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The use and application of the 'safe third country' concept within the EU: An instance of securitization of migration and violation of the principle of non-refoulement.

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Abstract:

In recent years, mass migration flows have arrived in the European shores. Every day, people fleeing from persecution, conflicts or searching for a better future are arriving in Europe. Since 2015 and the arrival of thousands of migrants, migration management in Europe is characterized by emergency. One solution to mitigate the arrivals of irregular migrants was the externalization of migration management and the cooperation with third countries. In 2016, the EU-Türkiye Statement was enforced and the 'safe third country' notion was applied. The aim of this research was to analyze the use and application of the 'safe third country' notion within the EU through the lens of securitization theory and legal analysis. The following research displayed that the use and application of the 'safe third country' notion can be conceptualized as an instance of securitization of migration, and that could be incompatible with the realization of refugees' rights and more specifically with the principle of non-refoulement. Eight years after the enforcement of the EU-Türkiye Deal and the designation of Türkiye as a safe third country allowed us to showcase the political and legal implications of the application of the notion and to conclude that extensive cooperation with third countries maybe is not the way to move forward.

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INTRODUCTION

1. Background

A crucial issue of the 21st century is migration, as thousands of people in the world are on the move because of persecution, conflicts, environmental disasters seeking safety elsewhere. States along with other International Actors, as regional institutions, are called upon to manage migration flows and comply with their international obligations towards refugees who arrive in their territory**.**

In Europe, especially after the 2015, the mass migration flows arriving in the European Shores became a central issue for the security agenda of the European Union and for the Common European Asylum System. During and after this period, we witnessed violations of human rights, forced returns at the borders of the European Union (pushbacks), construction of walls to prevent refugees to seek protection, poor reception conditions and hate speech towards refugees, and the correlation of asylum seekers with terrorism and criminality. The Mediterranean Sea has been characterized by International Organizations as a 'cemetery for children and their futures'.[1]

In 2016, the European Union, searching a way to deal with the mass arrivals of migration, signed among with Türkiye, a statement of cooperation. The EU-Türkiye deal aimed to combat irregular migration, to put an end to smuggling, prevent the arrival of irregular migrant, and provide for the migrants an alternative rather than putting their lives at risk. The Deal foresees for the returns of migrants and operates under the assumption that Türkiye is a safe third country. Therefore, in the aftermath of the mass arrivals of refugee flows. The cooperation with third countries lays at the center of the external dimension of migration and asylum up until today although it has been constantly criticized for outsourcing the responsibility to offer protection and prevent the arrivals of refugees.

The EU-Türkiye Deal considers to be a blueprint for further cooperation with third countries. The concerns on violations of human rights and refugees' and the

[1] UN News, 'Mediterranean "Becoming a Cemetery for Children and Their Futures" | UN News' (*news.un.org*29 September 2023) <https://news.un.org/en/story/2023/09/1141677>.

simultaneous expanse of cooperation with third countries, have led me to examine the use and application of the safe third country notion through the lens of securitization theory but also its compatibility with the principle of non-refoulement. To understand if the EU-Turkey Deal and the application of the 'safe third country' notion is the way to move forward.

2. Research questions.

The research questions guiding this study are twofold. Firstly, to what extent can the use and application of the safe third country notion be conceptualized as an instance of securitization of migration? Secondly, to what extent is the use and application of the safe third country notion compatible with the realization of migrants' rights and more specifically the principle of non-refoulement? Searching and answering those questions will lead us to a better understanding of the concept of the safe third country, a concept that is an uptrend in migration governance and has raised political and legal debates in the international community. At the heart of the research is the preservation of migrants' rights and therefore the examination of the use and application of the safe third country concept will enable us to shed light on the reasons and effects of its implementation.

3. Methodology

This thesis seeks to delve into these issues by adopting an interdisciplinary approach, combining International Relation Theories, focusing on the Securitization Theory, and legal analysis that will focus on the safe third country notion and the principle of non-refoulement. Therefore, the first question will be answered through engaging with the International Relations' theory and the second question will be answered through legal analysis.

The first part of this thesis will examine developments in migration policy through the lens of Securitization Theory, a framework that analyzes how certain issues are constructed as state's existential threats requiring exceptional measures and actions for their resolution. By applying key concepts such as securitizing actors, moves, security audiences and speech acts, this section will explore how migration has been framed as security issue in political discourse and if the use and application of the safe third country notion could be conceptualized as an instance of securitization.

In the second part of the thesis, the focus will shift to the principle of non-refoulement in refugee law, a cornerstone of international refugee protection that prohibits states from returning individuals to a country where they may face persecution or serious harm. Through detailed analysis of legal texts and academic debates, this section will investigate the legal obligations underlying the principle of non-refoulement and assess the extent to which the application of the safe third country concept aligns with these obligations.

Moreover, this thesis will explore the use and application of the safe third country notion as an instance of securitization and its legal consequences through a case study of the EU-Türkiye Statement (known as EU- Türkiye Deal). The EU-Türkiye Statement was reached in March 2016 to address the refugee 'crisis' in Europe and deal with irregular crossing-borders. Through this non-binding, political Agreement, Türkiye was designated as a safe third country, where third country nationals that entered irregularly in Greece from Türkiye would be returned and readmitted.

The EU- Türkiye Deal is a landmark agreement in the European Union's asylum acquis, applying the safe third country notion. Since this political agreement was applied in 2016, we are able now to assess its implications in a holistic way. The analysis of the implementation, challenges and impact of the agreement will shed light on the complexities of the operationalization of the safe third country concept, its combability with the principle of non-refoulement and if it could be conceptualized as an instance of securitization.

4. Structure of the Thesis

This thesis consists of an introduction, two substantive chapters and a conclusion. In the first chapter, the discussion will be geared towards answering the first research question through the lens of securitization theory. In this chapter, the theory of securitization will be presented as scholarly explained embedding my understanding of the theory in correlation with migration and the safe third country concept as it has been implemented through the EU-Türkiye agreement within the EU asylum regime.

In the second substantive chapter, the safe third country notion will be legally analyzed and examined as implemented in the EU-Türkiye agreement. Chapter 2 will focus on the second research question, as mentioned before, and therefore an analysis of the principle of non-refoulement and its correlation with the practice of the safe third country notion will be presented. Finally, an overall conclusion of what it has been mentioned and analyzed will lead to answers to my research question given my view and understanding of the issue.

5. Importance of the research

Migration is a phenomenon that characterizes our century. A phenomenon that has at its centered human beings being on the move voluntarily or by force. All the states, unities, international or regional organizations are urged to uphold their responsibilities towards refugees and asylum seekers, while dealing with migration flows. The importance of this research lays on the need to recognize if the way of the management of a development has its roots on the securitization of the issue and if it jeopardizes human rights. Discussing a potential cause and what are the effects of the use and application of the safe third notion will allow us to understand the future effects of similar developments.

The examination of the use and application of the safe third country notion through the securitization theory but also its applicability with the principle of non-refoulement is important as the management of migration within the EU has shifted to externalization practices. Cooperation with third countries has been an upward trend to

secure the EU borders and uphold the international obligations of the EU and its member states towards refugees and asylum seekers, with the latest development, the cooperation with Tunisia. The EU-Türkiye deal as the first of its kind, 8 years after its application, will allow us to view the political and legal implications of the application of the concept.

1. CONCEPTUALIZING THE USE AND APPLICATION OF THE SAFE THIRD COUNTRY NOTION AS AN INSTANCE OF SECURITIZATION.

1.1. Securitization theory

Analyzing the theory of securitization is an essential part of this thesis. The understanding of the theory will allow us to comprehend how, why, and when a security issue emerges and leads to security polices and its effects. Securitization theory can be a useful tool used as an analytic framework that is capable of practical application[2]. Moving beyond the traditional idea of security that is state-centric and focuses on the military sector and adopting a wider approach of security as presented by the Copenhagen School[3], we will be able to apply the concept of securitization to current issues such as migration.[4] As the theory has evolved and criticked since first presented by the Copenhagen School, I will make an attempt to present my understanding of the theory and use it as an analytical tool for the legal concept of the safe third country and more specifically the EU-Türkiye Agreement. The aim of this chapter is to explain the securitization theory in order to proceed with the examination of the securitization of migration within the EU and the use and application of the safe third country notion,

[2] Thierry Balzacq and others, 'What Kind of Theory – If Any – Is Securitization?' (2014) 29 International Relations 1.
[3] The Copenhagen School refers to a certain group of academics that were based at the Copenhagen Peace Research Institute (COPRI) in Copenhagen, Denmark.
[4] Marianne Stone, 'Security according to Buzan: A Comprehensive Security Analysis' (2009) 1 Security discussion papers series 1.

using the EU- TÜRKIYE Agreement, as an instance of securitization. The presentation of the theory will not include securitization within non-democratic contexts as the focus is on the issue of migration within the European Union.

Security studies, representing the core of International Relations, focus on understanding the threats to the security mainly of the state. Since the end of the Cold War, security has been a central issue of research and discussion and several changes on how we view the theory of security, and its application have occurred.[5] Military security was dominant in the realm of security and the State was traditionally the main referent object being at stake when security-military concerns were emerging. Since then, other sectors have been incorporated into the realm of security and the referent object is no longer just the state. The Copenhagen School taking a more holistic approach on security and its complexities, introduced three conceptual tools of analysis of security. They developed the sectors of security, the regional security complex theory and the securitization theory.[6] This thesis delves into the securitization theory but without forgetting the contribution of the other given tools that will help us apply the theory later.

According to the Copenhagen School, securitization can be viewed 'as a more extreme version of politicization'.[7] This is because a public issue that used to be nonpoliticized and brought into the realm of politics (politicized), is now framed as it is above politics. [8]An issue of public policy is now constructed by an actor to be an existential threat to a referent object, traditionally the state, that requires emergency measures, justifying actions that fall outside of the normal democratic process and political procedure.[9] The issue isn't necessarily and objectively an existential threat to the referent object, but it is presented to be. Is the securitizing move that presents an

[5] Jimena Puga , 'Post-Cold War Securitization in the European Union. Global Affairs. Universidad de Navarra' (*Global Affairs and Strategic Studies*2021) <https://www.unav.edu/web/global-affairs/seguridad-de-la-ue>.
[6] Rita Floyd, 'Towards a Consequentialist Evaluation of Security: Bringing Together the Copenhagen and the Welsh Schools of Security Studies' (2007) 33 Review of International Studies 328.
[7] Barry Buzan, Ole Wæver and Jaap De Wilde, *Security: A New Framework for Analysis* (Lynne Rienner Pub 1998) 23.
[8] Ibid [23-24]
[9] Ibid (ADD A DIFFERENT SOURCE)

issue as an existential threat, but for the securitization to be successful and the issue to be securitized, the acceptance of the audience is required.[10] Therefore, securitization is socially constructed through speech act, reflecting on evolving challenges and it is neither objective nor subjective. The concept of securitization is an intersubjective process as it is about the interactions and perceptions among the actors and the audience.[11]

For a complete understanding of the securitization process, it is essential to focus on the nature of the framework (speech act) and the main elements of the process, namely being the referent objects, the securitizing actors, the functional actors, the audience, and the existential threats. To start with, the theory of speech acts introduced by John L. Austin and John Searle, is based on the idea that language is not statements with objective content that can be judged as true or false, it is also performative and able to change narratives and social reality.[12] Certain conditions and requirements need to be met for every utterance to have performative power.

The power of the performance is based on three elements, the illocution, the perlocution and the authority. The illocutionary act is capturing the performative nature of the utterance, and it is performed by speaking and making declaration or giving orders. The perlocutionary act is reflecting the effect or reaction that the speech aims to produce to the audience such as actions, feelings, or beliefs.[13] The third element of the successful speech act is the authority that performs it and his power to engage with the speech and convince the audience. [14] In the Copenhagen School approach, the illocutionary aspect of the security speech act targets to create a rupture in the understanding of an issue and introduce it into the realm of security.[15] Taking from the

[10] Ibid [25]
[11] Ibid [31]
[12] John L Austin, *How to Do Things with Words* (Oxford University Press 1962) 10 10–11.
[13] Ibid [99-105]
[14] Stępka Maciej, 'The Copenhagen School and Beyond. A Closer Look at Securitization Theory', *Identifying Security Logics in the EU Policy Discourse: the 'Migration crisis' and the EU* (Springer 2022) 20.
[15] Juha A Vuori, 'Illocutionary Logic and Strands of Securitization: Applying the Theory of Securitization to the Study of Non-Democratic Political Orders' (2008) 14 European Journal of International Relations 69.

theory of the speech acts, we can conclude that the success of the securitization of an issue is based on the performance of the locution that included the grammar of security, the authoritative position of the securitizing actor that will define to a certain level the acceptance of the audience, and the featuring of the existential threats that will lead to securitization. [16]

As mentioned above, the main factors of the security speech acts are the referent objects, the securitizing actors, and the functional actors. On that we include the importance of the audience in the securitizing process. Referent objects are the ones that are existentially threatened and have a legitimate reason to claim their survival. Traditionally, the referent object on security studies is the State and indirectly the nation. Survival of the state is based on its sovereignty and of the nation is based on identity. Following the securitization approach though, given from the Copenhagen School, a securitizing actor could name anything as a referent object that its survival is at stake, if the actor is a powerful figure to construct an issue as a threat and convince the audience about it. The identity of the referent object that is being threatened depends also on the sectors of security that will lately be mentioned. [17] Nevertheless, the securitization in practice is likely to be more successful when the referent object is a collectivity as a nation or a state. [18]

Moving to the securitizing actors that play a crucial role as they are the ones that securitize issues by declaring that a referent object is existentially threatened. Securitizing actor could be someone or a group that will perform the security speech act. Most of the times, the role of securitizing actors holds political leaders, the government, pressure groups, bureaucrats, that hold the power to define and implement security[19]. It is rare that the securitizing actor and the referent object to be the same figure or entity.

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[16]Barry Buzan, Ole Wæver and Jaap De Wilde, *Security: A New Framework for Analysis* (Lynne Rienner Pub 1998) 33.
[17] Critical approaches to security page 55
[18] Ibid [36].
[19] Ole Waever, 'Securitization and Desecuritization', *On Security* (Columbia University Press 1995) 49-50.

Combining the security complex theory, the securitizing actors could be more than state's representatives and politicians and they could be heterogenous. A group of states, nations, firms, and supranational organizations could be the actors within the security sectors.[20] EU among with the states and the nations could be the securitizing actors but also the referent object being existentially threatened. This is because of the interdependence and connection (geographically, economically, politically) of the region that set common security concerns and perceptions. In the securitization process, there are also the functional actors who can influence the performance of securitization and call for security on behalf of the referent object.[21] In my understanding the role of the functional actors could be attributed to the media or other influential groups of society.

Through the securitization process, the role of the audience is decisive for the success of the securitizing move. The interaction between the securitizing actor and the audience is essential in constructing shared security values, legitimizing, and applying the security actions.[22] The identity and the role of the audience could be characterized as underdefined by the Copenhagen School although there is an emphasis on intersubjectivity. Other scholars have deepened on the role of the audience.

