how the Statement was conceived, several respondents argued that 'something had to be done' in regard to the humanitarian disaster on the Aegean Sea as well as the thousands of people arriving every day on some of the Greek islands. Respondent Michiel Kruyt, assistant of Member of the European Parliament (MEP) Kati Piri of the Dutch Social Democrats in the European Parliament adds the following:

> *"I don't feel too bad that they called it a Statement and bypassed the Parliament. They made sure something would happen within weeks, within days even, which would never have been possible if they would go by the legal route" (Michiel Kruyt, Assistant MEP)*

The EU has made the 'choice' to construct the EU-Turkey Statement outside of the EU legal framework, as the humanitarian disaster outweighed the founding principles in which international agreements are constructed. The EU Commission official discusses that at the time that the EU-Turkey Statement was created it was considered the 'least bad option' in a crisis situation:

> *"In order to avoid a humanitarian disaster in Greece this helped. The Statement helped. So we look at it as a success, but we still see that the situation in Greece is not so good so we are working on it to try to make it work" (European Commission official, DG NEAR)*

Respondents confirm that from the perspective of decreasing the number of arrivals to Greece, and thus, stopping the smugglers, it is a "success", yet they remain critical on the human rights implications that the 'deal' brings with it.

4.2 A 'battle' on the interpretation of non-refoulement

On paper, the EU-Turkey Statement states the following:

> "Migrants arriving in the Greek islands will be duly registered and any application for asylum will be processed individually by the Greek authorities in accordance with the Asylum

> Procedures Directive, in cooperation with UNHCR" (Council of the European Union 2016:no pagination).

The European Commission (2016d:3**)** specifically states that: "There is therefore no question of applying a "blanket" return policy, as this would run contrary to these legal requirements". Thus, in the EU-Turkey Statement, at least on paper, *non-refoulement* should not be at risk.

In practice however, criticisms about how the EU-Turkey Statement is operationalised in relation to *non-refoulement* are manifold. Under Article 20 of the APD free legal aid should be provided by the state so that asylum applicants can appeal against 'inadmissible' or 'unfounded' asylum claims (European Union 2013:73). The respondent from the local legal NGO, illustrates that with the 'new' hotspot approach, fair procedures have not always been followed. This is also indicated by a report of Human Rights Watch in 2016 (HRW 2016). With the mandate changing Greek law L4375/2016 in April 2016, and abolishing a personal interview during the second instance for asylum seekers in the asylum procedure, problems arose with legal aid (Konstantinou et al. 2016:14). Switching to fast track procedures in which interviews are held solely in the first instance, meant that 'free legal representation' became non-compulsory, removing the obligation to respect this condition. The respondent of the legal NGO argues:

> *"We have massive rejections, which are comprised by the same decision copied with the same wording for every person apart from the personal data at the beginning. This for example is not a proper individualized assessment" (Lawyer legal NGO)*

This means that in practice, individual procedures under the APD are not strictly followed in the 1:1 process. Although the L4375/2016 amendment was meant to create faster procedures designed to suit the 1:1 scheme (Neville et al. 2016:24), personal procedures and interviews should be safeguarded as otherwise, according to law, there is no appeal and therefore no legal aid. Yet the 'massive negative decisions' the respondent suggests indicate a possibility of 'blanket returns' under the 'safe third country' principle in which people are rather ruled 'inadmissible' under the ambiguous assumption that they will be 'safe' in Turkey. Here the problem arises of individualized versus supposedly collective procedures; muddling the differences in what is accepted as collective norm compliance among different actors.

In contrast to this set of criticisms from respondents, Victoria Valta of the Asylum Service indicated in her interview that *non-refoulement* as a norm was being strictly adhered to in assessing each asylum claim in the hotspots on an individualized basis. She reported that experts and case workers received training from the UNHCR, and help from the European

Asylum Support Office (EASO), and that their interviews were monitored to ensure that human rights standards were being followed. The respondent states:

> *"Nobody has been returned illegally, or against his or her will to Turkey" (Victoria Valta, Greek Asylum Service)*

The normative debate underlying the 'legal return' is crucial here as several respondents differ in notions of 'legality', trying to bring the debate beyond 'legal' and 'illegal' and back to the humanitarian imperative and EU values of Member States to provide asylum. Moreover, the fact that people have not been returned against their will or 'against the law', and have decided to leave voluntarily to Turkey, brought up some philosophical debates among respondents around the meaning of 'free will', given the long asylum procedures and poor hotspot conditions on the islands for those applying for asylum. Issues tend to arise due to lack of resources and poor staff recruitment; with the asylum seekers facing the ultimate consequences. In regard to the 1:1 scheme, the respondent of the European Asylum Support Office (EASO) mentions that 'no big problems' exist in terms of implementing *non-refoulement* within the CEAS and the work of the EASO:

> *"It is one of the cardinal principles. In the past you would have heard a lot of incidents of non-refoulement, but nowadays much more attention is being paid to this. It is still of course not water tight, but things have improved significantly" (Employee EASO)*

