



INTERNATIONAL DETERRENCE & ACCESS TO ASYLUM

MAPPING COOPERATION



DEPARTMENT OF LAW
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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-ENTREE

- 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*

- ▶ **DETERRENCE**
- ▶ AUSTRALIA
- ▶ EUROPE
- ▶ LEGAL ISSUES
- ▶ STATE RESPONSIBILITY



UNILATERAL

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

- ▶ **DETERRENCE**
- ▶ AUSTRALIA
- ▶ EUROPE
- ▶ STATE RESPONSIBILITY



INTERNATIONAL

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

- ▶ NON-ENTREE
- ▶ **AUSTRALIA**
- ▶ EUROPE
- ▶ LEGAL ISSUES
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MAPPING COOPERATION

- ▶ **Origin and transit countries:**
 - Sri Lanka
 - Indonesia
 - Malaysia
- ▶ **Processing and resettlement states:**
 - Nauru
 - Papua New Guinea
 - Cambodia

	SRI LANKA	INDONESIA	MALAYSIA	PNG	NAURU	CAMBODIA
1. Diplomatic relations		YES	YES			
2. Direct financial incentives				YES	YES	YES
3. Gifting of equipment	YES	YES	YES			
4. Training & capacity building	YES	YES	YES			
5. Joint operations			YES	YES	YES	
6. Funding of detention				YES	YES	
7. Funding of resettlement						YES
8. People exchange			ATTEMPTED			

- ▶ NON-ENTREE
- ▶ AUSTRALIA
- ▶ **EUROPE**
- ▶ STATE RESPONSIBILITY

MAPPING COOPERATION

- ▶ Italy & Libya
- ▶ Spain & Morocco
- ▶ (Senegal, Mauritania, Cape Verde, and Gambia, Guinea Bissau and Guinea)
- ▶ EU-Turkey

1. Diplomatic relations		Spain-Morocco		
2. Direct financial incentives	Italy-Libya			
3. Gifting of equipment	Italy-Libya			
4. Training & capacity building	Italy-Libya			
5. Joint operations	Italy-Libya	Spain-Morocco		
6. Funding of detention				
7. Funding of resettlement				
8. People exchange				EU-Turkey

- ▶ NON-ENTREE
- ▶ AUSTRALIA
- ▶ EUROPE
- ▶ **STATE RESPONSIBILITY**



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)
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- ▶ DETERRENCE
- ▶ AUSTRALIA
- ▶ EUROPE
- ▶ STATE RESPONSIBILITY



SUMMARY

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

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