Drawing from Cote, the audience could be defined as "the individual(s) or group(s) that has the capability to authorize the view of the issue presented by the securitizing actor and legitimize the treatments of the issue through security Practice".[23] Audiences could be the general public, but it could be widened to the government itself, the elites, organizational colleagues, technical experts etc.[24] The specific identity of the audience is a case-by-case consideration and in several cases multiple audiences can

[20] Barry Buzan, Ole Wæver and Jaap De Wilde, *Security: A New Framework for Analysis* (Lynne Rienner Pub 1998) 11-17
[21] Ibid [36].
[22] Adam Côté, 'Agents without Agency: Assessing the Role of the Audience in Securitization Theory' (2016) 47 Security Dialogue 541.
[23] Ibid [548].
[24] Ibid [546].

exist in the securitization process. However, the role and the capabilities of the audience in accepting, legitimizing, and constructing Common security beliefs and ideas is undeniable.[25]

The understanding of security threats has been broadened and it does not entail only military threats. New threats to the global community, states, individuals, and international organizations have emerged that go beyond the use of force and the immediate attack to the state sovereignty. Including other sectors of security leads to the sectoral approach to security introduced by Buzan in People, States, and Fear. The referent object, as said before, depends on the sector, although the state has still a dominant presence.[26]The sectors of security are namely the military, the environmental, the economic, the societal and the political sector. To facilitate this thesis, the focus will be on the societal sector as it links with the issue of migration.

Within the military sector, threats are the military ones that put at stake the sovereignty and the survival of the state. These threats are characterized by urgency, and they threaten the whole society. The main referent object in this sector is traditionally the state and the nation that are being threatened. An example though of the expansion of the referent objects in this sector is the form of intergovernmental organization, such as the NATO, that was the referent object during Cold war.[27] Religion could also be the referent object in the military sector as we have seen in the past.[28] The securitizing actors are mainly the representatives of the state, that are able to speak security on behalf of the state and the nation. Also, officials, representatives and the organs of the international/regional organizations could speak security as well as pressure groups within the state or the international community.[29]

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[25] Ibid [548].
[26] Laura J Shepherd, *Critical Approaches to Security* (Routledge 2013) 55.
[27] Ibid
[28] Barry Buzan, Ole Wæver and Jaap De Wilde, *Security: A New Framework for Analysis* (Lynne Rienner Pub 1998) 53.
[29] Ibid [55]

The environmental sector has emerged in the recent years. The threat is the environmental degradation that puts at existential risk locally to globally the ecosystem and the preservation of the civilization.[30] In this sector, securitization mostly attempted from the global level, but the success of securitization is mostly happening in the local level, where activists and the community are embracing the advocating for the climate changes that lead to existential threats.[31]

The economic sector refers to economic threats against the states, the global markets, individuals, and local economy, which are the referent objects. The actors are similarly varied, and they present economic crisis as existential threats to the referent objects. [32] The political security sector is not distinct from the other sectors. As said before, an issue to reach the level of securitization, has first to become politicized.

The political sector focuses on the non-military threats to sovereignty and state's ideology, or to the stability of the international society, law, and organizations.[33] Whatever non-military development threatens the stability, the survival and the organization of a Unit could be a political security issue. An example of a principle that could be securitized is human rights, where the violation of human rights threatens the stability of supranational organization, as the EU. The actors in this sector could be the state, intergovernmental organizations, other societal groups (minorities), religions and transnational movements. [34]

Societal security has been viewed as an extension of the state security (the protection of the sovereignty and territorial integrity). Several scholars have distinguished societal security where the referent object is the society and the protection

[30] Ole Waever, 'Securitization and Desecuritization', *On Security* (Columbia University Press 1995).
[31] Barry Buzan, Ole Wæver and Jaap De Wilde, *Security: A New Framework for Analysis* (Lynne Rienner Pub 1998) 92.
[32] Laura J Shepherd, *Critical Approaches to Security* (Routledge 2013) 56.
[33] Ibid
[34] Barry Buzan, Ole Wæver and Jaap De Wilde, *Security: A New Framework for Analysis* (Lynne Rienner Pub 1998) 145.

of its culture, identity, and language.[35]As mentioned before, securitization is the construction of existential threats to a referent object (the society) by securitizing actors, where through a securitization move, extraordinary measures are legitimized and applied. It depends on the power of the authority performing the securitization move, and the acceptance of the audience.

In societal security, the context and what the society thinks as a threat to their identity plays a significant role.[36] The threat presented by the securitization actor (who may leeks to the state) must correlate with pre-existing anxieties of the society or violate core beliefs and values. [37] We often observe that objective developments in the social sphere are becoming a societal, identity threat of the people and this securitization of the issues generate defensive actions and extraordinary measures beyond 'normal' politics and morality.[38]

The motives of the securitization actors that seek to construct societal threats could be self-interest, to further their own position and advance their political agendas. [39] Political elites could also move an issue to the security realm, in order to disorient public opinion from other internal problems and increase their popularity and influence. A phenomenon that is often securitized and perceived as a threat to the identity is migration. [40] The securitization of migration corresponds to pre-existing racists beliefs and allows to groups of society, the elites, and the government to act outside of the democratic process and the moral standards to 'secure' the identity of the society. The actors on securitization of migration could be the political leaders or nationalist politicians that want power, but also social movements (anti-immigrant) could also facilitate the securitization. [41]

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[35] Tobias Theiler, 'Societal Security', *The Routledge handbook of security studies* (Routledge 2010).
[36] Tobias Theiler, 'Societal Security', *The Routledge handbook of security studies* (Routledge 2010).
[37] Ibid [107]
[38] Ibid
[39] Ibid [110]
[40] Laura J Shepherd, *Critical Approaches to Security* (Routledge 2013) 56.
[41] Barry Buzan, Ole Wæver and Jaap De Wilde, *Security: A New Framework for Analysis* (Lynne Rienner Pub 1998) 124.

Additionally, media play a leading role as an actor or a functional actor in portraying migration as a threat to the identity of the nation.[42]Any development could be constructed or viewed as an attack on the "we" and this could be used from oopportunists that want to promote their agendas. Although we should seriously consider societal threats, it is important to focus on the negative effects of framing an issue as a security one.[43] Facilitating a societal threat is important, but going beyond the democratic process could entail negative effects to the cohesion of society and the protection of human rights.

To conclude, securitization theory is a significant tool to understand how security issues are emerging and constructed. Issues emerging from the military, environmental, economic, political, and societal sector are constructed as existential threats to the referents objects, such as the state, individuals, regional and international units, that require extraordinary measures in response. In some cases, securitization of an issue could lead to right solutions. In the example of securitization of the environmental sector, from the global to local community, there is mobilization on the perseverance of the ecosystems and civilization. In other cases, though, the securitization of a sector, such as the societal, could lead to negative mobilization and the tool of securitization could be used to serve fake and malicious intentions that will entail negative effects.[44] In the next chapter, securitization of migration and refugee flows within the EU and its member states will be presented and we will explore its effects.

1.2. Securitization of migration with the focus on EU migration-security nexus

After analyzing the theory of securitization and its main elements, we are moving on, focusing on securitization of migration. In this section, we will introduce

[42] Ibid
[43] Ole Waever, 'Securitization and Desecuritization', *On Security* (Columbia University Press 1995).
[44] RITA FLOYD, 'Towards a Consequentialist Evaluation of Security: Bringing Together the Copenhagen and the Welsh Schools of Security Studies' (2007) 33 Review of International Studies 348.

the tendence of securitizing migration. Later, the emphasis will be given in the European Union's migration-security nexus. It is important to understand how the phenomenon of migration and the related developments are being viewed and faced by the European Union and its member states. What are the implications of viewing migration as a security issue and what are the effects? What is the response of the Union and its member states on migration and refugee flows? Answering these questions will help us to examine if the safe third country notion within the EU could be conceptualized itself as an instance of securitization. Finally, the focus will be on forced migration (refugees, asylum seekers) and illegal migration as the examination of them are useful to this thesis and they are the ones that are highly politicized and viewed as the greatest threat.[45]

The securitization of migration refers to the process where migration is being framed as a threat to the state and the societal security and therefore extraordinary measures are required to be taken. [46]Although, migration and mobility of people is a long- standing phenomenon that has marked the history of humanity and contributed to its development, through the last decades, it is being constantly framed as a threat to the stability of the state, the social cohesion, the economic stability and a root of criminality, human trafficking and terrorism.[47]

Political elites, pressure groups, lobbies, group of citizens and the media are presenting migration as a threat, through the speech act and they are introducing measures that are out the normal political process searching for legitimization from the audience. As concluded in the previous chapter, securitization of an issue is mostly a way of advancing your influence and power, disorient your audience from more serious problems and gain popularity over your components.[48] As stated by Browning, 'claims

[45] Philippe Bourbeau, *Handbook on Migration and Security* (Edward Elgar Publishing 2017) 2.
[46] Marianne Potin and Diane E Davis, 'Resilience, Security and Spaces of Migrant Refuge', *Handbook on migration and security* (Edward Elgar Publishing 2017) 192.
[47] Ibid
[48] Jakub Bardovič and Jaroslav Mihálik, *Migration: The Challenge of European States* (Ibidem Verlag 2019) 13.

about the security implication of migration are always politically framed and never objective as such'.[49]

The last two decades, refugees, asylum seekers and unauthorized migrants are systematically included in security agendas. There are theoretical and empirical reasons of the connection of migration with the security nexus. The end of the Cold War marked a new era, of different security concerns, rather than the military ones. The political elites, scholars and security specialists had to introduce new security concerns to keep their positions.[50] Therefore, in the post-world era, security concerns such as environmental, economic, and societal, identity where introduced.

Forced migration started to be framed as potential threat to all these new sectors of insecurity.[51] The framing of forced migration as a threat is also based on empirical reasoning. The collapse of the Soviet Union and wars in the 90s and 00s such us in Iraq, Bosnia, Rwanda, Kosovo, Syria had as an outcome the mass mobilization of refugees and asylum seekers. These developments triggered the response of the States and International Organizations, that tried to tackle the issue of refugees by framing it as an issue of international peace and security.[52]

Since we have underline that the securitization process is done through speech act and its intersubjective nature, we can recognize how migration is being framed as a threat to the security sectors. Firstly, forced migration is being portrayed as a financial burden to the welfare system, as a reason to the unemployment and poverty of a state and therefore a threat to the economy.[53] Secondly, the securitizing actors and

[49] Christopher S Browning, 'Security and Migration: A Conceptual Exploration', *Handbook on migration and security* (Edward Elgar Publishing 2017) 56.
[50] Anne Hammerstad, 'The Securitization of Forced Migration', *The Oxford Handbook of Refugee and Forced Migration Studies* (Oxford University Press 2014). 265
[51] Ibid [266]
[52] Ibid
[53] Anthony M Messina, 'Migration as a Global Phenomenon', *Handbook on migration and security* (Edward Elgar Publishing 2017) 24.

the audience claim that migrants undermine the collective culture and that they pose a threat on their ethnic, linguistic, religious and national identity.[54]

Moreover, through the securitization move, refugees, asylum seekers, illegal migrants are framed as a root cause of terrorism, especially after the 9/11 and the terrorist attacks in Europe.[55] Finally, migrants are accused of threatening the safety of the public and the society as they considered to be part of the organized crime, corruption, drug and human trafficking.[56] Political elites, but also the media are pushing for the framing of refugees as security threats, and the words being used serve for the dehumanization of refugees or at least the dominance of the state and societal security over human security (the security of the refugees).

The motives of the actors through the securitizing process have been briefly mentioned on the previous chapter, namely being the gain of power, promotion of their agenda, and disorientation of the public. Specifically, in the case of securitization of migration, actors use the migration-security link as a justification of the denial of their international responsibilities.[57] States might fear of losing the symbolic control of their territorial borders and therefore their power. [58]Finally, framing migration as an existential threat through the discursive process, will contribute to the institutionalization of securitization. By institutionalization, we mean the enactment of laws and application of policies that were influenced by the framing of migrants as threats.[59] Most frequently, the outcome but also the intention of the securitization of migration is restrictive migration policies and limitations to migrants' entry.[60]

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[54] Ariane Chebel d'Appollonia, 'Xenophobia, Racism and the Securitization of Immigration', *Handbook on migration and security* (Edward Elgar Publishing 2017) 256.
[55] Maggie Ibrahim, 'The Securitization of Migration: A Racial Discourse' (2005) 43 International Migration 172.
[56] Ricard Zapata-Barrero and Lorenzo Gabrielli, 'Ethics and the Securitization of Migration: Reversions the Current Policy Framework', *Handbook on migration and security* (Edward Elgar Publishing 2017) 128.
[57] Ibid [132]
[58] Jakub Bardovič and Jaroslav Mihálik, *Migration: 2 The Challenge of European States* (Ibidem Verlag 2019) 13.
[59] Ibid
[60] Ricard Zapata-Barrero and Lorenzo Gabrielli, 'Ethics and the Securitization of Migration: Reversions the Current Policy Framework', *Handbook on migration and security* (Edward Elgar Publishing 2017) 129.