The respondent refers to the positive evolvements of norm behaviour, which is continuously adjusted or addressed to ensure that no norm violation takes place, as more emphasis is put into creating awareness of *non-refoulement*, and providing training in legal principles of border control. However, the EASO's involvement in the hotspots and its role in the admissibility interviews has been questioned by the European Centre for Constitutional and Human Rights (ECCHR 2017). Under Article 14 of the APD 'personnel of another authority' may be used by a country in the case of extreme pressure in asylum procedures (European Union 2013:70). As a result, the Greek law L4375/2016 was adapted to enable the EASO to conduct admissibility interviews (AIDA 2017). Yet new criticism has arisen, and the European Ombudsman is currently investigating whether the EASO's decision making procedures abide by the legal norm of *non-refoulement* (ECRE 2017). This creates an interesting debate in relation to the Norm Life Cycle, as new 'battles' over the norm arise. The terms under which people are returned and how asylum procedures should be applied leads to disputes among different actors. Even though the law has been adapted in order to 'conform' to stricter norm adherence, it seems as if other norm entrepreneurs, in this case

humanitarian organisations, are not satisfied with this new construction of a functional rather than a humanitarian imperative. Thus, in this case, law change as such could also 'weaken' rather than 'strengthen' norm conformity.

4.3 'Safe third country' and pragmatic decision making

As stated by the EU-Turkey Statement:

> "Migrants not applying for asylum or whose application has been found unfounded or inadmissible in accordance with the said directive will be returned to Turkey" (Council of the European Union 2016:no pagination).

The terminology of calling all arrivals, including refugees, 'migrants' further complicates the definition and 'nuance of needs' and procedures followed by the Greek administration in the hotspots, emphasizes the human rights advocate of the humanitarian INGO. The respondent of the local legal NGO adds to this, that the 'ambiguity' of language in the EU-Turkey statement has resulted in the shift of a refugee to the sphere of immigration rather than asylum policy. Ambiguity further affects how human rights standards and procedures are implemented, as refugees and migrants are likely to be treated with the same degree of scepticism and disbelief as those termed 'economic migrants' or 'illegals'. Respondent Amanda Taylor, European Database of Asylum Law (EDAL) coordinator at the European Council on Refugees and Exiles (ECRE) and the lawyer of the legal NGO are both critical of how 'first country of asylum' and 'safe third country' principles are used in the 'deal'; in particular in regard to the temporary status given to refugees in Turkey:

> *"This temporary residence status that Turkey is giving right now to almost all the refugees in their borders is not equivalent to that of the Geneva Convention" (Amanda Taylor, ECRE)*

This was also indicated in a Council of Europe report (Committee on Migration, Refugees and Displaced Persons 2016:3), stating that Turkey does not provide 'sufficient' protection to Syrians and non-Syrians. Similarly, UNHCR (2016b:3) argues that 'sufficient protection' is not defined in the APD, and that fundamental rights as defined by the EU treaties such as 'the right to asylum' in Article 18 of the EU Charter of Fundamental Rights should be respected. Protection for refugees should thus go beyond non-violation of the principle of *non-refoulement* and look into overall human rights standards and international law instruments embedded in law (UNHCR 2016b:3). The anonymous lawyer of a legal NGO in Greece says specifically that *non-refoulement* is not respected in Turkey:

> *"We have seen 80% Syrian refugees that are describing multiple repellents from the Turkish borders. Not letting a person cross the border. It is sending a person back where their life is at stake" (Lawyer legal NGO)*

This closely relates to the numerous reports of humanitarian organisations indicating that in the past, Turkey has engaged in *refoulement* by sending back people from the border with Syria, and complicating access to the country by building a wall across its borders (HRW 2015; MSF 2017a:7). However, in 2016 the EU Commission indicated to Greece that Turkey does provide 'sufficient protection' to Syrians, and that the Temporary Protection Regulation could be regarded as 'equivalent to the Geneva Convention' (European Commission 2016f:no pagination). Similarly on 22nd September 2017, the Greek Council of State judged that one of the prerequisites, "protection in accordance with the Geneva Convention" under the 'safe third country' principle does not require a country to have fully ratified the Geneva Convention, nor to have an asylum system in place that completely stands in line as such (AIDA 2017).

The European Commission official states that despite this judgement by which Turkey can be considered a 'safe third country', the returns under the 1:1 scheme are still low, whilst the long and ineffective asylum procedures in the hotspots lead to prolonged living situations for which the camps were not intended. Additionally, the framework that has been set-up does not seem to be able to return those for whom their application have been judged unfounded or inadmissible; illustrating the many practical challenges of the EU-Turkey Statement. The statistics from all seven progress reports to date show that so far 1896 people have been returned under the 1:1 scheme, of which 214 are Syrians (European Commission 2016e:4; European Commission 2016g:4; European Commission 2016h:5; European Commission 2016i:5; European Commission 2017c:5; European Commission 2017d:5; European Commission 2017b:5).

