PROTECTING THE RIGHTS OF REFUGEES BEYOND EUROPEAN BORDERS
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Establishing Extraterritorial Legal Responsibilities

Lisa HESCHL
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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The first ideas for researching the topic were sketched during a research stay at the University of Deusto, Bilbao, Spain. I am thankful for the Marie Curie Early Stage Researcher Fellowship I have been awarded and would like to express my sincere gratitude to Osane Uriarte and her colleagues at the University of Deusto for providing me with such an opportunity.

The next huge share of gratitude is owed to my dear colleagues at the Institute of International Public Law and the European Training and Research Centre for Human Rights and Democracy of the University of Graz. Besides benefitting from the invaluable academic support, the comments and critique of Gerd Oberleitner, Christian Pippan, Stefan Salomon, Kushtrim Istrefi, Pia Niederdorfer, Gregor Fischer and Lorin Wagner, I am especially thankful for having the possibility to work with such multi-talented, open-minded, inspirational and intelligent people.

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Lisa Heschl
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<td>AEDH</td>
<td>Association Européenne pour la défense des Droits de l’Homme</td>
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<td>AFSJ</td>
<td>Area of Freedom, Security and Justice</td>
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<td>AP</td>
<td>Action Plan</td>
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<td>ASR</td>
<td>Articles on Responsibility of States for Internationally Wrongful Acts</td>
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<td>CAT</td>
<td>Committee Against Torture Convention Against Torture</td>
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<td>CEAS</td>
<td>Common European Asylum System</td>
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<td>CEDAW</td>
<td>Convention on the Elimination of All Forms of Discrimination against Women</td>
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<td>CERD</td>
<td>Convention on the Elimination of All Forms of Racial Discrimination</td>
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<td>CFREU</td>
<td>Charter of Fundamental Rights of the European Union</td>
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<td>CFSP</td>
<td>Common Foreign and Security Policy</td>
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<td>CJEU</td>
<td>Court of Justice of the European Union</td>
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<td>CoE</td>
<td>Council of Europe</td>
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<td>CPT</td>
<td>European Committee for the Prevention of Torture</td>
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<td>CRC</td>
<td>Convention on the Rights of the Child</td>
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<td>EASO</td>
<td>European Asylum Support Office</td>
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<td>EBCGA</td>
<td>European Border and Coast Guard Agency</td>
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<td>EC</td>
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<td>FRA</td>
<td>Fundamental Rights Agency</td>
</tr>
<tr>
<td>Frontex</td>
<td>European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union</td>
</tr>
<tr>
<td>GAM</td>
<td>Global Approach to Migration</td>
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List of Abbreviations

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