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The externalisation of asylum and the reception of people seeking international protection

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Introduction

The externalisation of asylum procedures

Global security and international stability have deteriorated over the past decade (SIPRI, 2021). Armed conflicts have increased in number and complexity. The consequences of this increase in insecurity are visible in different dimensions, such as the fact that 82.4 million people have been displaced worldwide (UNCHR, 2021).

The international legal and asylum system aims to offer protection to people fleeing violence and conflicts. In fact, according to the United Nations, this protection is one of the world's most long-standing traditions, and is included in the Human Rights Declaration. Asylum is a fundamental right and an international obligation for the signatory countries, as recognised in the 1915 Geneva Convention on the protection of refugees and its 1967 Protocol. The Geneva Convention protects any person who has a well-founded fear of persecution –and is outside their country of origin– for reasons related to race, religion, nationality, political opinion, and/or membership to a particular social group. The basic principle is non-refoulement, which means that refugees should not be returned to a country where they face serious threats to their life or freedom. This is considered a rule of customary international law. The most recently articulated version of this protection is to be found in the New York Declaration on Refugees and Migrants, adopted in September 2016 and endorsed by all 193 United Nations Member States of the General Assembly. Later on, the Declaration on Refugees and Migrants became an integral part of the Global Compact on Refugees –a subsequent resolution of the United Nations High Commissioner for Refugees–, which was adopted by the General Assembly on 17 December 2018. Among its commitments to addressing large movements of refugees and migrants, the 2016 Declaration includes dimensions such as the following:

- To protect the human rights of all refugees and migrants, regardless of their status. This includes the rights of women and girls to promote their full, equal and meaningful participation in finding solutions.
- To ensure that all refugee and migrant children receive an education within a few months of arrival.

- To prevent and respond to sexual and gender-based violence.
- To support countries that rescue, receive and host large numbers of refugees and migrants.
- To strongly condemn xenophobia against refugees and migrants and support a global campaign to counter it.

These traditions and international law frameworks meet challenges when they are implemented as policies at the state and regional levels. Over the last 20 years, one way in which this protection has been increasingly redefined in the Global North is by the externalisation of borders. The externalisation of borders refers to the offshoring and outsourcing of actions for migration control purposes outside national territorial boundaries. The externalising actor or state manages the extraterritorial migration and refugee policies in another country through public, private, or non-state agencies. More recently, the externalisation of asylum procedures and of the reception of people seeking international protection has been deployed by different countries. Australia's Pacific Solution is often mentioned as the first instance of the contemporary externalisation policy used for migration and refuge purposes, and involves detention centres in Nauru and Papua New Guinea, mainly implemented in the period 2001-2008. Similarly, the UK-Rwanda Agreement approved in 2022 aims to provide asylum for immigrants travelling irregularly to the U.K. by relocating them to Rwanda.

In the case of the European Union (EU), the Common European Asylum System (CEAS) has been put together (mainly since 1999) with the aim of harmonising and standardising asylum policy across Member States. Essentially, sets out standards for deciding who shall receive protection and what rights come with this protection. The CEAS tries to harmonise the procedures, although the final decision of any asylum application rests in the hands of each Member State. However, despite some advances in EU regulations, it remains a challenge to mount a coordinated response, especially in cases when large influxes of people occur, as has happened with Afghans and Syrians.

Against this backdrop, Country Z has a population of 6 million people. In terms of inequality, the country has a Gini Index of 0.282 and is considered a country with a High Development Index. 8.5% of the country's population has an immigrant background, meaning that these people were either born abroad

or have at least one foreign-born parent. Although the country has a generous welfare system, recent governments in the country have implemented anti-immigrant policies. Examples of these policies include authorising police to seize cash and valuables from arriving asylum seekers to offset the cost of their maintenance, and laws requiring parents living in so-called “ghetto” neighbourhoods to enrol their children in additional schooling in national values.

