

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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Cambridge – Antwerp – Portland

Intersentia Ltd
Sheraton House | Castle Park
Cambridge | CB3 0AX | United Kingdom
Tel.: +44 1223 370 170 | Fax: +44 1223 370 169
Email: mail@intersentia.co.uk
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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

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