



POLICY BRIEF 1

## Extraterritorial processing in Europe

### Is 'regional protection' the answer, and if not, what is?

Never Stand Still

Law

Andrew & Renata Kaldor Centre for International Refugee Law

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## Executive summary

The loss of over 700 lives in a single incident in the Mediterranean on 18 April 2015, following a six-day period in which over 10,000 migrants were rescued, has sparked renewed debates about whether extraterritorial processing – sometimes called ‘offshore processing’ – might save lives at sea.<sup>1</sup>

Despite a plethora of European proposals over the past 20 years, none has ever been sufficiently fleshed out to receive adequate support to be implemented. Legal and practical concerns have proven insurmountable. There is also recognition that while regional or other external processing arrangements may provide a useful complement to other protection mechanisms, they are not a solution in and of themselves.

This paper examines European proposals for extraterritorial processing and the establishment of regional protection centres by considering:

- their policy rationale;
- their history;
- legal concerns;
- comparisons with Australia and the United States;
- the role of host States;
- models for regional processing; and
- complementary strategies that can provide a protection ‘toolkit’.

Cooperative regional approaches can help States to develop more coherent, systematic and predictable responses to refugee movements. But they must acknowledge the concerns and interests of all participating States. And timely solutions for refugees will be central to their success or failure.

The paper concludes by offering a flexible range of tools that can help States to provide protection in a safer, and more regular, manner. Unless States create measures to allow people to seek protection lawfully, dangerous journeys will continue.

# 1 Introduction

Since the mid-1990s, European States have perennially raised the idea of regional processing centres. This idea gained momentum in 2003 when the UK put forward a proposal to create centres outside Europe in which asylum seekers could have their protection claims considered, which was ultimately rejected. With very large numbers of people crossing the Mediterranean, the establishment of such centres has again been mooted as a way to assist people closer to their countries of origin and thereby prevent dangerous boat journeys. At the same time, there are concerns that this will contract the protection space within Europe even further.

The development of an externalized processing regime for the EU would mark a ‘paradigm shift in EU asylum and migration policies’.<sup>2</sup> Legally, it is difficult to see how such a scheme could comply with EU Member States’ obligations under international and EU law. Practically, it is highly unlikely that the creation of external processing centres will stop dangerous boat journeys and loss of life at sea. Unless and until processing standards in such centres are consonant with those required by EU law, and durable solutions are forthcoming, then asylum seekers will continue to risk their lives in search of protection – especially since the European Charter of Fundamental Rights guarantees the right to seek asylum within the EU.<sup>3</sup> And for migrants crossing the Mediterranean in search of better opportunities, asylum processing centres will provide no solution at all. It is therefore naive to assume that the creation of an external processing regime would stop people from getting on boats.

Arguably, the EU already has its own form of regional protection in place: the Common European Asylum System, which seeks to create a harmonized EU-wide approach to asylum seekers and refugees. The focus of the present paper, however, is on proposals to process asylum seekers *outside* the EU.<sup>4</sup> Whether described as ‘external’, ‘extraterritorial’, ‘offshore’, ‘transit’ or ‘regional’ processing, the proposals have generally been based around two main ideas:

- the creation of *regional* processing areas or zones in regions close to asylum seekers’ countries of origin.<sup>5</sup> These would be ‘safe’ areas to which people could flee and remain until either return home or resettlement elsewhere was possible;
- the creation of *transit* processing centres in countries just outside the EU. Asylum seekers arriving in, or intercepted en route to, EU Member States would be transferred there for processing, according to burden-sharing principles.<sup>6</sup>

Indeed, despite some media and political interest in the idea of extraterritorial processing in the aftermath of the April 2015 Mediterranean incident,<sup>7</sup> it is telling that this has not featured in any of the formal responses by the EU, the European Council, or the European Parliament.<sup>8</sup> Whether this indicates recognition that it may be inconsistent with EU Member States' legal obligations, or simply that States are not prepared to commit themselves to accepting refugee quotas, it highlights the legal and practical challenges of creating such a scheme.

## 2 Policy rationale

At the heart of the EU's regional processing proposals lies a tension between protection and control.<sup>9</sup> Tighter border controls may limit the numbers of irregular migrants reaching the EU, but they create obstacles for asylum seekers in need of protection.<sup>10</sup> In 2014, 600,000 people applied for asylum in the EU, which was a record high.<sup>11</sup>

Properly crafted externalized processing arrangements may contribute to:

- 'burden sharing' (also described as 'responsibility sharing' – via funding or quotas);
- a more harmonized approach to determining asylum claims;
- providing better protection to people closer to their countries of origin;
- avoiding the need for people to embark on dangerous boat journeys in search of protection ('saving lives at sea'); and
- more efficient sharing of resources (eg infrastructure, knowledge and expertise).<sup>12</sup>

However, such objectives are very difficult to achieve without a clear understanding of States' diverse interests, and true political will to share responsibilities equitably. For instance, whereas frontline European countries such as Italy and Greece welcome the idea of a regional system for processing and allocating refugees throughout the EU, other European States are less receptive to the idea. According to one commentator, this is because any regional system would require all EU Member States to commit to resettling a certain quota of refugees, and some are reluctant to do this.<sup>13</sup>

Furthermore, as the EU Commission's European Agenda on Migration makes clear in its recommendation to increase the number of EU resettlement places, resettlement can be enhanced without the establishment of regional or externalized processing arrangements.<sup>14</sup> There are millions of refugees already registered with

the United Nations High Commissioner for Refugees (UNHCR) who could be resettled now, if only States were willing to take them.

Further, each of the objectives above should not be seen as an end in itself, but considered within the broader global protection context. Thus, while preventing people from taking dangerous journeys is a laudable aim, it is meaningless unless alternative, safe and accessible protection pathways are created. Any regional framework must genuinely foster better protection within the region as a whole, and not deflect responsibilities on to other States.<sup>15</sup>

### 3 History

The idea of regional or externalized asylum processing has been debated in Europe for the past 30 years. As early as 1986, Denmark proposed a draft resolution in the UN General Assembly to create UN processing centres to coordinate the resettlement of refugees among all States, recognizing that ‘the care for and the interest of the individual refugee must at all times be the primary concern’.<sup>16</sup> By contrast to contemporary extraterritorial processing discussions, Denmark considered that ‘UNHCR should be the focal point for such processing’.<sup>17</sup> This proposal was envisaged as part of a broader strategy to establish more orderly mechanisms for managing refugee movements. It was less about regional processing (understood as a regionalized system for processing), and more about externalized processing – external, that is, to the States that might ultimately resettle refugees.