Over the years, academics are claiming that, within the European Union, migration is listed as a security issue among with terrorism, organized crime, drugs, and corruption. [61] Scholars like Bigo and Huysmans have stated that in Europe, migration is viewed from a security-based approach. [62]The securitization of migration within the EU could be divided into two processes. The securitization through political and media discourses (speech acts) that transmit anti-immigrant feelings and framing migrants as threats to the stability and security of the union and its member states. But also, securitization through policies and legislation. [63] This is the reason scholars are presenting the EU as a complex and diverse securitizing actor.[64]

Huysmans argues that since the mid-1980s, migration has been increasingly presented as a danger to culture identity, public order and domestic and labor market stability and led to triggering the policies of the EU.[65] Except of this main security narrative, that unauthorized flows of migration are viewed as a risk to the security and stability, there are also 'humanitarian' discourses. This narrative indicates the need to protect migrants and their rights from smuggling, criminal organization trafficking at the borders or from the dangers that border-crossing process may entails.[66] The latter enables speech acts and policies with the goal to minimize mobility, with the intention to protect and safeguard refugees' rights (human security)[67] Finally, the rise of extreme nationalism, xenophobia and far-right parties of the Members States have played a

[61] Ibid [128]

[62]. Lorenzo Gabrielli, 'SECURITIZATION of MIGRATION and HUMAN RIGHTS: FRICTIONS at the SOUTHERN EU BORDERS and BEYOND' (2014) 16 Lidé města 312.
[63] Laura Planas Gifra, 'Migration, Security, and Politics: The Role of Politics in Securitizing Migration' 21 Migration Letters 851.
[64] Maciej Stepka, *IDENTIFYING SECURITY LOGICS in the EU POLICY DISCOURSE: The 'Migration Crisis' and the Eu.*(Springer Nature 2022) 193 193.
[65] Jef Huysmans, 'The European Union and the Securitization of Migration' (2000) 38 JCMS: Journal of Common Market Studies 752.
[66] Lorenzo Gabrielli, 'SECURITIZATION of MIGRATION and HUMAN RIGHTS: FRICTIONS at the SOUTHERN EU BORDERS and BEYOND' (2014) 16 Lidé města 312.
[67] Maciej Stepka, *IDENTIFYING SECURITY LOGICS in the EU POLICY DISCOURSE : The 'Migration Crisis' and the Eu.*(Springer Nature 2022) 77.

central role on the securitization of migration in the political and public discourse within the EU. [68]

The European security-migration discourse was intensified through several periods. To name a few, the terrorist attack of 9/11, the terrorist bombings in Madrid (2004), in London (2005), in Paris (2015)[69], the 2015-2016 'refugee crisis'.[70] Such circumstances and developments created a fear-driven discourse, where refugees and asylum seekers could possibly be terrorists, criminals, or illegal migrants that abuse the right to asylum in order to have a better future. [71] These narratives could be found in the language that is being used from the EU institutions, the speech acts of the political leaders of the member states, the media, and the citizens. [72]

Within the research of Asderaki and Markozani, the results of lexicometry showed that, on average, the issue of migration was always included in the documents on security during 2013-2017. Through this research, it is clear that EU institutions have linked migration with security threats and specific dangers such as terrorism, cross-border crimes, and trafficking.[73] Except of the EU institutions, the Member States have adopted over the decades securitized language over refugees and asylum seekers. Focusing on Greece, political elites have linked migration to poverty and criminality.[74] From the government to the far-right parties that have been elected, to the media, the language being used, presents migrants as societal and identity threat, economic burden, terrorists that bring chaos to the State. [75]

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[68] Georgios Karyotis and Dimitris Skleparis, 'QuiBono?' (2013) 22 Griffith Law Review 683.
[69] Ricard Zapata-Barrero and Lorenzo Gabrielli, 'Ethics and the Securitization of Migration: Reversions the Current Policy Framework', *Handbook on migration and security* (Edward Elgar Publishing 2017) 129.
[70] Sarah Léonard and Christian Kaunert, 'Refugee Flows and Terrorism in the European Union: Securitization through Association' (2021) 59 International Politics.
[71] Ibid
[72]Foteini Asderaki and Eleftheria Markozani, 'The Securitization of Migration and the 2015 Refugee Crisis: From Words to Actions', *The New Eastern Mediterranean Transformed: Emerging Issues and New Actors* (Springer 2021).
[73] Ibid
[74] Gabriella Lazaridis and Dimitris Skleparis, 'Securitization of Migration and the Far Right: The Case of Greek Security Professionals' (2015) 54 International Migration 176.
[75] Georgia Dimari, 'The Securitization of Migration in Greece 2011-2019: A Discourse and Practice Analysis' (2020) 9 European Quarterly of political Attitudes and Mentalities 5.

To address the range of securitization of migration within the EU, we have to move beyond speech acts and exceptional actions. As Paris School has indicated, securitization process can evolve through practice and routine[76] such as policies, control, and surveillance.[77] Also, security logic within the EU is not restricted to exceptionalism. The EU practices on migration management, rely on risk management and human security logics too.[78] This means, that the securitization of migration at the EU level is not only presented as an immediate threat that has to be dealt through exceptional measures. At the EU level, through normal policies and not just speech acts, migration is conceptualized as a future risk to the sociopolitical system and border control, but also as a situation that puts at risk refugees' rights safety.[79]

There are many examples of policies that have been enacted at the EU level in order to deal with migration flows and illegal migration. As mentioned above, the dominant logic in EU policies is the risk management through political and technocratic practices. Institutional and constitutional securitizing moves are the main vehicle to protect the internal order and external borders.[80] Scholars have argued that through the EU treaties and the Schengen acquis, the EU migration-security nexus has successfully been facilitated. By linking irregular migration to destabilization, enforcing restrictive border control measures, and expanding the internal security agencies (Eurojust, Europol, Frontex), academics are arguing that these practices have a securitizing effect, where the movement of people is being framed as threating and extraordinary measures but also policing is required.[81]

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[76] Thierry Balzacq, 'Constructivism and Securitization Studies', *The Routledge Handbook of Security Studies* (Routledge 2010).
[77] Maciej Stepka, *IDENTIFYING SECURITY LOGICS in the EU POLICY DISCOURSE : The 'Migration Crisis' and the Eu.*(Springer Nature 2022) 27.
[78] Maciej Stepka, *IDENTIFYING SECURITY LOGICS in the EU POLICY DISCOURSE : The 'Migration Crisis' and the Eu.*(Springer Nature 2022) 38.
[79] Ibid
[80] Ibid [65]
[81] Yasmin Ibrahim and Anita Howarth, 'Communicating the "Migrant" Other as Risk: Space, EU, and Expanding Borders' (2017) 21 Journal of Risk Research 1.

Going back to "exceptionalist" security that is connected to the militarization of migration management, we could refer to the growth of activities of the Frontex agency, the Operation Sophia and the use of technologies and the deployment of military for border control. Operations of Frontex, have been characterizes as "organized hypocrisy" where the aim is not only to decrease the number of deaths of refugees, but also to mitigate their arrival, through the deployment of excessive security measures.[82]

Furthermore, operation EUNAVFOR MED Sophia in 2015 was the answer to the "refugee crisis" in the Mediterranean. A military operation in order to combat human smuggling and trafficking since these are the root causes of mass migration flows, set the trend for militarization of border management. Naval vessels, aircraft and military was involved, shifting the principle aim to rescue and prevent the deaths, to the combat of illicit activities. [83]

Finally, I would like to mention one example that reflect on the securitization of migration as a threat to the stability, social identity, and security of the member states. Greece over the last decades has set EU border security as a priority over the lives of refugees. This is unveiled of the construction of the Evros Fence in the borders with Türkiye in 2012. [84] To add on that, the intentions of the Greek government are to extent the fence from 12.5km to 40 km through 2024. [85]

The minister of Citizens Protection of Greece, stated that the Armed forces in the area of the fence, are defending the values and principle of the European Civilization, and that the fence is the most effective measure to combat irregular migration. He spoke about a hybrid threat to the national order and security of the State and stressed that Greek authorities will take any necessary measure to end irregular

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[82] Vanda Amaro Dias and Maria Raquel Freire, 'Insecurities in EU Border Management: The Unintended Conséquences of Securitization Processes in the Mediterranean' (2022) 10 Methaodos.revista de ciencias sociales 297.
[83] Ibid
[84] Georgia Dimari, 'The Securitization of Migration in Greece 2011-2019: A Discourse and Practice Analysis' (2020) 9 European Quarterly of political Attitudes and Mentalities 5.
[85] Fenix, 'Why EU-Funded Walls Are a Threat to Our Values' (*Fenixaid.org*2023) <https://www.fenixaid.org/articles/why-eu-funded-walls-are-a-threat-to-our-values> accessed 13 August 2024.

flows. [86] The Evros Fence is accompanied by digital border surveillance ad barbed wire. Although the EU does not finance the construction of the wall, the necessary infrastructure (technology) is funded by the Union. [87]

To conclude, in my understanding the linkage of refugees and asylum seekers to security threats or risk to stability of the Union socially and economically is obvious. The securitization of migration either at the discursive or institutional level has a common outcome. That is the shift from human security logic and protection of refugees to the dominance of risk management and exceptionalism. This means that refugees' rights and protection is not at the central of the discussion of the policies, rather they are complementary and serve for the justification of practices.

I would like to take the direction that security narratives, speech acts, preexisting beliefs are leading to the policies and measures that are being taken and not that policies securitize migration in absence of the discursive part. The rhetoric of the governments, the media, the rise of far-right parties within the Member States, the feelings, and the perspective of the public among with the language being used from the EU institutions, are serving for the conceptualization of migrants as threats and risks and the policy response that focuses on mitigation of migration flows.

1.3. The use and application of the safe third country notion through the EU-Türkiye deal.

After analyzing the securitization of migration and the EU migration-security nexus, by giving some illustrative examples, we come to the point where we have to examine whether the use and application of the safe third country notion could be

[86] Bleona Restelica, 'Greece: Construction of Evros Fence to Be Completed by the End of 2023' (*SchengenNews*24 February 2023) <https://schengen.news/greece-construction-of-evros-fence-to-be-completed-by-the-end-of-2023/> accessed 1 August 2024.
[87] Fenix, 'Why EU-Funded Walls Are a Threat to Our Values' (*Fenixaid.org*2023) <https://www.fenixaid.org/articles/why-eu-funded-walls-are-a-threat-to-our-values> accessed 1 August 2024.

conceptualized as an instance of securitization. To be able to answer that in the conclusion, we have to introduce the safe third country notion and examine its use and application through the EU-Türkiye deal. This process will allow us to answer if the use and application of the concept is linked with the securitization of migration within the EU.

In 2015, large numbers of migrants and asylum seekers crossed the borders to reach the EU territory in order to seek for refuge and to escape from conflict, violence, repressive governments and insecurity.[88] Thousands of refugees and migrants arrived on European shores and 75% of those fled conflict or persecution were from Syria, Afghanistan or Iraq.[89] The mass migration flows in Europe during the summer of 2015, namely known as 'refugee crisis', unveiled the incapacity of the EU member States to act united. [90] Heated debates of the reception and distribution of the refugees, construction of fences by some member States, reintroduction of border controls and narratives linking migration to terrorism were part of the reactions to the 'refugee crisis'. [91] As one of the panicked responses to the sharp rise in the number of refugees arriving in Europe, the EU-Türkiye Statement (known as the EU-Türkiye Deal) was introduced in March of 2016 and the 'safe third country notion' was implemented through the Member State of Greece for the very first time. [92]

The EU-Türkiye agreement, that was reached on March 2016, refers to the statement of cooperation between the EU and the state of Türkiye, in the aftermath of the 'refugee crisis'. The EU- Türkiye deal is not legally binding for EU and Turkey, as it is defined as a political declaration, and it is not part of the official EU policy for

[88] Human Rights Watch, 'Europe's Refugee Crisis | an Agenda for Action' (*Human Rights Watch*9 September 2015) <https://www.hrw.org/report/2015/11/16/europes-refugee-crisis/agenda-action>.
[89] William Spindler, '2015: The Year of Europe's Refugee Crisis' (*UNHCR*8 December 2015) <https://www.unhcr.org/news/stories/2015-year-europes-refugee-crisis>.
[90] Nikos Papadakis and Georgia Dimari, 'Transformations in Greek Migration Policy after 2015: Securitization Practices and Precarity of Refugees' (2023) 6 Migration, Mobility, & Displacement 102.
[91] Martin Wagner, '2015 in Review: How Europe Reacted to the Refugee Crisis - ICMPD' (*www.icmpd.org*21 December 2015) <https://www.icmpd.org/blog/2015/2015-in-review-how-europe-reacted-to-the-refugee-crisis>.
[92] Mediterranean page 19

migration management.[93] Nevertheless, the implementation of the statement should comply with the EU and international law as it involves Member States' actions under the EU asylum and return acquis.[94] The aim of the EU-Türkiye Deal, as stated in the document, is to "break the business model of the smugglers and to offer migrants an alternative to putting their lives at risk".[95] The facilitation of the Statement marks the decision of the EU and Türkiye to end irregular migration.[96] Externalization through soft law agreements is becoming a dominant approach with the EU- Türkiye deal seen as a model for future initiatives.[97]

What this deal entails? From the enactment of the Deal, all new irregular migrants, whose asylum application is found inadmissible or unfound or they did not apply for asylum, would be returned to Türkiye, respecting the international and EU law and the principle of non-refoulement. This measure was introduced as a temporary and extraordinary one, responding to the necessity to end human suffering and to reestablish public order.[98] Furthermore, for every Syrian that is being returned to Türkiye from the Greek islands, another Syrian will be resettled from Türkiye to the EU, with the limit of 72 thousand people being returned through this mechanism.[99]

Article 3 of the statement declares that Türkiye has to "take all necessary measures to prevent new sea or land routes for illegal migration opening from Türkiye

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[93] Maciej Stepka, *IDENTIFYING SECURITY LOGICS in the EU POLICY DISCOURSE : The 'Migration Crisis' and the Eu.*(Springer Nature 2022) 144.
[94] Violeta Moreno-Lax and others, 'The EU Approach on Migration in the Mediterranean Policy Department for Citizens' Rights and Constitutional Affairs Directorate-General for Internal Policies' (2021) <https://www.europarl.europa.eu/RegData/etudes/STUD/2021/694413/IPOL_STU(2021)694413_EN.pdf> 44.
[95] European Council, 'EU-Turkey Statement, 18 March 2016 - Consilium' (*Europa.eu*18 March 2016) <https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/>.
[96] Ibid
[97] Violeta Moreno-Lax and others, 'The EU Approach on Migration in the Mediterranean Policy Department for Citizens' Rights and Constitutional Affairs Directorate-General for Internal Policies' (2021) <https://www.europarl.europa.eu/RegData/etudes/STUD/2021/694413/IPOL_STU(2021)694413_EN.pdf>.
[98] European Council, 'EU-Turkey Statement, 18 March 2016 - Consilium' (*Europa.eu*18 March 2016) <https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/> , article 1
[99] Ibid, Article 2

to the EU and will cooperate with neighboring states as well as the EU to this effect".[100] In return, the EU is bound to accelerate visa liberalization negotiations with the purpose to lift visa requirements for Turkish citizens, at least by the end of June 2016.[101] Moreover, the EU will disburse three billion euro as part of the Facility for refugees in Türkiye fund and will provide additional three billion euros for any further projects that are aiming to help refugees in Türkiye (in the field of health, education, infrastructure, food and other living costs)[102] .

The EU-Türkiye deal, moving beyond the prior Joint Plan that was introduced in 2015[103], allows the deportation of Syrian refugees and it is not limited to irregular migrants that are not in need of international protection.[104] This means that through the EU- Türkiye Deal, Türkiye is designated as a safe third country. In the Greek islands, Greek authorities would implement a fast-track procedure for the migrants where it will be decided if Türkiye is a safe third country for applicants. This was possible through the introducing of a new law, that allowed the Greek Ministries of Interior and Defense to implement exceptional measures in cases of mass influx of migrants filing asylum application at the border.[105] The base of the deal was a readmission agreement between Greece and Türkiye but the need to manage 'refugee crisis' immediately led to the creation and implementation of the known EU- Türkiye Deal.[106]

The EU-Türkiye Deal operates under the presumption that Türkiye is a 'safe third country' for Syrian nationals and therefore asylum applications should be considered as inadmissible on the ground that Syrian claimants will find protection

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[100] Ibid, Article 3
[101] Ibid, Article 5
[102] Ibid, Article 6
[103] European Commission, 'EU-Turkey Joint Action Plan' (*European Commission - European Commission*15 October 2015) <https://ec.europa.eu/commission/presscorner/detail/de/MEMO_15_5860>.
[104] Gerda Heck and Sabine Hess, 'Tracing the Effects of the EU-Turkey Deal : The Momentum of the Multi-Layerez Turkish Border Regime' (2017) 3 Movements Journal For Critical Migration And Border Regime Studies 14.
[105] Ibid (44)
[106] Ibid

when they will be returned to Türkiye, the state that they reached firstly.[107] Refugees should seek for asylum in the first country that they are able to reach, is the exact principle the 'Safe Third Country' notion is being based.[108] Legally it has its roots on article 31(1) the Refugee Convention.[109] The article states that the member states of the Convention, should not impose sanctions on refugees that entered their territory unlawfully, coming -directly- from a territory where they face persecution.

