and residence permits (for economic migrants) in EU embassies in certain third countries.

At a first glance, this would seem risky, with possibly unforeseen dangers and challenges for implementation – for example, the challenge of deciding who is a refugee and who is an economic migrant. But we are doing it already in the EU, with the help of screeners, debriefers, interpreters and so on. We would need to arrange for appropriate infrastructure and procedures in the embassies too, as well as staff with appropriate experience for this task.

Given the fear that such a policy might create a ‘pull factor’ for many more refugees and economic migrants to come to Europe, certain criteria would have to be laid down, such as those described in the European Agenda on Migration 2015.¹ There are of course difficulties to be overcome but migrants in all categories are anyway coming to Europe illegally and in their thousands, maybe risking their lives at sea and being exploited by organised criminal networks in order to reach their destination.

But if a refugee could go to a European State’s embassy nearer to home and apply for asylum there, and if that was granted, they would have the possibility of being legally escorted to that European State. In this way the refugee would avoid the hazards of the long journey to Europe, would not be exploited by the criminal networks outside or inside Europe, and would not risk their life on the Mediterranean or at the land borders.

Refugees are the main priority for Europe now; nevertheless, the same policy (strengthening of legal channels for migration) could be applied to economic migrants but with one basic difference, that is, the reinforcement of the EU return mechanism for those migrants whose visas expire or who have entered the EU illegally. This action should not give the impression that Europe ‘is closing the doors’ for economic migrants but rather send the message that migration has to become regulated for economic migrants too, so that they can enjoy the privileges of freedom, security and justice, like Europeans do.

This policy cannot bring immediate results; it will take time. But, thus far, exclusive use of suppression and law-enforcement measures have not dealt with the migration problem and cannot be expected to.

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¹ http://tinyurl.com/EuropeanAgendaMigration

The extra-territorial processing of asylum claims

Sarah Léonard and Christian Kaunert

Calls for the creation of asylum-processing centres outside the EU are being renewed – but significant objections and obstacles remain.

In November 2014, German Interior Minister Thomas de Maizière floated the idea of establishing ‘welcome and departure centres’ in major transit countries in North Africa, where applications for asylum would be processed. By removing the obligation to be on European soil in order to apply for asylum, the external processing of asylum claims would remove the necessity for asylum seekers to embark on perilous and costly journeys across the Mediterranean to Europe.

The extra-territorial processing of asylum claims is not a new idea. As long ago as 1986, Denmark tabled a draft resolution in the United Nations (UN) General Assembly to create UN centres where asylum claims would be processed and the resettlement of refugees would be coordinated among all states. A few years later, the idea of establishing European processing centres was considered at the Intergovernmental Consultations on Migration, Asylum and Refugees following
a Dutch initiative. The Danish government also advocated the idea of ‘reception in the region’ during the Danish Presidency of the Council of the European Union (EU) in 2001.

In 2003, the British government tabled the most elaborate proposal on extra-territorial processing to date as part of a ‘new vision for refugees’. Among various measures aiming to better manage asylum on a global scale, it suggested establishing ‘transit processing centres’ for asylum seekers, notably on migration transit routes to the EU. It was suggested that these centres could be financed by the participating states, possibly with some financial support from the EU budget. Those granted refugee status would be resettled in the EU on a quota basis, whereas those whose applications were rejected would normally be returned to their country of origin. Various countries were named in media reports as potential hosts for the transit processing centres, including Albania, Romania, Croatia, Russia, Turkey, Ukraine, Iran, Somalia and Morocco.

The proposal was discussed at several EU meetings in early 2003 and the governments of some EU Member States expressed some interest in the proposal but others were more sceptical or even critical, in particular the governments of Germany and Sweden. Several reports by journalists and non-governmental organisations also highlighted legal, moral and financial issues. In the face of such criticisms, in June 2003 the British government dropped its plan for the extra-territorial processing of asylum claims.

