

PROTECTING THE RIGHTS OF REFUGEES BEYOND
EUROPEAN BORDERS

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OF REFUGEES BEYOND
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Establishing Extraterritorial Legal
Responsibilities

Lisa HESCHL



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Protecting the Rights of Refugees Beyond European Borders. Establishing
Extraterritorial Legal Responsibilities

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For all the ones I love

PREFACE

In August 2017, several European and African leaders met on the invitation of the French President Macron in Paris in order to develop new strategies and new ways of cooperation to cut migration into Europe from northern Africa in order to resolve the proclaimed ‘migration and refugee crisis’ and to protect the European Union from unwanted migrants.

From the outset, the European migration and asylum policy has been shaped by efforts to establish an efficient migration management system in order to protect the Area of Freedom, Security and Justice from the new security threat ‘irregular migration.’ The extraterritorialisation of immigration control measures beyond actual territorial borders forms part of this strategy. Pre-border control mechanisms composed of administrative, legislative and operational measures, are largely perceived as effective means to channel flows of migrants prior to the borders, avoiding logistical and financial burdens for Member States. From a legal perspective, the shift of borders raises important questions related to the creation of nebulous legal zones where responsibilities for norms related to the protection of refugees may be circumvented by states and other actors involved in migration control activities.

This book tries to reconcile the motives behind extraterritorialisation strategies with their actual legal consequences. It focuses on the examination of the legal frameworks governing situations where a refugee meets state authority in the context of extraterritorial immigration control measures. It approaches the topic from the hypothesis that international and European obligations not only constrain extraterritorial acts of states or specialised agencies, but give rise to concrete responsibilities. The study shows that international, European and human rights law provide for a rather well-equipped ‘tool box’ to hold states responsible for violations of protection norms even if occurring outside the territory of a state or beyond European borders. Furthermore, the study proves as well that the establishment of responsibilities for violations of protection related norms occurring in the context of extraterritorial immigration control measures is a rather theoretical undertaking without major practical implications. Opportunities to invoke responsibilities for human rights violations occurring in the context of extraterritorial immigration control measures are still limited, undermining the effective access to protection for refugees and persons in need of international protection.

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LIST OF ABBREVIATIONS

| | |
|---------|--|
| AEDH | Association Européenne pour la défense des Droits de l'Homme |
| AFSJ | Area of Freedom, Security and Justice |
| AP | Action Plan |
| ASR | Articles on Responsibility of States for Internationally Wrongful Acts |
| CAT | Committee Against Torture Convention Against Torture |
| CEAS | Common European Asylum System |
| CEDAW | Convention on the Elimination of All Forms of Discrimination against Women |
| CERD | Convention on the Elimination of All Forms of Racial Discrimination |
| CFREU | Charter of Fundamental Rights of the European Union |
| CFSP | Common Foreign and Security Policy |
| CJEU | Court of Justice of the European Union |
| CoE | Council of Europe |
| CPT | European Committee for the Prevention of Torture |
| CRC | Convention on the Rights of the Child |
| EASO | European Asylum Support Office |
| EBCGA | European Border and Coast Guard Agency |
| EC | European Community |
| ECHR | European Convention on Human Rights |
| EComHR | European Commission of Human Rights |
| ECOSOC | Economic and Social Council |
| ECtHR | European Court of Human Rights |
| EEAS | European Union External Action Service |
| ENP | European Neighbourhood Policy |
| EP | European Parliament |
| ESM | European Stability Mechanism |
| EU | European Union |
| ExCom | Executive Committee |
| FRA | Fundamental Rights Agency |
| Frontex | European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union |
| GAM | Global Approach to Migration |

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| GAMM | Global Approach to Migration and Mobility |
| GRC | Geneva Convention Relating to the Status of Refugees 1951 |
| HLWG | High Level Working Group |
| HRC | Human Rights Committee |
| IACHR | Inter-American Commission on Human Rights |
| IACtHR | Inter-American Court of Human Rights |
| IBM | Integrated Border Management |
| ICCPR | International Covenant on Civil and Political Rights |
| ICESCR | International Covenant on Economic, Social, and Cultural Rights |
| ICJ | International Court of Justice |
| ILC | International Law Commission |
| ILO | International Labour Organization |
| JHA | Justice and Home Affairs |
| MS | Member States |
| OHCHR | Office of the United Nations High Commissioner for Human Rights |
| OLAF | European Anti-Fraud Office |
| PCIJ | Permanent Court of International Justice |
| QMV | Qualified Majority Voting |
| RABIT | Rapid Border Intervention Team |
| SBC | Schengen Borders Code |
| SEA | Single European Act |
| SIC | Schengen Implementation Convention |
| TCN | Third Country Nationals |
| TEU | Treaty of the European Union |
| TFEU | Treaty on the Functioning of the European Union |
| UDHR | Universal Declaration of Human Rights |
| UN | United Nations |
| UNHCR | United Nations High Commissioner for Refugees |
| VCCR | Vienna Convention on Consular Relations |
| VCLT | Vienna Convention on the Law of Treaties |