In the mid-1990s, the Netherlands proposed the idea of European regional processing centres at Europe’s intergovernmental consultations (IGC) on refugees and exiles, but it was considered to be legally and practically infeasible.<sup>18</sup> The idea was raised again by the UK Home Secretary, Jack Straw, in the late 1990s, but went nowhere.<sup>19</sup>

In 2001, the Danish government promoted discussion on ‘reception in the region’, a topic it further advocated during its Presidency of the EU in 2002.<sup>20</sup> Denmark drew on practical precedents such as the United States’ policy of processing Haitian and Cuban asylum seekers at Guantanamo Bay, and Australia’s Pacific Solution, which became operational from late 2001.<sup>21</sup>

In March 2003, the UK launched a series of proposals to establish ‘Regional Protection Areas’ and ‘Transit Processing Centres’ for asylum seekers, based on the premise that ‘the current global system is failing’.<sup>22</sup> ‘Regional Protection Areas’ were



described as ‘safe areas where UNHCR has responsibility for providing protection and humanitarian support to refugees’.<sup>23</sup> The initial idea was not only that asylum seekers could apply directly for protection in Regional Protection Areas close to their countries of origin, but also that asylum seekers who reached the EU would be returned to them (ostensibly on the basis of the ‘safe third country’ principle). Those found to be in need of international protection could be considered for resettlement in an EU Member State, but there was no intention that all refugees would be resettled.<sup>24</sup> This was very clearly intended as a containment strategy – to restrict access to EU territory and shift to a discretionary resettlement process. The UK itself recognized that this was contrary to its obligations under international and EU law.<sup>25</sup>

The second tranche of the UK’s strategy was to create transit processing centres just outside the EU’s external borders, to which asylum seekers already in the EU – or those who presented themselves on arrival – could be transferred to have their protection claims determined.<sup>26</sup>

Unsurprisingly, given their past enthusiasm for externalized processing, Denmark and the Netherlands strongly supported this general approach.<sup>27</sup> The Danish government developed some of the ideas further and suggested that any regional protection area must guarantee respect for the principle of *non-refoulement*, physical and social protection, and incorporate a resettlement programme. It indicated that refugee status determination processes in transit processing centres would need to be identical to EU asylum procedures, and suggested that only asylum seekers from States with a ‘high rejection rate’ should be sent there.<sup>28</sup>

Italy and Spain also signalled their approval,<sup>29</sup> while others vigorously opposed it,<sup>30</sup> especially Sweden, Germany, and France (and especially on the issue of transit processing centres).<sup>31</sup> Their criticisms of the UK proposals included its lack of clarity about:

- how region-based protection would guarantee effective protection, durable solutions, and stop onward movement to the EU;
- who would have responsibility for protection in transit processing centres and under what legal arrangements; and
- how individuals would be identified (and prioritized) for resettlement.<sup>32</sup>

In 2004, the German Interior Minister, Otto Schily, suggested the creation of EU-funded ‘safe zones’ in North Africa,<sup>33</sup> to which asylum seekers intercepted at an early stage of their journey could be sent. With Italy’s support, a plan was formally proposed at an EU Justice and Interior Ministers meeting on 1 October 2004,<sup>34</sup> and

there was some interest from the UK, Poland and Austria. However, the Scandinavian countries condemned it, questioning in particular the legal basis for transferring asylum seekers to countries outside the EU.<sup>35</sup>

To date, no regional or external processing arrangement has received sufficient support to be implemented – either by EU Member States, or potential host States. Concerns have been raised about various matters, including:

- where processing centres would be located;
- whether they would be compatible with national law, EU legislation, the legislation of the envisaged countries hosting such centres, the European Convention on Human Rights and international law;
- which procedural rules (EU or national) would govern such centres; and
- the extent to which it would be possible to transfer asylum seekers to such centres if they had not transited through or otherwise stayed in the countries in which the centres were located.<sup>36</sup>

This has resulted in some States pursuing bilateral partnerships (for example, Italy and Libya; Spain and Morocco, Senegal, Mauritania and Cape Verde) to try to stop asylum seekers and migrants departing regions of origin in the first place.<sup>37</sup> The European Court of Human Rights ruled that certain practices pursued in this connection were unlawful, such as pushbacks of asylum seekers at sea.<sup>38</sup>

The EU also has a number of Regional Protection Programmes (RPPs) in place, but these are not the same as proposed regional processing areas or centres. Rather, through RPPs, the EU seeks to enhance the capacity of non-EU countries to provide durable solutions to refugees – repatriation, local integration or resettlement.<sup>39</sup> The RPPs involve a range of activities, including enhancing national asylum systems, training decision makers, improving reception conditions, and addressing concerns that affect refugees and the host community alike (such as development and disaster risk reduction). These objectives feed into Europe's Global Approach to Migration and Mobility (GAMM), which seeks to:

- organize and facilitate legal migration and mobility;
- prevent and reduce irregular migration and trafficking in human beings;
- promote international protection and enhance the external dimension of asylum policy; and
- maximize the development impact of migration and mobility.<sup>40</sup>

## 4 Legal concerns

For any externalized or regional processing scheme to be lawful, the human rights and protection needs of all asylum seekers, refugees and migrants must be respected. This includes ensuring that there are adequate refugee status determination procedures in place to identify people at risk of persecution or other serious harm, and that the conditions of treatment in the processing centres accord with international human rights standards. If asylum seekers are to be transferred to processing centres, then individual determinations must occur prior to removal to ensure that they are not at risk of persecution or serious harm in the country where the centre is located (and are not at risk of being sent on from there to a place where they risk such ill-treatment).

UNHCR acknowledges that extraterritorial processing might be acceptable when used 'as part of a burden-sharing arrangement to more fairly distribute responsibilities and enhance available protection space.'<sup>41</sup> It concedes that processing in North Africa and the Middle East may be a necessary measure to help prevent loss of life at sea, provided that certain legal safeguards are put in place.<sup>42</sup> For instance, it could be an effective approach to assist people from countries whose nationals are regularly found to need international protection.<sup>43</sup>

As a matter of international law, States cannot simply divest themselves of legal responsibility for asylum seekers transferred elsewhere. Any State involved in a regional processing arrangement must accept responsibility for implementing it in accordance with their international, regional and national legal obligations.<sup>44</sup>

Minimum preconditions include assurances that asylum seekers will:

- be admitted to the country in which the centre is located;
- be protected against *refoulement*;
- have access to legal assistance;
- have access to a fair and impartial status determination procedure;
- have access to a fair and impartial appeals process;
- have the right to remain while appeals take place;
- have the right to family unity respected;
- have access to durable solutions; and
- be treated in accordance with accepted international standards.<sup>45</sup>

The European Court of Human Rights has made clear that States' *non-refoulement* obligations apply wherever their officials act, whether inside a State's territory or outside it, including on the high seas.<sup>46</sup> This obligation means that States must not expose individuals to a real risk of being persecuted, tortured, arbitrarily deprived of life, or exposed to inhuman or degrading treatment or punishment – either by sending them directly to the country in which such harm is feared, or to any other country where they might be at risk (including via removal to the place where harm is feared). It means that States cannot lawfully remove an individual to other territories for processing unless it can be shown, on a case-by-case basis, that the particular territory is 'safe'.<sup>47</sup>

In effect, this means that there needs to be a separate procedure to examine the legality of a decision to transfer an asylum seeker to a processing centre.<sup>48</sup> This may undercut any deterrence message that a regional scheme might be designed to send.<sup>49</sup> It may also be very time-consuming and resource intensive. For example, under the EU's 'Dublin system', asylum seekers may be transferred back to the first European country they entered to have their protection claim determined. In practice, it can take longer for transfer decisions to be made than if the substantive asylum claim were considered in the first place.<sup>50</sup>

Further, minimum standards of treatment, in accordance with EU law, must be observed in the regional centres. If standards are lower, processing times longer, or durable solutions less forthcoming, then asylum seekers will continue to weigh up the risk of entering and residing in the EU irregularly, against being transferred elsewhere for processing.<sup>51</sup>

European proposals to date have left many unanswered questions. For instance, the Parliamentary Assembly of the Council of Europe has asked:

- 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?
- 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?