This principle was incorporated within EU asylum law. Within the EU Asylum Procedures Directive, the member states can consider an asylum application as inadmissible, if they consider a third country (not an EU member State) to be safe for the applicant.[110] The application of the safe third country concept by the Member States can be realized, only if the authorities are confident that a person requesting international protection will be treated in the third country in line with specific principles.[111] In the third country, the person seeking for asylum, should not face threats to its life and liberty on account of race, religion, nationality, political opinion or risk of serious harm. [112]The principle of non-refoulement should be respected as well as that the removal should not violate the rights to freedom from torture, cruel and inhuman or degrading treatment.[113] Finally, the applicant should have the possibility to request refugee status.[114] On article 38 (2), stresses the case-by-case consideration of the safety of the country for an applicant and set the rule that a clear connection between the applicant and the third country is required. [115]

The EU policy actors praised the implementation of the EU-Türkiye Deal as a cooperation that will set an end to human suffering and deaths and presented it as a life-

[107] Marianna Gkliati, 'The EU-Turkey Deal and the Safe Third Country Concept before the Greek Asylum Appeals Committees' (2017) 3 Movements. Journal for Critical Migration and Border Regime Studies.
[108] Ibid
[109] The Refugee Convention, article 31 (1)
[110] Recast Asylum Directive, Article 33 (2)(c)
[111] Recast Asylum Directive, Article 38
[112] Recast Asylum Directice Article 38 (1) (a)
[113] Ibid, Article 38 (1) (c) (d)
[114] Ibid, Article 38 (1) (e)
[115] Ibid, Article 38 (2)

saving instrument.[116] In their point of view, the implementation of the statement, would end illegal migration, and would create a safe route for Syrians refugees to the EU. In reality, although there was a rapid drop of irregular border-crossing, the statement has been judged for the lack of human rights and human security dimension.[117] The focus was to prevent the movement of migrants and their arrival to the EU, to mitigate the effects of the 'refugee crisis' on public order and state- union security, rather than the protection of refugee's rights and their safety. [118]

To be more specific, the developments after the enforcement of the EU-Türkiye deal and its effects depict how the safe third country notion was misused by the Greek government and the EU actors. Firstly, for the implementation of the deal, the hotspot approach had a key role. The asylum seekers, subjects to the Statement, were geographically restricted to the Greek islands that were designated as hotspots for the facilitation of the re-admittance to Türkiye.[119] The outcome was the overpopulation of the accommodation centers that reached numbers over their capacity. Using limited resources as justification and the safe third country notion, the Greek government used the 'fast track' procedure in a wider way, stating more cases as inadmissible and denying international protection.[120]

Secondly, the EU actors and the Greek government continued on insisting on the implementation of the statement and the designation of Türkiye as a safe third country, despite the concerns of scholars, activists and deciding bodies.[121] The Greek

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[116] Maciej Stepka, *IDENTIFYING SECURITY LOGICS in the EU POLICY DISCOURSE: The 'Migration Crisis' and the Eu.*(Springer Nature 2022) 145
[117] Amnesty International, 'EU: Human Rights Cost of Refugee Deal with Turkey Too High to Be Replicated Elsewhere' (*Amnesty International*) <https://www.amnesty.nl/actueel/eu-human-rights-cost-of-refugee-deal-with-turkey-too-high-to-be-replicated-elsewhere>.
[118] Amnesty International, 'EU-TURKEY STATEMENT Six Years of Undermining Refugee Protection 8 NGOS WARN THAT POLICIES IMPLEMENTED in GREECE KEEP DISPLACED PEOPLE from ACCESSING ASYLUM PROCEDURES, despite CLEAR NEED of PROTECTION' (2022) <https://www.rescue.org/sites/default/files/2022-03/EU%20Turkey%206%20years.pdf>.
[119] Katrien Luyten and others, 'BRIEFING EPRS | European Parliamentary Research Service Hotspots at EU External Borders State of Play SUMMARY' (2020) <https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/652090/EPRS_BRI(2020)652090_EN.pdf>.
[120] Elif Demirbas and Christina Miliou, 'Looking at the EU-Turkey Deal : The Implications for MIGRANTS in Greece and Turkey', *Migrations in the Mediterranean* (Springer Nature 2024) 19.
[121] Ibid

Government preferred to transform the composition of the 'independent appeal committees', when they were insisting that Türkiye doesn't have a legal framework for Syrian Asylum refugees, in order to be able to facilitate the desirable returns.[122]

Furthermore, despite Türkiye's refusal to implement its responsibilities under the statement, since it has opened its borders, stopped preventing the border-crossing to Greece and blocked the returns from 2020, the Greek government decided to expand the application of the safe third country notion to other nationalities too and not only for the Syrians refugees. [123] Using the EU-Türkiye deal as a blueprint, the Greek government used the safe third country notion on its interest, designating Türkiye as safe for claimants from Afghanistan, Bangladesh, Pakistan, and Somalia. [124]The increase of inadmissible application from 2020 to 2021 reached 126%. [125]It is worth to mention, that Greece did not face any sanctions for the lack of the protection of claimants' rights. Instead, European Commission, decided on additional fund aid to Türkiye, stressing the importance of the implementation of the Deal. [126]

Finally, the negative impact of the EU-Türkiye deal and the designation of the 'safe third country' notion was also visible to the reactions of the public and of the officials. Asylum seekers were no longer viewed as people fleeing persecution, with the right and need to receive protection, since they had now to return to Türkiye and this was the country responsible to accept them. But Türkiye instead of implementing

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[122] Marianna Gkliati, 'The EU-Turkey Deal and the Safe Third Country Concept before the Greek Asylum Appeals Committees' (2017) 3 Movements. Journal for Critical Migration and Border Regime Studies 215-216.

[123] Elif Demirbas and Christina Miliou, 'Looking at the EU-Turkey Deal : The Implications for MIGRANTS in Greece and Turkey', Migrations in the Mediterranean (Springer Nature 2024) 20.

[124] Amnesty International, 'EU-TURKEY STATEMENT Six Years of Undermining Refugee Protection 8 NGOS WARN THAT POLICIES IMPLEMENTED in GREECE KEEP DISPLACED PEOPLE from ACCESSING ASYLUM PROCEDURES, despite CLEAR NEED of PROTECTION' (2022) <https://www.rescue.org/sites/default/files/2022-03/EU%20Turkey%206%20years.pdf>.
[125] Ibid
[126] European Commission, 'Mid-Term Evaluation of the Facility for Refugees in Turkey: EU Support Made a Significant Contribution to the Welfare of Syrians and Others Fleeing Conflict in the Region' (*European Commission - European Commission*July 2021) <https://ec.europa.eu/commission/presscorner/detail/en/IP_21_3438> accessed 1 August 2024.

the Deal by accepting the returns and block the crossing of the border, open its borders.[127] The locals in Greek islands, that prior to the implementation of the Deal had welcomed the migrants, were now shouting against them, calling them illegals.

But also, the officials (police, coast guards), perceiving the opening of Turkish borders and the arrivals of refugees as threat, used violence to repulse the refugees.[128] In the light of this development (opening of the Turkish borders), the EU proceeded on praising the role of Greece on protecting the EU borders, along with a fund of 700 million euros for the government to upgrade the infrastructure of the border, calling Greece "our European shield". [129] The racist reaction of the public, the use of force of the officials and the militarized speech of the EU, rather than calling for the protection of the migrants, or judging the implementation of the Deal and the 'safe third country' notion and responding in a different way, shows the perception of the actors that externalization of border management and the repulsion of refugees is the way to respond to mass migration flows.[130]

To conclude, eight years after the enforcement of the EU-Türkiye Deal and the designation of Türkiye as safe, despite the concerns and the calls for annulment against the classification of Türkiye as 'safe third country' since they are not taking back asylum seekers, leaving the refugees in limbo, is still perceived as an efficient tool to the management of refugee flows and a blueprint for further externalization of EU

[127] David Crane, 'The EU-Turkey Deal Breakdown: How Securitisation Narratives Are Reproduced through Externalisation - Refugee Research Online' (*Refugee Research Online - Providing a platform for academic research and documentation on issues surrounding asylum seekers and refugees. Promoting better awareness of related issues through publications and public forums.*5 October 2021) <https://refugeeresearchonline.org/the-eu-turkey-deal-breakdown-how-securitisation-narratives-are-reproduced-through-externalisation/#_edn4> accessed 4 August 2024.
[128] Ibid
[129] Jennifer Rankin, 'Migration: EU Praises Greece as "Shield" after Turkey Opens Border' *The Guardian* (3 March 2020) <https://www.theguardian.com/world/2020/mar/03/migration-eu-praises-greece-as-shield-after-turkey-opens-border>.
[130] Elif Demirbas and Christina Miliou, 'Looking at the EU-Turkey Deal : The Implications for MIGRANTS in Greece and Turkey', *Migrations in the Mediterranean* (Springer Nature 2024).

migration and asylum acquis.[131] Amnesty international among with 8 NGOs, called for the abandonment of the safe third country concept and the retraction of the EU-Türkiye Statement in 2023.[132] Even when the third country has the biggest number of migrants and refugees, offers poor receptions conditions, has insufficient legal system for the refugees, refuses the returns of migrants and instrumentalizes the mobility of people on its interest, which is the case of Türkiye, the response is the persistence on the application of the Deal and on the idea that Türkiye is a safe third country.

1.4.Conclusion

Overall, through this chapter, we have analyzed the theory of securitization, the securitization of migration within the EU and examined the use and application of the 'safe third country notion' through the EU-Türkiye Deal. The aim was to trace the connection between securitization of migration and the application of the 'safe third country' notion using the EU-Türkiye Deal as a case study to illustrate this.

As we mentioned before, securitization theory, is a useful tool to detect how security issues are emerging and constructed. Powerful actors, such as the government, institutions (international, regional), pressure groups within the society, or even the media are presenting developments as an existential threat to the referent objects such as to the state, to individuals, to international or regional units or the society. This process is done through speech acts leading to extraordinary measures to be taken in order to safeguard the security and stability of the referent objects and require the acceptance of the audience (public opinion). The securitization of an issue could lead to positive measures that will reassure the perception and the management of the issue

[131] Refugee Support Aegean, 'Eight Years of Failure of the EU-Turkey Deal: The "Safe Third Country" Concept Comes under Scrutiny by the Court of Justice of the European Union' (*R.S.A.*14 March 2024) <https://rsaegean.org/en/eu-turkey-deal-safe-third-country-concept-under-scrutiny-cjeu/>.
[132] Amnesty International, 'EU-TURKEY STATEMENT Six Years of Undermining Refugee Protection 8 NGOS WARN THAT POLICIES IMPLEMENTED in GREECE KEEP DISPLACED PEOPLE from ACCESSING ASYLUM PROCEDURES, despite CLEAR NEED of PROTECTION' (2022) <https://www.rescue.org/sites/default/files/2022-03/EU%20Turkey%206%20years.pdf>.

as a priority. Although in most cases, the intentions of the securitizing actors are to disorient the public and enforce their agendas and influence. The exceptionalist measures being adopted could have negative impacts on the issue being securitized.

Drawing from the previous analysis, migration and refugees have clearly been an issue that has been securitized within the EU and the Member States. In presence of speech acts but also the employment of policies and measures that are focusing on preventing the arrivals of refugees, the narrative that refugees are a present but also a future risk to the stability and security is being well established. This leads to the perception of refugees as possible terrorists, criminals, thieves of jobs, or just a burden to the society and economy. Even when the perception is focusing on human security, and the need to manage migration flows has the goal to prevent the deaths of migrants and refugees in the Mediterranean Sea and uphold the obligations towards them, one main response is to externalize border management and the responsibility to offer refuge. Externalization of the border management and outsourcing the responsibilities towards the migrants by cooperating with third countries seems to be a trend solution that the EU and the Member States are using to manage mass migration flows. [133]

In the aftermath of the 'refugee crisis', as it is known, in 2016, the EU-Türkiye Deal was enforced with the aim to handle the massive influx of refugees. Scholars have linked the implementation of the EU-Türkiye Deal and therefore the implementation of the safe third country notion with the securitization of migration within the EU and the Member States.[134] The persistence of the Greek government to implement the EU-Türkiye Deal, the transformations on the Greek asylum law, the expanse of the application of the 'safe third country' concept, shows that the main aim of the Deal was

[133] Elif Demirbas and Christina Miliou, 'Looking at the EU-Turkey Deal : The Implications for Migrants in Greece and Turkey', *Migrations in the Mediterranean* (Springer Nature 2024) 19.
[134] Georgia Dimari, 'The Securitization of Migration in Greece 2011-2019: A Discourse and Practice Analysis' (2020) 9 European Quarterly of political Attitudes and Mentalities 5.
Elif Demirbas and Christina Miliou, 'Looking at the EU-Turkey Deal: The Implications for MIGRANTS in Greece and Turkey', *Migrations in the Mediterranean* (Springer Nature 2024).

to decrease and prevent the arrivals of refugees and asylum seekers.[135] The implementation of the statement depicts that minimal importance was given to the protection of the rights of refugees and asylum seekers and therefore to the humanitarian narrative 'end the human suffering'[136]. The actions were oriented to outsource the responsibility of offering refuge to migrants to the State of Türkiye and to minimize the arrivals of refugees in Europe.

The enforcement of the deal and the application of the 'safe third country' concept sparked the preexisted perception of the Greek government, media and public that the mass arrival of refugees and asylum seekers is causing the destabilization of the state and threats the national identity. It was now an obligation of Türkiye to accept the returns of refugees and stop the crossing of the borders. The fact that Greece did not receive any sanction from the EU on the way they implemented the deal, but the country was encouraged by calling it 'our European shield' serves for the conclusion that the prevention of the arrivals of refugees is above the protection of their rights.[137]

To conclude, in my view the use and application of the 'safe third country' concept through the EU-Türkiye Deal is an instance of securitization, or in better words, is an extraordinary measure that the securitizing moves (speech acts, policies) of the securitizing actors (EU institutions, Member States, Media) with the acceptance of the audience (public opinion) gave birth to. Presenting the refugees as a risk or a threat to the public order and the stability of the Union or of the Member States, declaring the arrival of refugees as a 'crisis' that requires temporarily extraordinary measures corresponds to the definition of the securitization of migration. In my understanding, one of the extraordinary measures was the EU-Türkiye deal. A Deal that it is not only an outcome of securitization of refugees but served for further securitization of them, presenting them as "illicit" that have to go back to Türkiye . The application of the 'safe third country' for the Syrians refugees and later for the majority of the nationalities

[135] Elif Demirbas and Christina Miliou, 'Looking at the EU-Turkey Deal: The Implications for MIGRANTS in Greece and Turkey', *Migrations in the Mediterranean* (Springer Nature 2024) 21.
[136] European Council, 'EU-Turkey Statement, 18 March 2016 - Consilium' (*Europa.eu*18 March 2016) <https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/>.
[137] Ibid

that were arriving to Greece, was an instance of securitization as they were all perceived as factors of destabilization of the Union and a threat to the national security of Greece rather than refugees trapped in limbo, that have the right to receive protection.

