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Extra-territorial processing of asylum claims and the creation of safe refugee shelters abroad

Report[1]
Committee on Migration, Refugees and Displaced Persons
Rapporteur: Mr Domagoj HAJDUKOVIĆ, Croatia, Socialists, Democrats and Greens Group

Summary

Given the continuing high number of migrants who lose their lives when boarding the boats of human smugglers, in particular embarking from Turkey, Libya and Morocco, member States should provide legislative and practical measures to enable individuals to apply for asylum through extra-territorial processes as an exceptional measure on humanitarian grounds.

However, as a general principle under international law, people should apply for refugee status in the first safe country of arrival. Any country of first arrival must receive and duly process such applications. Refugees must not be denied their right to asylum in any country because another country is allowing extra-territorial asylum applications.

In addition, measures are urgently needed to provide safety and protection to refugees and migrants in first countries of arrival in accordance with the standards required under the 1951 United Nations Convention relating to the Status of Refugees, for example in the UNHCR camps in Turkey, Jordan and Libya.

1. Reference to committee: Doc. 14314, Reference 4305 of 30 June 2017.

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A. Draft resolution[2]

1. The Parliamentary Assembly is deeply concerned about the continuing high number of migrants who lose their lives when boarding the boats of human smugglers, in particular embarking from Turkey, Libya and Morocco, in their desperate efforts to reach European countries on the other side of the Mediterranean Sea. The Assembly also deplores the severe violence to which migrants are exposed in Libya and the Lake Chad region. It is of utmost importance that all member States pursue concerted efforts to halt this human tragedy.

2. A considerable number of these migrants have the right to asylum or other forms of international protection. They should therefore not be obliged to embark in this way or to use other means of illegal transport which put their lives at risk in addition to the existing threats in their home countries. Instead, they should be offered safe ways of applying for asylum in conformity with the 1951 United Nations Convention relating to the Status of Refugees.

3. Recalling the historic examples of the extra-territorial issuance of visas on humanitarian grounds by Raoul Wallenberg and other outstanding diplomats in Budapest towards the end of the Second World War, the Assembly calls on member States to take legislative and practical measures to enable people to apply for this protection through extra-territorial processes as an exceptional measure on humanitarian grounds.

4. The Assembly reaffirms that, as a general principle under international law, persons should apply for refugee status in the first safe country of arrival and that any country of first arrival must receive and duly process such applications. It emphasises that this fundamental obligation cannot be derogated from on the grounds that a third country provides for the possibility of processing asylum claims extra-territorially in that country of first arrival. Refugees must not be denied their right to asylum in any country because another country is allowing extra-territorial asylum applications.

5. Referring to Recommendation (97) 22 of the Committee of Ministers containing Guidelines on the Application of the Safe Third Country Concept, the Assembly recalls that, when a third country is considered safe, applications for asylum are generally examined in accelerated procedures. Therefore, such non-substantial examinations could be made through diplomatic or consular missions of member States in safe third countries, on the condition that the criteria developed by the Office of the United Nations High Commissioner for Refugees (UNHCR) are fulfilled and that applicants can challenge the status of safe country. This extra-territorial processing of asylum claims would prevent people from being deceived by human smugglers about opportunities for asylum.

6. Referring to the Guidelines on human rights protection in the context of accelerated asylum procedures adopted by the Committee of Ministers on 1 July 2009, the Assembly recalls that States receiving asylum applications are required to ensure that return of asylum seekers to their country of origin or any other country will not expose them to a real risk of a death sentence, torture or inhuman or degrading treatment or punishment, persecution, or serious violation of other fundamental rights which would, under international or national law, justify granting protection.

7. Welcoming the initiative by the French Government in 2017 to provide 3 000 visas and transport to France for refugees from Chad and Niger, the Assembly notes with regret that many member States do not have legislation which allows for extra-territorial processing of asylum claims on humanitarian grounds.

8. The Assembly further welcomes the fact that the UNHCR has resumed its evacuation of vulnerable refugees and asylum seekers out of Libya and provides official Asylum Seeker Cards for Syrian refugees registered in Egypt, but regrets that in 2013 it had to end its global Refugee Status Determination Programme due to the considerable increase in applications. Through the latter programme, the UNHCR assisted approximately 50 States in dealing with asylum applications and had directly assisted applicants in an additional 20 States globally.