In regard to the 'safe third country' principle and Turkey, the EU decided that it was 'safe enough' for a number of refugees. Michiel Kruyt indicates that this compromises human rights:

> *"This was clearly a practical pragmatic decision, and not one based on ideals or principles. Even if the legal notion is the same, we didn't change anything in the law, but the way we explain it, the way we put it in practice has definitely changed" (Michiel Kruyt, Assistant MEP)*

The disputes over the use of the norm indicated by the respondent, is not whether the norm, in this case *non-refoulement* under the 'safe third country' is changed, but how it is applied in a

specific way of understanding and use of the principle. The principle of 'safe third country' has existed and has been implemented over the past decades. Yet over the past years 'safe third country' has received 'increased interest', and the way it is now being used indicates a change of norm behaviour. Previously, countries were free to implement the 'safe third country' principle and accept or decline asylum requests according to their own national immigration policies (Van Selm 2001:14). For example, although Greece had these principles in law, they were only used after the implementation of the EU-Turkey Statement (Konstantinou et al. 2016:14), with the pressure of the EU Commission to regard Turkey as safe in line with the Geneva Convention (European Commission 2107f:no pagination). Michiel Kruyt and the respondent from ECRE discuss how the streamlining of the CEAS can make legal principles obligatory, leading to the different use of the principles all together.

> *"I think in general you see the attempt, at least by the proposals by the Commission, with support of the Member States to make it more difficult to get asylum in Europe. If you make these principles of 'safe third country' and 'country of origin' obligatory, that means that some Member States will have to deal with less asylum applications, because they are already inadmissible" (Michiel Kruyt, Assistant MEP)*

As the EU maintains its 'right' to govern its borders, 'safe' third countries remain. The importance of norms and norm compliance could be undermined in this process of defining countries as 'safe', especially if what is considered 'sufficient' protection and 'safe' in third countries increasingly results in lower standards of norms along the EU *acquis*. Dr. Murat Seyrek disagrees with the discussions that Turkey is not safe, especially since many refugees have now been residing in Turkey for years.

> *"If you start calling Turkey a 'non-safe third country' then there is a list of safe countries that will be very small in the world. Maybe it is not the best time for Turkey now internally but even then I don't see Turkey as a non-safe third country for refugees" (Murat Seyrek, EFD)*

Both Michiel Kruyt and the EU Commission official confirm that human rights standards and human resources for Syrians and non-Syrians have improved in Turkey, with the access to education and health services, mostly as a result of the EU-Turkey 'deal'. Albeit, that the notion of 'improvement' could refer to the fact that human rights are increasingly becoming internalised and implemented more effectively, perspectives vary whether Turkey is indeed 'safe'.

4.4 'To abide by the norms, or not to abide by the norms'

Initially, the issue of whether Turkey could be considered a 'safe third country' was brought up by Greek Appeal Committees in 2016 due to 'ineffective protection' provided by the Turkish authorities (Nielsen 2016). In June 2016, the amendment of Greek law L4399//2016 changed the composition of the Appeal Committees, propagated by the EU as too few negative decisions in the second instance were given, slowing down the 1:1 scheme (Konstantinou et al. 2016:41). Previously the old Committees were comprised of three independent members, however, with the shifts in policy there are now two public officers in the Appeal Committees; which creates duplication of powers and conflict of interest in a process of asylum procedures (ECRE 2016).

The respondent Victoria Valta of the Asylum Service explains that the initial appeal evolved around the composition of the Appeal Committees and the 'safe third country' principle. The respondent illustrates that since the High Court decreed that the Appeal Committees are in line with the constitution, some Appeal Committees have been issuing decisions of applicants on the basis of 'safe third country'.

> *"Deciding on whether Turkey is a 'safe third country', is challenging, specifically the situation in Turkey makes it even more difficult but we examine each case, each application on an individualized basis, and then according to the circumstances of each case we decide accordingly" (Victoria Valta, Greek Asylum Service)*

This is also established in the APD of 2013, in which asylum seekers ought to be individually judged on account of whether the 'safe third country' principle can be applied. In case the asylum seeker disagrees with the decision, appeal can be made against the 'unsafeness' of the third country in the individual account (European Union 2013:80). Victoria Valta indicates that not all Appeal Committees issue decisions, as they are 'reluctant' to decide whether Turkey is a 'safe third country'. The EU Commission official confirms that despite the decision of the Council of State, Appeal Committees function ineffectively when it comes to issuing decisions.

As indicated by Acharya (2004:244) the localization of norms may differ from the expected norm implementation on international level. However, in the Greek context, the law had internalised the human rights instruments on a local basis, as decisions were made according to international law. However, the entire functioning of *non-refoulement* and its legal obligations seem to fall away in the shifting Greek laws under pressure of the EU. Michiel

Kruyt describes how the EU is issuing new agreements with Greece continuously to find the right setting and outcome:

> *"You say you need to abide by these rules; so then you abide by the rules. And then you say no, 'but the outcome is not what we wanted'; so now we should change the rules" (Michiel Kruyt, Assistant MEP)*

The respondent refers to the rules, implying the human rights standards and asylum procedures under EU law. The norms underlying the rules however, become lost amidst changing frameworks due to EU's argumentative persuasion. The EU is changing their laws *ad hoc*, trying to find a suitable solution, which influences the resilience of the human rights norms that should be the basis of the normative framework through which decisions are made. Yet from several responses given in the interviews it is clear that the norms are not effectively implemented, and rather, in disputes and arguments over how the norm should be practised, laws are adapted. In relation to the Norm Life Cycle proposed by Finnemore and Sikkink (1998), the findings undermine the socialization process of 'domestic and international legitimacy', as new laws are created 'conforming' to the same norm albeit in a different circumstance. Moreover, corresponding to the third 'phase' of the Norm Life Cycle, the different levels of bureaucracy, international politics and domestic law involved in EU decision making complicate rather than facilitate the implementation of human rights norms in the 1:1 scheme.