2. THE COMPATIBILITY OF THE USE AND APPLICATION OF THE SAFE THIRD COUNTRY NOTION WITH THE PRINCIPLE OF NON-REFOULEMENT.

2.1. Introduction

After examining the use and application of the 'safe third country' concept through the EU- Türkiye Deal as an instance of securitization of migration, we are moving to the part where we will legally analyze the of the application of the concept with the principle of non-refoulement. The 'safe third country' notion and its application is becoming increasingly important in the EU asylum law and policy, using as a blueprint the non-binding, political agreement between the EU institutions and Türkiye and the designation of the later as a safe third country for refugees to receive protection.[138] Accessing an examination of the applicability of the notion, as it has been implemented, with the principle of non-refoulement, a cornerstone principle under International Refugee Law and International Human Rights Law that has to be always respected when applying the notion and returns, is highly important.

The 'safe third country' concept lays on the idea that States can find an asylum application as inadmissible, if the refugee is able to find protection within another State, that is considered to be safe and will uphold its international obligations towards them. The principle of non-refoulement, i.e., the prohibition of removal and return of refugees where they may face serious harm or persecution[139], is at the center of the

[138] Jens Versted-Hansen, 'Admissibility, Border Procédures and Safe Country Notions', *The EU Pact on Migration and Asylum in light of the United Nations Global Compact on Refugees* (European University Institute 2021).
[139] UNHCR, 'Convention and Protocol Relating to the Status of Refugees' (*UNHCR*1951) <https://www.unhcr.org/media/convention-and-protocol-relating-status-refugees>.

implementation of the 'safe third country' concept as the main (or minimum) criterion. The examination of the application of the notion through the EU-Türkiye deal and the designation of Türkiye as a safe third country, under the principle of non-refoulement, it is deemed necessary. This is because, we are seeing the use of the 'safe third country' notion by the States and the Union as a tool for border management and restriction of refugee arrivals and the cooperation with third countries a desirable solution to migration management.

Within the first sub-charter, we will start by explaining the 'safe third country' notion and its legal basis under International Refugee Law and under EU asylum law. On the second part, the focus will be on the principle of non-refoulement under International Refugee Law and International Human Rights Law. On this part, we will refer in detail on the relationship between the 'safe third country' notion and the principle of non-refoulement. In the last section, the focus will shift on the implementation of the 'safe third country' notion, entering the EU-Türkiye deal. Taking the case on the Greece-Türkiye border, we will be able to examine if the application of the notion was in compliance with the principle of non-refoulement. In the conclusion part of this chapter, the second research question will be answered taking into consideration the findings of the previous chapters.

2.2. Safe third country notion under International and EU law.

From the late 1970s, in many situations of mass migration flows were arriving in state's territories, there has been an increasing trend of 'protection elsewhere'. These practices have been enacted based on the concepts of 'safe third country', 'first country of asylum' and 'safe country of origin'. [140]The idea is that since the refugees/asylum seekers could have been obtain protection in another state through which they travelled; they should not seek for asylum in the State that they after all applied for asylum. This

[140] Berfin Nur Osso, 'Unpacking the Safe Third Country Concept in the European Union: B/Orders, Legal Spaces, and Asylum in the Shadow of Externalization' (2023) 35 International Journal of Refugee Law.

notion is enabling the States to decline admissibility on the ground that refugees can find effective protection elsewhere. [141] But from where this concept of 'safe third country' is originated since there is no explicit mention of the concept in International Conventions and how it has been incorporated within the EU migration and asylum acquis?

Starting from the international level, the 'safe third country' concept finds its legality and adequacy, on the Conclusions made by the UNHCR's Executive Committee (EXCOM) and, according to its adherents, to the Refugee Convention. In EXCOM Conclusion 15, the Committee embraces the cooperation among States in situations of mass influx of asylum-seekers, according to the principle of equitable burden-sharing.[142] In EXCOM Conclusion 58 (XL) "on the problem of refugees and asylum-seekers who move in an irregular manner from a country in which they have already found protection", in 1989, it is being stated that returns of individuals to the country where they have already found protection are allowed.[143]In other words, if the movement of the individual originates in countries where protection has been found, is irregular and is done with the purpose to seek asylum in another country, the states are allowed to dismiss the application and proceed to the return of the individual, as long as the principle of non-refoulement and human rights are respected.[144] The language being used i.e. "they have already found protection", has been understood as supporting both the 'safe third country'' notion and the idea that the individual does not have a right to select the country of refuge.[145]

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[141] Ibid
[142] UNHCR Executive Committee, 'Executive Committee Meetings Refugees without an Asylum Country No. 15 (XXX) - 1979' (*UNHCR*1979) <https://www.unhcr.org/publications/refugees-without-asylum-country>.
[143] UNHCR Executive Committee, 'UNHCR Executive Committee Conclusion No. 58 (XL) on the Problem of Refugees and Asylum-Seekers Who Move in an Irregular Manner from a Country in Which They Had Already Found Protection | 1989 | UNHCR' (*UNHCR*2024) <https://www.unhcr.org/media/unhcr-executive-committee-conclusion-no-58-xl-problem-refugees-and-asylum-seekers-who-move>.
[144] María-Teresa Gil-Bazo, 'The Safe Third Country Concept in International Agreements on Refugee Protection Assessing State Practice' (2015) 33 Netherlands Quarterly of Human Rights 42.
[145] Violeta Moreno-Lax, 'The Legality of the "Safe Third Country" Notion Contested: Insights from the Law of Treaties', in G.S. Goodwin-Gill and P. Weckel (eds), Migration & Refugee Protection in the 21st Century: Legal Aspects - The Hague Academy of International Law Centre for Research (Martinus Nijhoff, 2015) 665-721.

Moving to the Refugee Convention, within its preamble, the unduly burden that the grant of asylum could impose to certain countries is being recognized. International Cooperation among states is urged as an essential factor to deal with the refugee plight.[146] One of the expressions of cooperation is the adoption of agreements and the implementation of the 'safe third country' notion.[147] The Refugee Convention doesn't refer to the allocation of responsibility for asylum claims and within the Convention there is not an explicit requirement to recognize refugees and grant them permanent protection. The absence of these, constitute a right of the States to return asylum seekers to safe countries if they uphold their obligation under the Convention and especially the principle of non-refoulement. [148]

Moreover, provisions of the Refugee Convention that have been used to buttress the 'safe third country' notion are Article 31, 1E, and 32. More specifically, article 31(1) states that the members of the Convention, should not impose penalties to refugees that unlawfully entered their territory, when the refugees are fleeing directly from a territory that they face persecution.[149] Drawing from Moreno-Lax, the "coming directly" clause is serving as base to the 'safe third country' notion, since the assumption of the States is that only if refugees are fleeing directly from a country of persecution should not be penalized and the ones travelling through intermediary countries may be penalized. Therefore, States do not have the duty to process an asylum claim, when the movement is unlawful and not direct from the country of persecution,

[146]UNHCR, 'Convention and Protocol Relating to the Status of Refugees' (*UNHCR*1951) <https://www.unhcr.org/media/convention-and-protocol-relating-status-refugees>.
[147] María-Teresa Gil-Bazo, 'The Safe Third Country Concept in International Agreements on Refugee Protection Assessing State Practice' (2015) 33 Netherlands Quarterly of Human Rights 42.
[148] Violeta Moreno-Lax, 'The Legality of the "Safe Third Country" Notion Contested: Insights from the Law of Treaties', in G.S. Goodwin-Gill and P. Weckel (eds), Migration & Refugee Protection in the 21st Century: Legal Aspects - The Hague Academy of International Law Centre for Research (Martinus Nijhoff, 2015) 665-721.

[149] UNHCR, 'Convention and Protocol Relating to the Status of Refugees' (*UNHCR*1951) <https://www.unhcr.org/media/convention-and-protocol-relating-status-refugees>.

but rather they could proceed on returning the individual to the intermediary country. [150]

Furthermore, article 1 (E) of the Refugee Convention has been a basis of the 'safe third country notion'. According to this provision, in cases where individuals that have been already recognized by the authorities of a country as a refugee, the convention is not applicable. In article 32 of the Refugee Convention, there is an exception on the prohibition of expulsions, where in cases of "compelling reasons of national security" the state may proceed on removals.[151] Also, in article 33, the expel or return of a refugee to a territory where he will face persecution or serious harm is being prohibited. Combining these two, the assumption of the actors is that removal, on the ground of national security and in territories that considered to be safe (no risk of persecution), is acceptable. [152]

Although these assumptions have been contested by judicial bodies and scholars, and the 'safe third country' notion has been under heated debates, the focus here is not to test its compatibility with international law rather than to depict its background on International Refugee Law. Overall, today the 'safe third country 'notion has been implemented in Europe, adopted by the EU and countries like Australia and North and South America, with the aim to manage migration flows, share the 'burden', and decrease the arrivals of refugees by allocating the responsibility.[153] The UNHCR has focused on setting the requirements on the application of the safe third country notion. Prior to the transfer, it must be reassured that the third country will readmit the person, provide the person with access to a fair asylum process, allow the

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[150] Violeta Moreno-Lax, 'The Legality of the "Safe Third Country" Notion Contested: Insights from the Law of Treaties', in G.S. Goodwin-Gill and P. Weckel (eds), Migration & Refugee Protection in the 21st Century: Legal Aspects - The Hague Academy of International Law Centre for Research (Martinus Nijhoff, 2015) 687.

[151] UNHCR, 'Convention and Protocol Relating to the Status of Refugees' (*UNHCR*1951) <https://www.unhcr.org/media/convention-and-protocol-relating-status-refugees>.

[152] Violeta Moreno-Lax, 'The Legality of the "Safe Third Country" Notion Contested: Insights from the Law of Treaties', in G.S. Goodwin-Gill and P. Weckel (eds), Migration & Refugee Protection in the 21st Century: Legal Aspects - The Hague Academy of International Law Centre for Research (Martinus Nijhoff, 2015) 665-721.

[153]Luisa Feline Freier, Eleni Karageorgiou and Kate Ogg, 'The Evolution of Safe Third Country Law and Practice' [2021] The Oxford Handbook of International Refugee Law 518. 1.

person to stay while a status determination is made and finally will ensure that the individual will receive appropriate treatment according to the Refugee convention (1951), and international human rights standards. The UNHCR also emphasizes the importance of a significant connection between an asylum-seeker and the third country to be existed and examined. [154]

Finally, it is worth to mention that UNHCR on the document regarding the "Legal considerations on returning asylum seekers and refugees from Greece to Türkiye under safe third country and first country of asylum" has stated that International Refugee law foresee for the possibility to return individuals seeking for international protection to a safe third country on the basis of 'safe third country' concept.[155] Nevertheless, the practice of 'safe third country' agreements has been criticized for shifting burdens rather than sharing them and recent developments in safe third country legislation and interpretation have worsened the inequities among states regarding their responsibilities in hosting refugees.[156]

As mentioned before, the 'safe third country' notion has been adopted by the European Union.[157] Since the early 1990s, the 'safe third country' concept has been an integral component of the external and internal aspects of the EU asylum acquis. Staring point of the 'safe third country' notion within the EU law, was the Schengen Agreement and the Dublin Convention in 1990.[158] To that the London Resolution was also significantly contributed to the incorporation of the 'safe third country notion' and the setting of common criteria in the Member States for rejecting asylum applications of individuals 'not in genuine need of protection' and returning them to a third country.

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[154] UN High Commissioner for Refugees (UNHCR), 'Legal Considerations Regarding Access to Protection and a Connection between the Refugee and the Third Country in the Context of Return or Transfer to Safe Third Countries' (*Refworld*2018) <https://www.refworld.org/policy/legalguidance/unhcr/2018/en/120729> accessed 8 August 2024.
[155] UN High Commissioner for Refugees (UNHCR), 'Legal Considerations on Returning Asylum Seekers & Refugees from Greece to Turkey under Safe Third Country & First Country of Asylum Concepts | UNHCR' (*UNHCR*2024) <https://www.unhcr.org/media/legal-considerations-returning-asylum-seekers-refugees-greece-turkey-under-safe-third-country> accessed 8 August 2024.
[156] Luisa Feline Freier, Eleni Karageorgiou and Kate Ogg, 'The Evolution of Safe Third Country Law and Practice' [2021] The Oxford Handbook of International Refugee Law 518.
[157] Ibid
[158] Berfin Nur Osso, 'Unpacking the Safe Third Country Concept in the European Union: B/Orders, Legal Spaces, and Asylum in the Shadow of Externalization' (2023) 35 International Journal of Refugee Law 285.

After these, the allowance of application of the 'safe third country' concept was reiterated under the Dublin Regulation II and the Asylum Procedures Directive of 2005.[159]

Within the EU, the Common European Asylum System (CEAS) has been established as a body of legislation and institutional practice on asylum. The EU treaties set as requirements for the CEAS measures, the compliance with the Refugee Convention and other Human Rights Treaties among with the Member States' solidarity. The cooperation under the CEAS, is based on the mutual trust principle i.e., the assumption that all EU Member States uphold their international obligations towards refugees and therefore considered to be safe for refugees. Also, on a broad assessment of safety, allows the allocation of responsibility for refugees to third countries, outside the EU. Although the absence of determination of criteria for the 'safe third country,' the Dublin Regulation III supports the legal ground for returns to a third country under the 'safe third country' concept.[160]

Today, the 'safe third country' notion in the European Union is governed by the (recast) Asylum Procedures Directive (APD) and the recast Reception Conditions Directive. These directives, along with the Qualification directive, are key components of the Common European Asylum System (CEAS), setting common procedures and standards for granting asylum, processing the asylum application, and recognizing third-nationals or stateless persons as beneficiaries of international protection. The directives include provisions related to the 'safe third country' concept.

To be more specific, under article 33 of the Asylum Procedures Directive, Member States are allowed to consider an application for international protection as inadmissible, on the ground that a third country (outside of the EU) is considered to be safe.[161] In article 38 of the same directive, the criteria of determination of a third country

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[159] Ibid
[160] EU, 'REGULATION (EU) No 604/2013 of the EUROPEAN PARLIAMENT and of the COUNCIL of 26 June 2013 Establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Application for International Protection Lodged in One of the Member States by a Third-Country National or a Stateless Person (Recast)' (2013) <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0031:0059:EN:PDF>. article 3.3.
[161] Asylum Procedures Directive (2013/33/EU), article 33 (2) (c)

as safe, are being settled. Drawing from the provisions, for a third country to considered as safe, the authorities should be confident that a person requesting international protection will be treated in the third country in line with specific principles.

Those principles are as follows: a) life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion b) there is no risk of serious harm as defined in Directive 2011/95/EU (Qualification Directive), c) the principle of non-refoulement in accordance with the Geneva Convention is respected, d) the prohibition of removal, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law, is respected and e) the possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Geneva Convention.[162] In addition, on paragraph 2 of article 38, the directive sets the rule that there has to be a link between the applicant and the third country, in order to apply the concept, and that a case-by-case examination of the safety of the country for an applicant should be applied.

