

## Legal Topography of the 2015 European Refugee “Crisis”

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During the summer of 2015, the Greek island of Kos in the eastern Aegean Sea was one of the main crossing points from Turkey for Syrian refugees hoping to reach Europe. The main squares and parks were full of exhausted men, women, and children who had transformed these spaces into temporary living areas. Every morning, a line of people formed outside the local police station along the waterfront, sharing the sidewalk with the passing tourists on summer holiday, while just a few yards away in the harbor more migrants and refugees were disembarking from the Greek Coast Guard vessels back from the morning surveillance rounds. Similar scenes played out all along the Aegean coast and further along the Balkan route.

By the summer of 2016, everything had changed. On 20 March 20, the EU-Turkey Deal took effect, and by June the street in front of the Kos police station was empty. There were no refugees and barely any tourists either. Scared off by the images of desperate people arriving on the beaches, vacationers had decided to avoid the islands altogether. The busy water promenade and lively squares were empty. Restaurants were open, large TV screens transmitted games from the UEFA European Championship, yet customers were lacking.

In the summer of 2017, the life on Kos had returned to its usual vibrancy. The harbor front and restaurants were once again full of tourists. Refugees and migrants were still crossing the Aegean, but once on Greek soil they were moved to camps set up as official Reception and Processing Centers

farther away from city centers and the public gaze. In Kos, the camps were so well hidden in the hilly countryside that even many locals had no clear idea where it was. The restaurant owners too no longer talked about refugees to their customers. The “refugee crisis” was over. All that was left behind was a new European topography dotted with various structures of permanence.

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The European refugee crisis of 2015 is commonly depicted as a circumscribed event with clear start and end dates. The successive changes on the Greek islands, such as those detailed above, from 2015 to 2017, reinforce the view that timely policy innovations effectively managed the situation that was spiraling out of control. In response to what was seen as an unprecedented humanitarian challenge, the EU and various member states undertook actions to contain the movement of the refugees and migrants by a mixture of spatial controls and economic deals with regional countries, most notably Turkey and Jordan. This has resulted in a complex and confusing patchwork of policies and legal frameworks implemented in the core countries along the route and an ever-multiplying presence of actors and EU agencies with seemingly overlapping authorities. The immediate response, as well as the longer-term measures, in the form of the European Agenda on Migration, have focused on the frontier states, Greece and Italy, as the epicenter of the migration crisis and as the weak spots in the EU’s migration management system. In turn, this geographic perspective has had direct consequences on the spatial management of the refugee crisis, including decisions regarding the location of refugee camps and Reception and Identification Centers (RICs), and the legal exemptions that would apply to each. Specifically, the five “hotspot” islands of the east Aegean—Chios, Kos, Leros, Lesvos, and Samos—have become the “anomalous zones” (Neuman 1996: 1197–234) of Europe, where the new policies can be tested and variously defined groups of migrants compete for legal rights.

The EU’s asylum system is governed by the Dublin Regulations, which impose geographic limits on migrant mobility to the first country of entry. The aim is to ensure that a specific member state is responsible for processing the asylum claim and to discourage secondary movement within EU territory. The new emergency measures that saw the creation of the “hotspot approach” and the signing of the EU-Turkey Agreement gave the EU a stronger role in border enforcement that it had been seeking.

The “hotspot approach” was developed by the European Commission and proposed in the initial document of the European Agenda for Migration in May of 2015. It aimed to offer better-coordinated assistance to the front-line member states dealing with the increase in irregular migration and to

provide greater uniformity in immigration procedures across all states. The assistance would “focus on registration, identification, fingerprinting and debriefing of asylum seekers” (European Commission 2015). According to the document, this would create a much more efficient and expedited set of procedures. However, it is a mistake to reduce the role that the islands have played in migration management to their geographical location on the edge of Europe. As major tourism hubs, they are pivotal in the EU’s economic development plan for Greece and the broader EU economic agenda. Hence, the speed with which the refugee crisis was able to endanger the livelihoods and economic security of the island residents reveals a deeper contradiction at the heart of the European integration model. The contradiction is driven, on the one hand, by the increasing economic insecurity that has been generated by the EU’s neoliberal policies and, on the other hand, by the lack of democratic space to contest these policies. It is this contradiction that is responsible for the rise of right-wing politics across the continent and that constitutes the EU’s *crisis of governance*. In response, the “hotspot approach,” the EU-Turkey Agreement, and the European Agenda on Migration represent yet another set of technocratic solutions that uses the emergency narrative to remove the issue of migration from the sphere of democratic control. The deeper contradictions are for the time being displaced by simply removing migrants and refugees from public view and Europe. In this chapter, I will argue that the response to the 2015 refugee crisis must be understood in this broader context of the EU crisis of governance.

To this end, the next section opens with an overview of the various crisis narratives that have populated the EU public domain over the last decade. In contrast to the typical segmented framing of each episode as *sui generis*, I suggest that these crises are interlinked through a larger crisis of EU governance. In the section that follows, I sketch out this argument by offering a brief history of the European integration process with particular focus on its ideological foundations and the broader international financial context of which it is a part. The theoretical framework I develop here reveals European Union’s economic logic and the tradeoff between efficiency (technical expertise) and democracy that it demands and that undergirds the integration project to this day. Paradoxically, it is the failure of *this* economic logic that has revealed the weakness of the tradeoff and resulted in the crisis of governance. In the second part of this chapter, I use the refugee situation of 2015 to draw out the manifestations of the governance crisis in everyday policymaking. A critical reading of the evolving spatial and legal nexus allows me to link the emergency measures instituted to deal with the immediate situation in the Aegean Islands to the broader externalization strategy for migration management. Hence, while the analysis here focuses extensively on one case study, the EU-Turkey Statement, specifically its implications in the eastern Aegean, I draw on insights from the Jordanian Compact to show

patterns of convergence and to capture the essence of the EU's migration agenda and the contradictions inherent to it. In this way, the chapter combines elements of critical international political economy and comparative policy studies. As I note in the conclusion, the EU's response to the 2015 refugee situation bears all the characteristics of the crisis of governance. On the one hand, technocratic responses to deeply political issues have not assuaged the public discontent generated by the contradictions inherent in the EU's model of integration. The elaborate spatial control of the migration flow has not dampened the appeal of right-wing parties in Europe. On the other hand, the more overtly political gestures embrace a shift to the right in an attempt to co-opt the right-wing voters. Paradoxically, such moves legitimize the very phenomenon they seek to eradicate.

