From Containment to Realpolitik and back again: a realist contructivist analysis of Turkey-EU relations and the migration issue.

Word count: 8500

Abstract

The EU's reaction to the migration 'crisis' of 2015/16 was to 'shower' the Turkish government with 'gifts' to secure cooperation on the Aegean crossing. This led to accusations of realpolitik after Brussels made concessions to Turkey despite Ankara's liberal democratic deficit. This paper examines EU policy before, during and after the migration 'crisis' to argue that the situation is more nuanced than this suggests. Turkey-EU accession had been in a state of 'containment' for nearly a decade before the migration issue. Brussels' reaction to it raised questions about the EU's liberal identity but it backtracked quickly once the extent of illiberality following the attempted *coup d'état* emerged. Turkey-EU relations then returned to a pre-migration state of 'containment' whereby Turkey remains a candidate but progress towards accession depends on liberal progress. Using

Realist Constructivism, it concludes the EU's liberal democratic standards remain, but the liberal bar is pliable according to circumstances.

Introduction

This paper argues the EU's relations with Turkey have come a full circle since 2014. They have gone from the containment which had become the norm since 2007, to the apparent possibility of real progress in 2015/16 and back to containment following the attempted *coup d'état* in July 2016. The stress of the migration issue obliged the EU's realpolitik response in contravention of its liberal principles but the extreme illiberality of the post-*coup* purge, of tens of thousands of people, was too illiberal to endorse. Turkey can no longer progress, but it remains a candidate despite illiberality. It is 'contained' to maintain its cooperation with migration.

In theoretical terms the paper argues that the EU remains a liberal actor, but it is not as liberal as it was – or aspired to be. It takes a realist constructivist approach to argue that identity is fluid and varies according to the constraints in which the actor or institution is working. So, whilst the EU self-identifies as a liberal democratic institution, according to the Copenhagen criteria, the degree of liberality exhibited by the EU – and the member states - is subject to the geostrategic stress placed upon it. The deals with Ankara were made despite illiberality in Turkey and, even though the EU has backtracked on accession 'progress' with Turkey following the post-*coup* abuses of human rights, the scale of its illiberality is still being underplayed by EU actors who need to maintain dialogue with Ankara for wider geostrategic reasons including the migration 'issue'.

This paper first examines the EU's policy of 'containment' towards Turkey before the migration issue in the spring of 2015. It then considers the deals with Turkey in 2015 and

2016 and asks what their implications are for EU policy identity. Can the EU be said to behave according to norms or strategy? Taking a realist constructivist framework, it argues that EU policy vacillates according to circumstances. It traces the process by which this happened using media and interview sources to assess the nature of EU policy identity and how liberal it has been. Overall it argues the EU errs on the side of liberal norms but is also subject to the need for a self-interested realist policy, particularly at times such as the migration issue. The paper concludes that the EU remains more liberal than not, as it has returned to 'containing' the Turkish case but is less 'liberal' than it was before.

Theory and Methods

The research puzzle asks how the EU reconciled increasing illiberalism in Turkey with the need to maintain cooperation over the migration 'issue'. Realist Constructivism (Barkin, 2003, 2010) assesses to what extent the EU adhered to its own standards of liberal democracy. The research question, therefore, is to what extent the EU deals on migration and the policy towards Turkey since have been shaped by interests or normative concerns at different stages of this process.

The theoretical approach sits within a broad constructivist epistemology which presumes the world is 'of our making' (Onuf, 1989). Hence, 'facts' do not exist independently of the human beings who understand them but are the "product of human interaction in a social world" (Fierke, 2015, p. 163). As Daddow (2013, p. 159) has explained, under a constructivist approach, '....identities and interests are not magically given to us. They are made by us in our interaction with the world "out there"'. Hence, Onuf introduced the notion of the social construction of reality into the study of world politics but it was Wendt (1992, 1999) who formulated it specifically as a theory of International Relations which challenged the

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Positivism of Neorealism on its own terms. Whilst Onuf, and others, continued this "post-positivist" approach more radically as Post-structuralism, Social Constructivism worked within presumptions of state-centricity. However, it remained a critique, particularly of Neorealism and developed as a conduit for liberal norms and values.

More recently, Realist Constructivism has reintroduced the possibility that within this "world of our making" it is logical for our norms and values to be liberal *or* realist *or* moveable on a spectrum between them. Barkin contends Wendt was arguing against the positivism of *Neo*realism rather than Realism *per se* and Social Constructivism should be seen as a theory rather than a metatheory. To do so pits Social Constructivism in opposition to Realism when it should be in opposition to Materialism, Rationalism and Positivism. For Barkin, policy can be driven by a liberal or self-interested logic and this movement can explain changes in policy and therefore identity. 'Neither pure realism nor pure idealism can account for political change, only the interplay of the two, subject to the assumption that morality is contextual rather than universal.' (Barkin, 2003, p.337). Therefore, this paper adheres to the constructivist approach that norms and values are social constructs but incorporates Barkin to argue it cannot be presumed the EU's values are always at the "liberal" end of the spectrum despite the emphasis placed by the EU on the Copenhagen criteria.

