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Whose safety?
Differentiated justice within the "safe countries / places" discourse concerning the EU-Afghanistan Joint Way Forward agreement

Penny - Panagiota Koutrolikou

Assistant Professor, School of Architecture, National Technical University of Athens, e-mail:pkoutrolikou@arch.ntua.gr

INTRODUCTION

In the present politically turbulent times, numerous yet diverse events are described and defined as crises, denoting an acute sense of emergency (Allen et al, 2018; De Genova et al., 2018). Irrespective of the increase or decrease of the number of emergencies, crises and emergencies (even imminent or alleged ones) have become a dominant way of governance of the social and the political (Athanasiou, 2012). Ever since 2015, when the number of refugees arriving in European shores multiplied extensively, migration and asylum topped both the EU policy priorities and many national political agendas. 2015 came to signify what was described as "Europe's refugee crisis" somehow implying that Europe was the actor mostly affected by the 'crisis' rather than the people actually seeking refuge to Europe. Subsequently, the Asylum and Mi-

gration agenda, became one of the most contested and influential portfolios of the EU, with an array of high level meetings taking place and new (mostly harsher) policies being introduced. At the same time, it became a defining issue for electoral campaigns and politics which, in a context of continuing austerity and Islamophobia, embedded (far)right populism in European political arenas (Koutrolikou, forthcoming).

As several researchers have argued, governing migration through containment, securitization and externalization of border / territorial control is not completely new for Europe (Huysmans, 2006; Hyndman, 2012; Maillet et al, 2015), making a point of the significance of the coming to force of the Schengen agreement in the 90s. However the post-2015 European climate, border closures along the Balkan route and deep splits among European partner countries, accelerated trends of not only hardening the allocation of asylum but of trying to deal with refugees' mobility away from European territories.

This approach was mostly implemented through a "carrot and stick" strategy involving development aid incentives, security apparatuses and infrastructures and (re)categorizations of deservingness (Bunyan, 2018) – all of these expressed and incorporated through diverse 'partnerships', 'agreements' and 'statements' that have received considerable criticism. For example, it entails several and multi-level arrangements (in order to avoid their legal definition as agreements or not) with mostly African but also Asian countries (such the EU Emergency Trust Fund for Africa, or even the Operation Sophia, the Memorandum of Understanding between Italy and Libya and the evacuation programme from Libya to Niger, see Akkerman, 2018). The European development aid that such agreements promise (focusing on democratization, conflict prevention and economic development) could, at times, be perceived as a trade-off (Garcés-Mascareñas, 2017) and seem to supplement the harshening of the criteria for receiving international protection (Craig and Zwaan, 2018).

One such arrangement, the common statement between the EU and Turkey came into effect (20th of March 2016), offering financial and political support to Turkey[1] in order for the latter to 'manage' (actually obstruct) refugees crossing to Europe and to receive rejected asylum seekers and all the people categorised as 'irregular migrants'. In other words, supporting that Turkey is a "safe third country" for asylum seekers and refugees who passed through its territory, despite strong criticism about such

designation and about the 'deal' as a whole[2]. Some months earlier, the EU deal with Afghanistan was agreed upon and made the front pages – along with voiced concerns and criticisms (mostly from human rights organisations but not only) about the potential repercussion of such agreement.

The migration – development nexus that can be traced in most of the recent EU external migration policies and agreements is crucial in understanding the implicit or explicit coercive strategies from European Institutions and Governments to countries in need of financial aid and resembles centuries' old practices of imperialism and exploitation. Whilst keeping this mind this paper focuses on one aspect of such policies; on the differentiated access to and deserving-ness of rights and particularly to the right to live in a safe place based on the 'origin' of the subjects in question. In other words, by juxtaposing the different designations of place-based safety for European and for specific Third Country nationals it wishes to debate the position of the rightful subject – a positions that crucially impacts the lives of individuals but which is also central in the discussions about inequality and injustices.

THE "SAFE COUNTRIES" CONCEPTS

In our fear dominated societies, safety and security have become major priorities to be ensured (often at all costs) increasingly shaping political and policy agendas and, more often than not, shaped in juxtaposition to a 'threatening Other' and/or to looming emergencies (Pain and Smith, 2008). Safety and security have become complicated and contested notions also within the EU Migration agenda. On one level, increased securitization and control have become permanent features in the recent debates about migration in the EU, while institutions and policies tasked with their implementation expand their influence and enlarge their budgets.