- 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?
- where should the centres be located?
- 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?<sup>52</sup>

Participating States would need to provide assurances that they would respect decisions and act on the outcomes. There would also need to be a clear process for distributing refugees in the EU, as well as for returning those found not to have a protection need.

## 5 Comparisons with Australia and the United States

While the idea of creating external processing centres is neither new nor unique, its practical implementation is less common. Australia has pioneered the systematic use of offshore processing in third countries (Nauru and Papua New Guinea) which entails violations of international law. Indeed, far from providing satisfactory answers to the legal concerns raised above, Australia's offshore processing arrangements with Nauru and Papua New Guinea have reinforced why they are such pressing matters. Concerns about *refoulement*, coerced repatriation or resettlement, and serious human rights violations have been extensively documented.<sup>53</sup> If Australia's approach were adopted in Europe, it would also breach European regional human rights laws and EU norms (which are subject to relatively strong enforcement mechanisms).

Australia's approach is partly modelled on the US practice of processing asylum seekers from Haiti (since 1991) and Cuba (since 1994) at Guantánamo Bay in Cuba.<sup>54</sup> The US Secretary of Homeland Security has the power to detain and screen any undocumented non-citizen intercepted in the Caribbean region who demonstrates a credible fear of persecution.<sup>55</sup> As with the present Australian practice, asylum seekers processed offshore (at Guantanamo Bay), and those found to be refugees are detained indefinitely until they can be resettled in a third country. However, whereas Australian law contemplates the offshore transfer of any asylum seeker who arrives without a visa, only asylum seekers interdicted at sea are taken to Guantanamo Bay. Asylum seekers who reach the US are not sent there.<sup>56</sup>

Neither the US nor Australia's externalized processing regimes can be easily equated with EU proposals. First, they are not true 'regional' approaches pursued by a number of States with a common objective. The US has a special lease over Guantanamo Bay which enables it to operate a processing centre there. Australia's system is premised on bilateral agreements with each participating State, rather than a multilateral process involving a number of countries in the region. Secondly, neither the US nor Australia agrees to resettle those found to be refugees, whereas most EU proposals contemplate the resettlement of at least some refugees across the EU.

## 6 The role of host States

The fact that processing in this context is so often described as 'extraterritorial' processing highlights the perspective from which it is approached: namely, States seeking to move refugee status determination outside their own borders.

Indeed, Betts and Milner have noted that the States expected to host such centres are often excluded from discussions, with proposals presented to them as a *fait accompli*.<sup>57</sup> Sometimes, their need for foreign aid, as is the case in Nauru and Papua New Guinea, may entice them to accept arrangements for financial reasons rather than because they regard them as sound policy. As has been evident in the Asia-Pacific, Australia has pursued a national agenda on asylum 'in isolation from consideration of the political and structural realities of asylum' in the region.<sup>58</sup> This has limited the buy-in of transit countries, such as Indonesia. A sense of alienation may result in an even greater unwillingness to cooperate in regional solutions over the longer term.

Potential host States for any processing centre may be concerned about becoming a magnet for even more asylum seekers, propelled by the prospect of seeking asylum 'safely'. Neither host States, nor EU States, want to create incentives for additional flows. As Garlick explains, '[s]trong incentives, and a demonstration that third countries' interests are served by the arrangement, would be critical.'<sup>59</sup>

Tensions may also arise if the conditions in the processing centre are superior to those in the community. This is why it is important to take a holistic approach in contemplating any externalized regime. As events in Australia's offshore processing centres show, negative community attitudes can lead to tensions and serious violence.<sup>60</sup>

## 7 What would a functional, regional protection framework look like?

Cooperative regional approaches can help States to develop more coherent, systematic and predictable responses to refugee movements. Over time, they can enable a fairer distribution of responsibilities among States for providing protection and assistance to refugees (both within the region, as well as outside it – for example, through resettlement).<sup>61</sup> They can help to create more consistent, harmonized standards of treatment for those on the move, which may remove incentives for secondary movements and thereby reduce the demand for people smugglers.<sup>62</sup>

Timely solutions are key. If refugees know that a durable solution is forthcoming, then they are more likely to wait in a transit country than to try to find an alternative solution on their own. This is why international cooperation is so important. The less that States are prepared to build protection capacity in their own territory, the more likely it is that secondary movements will occur.

To be effective, attempts at cooperation must acknowledge the concerns and interests of all participating States within a broader context (such as development, security, etc),<sup>63</sup> rather than being imposed by one side. They must identify common shared understandings from which practical measures can be built. And they must operate in accordance with international law.

UNHCR has explained that multilateral cooperation and equitable responsibility-sharing can support the international legal protection regime, if appropriately designed. Tough border controls are not the answer: the focus must be on providing safe avenues for protection.<sup>64</sup> Importantly:

- the effective protection of refugees must not be displaced by a focus on border control;
- any transfer of asylum seekers to other countries must be consistent with international law and practice, with minimum guarantees that they will be admitted to the country; will enjoy effective protection there, especially against *refoulement*; will have the possibility to seek and enjoy asylum; and will be treated in accordance with accepted international standards; and
- readmission agreements to facilitate the safe return of those not in need of protection are a necessary part of any international cooperative efforts.<sup>65</sup>

Finally, bringing the discussion back to Europe, Professor Guy S Goodwin-Gill from the University of Oxford has proposed the creation of a European Migration and Protection Agency. His vision is not about externalized processing, but rather about enhancing protection within Europe itself: in other words, how the 28 EU Member States might themselves create a functional regional processing regime. Such an agency would replace the national procedures of the EU Member States to provide a truly regional approach to protection.<sup>66</sup> This is reminiscent of a 2003 UNHCR proposal (a response to the UK proposals discussed above), which suggested, among other things, that asylum seekers in the EU could be processed in reception centres by an EU asylum agency, with appeals decided by an independent EU asylum review board, leading to a uniform status valid throughout the EU.<sup>67</sup> As Goodwin-Gill notes: 'The EU demands ... a simple European response, in which Europe's refugees enjoy a European asylum and European protection, and the rights and benefits accorded by European law.'<sup>68</sup>

## 8 Conclusion: A protection toolkit

Displacement is an age-old phenomenon that can at best be managed, not 'solved'. To better respond to the needs of those on the move, a number of complementary strategies are needed. Regional processing is one such option, but it will not work in isolation from others. A protection 'toolkit' provides a flexible range of measures that can help to provide protection in a safer, and more regular, manner. They should supplement, not replace, national asylum procedures.