This "realist turn" can also be seen in the literature on Normative Power Europe. Manners (2002, p.241) argued EU identity and influence was based around the principles of 'democracy, rule of law, social justice and human rights'. However, the nature of 'normative power' has since been contested including by Manners himself (2006; see also Sjursen, 2006, 2017) and is now more nuanced. It is accepted that the EU self-identifies as a liberal

democratic actor but is periodically subject to outside constraints which constrain this ideal. Marcussen *et al* had already argued, in 2001, that the relationship between interests and identity in EU policy should be a 'matter of empirical study' on a case by case basis. More recently de Sarto (2015) has approached this material from another dimension to argue that liberal norm-based behaviour is itself a '…a utility-maximizing strategy' thereby blurring the liberal/realist relationship further. What is becoming clear is that it should not be seen as a binary choice but instead as a spectrum along which movement is possible. A Realist Constructivism approach enables this nuance to be taken account of within a social constructivist framework.

In this way, the aim is to analyse the extent to which the EU adheres to its own standards of democracy by looking at EU-Turkey cooperation on refugee policy. It is also necessary to consider whether the Copenhagen criteria are a valid measure of liberal "democracy" as they have developed to manage enlargement, rather than wider policymaking. The Copenhagen criteria evolved from the 1960s Birkelbach report and '….defined a general concept of being European for the specific purposes of joining the Community' (Karamouzi and de Angelis 2017, p.2) to deal with the southern Mediterranean enlargement round. However, whilst the criteria have taken on broader significance to EU identity and have come to embody the prioritising of liberal democracy more generally. This can be seen in the derisive reaction to the migration deals by international civil society including the UN and Amnesty International. Additionally, Turkey's EU membership prospects are enmeshed with the refugee issue in this case because membership "progress" was the *quid pro quo* for Ankara's cooperation since 2015. Hence the Copenhagen criteria are the EU's default identity and were seen as the standard by which it should be judged in dealings with Turkey over migration.

This paper seeks to establish to what extent EU policy towards Turkey since the migration 'crisis' has been driven by liberal, or self-interested, norms. The theoretical framework allows for the theorization of policy change and is utilized here to explain the apparent ebbs and flows of EU policy towards Turkey. The research puzzle is only puzzling if Social Constructivism is viewed as a *liberal* theory. Instead, this paper seeks to establish the sequence of events in Turkey-EU relations since 2014 and to account for any change in policy and identity in dealing with the migration issue.

Process-tracing (George and Bennett, 2005: Checkel, 2008, Collier, 2011, Bennett and Checkel, 2012) is assessed by the strength of the qualitative evidence provided for a given explanation of events and this research draws inductive conclusions from a detailed examination of events from mid-2015 to date. It uses news-media from the Nexis database and eight semi-structured interviews carried out within the Brussels institutions in 2017 and 2018. The data is analysed to establish the causal mechanisms involved in the EU's response to the migration issue *vis-a-vis* Turkey.

A 'containment' strategy: the EU as a normative actor #1

For the EU as a normative power, its relationship with Turkey is contradictory as Turkey's illiberality is not a recent phenomenon. The relationship only exists because of the Cold War and the need to keep Turkey within the 'West' – as opposed to the Soviet sphere. However, although the first move was made in 1959, Turkey made minimal progress towards accession until it showed willingness to meet the EU's normative standards in the 1990s. Only after the Turkish Prime Minister, Bulent Ecevit, acknowledged the importance of the Copenhagen criteria with the Ecevit Letter of 1999 (Steinbach, 2000), and subsequently

began to make constitutional changes necessary to comply up to 2004, was it possible for any progress towards accession.

However, progress receded after accession negotiations were opened in 2005 because Turkey failed to maintain the pace of liberal reform. A vicious circle became apparent whereby Turkey's advocates were unable to make its case for accession without the necessary liberal progress as evidence and so the incentive to reform withered. What is relevant here however, is that the bar for Turkey's progress towards EU accession remained high: Ankara remained a candidate but could not progress without liberal reforms. This 'containment' strategy was facilitated by a relatively benign international situation and little changed until 2011 when the Arab Spring destabilised the region and the Turkish government shifted from illiberality towards authoritarianism.

The European Commission's 'Positive Agenda' of May 2012 was an attempt to restart the moribund relationship as the Arab Spring continued despite declining illiberality in Turkey. However, it did not offer actual accession 'progress' merely a rejuvenation of the political-will surrounding it and had only limited success (Phinnemore and İçener, 2016). The containment policy continued for another two years, but only after Turkey's cooperation was required, in dealing with refugees from Syria[1], did the EU move on from 'containment'. Instead it was obliged to offer accession 'incentive' to an authoritarian state thereby posing a dilemma for a "liberal-democratic" institution.

Containment in this context means the ongoing management and placation of Turkey as candidate with no actual progress towards accession due to failure to comply with the Copenhagen criteria. For example, although Turkey was chided by the EU for its illiberal

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[1] As well as the security situation in northern Syria

response to the Gezi Park protests in 2013, there was no real threat to its candidacy but also no prospect of progress either. The EU tolerated a level of illiberality to maintain the relationship, but accession progress depended on liberal reforms.

The migration issue as an existential threat

This containment strategy in Turkey-EU relations masked the contradiction of dealing with an illiberal state. The EU was not obliged to confront the inconsistency until the migration issue in mid-2015 which was the '…largest influx of refugees since World War II' (Lavenex, 2018, p.2). It acquired 'crisis' proportions in summer 2015 for three main reasons: 1) the difficulty of dealing with the scale of the problem; 2) The illiberal reaction to it by some governments of EU member states on the migration route and 3) Increasing populism in member states, some with impending general elections. This evoked a 'sense of panic' within EU institutions and a need to ensure 'at all costs' that millions of refugees did not arrive in (western) Europe[2].