## Competing Crisis Narratives?

On 4 March 2019, French president Emmanuel Macron called on his fellow European citizens to “renew” their commitment to the European project in the face of a growing danger from “nationalist retrenchment.” Cautioning that time was short, he proposed a new renaissance for Europe, one anchored in the ambitious pursuit of freedom, protection, and progress. His appeal was grounded in the recognition that Europe was in the midst of a crisis generated by its failure “to respond to its peoples’ needs for protection from the major shocks of the modern world” (Macron 2019). To many, he noted, Europe had become “a soulless market.” He warned that this popular disillusionment opened the way for nationalist forces that were capitalizing on people’s anger. But “business as usual” and resignation were equally dangerous attitudes as they would deny the fears of the people and undermine the value of democracies. Instead, he announced, it was time for people to take back control of the European project and their future.

For a couple of days, Macron’s letter generated considerable attention in the European media. It seemed to offer a new broader definition of the European crisis, its sources, and its consequences, one that treated Brexit and the rise of nationalism as its symptoms rather than causes and declined to reduce either to a backlash against migration. The EU is no stranger to discussions about crises, including the crises on the nature of its overall project. Recently the term has been bandied about with some frequency—during the run-up to the Constitutional Treaty, Europe was said to be facing the crisis of democratic deficit and public alienation. At the same time, multiple successive enlargements eastward had brought about a form of crisis described as “enlargement fatigue.” Then in 2008, the global financial meltdown caused the Eurozone crisis accompanied by the Greek government-debt crisis, which still lingers today. While 2015 was defined by the refugee crisis, from

2016 onward the Brexit crisis has dominated the EU agenda. Most recently, the rise of right-wing and nationalist forces is said to be threatening the EU with an existential crisis.

The tendency has been to view these episodes as independent phenomena. Hence, the 2008 Eurozone crisis and the Greek debt crisis that grew out of it have only rarely been linked to the earlier democratic deficit debate or to the more recent political crisis associated with the 2015 refugee influx and the divisions it has produced among the member states. For most observers, the former was the result of economic variables alone, technical failures rather than political decisions. Only the most critical voices are willing to point out that the European economic model itself is implicated in the production of these crises. Specifically, the imbalance between export-driven economies, like Germany, and major importers, like Greece, creates a dangerous and unsustainable situation. The neoliberal turn with the adoption of the Maastricht Treaty has enshrined such market contradictions at the very heart of the EU (EuroMemo Group 2010; Streeck 2012: 63–71; Patomäki 2013). The dominance of the competition policy above all other values, especially the protections enshrined in the European Social Model, has indeed reduced the EU to a “soulless market.”

I want to extend this critique and suggest that the crisis the EU is facing is more fundamental than the economic contradictions highlighted above. It is not defined by the economic crisis, though much of the source of concern stems from the economic ideology that defines the EU project. It is also more than institutional overreach, democratic deficit, or right-wing backlash, as many would describe it. In a sense, what I sketch here is a crisis that emanates from the core logic that underpins the design of the European Union. This is a *governance crisis*, and as such it once again raises the question as to which foundational values (efficiency, technocracy, democracy, social justice, solidarity, etc.) should be chosen and how they should be ordered in this new polity. Hence, it speaks to the legitimate source of authority and its limits, its fiduciary obligations, and its claims to expertise and truth making. It determines how the refugee crisis of 2015 is framed, how the causes are identified and linked (or failed to be linked), and what solutions are offered.

## EU Governance Crisis

At the core of the EU’s governance crisis is a contradiction between democratic principles (popular legitimacy) and market principles enshrined in the founding treaties of the European Union (then Community). Of course, most international organizations can be said to suffer from some form of democratic deficit (Dahl 1999: 19–36). This typically means that there is a gap between the authoritative decisions and policies they produce and

the principle of popular sovereignty or the assumed equality of all those affected by the decisions of the governing authority. Yet, in the EU context, this deficit has much more contentious history, and its challenge to the legitimacy of the European Union has much more severe and far-reaching implications for both the EU and the member states.

From the very outset, the design of the new entity was predicated on a nondemocratic, highly technocratic model that focused on economic growth and efficiency as the founding values of the integration project. This framework was justified by appeals to the broadly utilitarian (and paternalistic) argument that by pooling sovereignties and establishing expert-driven authority, the new community would be able to guarantee better management of sensitive natural assets (coal and steel), which would lead to greater prosperity and utility for all. The assumption behind the argument was that there was a technically (in economic terms) correct solution for how best to guarantee progress, and its implementation had to be isolated from both the narrow and self-interested actions of nation-states and the influence of interest-based politics. In other words, the common management of coal and steel was not about party politics or sectional interests, it was an issue that could be settled and managed scientifically. It was presented as a problem-driven and pragmatic response to the violence of the two world wars and interwar protectionism. The liberal economic arguments that trade and integration lead to peace were accepted as fact. As Jean Monnet had argued during the war, the only way forward for Europe was through a common market. An overall belief in economic integration was coupled with a belief in economic efficiency to form the scientific creed of the European Union. Since the very beginning, then, the character of the European Union was marked by the belief (or at least a claim) that economic issues that drive European integration are nonideological and nonpolitical. Hence, they do not require much oversight by elected officials. The job should be left to experts or technicians, who will apply the best scientific knowledge and respond *pragmatically* to any problems that arise to help move the European Union forward. It is worth pointing out that the view that economic policy is simply a technical matter persists among many who argue that the EU does not suffer from a democratic deficit because the issues it oversees are economic (and therefore technical).<sup>1</sup> More recently, the EU's response to the 2008 Eurozone crisis and the Greek debt crisis has shown the same commitment to shield economic policies from the democratic sphere. Caretaker governments were installed in both Italy and Greece led by economic-technocrats—Mario Monti, the former EU commissioner for competition in Italy, and Lucas Papademo, the former president of the Greek Central Bank in Greece. Even the Greek referendum of 25 June 2015 could not persuade the EU technocrats that its economic formulas should be subject to public scrutiny.