A protection toolkit may include combinations of the following:

- increased resettlement;
- strategic use of existing temporary and permanent visa categories for people who can qualify (for example, education (students, academics), labour (to fill shortages, entrepreneurs), family);<sup>69</sup>
- facilitation of family reunion;<sup>70</sup>
- humanitarian evacuations (to get people out of dangerous situations, as in the case of Kosovo, for example);
- humanitarian admissions (for people who may not meet the formal legal protection criteria, but have compassionate reasons for entry);<sup>71</sup>
- protected entry procedures (such as accepting asylum applications at embassies);<sup>72</sup>
- in-country processing/orderly departure programmes for identified cohorts;<sup>73</sup>
- use of mobile refugee status determination teams;<sup>74</sup>
- use of temporary protection in situations of mass influx;<sup>75</sup>



- reconsideration of carrier sanctions; and
- development of complementary private refugee sponsorship schemes, such as Canada's Private Sponsorship of Refugees Programme and Germany's family sponsorship programme for Syrians.<sup>76</sup>

Some of these elements are already well-known protection tools, such as resettlement. Others may be less familiar. For instance, in the past, a number of European countries allowed asylum seekers to apply for asylum at embassies abroad.<sup>77</sup> Some embassies simply accepted and passed on asylum applications, while others undertook a full assessment of the claim. Such practices have fallen out of favour because of the resources required, as well as concerns that applicants may have inferior access to information, legal assistance, appeal processes, and so on.<sup>78</sup> That is why they should only ever be *one* approach among several. At present, French consulates can exceptionally issue visas to asylum applicants in crisis zones to enable them to travel to France to apply for protection. Beneficiaries of this mechanism have included victims of the Haiti earthquake, Iraqi Christians, and Syrians.<sup>79</sup> As the European Council on Refugees and Exiles notes, with political will such schemes could operate more systematically and effectively.<sup>80</sup>

A number of the suggestions above were included in a resolution adopted by the European Parliament in late April 2015 (in response to the Mediterranean incident on 18 April 2015). It called on the EU and its Member States to, *inter alia*, issue humanitarian visas at their embassies and consular offices abroad; trigger the 2001 Temporary Protection Directive (to respond to situations of mass influx); and make greater contributions to existing resettlement programmes and establish a binding quota for the distribution of asylum seekers among all Member States.<sup>81</sup>

Importantly, it stressed the need to situate asylum policies within a broader regional and global context. In particular, it noted that creating regional stability in conflict areas is central to reducing further displacement. It also called on the EU and its Member States to:

- take a more holistic EU approach in focusing on the root causes of displacement, violence, under-development and migration in countries of origin, including by considering the inter-relationship between foreign and security policy, development policy and migration policy;<sup>82</sup> and
- strengthen cooperation with partner countries in the Middle East and Africa to promote democracy, fundamental freedoms and rights, security and prosperity, noting that such countries should significantly enhance their governance structures by building effective and inclusive public institutions,

increase capacity in their asylum systems, establish the rule of law, and fight endemic corruption.

On 13 May 2015, the EU Commission set out its vision for a new approach to asylum and migration policy in its European Agenda on Migration. It put forward immediate measures to respond to the situation in the Mediterranean, as well as longer-term strategies.

Key proposals include:

- developing a mandatory distribution (or ‘relocation’) scheme within the EU to share responsibility for refugees and asylum seekers, based on criteria such as GDP, population size, unemployment rate, and past numbers of asylum seekers and refugees;<sup>83</sup>
- establishing an EU-wide resettlement scheme offering 20,000 places annually;<sup>84</sup>
- enhancing Regional Development and Protection Programmes;<sup>85</sup>
- addressing root causes of displacement through development cooperation and humanitarian assistance;
- encouraging States to fulfil their obligation to readmit their nationals who are not in need of protection; and
- create stronger links between migration and development policies.

UNHCR described the agenda as a ‘great breakthrough in terms of managing refugee flows and migration’.<sup>86</sup> It remains to be seen whether it will receive sufficient buy-in from Member States to be implemented fully.

Finally, it is timely to reconsider the consequences for refugees of policies that seek to curb irregular migration, such as carrier sanctions. Any transport company that permits a person to travel without the requisite entry documents is liable to very significant fines (known as ‘carrier sanctions’). Some asylum seekers could afford to purchase airline tickets or safe passage on a ship. However, since they are not permitted to board without valid visas – and someone fleeing persecution or serious human rights abuses is unlikely to have (or be able to obtain) one<sup>87</sup> – they are effectively forced into covert means of movement. In 2013, over 100 nationalities required a visa to enter the EU – in other words, more than 80 per cent of the world’s non-EU population.<sup>88</sup> People smugglers respond to a demand driven by the absence of other escape options. If carrier sanctions were moderated, then the need for people smugglers would be reduced,<sup>89</sup> and safer forms of travel could be used. Unless States create measures to allow people to seek protection lawfully, dangerous journeys will continue.

## Endnotes

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<sup>1</sup> European Parliament, Joint Motion for a Resolution on the Latest Tragedies in the Mediterranean and EU Migration and Asylum Policies 2015/2660(RSP) (28 April 2015) <<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2F%2FEP%2F%2FTEXT%2BMOTION%2BP8-RC-2015-0367%2B0%2BDOC%2BXML%2BV0%2F%2FEN&language=EN>>. For statistics from 1998–2015, see Philippe Fargues and Anna Di Bartolomeo, *Drowned Europe* (Migration Policy Centre Policy Brief, April 2015) 2

<[http://cadmus.eui.eu/bitstream/handle/1814/35557/MPC\\_2015\\_05\\_PB.pdf?sequence=1](http://cadmus.eui.eu/bitstream/handle/1814/35557/MPC_2015_05_PB.pdf?sequence=1)>.

<sup>2</sup> Gregor Noll, 'Visions of the Exceptional: Legal and Theoretical Issues Raised by Transit Processing Centres and Protection Zones' (2003) 5(3) *European Journal of Migration and Law* 303, 307. The initial proposal was put forward by the Greek Presidency and is being pursued by the Italian Presidency.

<sup>3</sup> *Charter of Fundamental Rights of the European Union* [2012] OJ C 362/391, art 18; 'European Commission Presents Its Views on the Future EU Home Affairs Policies' (18 March 2014) Asylum Information Database <<http://www.asylumineurope.org/news/18-03-2014/european-commission-presents-its-views-future-eu-home-affairs-policies>>.

<sup>4</sup> When the term 'regional' is used in EU discussions, it typically refers to countries in the regions from which asylum seekers come (eg North Africa and the Middle East), not to a regional EU approach. By contrast, when Australian commentators refer to regional processing arrangements, they typically mean arrangements within the Asia-Pacific region.

<sup>5</sup> The term 'Regional Protected Area' came from the UK's proposals in 2003: United Kingdom Home Office, 'New Vision for Refugees: Summary' (Policy Proposal, 7 March 2003) ('New Vision Proposal') <[http://www.proasyl.de/texte/europe/union/2003/UK\\_NewVision.pdf](http://www.proasyl.de/texte/europe/union/2003/UK_NewVision.pdf)>. A memorandum by the Danish government in April 2003 used the term 'regional protection zone' (RPZ) and provided more detail: Ministry of Refugee, Immigration and International Affairs (Denmark), 'Protection in the Region/Transit Processing Centres: Legal, Practical and Financial Issues' (Memorandum, 24 April 2003), cited in Noll, above n 2, 307. See also Kim Ward, *Navigation Guide: Regional Protection Zones and Transit Processing Centres* (Information Centre about Asylum and Refugees in the UK, November 2004) 10. At the outset, it is important to be clear that when the term 'regional' is used in EU discussions, it typically refers to countries in the regions from which asylum seekers come (eg North Africa and the Middle East), not to a regional EU approach. By contrast, when Australian commentators refer to regional processing arrangements, they typically mean arrangements within the Asia-Pacific region.

<sup>6</sup> See Select Committee on European Union (UK), 'New International Approaches to Asylum Processing and Protection' in *Handling EU Asylum Claims: New Approaches Examined*, House of Lords Paper No 74, 11<sup>th</sup> Report of Session 2003–04 (2004) Appendix 5; New Vision Proposal, above n 5. There have been a wide range of iterations over the years: for a summary, see Ward, above n 5. This paper uses the terms above interchangeably.