9. If sufficient provision were made for refugee status determination in applicants' home countries, in countries of first arrival or in third countries, migrants would not have to expose themselves to life-threatening journeys or human smuggling. Therefore, the Assembly calls on member States to:

9.1. consider introducing in their domestic law, if such provisions do not already exist, the possibility to apply for asylum or humanitarian visas at diplomatic or consular missions abroad;

2. Draft resolution adopted unanimously by the committee on 4 June 2018.

9.2. define the conditions to be fulfilled by those extra-territorial applicants, such as a particular humanitarian emergency, the impossibility to reach safely the territory of the member State concerned, quotas for applicants, or security requirements including the presentation of identity documents;

9.3. provide special extra-territorial procedures for accelerated asylum applications:

9.3.1. when their competent national authorities have decided to generally grant a category of refugees asylum as an exceptional measure on humanitarian or other grounds;

9.3.2. in the context of family reunification of refugees;

9.3.3. by applicants originating from safe countries or present in third countries which are considered as safe, in accordance with Committee of Ministers Recommendation No. R (97) 22;

9.4. provide basic social services, including shelter, food and health care for applicants, where necessary, possibly in co-operation with the UNHCR or the European Union;

9.5. provide comprehensive information to applicants about the procedure of applying for asylum or humanitarian visas, as well as about regular entry visas to which they may have access, such as temporary visas, work visas and study visas;

9.6. assist successful applicants with their travel to the respective member States which have granted asylum;

9.7. ensure that rejected asylum seekers have an effective remedy against the rejection in accordance with Article 13 of the European Convention on Human Rights (ETS No. 5);

9.8. substantially step up the number of pledges for resettlement and humanitarian admission programmes organised by the UNHCR;

9.9. ensure that any means of humanitarian admission or resettlement do not affect the right to apply for asylum in member States.

10. Referring to its Resolutions 2000 (2014) on the large-scale arrival of mixed migratory flows on Italian shores and 2147 (2017) on the need to reform European migration policies, the Assembly recognises that extra-territorial processing of asylum claims remains an exceptional and limited way of granting international protection. Therefore, additional measures are urgently needed to provide safety and protection to refugees and migrants abroad in accordance with the standards required under the Convention relating to the Status of Refugees.

11. In the past, protective shelters or zones were established successfully, for instance in the framework of the United Nations or the North Atlantic Treaty Organization (NATO), for persons who were forcibly displaced by violence or armed conflicts. Those shelters provided temporary security to persons who would otherwise have qualified for asylum in other countries. Therefore, the Assembly calls on member States to help establish such protective shelters in countries affected by violence or conflict or in neighbouring countries, in order to avoid persons being forced to flee to other countries on long and perilous routes.

12. Referring to the camps established successfully for Syrian refugees in Turkey and Jordan, the Assembly calls on member States and the European Union to support such camps financially and logistically.

13. Welcoming the projects of the Italian Refugee Council and the UNHCR for refugees and migrants in Libya, including the creation of protected areas for children, the Assembly calls member States and the European Union to pursue similar action in Libya.

14. The Assembly invites the UNHCR and the International Organization for Migration (IOM) to assist migrants who so wish by registering them as asylum seekers and to provide refugee status determination programmes in co-operation with safe countries of first arrival as well as third countries which offer extra-territorial processing of asylum claims.

15. The Assembly invites the European Union and its member States to support financially and through technical co-operation those States which accept persons under international protection or on humanitarian grounds.

B. Draft recommendation[3]

1. The Parliamentary Assembly welcomes the higher legal standards for the protection of asylum seekers set by the European Union, while noting that these standards are not applicable in many member States of the Council of Europe and that the granting of refugee status and of humanitarian visas is not a legislative competence of the European Union. Therefore, the Assembly believes that the Council of Europe could serve all its member States, whether a member of the European Union or not, by setting common standards in this field and by ensuring mutual legal assistance and administrative co-operation in matters regarding refugees and migrants.

2. Referring to its Resolution …. (2018) on extra-territorial processing of asylum claims and the creation of safe refugee shelters abroad, the Assembly recommends that the Committee of Ministers:

2.1. instruct its European Committee on Legal Co-operation (CDCJ) to analyse whether and to what extent a revision is required of:

2.1.1. the European Agreement on the Abolition of Visas for Refugees (ETS No. 31), in order to allow persons who have received refugee status through an extra-territorial procedure to transit or enter the territory of another party without a visa;

2.1.2. Chapter IV of the European Convention on Consular Functions (ETS No. 61), in order to allow consular officers of a sending State to issue humanitarian visas or grant refugee status to persons in a receiving State or on board a vessel registered in that sending State;

2.2. invite member States to sign and ratify the Protocol to the European Convention on Consular Functions concerning the Protection of Refugees (ETS No. 61A) and to consider updating this protocol in view of the present challenges and requirements regarding the protection of refugees by consular services abroad.