Under the APD, Member States have a wide margin of discretion on how they use the 'safe third country' concept.[163] As an example, it is not a requirement for the third country to be a contracting member state to the Refugee Convention, as long as the refugee could receive protection in 'accordance to the Convention'.[164] In general, it has been argued that the set of safety criteria under the APD may not align with the understanding of effective protection advocated by the UNHCR.[165] The removal of an asylum seeker to a third state must guarantee the complete set of protective measures given from the Refugee Convention and the International Human Rights Law. [166]

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[162] Asylum Procedures Directive (2013/33/EU), article 38 (1)
[163] Berfin Nur Osso, 'Unpacking the Safe Third Country Concept in the European Union: B/Orders, Legal Spaces, and Asylum in the Shadow of Externalization' (2023) 35 International Journal of Refugee Law.
[164] Luisa Feline Freier, Eleni Karageorgiou and Kate Ogg, 'The Evolution of Safe Third Country Law and Practice' [2021] The Oxford Handbook of International Refugee Law 518.
[165] Berfin Nur Osso, 'Unpacking the Safe Third Country Concept in the European Union: B/Orders, Legal Spaces, and Asylum in the Shadow of Externalization' (2023) 35 International Journal of Refugee Law 288.
[166] Luisa Feline Freier, Eleni Karageorgiou and Kate Ogg, 'The Evolution of Safe Third Country Law and Practice' [2021] The Oxford Handbook of International Refugee Law 518.

Looking at the jurisprudence of the European Courts on 'safe third country' cases, the key considerations in assessing the legality of the removals are violations of article 3 of the European Convention on Human Rights and article 4 of the EU Charter of fundamental Rights. The benchmark is set on the principle of non-refoulement, and that falls below the notion of effective protection that includes the guaranteed of both the Refugee Convention and the International Human Rights law.[167] Recent ruling by the European Court of Human rights (ECtHR), have led certain observers to note that it has shifted from a focus to protection concerns, to focusing on State's procedural obligations. [168]

To conclude, in this chapter we are able to view the 'safe third country' notion background within the International Refugee Law and EU asylum law. In the first part, based on the Refugee Convention and the Conclusion of the UNHCR Executive Committee, we can see how the 'safe third country' notion is finding its legality under International Law. On the second part, we analyze the incorporation of the notion, within the EU asylum acquis, through the Dublin Regulation to the Asylum Procedures Directive. Although that the 'safe third country' concept has been legally framed, scholars, NGOs and International organizations, have stressed certain concerns on the potential negative impact that the application of the concept might have on access to asylum and respect of the non-refoulement principle.[169] Taking that the principle of non-refoulement is a primary constraint on the use of the 'safe third country' concept, we will proceed on reviewing the principle under International Refugee law and under International Human Rights Law, before moving to the examination of the EU-Türkiye deal and the compliance of the 'safe third country' notion as applied in the case of Türkiye with the principle of non-refoulement.

2.3. Principle of non-refoulement

[167] Ibid
[168] ibid
[169] Roberto Cortinovis, 'The Role and Limits of the Safe Third Country Concept in EU Asylum Policy' [2901] RESOMA, Research Social Platform on Migration and Asylum 9.

The principle of non-refoulement is a fundamental concept and a cardinal obligation towards refugees originating in International Refugee Law and enriched in International and Regional Human Rights Law, Regional Refugee Law and by the jurisprudence of regional human rights courts.[170]The consistent practice of the principle and its establishment in various international treaties, adopted in international and regional levels, are supporting the view of the principle as rule of international customary law too.[171] The principle of non-refoulement prohibits the forcible return of individuals to a country where they would likely face persecution, torture or other serious harm. It is known to be a cornerstone of International Refugee Law and International Human Rights Law, and it has been characterized as "the most fundamental of all obligations owed to refugees."[172]

As mentioned above, the principle of non-refoulement can be found in International Refugee Law and more specifically it is being enshrined in the Refugee Convention, where the rights of refugees and the obligations of states to provide protection to people fleeing persecution are outlined. Under article 33 of the Refugee Convention, it is being stated that "no Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion"[173] Article 32 of the Convention is also prohibiting the expulsion of a refugee but with limiting its scope on refugees that have been lawfully present to the territory. [174] It could be noted that the prohibition of refoulement is not absolute under the Refugee Convention, as paragraph

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[170] OHCHR, 'The Principle of Non-Refoulement under International Human Rights Law' (2018) <https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf>.
[171] UNHCR, 'The Principle of Non-Refoulement as a Norm of Customary International Law. Response to the Questions Posed to UNHCR by the Federal Constitutional Court of the Federal Republic of Germany in Cases 2 BvR 1938/93, 2 BvR 1953/93, 2 BvR 1954/93' (*Refworld*1994) <https://www.refworld.org/jurisprudence/amicus/unhcr/1994/en/20625>.
[172] Penelope Mathew, 'Non-Refoulement' in Cathryn Costello, Michelle Foster and Jane McAdam (eds), *The Oxford Handbook of International Refugee Law* (Oxford University Press 2021) 899.
[173] UNHCR, 'Convention and Protocol Relating to the Status of Refugees' (*UNHCR*1951) <https://www.unhcr.org/media/convention-and-protocol-relating-status-refugees> article 33 para 1.
[174] UNHCR, 'Convention and Protocol Relating to the Status of Refugees' (*UNHCR*1951) <https://www.unhcr.org/media/convention-and-protocol-relating-status-refugees>. Article 32

2 of article 33, allows the removal of a refugee in cases where he is regarded to be a danger to the security of the State and to the community of the Country.

Moreover, instruments of International Human Rights Law play a significant and essential role in upholding the principle of non-refoulement. The International Covenant on Civil and Political Rights (ICCPR), through the interpretation of the Human Rights Committee (which is monitoring the implementation of the Covenant), is encompassing the principle of non-refoulement under article 7 and the prohibition of torture and cruel, inhuman, or degrading treatment. [175] Also, the United Nations Convention against Torture and other Cruel, Inhuman or degrading Treatment or Punishment (CAT) is incorporating the principle in article 3, stating that "No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture". [176] The principle can also be found under the International Convention for the Protection of All persons from enforced Disappearance (ICPPED). The prohibition of refoulement under International Human Rights law, is expanding its scope from refugees to all persons and is having an absolute nature. [177]

At a regional level, the European Convention on Human Rights (ECHR) is establishing the principle of non-refoulement under article 3 of the Convention where "no one shall be subjected to torture or inhuman or degrading treatment".[178]Although the principle is not explicitly being mentioned, the European Court of Human Rights (ECtHR) has recognized the applicability of the article in cases of refoulement of refugees and asylum seekers.[179] To be more specific, the principle of non-refoulement

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[175] Violeta Moreno-Lax, *EU Non-Refoulement: (the Irrelevance Of) Territoriality and Pre-Border Controls* (Oxford University Press 2017)

[176] United Nations, 'Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment' (*OHCHR*10 December 1984) <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>. article 3.

[177] OHCHR, 'The Principle of Non-Refoulement under International Human Rights Law' (2018) <https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf>.

[178] Council of Europe (COE), 'European Convention on Human Rights' (1950) <https://70.coe.int/pdf/convention_eng.pdf> article 3.

[179]Jelena Ristik, 'The Right to Asylum and the Principle of Non- Refoulement under the European Convention on Human Rights' (2017) 13 European Scientific Journal, ESJ 114.

was mentioned for the very first time in the of Soering v. United Kingdom where the extradition of the applicant would amount to a risk of being subjects to torture or to inhuman or degrading treatment or punishment.[180] This interpretation by the court of the article 3 of the ECHR incorporated the non-refoulement obligation and established in cases of removal, the risk of torture or inhuman or degrading treatment has to be assessed and not to be proceeded. [181] Through many cases of the ECtHR, the absolute nature of the Article has been confirmed and no derogations are allowed, not even for reasons of national or societal security.[182]

Under European Union's Law, the safeguards deriving from the Refugee Convention and International and Regional Human Rights Law are combined within the primary and secondary legislation. [183] For example, The Treaty on the Functioning of the European Union (TFEU) provides that the EU should abide by the Refugee Convention and its protocol and ensure the compliance with the principle of non-refoulement when applying the policies under the Common European Asylum System.[184] Within the secondary law, the principle of non-refoulement has been incorporated in the Qualification Directive and the Asylum Procedures Directive. Both are prohibiting the return of individuals to situations where they could face serious harm or persecution as laid down in the Refugee Convention but also the prohibition of removal where there is a risk of torture and cruel, inhuman, or degrading treatment. Nevertheless, exceptions to the principle of non-refoulement can be found in the EU Charter of Fundamental Rights, and in the directives mentioned above under national security and public order concerns.

Combining the International/Regional Refugee Law and the International/regional Human Rights, we could say that the principle of non-

[180] Soering v. United Kingdom, App no 14038/88 (ECHR 1989) para 91.
[181] Violeta Moreno-Lax, *EU Non-Refoulement: (the Irrelevance Of) Territoriality and Pre-Border Controls* (Oxford University Press 2017) 267.
[182]Jelena Ristik, 'The Right to Asylum and the Principle of Non- Refoulement under the European Convention on Human Rights' (2017) 13 European Scientific Journal, ESJ 116.
[183] Ibid
[184] Treaty on the Functioning of the European Union, art 78(1)

refoulement is a well-established principle that recognizes the obligation of the states towards refugees and asylums seekers not to be returned in territories where their life will be threatened, they will be persecuted or face ill-treatment. The principle of non-refoulement is not limited to lawful refugees but it is also applicable to individuals, subjects of a removal, regardless their status. Moreover, the principle is not limited to the physical borders of the state but instead actions should be in compliance with the principle when the state operates extraterritorially. [185] Also, the principle of non-refoulement covers not only the direct refoulement to a country but also indirect refoulement (the so-called chain refoulement). This means that it is prohibited to remove an individual to an intermediate country, where he may not be threatened, but he will not receive effective protection from an onward transfer to a territory where his life will be at risk, he may face persecution or degrading treatment. [186]

The principle of non-refoulement has also a procedural dimension, obligations that the state has to uphold for the intended returns not to amount violation of the principle. These obligations appear in the Refugee Convention, in human rights law and the law of the European Union. Firstly, the states and national authorities have the responsibility to determine the existence of risk on objective grounds, by obtaining relevant information that reassure that effective protection will be accessible to the refugees.[187] Secondly, the states should provide for the right to challenge the transfer decision and if the review proves that the person will face persecution, serious harm, degrading treatment to the territory that it will be transferred, the transfer decision should be suspended. Finally, the sending State must proceed with an individual assessment (case by case) to determine whether the transfer to a third country will not expose the individual to risk of persecution, torture, or other serious harm. These

[185] Tilman Rodenhäuser, 'The Principle of Non-Refoulement in the Migration Context: 5 Key Points - World' (*ReliefWeb*30 March 2018) <https://reliefweb.int/report/world/principle-non-refoulement-migration-context-5-key-points>.
[186] Penelope Mathew, 'Non-Refoulement' in Cathryn Costello, Michelle Foster and Jane McAdam (eds), *The Oxford Handbook of International Refugee Law* (Oxford University Press 2021) 913.
[187] Emanuela-Chiara Gillard, 'There's No Place like Home: States' Obligations in Relation to Transfers of Persons' (2008) 90 International Review of the Red Cross 730.

procedural obligations are required for the principle of non-refoulment to be respected and for the State to uphold its obligation towards the principle. [188]

The application of the 'safe third country' notion is highly interlinked with the principle of non-refoulement. Firstly, the application of the notion is a measure that entails returns to third countries, and therefore operations at the borders and beyond. As OHCHR's Recommended Principles and Guidelines on Human Rights at International borders have stressed that States should ensure that "returns from all areas where the State exercises its jurisdiction or effective control, including extraterritorially, are only carried out in accordance with international law and due procedural guarantees. Arbitrary or collective expulsions that violate the principle of non-refoulement and/or the prohibition of collective expulsion should be strictly prohibited".[189] Later in the document, in the section of cooperation, it is being urged that States should suspend any bilateral or regional cooperation agreement, arrangements or mechanisms if human rights are not protected, focusing again on the importance of upholding the principle of non-refoulement. [190]

Furthermore, as said mentioned above, the obligation under the principle of non-refoulement, precludes the prohibition of indirect refoulement (chain). Therefore, the application of "safe third country" notion and the designation of a country as safe, where the effective protection of migrants and the protection against expulsion is not guaranteed, the principle of non-refoulement is not only being violated by the intermediate state, but also by the State, indirectly, that initiated the return at first place. [191] Finally, the application of the 'safe third country' concept may raise the issue of constructive/disguised refoulement that is considered to be a violation of the principle too. Constructive or disguised refoulement refers to the practice where a state is effectively returning individuals to a country where they may face serious harm or

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[188] ibid
[189] OHCHR, 'RECOMMENDED PRINCIPLES and GUIDELINES on HUMAN RIGHTS INTERNATIONAL BORDERS p.37 <https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/OHCHR_Recommended_Principles_Guidelines.pdf>.
[190] Ibid 43
[191] Penelope Mathew, 'Non-Refoulement' in Cathryn Costello, Michelle Foster and Jane McAdam (eds), *The Oxford Handbook of International Refugee Law* (Oxford University Press 2021) 912.

persecution, but it is disguised as something else to avoid legal obligations under international law. Among with border closures, creating harsh conditions and therefore posing indirect pressure to return, is also the application of the 'safe third country' concept. [192] Under the assumption that the third country is safe, even though effective protection is lacking, the states proceed to returns relying on the legality of the concept. [193]

Finally, since the 'safe third country' concept entail of returning people to third countries, the states must abide with the procedural obligations that both the principle of non-refoulement but also the requirements for the implementation of the concept entail. Namely, these are the responsibility to determine the existence of risk and the safeness of the country, the case-by-case consideration (individual assessment) and the right to challenge the transfer decision.

To conclude, hence that the Member States of the EU are contracting members to the Refugee Convention and the European Convention of Human Rights, and they are binding by the International Human Rights Treaties mentioned above and the jurisprudence of the Courts, the obligation to uphold the principle of non-refoulement towards individuals under their jurisdiction and therefore the responsibility to uphold their human rights is given. The 'safe third country' concept being used as a tool to address irregular migration, combat smuggling, and protect refugees' rights has to be applied in accordance with the principle of non-refoulement, a fundamental obligation under International Refugee law and International Human Rights Law. There are instances where the 'safe third country' concept has been applied solely with the intention to prevent the arrivals of refugees on the territory of the States, not considering the impacts on human rights of refugees during and after the return, triggering the principle of non-refoulement. In the next chapter, we will review the EU-TÜRKIYE deal, where the 'safe third country' notion was implemented and it has served as a

[192] Yota Negishi, 'Constructive Refoulement as Disguised Voluntary Return: The Internalised Externalisation of Migrants' (2024) 71 Netherlands international law review 158.
[193] Penelope Mathew, 'Non-Refoulement' in Cathryn Costello, Michelle Foster and Jane McAdam (eds), *The Oxford Handbook of International Refugee Law* (Oxford University Press 2021) 913.

blueprint for further cooperation with third countries, to find out if the principle of non-refoulement was triggered.