Beyond these aspects though, safety has become an integral feature in the asylum process and a pivotal one for those asking for international protection. As versed in article 3 of the Universal declaration of human rights (as well as in other charters of rights), security of person is right to be safeguarded for everyone. However, besides this more general articulation, evaluations of the risky security situation of a person has become far more convoluted in asylum legislation and applications. At present,

there are three significant notions affecting such evaluations: two legal ones, the "safe country of origin" and the "safe third country", and a rather loosely articulated one, the safe country/place for returns.

As described, a 'safe third country' is a "country through which an applicant transits, which is considered as capable of offering him or her adequate protection against persecution or harm" (European Parliament Research Service, 2017, UNHCR, 2010 and for a more detailed analysis see Moreno-Lax, 2015). Although this concept was incorporated in earlier Directives and Regulations (such as the Directive 2013/32/EU on international protection), it forms an important part of the proposed common Asylum procedures legislation (Council of the European Union, 2018; Amnesty International, 2017). The EU-Turkey statement might well fit in this concept.

The safe country of origin on the other hand is a country where its own citizens are generally not persecuted. Specifically (AIDA, 2015:3) a "country is considered as a safe country of origin where, on the basis of the legal situation, the application of the law within a democratic system and the general political circumstances, it can be shown that there is generally and consistently no persecution as defined in [the recast Qualification Directive], no torture or inhuman or degrading treatment or punishment and no threat by reason of indiscriminate violence in situations of international or internal armed conflict".

Lists regarding safe countries of origin are not a new thing for many European countries, although the countries included may differ, since their adjudication as 'safe countries' depends not only on geopolitical situations (such as conflicts, persecutions etc) but also on issues that the host countries consider significant for them (for example the number of people of the specific nationality already living in the country or the 'desirability'). As the Dutch Minister for Migration[3] wrote, "a country is considered to be a safe country of origin if people are not prosecuted based on, for example, race or religion, torture or inhumane treatment. Asylum seekers from safe countries of origin will, however, be given the opportunity to demonstrate why the country may not be safe in their specific situation. However, asylum seekers from a safe country will have to do more to demonstrate that they need protection. The list of safe countries already included over 50 countries. […] Asylum seekers from safe countries hardly have any chance of obtaining an asylum residence permit. Their asylum applications

are handled with priority in an accelerated procedure. The accelerated procedure consists of one interview. Asylum applications filed by asylum seekers coming from a safe country may be rejected as manifestly unfounded. This means that rejected asylum seekers will have to leave the Netherlands immediately. They are also imposed an entry ban for the entire Schengen Area for a period of two years".

At the moment, at least 13 European member states have national lists of countries of origin[4], although "suggests that the administrative practice may exist in countries with no formal SCO list" (Apap and Orav, 2015). More recently, since 2015 (when the Asylum procedures directive 2013/32/EU became applicable) the EU is trying to legislate an EU list of safe countries of origin[5]. The argument for its establishment has been the speedier and more effective management of migration and international protection in light of rapid increase of people arriving and applications for international protection. For the moment, this list includes Albania, Bosnia & Herzegovina, Macedonia, Kosovo, Montenegro, Serbia and Turkey[6]. As expected, human rights organizations have voiced concerns and strong critiques on the notion of the proposed list, since, as argued it would curtail the claimants' rights and not country should be simply judged as 'safe' (AIDA for Turkey, UNCHR, Amnesty International, Human Rights Watch, Fundamental Rights Agency, L'Association Européenne des Droits de l'Homme (AEDH), EuroMed Rights and the International Federation for Human Rights (FIDH)).

Finally, the third concept of growing 'popularity', the one that this paper focuses more, is that of "safe country (place) for returns" rejected asylum-seekers or people who are residing in Europe without the necessary legal documents (permits) are forcefully or 'voluntarily' returned. As mentioned by H. Bjelica (2016) "under international refugee law and international human rights law, it is not illegal to deport people who have failed in their bids for asylum, provided [their] cases have been judged equitably and the home country is not so dangerous that there is a general ban on returning anyone. At the moment, only two countries are judged to be in this category: the UNHCR has issued non-return advisories for Syria (dangerous for everyone) and Libya (dangerous for foreigners)".

The frenzy desire of the EU to limit migration towards its territories has resulted in an increased use of the concept of safe country (or places within a country) for returns concept, even in places still considered as non-secure by most assessments. A

renewed – and stricter – Returns Directive (proposed) along cooperation pressures towards countries through the development – security – migration nexus, have resulted in increased numbers of deportations and 'returns' with adverse consequences. One such case is that of Afghanistan, which will be briefly outline further on.