European integration has progressed a long way from the early days of the European Coal and Steel Community. Today the EU is a complex and multifaceted entity with considerable influence in the member states’ domestic affairs; it also has a strong international presence. Its policy reach now extends far beyond the Single Market and single currency, the euro, which can be considered the major policy accomplishments of the EU. Yet, despite the many changes in the character of the EU, the masterstrokes of integration remain economic, specifically, liberal economic. This is due in part to the dominant economic nature of the early days of the European project and the persistent liberalization of European policymaking. The dominance of economic thinking in European integration has meant that all other social spheres and issues are viewed through the lens of economic logic and are subject to evaluation based on their compatibility with market principles. But partly, the economic character remains, as we can see in the case of the Lisbon Treaty, because economics is still the main focus of the European Union’s self-conception. Therefore, even the most recent attempts at recasting the EU have been clothed in primarily economic language. Economic principles and goals are still accorded higher significance than social or political aims, and little is said about how to reconcile these principles when they come into conflict.

By emphasizing the economic logic behind integration, I do not mean to suggest that other concerns and interests were not equally compelling and significant in motivating the decision-makers at different points in EU history. Instead, I argue that economic considerations have been *the most consistent and enduring* element in the building of today’s European Union. Economic policy has been the staple of European decision-making even where the ultimate goal might have been peace and security.<sup>2</sup> The same linking of security and economic interests is now revealed in the steps taken to manage irregular migration and the refugee crisis. For example, both the Africa Trust Fund and the Jordanian Compact, are market-oriented economic solutions to perceived security challenges posed by migration. The rhetoric and principles that accompany them make a distinction between security and economic goals almost impossible. Put more succinctly, economic reasoning and efficiency play the role of a metanarrative of the integration process and, therefore, drive policy innovations.

## The 2015 European “Refugee Crisis”

The Syrian refugee crisis of 2015 seemed to catch the leaders in the national capitals and Brussels off guard. Migration from the Middle East and sub-Saharan Africa, mostly via Libya to Italy and other parts of the Mediterranean, had been an issue of concern for EU decision-makers for years. It

had prompted emergency meetings and had justified new security operations, temporary border closures, the building of fences, and an expanded role for FRONTEX (the EU border management agency) (European Council 2015). But images of columns of desperate people crossing Europe on foot during the summer and fall of 2015 evoked deeper reactions and brought to the fore unpleasant historic associations. The seeming lack of a unified response challenged Europe's self-image as a prosperous and advanced region able to deal with humanitarian disasters in an organized manner and in accordance with the principles of human rights. As Spanish prime minister Mariano Rajoy had said a few months earlier, "As Europeans we are gambling with our credibility ..." (Yardley 2015). It highlighted the political stalemate in Brussels over refugee quotas as well as the absence of solidarity and burden sharing among the EU members. And, to many, it confirmed the anxieties and insecurities associated with the Schengen Area, the disappearance of internal borders and the porous nature of the external ones. A public backlash against various proposed measures to tackle the crisis and the growing strength of the right-wing parties across the continent threatened social instability. The daily scenes unfolding along the tourist beaches of the eastern Aegean Islands and at the border crossings between EU and non-EU Balkan states encapsulated all these fears about the political, economic, and social state of the European Union and dominated the framing and the sense of the crisis. The EU's formal documents and press briefings portrayed the crisis as the greatest humanitarian challenge to face the continent since World War II. Such framing justified emergency measures that were adopted and still operate today (European Commission 2019). At the core of these emergency measures are policies of spatial control and legal innovations that accompany them. In the second part of this chapter, I take a closer look at two cases that represent this new spatial ordering. The first case concerns the eastern Aegean islands, which were the focus of two crucial policy decisions—the "hotspot approach" and the EU-Turkey Agreement—that together transformed them into *extralegal* spaces where normal EU asylum procedures do not apply. The second case, concerning the Jordan Compact, looks in more detail at the EU's rapidly evolving externalization policy and the economic logic that accompanies it.

The Aegean islands nearest to the coast of Turkey have been a preferred crossing point for irregular migrants for years. After Greece joined the Schengen Area in 2000, the former Ottoman territories became the external border of the EU, and the rocky islands acquired new strategic significance. Their location only a few nautical miles from a long Turkish Aegean coast provides ample opportunities for crossing the international waters in small dinghies and light crafts that can avoid detection by the Turkish and the Greek coast guards and navies. The Aegean route became the focal point when the much safer land route across Turkey's western border with Bulgaria and Greece was sealed by the neighboring states.



As a result, the islands had seen a continuous increase in arrivals by sea in the years leading up to the 2015 crisis. Local police departments with limited capacities for housing, services, and processing arrivals had nevertheless been engaged in the task of serving as frontline humanitarian and immigration offices. They were assisted in this task by the Hellenic Coast Guard and FRONTEX, which has been deployed in the area as part of the EU’s Operation Poseidon since 2011 (Bacas 2014: 173). Jutta Lauth Bacas has chronicled the evolution of procedural and administrative changes on the island of Lesbos, now the most targeted crossing point, since 2004. She notes that the spike in arrivals in 2013 prompted the local Hellenic Coast Guard to set up the first improvised detention center in the Mytilini port area (Bacas 2014: 164). And, by the end of September, the now notorious Moria detention center was also operational. Far from the public gaze, Aegean islands were already spaces where the overlapping and complex authority structures allowed for an ambiguous application of immigration law (Bacas 2014: 175). More importantly, the islands, and the Mediterranean more broadly, played a crucial role in the EU’s economic model. As argued previously, it is this very model of neoliberal development, the contradictions between the economic character of the European Union, and the social and democratic expectations of the public that created the governance crisis for the EU in the first place. The legal and spatial response to the 2015 refugee influx in the Aegean Islands must be understood in the context of this crisis of EU governance.

