RSD IN TRANSITION - EMERGING SYSTEMS
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DO WE NEED RSD IN EVERY SITUATION?

State responsibility is to protect, not to conduct RSD

What are legal implications of a positive decision? Right to work, family reunification, documentation, freedom of movement? What are reception conditions?

Durable solutions?

More restrictive migration climate may lead people to seek asylum b/c no other means to regularize stay

Possibility of other solutions, temporary protection, labour migration (ex MERCOSUR)

Subsidiary protection – for “survival migration”. Currently ad hoc processes, we need internationally recognized and predictable standards of subsidiary protection –CAT, ECHR

Protection sensitive alternatives to RSD – TPS in US context

Regional cooperation – several models – Bali process, Mercosur
Trends at a Glance

2013 in review

Europe received 484,600 claims, an increase of 32% compared to 2012 (368,400 claims).

An estimated 612,700 asylum applications were registered in 2013 in the 44 industrialized countries, some 133,000 claims more than 2012 (+28%). This is the third consecutive annual increase and the second highest annual level of the past 20 years.

The 28 Member States of the European Union (EU) registered 398,200 asylum claims in 2013, a 32% increase from 2012 (301,000). EU States accounted for 82% of all new asylum claims submitted in Europe.

In Southern Europe, asylum seekers increased by 49% to 89,600, the highest on record. Turkey was the main recipient of asylum applications.
The reported number of new asylum-seekers in Australia increased by 54 per cent.

In North America, an estimated 98,700 new asylum applications were submitted in 2013, Canada registered 10,400 new applications, half the level than in 2012 (20,500), while the United States of America recorded approximately 88,400, (+25%)

Japan registered close to 3,300 new asylum applications in 2013 while the Republic of Korea recorded 1,600 claims. Although increased, numbers continue to be modest in comparison with other industrialized countries.

The Syrian Arab Republic, the Russian Federation, Afghanistan, Iraq, and Serbia (and Kosovo: Security Council resolution 1244 (1999)) were the five top source countries of asylum-seekers in 2012.

Germany was for the first time no 1

The United States of America was second with an estimated 88,400 asylum applications, followed by France (60,100), Sweden (54,300), and Turkey (44,800).

With 109,600 new asylum applications registered during 2013, Germany was for the first time no 1
ASYLUM APPLICATIONS 2013

Group of 44 industrialized countries – Australia, Canada, EU, Japan, Korea, NZ, Turkey, US, most European countries that are not EU member states

612,700 new asylum applications in 2013 (Persons, not cases)

Highest for 20 years

UNHCR mandate applications 116,000 in 2012 (2013 numbers pending completion)- 67 countries, but 90% of applications in top 15 countries

UNHCR recognition rate – 77% (2012), never below 65% for last 10 years

Industrialized state recognition rate – 32% (2012), never higher than 38 % (2008) for last 10 years
WHAT ARE EMERGING SYSTEMS?

UNHCR mandate RSD in 67 countries (but 90% of applications in top 15)

Goal of UNHCR for states to establish RSD procedures

- transition from UNHCR mandate RSD – Israel, Morocco, Kenya (planned), Hong Kong, Japan, Mexico, Korea, Ecuador, Cameroon (planned)
- New systems where there were few asylum seekers before, or a prima facie regime, e.g. RSA post 1994

UNHCR often stays financially engaged

UNHCR’s role in transition – should be to support a responsible transition
UNHCR’S ROLE IN TRANSITION – SUPPORT A RESPONSIBLE TRANSITION

Article 8 of Statute – UNHCR to provide for protection of refugees
 Supervisory Role – Convention Article 35
 Advise on configuration of system, implementation of system
 What are minimum procedural requirements? Access to legal assistance? Effective appeal remedies?
 How to ensure that the system is sustainable?
 Should there be UNHCR participation?
 Should UNHCR continue RSD in order to prevent backlogs immediately?
 Undertake mandate processing as safety valve if certain groups excluded from national procedure
 Are there circumstances in which UNHCR should discourage state systems?
 Use of quality initiatives – some undertaken in Europe and Latin America
 Funding implications?
WHAT MOTIVATES STATES TO IMPLEMENT NEW SYSTEMS?

New influxes put it on the political agenda – ex Malta after joining EU (2004) Ireland mid-90s, Israel

States want to “manage” migration – Southern Europe – Spain, Italy, Greece, Bulgaria

Security concerns of states vs protection

RSD to discourage asylum applicants – Israel

Role of civil society - NGOs

Role of judiciary – Hong Kong, Kenya, Belize, Israel

What motivates non-implementation? Some have another procedure (e.g. prima facie), group determination, too few asylum seekers, anti-foreigner sentiment

Does state see RSD as a state responsibility or a burden dumped by UNHCR? Or state sees itself as a “transit” country only?
CHALLENGES DURING TRANSITION

How to avoid taking on or building a backlog
Exclusion cases/security concerns
Restrictive application of the law
Interception
Detention
Mixed migration – how to keep other migrants out of asylum system

Expedited procedures sometimes focus on expediting “manifestly unfounded” claims
- why not expedite “manifestly founded”? 
ALTERNATIVES TO RSD

Protection sensitive alternatives

Importance of prima facie determinations – much of Africa, Afghans in Pakistan and Iran, Syrians

Group or prima facie determinations usually use extended definition

“Enhanced registration” - e.g. ECU, accelerated registration (Syrian refugees)

Subsidiary protection

Labour migration

Issue is what rights come with such status? Often limited in duration, no right to family reunification