3. Draft recommendation adopted unanimously by the committee on 4 June 2018.

C. Explanatory memorandum by Mr Domagoj Hajduković, rapporteur

1. Introduction

1. The United Nations High Commissioner for Refugees (UNHCR) described 2016 as a year in which global forced displacements hit a record high.[4] While the numbers of refugees arriving in Europe started decreasing again in 2017, it can be assumed that figures remained excessively high globally. The UNHCR counted 172 301 people having arrived by boat in Europe, and 3 139 dead or missing.[5] Faced with such an immense human tragedy, often engineered by ruthless smugglers, Europe must develop safe alternatives for asylum seekers to apply for international protection without risking their lives in overcrowded boats or vehicles. One such alternative is the processing of asylum applications in countries of origin or transit.

2. In paragraph 9.4 of its Resolution 2000 (2014) on the large-scale arrival of mixed migratory flows on Italian shores, the Parliamentary Assembly called on member States to "respond positively to the suggestion of the Italian Minister of the Interior and others that camps should be set up in North African countries to process applications for asylum and international protection, and that the aim should be to intercept migrants before they set sail; consideration should be given to establishing centres to which the United Nations High Commissioner for Refugees would have access so that human rights can be protected". Resolution 2147 (2017) on the need to reform European migration policies called on the European Union to explore possibilities for the establishment of hotspots outside Europe.

3. Through the Raoul Wallenberg Prize, the Council of Europe rewards every two years humanitarian achievements and hereby recalls the memory of this outstanding Swedish diplomat who saved nearly 10 000 Jews in Budapest from July to December 1944 by issuing them protective passports and sheltering them on diplomatic premises. In parallel actions in Budapest, the Papal Nuncio Angelo Rotta issued more than 15 000 such protective passes, the Swiss Vice-Consul Carl Lutz issued 8 000 protective letters, the Spanish Embassy issued some 5 200 protective passports and the Portuguese Embassy issued approximately 1 000 safe conducts to Jews who had relatives in Portugal, Brazil or the Portuguese colonies. In addition, Turkey issued numerous transit visas and admitted many Jewish refugees.These extraordinary historic actions by diplomatic missions during the Second World War can be an example for the issuance of visas on humanitarian grounds through extra-territorial consular processes to persons who are persecuted today.

4. The phrase "extra-territorial processing" means that a State is processing an asylum application outside its territory, but within its jurisdiction. Such extra-territoriality could be in diplomatic missions, embassies or consulates on foreign territory or on vessels in international waters. Extra-territoriality also exists in missions of international organisations, such as the United Nations Support Mission for Libya,[6] the United Nations Assistance Mission for Iraq[7] and the United Nations Assistance Mission in Afghanistan[8] as well as the Office of the UNHCR Representative in Syria.[9] The European Union maintains also extra-territorial missions, such as the EU Border Assistance Mission in Libya[10] and EU Delegations to Afghanistan,[11] Iraq[12] and Syria.[13]

5. Having tabled the motion for a resolution on this subject,[14] I wish to contribute through this report to parliamentary discussions throughout Europe and the identification of common approaches regarding the legal and practical requirements for the extra-territorial processing of asylum claims. I am grateful to those committee members and international experts who have contributed actively to this report, in particular Ms Carol Batchelor, Director of the Division of International Protection, UNHCR, Geneva, Mr Othman Belbeisi, Head of the Mission of the International Organization for Migration (IOM) in Libya, and Mr Leonello Gabrici, Head of Division for Migration and Human Security, European External Action Service, European Commission, Brussels.

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4. www.unhcr.org/globaltrends2016/.
5. http://data2.unhcr.org/en/situations/mediterranean.
6. https://unsmil.unmissions.org.
7. www.uniraq.org.
8. https://unama.unmissions.org.
9. www.unhcr.org/syrian-arab-republic.html.
10. https://eeas.europa.eu/csdp-missions-operations/eubam-libya_en.
11. https://eeas.europa.eu/delegations/afghanistan_en.
12. https://eeas.europa.eu/delegations/iraq_en.
13. https://eeas.europa.eu/delegations/syria_en.
14. http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=23735&lang=en.

2. International standards regarding asylum applications

6. Any extra-territorial processing of asylum applications has to be in conformity with applicable legal standards under international law and European legal obligations. It is therefore necessary to recall those standards.