THE EU – AFGHANISTAN JOINT WAY FORWARD (JWF)

On the 2nd of October 2016, European Union signed an agreement with Afghanistan: the "The EU-Afghanistan Joint Way Forward on Migration issues". As stated the Joint Way Forward "reflects the joint commitment of the EU and the Government of Afghanistan to step up their cooperation on addressing and preventing irregular migration, and on return of irregular migrants, who after the consideration of all relevant international law and legal procedures cannot be granted international protection status" (Joint Way Forward, 2016).

As Afghanistan Analysts mention, reaching this agreement hasn't been an easy process. On the contrary, it involved tactics of 'stick and carrot' (or in Gramscian terms of coercion and consent) in order for the government of Afghanistan to agree on the specific document. "The EU has negotiated the agreement with the Afghan government as part of the run-up to this week's Brussels donor conference, where international donors will pledge aid for Afghanistan for the coming four years. Some Afghan officials seem to have felt strong-armed. The Afghan minister for refugees and repatriation, Sayed Hussain Alemi Balkhi, refused to sign the document, leaving the duty to a deputy" (Rasmussen, Guardian, 2016)[7].

As characteristically noted by From Jelena Bjelica[8]

"Finance Minister Hakimi again told the parliament that no document had yet been signed on deporting failed asylum seekers, but added that, "partner countries do expect us to cooperate with them on the refugee issue […] The EU countries cannot deal with the refugee crisis alone." He concluded by saying: "If Afghanistan does not cooperate with EU countries on the refugee crisis, this will negatively impact the amount of aid allocated to Afghanistan. Germany cannot provide aid money and deal with the refugees at the same time."

The agreement can also be read as an enforced trade-off between International

Aid (EU in this case) (including security and civil reforms as well as development assistance) and readmission of Afghan citizens whose live or are in Europe without papers or whose asylum claims have been rejected. And Aid is particularly important for a country whose only 10.4% of its GDP comes from domestic revenues and 40% depends on Aid.

"Liza Schuster, a Kabul-based migration expert, said the deal was an example of "how developed countries are able to push through their agenda in countries where there simply isn't the capacity in the ministries to push back". She added that there had been little transparency in the negotiation process. "There has been no oversight, no consultation, and hardly any mention of it to any of the migrant organisations or rights organisations [in Europe]. There was no chance to mount resistance against it," Schuster said." (Rasmussen, 2016, Guardian)

During the negotiations the Government of Afghanistan argued (Bjelica, 2016) that returns would be on a voluntary basis, with financial support and would not include any vulnerable groups. However the deal includes forced returns and, in practice, it paves the way for deporting vulnerable groups as well[9]. As soon as the deal was agreed, deportations of Afghan citizens from European countries increased rapidly. After pressures from humanitarian groups, this practice was temporary suspended (by some countries) after the very lethal attack in Kabul (2017) but it was soon resumed.

As expected, reactions and criticism to the agreement abounded (from rights groups and organizations as well as from refugee support groups) as did for the increased numbers of deportations to Afghanistan. Despite all these, and despite the present situation in the country, deportations are still going on while the number of asylum applications decreases. In order to by-pass obstacles for returns to Afghanistan, the Joint Way forward mentions "placing a time-limit of four weeks for the Afghan authorities to identify Afghan nationals and issue a travel document, after which time a European travel document can be issued instead" (ECRE, 2017).

In addition, the Internal Protection Alternative (IPA) is often considered in asylum applications, whereby it can be decided that protection to the applicant can also be provided in specific places within the country. As stated in EASO's Country Guidance note (2018), and considering individual circumstances and networks, "IPA in the cities of Kabul, Herat and Mazar-e Sharif could be considered reasonable for

the following profiles, including where the applicant has no support network in the respective IPA area: Single, able-bodied adult men and Married couples of working age without children". Yet the same guidance goes in arguing that the same IPA may not be considered reasonable if individuals lack a support network in the respective area for those belonging in the categories of single women, unaccompanied children, family with child(ren), applicants with severe illnesses or disabilities, applicants who were born and/or lived outside Afghanistan for a very long period of time, elderly. In other words, the way this guidance is written, doesn't recommend against the use of IPA to the specific cities even of individuals belonging to vulnerable groups if they have a support network in the area. In addition, many people with Afghan citizenship were not residing there or were not even born in the country. Millions of Afghans live in Iran and Pakistan (although in the past 10 years they were increasingly urged to leave these countries) and their deportation to Afghanistan might lead them to a place with no connection or social ties (Schuster and Majidi, 2013; Lafazani 2008)

Although the security situation in Afghanistan has been deteriorating (ECRE, 2017; ECOI, 2017), some Country of Origin Information reports (EASO, 2018; Home Office 2017) still try to portray some part of the country – especially in the city of Kabul – as less threatening for returns. As specifically stated in a UK tribunal, "that those parts of Kabul city where returnees are most likely to live are 'the poorest areas of the city or its environs' and have been less affected by indiscriminate violence, stating that the 'great majority [of attacks] have concentrated on areas where the government or international organisations have their offices or where their employees frequent'". These poor areas of the city are mostly informal areas where also the thousands of internally displaced people struggle to live often in severe poverty, thus placing further burdens on the livelihoods of the people living there.