## **Crisis on the Islands**

The EU’s response to the refugee presence in the islands cannot be understood without considering the role that the islands play in the broader EU economic agenda. As discussed, the European integration project has been dominated by particular economic reasoning that emphasizes economic efficiency and competition as drivers of economic growth. Entry into the European Union requires each candidate state to submit their economy to deep restructuring to be able to join the Single Market without bringing with it too much volatility. As Costas Passas and George Labrinidis point out, this restructuring involves adapting to “a peculiar kind of EU division of labor” and specialization. In the restructuring of the Greek economy that followed the country’s accession to the EEC in 1981, Greece came to play the role of “the front door and the hallway of the EU to the East” (Passas and Labrinidis 2016). Its ports provided a crucial link with regional and international trade routes, and soon other large infrastructure projects followed. The structural reorganization meant that the agricultural sector, which had accounted for a large part of the Greek economy and employment, would be reduced, and

the trade in agricultural products went from surplus to deficit in a short time. This was done to serve the interests of large food monopolies in the north (France and Germany). Hence, Greece integrated into the common market by specializing “(a) as [the] outsourced management, banking, transportation, and logistics hub of north European manufacturing capital in South Eastern Europe and (b) as [the] tourism heaven for north European (mainly British and German) workers” (Passas and Labrinidis, 2016). Islands became crucial in restyling Greece as a competitive tourism destination.

Indeed, the entire Mediterranean has increasingly been defined in economic terms. The process has accelerated since the 1990s and the signing of the Maastricht Treaty with an increased neoliberal reimagining of space everywhere. According to Beste İşleyen “The Mediterranean island, whether Greek or Italian, has for the last decades been constituted as an economic space—a space of private investment, capital accumulation as well as the exchange of services, capital and goods relating to its production as a tourism attraction.” Specifically, both the Euro-Mediterranean Partnership and the European Neighborhood Policy have promoted the Mediterranean as a space to be created and fostered for increasing transnational interactions, exchange of goods, and opportunities for investment (İşleyen 2016: 328).

Island economies would feel this shift in specialization very directly. For the last three decades, it has defined the economic and much of the social life on the islands (Spilanis and Vayanni 2004). On some islands, like Kos, the dependence on tourism constitutes 95 percent of economic activity. Hotel construction and restaurant businesses account for a large part of the increased performance of the service sector (Passas and Labrinidis 2016). Even during the heights of the refugee crisis when occupancy rates for holiday bungalows were dismally low, new holiday accommodations were being built on the island of Chios. To my puzzled inquiry, a local hotel owner responded that there is always money in hotels. Similar building activity was taking place along the north shore of the nearby island of Lesvos even as the neighboring hotel owner complained that migrants and refugees had driven off all the tourists.

The arrival of thousands of refugees to the Aegean Islands revealed the dangers inherent in the EU’s economic model based on such mono-specialization. Throughout the summer and fall seasons of 2015, stories quickly circulated in the international media showing perplexed tourists witnessing panicked and often traumatized people disembark on the beaches. The full effect of the mass arrival of refugees manifested during the 2016 tourism season. During the summer of 2016, business on the islands seemed to have ground to a halt. Streets, shops, and restaurants were mostly empty save for the few elderly locals. The severity of the impact varied from island to island and provided a quick sense of the extent of local dependence on tourism. The island of Kos was perhaps most affected as it is oriented almost entirely

toward the tourism industry, including mass package tours at larger resort hotels. Local shop and restaurant owners were desperate and angry. The little island of Leros was equally affected. When I spoke to one local restaurant owner in early June, he was considering closing his beachfront establishment and moving to Athens. The impact on Chios and Lesvos seemed less noticeable in part because both island economies are more diversified. Yet, even as late as January 2017, the deputy mayor of Chios reported that the number of chartered flights for the coming summer had declined by 100 percent.<sup>3</sup>

It was clear that the mass arrival of refugees had put enormous pressure on island economies. Economic specialization imposed by accession into the EEC had rendered islands dependent on mass tourism and vulnerable to sudden drops in supply. Since the flow of refugees could be expected to continue, the response would need to ensure that their presence on the islands, however temporary, would not compromise the tourist industry. The “hotspot approach” drafted in 2014 had already identified the islands as useful emergency sites for restricting the movement of migrants and refugees until their status could be assessed. Their location at a safe distance from the Greek and European mainland made them a perfect choice in the EU’s attempt to control the flow of migrants by adopting a set of externalization programs. The signing of the EU-Turkey Agreement in the spring of 2016 turned the five “hotspot islands” into extraterritorial spaces where spatial and legal innovations were meant to overcome the contradictions inherent in the European integration project.

## **New Spatial and Legal Topography**

The 2016 EU-Turkey deal is seen by most commentators, government officials, and NGO staff as a crucial moment of change in the management of the refugee situation in Europe. The agreement was a continuation of an earlier Joint Action Plan signed on 15 October 2015 and part of a new European Agenda on Migration inaugurated by the Juncker Commission in June of 2014. The Joint Action Plan was an agreement between the European Commission and the Republic of Turkey and was endorsed by all twenty-eight heads of state and government. It identified “a series of collaborative actions to be implemented as a matter of urgency by the European Union and the Republic of Turkey with the aim of confronting common challenges in a concerted manner and supplementing Turkey’s efforts in managing a large number of people in need of protection in Turkey” (European Commission 2016). Under the provision of the Action Plan, the European Commission undertook to set up the Facility for Refugees in Turkey, providing a sum of €3 billion for the next two years to be allocated toward “humanitarian aid,

education, labor market integration, health care access, social inclusion and infrastructure projects.” This assistance was to be provided in return for Turkey’s efforts in preventing irregular departures and smuggling from its territory along with more effective and full implementation of preexisting Readmission Agreements with Greece and the EU (European Commission 2016). The preexisting agreements provided the legal basis for the return of irregular migrants and refugees laid out in the EU-Turkey deal.

The EU-Turkey Statement was issued on 18 March 2016 and, like the previous Joint Action Plan, was presented in large part as an attempt to alleviate the pressures caused to Greece by irregular migration from Turkey. Its geographical focus on the Greek Aegean islands inaugurated a new bifurcated asylum procedure effectively splitting the legal domain in Greece into two distinct spheres. From a legal perspective, the islands became what Gerald L. Neuman has described as “‘anomalous zones,’ a geographical area in which certain legal rules, otherwise regarded as embodying fundamental policies of the larger legal system, are locally suspended” (Neuman 1996: 1201). He observes that such suspension is typically justified on the basis of perceived necessity and conceives of border areas as uniquely vulnerable.