Chapter 5- The politics of norms in migration policies

5.1 Political crisis of trust and solidarity

The preamble of the Geneva Convention stresses the need of international cooperation and solidarity in regard to migration (UNHCR 2010:13). Yet the EU is much divided when it comes to dealing with migration policies. The respondent from ECRE critically discusses the 'refugee crisis' and the migration policies of the EU:

> *"This is not a "refugee crisis" or a "migration crisis", it is a political crisis. The effective implementation of human rights is rooted in Member States adherence, not the other way round" (Amanda Taylor, ECRE)*

The respondent referred to the infringement procedures by the EU Commission against Hungary, Poland and the Czech Republic. This has been initiated as a result of their unwillingness to cooperate with the resettlement and relocation scheme of refugees under the shared responsibility of the ECHR and Geneva Convention (European Commission 2017e:no pagination). The emergency relocation scheme established by the Council in 2015 was an effort to relocate people in clear need of international protection to other Member States to aid Greece and Italy- for which funding would be given for each resettlement (European Commission 2015e:84). According to recent statistics of October 2017, 21 202 people have been relocated from Greece to Member States from a total of 63 302 initially proposed relocations (European Commission 2017f:no pagination). The EU Commission official believes that these infringement procedures and set quotas of refugee resettlement and relocation will eventually lead to more solidarity among Member States:

> *"For the first time we are trying on resettlement and on relocation and we are saying, 'OK but you have to take people'. It is not just one Member State that takes them, but you have to" (European Commission official, DG NEAR)*

Looking at the Norm Life Cycle, the fact that terms and conditions regarding norm compliance and principles underlying the EU Treaties became divided on ideas on migration policies have now led to the 'renegotiation' of migration in the EU as a whole. The fact that the Dublin Regulations and the CEAS are currently under revision because it did not function under the influx of asylum seekers (Maas et al. 2015:4) and led to insufficient 'burden sharing' among Member States (Maas et al. 2015:10), could be regarded as part of this 'renegotiation' of the asylum policies. Dr. Murat Seyrek argues that the 'double standards' in

decision making and 'bigger Member States imposing things on others' has weakened the notion of trust and solidarity in the EU:

> *"It is not only the refugee issue but it is even a bigger problem which includes trust on the side of the EU, decision making, the balance between the different Member States, and balance between different EU institutions; it is all part of this bigger game" (Murat Seyrek, EFD)*

The 'bigger game' ties into aspects of normative consensus making and how norms were 'made and taken' by Member States in the past in regard to policy making. Since the EU encompasses 28 Member States, heterogeneity is high and consensus in decision making on the implementation of certain established rules at times remains complicated. This heterogeneity becomes even more visible in migration policies, as often pro- and anti-refugee camps come to exist within politics (Greenhill 2016:322). Moreover, conditionality for political integration is often left vague and inconsistent and thus might differ among Member States (Schimmelfennig 2005:119). The 'Union' as such could be contested, as national histories, political parties and national contexts still play an important role between national versus EU level decision making (Marks et al. 2002:586).

The 'timing' of norm change and norm strengthening as such plays a key role. Political momentum is closely tied to political interest, and in return to public interest and support, that will foster the provision of protection to those in need. Laura Batalla Adam states that due to the low number of resettlements from Turkey under the EU-Turkey Statement, Turkey is being 'left alone' in dealing with refugees, as the EU is failing to meet its targets, even though millions of refugees are currently residing in Turkey. Recent statistics of September 2017 claim that 8834 Syrians have been resettled under the 1:1 scheme, of the pledge of 25 000 to be made at the end of 2017 (European Commission 2017b:9) of a total pledged of 72 000 (Zalan 2016).

Michiel Kruyt argues that the only reason why the EU Parliament was in favour of the EU-Turkey Statement, was because of the Union's legal resettlement plans for refugees, not only from Turkey, but also Lebanon and Jordan for example. These resettlement plans were conceived in 2015, in which over 20 000 people in clear need of international protection would be resettled in the EU over a span of two years (European Commission 2017g:8). In March 2016, before the EU-Turkey Statement was established, the EU Commission acknowledged that there was a lack of political will among Member States that was slowing

down the process of relocation and resettlement, decreasing the ability of the EU to provide 'legal' means to reach Europe (European Commission 2016j:no pagination). The respondent links the 'ineffective' resettlement 1:1 scheme to the political momentum of the EU. At the time that these numbers were discussed, there was political willingness and public support. He explains that the numbers of refugees arriving into the EU dropped with the closure of the west Balkan route, which also decreased the willingness of resettlement.