The EU's handling of this situation has been criticized for being slow to react and then daunted by the scale of the problem. Menendez said: '…the gathering of the refugee crisis was hard to miss, at the very least since 2013. And still, the Union missed it.' (2016, p.396). Nick Witney, of the European Council on Foreign Relations labelled it a 'shameful shambles'[3] which turned a difficult situation into a political crisis for the EU and a catastrophe for the migrants.

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[2] Interview 5, May 2017. See also comments at the 2016 Davos Economic Forum in January 22nd 2016, Agence France Presse, *'Panic' as Europe faces demise over refugees, top officials say*

[3] Nick Witney at the European Council on Foreign Relations quoted in the Financial Times, September 19th 2015, *Croatia shuts crossings from Serbia as it fights to handle influx; Migrants crisis.*

The migration issue was not the cause of the EU's problem but a 'trigger' factor in an already weak system. 'The so-called European 'refugee crisis' should therefore more accurately be termed a crisis of the Common European Asylum System (CEAS) which was unable to deal with the scale of the problem which emerged in 2015 (Neimann and Zaun, 2018, p.3) and stems from what Lavenex (2018) has described as the 'organized hypocrisy' of the CEAS. Indeed, as Menendez has outlined, weak asylum policy also led to the '…overloading of the Italian asylum system in 2014 and the virtual collapse of the Greek asylum system in 2015' (Menendez, 2016, p.388) as the scale of the problem took the EU by surprise.

The policy it had in place was not designed to deal with the quantity of people in 2015 which 'ballooned into millions' and the EU was surprised by numbers which, ironically, would now be considered small[4]. A weak system was required to deal with a situation beyond expectations precipitating a sense of panic that it could jeopardize the EU's existence. The Head of the European Commission, Jean-Claude Juncker, said the EU had to 'safeguard the spirit behind Schengen' as it was '…one of the pillars of the construction of Europe.'[5]

This structural weakness was exacerbated by the reaction, to the migration flow, of member states such as Hungary which shut its borders with Serbia and Croatia in October 2015[6]. This closed the 'Balkan route' trapping tens of thousands of migrants in Greece (Weber, 2016, p.38; see also Trauner, 2016). The Hungarian Prime Minister, Victor Orban, had voiced

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[4] Interview 6, May 2017

[5] Financial Times, November 26th 2015, *'Stem flow of migrants to EU or risk fate of the Roman empire'; Rutte warning as Dutch prepare for EU presidency   Hopes pinned on Turkish camps*

[6] Agence France Presse, October 16th 2015, *Hungary to close Croatia border to migrants at midnight*

opposition to the EU's plan to distribute Syrian refugees across the member states early on saying: 'The European idea that somebody allows refugees into their own country and then distributes them to other member states is mad and unfair.'[7] Thereafter the policy of blocking migration through Hungary and treatment of those already there was highly illiberal. Orban said migration was a threat to European 'civilization', linked migration directly to a threat of terrorism,[8] built a fence on the border, and suspended Hungary's participation in the Dublin III Agreement saying 'the boat is full'[9]. Peter Sutherland, the special representative for international migration for the UN Secretary-general, Ban Ki Moon, said in September 2015:

> The EU is in disarray. Faced with waves of asylum seekers from conflict-ridden states, too many European countries have acted selfishly and unilaterally, undermining any chance of an effective collective response to the crisis. Rather than calmly handling an eminently manageable situation, they have made Europe appear incompetent, near hysterical and without integrity.[10]

Orban's approach was also reflected in member states such as France, Netherlands and Germany which had active populist oppositions. The European Union's policy actors were aware of the electoral threat posed by the *Front Nationale* and *Partij voor de Vrijheid* which could be exacerbated by migration on this scale. The result was that the EU member states'

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[7] Agence France Presse, May 12th 2015, *Refugee quotas divide EU: sources*

[8] Agence France Presse, June 9th 2015, *Hungary steps up anti-immigration rhetoric in face of refugee surge*

[9] Agence France Presse, June 23rd 2015, *Hungary halts key EU asylum rule, saying 'the boat is full'*

[10] Financial Times, September 3rd 2015, *A brief chance for Europe to rescue its integrity.*

reactions to the migration crisis '…displayed a lack of solidarity and unwillingness to find a unified solution to the worst humanitarian crisis of our time' (Batalla-Adam, 2017, p.56).

> Our leaders were looking forward to the elections of 2017 and realized that bringing in the refugees could have increased the chance of extremists in these countries of being successful (Geert Wilders and Marine le Pen). That would have been the final blow for the European integration project. Maybe we would not have had such a dramatic outcome, but it was possible[11].

The populist Eurosceptic opposition in western Europe was viewed as a threat to the EU: 'The threat from Marine le Pen was real. On our mind was the end of the EU. There was a paralysis of fear'.[12] The EU felt its 'honour had to be defended no matter what' even if that meant 'sacrificing its agenda'. The European institutions were aware the deals would compromise liberal democratic principles but felt they had no choice.[13]

The 'deals' with Turkey: 'Realpolitik at its worst'?