Country Z is currently ruled by a single-party minority government led by the Prime Minister, who is also the leader of the centre-left political party (a social-democratic party, and the party with most votes in Parliament). In order to have enough seats to form a majority, the government is supported by a group of six political parties in Parliament (including the ruling party). However, these parties have an unstable relationship. Representation in Parliament is fragmented, but the two parties which garner most votes, namely the centre-left and the right-wing political parties, have around 25% of the vote share each. During the last legislative period, the leader of the political opposition, from the right-wing party, was the Prime Minister.

Despite having a comparatively lower population of immigrants than other countries in Europe, Country Z is highly polarised over immigration policies. Country Z stands out among its neighbours for its reluctance to offer refuge to asylum seekers. For instance, it granted protection to 2,365 people in 2017, compared with the nearly 28,000 people received by one of its neighbouring countries.

The Prime Minister, as a policy entrepreneur, claims that policy innovation is necessary in order to tackle the influx of refugees, through a large-scale, transnational system of migration control. She states that moving further towards the externalising asylum is an innovative and ground-breaking way to manage a “broken global” protection system. This claim made by the Prime Minister is highly controversial and raises concerns, causing it to not be considered an innovative social policy. In order to examine this controversy, two actual strategies considered by the PM can be discussed:

- **A legislative proposal in Parliament.** This aims to start changing things at the national level by passing a law in Parliament with the aim of externalising asylum processing and refugee obligations to (non-EU) partner countries. [Strategy 1]
- **A trans-EU coalition of Member States.** This aims to promote a transnational coalition among (some) EU countries in order to foster the creation of “regional protection areas” and “transit processing centres” in third countries (e.g. through memorandums and meetings within the EU). [Strategy 2]

Which of the two strategies could play out better, considering the Prime Minister’s goals?

[Once you have read the description of the actors involved in the case, choose the strategy that best supports the Prime Minister’s goals.]

[If you choose strategy 1, go to page 9]

[If you choose strategy 2, go to page 11]

Actors

Prime Minister

The Prime Minister, a social-democrat from the left-wing party, leads the central government with the support of the Cabinet (Prime Minister and Ministers).

She has taken a conservative stance towards immigration, and stated that Country Z's "ultimate goal" shall be one of "zero spontaneous asylum seekers".

Central government

Country Z's government is led by the Prime Minister and the Cabinet.

The current Cabinet is made up of Ministers from the social-democrat party. It owes its stability to the support of five political parties (social liberals, left and green parties). The previous government coalition had the support of left-wing parties, liberals and conservatives, but also of the right-wing populist party, despite it not being an official member of the government. The institutional design of Country Z enables minority parties to rule on specific issues on an ad hoc basis, selecting partners for support based on common policy interests.

Left-wing party

A social-democrat party is currently the largest party in Parliament after the right-wing one.

Since the 1980s, due to the far-right political parties' influence on political narratives and public debates on immigration, the party has leaned towards even harsher positions. This began when the current Prime Minister succeeded the previous leader of the Left-wing party. Thus, even though it can be seen as a progressive party economically speaking, it is a party with a conservative approach towards immigration policies.

Right-wing party

This is a conservative-liberal political party, and the second one in Parliament in number of seats. It leads the opposition.

The party was in a coalition government in the legislature that had come before the current one. In that legislature, the left-wing and green parties tended to agree more with this party than with social-democrats on legislative initiatives. For 20 years, its position towards harsher immigration policies has given it significant popular support.

Far-right populist party

This political party has a minority of seats in Parliament.

This political party states that it is against the multi-ethnic transformation of Country Z, and seeks to drastically reduce so-called "non-western" immigration. This party had given its support to the previous conservative-liberal coalition when it was in government. Despite not currently having as many seats as it obtained in previous elections, it has the capacity to have an impact on public discourse.

