INTERNATIONAL DETERRENCE & ACCESS TO ASYLUM

MAPPING COOPERATION
OUTLINE

1. DEFINING DETERRENCE
2. AUSTRALIA’S REGIME
3. EUROPE COMPARED
4. STATE RESPONSIBILITY
ASYLUM UNDER PRESSURE

- A legal gap between asylum and *non-refoulement*
- Increasingly complex migration control arrangements
- Australia a leading exponent of international deterrence
- International cooperation in refugee law
- International responsibility as starting point
Evolving Non-Entrée

- Hathaway: ‘non-entrée’ 1992
- Vedsted-Hansen and Noll: ‘non-arrival’ 1999
- Gammeltoft-Hansen and Hathaway: ‘complex deterrence’ 2014
- International deterrence: extraterritorial measures undertaken by a developed state in cooperation with a developing state to prevent access to asylum in the first state
UNILATERAL

- Visa controls
- Carrier sanctions
- ‘International zones’
- Excision of territory
- Interdiction on the high seas
- Indirect deterrence
INTERNATIONAL

- Diplomatic relations
- Direct financial incentives
- Gifting of equipment
- Training & capacity building
- Joint operations
- Funding of detention
- Funding of resettlement
- People exchange
MAPPING COOPERATION

- Origin and transit countries:
  - Sri Lanka
  - Indonesia
  - Malaysia

- Processing and resettlement states:
  - Nauru
  - Papua New Guinea
  - Cambodia
<table>
<thead>
<tr>
<th>Number</th>
<th>Description</th>
<th>SRI LANKA</th>
<th>INDONESIA</th>
<th>MALAYSIA</th>
<th>PNG</th>
<th>NAURU</th>
<th>CAMBODIA</th>
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<tbody>
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<td>1.</td>
<td>Diplomatic relations</td>
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<td>Direct financial incentives</td>
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<td>3.</td>
<td>Gifting of equipment</td>
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<td>YES</td>
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<td>4.</td>
<td>Training &amp; capacity building</td>
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<td>YES</td>
<td>YES</td>
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<td>5.</td>
<td>Joint operations</td>
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<td>6.</td>
<td>Funding of detention</td>
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<td>7.</td>
<td>Funding of resettlement</td>
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<td>8.</td>
<td>People exchange</td>
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<td>ATTEMPTED</td>
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MAPPING COOPERATION

- Italy & Libya
- Spain & Morocco
- (Senegal, Mauritania, Cape Verde, and Gambia, Guinea Bissau and Guinea)
- EU–Turkey
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<td>Italy-Libya</td>
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<td>Spain-Morocco</td>
<td>EU-Turkey</td>
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LEGAL ISSUES

- REFOULEMENT
- TORTURE & IDTP
- ARBITRARY DETENTION
- SOCIO-ECONOMIC RIGHTS

NON-ENTREE
AUSTRALIA
EUROPE
STATE RESPONSIBILITY
STATE RESPONSIBILITY

SECONDARY RULES OF GENERAL APPLICATION: ASR

MODES OF RESPONSIBILITY

- INDEPENDENT (ART 1)
- JOINT (ART 47)
- DERIVATIVE (ART 16)
SUMMARY

- International deterrence is on the rise
- Transfer between Europe and Australia?
- Cooperation raises legal issues
- State responsibility as a useful way forward
THANK YOU

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