2.1. Council of Europe

7. The European Convention on Human Rights (ETS No. 5, "the Convention") applies also to asylum cases,[15] although it does not contain a right to asylum. However, the Convention guarantees related fundamental rights,[16] such as the prohibition of torture or inhuman or degrading treatment (Article 3), the right to liberty and security (Article 5), the right to an effective remedy (Article 13) and the prohibition of collective expulsion of aliens (Article 4 of Protocol No. 4 to the Convention (ETS No. 46)). The Convention can also be applicable outside the territory of member States.[17]

8. The European Court of Human Rights developed jurisprudence in this field. For instance, in cases where migrants were to be deported, the Court found indirectly a violation of the non-*refoulement* obligation under international law due to the risk of the applicants being exposed to torture or other serious human rights violations.[18] In this context, the Committee of Ministers adopted Recommendation No. R (98) 13 on the right of rejected asylum seekers to an effective remedy against decisions on expulsion in the context of Article 3 of the European Convention on Human Rights.[19]

9. The Committee of Ministers also dealt with asylum standards through its Resolution (67) 14 on asylum to persons in danger of persecution[20] as well as its Recommendation No. R (81) 6 on the harmonisation of national procedures relating to asylum.[21] In its Recommendation No. R (97) 22, the Committee of Ministers adopted Guidelines on the application of the safe third country concept.[22] In addition, the Committee of Ministers adopted on 1 July 2009 its Guidelines on human rights protection in the context of accelerated asylum procedures.[23]

10. The detention of asylum seekers is specifically addressed in Committee of Ministers Recommendation Rec(2003)5.[24] Regarding migrants, their detention is only admissible in accordance with Article 5.1.*f* of the European Convention on Human Rights in cases of "the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition".

11. The Assembly has frequently dealt with asylum and refugees. For this report, I would just draw attention to Recommendation 434 (1965) on granting of the right of asylum to European refugees, Recommendation 1088 (1988) on the right to territorial asylum, Resolution 1471 (2005) on accelerated asylum procedures in Council of Europe member States, Resolution 1707 (2010) on the detention of asylum seekers and irregular migrants in Europe as well as Resolution 1918 (2013) "Migration and asylum: mounting tensions in the eastern Mediterranean".

12. Finally, the Council of Europe Commissioner for Human Rights has also worked on the human rights of immigrants, refugees and asylum seekers.[25] In addition, the Secretary General of the Council of Europe has appointed a Special Representative on migration and refugees.

15. https://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-09(2000).pdf.
16. www.unhcr.org/3ead2d262.pdf.
17. European Court of Human Rights: Factsheet – Extra-territorial jurisdiction of States Parties (2016), www.echr.coe.int/Documents/FS_Extra-territorial_jurisdiction_ENG.pdf.
18. https://www.echr.coe.int/Documents/Seminar_background_paper_2017_ENG.pdf.
19. www.refworld.org/docid/3ae6b38e13.html.
20. www.refworld.org/docid/3ae6b38168.html.
21. www.refworld.org/pdfid/47fdfb0533.pdf.
22. www.refworld.org/docid/3ae6b39f10.html.
23. https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805b15d2.
24. www.refworld.org/docid/3f8d65e54.html.
25. https://www.coe.int/en/web/commissioner/thematic-work/migration.

2.2. European Union

13. The European Union itself does not have competence for issuing visas or granting asylum. However, Article 18 of the Charter of Fundamental Rights of the European Union stipulates: "The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty on European Union and the Treaty on the Functioning of the European Union."

14. EU legislation regulates this subject through the Asylum Procedures Directive 2013/32/EU, the Reception Conditions Directive 2013/33/EU, the Qualification Directive 2011/95/EU, the Dublin III Regulation No 604/2013 and the EURODAC Regulation No 603/2013 for the comparison of fingerprints for law-enforcement purposes. In addition, Article 19 of the Charter of Fundamental Rights prohibits *refoulement* through the removal, expulsion or extradition of a person to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

15. The EU Court of Justice clarified in its judgment in the case of *X and X v. Belgium* (C-638/16), which concerned Syrians who had applied for asylum in the Belgian Embassy in Beirut, that EU member States are not required, under EU law, to grant humanitarian visas to persons who wish to enter their territory with a view to applying for asylum, but they remain free to do so on the basis of their national law.[26]

16. The concept of first country of asylum has been incorporated into EU law.[27] Together with the concept of safe country of origin,[28] it determines whether a person can seek asylum in another country. Several EU member States have lists of safe countries of origin[29] and the European Union has been proposing a harmonisation of such lists at EU level.[30] However, the initiative of a common list of safe countries of origin was unfortunately halted by the EU Council in 2017.[31]

17. EU law also influences non-EU countries. Although not a member of the European Union, Switzerland follows for instance the Dublin III rules of the European Union.[32]

18. Based on the experience with so-called "hotspots" in Greece and Italy,[33] which received some criticism from the EU Court of Auditors recently,[34] the European Union has been discussing the possibility of setting up refugee centres outside the European Union since 2015. The European Commission is currently preparing a new set of proposals regarding returns of irregular migrants, solidarity with Africa and opening legal pathways for migration into the European Union.[35]

2.3. United Nations

19. The 1951 United Nations Convention relating to the Status of Refugees is the international legal foundation for asylum and asylum procedures. It has 145 States Parties and 146 Parties to its Protocol of 1967. However, the Convention does not impose specific obligations on the procedure of granting protection to refugees, except the prohibition of *refoulement* under its Article 33.