> *"In all the progress reports from the Commission for example they hide behind procedures, they say it is complicated because people have to register, but it is clearly a lack of political will"(Michiel Kruyt, Assistant MEP)*

This 'inconsistent' behaviour to which the respondent refers to is determined by political will which affects the normative debate of creating 'legal routes' to the EU, and upholding the right and possibility of applying for asylum. Inconsistent use of norms when it comes to enforcement and conditions can harm the EU's credibility (Schimmelfennig 2005:111). Moreover, several respondents indicated that by not following through on these schemes created to provide international protection to those in need, the effectiveness of tackling smuggling routes and to decrease the incentive of people in finding other, dangerous routes to the EU, diminishes.

5.2 'Bending' the Geneva Convention

The process of institutionalization of the human rights regime is implemented through governments who bind themselves to international human rights norms due to the underlying values they carry and "the overpowering ideological and normative appeal" they have (Moravcsik 2000:223). Yet the findings indicate that this normative appeal is largely overruled by political willingness. Thus, international human rights norms in the case of migration policies, are still largely decided by domestic state practices and law and thus political interest. The respondent from ECRE explains that the EU Charter and the ECHR bind Member States to the effective implementation of EU law. The respondent illustrates that even though these legal and political frameworks have been created by the EU, the effective implementation of the Geneva Convention remains under critical discussion:

> *"There is no willingness to adhere to the Convention, I think that is abundantly clear by these deals and the proposals for the CEAS. The 1:1 scheme is based on numbers, essentially a people market; it takes no account of the individualised circumstances or fleeing a real risk of persecution into the equation" (Amanda Taylor, ECRE)*

The respondent mentions that the Geneva Convention does not have an international court to uphold it, even though the UNHCR does provide guidance in the implementation of the Convention. This means that the implementation of its articles is still at the 'peril' of the Member States. On the issue of political willingness and solidarity of 'burden sharing', in which the bargain between cost-benefit plays an important role, the article by Thielemann (2003:258) argues that although these principles of the Union are fundamentally important, in times of crisis, national identity becomes more valued than economic or political gains or costs. The solidarity in the 'burden' of migration policies then becomes much less valued. Overcoming national preferences under the Union remains a bargaining process in which national and supranational costs and benefits are clearly outweighed (Thielemann 2003:263). With the extension of the refugee regime and inclusion of refugees outside EU borders, the Geneva Convention comes under pressure due to political upheaval. And the principle of providing protection to those in need amidst millions of people coming to Europe becomes less favourable. The circumstances have changed also influencing the change in strategy and rationale of the actors involved. In regard to the pragmatic versus normative decision making debate, respondent Victoria Valta of the Asylum Service concludes:

> *"Surely our law and the EU legislation can change, but the Geneva Convention will not change, or the ECHR will not change, so we will have to find a balance between them" (Victoria Valta, Greek Asylum Service)*

Re-negotiation of norms in policies and by politicians may occur, yet the respondent shows that other norm entrepreneurs involved in asylum procedures play an important role in upholding key human rights norms, ensuring that they are implemented according to international law. Norms can be in a 'trial and error' through which different norm entrepreneurs, in this case on national and EU level, constantly re-evaluate the 'external' versus the 'internal' functioning of the norm based on how it is implemented. In contrast to the above respondents, the official of the EU Commission clearly mentions that the normative framework of the EU has not been 'hollowed out' but that it is still central in asylum procedures:

> *"It is complicated to implement but it does not mean that it is not being implemented. It has to be implemented. Because these are very important norms on asylum, these are key, the Geneva Convention needs to be upheld" (European Commission official, DG NEAR)*

Overall, the respondents are clear on one thing: 'the Geneva Convention will, and must, be upheld'. However, since norms are flexible and subject to change, the balance between

'convenient' pragmatic choices and moral obligations are often compromised. This closely ties into what Michiel Kruyt mentions on the dilemmas surrounding international law and political willingness in regard to the Geneva Convention:

> *"We try to see how far we can bend it, or how far you can go with the interpretation of the legal principle. We would not have done this if it had been only 100.000 refugees. When you see there is a clash between our own interest, and principles such as human rights then I think these principles are bent a little bit, they are not so strong or not so fixed as they would seem"(Michiel Kruyt, Assistant MEP)*

In other words, amidst upheaval around original migration policies, new, perhaps more 'realistic' policies are created in the current setting in order to reach the goal of controlling migration whilst simultaneously providing asylum. Considering that the European Union Global Strategy (2016:16) aims to use 'principled pragmatism' in its foreign policy combining EU's normative idealism with 'realistic assessment', the path towards more pragmatic decision making becomes more visible. Instead of understanding how norms are internalized, it is important to understand how they are *not* internalized due to the continuous political debate revolving around norm language and norm implementation. In this context, norms are co-opted, which ties into the rational theoretic of the Norm Life Cycle theory, as preferences change leading to strategic decision making. The EU policies are not explicitly trying to change the norms, but rather, by means of changing laws evolving around the norms, the norm in itself loses part of its impact of safeguarding human rights of refugees and upholding the 'right to seek asylum'.

