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

Resolution 1569 (2007)<sup>1</sup>

1. The number of asylum seekers in Europe continues to fall and has reached its lowest level since 1988. However, the number of persons however seeking to enter Europe illegally is on the increase, with some estimates of as many as 500,000 additional irregular migrants in Europe entering or overstaying every year. Some estimates indicate that there may be up to 5.5 million irregular migrants in the European Union with estimates of a further 8 million irregular migrants in Russia alone.

2. There are increasing concerns across Europe as to how best to tackle this mixed flow of irregular migrants and asylum seekers. The United Nations High Commissioner for refugees (UNHCR) in 2006 developed a 10-Point Plan of Action to address mixed migratory movements. Countries such as Spain, Italy, Malta and Greece, experiencing mass 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, transit and 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 drowning, suffocating, dying of exposure or being blown up in minefields while trying to enter Europe continues to grow at an alarming rate. Those that make it to Europe have often spent large sums of money, travelled in dangerous and difficult circumstances and 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 exploitation, trafficking, deaths and suffering that accompanies it.

5. These approaches need to be comprehensive in nature and implicate countries of origin, countries of transit and countries of destination. There are examples in the past of initiatives that have sought to deal with refugee and irregular migrant flows in a comprehensive fashion. Reference can be made to 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 UNHCR put forward a proposal to the European Union for joint processing within the Union. Other proposals which were, however, more controversial included processing outside the borders of the European Union but within Europe (as in the United Kingdom's "New Vision" Paper) and processing outside of Europe in North Africa (as in the former German Interior Minister Otto Schilly's proposal).

7. These proposals were not entirely novel as there were past precedents in other parts of the world. In the early 1990's Haitians intercepted at sea were taken to the US Naval Base at Guantanamo Bay in Cuba for processing. Another example concerned Australia and the setting up of processing centres in Nauru and Papua New Guinea.

8. The Parliamentary Assembly considers it important to take into account positive and negative past experience together with past proposals with a view to formulating recommendations that can be taken into account 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 for creating transit or processing centres. These are centres where persons 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 has varied according to whether the proposals have related to transit or processing centres within the European Union, outside of 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 for considering such transit or processing centres. For example, depending on the type of arrangements envisaged, they may contribute to burden sharing, they may facilitate harmonisation of asylum processing, they may ensure that migrants and asylum seekers are processed closer to countries of origin, they may offer better levels of protection than currently on offer in a number of countries of transit and destination, they may ensure that resources are more efficiently shared and used.

11. The Assembly recognises, however, that there are many open questions concerning transit or processing centres. The Assembly notes that it is very difficult to examine in the abstract transit and processing centres without answers to some of the following questions:

11.1. Who would be responsible for the centres? Would responsibility remain with the state transferring the persons concerned, would it transfer to the country where the centre is established or would there be shared responsibility between the transferring state and the country where the centre is established? Would UNHCR also share responsibility and in what form? What legal regime would apply? What responsibility would the European Union have and under what legal framework would it act?

11.2. Who would the centres be for? 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, 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 or resettlement or organisation of return? 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. What conditions should persons be held in? Should these be open centres or closed centres and what level of reception conditions and accommodation should be offered?

12. The establishment of transit or processing centres raises a number of practical and legal issues and concerns, including human rights and refugee rights issues and concerns, 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 well-established asylum procedures in European destination countries but should be seen as just one possibility of many to deal with migration and refugee movements;

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

13.3. centres should only be considered as part of a comprehensive, pro-active approach that includes focussing on countries of origin, neighbouring countries, countries of first asylum, transit countries and countries of destination. In this connection, the positive experience and lessons learned from the Comprehensive Plan of Action for Indo-Chinese Refugees (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 any transfer to centres can not absolve the responsibility of European states to guarantee *non-refoulement* under the 1951 Geneva Convention on the status of refugees or their human rights obligations under the European Convention on Human Rights 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 can not, as mentioned above, absolve a state from all responsibilities;

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

13.8. UNHCR must be fully consulted in any discussions concerning such centres and should such centres be established, UNHCR should be guaranteed a presence as well as a role in the refugee determination procedures adopted, subject to its agreement;

13.9. in their operation and functioning centres must comply with all relevant human rights and refugee law standards. In the event that they are closed centres and operated under the responsibility or partial responsibility of Council of Europe member states or the European Union, they would need to be open to monitoring by the European Committee for the Prevention of Torture (CPT). They would also need to be open to NGOs providing 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, more particularly including 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 destination;

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

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

13.16. should such centres be established, until they have been proven to function within the European Union in full compliance with all human rights and refugee law standards, there should be no consideration of extending the concept of such centres outside of the territory of the European Union.

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 put forward where human rights concerns are at issue.

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.

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