<sup>7</sup> See eg, David Wroe, 'Refugee Crisis: Europe Looks to Australia for Answers', *Sydney Morning Herald*, 24 April 2015 <<http://www.smh.com.au/national/refugee-crisis-europe-looks-to-australia-for-answers-20150424-1ms804.html>>; 'Australia's Refugee Policy: Should Europe Emulate It?', *DW*, 22 April 2015 <<http://www.dw.de/australias-refugee-policy-should-europe-emulate-it/a-18399274>>; Jonathan Pearlman, 'How Australia's Migrant Policy Works – And Is It Transferable to the Mediterranean?', *The Telegraph*, 22 April 2015 <<http://www.telegraph.co.uk/news/worldnews/australiaandthepacific/australia/11554161/How-Australias-migrant-policy-works-and-is-it-transferable-to-the-Mediterranean.html>>.

<sup>8</sup> See eg, European Commission, 'Joint Foreign and Home Affairs Council: Ten Point Action Plan on Migration' (Press Release, 20 April 2015) <[http://europa.eu/rapid/press-release\\_IP-15-4813\\_en.htm](http://europa.eu/rapid/press-release_IP-15-4813_en.htm)>;

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European Council, 'Special Meeting of the European Council, 23 April 2015: Statement (23 April 2015) <<http://www.consilium.europa.eu/en/press/press-releases/2015/04/23-special-euco-statement/>>; European Parliament, Joint Motion for a Resolution on the Latest Tragedies in the Mediterranean and EU Migration and Asylum Policies 2015/2660(RSP) (28 April 2015) <<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2F%2FEP%2F%2FTEXT%2BMOTION%2BP8-RC-2015-0367%2B0%2BDOC%2BXML%2BV0%2F%2FEN&language=EN>>; European Commission, 'A European Agenda on Migration' (Communication) COM (2015) 240 final, 13 May 2015 <[http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/communication\\_on\\_the\\_european\\_agenda\\_on\\_migration\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/communication_on_the_european_agenda_on_migration_en.pdf)>. The Agenda (at 5) includes a statement about the planned establishment of a 'pilot multi-purpose centre' in Niger by the end of 2015: 'Working with the International Organisation for Migration (IOM), the UNHCR and the Niger authorities, the centre will combine the provision of information, local protection and resettlement opportunities for those in need. Such centres in countries of origin or transit will help to provide a realistic picture of the likely success of migrants' journeys, and offer assisted voluntary return options for irregular migrants.' It is unclear precisely what its function would be, but it is clear that this is envisaged as something very different from an extraterritorial processing centre for the EU.

<sup>9</sup> See eg, Advisory Committee on Migration Affairs (Netherlands), *External Processing: Conditions applying to the Processing of Asylum Applications outside the European Union* (Advisory Report No 32, 2010) 46 <<http://www.acvz.org/publicaties/Advies-ACVZ-NR32-ENG-2010.pdf>>.

<sup>10</sup> Ibid 13.

<sup>11</sup> 'A European Agenda on Migration', above n 8, 12.

<sup>12</sup> See eg Committee on Migration, Refugees and Population, Parliamentary Assembly of the Council of Europe, *Assessment of Transit and Processing Centres as a Response to Mixed Flows of Migrants and Asylum Seekers*, Doc 11304 (15 June 2007) para 10.

<sup>13</sup> Zara Rabinovitch, 'Pushing Out the Boundaries of Humanitarian Screening with In-Country and Offshore Processing' (16 October 2014) Migration Policy Institute <<http://www.migrationpolicy.org/article/pushing-out-boundaries-humanitarian-screening-country-and-offshore-processing>>. For an in-depth analysis of distribution keys, see Martin Wagner and Albert Kraler, *An Effective Asylum Responsibility-Sharing Mechanism* (International Centre for Migration Policy Development, October 2014) <[http://research.icmpd.org/fileadmin/Research-Website/Lists\\_of\\_publications/TP\\_Responsibility\\_Sharing\\_Wagner\\_Kraler.pdf](http://research.icmpd.org/fileadmin/Research-Website/Lists_of_publications/TP_Responsibility_Sharing_Wagner_Kraler.pdf)>.

<sup>14</sup> 'A European Agenda on Migration', above n 8, 4–5.

<sup>15</sup> Refugee Council of Australia, '2010 High Priorities List: Asylum Policy Issues' (20 October 2010) <[http://www.refugeecouncil.org.au/docs/current/2010\\_Asylum\\_priorities.pdf](http://www.refugeecouncil.org.au/docs/current/2010_Asylum_priorities.pdf)>. See also 'A Regional Refugee Protection Framework: A Joint Statement by Australian Non-Government Organisations' (1 August 2010) <[http://www.refugeecouncil.org.au/docs/releases/2010/100801\\_Regional\\_Protection\\_Framework.pdf](http://www.refugeecouncil.org.au/docs/releases/2010/100801_Regional_Protection_Framework.pdf)>. UNHCR presented the original proposal for a Regional Cooperation Framework to the November 2010 Ad Hoc Workshop on Regional Cooperation in Manila: UNHCR, 'Regional Cooperative Approach to Address Refugees, Asylum-Seekers and Irregular Movement' (Discussion Paper presented at the Ad Hoc Workshop on Regional Cooperation, Manila, 22–23 November 2010) <<http://www.baliprocess.net/files/Regional%20Cooperation%20Approach%20Discussion%20document%20-%20final.pdf>>; Gilbert and Tobin Centre of Public Law (UNSW), Submission to Prime Minister's Expert Panel on Asylum Seekers (July 2012) <[http://www.gtcentre.unsw.edu.au/sites/gtcentre.unsw.edu.au/files/expert\\_panel\\_11\\_7\\_12.pdf](http://www.gtcentre.unsw.edu.au/sites/gtcentre.unsw.edu.au/files/expert_panel_11_7_12.pdf)>.

<sup>16</sup> Office of the United Nations High Commissioner for Refugees, 'International Procedures for the Protection of Refugees', UNGA draft res, UN GAOR, 3<sup>rd</sup> Comm, 41<sup>st</sup> sess, Agenda item 99, UN Doc A/C.3/41/L.51 (12 November 1986) preamble. Consideration of the resolution was deferred until the 42<sup>nd</sup> session of UNGA (see Provisional Verbatim Record, UN GAOR, 41<sup>st</sup> sess, 97<sup>th</sup> mtg, 4 December 1986, UN Doc A/41/PV.97 (11 December 1986) 48, but it was never formally considered further.

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<sup>17</sup> Summary Record of the 39<sup>th</sup> Meeting, UN GAOR, 3<sup>rd</sup> Comm, 41<sup>st</sup> sess, 39<sup>th</sup> mtg, UN Doc A/C.3/41/SR.39 (7 November 1986) para 33.

<sup>18</sup> Ward, above n 5, 10, referring to Dutch State Secretary of Justice, Aad Kosto, who suggested that 'all asylum seekers would be sent back to reception centres in their own region of origin' for the processing of their claims, cited in Noll, above n 2, 312. In 1994–95 the IGC extensively analysed and critiqued the US model: see Noll, above n 2, 313–14.