The migration deals, of November 2015 and March 2016, were the evolution of the 2013 EU Turkey Readmission Agreement (TRA).[14] This had established procedures for dealing with irregular migration from Turkey to Europe as part of the regular Turkey-EU relationship (European Union, 2014) and interest in it was reignited by the 2015 'crisis' (Turhan, 2016). The November 2015 deal, which followed several weeks of negotiation, was ratified by the

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[11] Interview 5, May 2017

[12] Interview 1, June 2017

[13] Interview 7, May 2018

[14] Incidentally signed days before the split with the Gülen movement unleashed serious allegations of high level corruption within the AKP government.

Council of the European Union on November 29th, 2015. It agreed to initiate regular Turkey-EU summits, to 're-energize' the accession process and open chapter 17 of the *acquis communautaire.* Additionally, there was the promise of visa liberalization, euro 3bn of humanitarian aid and the Joint Action Plan on 'migration management' to curtail the number of people reaching Greece from Turkey (Turhan, 2016). The Commission also delayed the 2015 annual progress report, which highlighted a negative trend in the respect for the rule of law and fundamental rights, until after the November general election in Turkey.

There was a scathing reaction to the November deal: A senior EU diplomat, quoted in the Financial Times, said Erdoğan had gone from being 'untouchable' in the summer of 2015, due to human rights violations, to the 'dinner companion of choice' of the EU's three presidents (of the European Parliament, Commission and Council) as well as the German Chancellor, Angela Merkel, just a few months later.[15] The former EU Ambassador to Ankara, Marc Pierini, described it as 'EU realpolitik at its worst' as it made no mention of human rights, restrictions on press freedom or the Kurdish issue[16]. This was all attributed to 'political panic' by Pierini who said the EU had gone to Erdoğan 'on our knees' and 'now he is playing us'.[17]

A further agreement was reached in March 2016 under which there would be an 'acceleration' of visa liberalization and irregular migrants would be returned to Turkey in exchange for migrants in Turkey to go to the EU. An additional euro 3bn was agreed for humanitarian aid and work to 'upgrade' the Customs Union was 'welcomed' by both sides.

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[15] Financial Times, October 15th 2015, *Turkey offered sweeteners for migrants; Brussels summit*

[16] Agence France Presse, November 30th 2015, *Less to Turkey-EU deal than meets the eye: analysts*

[17] Financial Times, November 23rd 2015, *EU bows deeply to Erdoğan in bid to relieve migrant crisis*

Moreover, the accession process would be re-energized, again, with the opening of chapter 33[18] and preparatory work on other chapters would 'continue at an accelerated pace' (European Commission, 2016a). The March 2016 deal was criticized by the United Nations High Commission on Refugees (UNHCR 2017) because it planned to return migrants to Turkey despite its human rights record and fairness of its asylum system[19]. Amnesty International said the EU was 'shirking its responsibility to people fleeing war and persecution' by using Turkey as a 'border guard' (Amnesty International, 2016). The humanitarian charity *Medecins Sans Frontieres* (MSF) said the deals were a 'historic abdication of legal and moral responsibilities' to refugees[20]. MSF has since refused to accept funding from the EU in protest at the 'shameful' policy which '...focused on deterrence rather than providing people with the assistance and protection they need.' The MSF International General Secretary, Jerome Oberreit, said the EU-Turkey deals had '...placed the very concept of 'refugee' and the protection it offers in danger'.[21]

The legality of the deals has also been questioned: they were finalised by member states rather than the 'EU' which took scrutiny outside the jurisdiction of the General Court of the European Union (Batalla-Adam, 2017, p.46). This created 'the illusion of trying to solve the irregular migration and human trafficking issues and assisting Syrians seeking asylum' but was allegedly in contravention of the 1951 Geneva Convention (Moldovan, 2017, p.197). Tunaboylu and Alpes (2017) outline the difficult legal status of Syrians returned to Turkey such as non-eligibility for refugee status (see also Düvell, 2018). The continuation regardless

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[18] Chapter 33 of the acquis communautaire refers to financial and budgetary provisions.

[19] Agence France Presse, March 8th 2016, *Turkey, Greece commit to EU plan despite UN legal fears*

[20] Agence France Presse, May 13th 2016, EU-Turkey deal 'historic abdication' of Europe's moral duties: MSF

[21] Agence France Presse, June 17th 2016, MSF rejects EU funds over 'shameful' migrant policy

of the deals coupled with the pledges for accession progress despite Turkish illiberality –

which was much in evidence as the deals were being made - was a change in long-term EU

behaviour as previously, also under considerable geostrategic pressure, the normative

obligations had remained sacrosanct. With migration in 2015/16, Erdoğan was 'showered

with gifts' regardless[22] and whilst the November 2015 deal was conditional, the March 2016

equivalent, was pragmatic in avoiding illiberality in Turkey.