The Joint Way forward was negotiated and agreed upon with the Eurozone crisis on its back, in the midst of what has been termed as Europe's 'refugee crisis', in a climate of rising Islamophobia and stigmatization of European Muslims as 'terrorists' and with increasing electoral and discursive success of far-right / racist political parties. This is reflected on a restricted non-paper (March 2016)[10] where it is argued that because of the deteriorating security situation together with the deteriorating economic situation and the pressure in Iran and Pakistan upon Afghans "there is a

high risk of migratory flows to Europe". Thus, and despite security and humanitarian concerns, the non-paper supports "that there is a need for a common definition of safe areas in Afghanistan".

As such, the Joint Way Forward and the subsequent safe areas definitions (and the resulting deportations) make the 'everyone' of the Universal Declaration of Human Rights much less inclusive despite stated commitments to safeguarding and respecting rights.

CHANGING POSITIONS AND JUXTAPOSITIONS

Based on the above directives and recommendations, if one is an Afghan citizen then there are significant chances that s/he will be returned to a safe area within Afghanistan. But what happens if one is a European citizen? Then what is considered as a safe area (or country) changes radically. For example, as stated by the Foreign and Commonwealth Office (UK):

The Foreign and Commonwealth Office (FCO) advise against all travel to all districts in the following provinces of Afghanistan:

Kapisa; Kunar; Nangahar; Laghman; Nuristan; Ghazni; Khost; Paktika; Paktiya; Logar Wardak; Kandahar; Uruzgan; Zabul; Helmand; Nimroz; Badghis; Farah; Faryab; Jowzjan; Badakhshan; Baghlan; Kunduz and Takhar.

The FCO advise against all travel to the following specific districts of Afghanistan: Kabul (Surobi district); Parwan (Charikar City, Bagram, Ghorband/Siaghird, Jabal Saraj, Kohi Saraj, Salang, Sayed Khel and Shinwari districts); Daikundi (Gizab and Kajran districts); Ghor (Dolina/ Du Layna and Pasaband districts); Herat (Shindand district); Balkh (Chaharbolak, Chamtal/Chimtal, Daulat Abad/Dawalatabad, Hairatan Port, Kaldar and Shortipa/Shur Tapa/Shor Tepah districts); Sar-e-Pul (Sar-e-Pul City and Sayad districts).

The Foreign and Commonwealth Office (FCO) advise against all but essential travel to all other provinces and districts of Afghanistan.

This is clearly represented in the following map visualizing travel warnings for citizens of European countries (this one is from the UK but many other European countries have similar ones).
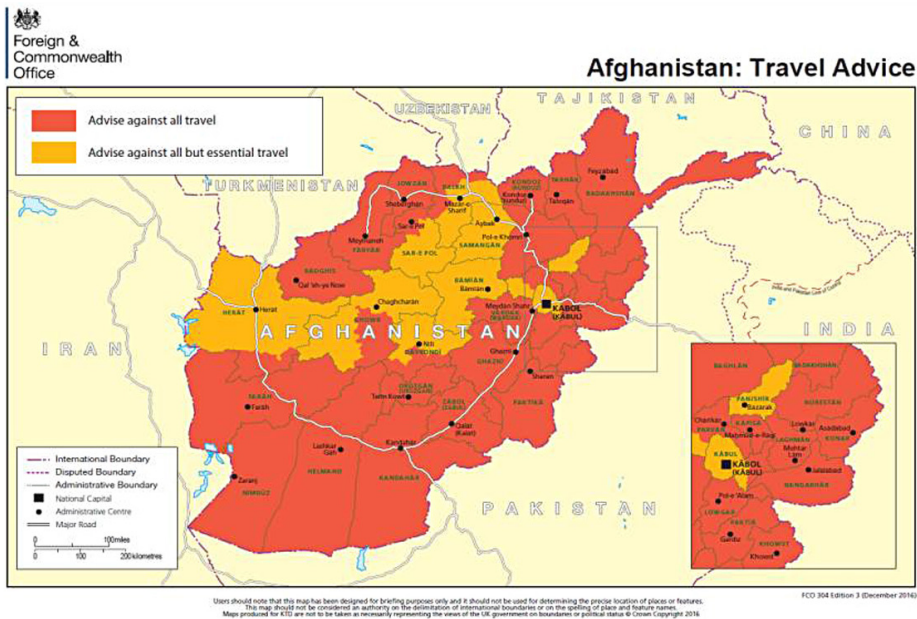
FCO is not the sole governmental agency providing travel warnings to its citizens. Similar travel warnings are issued by the respective agencies in Austria, Germany and the Netherlands (among others). Many of these agencies are also providing baseline country information to EASO in order to formulate its guidance. Surprisingly (or maybe not so much), the evaluations of safety differ substantially according to the 'deserving subject'.