20. An overview of international and regional asylum law has been published by the UNHCR, which contains guidance for national legislators.[36]

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26. https://curia.europa.eu/jcms/upload/docs/application/pdf/2017-03/cp170024en.pdf.
27. www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=4bab55da2.
28. www.unhcr.org/excom/scip/3ae68ccec/background-note-safe-country-concept-refugee-status.html.
29. See for example the list drawn up by the Netherlands at https://www.government.nl/topics/asylum-policy/question-and-answer/list-safe-countries-of-origin, the French list at http://english.conseil-etat.fr/Activities/Press-releases/Asylum-list-of-safe-countries-of-origin, the German list at www.bamf.de/EN/Fluechtlingsschutz/Sonderverfahren/SichereHerkunftsstaaten/sichere-herkunftsstaaten-node.html as well as the United Kingdom list at https://www.gov.uk/government/collections/country-policy-and-information-notes.
30. https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/2_eu_safe_countries_of_origin_en.pdf.
31. www.europarl.europa.eu/legislative-train/theme-towards-a-new-policy-on-migration/file-european-list-of-safe-countries-of-origin.
32. https://www.swissinfo.ch/eng/dublin-rules_federal-court-decision-gives-asylum-seekers-more-legal-rights-/43819384.
33. European Parliament, DG Internal Policies: On the frontline: the hotspot approach to managing migration (2016) at www.europarl.europa.eu/RegData/etudes/STUD/2016/556942/IPOL_STU%282016%29556942_EN.pdf.
34. https://www.eca.europa.eu/Lists/ECADocuments/SR17_6/SR_MIGRATION_HOTSPOTS_EN.pdf.
35. http://europa.eu/rapid/press-release_IP-17-3406_en.htm.
36. www.unhcr.org/publications/legal/3d4aba564/refugee-protection-guide-international-refugee-law-handbook-parliamentarians.html.

21. The UNHCR has also published principles for asylum seekers and refugees rescued at sea, which include principles on access to asylum procedures.[37]

3. National examples of asylum visas issued abroad

22. Following the initiative of French President Emmanuel Macron, the heads of State or government of France, Germany, Italy and Spain, as well as the EU High Representative for Foreign Affairs and Security Policy, met in Paris on 28 August 2017 and agreed on a common declaration with the heads of State or government from Chad and Niger and the President of the Libyan Presidential Council.[38] In its Annex, the Declaration supports a legal way for persons from the Sahel region in need of international protection to apply for asylum through diplomatic missions, in co-operation with the UNHCR, after their registration in the countries of first arrival.

23. The French Government subsequently announced hosting 3 000 refugees from Chad and Niger within a year, following government missions to both countries for identifying and transporting people deserving asylum status.

24. The UNHCR welcomed the Paris declaration of 28 August 2017,[39] but some international non-governmental organisations (NGOs) have criticised such an approach.[40]

25. The UNHCR was active in the determination of refugee status of individual applicants, but this action has regrettably been suspended.[41] While States have the primary responsibility for determining the status of asylum seekers, the UNHCR did such work under its Refugee Status Determination programme, where States were not able to do this. The UNHCR registered 203 200 individual asylum applications in 2013, but suffered from a backlog of 252 800 applications pending decision due to the considerable increase of applications in 2013.

26. National laws differ widely. For example, under Article 22 of the German *Aufenthaltsgesetz* (federal law on the presence, employment and integration of foreigners), applications for exceptional humanitarian visas can be made through diplomatic missions abroad.[42] Norway has specific rules on asylum applications dealt with by its embassies abroad.[43]

27. Further information on national legislation has been gathered through the European Centre for Parliamentary Research and Documentation (ECPRD).[44] I am very grateful for the often substantial replies from a majority of members of the ECPRD, which showed that only few States have legislation allowing the extra-territorial granting of humanitarian visas or refugee status, while other national legislation and practice leaves room for exceptional procedures by diplomatic or consular missions:

