

The extra-territorial processing of asylum claims

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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

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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-2004,¹ 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 very significant procedural issues, such as which procedural rules would apply as there are still differences amongst Member States in respect of asylum

procedures. The same can be said about reception conditions for asylum seekers.

Secondly, the extra-territorial processing of asylum claims raises a crucial moral question. There is no denying that extra-territorial processing has generally been of particular interest to governments seeking to limit the numbers of migrants and asylum seekers arriving on their territories. Further, measures that seek to ensure that asylum seekers either stay in or are returned to countries outside the EU for the processing of their asylum claim can also be seen as an attempt to shift responsibility onto other states, especially for persons whose asylum claim will be turned down. This is particularly problematic considering the less favourable socio-economic conditions and the relative lack of asylum expertise and reception capacities that characterise the countries where asylum processing centres could be established.

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

2. See McKay F ‘A return to the ‘Pacific Solution’’, *Forced Migration Review*, issue 44 www.fmreview.org/detention/mckay