The Humanitarian Aid Commissioner, Christos Stylianides justified compromises on the

grounds of geostrategic need: 'I know this deal remains controversial. I would like to say

that there is no solution without Turkey. There is no other solution than having a deal with

Turkey. We need them, they need us - that is all.'[23] Similar sentiments were expressed in

other EU institutions: 'We can talk about whether this was morally acceptable…whether it

was worth it...(but) the risk (of populism) necessitated the deal we did with Turkey.' [24] It was

acknowledged that Turkey 'held a lot of the cards' and the EU had no choice but to accept

the deal.[25] 'It was not a perfect deal…and it raises moral questions but…overall…I think it

was fair and the best we could have done if we wanted to preserve the EU as we know it.' [26]

This reality limited the negotiating power of the EU – and increased Turkey's leverage –

causing one European Ambassador to comment that: 'They (the Turks) are trying to exploit

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[22] Financial Times, October 15th 2015, Turkey offered sweeteners for migrants; Brussels summit

[23] Agence France Presse, April 28th 2016, *Contested Turkey deal 'only solution' in migrant crisis: EU commissioner*

[24] Interview 5, May 2017

[25] Interview 6, May 2017

[26] Interview 5, May 2017

this situation in a way that some countries find unacceptable.'[27] Another official said that member state self-interest overrode the EU's normative identity: '…if you want to be cynical, as soon as Austria, Germany and Sweden realized you can walk here from Syria we were looking at Turkey.'[28] The result was that the EU prioritized '…its strategic interests over the defence of its core values in its relations with Turkey.' (Saatçioğlu, 2016, p.3). It made illiberal deals with an illiberal state. Ultimately the EU felt it had no choice but to make the deals with Turkey to stem the migration numbers despite human rights considerations. De Marcilly and Garde (2016, p.8) have argued the deals placed the EU in a 'trap of false stability' forced upon it by the migration issue and the lack of cooperation between member states to deal with it.

Containment revisited: Back to the Future

This section argues the EU's realpolitik in mid-2015 was an aberration in the overall pattern of Turkey-EU relations which, since then has reverted to 'containment'. The pledge to open a chapter and liberalise visas, prompted by the panic of the migration issue, was curtailed by increasing illiberality following the attempted *coup* in July 2016. The return to containment means that the prospect of accession progress is no longer real, but Turkey remains a candidate and the EU is muted in its response to creeping authoritarianism.

Illiberality in Turkey was in evidence as the deals were negotiated: Journalists and academics were persecuted and prosecuted for daring to scrutinise AKP policy with many charged under terrorism legislation. In November 2015 the Editor-in-Chief of *Cumhuriyet*

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[27] Financial Times, November 19th 2015, *EU-Turkey talks sour as Erdoğan belittles Juncker*

[28] Interview 3, June 2017

newspaper[29], Can Dündar, was accused of espionage and revealing state secrets following publication of footage suggesting the state security service *Millî İstihbarat Teşkilatı* (MIT) had transferred weapons to (Islamic State) jihadists in Syria.[30] Dündar was cleared of espionage but convicted of revealing state secrets and in May 2016 was sentenced to five years and ten months in prison. He was freed on appeal and went to Germany. The EU's reaction to the *Cumhuriyet* case overall was muted. In January 2016, Enlargement Commissioner Johannes Hahn expressed 'shock' at suggestions Dündar[31] and his co-accused should receive life sentences[32]. A few weeks later Federica Mogherini praised Dündar's release on bail by Turkey's constitutional court – which at that time was not controlled by the AKP – as 'a needed step in the right direction in Turkey for guaranteeing freedom of expression'[33].

Another case playing out as the deals were made was the state takeover of the Gülen-affiliated '*Zaman*' newspaper in March 2016. This was pre-*coup* attempt but followed the acrimonious split between Gülen and the AKP in December 2013. Hahn said he was 'worried' about the situation, Turkey needed to 'respect the freedom of the media', and rights were 'not negotiable'[34]. Similarly, in January 2016, 1,128 academics in Turkey, and beyond, signed a petition against hostilities in eastern Turkey. The *'Barış İçin*

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[29] A serious broadsheet newspaper associated with the secular liberal establishment

[30] Agence France Presse, November 27th 2015, *Protests in Turkey after reporters arrested for 'spying' over arms report*

[31] Dündar was also added to the later *Cumhuriyet* indictment

[32] Agence France Press, January 27th 2016, *Prosecutors seek life terms for two anti- Erdoğan journalists*

[33] Agence France Press, February 28th 2016, *Erdoğan says 'no respect' for ruling to free Turkish journalists*

[34] Agence France Presse, March 5th 2016, *Anti- Erdoğan newspaper defiant after dramatic seizure*

Akademisyenler' (Academics for Peace) petition protested allegations of human rights abuses against civilians in the eastern Turkish (Kurdish) towns such as Cizre and Nusaybin which have since been substantiated by the UN (UN, 2017). The petition called on the Turkish government to '…abandon its deliberate massacre and deportation of Kurdish and other peoples in the region…'. In response, the government launched an investigation into the signatories on charges of terrorism, inciting violence and insulting the state under Article 301 of the Turkish Constitution. Nearly 150 signatories were charged with making propaganda for a terrorist organization and others lost employment (Butler and Ertür, 2017). The EU institutions' response was to call for a ceasefire between the Partiya Karkerên Kurdistanê (Kurdistan Workers' Party – PKK) and the AKP and 'strongly' condemn 'all kinds of terrorism'[35] but they stopped short of highlighting the actions of the Turkish state. Both the Dündar case and the *Barış İçin Akademisyenler* petition happened at a time when negotiations on the second migration deal were especially sensitive.

The migration 'issue' was seen by some within the EU institutions as an opportunity: in the long-term Turkish accession was a positive attribute for the EU, and this had created space for Turkey's advocates to 'sell' the Turkish case to sceptical member states despite Turkey's illiberality. 'Senior bureaucrats…they were saying that this is a gift…we will package it…. It was an opportunity to revive the accession process…with visa liberalization…for the good of our agenda in Turkey.'[36]

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[35] Agence France Presse, January 25th 2016, *EU calls for 'immediate ceasefire' in Turkey's Kurdish southeast*

[36] Interview 7, May 2018

After migration we had a positive story to tell. 'How many migrants do you want

to see walking into your nice village in Austria…' and have that sort of dialogue.

