Part I
Overviews
Extraterritorial Immigration Control: What Role for Legal Guarantees?

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Introduction

The immigration control systems of developed states are today frequently characterised by strategies of ‘extraterritorialisation’. This has involved the rejection of the model whereby admission decisions are taken at ports and border crossing points, while the policing of irregular migration takes place either at the borders or within the territory. Developed states now increasingly treat that model as anachronistic, and seek instead to take immigration control action – both decision-making and enforcement – prior to an individual’s arrival on their territory. In some cases, indeed, the objective appears to be that as much immigration control activity as possible should take place elsewhere, either on the territory of other states, or in international waters, where the presumption is that states lack jurisdiction.

This chapter provides an overview, from a legal perspective, of extraterritorial practices within contemporary immigration control. It will focus on examples from the United States, the United Kingdom and the European Union, with the experiences of other developed states referred to where appropriate. The material is organised into three substantive sections, which discuss visa requirements, pre-departure checks and interception at sea, respectively.

The chapter’s starting-point is Guiraudon’s observation that extraterritorialisation strategies aim at “short-circuiting judicial constraints on migration control.”

The chapter will show that the development of extraterritorial immigration control techniques typically reflects a mixture of non-legal and legal factors. Non-legal factors include passenger convenience, the prevention of irregular migration, security, and the terms of the relationship with specific other states. The legal element consists in the avoidance of international law and domestic law.