5.3 'Copying and pasting' the EU-Turkey Statement?

In 1991 the UNHCR already indicated a concern that 'safe third country' could be misused, to encourage 'democratization' and promoting protection or 'normalization' in countries of origin: "it serves to politicize an essentially humanitarian process" (UNHCR 1991). The respondent from ECRE says that by increasing the focus on 'safe third country' and 'first country of asylum' principles, the EU is pushing its protection boundaries elsewhere:

> *"The EU is not aiming to protect the rights of those seeking protection with the EU-Turkey Statement. It is about reducing the protection sphere as much as possible for those wishing to apply for international protection and stay in an EU country" (Amanda Taylor, ECRE)*

Several respondents argue that the EU is in a transitioning period in which more Member States are in favour of developments abroad, to 'prevent' people from coming to Europe, ignoring the fact that people have, and will always migrate. This transitioning period is

perhaps most visible in the fact that in the past, the EU condemned i.e. Sudan (European Parliament 2016b:no pagination), Nigeria (Lambert et al. 2014:3) and Ethiopia (European Parliament 2016c:no pagination) in regard to their severe human rights violations and protection policies. Not to forget that Turkey was largely not allowed to join the EU because of its lower human rights standards (Manners 2002:250). This inconsistent use of norms, or dual positionality that the EU takes in its internal, compared to its external dimension in migration policies, questions the EU's path of 'principled pragmatism'. Currently, the EU has created bilateral or multilateral agreements with these very countries in a 'mutually beneficial' way to manage migration. On-going violence and war crimes are detrimental to human rights standards in Sudan, which the financial migration 'deal' with EU funding is accused of making even worse (Shah 2017; Neslen 2017). "Common Agendas on Migration and Mobility" (CAMM) have also been established with Ethiopia and Nigeria with the idea of creating mutual cooperation on legal mobility and tackling 'illegal' migration (European Commission 2017h). Continuous human rights violations have taken place in Ethiopia (HRW 2017b) and in Nigeria (Amnesty International 2017); making these 'deals' contest EU's underlying norms and values. Respondent Laura Batalla Adam focuses on the externalisation behaviour of the EU:

> *"We are copying and pasting the same model that we have with Turkey, which is basically to externalize all "irregular" migration to Turkey. Now we are exporting the same model to all the Northern African countries" (Laura Batalla Adam, European Parliament Turkey Forum)*

The focus is clearly put on 'root causes' and preventative and capacity building measures to decrease migratory flows to Europe. The European Union Global Strategy (2016:9) aims to strengthen countries with social, economic and political 'fragility' and to increase 'migration management'; by focussing on peace- and state building, and the implementation of EU's principles to bring stability in the neighbourhood. In the past cooperation has also been enabled through Mobility Partnerships (MPs) such as with Tunisia, Jordan, and Morocco, amongst others (European Commission 2017i). A more recent development is the agreement between several EU Member States and African countries Niger and Chad on creating development and financial support in return of tackling smuggling routes and stemming the flow of migration to Europe (Wintour and Willsher 2017).

The respondent from ECRE is not only critical about the EU-Turkey Statement, but also on the effect this might have on 'future deals':

> *"The 'deal' is contradictory in that it violates the EU's own set of fundamental rights. It sets a precedence of paradoxes which will carry on in the future. The only standards it will set is how to most effectively prevent people from exiting their country" (Amanda Taylor, ECRE)*

Through 'rhetorical action' the EU creates the image of norm complying behaviour, by strategically using its soft liberal approach of providing protection abroad as 'argumentative behaviour' and persuasion. The paradox the respondent refers to should be avoided, especially when it comes to what message this sends to third countries, and the credibility the EU has when it comes to prioritizing human rights in its external dimension.

The Migration Policy Institute (MPI) argues that the EU has negotiated 'deals' over the past decade with Libya, Tunisia and Egypt on control of their coastline, 'reallocating responsibility' for the refugees and migrants crossing the Central Mediterranean Sea to neighbouring states of the Maghreb. The respondents in particular bring up the negotiations and situation within Libya, and how the EU has been coping with the influx of asylum seekers to Italy over the past years. Although beyond the scope of this research paper to investigate political relations and previous involvement of the EU in Libya, several events do put increasing pressure on EU's adherence to *non-refoulement* and prerequisites under the 'safe third country' principle. Since 2008, the EU and Libya have discussed new methods to stop illegal migration and smuggling routes from Libya to Italy (MPC Team 2013:7). The Geneva Convention has not been ratified in Libya (UNHCR 2016b:9**)**, complicating the establishment of a safe refugee framework in the country. In 2009 questions regarding *non-refoulement* were raised in the process of forcibly returning dinghies on the Central Mediterranean Sea back to Libya (UNHCR 2016b:5). Due to the civil war, its unstable UN-led government, and chaos, the lives of migrants are put in dangerous positions (Kingsley 2016), as slave labour markets have started to emerge (Graham-Harrison 2017), and there have been testimonies of torture and sexual violence (Amnesty International 2016b; Farand 2017; MSF 2017b).