2.4. The use and application of the 'safe third country' notion – compatibility with the principle of non-refoulement

Within this chapter, we will examine the way that the 'safe third country' notion was implemented under the EU-Türkiye Statement, known also as the EU-Türkiye Deal. Considering the requirements being set by the Asylum Procedures Directive (recast), one of them being the principle of non-refoulement, we will examine if the application of 'safe third country' concept and the returns that this concept entails in this situation, are compatible with the principle of non-refoulement.

Taking from the previous chapter, the principle of non-refoulement entails the prohibition of return of an individual to a territory where he might face degrading treatment, persecution, or serious harm. The principle entails the prohibition both of direct or indirect refoulement and covers all individuals regardless of their status. Also, the principle includes the obligation of the state to determine that effective protection will be found in the territory where the individual is being transferred to, assess the risks, consider the concerns of the individuals and granting them with the right to challenge the transfer decision. Therefore, we will proceed to examine if and in what ways the principle of non-refoulement was triggered during the implementation of the EU-Türkiye deal and therefore the implementation of the 'safe third country' concept.

Starting with presenting the EU-Türkiye Deal and the developments after its enforcement, it is important to highlight that is an informal political agreement, non-legally binding.[194] As already mentioned within the thesis, the aim of the EU-Türkiye deal was to give an end to irregular migration from Türkiye to the EU, in order to combat smuggling and offer to migrants an alternative solution rather than putting their

[194] Maciej Stepka, *IDENTIFYING SECURITY LOGICS in the EU POLICY DISCOURSE : The 'Migration Crisis' and the Eu.*(Springer Nature 2022) 144.

lives at risk when crossing the borders.[195] The EU-Türkiye Deal foresees that every irregular migrant that arrives to the Greek islands from Türkiye will be returned back as from March 2016 that the Deal was enforced. In addition, for every Syrian that is being returned from the Greek Islands to Türkiye, EU Member States would accept one Syrian Refugee who had waited inside Türkiye. Within the deal, Türkiye is responsible to take any necessary measures to stop people crossing the borders to reach the EU territories. In return, Türkiye would receive 6 billion euros for the improvement of the humanitarian situation faced by refugees in the territory of the country and Turkish nationals would be granted visa-free travel to Europe. [196]

The correlation of the EU-Türkiye Deal with the 'safe third country' concept is that central to this Deal is a mechanism to return asylum seekers arriving irregularly in Greece to Türkiye. In order, for the returns to not violate the principle of non-refoulement, the State, here Türkiye, has to be considered a safe third country. Therefore, EU and its Member States, assumed that Türkiye is a safe third country for the Deal to be enforced and cooperation to be possible. [197] As stated by the European Commission back in 2016, the legal basis for the returns of irregular migrants is the EU-Türkiye Readmission agreement (2014) and the Bilateral Readmission Agreement between Türkiye and Greece (2002) and the basis for returns of asylum seekers, such as the Syrians, is the 'safe third country' concept as incorporated in the Asylum Procedures Directive (recast). Therefore, to return and readmit the asylum seekers back in Türkiye and Türkiye to be considered safe, Greece had to take legislative measures. [198]

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[195] European Council, 'EU-Turkey Statement, 18 March 2016 - Consilium' (*Europa.eu*18 March 2016) <https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/>.

[196] Ibid

[197] Fenix, 'A Bilateral Instrumentalisation of Asylum Seekers: A Legal and Political Analysis of the Failures of the EU-Türkiye Deal and Recommendations from the Ground at the Greek Borders.' (*Fenixaid.org*2023) <https://www.fenixaid.org/articles/a-bilateral-instrumentalisation-of-asylum-seekers-a-legal-and-political-analysis-of-the-failures-of-the-eu-turkiye-deal-and-recommendations-from-the-ground-at-the-greek-borders>

[198] European Commission, 'European Commission -Fact Sheet Implementing the EU-Turkey Agreement -Questions and Answers' (2016) <https://ec.europa.eu/commission/presscorner/api/files/document/print/en/memo_16_1221/MEMO_16_1221_EN.pdf>

The EU-Türkiye Deal led to changes of the law and policies in Greece. The State of Greece, at first, took the appropriate measures to incorporate the 'safe third country' notion under its Asylum code (article 91 (1)) according to the article 38 of the Asylum Procedures Directive (recast). [199] Border procedures (fast-track) and geographical restrictions on all third-country nationals arriving to Greek islands were introduced for the implementation of the EU-Türkiye deal. Up until 2020, the 'safe third country concept' was applied only to Syrian nationals and their applications were found inadmissible on the ground the Türkiye is safe for them, using fast track border procedures and without proceeding to individual assessment. [200]

Nevertheless, Asylum Code provided the possibility to set up a list of safe third countries by issuing Joint Ministerial Decisions (JMD). [201] In 2021, a Joint Ministerial Decision of the Deputy Minister of Foreign Affairs and the Minister of Migration and Asylum was issued and provided for the designation of Türkiye as safe. Third-country nationals from Syria, Pakistan, Bangladesh, and Somalia are now subjects to inadmissibility because Türkiye is considered to be safe for them. [202] According to the Greek Council for Refugees' report, the designation of Türkiye as safe under the JMD happened without any legal reasoning.[203] The information that concludes that Türkiye is a safe third country for those nationals was not given, but from now on their applications can be rejected as inadmissible and not be examined on their merits.[204] In

[199] Greek Council for Refugees, 'Safe Third Country' (*Asylum Information Database | European Council on Refugees and Exiles*2024) <https://asylumineurope.org/reports/country/greece/asylum-procedure/the-safe-country-concepts/safe-third-country/>.
[200] Ibid
[201] Joint Ministry Decision no 458568 (Gazette B' 5949/16-12-2021)

[202] Fenix, 'A Bilateral Instrumentalisation of Asylum Seekers: A Legal and Political Analysis of the Failures of the EU-Türkiye Deal and Recommendations from the Ground at the Greek Borders.' (*Fenixaid.org*2023) <https://www.fenixaid.org/articles/a-bilateral-instrumentalisation-of-asylum-seekers-a-legal-and-political-analysis-of-the-failures-of-the-eu-turkiye-deal-and-recommendations-from-the-ground-at-the-greek-borders>

[203] Greek Council for Refugees, 'Safe Third Country' (*Asylum Information Database | European Council on Refugees and Exiles*2024) <https://asylumineurope.org/reports/country/greece/asylum-procedure/the-safe-country-concepts/safe-third-country/>.
[204] Ibid

result of the application of the JMD, in 2023, the inadmissibility decisions were 4.773.[205]

It was well known by the European Commission and the Member States that Türkiye have suspended the returns and readmissions of third country nationals. Firstly, in 2018, Türkiye unilaterally canceled the readmission agreement with Greece, as a response of a decision of a Greek Court to release eight former soldiers. Secondly, Türkiye till this day does not implementing the readmissions of third-country nationals as the EU-Türkiye Readmission Agreement provides in article 4 with the demand to lift visa requirements to the Schengen Area as it has promised. Finally, Türkiye has suspended all the returns of irregular migrants on the grounds of public health.[206] Despite the suspensions of returns and readmissions by Türkiye, the Greek Asylum Authorities are continuing to apply the 'safe third country' concept, examining only if Türkiye is a safe country for them, rather than examine the applications on its merits.[207]

After viewing a few elements of how the 'safe third country' concept has incorporated and applied in Greece, due to the enforcement of the Deal, we could already state that the concept has been misused. Viewing the expanse of the concept to the majority of the nationalities that arrives in Greece, the lack of the information that provides for the safety of Türkiye, the lack of individual assessment and the framework that governs the returns no longer be operational, we can assume the lack of protection of migrants' rights. On top on these, migrants have left in legal limbo, as their applications are being rejected as inadmissible, on the ground that Türkiye is safe for them, but Türkiye has suspended the readmissions.[208] This has as a result the exclusion

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[205] Ibid

[206] Gamze Ovacık, Meltem Ineli-Ciger and Orçun Ulusoy, 'Taking Stock of the EU-Turkey Statement in 2024' (2024) 26 European Journal of Migration and Law 154 <https://brill.com/view/journals/emil/26/2/article-p154_2.xml>.

[207] Fenix, 'A Bilateral Instrumentalisation of Asylum Seekers: A Legal and Political Analysis of the Failures of the EU-Türkiye Deal and Recommendations from the Ground at the Greek Borders.' (*Fenixaid.org*2023) <https://www.fenixaid.org/articles/a-bilateral-instrumentalisation-of-asylum-seekers-a-legal-and-political-analysis-of-the-failures-of-the-eu-turkiye-deal-and-recommendations-from-the-ground-at-the-greek-borders> 21.

[208] Ylva Johansson, 'Implementation of the Safe Third Country Concept in Greece - Refugees International' (*Refugees International*12 May 2023) <https://www.refugeesinternational.org/advocacy-letters/implementation-of-the-safe-third-country-concept-in-greece/> accessed 22 August 2024.

of individuals from reception conditions and therefore access to dignified living conditions.[209] Amnesty International, from the very start, has called upon the limbo in which the migrants have left in, as a result of the implementation of the Deal and the 'safe third country' notion, focusing on the inhuman conditions and the violate hate crimes that they face in Greek islands.[210]

Since the begging of the enforcement of the EU-Türkiye deal scholars and defenders of human rights have concluded that Türkiye does not qualify as a safe third country. Moreover, the Greek Asylum Appeals Committees have issued multiple positive decisions on admissibility of asylum claims based on the argument that Türkiye is not a safe third country. [211] This argument is based on the insufficiency of the legal system of Türkiye, cases of pushbacks, the conditions in refugee camps in Türkiye and human rights violations. [212]

Although Türkiye is a contracting member to the 1951 Refugee Convention and its protocol of 1967, it maintains a geographical restriction. This geographical restriction foresees that only European citizens will receive protection under the Refugee convention, excluding non-European citizens. [213] Therefore, non-European citizens arriving in Türkiye will receive diverse types of protection deriving from the Turkish Law. These diverse types are namely the Temporary Refugee Status for the Syrian refugees, the Conditional Refugee Status, and the Subsidiary Protection Status. Nevertheless, these types of protection, are neither sufficient nor equivalent to the protection that the Convention guarantees.[214] Although, for example, Syrians under the Temporary Protection Status, have access to education, work permit and basic health care services, after interviews being conducted, they stated that this Status leaves them

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[209] Ibid
[210] Amnesty International, 'The EU-Turkey Deal: Europe's Year of Shame' (*Amnesty.org*20 March 2017) <https://www.amnesty.org/en/latest/news/2017/03/the-eu-turkey-deal-europes-year-of-shame/>.

[211] Marianna Gkliati, 'The EU-Turkey Deal and the Safe Third Country Concept before the Greek Asylum Appeals Committees' (2017) 3 Movements. Journal for Critical Migration and Border Regime Studies.
[212] Maciej Stepka, *IDENTIFYING SECURITY LOGICS in the EU POLICY DISCOURSE: The 'Migration Crisis' and the Eu.*(Springer Nature 2022
[213] ELDH , EDL , CHD, '"What Safety Are They Talking About?" : Why Turkey Cannot Be Considered a "Safe Third Country" an Expert Opinion' (Medico International 2023) 6.
[214] Ibid

without the possibility to obtain international protection and with constant legal and social insecurity.[215] Difficulties on registration because of closure of the centers have also been traced, resulting that the individuals that obtained the Temporary Refugee Status or the International Protection are not able to exercise their rights or to have access to social services. [216]

Furthermore, according to Human Rights Watch, Türkiye often restricts the ability to ask for international protection and deems individuals from Afghanistan, Iraq and other third country nationals as irregular to conclude with their deportation. In result, deportation centers have been fast overload with vulnerable populations including Afghans and Syrians and the conditions are harsh for their living.[217] In the same report, it is being stated that Turkish officials are conducting mass summary pushbacks and that under the disguise of voluntary repatriation, Türkiye is conducting forced returns of individuals to northern Syria. [218] The ECtHR has acknowledged this practice of forcing people to voluntarily return in Akkad v. Türkiye in 2022.[219] Amnesty international has also stressed the forced returns to territories that asylum-seekers and refugees will possibly face serious human rights violations, such as Syria, Afghanistan and Iraq.[220] At the same time, refugees are being victims of hate speech and violence against them. An example again, is the violence against Syrian Refugees, affecting all Syrians and their properties. [221] Finally, the general reception conditions are inadequate

[215] Gerda Heck and Sabine Hess, 'Tracing the Effects of the EU-Turkey Deal : The Momentum of the Multi-Layerez Turkish Border Regime' (2017) 3 Movements Journal For Critical Migration And Border Regime Studies.
[216] ELDH , EDL , CHD, '"What Safety Are They Talking About?" : Why Turkey Cannot Be Considered a "Safe Third Country" an Expert Opinion' (Medico International 2023) 6.
[217] Human Rights Watch, 'Türkiye: Events of 2023' (*Human Rights Watch*11 January 2024) <https://www.hrw.org/world-report/2024/country-chapters/turkey>.
[218] Ibid
[219] Akkad v. Turkey (2022) App No. 1557/19 (21/06/2022)
[220] Amnesty International, 'The EU-Turkey Deal: Europe's Year of Shame' (*Amnesty.org*20 March 2017) <https://www.amnesty.org/en/latest/news/2017/03/the-eu-turkey-deal-europes-year-of-shame/>.
[221]Syrian Network for Human Rights, 'Escalation of Threats and Violence against Syrian Refugees in Turkey: An Urgent Call to Protect Human Rights | Syrian Network for Human Rights' (*Snhr.org*5 July 2024) <https://snhr.org/blog/2024/07/05/escalation-of-threats-and-violence-against-syrian-refugees-in-turkey-an-urgent-call-to-protect-human-rights/> accessed 22 August 2024.

and are characterized as dire living conditions for the third country nationals to live in.[222]

In conclusion, in this chapter we reviewed an especially important aspect for the implementation of the EU-Türkiye Deal, the simultaneous application of the 'safe third country' concept. The way that the concept was implemented by Greece do not meet the requirements being set in the Asylum Procedures Directive that we referred to within the chapter 2.1 nor the requirements of the Greek law. This is because of the blanket application of the concept to Türkiye, without providing the proper legal reasoning. Furthermore, after the suspension of the returns and readmission from the side of Türkiye, Greece is continuing to consider Türkiye as a safe third country and is still applying the concept, deeming asylum claims of individuals as inadmissible on the ground that Türkiye is safe for them. This situation has further violated the right to receive protection of the refugees, as it has left them restricted to the Greek islands, facing inhuman conditions. I would like to add here, the finding of the chapter 1.3, that Greek Authorities under the idea that Refugees should be accommodated in Türkiye and after the opening of the Turkish borders in 2020, they proceed on using violence against the refugees that were trying to reach the European shores.

The EU and Member States has also failed on examining the safety of Türkiye. As mentioned above, Türkiye lacks a sufficient legal system that will protect individuals accordingly to the Refugee Convention. Despite the existing forms of protection, refugees are facing difficulties on proceeding with registration, leaving with no access to social services. Refugees and especially Syrians are in constant risk of refoulement to territories that will face persecution or degrading treatment. Refugees are also victims of violence, hate speech and racism and are facing dire living conditions in the reception and detention centers.