Other conservative and liberal parties

This set of actors includes nine political parties in the opposition that hold conservative and liberal ideological positions. These do not include the right-wing party or the far-right populist party.

Green party and other left-wing parties

This actor represents 6 political parties with green and left-wing ideological positions. All of them support the current government.

Pan-European Alliance of NGOs

This actor represents an alliance of 105 NGOs across 39 European countries. Its mission is to protect and advance the rights of refugees, asylum seekers and displaced persons.

Its members' work covers the full circle of displacement, from areas of conflict, to the dangerous routes undertaken and the displaced people's arrival in Europe, to long-term inclusion

in European societies. Their activities include humanitarian relief, social service provision, legal assistance, litigation, monitoring policy and law, advocacy and campaigning.

National Refugee Council

Country Z's Refugee Council is a private humanitarian organisation, the largest in the country, with a specific focus on forced displacement.

It works with civil society and the relevant authorities to promote the protection of human rights and peaceful coexistence.

European Council

The members of the European Council are the heads of state or government of the EU Member states, the European Council President, and the President of the European Commission. The European Council defines the EU's overall political direction and priorities, traditionally by adopting conclusions.

Through the European Council, Country Z, together with other countries, can call an Intergovernmental Conference (IGC). An IGC is a formal procedure for negotiating amendments to the EU's founding treaties. Under the treaties, an IGC is composed of representatives of Member States, also including the participation of the European Commission, and to a lesser degree, the European Parliament.

An IGC can conclude with a meeting of the European Council, at which any political issues requiring resolution at the level of Heads of State or Government can be tackled, and a final political agreement can be reached.

The European Council addresses international questions, common security and relations with other foreign countries. The chairman of the European Council also serves as the President of the European Union, and represents the Union in international negotiations.

European Commission

The European Commission serves as the executive branch of the EU. It operates as a cabinet government made up of 27 members of the Commission, known as Commissioners.

Commissioners are civil servants appointed by their respective member states. Each EU member state has its own commissioner. Each commissioner is responsible for a certain aspect of EU politics. The European Commission must look after the interests of all EU Member States; however Commissioners can listen to Member States Z, X and Y and assess their approach towards the externalisation of borders.

European Parliament

The European Parliament passes EU laws along with the Council of Ministers.

The Parliament represents all the citizens of the European Union. The citizens of each Member State elect their own representatives to the European Parliament by direct popular vote for a five-year term. The parliamentary seats are divided among Member States according to the size of their populations.

United Nations High Commissioner for Refugees (UNHCR)

The UNHCR, the UN Refugee Agency, is an international organisation.

This is the UN agency mandated to aid and protect refugees, forcibly displaced communities, and stateless people, and to assist in their voluntary repatriation, local integration or resettlement to a third country.

The UNHCR is governed by the UN General Assembly and the Economic and Social Council (ECOSOC), and is presided by the High Commissioner, who is appointed by the UN General Assembly. In terms of funding, the UNHCR relies almost entirely on voluntary contributions. Individual governments and the European Union provide 85 per cent of the UNHCR budget. Another 11 per cent comes from individuals and from the private sector, such as foundations and corporations.

In this scenario, the UNHCR plays the role of safeguarding the rights and protection of refugees all over the world. Both the EU and UNHCR were referenced by Country Z in order to increase the humanitarian appeal of its approach. It was proposed that they operate the asylum camps in partnership with Country Z. However, both actors refused to

be included in Country Z's plans. The UNHCR also participated in the IGC meeting.

Media

These are media outlets in Country Z.

"Media outlets" refers to country X's main local/national means of mass communication (broadcasting, publishing and the Internet).

The media landscape in Country Z can be characterised as a dual media system with two dominant actors: the two public service broadcasters, and daily newspapers, which are mostly owned by foundations but with some being commercially owned. The public service broadcasters reach most of Country Z's citizens.

