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

Contents	Page
A. Draft Resolution	2
B. Draft Recommendation	7

A. Draft Resolution

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

Amendment 5

(If adopted, amendment 1 falls)

Tabled by Mr Andrej HUNKO, Ms Ulla SANDBÆK, Mr Henk OVERBEEK, Ms Tineke STRIK, Ms Ioanneta KAVVADIA, Mr Georgios PSYCHOGIOS

In the draft resolution, paragraph 4, delete the first two sentences and merge the paragraph with paragraph 5.

Amendment 1

(Falls if amendment 5 is adopted)

Tabled by the Committee on Legal Affairs and Human Rights

In the draft resolution, paragraph 4, replace the words: "should apply for refugee status in the first safe country of arrival" with the following words: "may be expected to apply for refugee status in the first safe country of arrival, provided that country can guarantee effective protection in accordance with international standards"

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:

Amendment 2

Tabled by the Committee on Legal Affairs and Human Rights

In the draft resolution, paragraph 6, replace the words: "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" by the following words: "The Assembly recalls that under international law, including relevant provisions of the European Convention on Human Rights, the United Nations 1951 Convention relating to the Status of Refugees and its 1967 Protocol, and customary international law,"

Amendment 6

Tabled by Mr Andrej HUNKO, Ms Ulla SANDBÆK, Mr Henk OVERBEEK, Ms Tineke STRIK, Ms Ioanneta KAVVADIA, Mr Georgios PSYCHOGIOS

In the draft resolution, at the end of paragraph 8, insert the following sentence: "This example shows that such programmes can relieve the situation of refugees and asylum seekers, but only if they are substantially supported by the States."

Amendment 3

Tabled by the Committee on Legal Affairs and Human Rights

In the draft resolution, paragraph 9, after the words "refugee status determination", insert the following words: "and prompt access to effective protection".

Amendment 7

Tabled by Mr Andrej HUNKO, Ms Ulla SANDBÆK, Mr Henk OVERBEEK, Ms Tineke

- 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;
- 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;

STRIK, Ms Ioanneta KAVVADIA, Mr Georgios PSYCHOGIOS

In the draft resolution, paragraph 9, delete the words: "in applicants' home countries".

Amendment 8

Tabled by Mr Andrej HUNKO, Ms Ulla SANDBÆK, Mr Henk OVERBEEK, Ms Tineke STRIK, Ms Ioanneta KAVVADIA, Mr Georgios PSYCHOGIOS

In the draft resolution, paragraph 9, replace the words: "countries of first arrival or in third countries" with the following words: "safe countries of first arrival or in safe third countries".

Amendment 9

Tabled by Mr Andrej HUNKO, Ms Ulla SANDBÆK, Mr Henk OVERBEEK, Ms Tineke STRIK, Ms Ioanneta KAVVADIA, Mr Georgios PSYCHOGIOS

In the draft resolution, paragraph 9.2, delete the words: "; quotas for applicants, or security requirements including the presentation of identity documents".

Amendment 10

Tabled by Mr Andrej HUNKO, Ms Ulla SANDBÆK, Mr Henk OVERBEEK, Ms Tineke STRIK, Ms Ioanneta KAVVADIA, Mr Georgios PSYCHOGIOS

In the draft resolution, delete paragraph 9.3.3.

Amendment 11

Tabled by Mr Andrej HUNKO, Ms Ulla SANDBÆK, Mr Henk OVERBEEK, Ms Tineke STRIK, Ms Ioanneta KAVVADIA, Mr Georgios PSYCHOGIOS

In the draft resolution, replace paragraph 9.4 with the following paragraph:

"provide services and procedural safeguards in line with the standards of reception and

procedures of the state of jurisdiction for the extra-territorial asylum process, possibly in co-operation with the UNHCR or the European Union;"

Amendment 12

Tabled by Mr Andrej HUNKO, Ms Ulla SANDBÆK, Mr Henk OVERBEEK, Ms Tineke STRIK, Ms Ioanneta KAVVADIA, Mr Georgios PSYCHOGIOS

In the draft resolution, paragraph 9.5, after the words "provide comprehensive information to applicants about" insert the following words: "their rights and".

Amendment 13

Tabled by Mr Andrej HUNKO, Ms Ulla SANDBÆK, Mr Henk OVERBEEK, Ms Tineke STRIK, Ms Ioanneta KAVVADIA, Mr Georgios PSYCHOGIOS

In the draft resolution, paragraph 9.5, after the words "work visas and study visas" insert the following words: "in a language that they understand".

Amendment 14

Tabled by Mr Andrej HUNKO, Ms Ulla SANDBÆK, Mr Henk OVERBEEK, Ms Tineke STRIK, Ms Ioanneta KAVVADIA, Mr Georgios PSYCHOGIOS

In the draft resolution, paragraph 9.7, after the words "ensure that rejected asylum seekers have" insert the following words: "access to a complaint mechanism and".

- 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.

Amendment 15

(If adopted, amendment 16 falls)

Tabled by Mr Andrej HUNKO, Ms Ulla SANDBÆK, Mr Henk OVERBEEK, Ms Tineke STRIK, Ms Ioanneta KAVVADIA, Mr Georgios PSYCHOGIOS

In the draft resolution, delete paragraph 11.

Amendment 16

(Falls if amendment 15 is adopted)

Tabled by Mr Andrej HUNKO, Ms Ulla SANDBÆK, Mr Henk OVERBEEK, Ms Tineke STRIK, Ms Ioanneta KAVVADIA, Mr Georgios PSYCHOGIOS

In the draft resolution, paragraph 11, delete the words: "in countries affected by violence or conflict or".

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.

Amendment 17

Tabled by Mr Andrej HUNKO, Ms Ulla SANDBÆK, Mr Henk OVERBEEK, Ms Tineke STRIK, Ms Ioanneta KAVVADIA, Mr Georgios PSYCHOGIOS

In the draft resolution, paragraph 13, replace the words: "pursue similar action in Libya" with the following words: "support these programmes".

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.

Amendment 4

Tabled by the Committee on Legal Affairs and Human Rights

In the draft resolution, paragraph 14, delete the words "and the International Organisation for Migration (IOM)".

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

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.

Amendment 18

Tabled by Mr Andrej HUNKO, Ms Ulla SANDBÆK, Mr Henk OVERBEEK, Ms Tineke STRIK, Ms Ioanneta KAVVADIA, Mr Georgios PSYCHOGIOS

In the draft recommendation, paragraph 1, after the words: "by setting" insert the following words: "human rights based".