The EU-Turkey Statement reconstituted the islands into just such “anomalous zones” through two additional points that were not part of the original Joint Action Plan. The first point announced that starting on 20 March 2016, all irregular migrants crossing from Turkey to Greek islands would be returned to Turkey. The statement stipulated that the returns would be done in compliance with the relevant international law and the principle of non-refoulement. The procedure was recognized as a “temporary and extraordinary measure” necessitated by the desire “to end the human suffering and restore public order” (European Council 2016). The second point stipulated that for every Syrian returned through this procedure to Turkey another Syrian from Turkey would be resettled in the EU with specific attention to UN vulnerability criteria (European Council 2016). Though the statement itself does not reference a separate set of procedures for those entering the asylum system on the mainland versus those doing so on one of the islands, in practice the clear geographical restrictions of the first two points mandated such a delineation. This spatial ordering is further buttressed by the “hotspot approach.”

The current “hotspot approach” is focused on five Aegean islands seen as frontline locations in mass migration from Turkey. The policy establishing the hotspots is very much an exceptional measure presented as temporary. Yet, if successful, the approach could be replicated elsewhere in Europe. The Moria “hotspot” on the island of Lesbos was already operational in summer of 2015. Following the March 2016 EU-Turkey agreement, four more “hotspots” were opened at different intervals on the islands of Chios, Kos, Leros, and Samos. All five islands had already been part of the ir-

regular migrant crossings. A "hotspot" meant that a confined Reception and Identification Center was set up on each island to process the irregular migrants and asylum seekers and to adjudicate the appeals before people would be allowed to proceed to the mainland or be returned to Turkey or their country of origin.

The practical requirements of the EU-Turkey Statement hence create several layers of legal and spatial anomalies. As noted before, the islands are conveniently distanced from mainland Greece to remove the issue from public attention. At the same time, islanders feel that camps are a permanent blight on their livelihoods and lifestyles and that the presence of "hotspots" speaks to the neglect and indifference by the government and the EU toward local interests. In February 2016 Kos residents clashed with local police over the planned opening of the Reception and Processing Center. In Lesbos and Chios, attempts to expand the facilities in light of overcrowding have met with staunch local opposition. Local administrators feel caught between the demands created by the presence of the "hotspots" and those of local residents. When the municipality of Chios decided to pay for the heat generators in Souda camp, a local resident sued the mayor's office for the misuse of public funds.

At the same time, the need to restore the viability of the tourism industry has meant that where possible the camps could not be placed near major tourist sites, hotels, and other recreational spaces. In Kos, the camp and the refugees are so well hidden it would be hard to know that arrivals continue. In Chios, the centrally located Souda camp has been closed. All detentions and processing now take place at Vial camp further inland, and there is no public transport access from there to the town of Chios. In an interesting commentary on the changing international climate, since the end of the Cold War half of the camps in Greece are housed on the grounds of decommissioned military bases. No doubt these were selected for their availability, yet they are all located at a distance from major urban centers. Even where the local public transport is readily provided, the location of the camps removes most asylum seekers from daily interactions with local populations.

The EU-Turkey deal effectively creates two parallel but separate legal spheres for processing asylum cases. Those passing through the islands are subjected to new legal and procedural measures meant to identify migrants without sufficient claim to asylum and expedite their removal from EU territory. Those who apply for asylum on the mainland follow the usual immigration procedures. Inside the camps on the islands, the EU-Turkey deal has created an additional legal ordering in which Syrian refugees are seen as more genuine and deserving of asylum, followed by Afghans and Iraqis, leaving everyone else in a gray category of potentially illegal migrants. This legal segregation is enforced by various spatial measures. Before the initial registration and processing are completed, all migrants are confined to

a restricted area inside the Registration and Identification Center. The so-called *ausweis* cards issued to all migrants who have completed the initial intake interview further reinforce legal categorization. The card acts as a geographical gatekeeper. Those with a red stamp on the card are required to remain on the island until their case is processed. If caught traveling to the mainland, they can be arrested and returned to Lesbos where they are further segregated in the pre-removal detention center.

The EU-Turkey deal and the use of “hotspots” are roundly seen by the critics as being responsible for the deplorable conditions and overcrowding in camps on Lesbos and Samos. Anecdotal accounts claim that even Turkish smugglers are aware of the hierarchies of misery that distinguish one camp from another, and the journeys to islands with better situations now cost more than those to Lesbos and Samos. The peculiar legal character imposed on the islands by the “hotspot approach” and the EU-Turkey Agreement has turned them into “anomalous zones” simultaneously inside yet functionally outside the EU territory. This aspect links the “hotspot” islands to the EU’s broader policy evolution that uses externalization to third countries as a preferred migration management strategy.

## 2015 Emergency and New Externalization Measures

The focus on the EU-Turkey Statement often serves to remove attention from a broader policy shift toward externalization of migration controls and third-country partnerships that have become the core of the European migration management in the face of growing domestic backlash (Lavenex 2002: 164). Since the 1990s, various types of trade-related Association Agreements have granted non-EU countries “highly preferential access to the EU’s internal market” and have allowed the EU to demand that partner states implement specific immigration controls aimed at their own citizens as well as the third country nationals. The perceived crisis of the 2015 population movement led to a host of new emergency measures. In all of them externalization of migration played a key role. By claiming at the November 2015 Malta conference that it was responding to emergencies in several African countries, the EU created one of the largest migration funds, the EU Emergency Trust Fund for Africa: Trust Fund for Stability and Addressing Root Causes of Irregular Migration and Displaced Persons in Africa (EUTF). Incredibly, it covers twenty-six different African states considered to be in crisis situations, including Ghana, Kenya, and Senegal, and allocates a €4.6 billion budget to address these emergencies (Vermeulen et al. 2019). According to the EU’s own documents, migration control constitutes the EUTF’s major policy concern (European Commission 2018). In a parallel step, the EU signed development-based contracts with individual countries

of Jordan and Lebanon as part of the attempt to reduce onward movement of Syrians.

