

Resolution 1569 (2007)¹

Assessment of transit and processing centres as a response to mixed flows of migrants and asylum seekers

Parliamentary Assembly

1. The number of asylum seekers in Europe continues to fall and has reached its lowest level since 1988. However, the number of persons seeking to enter Europe illegally is on the increase. Some estimates show that, every year, as many as 500 000 people illegally cross the borders into Europe or overstay their visas. It is estimated that there may be up to 5.5 million irregular migrants in the European Union, with a further 8 million irregular migrants in the Russian Federation alone.
2. There are increasing concerns across Europe as to how best to tackle this mixed flow of irregular migrants and asylum seekers. In 2006 the United Nations High Commissioner for Refugees (UNHCR) drafted a 10-Point Plan of Action for Addressing Mixed Migratory Movements. Countries such as Spain, Italy, Malta and Greece, which experienced massive arrivals of irregular migrants and asylum seekers over the summer of 2006, have called for new initiatives and new approaches to tackle these mixed flows and to develop a more equitable system of burden sharing among countries of origin, of transit and of destination.
3. There are also increasing concerns as to the human and humanitarian costs of the movement of large numbers of irregular migrants and asylum seekers into and out of Europe. The number of people dying – through drowning, suffocating, of exposure or in minefields – while trying to enter Europe continues to grow at an alarming rate. Often, those who make it to Europe, after having spent large sums of money and travelled in difficult and dangerous circumstances, face numerous problems and potential exploitation when they reach Europe.
4. New approaches to tackling mixed flows of migrants and asylum seekers are therefore essential, not only to ensure that the protection needs of asylum seekers are met, but also to stem the flow of irregular migration and the deaths, exploitation, trafficking and suffering that accompany it.
5. These approaches need to be comprehensive and must involve countries of origin, of transit and of destination. Some examples of initiatives that have sought to deal with refugee and irregular migrant flows in a comprehensive fashion include the International Conference on Assistance to Refugees in Africa (ICARA) in the mid-1980s as well as to the Comprehensive Plan of Action for Indo-Chinese Refugees (CPA) in the late 1980s which provided a solution to the flow of Vietnamese boat people.
6. In recent years a number of new approaches for processing mixed flows of migrants and asylum seekers have been put forward. In a discussion paper on the three prongs of a European Union asylum policy, the UNHCR put forward a proposal to the European Union for joint processing within the EU. Other more controversial proposals included processing outside the borders of the European Union but still within Europe (as in the United Kingdom's "New Vision" Paper), or even in North Africa (as in the former German Interior Minister Otto Schily's proposal).
7. These proposals were not entirely novel as there had been precedents in other parts of the world. In the early 1990s Haitians intercepted at sea were taken to the US naval base at Guantánamo Bay, Cuba, for processing. Another example is Australia, which set up processing centres in Nauru and Papua New Guinea.

1. Assembly debate on 1 October 2007 (29th Sitting) (see [Doc. 11304](#), report of the Committee on Migration, Refugees and Population, rapporteur: Mrs Jonker; and [Doc. 11393](#), opinion of the Committee on Equal Opportunities for Women and Men, rapporteur: Mr Jean-Guy Branger). Text adopted by the Assembly on 1 October 2007 (29th Sitting).



8. The Parliamentary Assembly considers it important to take positive and negative past experience into account, together with past proposals, in order to formulate recommendations that can be given consideration in future discussions relating to the processing of mixed flows of migrants and asylum seekers. In this respect the Assembly notes that the European Commission plans to launch a feasibility study on internal and external territorial processing in the second half of 2007.

9. The Assembly is particularly concerned by some of the proposals to create transit or processing centres. These are centres where people are processed after having arrived in a country, been intercepted on their way to a country, been returned to a country through which they have transited, or been sent to a country where processing takes place. The level of controversy varies according to whether these proposals relate to transit or processing centres within the European Union, outside the European Union but still within Europe, or outside of Europe (for instance in North Africa). The level of controversy is also affected by whether centres are envisaged as transit centres where only pre-screening or clearing takes place, or if centres are envisaged as full processing centres.

10. The Assembly recognises that there may be valid reasons to consider such transit or processing centres. For example, depending on the type of arrangements envisaged, they may contribute to burden sharing, facilitate harmonisation of asylum processing, ensure that the processing occurs closer to the countries of origin, offer better levels of protection for the persons concerned than currently available in a number of countries of transit and destination, and ensure that resources are more efficiently shared and used.