Choose the strategy that best supports the Minister of Employment's goals:

- If you choose strategy 1 [[Go to page 9](#)]
- If you choose strategy 2 [[Go to page 11](#)]

Strategy 1 – National law to move refugees to asylum centres in a partner country

After sending a bill for public consultation to a range of stakeholders (public agencies and civil society actors), the social-democrat Prime Minister presents it in Parliament. The aim of it is that: a) country Z's authorities cease processing asylum claims and granting asylum to refugees on Country Z's territory; b) instead, it will export people filing asylum claims to extraterritorial facilities in a third country. In other words, the new law will allow Country Z to move refugees from Country Z's soil to asylum centres in a partner country: "If you apply for asylum in Country Z, you know that you will be sent back to a country outside Europe, and therefore we hope that people will stop seeking asylum in Country Z", the government's immigration spokesperson recently told the broadcaster.

Those who are already in Country Z territory would be transferred as soon as possible to extra-territorial facilities/camps outside Europe. It is said that the extra-territorial facilities will be located in host countries that comply with human rights standards.

Moreover, according to the content of this bill: "an asylum application originally launched in Country Z will no longer lead to a residence permit in Country Z. Thus, the model is built on an assumption that Country Z will not offer protection in cases where foreigners are granted asylum after duly processing asylum applications in the third country. The protection will instead be granted by the third country. If the applicant's asylum application is refused, it will similarly be the third country in question that will ensure the return of the person".

Throughout the public consultation process, the proposal raises a great deal of criticism and concerns from civil society organisations, some European representatives and other international actors. Nevertheless, and despite the plurality of political parties within the Parliament, the Prime Minister expects to build up alliances that include a significant number of parties.

Will the Parliament be able to pass this controversial law?

A. Who will oppose the parliamentary law to create asylum centres in a partner country?

B. Who will support the parliamentary law to create asylum centres in a partner country?

[Select the actors that you think will oppose the initiative and those who will support it.]

Go to Appendix A on page 13 to see the list of actors that support and that oppose the parliamentary motion, as well as the distribution of resources between supporters and opponents.]

[Once you have correctly selected the actors as opponents or supporters of the parliamentary motion, go to page 10.]

How does strategy 1 work?

The balance of resources is positive for the Prime Minister (+320). This strategy succeeds. Despite the misgivings expressed by civil society, human rights groups and international governing bodies, the new bill passes with widespread support in Parliament.

Human rights groups and international government institutions denounce the new measure, noting that it is probably incompatible with international protection measures in place for asylum seekers and refugees. If the legislation is implemented, it will have negative implications on refugee protection policies, as it represents a fundamental shift in how the international protection system works.

The law represents a remarkable policy shift, even more for a so-called “progressive” country. Up until now, the externalisation of borders had worked through a preventive logic, in the sense that it pre-assessed whether people aiming to go to a territory where they could exercise the right to apply could do so. However, the externalisation of asylum led by Country Z can also be interpreted as aiming to actually shun the international protection policies currently in place in Country Z.

Besides, it is still unclear how the country plans to implement the law – or what third country would be involved. Thus, under the new law, asylum seekers could be flown to third countries regardless of their origin, but there is still uncertainty regarding whether and how the law would be deployed. The media has speculated that Rwanda might be the country where Country Z is planning to send people who are asking for protection. In this regard, it would also be interesting to unveil the incentives given to third countries to participate in this policy.

The case is interesting for discussing what policy innovation actually means. Here, despite Country Z’s Prime Minister claiming that the law is an example of policy innovation, its contents, to the extent that it undermines the protection afforded to vulnerable people, can be contested both from normative and theoretical perspectives. This is the case because one of the main objectives of this social policy is to protect social rights.