<sup>19</sup> ABC Radio, 'Migration Experts Discuss the Global Dilemma of an Estimated 22 Million Refugees', *Breakfast*, 21 May 2003 (Gil Loescher); IGC Secretariat, *Reception in the Region of Origin: Draft Follow-Up to the 1994 Working Paper* (Geneva, August 1995) 7; Gregor Noll, Jessica Fagerlund and Fabrice Liebaut, *Study on the Feasibility of Processing Asylum Claims Outside the EU Against the Background of the Common European Asylum System and the Goal of a Common Asylum Procedure* (European Community, 2002) 62.

<sup>20</sup> See Noll, above n 2, 303–04.

<sup>21</sup> *Ibid.*

<sup>22</sup> Select Committee on European Union, above n 6.

<sup>23</sup> New Vision Proposal, above n 5, 2.

<sup>24</sup> *Ibid* 18.

<sup>25</sup> *Ibid* 9: 'If we want to reduce our asylum obligations we could completely withdraw from the Convention. However, this will bring us little gain unless we can withdraw from or alter Article 3 of EHCR. If we could change Article 3 then withdrawal from Geneva Convention may be worth considering. ... If we only had to concern ourselves with torture, inhuman and degrading treatment that happens in the UK we could remove anyone off the territory without obligation. Coupled with a withdrawal from the Geneva Convention refoulement should be possible and the notion of an asylum seeker in the UK should die.'

<sup>26</sup> Secretary of State for the Home Department, 'Statement on Zones of Protection' (Media Release, Stat010/2003, 27 March 2003), to which was appended the UK's proposal 'New International Approaches to Asylum Processing and Protection', in Select Committee on European Union, above n 6; European Commission, 'Towards More Accessible, Equitable and Managed Asylum Systems' (Communication) COM (2003) 315 final, 3 June 2003. See generally Alexander Betts, 'The International Relations of the "New" Extraterritorial Approaches to Refugee Protection: Explaining the Policy Initiatives of the UK Government and UNHCR' (2004) 22 *Refugee* 58; Madeline Garlick, 'The EU Discussions on Extraterritorial Processing: Solution or Conundrum?' (2006) 18 *International Journal of Refugee Law* 601.

<sup>27</sup> Committee on Migration, Refugees and Population, above n 12, para 20.

<sup>28</sup> See Ward, above n 5, 10.

<sup>29</sup> Agence Europe, *Bulletin Quotidien Europe* (28 March 2003) cited in Noll, above n 2, 306.

<sup>30</sup> Select Committee on European Union, above n 6, para 57. See further Noll, above n 2.

<sup>31</sup> Ward, above n 5, 11, citing British Refugee Council, 'International Protection Project Update' (September 2003).

<sup>32</sup> Ward, above n 5, 32. UNHCR responded with a proposal of its own, discussed further below. See UNHCR, 'UNHCR's Three-Pronged Proposal' (June 2003) <<http://www.refworld.org/docid/3efc4b834.html>>; UNHCR, 'UNHCR Working Paper: A Revised "EU Prong" Proposal' (2003) <<http://www.refworld.org/pdfid/400e85b84.pdf>>.

<sup>33</sup> Committee on Migration, Refugees and Population, above n 12, paras 23–24. See also Noll, above n 2, 306.

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<sup>34</sup> Ward, above n 5, 21.

<sup>35</sup> Advisory Committee on Migration Affairs, above n 9, 17.

<sup>36</sup> 'Towards More Accessible, Equitable and Managed Asylum Systems', above n 26, 6.

<sup>37</sup> Advisory Committee on Migration Affairs, above n 9, 18. See also EU Mobility Partnerships with Morocco (June 2013), Tunisia (March 2014), Moldova and Cape Verde (2008), Georgia (2009), Armenia (2011) and Azerbaijan (2013): <[http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/international-affairs/eastern-partnership/mobility-partnerships-visa-facilitation-and-readmission-agreements/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/international-affairs/eastern-partnership/mobility-partnerships-visa-facilitation-and-readmission-agreements/index_en.htm)>.

<sup>38</sup> See *Hirsi Jamaa & Ors v Italy* (European Court of Human Rights, Grand Chamber, Application No 27765/09, 23 February 2012).

<sup>39</sup> European Commission, 'On Regional Protection Programmes' (Communication) COM (2005) 388 final, 1 September 2005 <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2005:0388:FIN:EN:PDF>>.

<sup>40</sup> European Commission, 'The Global Approach to Migration and Mobility' (Communication) COM (2011) 743 final, 18 November 2011 <<http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52011DC0743>>.

<sup>41</sup> UNHCR, 'Maritime Interception Operations and the Processing of International Protection Claims: Legal Standards and Policy Considerations with respect to Extraterritorial Processing' (Protection Policy Paper, 2010) para 3.

<sup>42</sup> Vincent Cochetel, Director of the Europe Bureau, cited in Harriet Sherwood, Helena Smith, Lizzy Davies and Harriet Grant, 'Europe Faces "Colossal Humanitarian Catastrophe" of Refugees Dying at Sea', *The Guardian*, 3 June 2014 <<http://www.theguardian.com/world/2014/jun/02/europe-refugee-crisis-un-africa-processing-centres>>.

<sup>43</sup> UNHCR, 'Maritime Interception Operations and the Processing of International Protection Claims: Legal Standards and Policy Considerations with respect to Extraterritorial Processing' (Protection Policy Paper, 2010) para 51.

<sup>44</sup> See eg, Andrew & Renata Kaldor Centre for International Refugee Law, 'Offshore Processing and Australia's Responsibility for Asylum Seekers and Refugees in Nauru and Papua New Guinea' <[http://www.kaldorcentre.unsw.edu.au/publication/offshore-processing-and-australia%E2%80%99s-responsibility-asylum-seekers-and-refugees-nauru-and#state\\_responsibility](http://www.kaldorcentre.unsw.edu.au/publication/offshore-processing-and-australia%E2%80%99s-responsibility-asylum-seekers-and-refugees-nauru-and#state_responsibility)>.

<sup>45</sup> UNHCR, 'Maritime Interception Operations and the Processing of International Protection Claims: Legal Standards and Policy Considerations with respect to Extraterritorial Processing' (Protection Policy Paper, 2010) para 35.

<sup>46</sup> *Hirsi Jamaa & Ors v Italy* (European Court of Human Rights, Grand Chamber, Application No 27765/09, 23 February 2012).

<sup>47</sup> See Select Committee on European Union, above n 6, para 68; see also Select Committee on European Union, *Minimum Standards in Asylum Procedures*, House of Lords Paper No 59, 11<sup>th</sup> Report of Session 2000–01 (2001) paras 122–23. Forcibly transferring asylum seekers to transit processing centres would also contravene article 18 of the EU Charter of Fundamental Rights. Children should not be removed unless their best interests have been taken into account as a primary consideration: *Convention on the Rights of the Child*, 1577 UNTS 3 (opened for signature 20 November 1989, entered into force 2 September 1990) art 3. Special attention would need to be given to particularly vulnerable groups, such as children, the elderly, and sufferers of torture or trauma.

<sup>48</sup> Advisory Committee on Migration Affairs, above n 9, 41.

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<sup>49</sup> Noll et al, above n 19, 61.