In my understanding, the implementation of the 'safe third country' concept under the EU-Türkiye Deal is triggering the principle of non-refoulement and the obligations that are arising from the principle. In first instance, the principle of non-

[222] ELDH , EDL , CHD, '"What Safety Are They Talking About?" : Why Turkey Cannot Be Considered a "Safe Third Country" an Expert Opinion' (Medico International 2023).

refoulement is being violated directly since Türkiye is not providing effective protection to the asylum seekers that amounts with restricted access to education, work, and health care services. Furthermore, reports from NGOs are showing that refugees are being kept under harsh conditions in the detention centers and that also they face discrimination and acts of violence. The return to a country where the individuals might face degrading treatment is prohibited under the principle and therefore, so it does in this case. Furthermore, the principle of non-refoulement is being violated indirectly, as the returns in Türkiye often amount to chain refoulement. Since the information that Türkiye conducts forced returns, even under disguised ways (voluntary returns), is being acknowledged by NGOs and the ECtHR, the persistence on implementing the deal amounts to violation of the principle of non-refoulement. Finally, while practicing the 'safe third concept', Greece is failing to uphold the procedural obligations that the principle of non-refoulement entails. This can be supported by the lack of assessing the risks that individuals will face in Türkiye but also the lack on assessing their individual concerns about their safety in Türkiye.

2.5.Conclusion

To the conclusion of this chapter, we are coming back to answer the research question that governs this legal analysis. To what extent is the use and application of the safe third country notion compatible with the realization of migrants' rights and more specifically with the principle of non-refoulement?

To answer this question, we proceeded on analyzing the background of the 'safe third country' concept in International Refugee Law and its incorporation within the European Migration and Asylum Law. As mentioned before, the idea behind this concept is that individuals seeking for asylum and protection could have obtain or are able to obtain protection in another state that they have a link to. Under this concept, governments are allowed to declare the claims of asylum as inadmissible and proceed with the return of the claimants to the country that has been designated as safe for them.

Specific criteria have to be met in order for a country to be designated as safe and procedural methods have to be in place when examining the claims. Although the 'safe third country' concept has been under debates in relation of its legality or its application, following the criteria that had been set, individually assessing the claims and avoidance of its blanket application, could make the concept an important tool for international cooperation on migration management and could potentially help the migrants to receive protection in an effective and rapid way. On contrary, as has been mentioned from another scholar, "if this mechanism is not accompanied by adequate safeguards, the risk of orbiting and refoulement may be exponentially increased" [223].

Although that other refugee's rights could be violated in the process of application of the notion, such as the right to asylum, the consensus is that primary obligation of the States when applying the returns that the concept entails is the principle of non-refoulement. Combining Refugee law and human rights law under where the principle of non-refoulement has derived and enriched, the principle foresees for the prohibition of returns of refugees or an individual regardless its status to a territory where his life of freedom will be threatened, or they will face torture, inhuman or degrading treatment. The state is bound by the principle when they operate under their jurisdiction even extraterritorially if they have effective control over the individuals. The principle foresees for state's obligations in the procedural level, as the state has to effectively access the safety of the country, take into consideration each individual condition and provide for the right to the individuals to challenge the transfer decision. Finally, the principle prohibits not only the direct return of an individual to a place where he might face persecution, serious harm and degrading treatment but also foresees for the prohibition of indirect refoulement i.e., the State that will receive the individuals will proceed to removals/expulsions to territories where the refugee will face persecution and serious harm.

[223] The legality of the 'safe third country' notion contested : insights from the law of treaties

To examine to what extent is the use and application of the 'safe third country' notion in compliance with the principle of non-refoulement, we took the case of the EU-Türkiye Deal where the notion was applied by EU and its Member States and specifically Greece, designating Türkiye as a safe third country. After 8 years of operation, examining this case allowed us to understand how the application of the 'safe third country' concept could trigger human rights and especially the principle of non-refoulement. Under the EU-Türkiye Deal, we saw that neither Greece nor the EU institutions consider the legal and practical limitations of Türkiye to offer effective protection to the refugees exposing the individuals to refoulement directly or indirectly. Some of the arguments on this conclusion, is the assumption that Türkiye is a safe third country while putting in force the Deal, the lack of providing legal explanation on the safety of Türkiye by Greece, the documented instances of refoulement in Türkiye's border with Syria and the inadequate status that refugees are able to obtain in Türkiye, the absence of examination of the asylum claims on their merits after the suspension of returns and readmissions from the side of Türkiye.

In conclusion, this chapter depicted that the 'safe third country' notion could be in compliance with the realization of human rights and more specifically with the principle of non-refoulement in the extent where the States put the protection of the refugees' rights at the central of the decision making, uphold the criteria that has been set for a country to be considered as safe, follow the procedural obligations and guarantee for the effectiveness of the safety of the intermediate third country. Unfortunately, in many cases, the concept is being misused with a central intention to minimize or prevent the arrivals of asylum seekers and to externalize their obligations under Refugee and Human Rights law towards refugees to third countries, even though there is a lack of protection there, as the implementation of the EU-Türkiye Deal showed. In these circumstances that highlighted above, the application of notion fails to comply with the principle of non-refoulement, often resulting in further violations of the refugee's rights.

CONCLUSION

The central interest of this research is the preservation of the refugees' rights deriving from the Refugee Law and Human Rights law. Migration flows has been an international phenomenon that raises obligations to the States and the International and Regional Units to uphold towards individuals that are on the move, fleeing conflicts, violations of human rights, searching for a safer future. In the context of managing the migration flows and provide for the refugees' rights, political and legal implications are frequently arising, that puts at risk the life and dignity of the migrants, not respecting their right to receive refuge and protection. As stated, on the website of the Council of Europe "the situation of migrants in Europe has deteriorated, marked by pushbacks, deaths, poor reception conditions and restrictive policies"[224] Concerns expressed by NGOs, International organizations, and human rights defenders over the situation of migrants in the EU, especially in the aftermath of the refugee 'crisis' in 2015, led me to examine the externalization of border management of the EU and therefore its central component, the 'safe third country' concept. The 'safe third country' concept was grounded on the need for international cooperation to share the responsibility and effectively protect the migrants.[225] This concept was enforced under the EU-Türkiye Deal, an informal, non-binding political Statement that its aim was to end irregular migrants to reach at the European Shores through the Greece-Türkiye borders, prevent the deaths at the sea, create a safe path for Syrians Refugees to reach the EU and battle crimes that has been related with migration, such as smuggling and human trafficking.

Therefore, the aim of this research was to analyze the use and application of the 'safe third country' concept within the EU and specifically under the EU-Türkiye deal, and to examine if the adoption and operation of the notion, in the aftermath of the refugee 'crisis' was an instance of securitization or harmful to refugee rights, focusing on the principle of non-refoulement. The research questions laid out are: 1) To what extent can the use and application of the safe third country notion be conceptualized as

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[224] Commisioner for Human Rights, 'Migration - Commissioner for Human Rights - Www.coe.int' (*Commissioner for Human Rights*2014) <https://www.coe.int/el/web/commissioner/thematic-work/migration> accessed 18 August 2024.

[225] Elif Demirbas and Christina Miliou, 'Looking at the EU-Turkey Deal : The Implications for MIGRANTS in Greece and Turkey', *Migrations in the Mediterranean* (Springer Nature 2024).

an instance of securitization of migration? 2) To what extent is the use and application of the safe third country notion compatible with the realization of migrants' rights and more specifically the principle of non-refoulement? To answer those questions, as mentioned in the Methodology part, the adaptation of an interdisciplinary approach was essential, using the securitization theory that derives from the spectrum of International Relations and legal analysis that focused on the 'safe third country' notion and the principle of non-refoulement. In both approaches, the EU-Türkiye Deal, and the way that the 'safe third country' notion was applied, had a leading role to establish my argumentation.

Securitization theory contributed to understand how migrants and refugees have been perceived as threats or risks to the national and societal security and stability of the European Union and the Member States. Keys to securitization theory is the powerful actors that are presenting a development as an existential threat, through speech acts, to the referent objects and requires extraordinary measures to be taken, with the acceptance of the audience. Globally, migration is being included in security agendas, as an issue that threatens the security of the State, the social cohesion and the economic stability and it is being correlated with terrorism and criminality.

Through illustrative examples, such as the language being used in EU's document, the restrictive border policies, the militarized operations of Frontex and Operation EUNAVFOR MED Sophia and the language and practices of the Governments of the States such as the construction of Fences, we depicted the EU migration-security nexus and how migrants are being often perceived or correlated with terrorism, criminality and destabilization. Therefore, migration is being securitized not only through discursive practices but also through policies that are serving for the conceptualization of migrants as threats.

This lead as to the question, to what extend can the use and application of the 'safe third country' notion can be another instance of securitization of migration. The answer to this question comes from the examination of how the notion was implemented under the EU-Türkiye Deal. After examining the Deal, we can conclude that the aim was more to mitigate and prevent the arrivals of refugees in the European

shores outsourcing the responsibility to Türkiye by designating the country as safe for the irregular migrants and asylum seekers, rather than the protection of their rights. Despite the calls for a suspension of the Deal by human rights defenders and scholars because of concerns of human rights violations, as the analysis showed, and the denial of Türkiye to implement the deal by opening its borders, the Deal is still perceived as an effective tool to combat irregular migration and protect refugees' lives.

The enforcement of the notion served for the perception that individuals on the move are threats to the security and exceptional measures must be taken including returning them to countries that have been designated as Safe, even though they are not. Therefore, the use and application of the 'safe third country' notion could be conceptualized as an instance of securitization to the extent where it is being misused, having at its central of its implementation the prevention of migrants to seek for protection and not the protection of their rights.

The idea behind the concept of the 'safe third country' is that individuals seeking for asylum and protection can find protection in a third country. This concept is finding its legal basis on the International Refugee Law, and it has been incorporated within the EU migration and asylum law. The Asylum Procedures Directive (recast) has set the criteria for a State to be able to reject admissibility of asylum claims on the ground that there is a safe third country to offer effective protection to the refugees. The legal grounds for the application of notion could be considered sufficient for the protection of the refugees when being returned to the designated safe third country and effective for the establishment of cooperation. In practice though since it foresees for the returns of asylum seekers, it could also entail risks of human rights violations and of refoulement.

The principle of non-refoulement enjoys international recognition and is a fundamental obligation towards refugees. As it has been established by Refugee and Human Rights Law, the principle prohibits the return of individuals to a territory where they might face persecution, serious harm, degrading treatment, torture and risks of their lives. The principle protects individuals from both direct and indirect refoulement and is setting procedural obligations for the States when they are operating returns. The

EU institutions and the Member States are bound by this principle, and they have to respect it when accessing returns under the 'safe third country' notion.

Examining the way that the 'safe third country' concept was implemented under the EU-Türkiye deal, we are able to understand that, in practice, the concept carries risks for the realization of the rights of refugees and especially the principle of non-refoulement. To backup this argument, I will refer again to the blanket designation of Türkiye as safe and the failure or refusal to assess the safety of the country for the refugees and asylum seekers. Türkiye has an insufficient legislation to grant equivalent protection to the Refugee Convention. Refugees have a restrictive access to registration and therefore restrictive access to social services.

Moreover, instances of refoulement have been documented at its borders with Syria and refugees have been victims of degrading treatment and violence. Even when Türkiye suspends the returns and readmissions of migrants, Greek authorities continue to declare asylum claims as inadmissible on the ground that Türkiye is a safe third country, living refugees in legal limbo restricted to the centers of the Greek Islands under dire conditions. These facts serve for the conclusion that the use and application of the 'safe third country' notion could amount to direct or indirect refoulement. Therefore, to answer our research question, the use and application of the 'safe third country' concept could be incompatible with the principle of non-refoulement to the extent that actors applying the notion do not respect the criteria have been set and the obligations that the principle of non-refoulement entails.

This research is dedicated to the examination of the 'safe third country' concept as it has been implemented within the enforcement of the EU-Türkiye Deal in 2016. It has showed the implications that the implementation of the notion could have to the right of refugees not to be returned to territories where they will face torture, degrading treatment, punishment and serious harm. It also showed that the implementation of the notion could be governed by the interest of the governments and other actors to securitize migration and present migrants as a threat to the national and societal security that will lead to further violations of refugees' rights.

Eight years after the implementation of the Deal and the designation of Türkiye as a safe third country, the examination of their implications are highly relevant to the Today's reality. The New Pact on Migration and Asylum, adopted in 2024, as a new set of rules on managing migration and establishing a common asylum system, has as main pillar the cooperation on return and readmission.[226] Although, it considers to be a great achievement by the EU, civil society organizations and experts have express their concerns on the negative impact that it could have on migrants and refugees' rights and the functioning of the EU common asylum.[227] One of the main concerns, is that the New Pact on Migration and Asylum appears to excessively broaden the concept of the 'safe third country' as grounds for the inadmissibility of an asylum application.[228]

They EU-Türkiye deal is being praised for the dropping of irregular arrivals of migrants and is considered to be a blueprint for dealing with mass migration flows and preventing a repetition of the 2015 'drama' (meaning the mass arrival of migrants). [229] An example of this external dimension of migration management is the conduction of a Memorandum of Understanding with Tunisia on migration and economic cooperation. Under this cooperation, Tunisia is considered to be a safe third country of origin, although the United Nations and other organizations have urged for human rights violations, violations of refugee's rights, racism, and massive expulsions. [230] To conclude, cooperation with third countries is an upward trend that considered to be effective on dealing with irregular migration. Looking at the implementation of the notion under the EU-Türkiye deal, 8 years after, and how it affected the rights of

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[226] European Commission, 'Pact on Migration and Asylum' (*home-affairs.ec.europa.eu*21 May 2024) <https://home-affairs.ec.europa.eu/policies/migration-and-asylum/pact-migration-and-asylum_en>.
[227] Carmine Conte and Başak Yavcan, 'Reflection Paper on the New EU Pact on Migration and Asylum' (*Migration Policy Group*23 April 2024) <https://www.migpolgroup.com/index.php/2024/04/23/reflection-paper-on-the-new-eu-pact-on-migration-and-asylum/>.
[228] Ibid
[229] European Parliamentary Research Service, 'The External Dimension of the New Pact on Migration and Asylum [Policy Podcast]' (*YouTube*12 May 2021) <https://www.youtube.com/watch?v=ILZlpokWyxM> accessed 23 August 2024.
[230] UN OHCHR, 'UN Experts Urge Tunisia to Act Swiftly to Uphold Migrants' Rights ' (*ohchr.org*2023) <https://www.ohchr.org/en/press-releases/2023/07/un-experts-urge-tunisia-act-swiftly-uphold-migrants-rights>.,
Human Rights Watch, 'Tunisia: African Migrants Intercepted at Sea, Expelled | Human Rights Watch' (*hrw.org*10 October 2023) <https://www.hrw.org/news/2023/10/10/tunisia-african-migrants-intercepted-sea-expelled>.

migrants indicates that we should reconsider the extensive use of cooperation with third countries.

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