An array of international and national laws guarantee (actually or supposedly) the fulfilment of certain minimums deemed essential for dignified and safe human life (such as Charter of Human Rights, or Charter of Fundamental Rights of the European Union etc). Other protective laws have also been put in place (mostly after wars) in order to deal with people facing adverse situations that violate these rights. To all of these one might add other, equally significant but complementary rights such as the social, economic and cultural rights. However, in addition to wars and conflicts, socio-economic injustices and the extreme deprivation that millions of people are facing should/are valid reasons for wanting to escape from them and have a more secure life (see also Pogge, 2007)

This brief outline of the case of Afghanistan and the Joint Way Forward (an extreme case but not the only one) underlines hypocritical behaviours, hegemonic positions and, in the end, grave injustices. First and foremost, it illustrates the discrepancies of who is the deserving subject of rights in the implementation of refugee protection, since not everyone is entitled to "the right to life, liberty and security of person" or to "a standard of living adequate for the health and well-being of himself and his family". When international protection is judged vis-à-vis political/electoral and possibly economic gains and threatening public discourses, then it could be safe to argue that the actuality of such rights is highly positional and geopolitical (Basaran, 2011). It depends on who are the subjects claiming rights and in which geopolitical context and era.

More and more it seems that we are going back to the deserving / undeserving debate that shaped much of the welfare and poverty discussion. This time the debate is taking place on exclusive political and legal battlegrounds and it involves lucrative businesses such as weapons, trafficking, recourse monopolies, security and development. But it also takes place on sea and land borders and on human bodies. It concerns the materialities of human existence.

Yet, beyond the aspects of rights, the way the EU Migration and Asylum agenda is integrated and imposed via the EU International Cooperation and Development agreements, replicates strategies of power and domination to impose its own hegemonies through the development – security – migration nexus. If rights are a form of a social contract as some theorists argue, then their violation, manipulation or selective use in the context of migration (and not only) raises questions about the kind of polity one wants to live in.

NOTES

1. Financial aid for taking care of refugees and political support regarding the facilitation of the Visa process and implicitly supporting the current of Erdogan's government.

2. The common statement has been judged not as a European agreement since the European Court of Human Rights considered it outside its jurisdiction.

3. Netherlands has one of the toughest policies on asylum.

4. Austria, Belgium, Bulgaria, Czech Republic, Germany, France, Ireland, Luxembourg, Latvia, Malta, Netherlands, Slovakia and the United Kingdom.

5. Proposal for a Regulation of the European Parliament and of the Council establishing an EU common list of safe countries of origin for the purposes of Directive 2013/32/EU of the European Parliament and of the Council on common procedures for granting and withdrawing international protection, and amending Directive 2013/32/EU http://www.europarl.europa.eu/RegData/etudes/BRIE/2015/569008/EPRS_BRI%282015%29569008_EN.pdf

6. Countries will be re-examined and new countries will be added to the list. EU member-states can propose to add countries but they cannot have their own lists

7.   https://www.theguardian.com/global-development/2016/oct/03/eu-european-union-signs-deal-deport-unlimited-numbers-afghan-asylum-seekers-afghanistan

https://www.theguardian.com/global-development/2016/dec/15/first-wave-afghans-expelled-eu-states-contentious-migration-deal-germany-sweden-norway

8.   https://www.afghanistan-analysts.org/eu-and-afghanistan-get-deal-on-migrants-disagreements-pressure-and-last-minute-politics/

9. As for example has been the case with a number of teenagers or elderly deported from Germany and Netherlands.

10. http://statewatch.org/news/2016/mar/eu-council-afghanistan-6738-16.pdf

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