

## UNHCR Note on the “Externalization” of International Protection

1. This Note summarizes applicable legal standards and UNHCR’s positions regarding policies and practices which effectively serve to “externalize” international protection obligations.
2. The international refugee protection system depends on **international cooperation**. As ‘the grant of asylum may place unduly heavy burdens on certain countries,’ the 1951 Convention relating to the Status of Refugees (‘1951 Refugee Convention’) recognizes that international cooperation is essential. This key principle is also central to the Global Compact on Refugees. States need to act, within and beyond their borders and regions, to share responsibilities with States and communities hosting the large majority of the world’s refugees. States may make arrangements with other States to ensure international protection, as long as these arrangements enhance responsibility sharing and are consistent with the ‘widest possible exercise of ... fundamental rights and freedoms’ of refugees.
3. At the same time, some measures or arrangements between States serve in practice to shift, minimize or avoid responsibilities, obstructing rather than facilitating access to international protection through international cooperation as called for under the 1951 Refugee Convention and the Global Compact on Refugees. Measures preventing asylum-seekers from entering safe territory and claiming international protection, or transfers of asylum-seekers and refugees to other countries without sufficient safeguards, can amount to externalization of international protection responsibilities. Such measures have the potential to erode the international protection system, and if adopted by many States, could render international protection increasingly inaccessible, placing many asylum-seekers and refugees at risk of limbo, mistreatment or refoulement.
4. Measures designed, or effectively serving, to avoid responsibility or to shift, rather than share, burdens are contrary to the 1951 Refugee Convention and principles of international cooperation and solidarity. Such externalization measures are distinct from policies and practices aimed at sharing international protection responsibilities in the spirit of international cooperation and solidarity.
5. The **externalization of international protection** refers here to measures taken by States—unilaterally or in cooperation with other States—which are implemented or have effects outside their own territories, and which directly or indirectly prevent asylum-seekers and refugees from reaching a particular ‘destination’ country or region, and/or from being able to claim or enjoy protection there. Such measures constitute externalization where they involve inadequate safeguards to guarantee international protection as well as shifting responsibility for identifying or meeting international protection needs to another State or leaving such needs unmet; making such measures unlawful.
6. Externalization of international protection is distinct from **lawful practices involving transfer of the responsibility for international protection**, undertaken in accordance with international standards. This includes the correct application of safe third country concepts, of responsibility-sharing mechanisms as well as regional disembarkation mechanisms, and emergency or humanitarian evacuations or transfers, where these are regulated and implemented in the spirit of international cooperation with adequate safeguards and guarantees to ensure respect for rights. Such arrangements are referred to as ‘transfer arrangements’. Additionally, protection and solutions for refugees may be provided through other lawful arrangements including resettlement, humanitarian admissions and other complementary and

regular pathways or protected entry or embassy procedures, which involve transferring international protection responsibilities.

7. Externalization practices, on the other hand, often result in the transfer of people from one country to another, without adequate protection safeguards or standards of treatment. Externalization can lead to indefinite ‘warehousing’ of asylum-seekers in isolated places, exposing them to indirect refoulement and other dangers. Externalization may also de-humanize asylum-seekers and label people in need of international protection as unwanted.
8. **Practices** which can constitute externalization because of their design and/or implementation include extraterritorial processing in the territory of a third country and unilateral or cooperative measures to intercept or prevent arrivals. Transfer arrangements, as described in paragraph 6 above, which could otherwise be lawful, may constitute externalization if they are misapplied without respecting relevant safeguards or standards, or by shifting or avoiding responsibilities.
9. Among the **key principles** governing responses to asylum-seekers and refugees which are relevant to international cooperation and responsibility sharing:
  - a. Primary responsibility for identifying and **assessing international protection needs**, ensuring appropriate reception conditions and procedural standards during status determination, and providing international protection, rests with the State in which an asylum-seeker arrives and seeks that protection or, where relevant, the State whose jurisdiction that person engages. States have a duty to make independent inquiries as to the need for international protection of persons seeking or likely to need asylum and provide them with access to fair and efficient asylum procedures.
  - b. States must fulfil their obligations under international refugee and human rights law in good faith. They must make every effort to ensure that any measures taken to manage displacement, migration or mixed movements, whether unilaterally or in cooperation with other States, are **protection sensitive**, meaning that they differentiate between and provide appropriate measures, based on international standards, to meet the needs of all persons travelling and moving between countries, including refugees, other people with international protection needs, as well as people with specific needs (e.g. unaccompanied or separated children or victims of trafficking or trauma, and migrants).
  - c. States cannot avoid their obligations under international refugee and human rights law by employing transfer or extraterritorial processing modalities. Both the State to which an asylum claim has been, or is intended to be, made and the State on whose territory the determination takes place retain joint responsibility for **processing and reception**, and speedy and appropriate **outcomes**, consistently with their international obligations.
  - d. Wherever a State exercises **effective control** over persons or places on the territory of another State (or, for instance in international waters), its obligations under international refugee and human rights law continue to apply, including in extraterritorial asylum processes.
  - e. International cooperation in sharing international protection responsibilities and ensuring access to international protection is a primary consideration as affirmed in the Global Compact on Refugees of 2018. **Practices that shift burdens**, avoid responsibility, or frustrate access to international protection are inconsistent with global solidarity and responsibility sharing.

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28 May 2021