Overall, the respondents indicate that developments in third countries such as Libya indicate that EU's protection is slowly shifting to the EU's external borders. Internal functioning is 'secured' by focussing on preventative and protection measures in third countries (Haddad 2008:199). This could in return be harmful for refugees and those seeking refuge, in case human rights are not protected and access to the asylum system is not possible. Although the EU says it will make no such 'deal' with Libya as it has with Turkey (Rankin 2017), many respondents are worried that the normative framework and humanitarian imperative are not

upheld, and only strategic bargaining agreements are created in order to keep the refugees 'closer to home' and away from EU borders. However, Dr. Murat Seyrek says that it is unrealistic not to cooperate with third countries in regard to migration:

> *"As the EU we need to support third countries around us so that they also take a share in this. People should be able to stay in their countries. But we cannot expect them to be our 'guards' for Europe" (Murat Seyrek, EFD)*

In the creation of new 'deals', bargaining plays a key role between the EU and third countries in finding a 'common' interest. Countries are often not in favour of bilateral agreements because of 'low benefits', which is why the EU often proposes financial aid or visa incentives in return (Bal 2016:18). However, several respondents criticise the rationale of 'stopping' people from coming to Europe. Preventative measures are 'part of the solution', and not *the* solution. With the focus of bilateral agreements and MPs with third countries abroad, the risk arises of side-lining human rights, in return harming the credibility of the European Neighbourhood Policy adhering to the values of the Union (Carrera et al. 2013:5). Even though cooperation with third countries remains a debated topic among the different respondents, and whether or not the EU should cooperate with countries, and on what basis; many agree that cooperation is something that remains vital when dealing with third 'partner' countries, especially in promoting legal resettlement for refugees or economic migrants. However, the idea of protection should not be misused and as long as resettlement schemes remain ineffective due to low political will, the EU might be losing all its human rights credibility on other third 'partner' countries. With the focus on spreading EU's 'soft' liberal principles in order to create 'safe countries'; new debates surrounding norms arise. In particular to the complexity of legal capability and the jurisdiction involved in offshoring and externalising the responsibility and international protection instruments in third countries outside the EU; specifically in terms of upholding and enforcing human rights and minimum standards of treatment (Carrera and Guild 2017:3).

Chapter 6- Discussion and Conclusion

This study set out to investigate what normative changes are experienced in the implementation of the 1:1 scheme of the EU-Turkey Statement. It contributes to investigations regarding the EU's commitment to norms in a time of 'crisis' by focussing on different mechanisms involved in normative behaviour. This chapter discusses and summarizes the main findings of this study.

Firstly, the core principle of the Geneva Convention such as 'right to seek asylum', and *non-refoulement,* become contested as asylum applications are determined unfounded and inadmissible on the basis of 'safe third country' and 'first country of asylum' principles. Even though asylum seekers are able to revoke judgments of admissibility or 'safeness', and take decisions into higher court, the setting from the beginning is demotivating. The Geneva Convention and *non-refoulement* remain between a continuous legal and normative debate as new circumstances arise, and strategies are re-negotiated. This relates to previous Norm Life Cycle research, indicating that the 'cycle' is not finished. Secondly, the results indicate that contrary to the EU's claimed status as a normative character, the implementation of legal norms can be 'bent'. This relates to the third phase of the Norm Life Cycle, as laws are adapted to correspond to the Union's political willingness of 'externalising' the responsibility of asylum seekers to third countries. Lastly, the 'extra-territorialisation' of migration control under the motive of 'protection' remains part of the present and future. It is here that the mixed results of international cooperation versus human rights frameworks and normative decision making clash in the process of keeping people out, rather than letting people in.

On the basis of the findings I propose that the current framework of norms is not only continuing within a closed circle of reversal and re-adjustment of laws, but also that the mechanism of persuasion in the first cycle of Finnemore and Sikkink's (1998:895) framework, is present within each stage of the norm cycle. Whilst the EU is proposing a more pragmatic understanding of *non-refoulement* by increasing the use of 'safe third country', the national Appeal Committees and local organisations are emphasizing the importance of norms that the EU so valiantly spreads to countries abroad. Thus persuasion, both pragmatic and normative, play a key role for the different norm entrepreneurs. The dominant mechanisms do not only include socialization, but also strategic 'manipulation' and restructuring of contexts in order to make a norm 'work' between EU's humanitarian, normative and functional imperatives. This is visible in the process of norm conformity, as each human rights violation

is resolved through the 'legitimate' change of laws. As a result, the internalisation of the Geneva Convention and *non-refoulement* is not 'taken for granted', but rather reverses back to norm-cascade as new arguments and testimonies of norm entrepreneurs arise on the functioning of the EU-Turkey Statement, the legal framework and the implications it has created.