Of all such externalization projects, the Jordan Compact is seen as the most innovative and the most successful. This valuation reflects the fact that it represents a paradigmatic case of the new development-based migration model that has been gaining traction at the international level, which is reflected in the 2018 UN Global Compact for Migration. Sometimes referred to as “the Compact approach,” the new perspective sees refugees as an economic boon to the host countries (Temprano-Arroyo 2018). By building refugees’ self-reliance and resiliency through access to job markets and local public services, such as education and healthcare, the approach reconceptualized refugees as economic assets rather than humanitarian burdens. It is a win-win formula that is seen to restore dignity to refugee populations and to reignite the economic vitality of host countries. The approach emphasizes the crucial role of the private sector, and it is often linked to preferential trade agreements and special economic zones (SEZs). This enhances its appeal to actors like the EU and the World Bank, whose policies toward migration are situated in broader commitment to liberal economic agenda.

At a February 2016 London Conference, Jordan, Lebanon and Turkey agreed to improve the conditions for Syrian refugees residing in their territories. The “Jordan Compact,” announced at the end of the conference, envisaged the most proactive agenda of all three. Donors pledged €1.7 billion, with at least €700 million earmarked for infrastructure and municipal services (Howden et al. 2017). Within the terms of agreement, Jordan undertook the issuance of 200,000 work permits for Syrians in coming years and the removal of some of the hurdles that prevented Syrian refugees from entering the job market. It aimed to turn “the Syrian refugee crisis into a development opportunity that attracts new investments.” As part of this economic agenda, the Jordanian government agreed to “designate five development zones and provide these with maximum incentives under the new investment law” in order to generate much-needed jobs. The special economic zones were envisaged as incubators of change (Lenner and Turner 2018). “It was expected that stakeholders would be able to encourage investment in SEZs, particularly in manufacturing, and thereby provide employment for Syrians and Jordanians alike.” The backbone of the agreement was renegotiated terms of trade between Jordan and the EU similar to the 1990s trade association agreements. The special customs union would grant “preferential access to European markets for firms based in particular zones and employing Syrian refugees as a minimum proportion of their workforce” (Lenner and Turner 2018).

Unlike the “hotspot” approach, the Jordan Compact has been hailed as a welcome and an innovative step in global refugee management by international donors, the UN, and many humanitarian actors. Turning the

refugee crisis into a development opportunity for host communities while promoting self-reliance and resilience among refugees seems like a winning formula to many and one that is quickly gaining attention around the world. Julia Morris, however, finds little to justify their optimism. On all indicators, the compact has failed to deliver the expected benefits. By the spring of 2018, only six Jordanian companies “were approved by the Ministry of Industry, Trade, and Supply to export to Europe under the new EU-Jordan Association Agreement. Only three businesses had exported to the EU with net earnings of just 1.5 million euros” (Morris 2018: 8). In reality, Jordanian businesses do not have the training and necessary business development skills to be able to export to the European market and compete in it as the compact envisaged.

The job growth envisioned by the contract has also been limited. Of the target two hundred thousand work permits for Syrians, just over eighty thousand had been issued by January of 2018. But even this figure is not a good indicator of how many jobs had been created, as many of these were renewals of expiring work permits and “several thousand permits issued to the same people upon switching jobs” (Lenner and Turner 2018). The majority of available jobs were in agriculture and construction, areas that have a high level of informal employment. The government expected that all these workers would wish to formalize their employment by obtaining work permits, but staying informal has its advantages. In construction, where many Syrians are already employed, informal jobs pay better, and nobody is expected to make the social security payments (Howden et al. 2017). For seasonal agricultural workers, work permits are even less attractive. Instead of being a job-creation engine, the compact, by prioritizing the Syrian refugees, has pushed the costs of adapting to the new development agenda onto Egyptian, Bangladeshi, and other “irregular” migrants who are now losing their jobs to Syrians as businesses aim to fulfill the donor requirements and put off hiring non-Syrian migrants due to increased fees (Howden et al. 2017).

Yet, despite much negative evidence that the intended effects on refugees and benefits for Jordanian firms were not materializing, the agreement was renewed again in 2018. Its imputed success has generated interest further afield in places like Afghanistan, Malaysia, and Niger. A jobs contract in Ethiopia prompted Werner Hoyer, the president of the European Investment Bank, to observe that such agreements can be win-win tools for preventing migrants from traveling to Europe, allowing them to stay closer to home while providing the economic boost to the local community (Howden et al. 2017).

Like all other externalization measures, such as the EUTF, Lebanon Compact, and Khartoum Process, the Jordan Compact conceives of migration management through an economic metric. Given the EU’s economic



identity, this is hardly surprising. As Sandra Lavenex notes, the EU uses its economic weight as an instrument in the pursuit of goals other than purely economic ones through its external trade policy” (Lavenex 2002: 162). In the attempt to stem the flow of Syrian refugees toward Europe, the economic development approach provides the EU with the cover of a win-win justification for what is, in reality, a highly coercive policy that restricts individual mobility through an exercise of remote control. The SEZs in Jordan, like those on the Aegean islands, function as “anomalous zones” where the EU can pursue “innovative” measures as part of its refugee crisis management policy.

## **Technocracy versus Democracy**

The failure of the Jordan Compact to live up to its lofty economic expectations has much to do with its top-down technocratic character. The drafters of the compact were much more interested in fulfilling the market-based metrics and demonstrating the economic gains to be had from refugee management than generating locally viable policies. Most refugees did not have input into the programs that were designed to impact their lives and contribute to their self-sufficiency and resilience. Likewise, the drafters of the compact failed to consult local NGOs or experts and have consequently largely overestimated Jordan’s ability to become a competitive and globalized member of the MENA region. Instead of offering some “training or development for local businesses in how to improve or be meaningful competitors in the European marketplace,” the compact emphasizes the importance of work permit quotas as the measure of its ability to foster a more dynamic economic environment (Morris 2018: 8).