37. www.unhcr.org/3e5f35e94.pdf.
38. http://europa.eu/rapid/press-release_STATEMENT-17-2981_fr.htm.
39. www.unhcr.org/news/press/2017/8/59a50c614/statement-filippo-grandi-un-high-commissioner-refugees-paris-meeting-28.html.
40. See for example, Madeline Garlick, Migration Policy Institute Europe: "The Potential and Pitfalls of Extraterritorial Processing of Asylum Claims", Brussels, 2015, at https://www.migrationpolicy.org/news/potential-and-pitfalls-extraterritorial-processing-asylum-claims; Sadaf Lakhani and Judith Reen: "External Processing of Refugee Claims: Problem or Part of the Solution? The Australian Experience", Oxford University Human Rights Blog, 2015, at http://ohrh.law.ox.ac.uk/external-processing-of-refugee-claims-problem-or-part-of-the-solution-the-australian-experience/; Marie Walter-Franke, Jacques Delors Institute: "External EU Hotspots, Berlin, 2017, at www.delorsinstitut.de/2015/wp-content/uploads/2017/09/20170928_EU-hotspots_Walter.pdf; Centre for European Policy Studies: "Offshore processing of asylum applications: Out of sight, out of mind?", Brussels, 2017, at https://www.ceps.eu/publications/offshore-processing-asylum-applications-out-sight-out-mind.
41. www.unhcr.org/refugee-status-determination.html.
42. https://www.gesetze-im-internet.de/aufenthg_2004/__22.html.
43. https://www.udiregelverk.no/en/documents/udi-circulars/rs-2010-091e/.
44. https://ecprd.secure.europarl.europa.eu/ecprd/public/page/about.

COUNTRY	EXTRA-TERRITORIAL ISSUANCE OF HUMANITARIAN VISAS	EXTRA-TERRITORIAL REFUGEE STATUS DETERMINATION
Albania	NO	NO
Andorra	NO	NO
Austria	NO. However, in case of family reunification, a family member of someone having been granted asylum status or subsidiary protection status may file an application to be granted an entry permit in order to seek international protection once in the country.	NO
Belgium	YES. Visa applications for humanitarian reasons are not prescribed by law but in practice fall within the scope of one of the two visa categories, namely the long-stay visas or the short-stay visas.	NO
Canada	YES. Canada allows for the resettlement of those in refugee-like situations. The applicants may be admitted to Canada as permanent residents on humanitarian grounds provided they meet the definition of the Country of Asylum Class which addresses people in refugee-like situations who do not qualify as Convention refugees. Officials with Citizenship and Immigration Canada working abroad identify individuals who are in need of Canada's help and who are likely to be able to establish themselves successfully in Canada.	YES. The applicant must meet the definition of the Convention Refugee Abroad Class. Visa offices will only consider applications which have been referred to them by refugee referral organisations such as the UNHCR or that are accompanied by a private sponsorship.
Croatia	NO	NO
Czech Republic	NO	NO
Estonia	NO	NO
Finland	NO	NO
France	YES. French consular services have competence to issue long-term visas with a view to applying for asylum upon arrival (humanitarian visa). This practice is not prescribed by law; it is at the authorities' discretion to decide to issue such a visa.	NO. However, the French President agreed on a common declaration with the heads of State or government from Chad and Niger and the President of the Libyan Presidential Council. The Declaration supports a legal way for persons from the Sahel region in need of international protection to apply for asylum through diplomatic missions, in co-operation with the UNHCR, after their registration in the countries of first arrival.
Germany	YES	NO
Hungary	NO	NO
Iceland	NO	NO
Ireland	NO	NO
Israel	YES. Visas for humanitarian reasons can be delivered through diplomatic/consular services abroad. Moreover, the Ministry of the Interior may grant a visa for special reasons (which are not defined).	NO
Latvia	NO	NO
Lithuania	NO	NO
Luxembourg	NO	NO
Montenegro	YES. An individual first needs to apply for a visa through consular/diplomatic services of Montenegro, which will then enable him or her to apply for its extension for humanitarian grounds.	NO
Netherlands	YES. Short-term visas can be issued from consular or diplomatic services abroad on humanitarian grounds. In addition, visas may be granted by the same services in order to apply for asylum upon arrival.	YES. Long-term visas are issued to persons whose refugee status has already been determined under the framework of resettlement (individuals first nominated by the UNCHR, then selected by Dutch officials).
Norway	NO	NO

COUNTRY	EXTRA-TERRITORIAL ISSUANCE OF HUMANITARIAN VISAS	EXTRA-TERRITORIAL REFUGEE STATUS DETERMINATION
Poland	YES	NO. However, a foreigner can apply for asylum while staying abroad and then come to Poland on the basis of a national visa granted by Polish diplomatic or consular services, in order to participate in the asylum procedure.
Portugal	NO	NO
San Marino	YES. Extraordinary stay permits for specific humanitarian reasons may be granted to foreigners.	NO
Serbia	NO	NO
Slovak Republic	NO	NO
Slovenia	NO	NO
Spain	NO. However, there is a possibility for the Spanish consular services to issue a visa to travel to Spain with a view to applying for asylum (humanitarian visa), but such a possibility is at the discretion of the consul.	NO
Sweden	NO	NO. An asylum application may be handed in at a Swedish consular or diplomatic service abroad, which will be submitted to the Swedish Migration Board. However, it cannot be processed, as the applicant is not present in Sweden.
Turkey	NO. Turkey issues humanitarian residence permits for victims who are identified in Turkey only. According to the Victim Support Programme, short-term (6 months) residence permits are granted to the victims of human trafficking during their treatment, health care and legal proceedings.	NO
Ukraine	NO	NO
United Kingdom	NO	NO

28. In addition, several countries offer, through governmental websites, internet-based information in foreign languages regarding the requirements and potential chances of applicants being granted asylum. While such websites cannot substitute proper processing of asylum applications, they may nevertheless be helpful for potential applicants abroad.