Strategy 2 – Coalition with EU Member States to foster a migration policy reform that moves further towards externalising borders

Country Z's Prime Minister, together with the governments of Country X and Country Y, decide to launch a series of meetings in the EU institutional context to promote the creation of "regional protection areas" and "transit processing centres" in third countries (e.g. African and Middle Eastern countries). Regional protection areas are located in the source region of the refugee crisis, and purport to contribute to strengthening reception capacities. Transit processing centres are closer to the EU external borders, and represent a deterrent to unwanted migrants, including people seeking protection. The representatives' views are aligned with policies in the US and Australia, and differ from approaches that have been promoted by other EU countries.

What happens is that Country Z presents a "Memorandum", documenting the outcome of informal discussions that have taken place between the governments of Country Z, Country X and Country Y. The Memorandum is a result of previous discussions that have been held between these three countries, and proposals that they have put forward. Before the Memorandum, Country Z leaked a policy paper in a widely circulated daily newspaper, giving some insight into the thinking behind the initiative. A month later, Country Z's Prime Minister asked the EU Presidency to discuss a "better management" approach "of the asylum process globally". Later on, their ideas were discussed at a IGC meeting hosted by Country Z. Countries Z, Y, X were joined in this meeting by the EU Commission and the UNHCR. This IGC meeting resulted in the aforementioned Memorandum being drafted by Country Z's government.

Following these meetings, through the "Memorandum", Country Z's Prime Minister proposed a change to the EU Constitutional Treaty. If adopted, the proposed alteration would gear the Common European Asylum System towards processing and protecting people in their region of origin, rather than within the EU, a move which would introduce a paradigm shift in EU asylum and migration policies.

Will the coalition be able to further lay the ground for a EU reform to externalise borders, asylum and migration control further?

- A. Who will oppose reforming the EU to further externalise borders, asylum and migration control?
- B. Who will support reforming the EU to further externalise borders, asylum and migration control?

[Select the actors that you think will oppose the initiative and those who will support it.]

[Go to Appendix B on page 14 to see the list of actors supporting and opposing reforming the EU to further externalise borders and migration control, as well as the distribution of resources between supporters and opponents.]

[Once you have correctly selected the actors as opponents or supporters of the campaign, go to page 12.]

How does strategy 2 work?

This strategy fails. The balance of political resources is negative (-355). The coalition initiative quickly collapses. The European Commission issues a communiqué addressing the coalition's proposal and pointing out major problems in it. The Prime Minister and her counterparts had miscalculated the impact of the initiative, and have opened themselves up to being criticised by other countries in the region. Various NGOs also publicly oppose the initiative.

Nevertheless, the initiative reflects the heightened discussion about future strategies for migration policies. The externalisation proposal has been put forward by different governments in Country Z since 1986 and has also featured in initiatives led by Northern European countries at different points since the 1990s. They have been rejected in the past as lacking solidarity. Indeed, subsequent discussions after the coalition made its proposal have been developed around the idea of "EU reception centres" and whether they should be located within or outside EU territory. In 2018, the Council of Ministers issued a press release proposing "regional disembarkation platforms" in Northern African countries. Issued without previous consultations being made and never followed up with any concrete measures, it was a move that was perceived as a way to counter the European Commission perspective to not export asylum obligations outside Europe.

The coalition's initiative is evidence of the different approaches held across EU countries and EU institutions towards the legal obligations held towards people seeking international protection. Nevertheless, the discussion and dissemination of this approach put forward by the coalition has already permeated migration and asylum policies in the EU. Thus, whereas arguments in favour of solidarity have been expounded by different EU representatives over the years, when examining the EU migration control policies that have mostly been deployed since 2015, one could argue that the externalisation of borders (and asylum procedures) is to some extent already in place. Therefore, even though the initiative is rejected, the ideas underpinning the proposal are already impacting the EU response to the international protection system.