The European Agenda for Migration explicitly aims to use the refugee crisis to impose common standards for border management and immigration procedures and to centralize the migration management under EU control. The EU Commission sees this as an opportunity to bypass what it refers to as national idiosyncrasies and exceptions that are the result of local politics. The EU-Turkey deal and the “hotspot” approach are technocratic solutions that remove decision-making from the national democratic and legal arena. Greece was not a party to the EU-Turkey agreement, yet it bears the responsibility for its implementation. The drafters of the “hotspot” approach, which turns the islands into semipermanent prisons for migrants and refugees, did not consult with the local mayors, much less, the populations. The islanders, who were celebrated for their assistance to refugees in the initial months of the crisis, now feel their voices and interests are ignored and their communities are used as dumping grounds for Europe’s unwanted. Island governments often find themselves caught between the

policies coming from the EU and the demands of local citizens. As has been the practice for decades, the EU's economic policies are not subject to democratic control. With the adoption of the European Agenda on Migration, border and migration management will further limit the oversight from national democratic and legal processes.

In this respect, these developments are entirely consistent with the EU's decades-long practice of exerting its dominance in international trade to advance the European Union's migration goals. Since the early 1990s, the EU has been increasingly using bilateral trade and association agreements to externalize its migration controls to third countries. As is the case with the Jordan Compact and the EUTF, the agreements make trade and aid conditional on the implementation of a wide set of social and economic policies that aim to reduce push factors and that restrict the mobility of migrants from outside the state (Lavenex 2002: 161). As a matter of trade policy, the agreements have been exempt from democratic review in both contracting parties. In fact, the inclusion of conditionalities subverts the democratic process in the partner countries. Paradoxically, many of the agreements, especially those signed with African states, stipulated that democratic improvements must also accompany the implementation of the trade agreement.

The externalization of migration through such agreements has a direct effect on the quality and function of democracy in the EU as well. In the case of the Trust Fund for Africa, by declaring that the twenty-six partner countries are in a state of crisis, the EU has been able to sidestep its own public procurement procedures and the democratic oversight and transparency that they provide. An investigation by legal scholars Thomas Spijkerboer and Elies Steyger revealed that the EUTF's project proposal process is closed off and opaque. There is a dizzying variety of projects, from migration management and border control to food aid and awareness campaigns, yet how projects are chosen for funding remains unclear. The fund is run directly by the EU Commission, and 65 percent of the funding ends up in the hands of just five major actors: IOM, UNHCR, German development agency GIZ, the Italian government, and French organization Civipol. The EU parliament has no oversight function, and its calls for "more democratic handling of EUTF's project choices" have gone unheeded (Vermeulen et al. 2016), nor are African countries allowed to vote on the projects. They can sit in and observe the meetings but otherwise have little say in the selection process.

## Conclusion

From the vantage point of 2017, the legal and geographic innovations marshaled in response to the 2015 "refugee crisis" appeared to deliver instantaneous results. The change on the Aegean Islands, highlighted in the opening

vignette, was immediate and palpable. Most actors on the ground agreed that the EU-Turkey deal had drastically decreased the number of people arriving on the islands from Turkey. The introduction of “hotspots” with specially designed Reception and Identification Centers effectively cut off the flow of refugees out of Greece and prevented the accumulation of people at the border with North Macedonia. Together with the newly built border fences along the Balkan route, the policies put an end to the mass flow of people through the Balkans toward Western Europe.

However, by the summer of 2018, the number of asylum seekers was starting to increase just enough to overtax the system and the facilities. The RICs in Lesbos and Samos have become overcrowded and poorly equipped, and they lack many of the basic services. Instead of the efficiency and standardization of processing envisioned by the “hotspot approach,” the islands have become detention centers where people languish in legal limbo for months and years. The “European refugee crisis” has been solved with its relocation to the periphery of Europe.

Even these “solutions” are only temporary. As an emergency response to a perceived crisis, the EU’s Agenda on Migration is under constant pressure from the changing political landscape in the partner countries and the regions of which they are a part. The protracted nature of the Syrian conflict means that the negotiated externalization agreements might any day lose their appeal to the partner countries. In the meantime, such spatial controls require that the EU is sanguine about many human rights violations its policies generate and condone.<sup>4</sup>

The changes that might strain the EU’s innovative migration management are gathering. On 7 July 2019, the general election in Greece swept away the ruling Syriza Party and ushered in a center-right government dominated by the New Democracy Party (Smith 2019). Prime Minister Kyriakos Mitsotakis had campaigned on a broadly anti-immigration platform. Upon assuming the office, he immediately shut down the Ministry for Migration Policy. Henceforth, the issues related to migration would be housed within the Ministry of Citizen Protection, which deals with public order and security. As the outgoing minister observed, the move signals that the government intends to deal with the issue of migration as a matter of delinquency rather than one of humanitarian concern (Keep Talking Greece 2019).

In November 2019, members of the Greek parliament approved a government bill aimed at improving the situation on the Aegean Islands by speeding up the asylum process and the return to Turkey. In a heated debate that preceded the passage of the bill, the prime minister echoed the commitments outlined in the EU Agenda for Migration and the “hotspot approach” when he argued that the new legislature would unplug the overburdened asylum process by separating bogus refugees from real ones. In line with the emphasis on speed and improving efficiency, the bill also envisions a

shorter and more restricted appeals process for those whose asylum claims are rejected. To further reduce the applicant numbers, the area of the eastern Aegean would receive additional patrols and thermal cameras to help with the interception of boats before they leave Turkish waters (Kokkinidis 2019). As a harbinger of things to come, in late July of 2019 a zeppelin appeared above the hotspot island of Samos (Kokkinidis 2019). The airship was a gift from FRONTEX. It is equipped with a radar thermal camera and an automatic identification system that can monitor the area twenty-four hours a day (*Tornos News* 2019). While Greece is the first EU member state to deploy a zeppelin for coastal surveillance purposes, this pilot project is part of the Joint Operation Poseidon and the larger pan-European maritime and cross-border surveillance agenda.

While the new conservative government in Athens might bring to the EU's Migration Agenda a blunt interpretation the EU might find distasteful, the developments across the Aegean in Turkey and Syria threaten to unravel the entire policy of externalization agreements as an emergency measure for mass population movement. Throughout 2019, Assad's forces, backed by Russian airpower, were advancing against the remaining rebel-held areas in the country's northwest, uprooting thousands of people in the process. Between 12 and 25 December, 235,000 people were forced to flee, many for the second time in the year (OCHA 2019). The vast majority were heading toward the Turkish border for the promise of safety that lies beyond. Yet, in Turkey itself, the mood of the population and the leadership has been turning against the refugees.