We could present Turkey as being the most generous host nation of refugees. [37]

Accordingly, chapter 33 of the *acquis communautaire* was opened in June 2016, as agreed in the March 2016 deal and visa-liberalisation was under discussion.

However, this changed with the attempted *coup* in July 2016. The subsequent purge of alleged Gülenists 'blew' the political momentum created by the migration issue to push the accession process forward and took away '…the positive energy which the migration issue had provided.' [38] More than 100,000 people lost their jobs through association with the Gülen movement, dubbed 'terrorist' by the AKP following the *coup* attempt (Amnesty International, 2017). An official in the European External Action Service said: 'People thought visa liberalization could happen but the *coup* in July 2016 stopped that...our approach...doing favours for Turkey…it lost its sense and logic on that night'[39]. It was accepted that whilst the *coup* attempt was serious, the AKP government's reaction was disproportionate in terms of scale and illiberality as '…there were not 150,000 plotters. That would have been one hell of a plot'[40] and a sense that the AKP was now using it as an excuse to quash opposition[41].

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[37] Interview 3, June 2017

[38] Interview 3, June 2017

[39] Interview 7, May 2018

[40] Interview 3, June 2017

[41] Interview 2, June 2017

The EU institutions' response to the post-*coup* 'purge' was a formulaic normative

reiteration: Federica Mogherini, said the '….rule of law has to be protected in the country,

there is no excuse for any steps that take the country away from that.'[42] Jean-Claude

Juncker, expressed concerns in July[43] and stated in November 2016 that Turkey must

respect the migration deals and it had '...distanced itself from European principles and

values…' since 2014.[44] However, some member states were more direct in their opposition:

the Austrian Chancellor, Christian Kern, stated: 'We have to face reality: the membership

negotiations are currently no more than fiction. We know that Turkey's democratic

standards are far from sufficient to justify its accession.'[45] In December, the European Union

presidency, Slovakia, issued a statement saying no new chapters would be opened with

Turkey '…in the prevailing circumstances'. Austria had refused to sign the statement only

because it didn't go far enough: it wanted the accession negotiations to be completely

frozen.[46]

The opportunity presented by the migration crisis to progress Turkish accession and

implement visa liberalization[47] therefore evaporated following the purge. This stretched

political expedience towards Turkey generated by the deals and created an excuse for

Turkey's erstwhile critics, such as Austria. However, the EU institutions have remained

reluctant to be outspoken in their criticism of Turkey's human rights record. There have

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[42] Agence France Presse, July 18th 2016, *EU pushes Turkey on rule of law after coup crackdown*

[43] Agence France Presse, July 29th 2016, *Big risk' of EU-Turkey migrant deal collapsing*:

[44] Agence France Presse, November 26th 2016, *EU-Turkey migrant pact 'must be respected': Juncker*

[45] Agence France Presse, August 3rd 2016, *Austria wants EU to end Turkey membership talks*

[46] Agence France Presse, December 13th 2016, *EU says won't expand Turkey membership talks.*

[47] Interview 3, June 2017

been numerous occasions since the attempted *coup* when normative comment was warranted.

For example, the HDP co-leaders, Selahattin Demirtaş and Fiğen Yüksekdağ, have been in prison since November 2016 for alleged links to the PKK but this has elicited very little reaction.[48] Mogherini and Hahn issued a joint statement expressing 'grave concern' and stressed the importance of the rule of law and due process. The statement said action against the PKK – listed by the EU as a terrorist organization - was 'legitimate' but basic principles of democracy should not be undermined (European Commission, 2016b). There have been more arrests of HDP MPs but no further statements from the European Commission or External Action Service since November 2016 and member states have kept quiet '…because they do not want to upset Erdoğan because of the migration issue…if we confronted Turkey…we might find ourselves in a sticky situation. For as long as the refugees are in Turkey in my view we are in a weak position'. [49]

Cumhuriyet has also been targeted further by the Turkish government since the case of Can Dündar. In October 2016, 17 editorial staff members were arrested and 12 were remanded in custody. All 17 faced trial in July 2017 on charges of supporting terrorist groups - the PKK, the far-left Devrimci Halk Kurtuluş Partisi-Cephesi (Revolutionary People's Liberation Party-Front, DHKP-C) and FETÖ[50] - through coverage in the newspaper and Dündar was included *in absentia*. All but four of the defendants were released on bail in September 2017 but

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[48] Their parliamentary immunity from prosecution had been lifted by the Turkish government in March 2016.

[49] Interview 5, May 2017

[50] Since early 2015 the Gulen movement has been referred to in government discourse as the Fethullahçı Terör Örgütü (Fetullahci Terrorist Organisation, FETÖ)

remain on trial facing long prison sentences. The official EU strategy has hardened a little

but remains the reiteration of normative maxims.[51]

Furthermore, reaction to the April 2017 referendum which centralised political power in the

presidency rather than parliament has been underplayed. It gave Recep Tayyip Erdoğan

control over the budgetary and executive functions and influence over the judiciary[52]. Many

people who would have campaigned for a '*hayir*' (no) vote in the referendum, such as the

HDP leaders Demirtaş and Yüksekdağ, were in prison on 'terrorism' charges, and others

were afraid to speak out following the post-*coup* 'purge'. However, EU institutional

reactions to the referendum, were restrained: Mogherini urged the AKP to seek a 'national

consensus' and later re-stressed the Copenhagen criteria.