29. The extra-territorial issuance of asylum or humanitarian visas must be distinguished from the preclearance procedures established for example by the United Kingdom as well as Canada and the United States, at foreign airports. Such preclearance procedures aim to identify already on foreign soil persons who would have no right to enter the country. Where this procedure is used in order to prevent a particular ethnic group from applying for asylum, it might violate anti-discrimination obligations, as found for instance in the judgment of 9 December 2004 by the House of Lords of the United Kingdom in the case *Regina v. Immigration Officer at Prague Airport and Another* (Respondents) *ex parte European Roma Rights Centre and Others* (Appellants).[45]

4. Criticism of external processing of asylum applications

30. The extra-territorial processing of asylum has been the subject of legal research for years,[46] but the creation of refugee centres outside Europe has also been criticised.[47]

45. https://publications.parliament.uk/pa/ld200405/ldjudgmt/jd041209/roma-1.htm.
46. See, for instance, Maarten den Heijer: Europe and Extraterritorial Asylum, University of Leiden, 2011, at https://openaccess.leidenuniv.nl/bitstream/handle/1887/16699/000-Heijer-07-03-2011.pdf.
47. See, for instance, Red Cross EU Office: "Europe in Crisis: Facilitating Access to Protection, (Discarding) Offshore Processing and Mapping Alternatives for the Way Forward", Brussels, 2015, at https://redcross.eu/uploads/files/Latest%20News/europe%20in%20crisis/Europe%20in%20Crisis_Dr%20Moreno-Lax_final.pdf.

31. Looking at the negative experience of the Australian practice, European initiatives would have to avoid those shortcomings. Over the past two decades, approximately 60 000 people arrived in Australia by boat. From 2001 to 2007, Australia transferred asylum seekers to detention centres on islands in the Pacific Ocean, but abandoned this practice in 2008 and closed those centres, such as the Manus Regional Processing Centre on Papua New Guinea, which was closed on 31 October 2017.[48] The fate of the persons in those closed centres remains a matter of serious concern.

5. Practical requirements for issuing asylum visas abroad

5.1. Types of visas under national law

32. Individuals might apply for asylum or other forms of international protection, such as subsidiary protection under EU law or temporary protection under some national laws. Legal advice on the various types of visa options might be necessary for applicants, in order to make the proper choice.

33. In addition, national law might provide for humanitarian visas in exceptional circumstances. Given the exceptional nature of such visas, exceptional procedures including the extra-territorial issuance of such visas seem less problematic.

34. Finally, it is possible to apply for visas for family reunification. For this category, different procedures are required such as proof of family relations. The extra-territorial processing of such family visas could prevent family members from entering a country without a visa.

5.2. Procedural requirements

35. While asylum applications are being processed, applicants might have to be housed and provided with clothing, food, health services and legal assistance for the duration of the procedure. In this respect, the Reception Conditions Directive 2013/33/EU defines standards for applications within the European Union.

36. Whereas EU directives might not apply to procedures outside EU territory, the Convention relating to the Status of Refugees does not contains specific rules on the processing of asylum applications. Nevertheless, the UNHCR has published guidelines on the fair and effective processing of asylum requests, which may guide national authorities processing applications abroad.[49]

37. In this context, the report of the Advisory Committee on Migration Affairs of the Dutch Government of December 2010[50] not only contains an extensive overview of the discussion and some national approaches, it also underlines that rejected extra-territorial applicants must have the possibility to have such decision reviewed by national instances. The latter may require special procedures accessible for applicants abroad.

38. The latest data from the European Union's statistical office EUROSTAT shows that 46% of asylum applicants were granted asylum or subsidiary protection by EU member States.[51]

39. However, high numbers of asylum applications constitute a burden for national authorities. In Germany, for instance, the *Bundesamt für Migration und Flüchtlinge* (federal office for migration and refugees) in Nuremberg has processed half a million asylum decisions and spent some 20 million euros on court fees for some 200 000 appeals against such decisions in 2017.[52]

40. In addition, the Dutch Advisory Committee concluded that the prohibition of *refoulement* under Article 33 of the Convention relating to the Status of Refugees might not be applicable to acts performed outside the territory of a State, while the obligation under Article 3 of the European Convention on Human Rights might also apply in an extra-territorial context.[53]

