

An Australian 'model' for the EU's migration crisis?

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In 2013, the newly elected Australian conservative government implemented the so-called Operation Sovereign Borders. It was a new policy that aimed to prevent people smuggling ventures to Australia and deter asylum seekers from arriving in its territory, risking their lives at sea.

The policy has several highly controversial components, which include: a transfer of asylum seekers who had arrived by boat to Nauru and Manus Island for the processing of their claims under harsh mandatory detention regime; a rejection of further resettlement in Australia for anybody found to be a refugee in offshore processing centres; and the introduction of a policy to turn back all people smuggling boats to their country of departure, if deemed safe to do so.

While key elements of this contentious policy have received support from the two major (opposing) political parties as well as the broad public, many refugee advocates and international agencies, including the UNHCR, have been highly critical of what they consider to be punitive or harmful measures and a lack of transparency, particularly regarding turn backs.

Despite significant geographical, historical and political differences, Australia's approach has been considered by some EU states as a possible solution to the European 'refugee crisis'. The moral rationale and legal dimensions of some aspects of this policy require more in-depth analysis, namely off-shore processing, mandatory detention, and the use of turn backs. Any evaluation of the Australian policy approach also needs to examine the country's broader approach to immigration, refugee resettlement and multicultural policy as the Australian case can offer Europeans some guidance on how to address these challenges.

Turning back the boats and offshore processing presents legal difficulties

Australia's policy aims to turn illegal boats wishing to enter its waters back to international waters, and to transfer asylum seekers and refugees from Australia to Nauru and Papua New Guinea (PNG) for processing and possible further resettlement. While the compliance of such a system with international norms has been severely questioned by NGOs and the UNHCR, the High Court of Australia ruled it legal.

This kind of solution has gained traction in Europe, with the view to implement it in the Mediterranean Sea. However, this is not possible due to human rights obligations European and national authorities must respect. Once they have jurisdiction over people at sea, they cannot turn them back to countries where they are at risk and where their asylum claim will not be examined. In addition, turning back asylum seekers or refugees to a third country is only possible if it is a "safe country" as defined by EU law. Currently none of the third countries near the Mediterranean Sea should acquire this status.

Those who advocate implementing the Australian model in Europe should bear in mind that the EU and Australia are not on an equal footing when it comes to human rights. Australia is not bound by any constitutional human rights framework or regional human rights convention, and has considerable leeway in the interpretation and implementation of international rules. In addition, Australia is ruled by quasi-pure parliamentary sovereignty and domestic courts do not have the tools to undo what parliamentary majorities decide.

EU states, on the contrary, must implement international and regional human rights standards (the EU Charter and the European Convention) and are subject to the European Courts' review. Hence, turning back the boats the way Australia is doing is not legally possible in Europe, as it would violate several human rights guarantees.

Developing significant resettlement policies

Australia's policy *vis-à-vis* asylum seekers and refugees is not limited to the pushback approach. It is also based on a strong resettlement policy. With 13,750 places made available in 2016-17, Australia together with the United States and Canada is one of the most active countries regarding resettlement. This figure may look like a drop in the ocean of people displaced in the world, but it remains higher than many member states' commitments.

Compared to the size of Australia's population (23 million inhabitants), EU countries should have pledged to resettle more than 260,000 refugees over 2016-17. Another 240,000 should be added regarding Australia's one-off commitment to resettle 12,000 Syrians and Iraqis over the same period. While such comparisons should not ignore the fact that EU countries are currently dealing with more than one million asylum applications, it nevertheless shows that Australia's policy goes way beyond the decision adopted by EU states in July 2015 to resettle 22,504 persons within two years.

EU countries should also be inspired by the Australian policy supporting resettled refugees. Rights awarded to refugees in Australia are not so different than those enshrined in EU law (Directive 2011/95/UE). But, the way they are provided is based on a strong and efficient coordination between governments (national, state/territory, local), service providers and non-governmental players which has positive effect on the swift integration of refugees.

A greater commitment to resettle from EU states would contribute to the global resettlement effort, substantially alleviate the pressure on countries like Lebanon, Turkey and Jordan, and help to organise the orderly arrival of refugees in Europe. Such a policy would limit the resurgence of chaotic situations at European borders, which since 2015 have undermined trust in policies, revived citizens' fears and fuelled xenophobic reactions.

At the same time, ambitious resettlement policies should not justify harsh policies to keep people away from Europe's territory. First, this creates an artificial division between 'good' and 'bad' refugees, i.e. those who are waiting to be resettled and those who have made their way to Europe. Second, resettlement remains a voluntary process whereas examining asylum applications is a legal duty. Resettlement should therefore complement and not replace an effective asylum policy.

Positive narrative and comprehensive policy

Australia's asylum policy is a small share (less than 8%) of its migration policy, which is primarily based on legal, and preferably skilled, migration. Over 2016-17, Australia has decided to offer 190,000 permanent migration places and approximately 2 million temporary visas related to economic activities.

Not exempt from criticisms, especially regarding people arriving by boats or irregularly, Australia has built a comprehensive policy framework where border management is not the only issue at stake and cooperation with its regional partners, while currently imperfect, is key.

In addition, Australia has turned in less than 50 years from a mono-cultural society into a "successful" multicultural one. Xenophobia and racism do exist in Australia, but the main political leaders as well as society value migration as an opportunity. This positive narrative is the result of strong political leadership.

Ideas to replicate the Australian solution are emerging in European debates. While some elements can be a source of inspiration, solutions developed in Australia should always be considered from a European perspective and with the full consideration of their knock-on effects, particularly regarding values and people. Nevertheless, the strong belief in the positive effects of migration is a powerful argument to consider when it comes to the development of EU policies.

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