At its core, this case can be understood through the lens of what innovation in social policy means. First, some could argue that this initiative represents a significant departure from the previous status quo, and that because of this, it is an example of innovation. In this regard, others might argue that Country Z's Prime Minister's proposals are far from being innovative, but rather "represent a decades-long dream recycled by political and civil-servant networks from some Northern European countries. But while a small group of countries has pursued the idea, thus far, many more European countries have rejected it as lacking realism and pragmatism". Another aspect to discuss is whether innovation in social policy can occur when it entails pulling back the protection of vulnerable people.

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Appendix

A) Distribution of actors – Strategy 1

Actors supporting the new law (resources in parenthesis):

- Prime Minister (political: 100; economic: 0; knowledge: 0; legal: 100)
- Central government (political: 100; economic: 0; knowledge: 0; legal: 100)
- Left-wing party (political: 25; economic: 0; knowledge: 0; legal: 25)
- Right-wing party (political: 25; economic: 0; knowledge: 0; legal: 25)
- Far-right populist party (political: 0; economic: 0; knowledge: 0; legal: 10)
- Other conservative and liberal parties (political: 0; economic: 0; knowledge: 0; legal: 15)
- Green and other left-wing parties (political: 0; economic: 0; knowledge: 0; legal: 15)

Actors opposing the new law (resources in parenthesis):

- Pan-European Alliance of NGOs (political: 50; economic: 0; knowledge: 0; legal: 0)
- National Refugee Council (political: 50; economic: 0; knowledge: 0; legal: 100)
- European Commission (political: 100; economic: 0; knowledge: 0; legal: 0)
- United Nations High Commissioner for Refugees (UNHCR) (political: 20; economic: 0; knowledge: 0; legal: 0)

Inactive or neutral actors:

- European Council
- European Parliament
- Media

Note about resources.

Political resources refer to the consensus an actor is able to achieve. Economic resources refer to the ability to mobilise money or any other form of financial resource in order to modify other actors' behaviour. Knowledge is the availability of important information for decision-making process. Finally, legal resources refer to the advantages or disadvantages attributed to particular actors by legal norms and the legislative and administrative authority's decisions. Political resources are the most crucial for the Prime Minister in order to promote her initiative.

B) Distribution of actors – Strategy 2

Actors that support the coalition's proposal (resources in parenthesis):

- Prime Minister (political: 100; economic: 0; knowledge: 0; legal: 10)
- Central government (political: 50; economic: 0; knowledge: 0; legal: 10)
- Right-wing party (political: 25; economic: 0; knowledge: 0; legal: 25)
- Far-right populist party (political: 10; economic: 0; knowledge: 0; legal: 0)
- Other conservative and liberal parties (political: 15; economic: 0; knowledge: 0; legal: 0)

Actors the oppose the coalition's proposal (resources in parenthesis):

- Pan-European Alliance of NGOs (political: 70; economic: 0; knowledge: 0; legal: 0)
- National Refugee Council (political: 30; economic: 0; knowledge: 0; legal: 0)
- European Council (political: 200; economic: 0; knowledge: 0; legal: 0)
- European Commission (political: 200; economic: 0; knowledge: 0; legal: 0)
- United Nations High Commissioner for Refugees (UNHCR) (political: 100; economic: 0; knowledge: 0; legal: 0)

Inactive or neutral actors:

- Left-wing party
- Green and other left-wing parties
- European Parliament
- Media

Note about resources.

Political resources refer to the consensus an actor is able to achieve. Economic resources refer to the ability to mobilise money or any form of wealth in order to modify other actors' behaviour. Knowledge is the availability of important information for the decision-making process. Finally, legal resources refer to the advantages or disadvantages attributed to particular actors by legal norms and legislative and administrative authorities' decisions. Political resources are the most crucial for the Prime Minister in order to promote her initiative.

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- El cas Pirelli-Mar. (Ref. CL-2022-01)
- Instituto Mental de Santa Cruz. (Ref. PA-2022-01)
- School meals for vulnerable children. (Ref. PCUBE-2022-01)
- Artificial Intelligence and automated decision making in welfare policies. (Ref. PCUBE-2022-02)

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