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48. See for example, Refugee Council of Australia: media release of 1 November 2017 at https://www.refugeecouncil.org.au/media/refugee-council-calls-government-transparency-manus-alternatives/.
49. www.unhcr.org/publications/legal/3d4aba564/refugee-protection-guide-international-refugee-law-handbook-parliamentarians.html (see pp. 152-19).
50. Advisory Committee on Migration Affairs: Advisory Report "External Processing" for the Dutch Minister for Immigration and Asylum, The Hague, 2010, at https://acvz.org/wp-content/uploads/2015/09/Advies-ACVZ-NR32-ENG-2010.pdf
51. http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_quarterly_report#Decisions_on_asylum_applications.
52. See for example www.dw.com/en/almost-half-of-rejected-asylum-seekers-in-germany-winning-on-appeal/a-42155593
53. Ibid., p. 33.

5.3. Transfer of successful applicants

41. Successful applicants for asylum would obviously have to be transported to the country which granted asylum.

42. The Organisation for Economic Co-operation and Development (OECD) estimates that the cost of processing and accommodating an asylum seeker is approximately €10 000 in the first year.[54] At the peak of the migration crisis in Europe in 2015, for example, Germany spent €16 billion for 900 000 asylum seekers in Germany and Sweden spent €6 billion for 163 000 asylum seekers in Sweden.

43. Applicants might favour a few European countries over others, depending on the legal possibilities for international protection as well as the general living conditions. Therefore, a viable extra-territorial processing of asylum applications should be embedded in a common European approach. However, successful applicants from extra-territorial procedures would probably face obstacles for relocation among EU member States, as this would require a decision by the member States of the European Union.[55]

44. Specific support for the countries hosting refugees might be necessary. The European Union supports its member States and other States financially through various programmes, in particular its Asylum, Migration and Integration Fund with €3.137 billion for the period 2014-20[56] and the EU Facility for Refugees in Turkey with €3 billion for 2016-17.[57] In view of the huge numbers of refugees from Syria, the European Union and its member States finance aid in various ways, totalling €10.4 billion since the start of the crisis in 2011.[58]

5.4. Assistance to rejected applicants

45. As regards rejected applicants, many might not wish to return to their country of origin. It will therefore be essential to assist rejected applicants as well as the country where rejected applicants are physically present.

6. Conclusions

46. There are very few, but very laudable examples of asylum visas having been issued abroad on humanitarian grounds. National legislation in some member States permits in principle the issuance of humanitarian visas or visas for asylum applications through their diplomatic or consular services abroad.

47. The European Union does not have the competence to issue asylum visas or any other visas for the territories of its member States, but its member States can agree together at EU level on asylum issues such as asylum procedures, reception conditions for asylum applicants and the resettlement of persons under international protection. In addition, the European Union can support financially and through technical co-operation those member States which accept persons under international protection or on humanitarian grounds.

48. Under international law, individuals should seek asylum or humanitarian visas in the country where they first arrive after having fled their own country. However, some of those countries of first arrival might not be able to provide adequate conditions of asylum for all people seeking international protection.

49. The United Nations is typically present in countries of first arrival for asylum seekers. Through the UNHCR and other United Nations agencies or bodies, assistance is generally provided to persons seeking international protection as well as to national authorities dealing with asylum applications. The United Nations can also assist in the relocation and resettlement of persons under international protection or in the return of persons having unsuccessfully sought international protection.

50. Third States should issue asylum visas or humanitarian visas, where the conditions in countries of first arrival are inadequate, for instance due to huge numbers of asylum seekers or because human rights standards are not respected in the country of first arrival. The United Nations can be instrumental in assessing the actual situation as well as in assisting national diplomatic or consular services with regard to the extra-territorial processing of asylum applications.

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54. https://www.oecd.org/els/mig/migration-policy-debates-13.pdf.
55. See in this context, the decision by the EU Court of Justice on the relocation of refugees from Greece and Italy, https://curia.europa.eu/jcms/upload/docs/application/pdf/2017-09/cp170091en.pdf.
56. https://ec.europa.eu/home-affairs/financing/fundings/migration-asylum-borders/asylum-migration-integration-fund_en.
57. https://ec.europa.eu/echo/files/aid/countries/factsheets/turkey_syrian_crisis_en.pdf.
58. http://ec.europa.eu/echo/where/middle-east/syria_en.

51. Where vessels rescue asylum seekers in international waters, those persons should be able to apply for asylum at the first safe harbour, in accordance with international law. Under the Annex to the International Convention on Maritime Search and Rescue (1979), “a situation of distress shall be notified not only to consular and diplomatic authorities but also to a competent international organ if the situation of distress pertains to refugees or displaced persons”.