> 'The accession process continues, it is not suspended, not ended (although) we
>
> are currently not working on any new chapters…The criteria are very clear…. and
>
> if Turkey is interested in joining… it knows very well what that implies, especially
>
> in the field of human rights, rule of law, democracy and freedoms.'[53]

The EU institutions were similarly lowkey when Turkish staff of Amnesty International were

arrested in summer 2017. This followed a report in May 2017 claiming the number of

people imprisoned or sacked since the attempted *coup d'état* in July 2016 was 100,000. In

June 2017 the Amnesty Turkey chairperson, Taner Kılıç, had been arrested on charges of

being a member of a terrorist organisation[54] and in July 2017 another nine members of

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[51] EU Observer, July 25th 2017, *EU and Turkey fail to defuse tensions*

[52] New York Times, April 20th 2017, *Erdoğan claims vast powers in Turkey after narrow victory in referendum.*

[53] Agence France Presse, April 28th 2017, *EU's Mogherini says still wants Turkey to join*

[54] Agence France Presse, June 7th 2017, *Turkey Amnesty head arrested over alleged Gülen links*

Amnesty International staff, including a German and Swedish national, were detained on charges of Gülenist links to the attempted *coup* of July 2016[55]. Their October 2017 court indictment alleged they were 'aiding' and/or being a member of various organisations outlawed by Turkey as 'terror' groups including the PKK, the Gülenist movement and the DHKP-C. All but one were released in November 2017 but Taner Kılıç remained in prison until August 2018. The defendants are still charged with membership of a terrorist organisation (FETÖ) pending the trial outcome[56]. The EU's reaction has been to reiterate the usual normative requirements saying '…today, as we have consistently done in the past, we stressed that our cooperation and dialogue need to be sustained by concrete, positive steps in the areas of rule of law and fundamental freedoms.'[57]

Interests, Norms and Realist Constructivism

The EU's default position on Turkish accession is one of containment in which Turkey remains a candidate, despite illiberality, but accession progress is conditional on liberal democratic progress. However, this is subject to the implications of extraneous 'events' which apply intermittent stress-tests to the Turkey-EU relationship. The eastern enlargement round applied such a test in the early 2000s because Turkish cooperation was required to further accession for the countries of central and eastern Europe in the absence of a deal on Cyprus. At that time, however, the EU maintained the normative requirements of the Copenhagen criteria although the definition of 'sufficiently fulfilled' was liberally interpreted (Martin, 2015). Notwithstanding semantic discussions of what constitutes

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[55] Agence France Presse, July 8th 2017, *Erdoğan compares detained activists to coup plotters*

[56] https://www.amnesty.org.uk/actions/free-taner-Kılıç

[57] Deutsche Presse Agentur July 25th 2017, *High-level EU-Turkey meeting fails to defuse tensions*

'sufficient fulfilment', the situation returned to 'containment' soon after negotiations were opened because Turkey failed to maintain liberal progress (Schimmelfennig, 2009).

A more recent test of the EU's containment strategy for Turkey has been the migration issue of 2015/16. Illiberal deals were made with Turkey which was offered accession progress to expedite migration controls despite deterioration of its human rights situation. The illiberality was in evidence at the time of the deal negotiations but various actors within the EU felt there was no choice because of the illiberal reaction to migration by some member states and populist opposition in others which had upcoming elections.

Hence, when the number of people affected by illiberality in Turkey was in the hundreds, before the attempted *coup d'état,* the EU was able to carry on. However, the 'purge' of 100-150,000 people which followed it was too illiberal for EU actors to ignore. Since mid-2016 Turkey has been maintained as a candidate, but no more chapters have been opened. EU officials now state that Turkish accession progress has been 'parked' and 'everyone knows there is nothing happening on the enlargement process'.[58] Hence, similarly to 2004/5, dealings with Turkey have reverted to 'containment'.

Therefore, we can see how the EU assesses illiberality: the pre-*coup* situation was acceptable for apparent accession progress although only because the EU felt obliged. However, post-*coup* the scale of illiberality was too big to ignore and the relationship reverted to pre-migration deal containment.[59] It should be noted that the immediate threat of mass migration across the Aegean has passed. UNHCR reports that 13,700 people made the Aegean crossing between January and June 2018 compared to 158,400 in the same

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[58] Interview 8, July 2018.

[59] Interview 5, May 2017

period of 2016[60]. Moreover, the electoral possibility of Eurosceptic governments in France and the Netherlands also failed to materialise. However, people are still making the perilous journey from Turkey to Greece and anti-immigrant Euroscepticism remains an electoral issue in member states such as Italy and Germany[61] and a political issue in Italy and others such as Hungary and Poland in advance of the European Parliament elections in 2019[62]. The crisis may have receded, but it has not gone away.

The EU needs to 'contain' Turkey as a candidate even if it can no longer expedite Ankara's accession. This may also explain the EU institutions' reaction to the 2018 general election in Turkey: Mogherini highlighted Turkey's liberal democratic shortcomings but maintained the veneer of a relationship[63] and soon after the EU member states agreed to release the next tranche of 3bn euros agreed in the March 2016 migration 'deal'.[64] EU policy has come a full circle since 2015 (see figure 1).