<sup>50</sup> UNHCR, 'UNHCR Recommendations on Important Aspects of Refugee Protection in Italy' (July 2013) 7 <<http://www.refworld.org/pdfid/522f0efe4.pdf>> (where it may take up to 24 months); European Council of Refugees and Exiles, *Dublin II Regulation: Lives on Hold: European Comparative Report* (February 2013) 218–27 <<http://www.ecre.org/component/downloads/downloads/701.html>>; Minos Mouzourakis, 'We Need to Talk about Dublin': *Responsibility under the Dublin System as a Blockage to Asylum Burden-Sharing in the European Union* (Refugee Studies Centre, Working Paper Series No 105, December 2014) 18–19.

<sup>51</sup> See eg Advisory Committee on Migration Affairs, above n 9, 42.

<sup>52</sup> Committee on Migration, Refugees and Population, above n 12, para 11 (original numbering and capital letters omitted).

<sup>53</sup> Juan E Mendez, *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 28<sup>th</sup> sess, Agenda item 3, UN Doc A/HRC/28/68/Add.1 (6 March 2015) 7–9; Amnesty International, *Report 2014/15: The State of the World's Human Rights* (2015) 63–64

<[http://www.amnesty.org.au/images/uploads/about/Annual\\_Report\\_2015\\_The\\_State\\_of\\_the\\_Worlds\\_Human\\_Rights.pdf](http://www.amnesty.org.au/images/uploads/about/Annual_Report_2015_The_State_of_the_Worlds_Human_Rights.pdf)>; Legal and Constitutional Affairs References Committee, Parliament of Australia, *Incident at the Manus Island Detention Centre from 16 February 2014 to 18 February 2014* (2014) <[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Legal\\_and\\_Constitutional\\_Affairs/Manus\\_Island/Report](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Manus_Island/Report)>; Australian Human Rights Commission, *The Forgotten Children: National Inquiry into Children in Immigration Detention* (2014) <[https://www.humanrights.gov.au/sites/default/files/document/publication/forgotten\\_children\\_2014.pdf](https://www.humanrights.gov.au/sites/default/files/document/publication/forgotten_children_2014.pdf)>; Philip Moss, *Review into Recent Allegation relating to Conditions and Circumstances at the Regional Processing Centre in Nauru* (Department of Immigration and Border Protection, 6 February 2015) <[https://www.immi.gov.au/about/dept-info/\\_files/review-conditions-circumstances-nauru.pdf](https://www.immi.gov.au/about/dept-info/_files/review-conditions-circumstances-nauru.pdf)>.

<sup>54</sup> Azadeh Dastyari, 'Refugees on Guantanamo Bay: A Blue Print for Australia's "Pacific Solution"?' (2007) 79 *Australian Quarterly* 4, 6; Azadeh Dastyari and Libbey Effenev, 'Immigration Detention in Guantánamo Bay: (Not Going Anywhere Anytime Soon)' (2012) 6(2) *Shima: The International Journal of Research into Island Cultures* 49.

<sup>55</sup> Executive Order 13276 of 15 November 2002 (President GW Bush), as amended by Executive Order 13286, cited in Dastyari and Effenev, above n 54, 56.

<sup>56</sup> Dastyari and Effenev, above n 54, 50.

<sup>57</sup> Alexander Betts and James Milner, *The Externalisation of EU Asylum Policy: The Position of African States* (COMPAS Working Paper No 36, 2006) 16–17.

<sup>58</sup> *Ibid* 44.

<sup>59</sup> Garlick, above n 26.

<sup>60</sup> Legal and Constitutional Affairs References Committee, above n 50.

<sup>61</sup> UNHCR, 'Regional Cooperative Approach', above n 15, 2–3.

<sup>62</sup> *Ibid*.

<sup>63</sup> Betts and Milner, above n 57; UNHCR, 'Regional Cooperative Approach', above n 15, 3.

<sup>64</sup> Vincent Cochetel, above n 42.

<sup>65</sup> See UNHCR, 'Three-Pronged Proposal', above n 32, 2–3.

<sup>66</sup> Since they 'have all agreed to treat refugees in the same way, to recognize the same rights and to accord the same benefits, national refugee status determination systems are redundant': Guy

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Goodwin-Gill, “Regulating ‘Irregular’ Migration: International Obligations and International Responsibilities” (Keynote Address, National and Kapodistrian University of Athens Faculty of Law, 20 March 2015) 9.

<sup>67</sup> UNHCR, ‘A Revised “EU Prong” Proposal’, above n 32.

<sup>68</sup> Goodwin-Gill, above n 66, 9. See also ‘A European Agenda on Migration’, above n 8, 17, on the adoption of a uniform asylum status.

<sup>69</sup> ‘The EU is also facing a series of long-term economic and demographic challenges. Its population is ageing, while its economy is increasingly dependent on highly-skilled jobs. ... Migration will increasingly be an important way to enhance the sustainability of our welfare system and to ensure sustainable growth of the EU economy’: ‘A European Agenda on Migration’, above n 8, 14.

<sup>70</sup> A joint statement by António Guterres, the United Nations High Commissioner for Refugees; Zeid Ra’ad Al Hussein, the United Nations High Commissioner for Human Rights; Peter Sutherland, the Special Representative of the UN Secretary-General For Migration and Development; and William L Swing, the Director-General of the International Organization for Migration, recommended ‘making family reunification more readily accessible and easier’: ‘Joint Statement on Protection in the Mediterranean in light of the EU Council’s Decision of 23 April 2015’ (Press Release, 27 April 2015) <<http://www.unhcr.org/553e41e66.html>>.

<sup>71</sup> See eg, Ulla Iben Jensen, *Humanitarian Visas: Option or Obligation?* (European Parliament, Directorate-General for Internal Policies, Study for the LIBE Committee, 2014, PE 509.986) <[http://www.europarl.europa.eu/RegData/etudes/STUD/2014/509986/IPOL\\_STU%282014%29509986\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2014/509986/IPOL_STU%282014%29509986_EN.pdf)>. Such visas could be granted to asylum seekers already within a Member State, as well as extraterritorially.

<sup>72</sup> ‘Protected entry procedures’ is not a term of art, but an ‘overarching concept’ to describe any arrangement that permits an individual: (a) to approach a potential host State outside its territory with a protection claim; and (b) if found to be in need of protection, to be granted an entry permit to that State: Noll et al, above n 19, 20.

<sup>73</sup> See eg, Andrew & Renata Kaldor Centre for International Refugee Law Research Project on In-Country Processing and Orderly Departure Programmes <<http://www.kaldorcentre.unsw.edu.au/country-processing-and-orderly-departure-programmes>>. UNHCR explains that this allows for the identification of particular groups or individuals at risk in their own country, and the use of either refugee/humanitarian visas, labour migration schemes, or family reunion to bring them to a safe country: UNHCR, ‘Regional Cooperative Approach’, above n 15, 6.