Following the government party's (AKP) electoral defeat in the March 2019 municipal elections in Istanbul and Ankara, Erdoğan has become increasingly vocal about the burden that Turkey is carrying for Europe by hosting more than three million Syrian refugees. The large presence of Syrians, especially in Istanbul, is seen as part of the reason for the voter backlash. Several reports in 2019 indicated that Turkish authorities had illegally deported several hundred Syrians back to Syria. Since spring, police had been stepping up random document checks on streets and in other public places to apprehend "illegal migrants." Yet the Human Rights Watch claims that even some Syrians with legal permission to stay in Turkey had been forcefully returned to Syria. The organization spoke to several Syrians, all of whom recounted being held in detention until they agreed to sign a document stating that they had wanted to return voluntarily. Afterward, they were bused to the border and released on the Syrian side (Human Rights Watch 2019). The forced returns are in clear violation of Turkish law, EU law, and the international principle of nonrefoulement. They raise uncomfortable moral questions about the continuation of the EU-Turkey deal but also potentially signal its demise.

The attack on Idlib prompted Erdoğan to issue the most direct threat yet against Europe's apparent inaction. At an award banquet in Istanbul on 22 December, Erdoğan warned the EU that Turkey would not shelter the new group of migrants. He noted that instead of criticizing Turkey's plan to establish "safe zones" inside Syria, the EU should focus on preventing the exodus of affected civilians in the first place. He promised that unless the European states took measures to stop the violence in Idlib, they would see a repeat of the 2015 refugee crisis, with Greece feeling the most direct effect (BBC News 2019).

The EU has not yet altered its policy in light of these growing challenges. Instead, in September 2019, Ursula von der Leyen, the newly elected president of the EU Commission, announced her team of top EU executives. Among the established commissioners was a new supercommissioner with oversight for migration, security, employment, social rights, youth, and education whose new job title was to be commissioner for "protecting our European way of life." The title was roundly ridiculed and criticized for being an embarrassment and out of touch with reality. Liberal and left-leaning politicians accused van der Leyen of pandering to the nationalist and far-right forces (Rankin 2019). Van der Leyen responded by altering the final title to "promoting our European way of life." In face of the mounting problems associated with the EU's responses to the migration "crisis," the leadership has internalized the view that co-opting some of the more hackneyed phrases from the populist right might buy them public sympathy and support.

The technocratic solutions offered by the new migration agenda and the externalization agreements show that the EU elites either do not care or do not understand the source of public unease in Europe that such migration control measures are meant to assuage. As a consequence, they are likely to inflame the sentiments that drive the appeal of the far-right parties rather than dampen them. First, treating the refugee and migration issue as a purely technical problem that can be resolved outside the democratic sphere has depoliticized what is an essentially highly political matter. By removing it from the public arena, the EU denies that people have a direct interest in how the issue is managed and that the costs for its implementation are likely to be unequally distributed among the member states and communities. Under the "hotspot approach," the eastern Aegean islands bear the brunt of the new migration agenda. The emergency measure that was ostensibly adopted to assist Greece (and Italy) with the influx of refugees has turned the islands into open prisons. While local communities resent being forced to serve as an experiment for population control, they have no effective way to impact the EU policymaking. This speaks to the second problem with the technocratic governance approach. The EU's paternalistic attitude to voter concerns generates the kind of anti-EU attitude that contributes to the ap-

peal of the far right and nationalist forces. The EU claims that its emergency measures aim to relieve the pressure created by the mass influx of refugees into the “frontier” states of Greece and Italy. Yet, the measures have not removed the refugees from these states. Greece and the islands specifically still carry the higher burden of hosting most of the arrivals. Under these conditions, the EU’s technocratic form of governance leaves people feeling increasingly disempowered and ignored. In Greece, the sense of resentment is compounded by years of austerity measures and the EU’s refusal to subject them to any form of democratic control. In the islands, the EU’s own economic development agenda is very much implicated in the way the crisis is experienced by the local population. With the tourism industry accounting for as much as 95 percent of economic activity on some islands, the arrival of refugees and decline in tourism has meant that people experience the crisis as a direct impact on their personal well-being and economic security. Finally, the technocratic response to the crisis is typical of the EU’s failure to engage with the deeper causes of public discontent. The primary aim of the “hotspot approach” and various externalization measures seems to be to remove the migrants and refugees from the public site. Such a short-term response, one conceived as an emergency measure, acts as a divergence from the deeper crisis of governance that remains unacknowledged.

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## Notes

1. Moravcsik is among the most prominent advocates of this view. He argues that economic issues are of little interest to voters who find them tedious and complicated. It is acceptable therefore to entrust them to the economic elite of the EU without a concomitant fear of having compromised the values of democracy (Moravcsik 2002: 603–24).
2. Until more recently, the only notable attempt at furthering the integration through security policy was the ultimately doomed plan for the European Defense Community, which in 1954 was rejected by the National Assembly of France. If European states wanted to form a military alliance, they would have to do so outside the structures of the ECSC, specifically, the West European

Union. It is perhaps important to note that almost every attempt at creating a more robust security policy for the EU has been met with rather destabilizing and acrimonious debates that expose more than any other issues deep-seated national differences that exist among the member states. Participation in external wars (often a unifying theme in popular politics) has also not produced a coherent voice or strategy vis-à-vis security policy. Intervention in the Yugoslav wars exposed the EU’s unpreparedness to deal with such complex emergencies. The agonizing decision on the Iraq war was responsible for driving sharp cleavages between the “old” and the “new” Europeans that still linger in public consciousness.

3. Interview with George Karamanis, deputy mayor, Chios, January 2017.
4. Several reports indicate that money from the EUTF has indirectly been used to fund Sudan’s Rapid Support Forces—a government-sponsored paramilitary group, which includes former Janjaweed fighters who were implicated in the genocidal violence in Darfur (Chandler 2018).

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