Nevertheless, it was not long before the idea of extra-territorial asylum processing resurfaced. Following a much criticised incident in mid-2004, the then German Interior Minister Otto Schily, who had been critical of the British proposal one year earlier, proposed creating EU-funded ‘safe zones’ in North Africa. His ideas were further detailed in a paper entitled ‘Effective protection for refugees: fighting effectively against illegal migration’. It suggested that asylum seekers and migrants should be intercepted in the Mediterranean and returned to extra-territorial processing centres where pre-screening would be conducted to determine which asylum seekers should be transferred to either the EU or ‘safe countries in the region of origin’ for full refugee status determination.

An idea tested outside Europe
The ‘transit centres’ or ‘processing centres’ that have been discussed over the years have differed with regard to their proposed location and functions. Nevertheless, in practice, there has not yet been any extra-territorial processing of asylum claims by the EU or any of its Member States. In contrast, some countries outside Europe have had practical experience of the extra-territorial processing of asylum claims, in particular the United States (US) and Australia.

The US implemented a system of extra-territorial processing of asylum claims for dealing with flows of asylum seekers from Haiti in the 1980s and 1990s. From 1981 onwards, US border guards intercepted boats carrying asylum seekers from Haiti and interviewed them on board its coastguard vessels to assess the merits of their claim. From 1994, intercepted Haitian asylum seekers were transported to a temporary holding centre on the US naval base at Guantanamo Bay for a preliminary hearing of their refugee claim. In the same year, the US Administration concluded agreements with Jamaica and the Turks and Caicos Islands to conduct full refugee status determination on their territories of asylum seekers fleeing from Haiti. The hearings were monitored by UNHCR. The policy was ended once the political situation in Haiti changed in the mid-1990s.

Australia launched the so-called Pacific Solution (later also known as the Pacific Strategy) in 2001 by which asylum seekers intercepted at sea on unauthorised vessels were transferred to offshore processing centres on Nauru and Manus Island in Papua New Guinea. The offshore facilities were managed by the International Organization for Migration (IOM) with the support of a private security company. Although the Australian government ended the Pacific Solution in 2008, a return to the offshore processing of asylum applications was announced in August.
2012. It has proved very controversial and has been challenged in court.²

Advantages, problems and challenges
Those advocating for extra-territorial processing of asylum claims argue that it has several advantages over the processing of spontaneous asylum claims in Europe. First of all, it would reduce the need for asylum seekers to embark on long and perilous journeys to reach Europe. This would save lives, as well as reducing the profits made by the organised crime groups that smuggle asylum seekers and migrants into European countries. In addition, it would offer asylum seekers protection closer to their region or country of origin. This would be particularly advantageous to those who aim to ultimately return home. Establishing an EU-wide joint system for the extra-territorial processing of asylum claims is seen as entailing even more benefits, including a more efficient use of resources such as expertise, staff and infrastructure, as well as a more harmonised system to determine asylum claims across the EU.

However, extra-territorial processing – depending on what form it takes – gives rise to a wide range of challenges and problems, some of which are very significant. First of all are the numerous legal issues. The first problem concerns a possible violation of the right enshrined in the Universal Declaration of Human Rights to seek and enjoy in other countries asylum from persecution. Another important problem concerns the possible violation of the principle of non-refoulement, that is, the right not to be returned to a country where life or freedom would come under threat. Given the human rights records of many of the countries in which transit processing centres might be established, it is not clear how it could be guaranteed that no refoulement would take place, since it is not only direct refoulement but also indirect or ‘chain’ refoulement that is prohibited by the Refugee Convention.

Finally, there are many practical challenges inherent in extra-territorial processing. It is very likely to be costly and resource-intensive, for example requiring that reception facilities meet adequate standards with regard to sanitation, water, electricity, etc. Although a looser interpretation of external processing via the creation of EU-sponsored refugee camps in Turkey combined with large-scale resettlement has also been proposed, offshore centres for the extra-territorial processing of EU asylum claims as previously conceived of are unlikely to become reality in the near future, given the numerous problems inherent in the concept.

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1. The ‘Cap Anamur’ boat incident in which a group of asylum seekers rescued from the Mediterranean were then expelled from Italy. www.unhcr.org/4101252e4.html