<sup>74</sup> UNHCR has used such teams in emergencies, and/or to reach asylum seekers in remote areas. It has also been suggested that countries could create and fund mobile teams of decision-makers to travel to transit countries to determine asylum claims. This could provide an interim strategy to enhance refugee status determination within transit countries while they develop their own protection and assessment capacity: Bob Douglas et al, *Beyond the Boats: Building an Asylum and Refugee Policy for the Long Term* (November 2014) 42, 72 <[https://cpd.org.au/wp-content/uploads/2014/11/Beyond-the-boats\\_LoRes.pdf](https://cpd.org.au/wp-content/uploads/2014/11/Beyond-the-boats_LoRes.pdf)>; UNHCR, ‘Regional Cooperative Approach’, above n 15, 14–15; UNHCR, ‘UNHCR to Send Emergency Mobile Team to Lebanon’ (Press Release, 18 July 2006) <<http://www.unhcr.org/44bd082a4.html>>; UNHCR, ‘Q & A: UNHCR Teams Reach Out to Vulnerable Syrian Refugees across Jordan’ (Press Release, 3 April 2006) <<http://www.unhcr.org/515c49066.html>>; UNHCR, ‘Mobile Teams Bring Repatriation News to Rural Afghan refugees’ (Press Release, 17 September 2003 <<http://www.unhcr.org/3f6875f70.html>>; UNHCR, ‘UN Mobile Teams Register 26,000 Colombian Refugees in Northern Ecuador’ (Press Release, 6 April 2010) <<http://www.refworld.org/docid/4bc2cd158.html>>; UNHCR, ‘UNHCR to Start Mobile Registration in Malaysia’s Jungle Camps’ (Press Release, 10 December 2004) <[http://www.unhcr.org.my/News\\_Views-@-UNHCR\\_to\\_start\\_mobile\\_registration\\_in\\_Malaysia%E2%80%99s\\_jungle\\_camps.aspx](http://www.unhcr.org.my/News_Views-@-UNHCR_to_start_mobile_registration_in_Malaysia%E2%80%99s_jungle_camps.aspx)>.



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<sup>75</sup> For example, by triggering the 2001 EU Temporary Protection Directive: *Council Directive 2001/55/EC of July 2001 on Minimum Standards for Giving Temporary Protection in the event of a Mass Influx of Displaced Persons* [2001] OJ L 212/12.

<sup>76</sup> See eg Noll et al, above n 19; Italian Refugee Council, *Access to Protection: A Human Right* (October 2013) <<http://www.cir-onlus.org/images/pdf/rapporto%20epim.pdf>>; European Union Agency for Fundamental Rights, *Legal Entry Channels to the EU for Persons in Need of International Protection: A Toolbox* (FRA Focus Document, February 2015) 5–6 <[http://fra.europa.eu/sites/default/files/fra-focus\\_02-2015\\_legal-entry-to-the-eu.pdf](http://fra.europa.eu/sites/default/files/fra-focus_02-2015_legal-entry-to-the-eu.pdf)>; Canada's 2015 resettlement target includes 4,500 to 6,500 privately sponsored refugees; Germany permits families to sponsor their Syrian relatives (by committing to covering transport and living costs).

<sup>77</sup> See generally European Council on Refugees and Exiles and Italian Council for Refugees, *Exploring Avenues for Protected Entry in Europe* (2012) 28–29 <<http://www.ecre.org/component/downloads/downloads/468.html>>; Noll et al, above n 19, 4. Austria, Denmark, France, the Netherlands, Spain, Switzerland and the UK had formalized procedures in place. Switzerland was the last to abolish its procedures (in 2012).

<sup>78</sup> Noll et al, above n 19, 84.

<sup>79</sup> European Union Agency for Fundamental Rights, above n 76, 10.

<sup>80</sup> Michael Diedring, Secretary General, European Council on Refugees and Exiles, 'Legal Routes to Access Asylum in Europe Workshop' (Paper presented at the *An Open and Safe Europe – What Next?* Conference, Brussels, 30 January 2014) 2 <[http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/future-of-home-affairs/high-conference-jan-2014/docs/diedring\\_speaking\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/future-of-home-affairs/high-conference-jan-2014/docs/diedring_speaking_en.pdf)>.

<sup>81</sup> European Parliament, Joint Motion for a Resolution on the Latest Tragedies in the Mediterranean and EU Migration and Asylum Policies 2015/2660(RSP) (28 April 2015) <<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2F%2FEP%2F%2FTEXT%2BMOTION%2BP8-RC-2015-0367%2B0%2BDOC%2BXML%2BV0%2F%2FEN&language=EN>>. It is important in the EU context to distinguish between redistribution quotas for asylum seekers already in the EU, and resettlement quotas for refugees outside the EU. Resources could be better spent on the resettlement of refugees from outside the EU, rather than redistributing asylum seekers already within the EU: Martin Wagner and Albert Kraler, *An Effective Asylum Responsibility-Sharing Mechanism* (International Centre for Migration Policy Development, Vienna, October 2014) 4 <[http://research.icmpd.org/fileadmin/Research-Website/Lists\\_of\\_publications/TP\\_Responsibility\\_Sharing\\_Wagner\\_Kraler.pdf](http://research.icmpd.org/fileadmin/Research-Website/Lists_of_publications/TP_Responsibility_Sharing_Wagner_Kraler.pdf)>. For a comparison of possible distribution models, see Council of the European Union, Note from Austrian Delegation to the Strategic Committee on Immigration, Frontiers and Asylum on EU Resettlement Initiative – 'Save Lives' – Discussion Paper (13287/14, 16 September 2014) 6–8 <[http://www.europarl.europa.eu/meetdocs/2014\\_2019/documents/libe/dv/18\\_resettlement\\_save\\_lives/\\_18\\_resettlement\\_save\\_lives\\_en.pdf](http://www.europarl.europa.eu/meetdocs/2014_2019/documents/libe/dv/18_resettlement_save_lives/_18_resettlement_save_lives_en.pdf)>.

<sup>82</sup> For instance, the GAMM, above n 40, notes the importance of better articulating the links between international protection and development, and for improving the transition between humanitarian assistance and development aid. See also T Alexander Aleinikoff, *From Dependence to Self-Reliance: Changing the Paradigm in Protracted Refugee Situations* (Policy Brief, Transatlantic Council on Migration, May 2015) <<http://www.migrationpolicy.org/research/dependence-self-reliance-changing-paradigm-protracted-refugee-situations>>.

<sup>83</sup> 'A European Agenda on Migration', above n 8, 14. Note that in the EU context, 'relocation' refers to the transfer of refugees and others in need of international protection who are already in the EU; 'resettlement' refers to the process of admitting refugees and others in need of international protection from *outside* the EU: European Commission, 'Resettlement and Relocation' <[http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/relocation\\_and\\_resettlement\\_factsheet\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/relocation_and_resettlement_factsheet_en.pdf)>.

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<sup>84</sup> 'If necessary this will be followed up with a proposal for a binding and mandatory legislative approach beyond 2016': 'A European Agenda on Migration', above n 8, 5. Denmark will not be bound by any rules or laws adopted under the Agenda, and the UK and Ireland have a right to opt out.

<sup>85</sup> See above, n 39.

<sup>86</sup> UNHCR, 'UNHCR Hails Today's EU Proposed Agenda on Migration as Breakthrough, Urges Speedy Adoption' (Press Release, 13 May 2015) <<http://www.unhcr.org/55537b166.html>>.

<sup>87</sup> See Jane McAdam and Fiona Chong, *Refugees: Why Seeking Asylum is Legal and Australia's Policies Are Not* (UNSW Press, 2014).

<sup>88</sup> Jensen, above n 71, 10, citing Frontex (2013), *Annual Risk Analysis 2013*, European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, 14–16.

<sup>89</sup> Mariagiulia Guiffre and Cathryn Costello, 'Tragedy and Responsibility in the Mediterranean' (27 April 2015) Open Democracy <<https://www.opendemocracy.net/can-europe-make-it/mariagiulia-giuffr%C3%A9-cathryn-costello/crocodile-tears-tragedy-and-responsibility-i>>.