The main conclusion from this study is that international human rights norms, even though adopted in the 1950's, and embedded in a legalized environment, are not necessarily implemented the way that they were intended on paper. I claim that the EU is not changing the norms, but rather by using the 'cracks' in the EU's bureaucratic framework, norms are applied 'half-heartedly'. What makes the EU liberal under its own liberal human rights becomes tested amidst human rights violations within its own borders and in third countries where the EU has no legal jurisdiction. The influence that the EU has in other countries might be 'soft', but low human rights protection has 'hard' consequences for the lives of refugees in 'safe third countries' and 'first countries of asylum'. The EU's moral and humanitarian obligations, should primarily govern migration policies in the EU-Turkey Statement and in other 'deals' elsewhere. Whereas now, the EU's integrity is contested due to the malleability of the EU's internal versus external norm appliance during times of 'crisis'.

This study continues on previous research on norm change in international relations and in the wider context of Development Studies, focussing on how human rights in the 21st century in migration policies are diffused and implemented in a local context. The Norm Life Cycle in this study provides insights on how decisions change the effective implementation of human rights norms, in particular in a discipline of migration studies in which a humanitarian imperative and norms play a crucial role. Though this study provides some insights in the many mechanisms involved in norm change in international relations, it could have been expanded by using comparative studies with other norms, or using a historical timeline in order to address previous norm disputes between Member States and EU institutions in regard to migration policies. The history of EU-Turkey relations could not be extensively included in this study, but would create an in-depth understanding of the complexity of the current situation in Turkey and the functioning of the EU-Turkey Statement. Also Greece's national and historical migration policies could not be investigated in-depth. Additionally, the Union encompasses 28 Member States, which means that political views as well as norm implementation in regard to migration policies still vary between each country. Moreover, future research investigating bargaining theory as well as securitization theory in regard to

this case study would enhance the understanding of other mechanisms and negotiations involved in the creation of the EU-Turkey Statement.

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Annex I: Table of Informants

	Respondents	Type of procedure	Organisation/Institution	Important information	Date	Duration of procedure
1.	L. Batalla Adam	Face to face interview	European Parliament Turkey Forum	Secretary General	19-07-2017	+/- 1.5 hrs
2.	Dr. M. Seyrek	Face to face interview	European Foundation for Democracy (EFD)	Senior policy advisor	20-07-2017	+/- 1.5 hrs
3.	Employee EASO	Phone call	European Asylum Support Office (EASO)	-	20-07-2017	+/- 1 hrs
4.	A. Taylor	Questions by paper	European Council on Refugees and Exiles (ECRE)	European Database of Asylum Law (EDAL) coordinator	27-07-2017	-
5.	Human rights advocate	Skype interview	Anonymous humanitarian INGO	-	02-08-2017	+/- 1.5 hrs
6.	M. Kruyt	Skype interview	European Parliament	Parliamentary Assistant Kati Piri S&D NL - Partij van de Arbeid	30-08-2017	+/- 1.5 hrs
7.	V. Valta	Skype interview	Greek Asylum Service	Training, Quality Assurance and Documentation Department	04-09-2017	+/- 1.5 hrs
8.	Lawyer	Skype interview	Anonymous legal aid NGO in Greece	-	14-09-2017	+/- 1.5 hrs
9.	European Commission official	Face to face interview	European Commission	European Commission official Directorate General Neighbourhood and Enlargement Negotiations (DG NEAR)	26-10-2017	+/- 1 hrs

Annex II: Interview Guide

The following questions are used as a 'guideline' throughout the semi-structured interview, leaving room for discussion and other questions to emerge during the conversation. The questions were introduced with an explanation of the research study. Background information was often provided before questions were asked.

1. What do you think of the current migration policies, and to what extent do you think they work? Do you have examples?
2. What are the 'strengths' and 'weaknesses' of the current policies regarding the 'refugee crisis'?
3. What changes, if any, have you seen in the role of the EU norms over the past years leading up to/after the EU-Turkey Statement?
4. What are your views on the EU-Turkey Statement? On the functional front, do you think it will work, and will it help to address the issue? What are the main challenges of the 1:1 scheme?
5. To what degree are norms an important basis for the migration governance policies? To what extent are they used/operationalized; and if so who controls/enforces them?
6. What role are human rights norms playing in the migration crisis? Do you believe that this works (in)effectively in dealing with the refugee crisis?
7. What are the political or legal challenges that are involved in implementing human rights norms in practice or in the local context? How could law and politics work more effectively in upholding norms and Treaties regarding the Geneva Convention?
8. How could the Geneva Convention be upheld? To what degree do you believe it is effective? How are norms and the Refugee Convention controlled by the EU within and outside its borders?
9. Is the normative framework of the EU 'useful', or does it give leeway to implementation- possibly backfiring and harming human rights instead, which the EU is aiming to protect?
10. How are '*non-refoulement'* and *'safe third country'* formulated and operationalized in the 1:1 scheme? What are the main challenges?
11. What does the current framework imply about the EU's willingness and ability to adhere to the standards of the Geneva Convention?
12. How does the EU-Turkey Statement set standards for the EU's evolving migration governance elsewhere (to other third countries i.e. Libya)?
13. To what extent do liberal principles and norms that the EU is trying to work out on other countries, including Turkey and third countries, really uphold the principles of *non-refoulemen*t?
14. How is the externalisation of migration affecting human rights norms in migration governance/policies at this moment? What do these 'deals' say about the migration governance policies of the EU?