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[60] UNHCR Refugees & Migrants Arrivals to Europe In 2018 (Mediterranean) Jan-Jun 2018. Available at:

https://data2.unhcr.org/en/documents/download/64891

[61] Germany has been a key counterpoint to calls by Austria to stop the accession process with Turkey altogether.

[62] Agence France Presse, August 28th 2018, *Salvini and Orban ready anti-migrant fight ahead of EU elections*

[63] See: https://ec.europa.eu/commission/commissioners/2014-2019/hahn/announcements/statement-high-representativevice-president-federica-mogherini-and-10_en

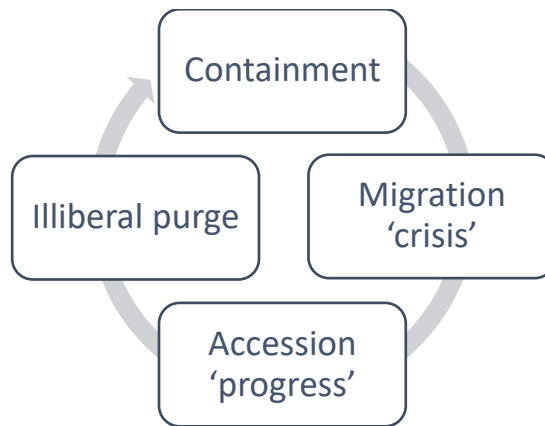[64] Council of the EU, press release 248/18, 29th June 2018.

Figure 1

Whether the EU is driven by interests or norms *vis-à-vis* Turkey therefore varies depending on the geostrategic and political stress it is under. Its reaction to the migration issue was 'realpolitik' because of existential panic and was carried out in alleged contravention of human rights law and the liberal norms of the EU. Viewing the migration issue as an 'opportunity' to override normative concerns could also be viewed as self-interested behaviour.

However, subsequent illiberal events mean accession progress has stalled and some member states – notably Austria – want to suspend candidacy altogether even though the migration stress-test still exists: people are still crossing the Aegean - the 2018 figure is higher than 2017 - and migration remains a sensitive political topic in many EU many states. Whilst realpolitik is no longer the case, Turkey remains a candidate and the EU's response to its increasingly audacious illiberalism is muted because Brussels needs to maintain Ankara's cooperation.

The under-stated response of the EU to issues such as the jailing of Demirtaş and Yüksekdağ, the persecution of Amnesty International officials and the establishment of presidential governance is also indicative of this muted response due to geostrategic and political stress.

The EU's identity remains liberal, but this is not absolute, and it is not constant. However, as Realist Constructivism contends, it would be wrong to suggest the EU is able to be a constant liberal actor as it must adapt to the prevailing conditions. It has a liberal identity, but this changes according to events and the migration issue forced the liberal bar lower than it had previously been.

Conclusion

This paper has assessed the implications of the migration issue on EU identity and policy towards Turkish accession. Before 2015/16 the accession process was static due to the increasingly illiberal nature of the AKP government. Turkey was 'contained' as a candidate, but accession progress was not feasible due to its illiberal governance. However, the migration issue provided an impetus to offer progress in accession in return for stricter management of the Aegean crossing. Whilst questions were asked about the normative value of offering accession progress to an illiberal state and the ethics of returning vulnerable refugees to Turkey, a chapter was opened, and visa-liberalisation discussed. However, the 'purge' of 150,000 people after the attempted *coup d'état* quelled the appetite for accession progress and Turkey has returned to containment as a candidate only. Neither accession progress nor visa-liberalisation is likely, but the EU maintains a 'softly-softly' approach to illiberality including the 'purge' and the widespread use of anti-terrorism legislation against political opposition.

It is not contested that the response to the migration crisis was contrary to the EU's liberal identity. It was an ethically questionable, but instrumental, reaction to an extreme situation. However, it is argued that this does not contradict constructivist theory – merely a constructivist theory which presumes itself to be liberal. The relationship between (liberal)

norms and interests is not binary but iterative and dependent on circumstances. Realist Constructivism, as opposed to Wendtian (liberal) Social Constructivism, can account for this policy turn and the subsequent backtrack to 'containment'. Whilst the illiberality of the purge was too much for accession progress, a certain amount of illiberality can be tolerated to maintain the relationship and, crucially, the migration deals.

The EU remains a normative institution with liberal values enshrined in the Copenhagen criteria, but these are expendable given a serious existential threat and are malleable depending on circumstances. Whilst fears at the time of the migration deals, in 2015/16, that the EU had forsaken its liberal ideals have not come to pass, its commitment to liberality has been tarnished. It still exists, having been re-instated following the attempted coup, but the EU's norms have been shown to be elastic under geostrategic pressure.

Acknowledgements

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   University Press)

Appendix 1 – interviews

NO	DATE OF INTERVIEW	INSTITUTION OF INTERVIEWEE
1	1st June 2017	European Commission – DG NEAR
2	1st June 2017	European Parliament
3	1st June 2017	European Commission – DG Enlargement

4	31st May 2017	European Parliament
5	31st May 2017	European External Action Service
6	30th May 2017	European External Action Service
7	16th May 2018	European External Action Service
8	12th July 2018	European Commission – DG Enlargement