11. The Assembly believes, however, that many questions remain unanswered. It notes that it is very difficult to examine transit and processing centres in the abstract, without answers to some of the following questions:

11.1. Who would be responsible for the centres? Would responsibility be in the hands of the state transferring the persons concerned or the state upon whose territory the centre is located, or would there be shared responsibility between the transferring state and the state host to the centre? Would the UNHCR also share responsibility and in what form? What legal system would apply? What responsibility would the European Union have and under what legal framework would it act?

11.2. For whom would the centres be? Those arriving in countries where the centres are situated, those intercepted en route to a European country, those who have previously transited through the countries where centres are situated, or those who have arrived in a European country but who are then transferred to a country with a centre?

11.3. What would happen after the refugee status determination procedure? How would burden sharing operate in relation to settlement, resettlement or return of failed asylum seekers? What would happen to those whose country of origin could not be identified? What would happen to those who could not be returned?

11.4. Where should the centres be located?

11.5. In what conditions should persons be held? Should these centres be open or closed facilities, and what should the level of reception and accommodation be?

12. The setting up of transit or processing centres raises a number of practical and legal issues and concerns, including in terms of human rights and refugee rights, which must be taken into account in any future discussions concerning the establishment of such centres.

13. The Assembly therefore calls on the competent authorities of all member states to take into account the following issues and concerns in any future discussions concerning the establishment of such centres:

13.1. centres should not replace national asylum procedures in force in European countries of destination but should be seen as just one possibility among many others for dealing with migration and refugee movements;

13.2. centres should not undermine national policies and practice and determination procedures and facilities in the countries where such centres might be established;

13.3. centres should only be considered as part of a comprehensive, proactive approach that includes focusing on countries of origin, neighbouring countries, countries of first asylum, transit countries and countries of destination. In this respect, the positive experience and lessons learned from the CPA can serve as a useful point of reference;

13.4. in the event of such centres being established and proving successful, any extension of such centres outside the European Union must fully comply with all human rights and refugee standards;

13.5. the transfer to centres cannot absolve the responsibility of European states to guarantee non-refoulement under the 1951 Geneva Convention relating to the Status of Refugees or their human rights obligations under the European Convention on Human Rights (ETS No. 5) and other human rights treaties;

13.6. there must be no transfer from one country to another without express agreement between the states concerned and only on the condition that effective protection can be guaranteed. Such transfer cannot, as mentioned above, absolve a state from its responsibilities;

13.7. the relative merits and drawbacks of transit centres as opposed to full processing centres need to be examined in detail;

13.8. the UNHCR must be systematically consulted in any discussions concerning such centres; should such centres be established, there should be a guarantee that the UNHCR be present and involved in the determination procedures of the refugee status, subject to its agreement;

13.9. in their functioning, centres must comply with all relevant human rights and refugee rights standards. Furthermore, closed centres under the full or partial responsibility of Council of Europe member states or the European Union would need to allow monitoring by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). They would also need to allow NGOs to provide advice and assistance to migrants and asylum seekers;

13.10. centres should provide all necessary protection facilities for particularly vulnerable persons, including women and minors and in particular unaccompanied minors;

13.11. centres should include a gender dimension, ensure that applications from migrants and asylum seekers are handled in a way that does not de facto discriminate against women, ensure observance of women's fundamental rights, including gender equality, protect women from physical and psychological assault, and safeguard them from all forms of gender-based violence, particularly rape and forced prostitution

13.12. . the consideration of asylum requests in these centres should take into account grounds based on sexual identity, including in particular sexual violence, domestic violence, trafficking in human beings, forced family planning, forced abortion, female genital mutilation, honour crimes and forced marriage;

13.13. centres should only be considered as transitional measures which should not affect the goal of building up legal and institutional capacities in all relevant countries, whether they be countries of transit or of destination;

13.14. steps also have to be taken to tackle root causes of migration and asylum seeking in the countries of origin with the aim of identifying more long-term, comprehensive and holistic solutions to the asylum-migration issue;

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13.17. lasting solutions for management of migration flows should include energetic policies that seek to prohibit and eradicate violence against women in the countries of origin, which can trigger migration flows;

13.18. should such centres be established, no extension of their concept outside of the territory of the European Union should be considered until they have been proven to function within the European Union in full compliance with all human rights and refugee rights standards.

14. The Assembly calls on the European Union to take into account the concerns raised in relation to the creation of transit or processing centres in any future discussions or proposals on this issue, including in the proposed feasibility study on internal and external territorial processing of mixed flows of migrants and asylum seekers, scheduled for the second half of 2007.

15. The Assembly calls on the Council of Europe Commissioner for Human Rights to follow developments in this field and respond accordingly to any future proposals where human rights are concerned.
16. The Assembly considers that new and innovative measures are required to handle the mixed flow of irregular migrants and asylum seekers, and considers that this issue merits further discussion within the Assembly and within its Committee on Migration, Refugees and Population.