Part III
European Union Aspects
Europe beyond its Borders: Refugee and Human Rights Protection in Extraterritorial Immigration Control

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1. Introduction

Migration is about crossing borders. Defying the rhetoric of globalisation as a process nullifying the relevance of borders (“borders don’t matter anymore”), the border remains the crucial geographical threshold for obtaining entry into another State. For vast categories of migrants, globalisation has all but rendered the notion of the border irrelevant. The border is the first and foremost instrument at a State’s disposal in controlling immigration. The power of States to prevent foreigners from crossing their borders is inherent to a State’s territorial sovereignty, and, as such, firmly underpinned by international law.1

Borders, nonetheless, have proven to be notoriously porous. No matter how high the fences are or how technically advanced border surveillance is, undocumented migrants without a legal right of entry somehow manage to get through.2 From an international law perspective, the border is moreover inherently ineffective as an instrument of immigration control, as the power to exclude aliens remains subject to a State’s treaty obligations, implying that refugees and other categories of migrants may rightfully claim protection and a concurring right of entry once they have succeeded in presenting themselves at the border.

Acknowledging that merely controlling the border is insufficiently effective to prevent unsolicited migrants from entering, European States have in recent decades been adopting strategies which amount to what may be called a process of ‘shifting and multiplication’ of the European external border. In an effort to increase the effectiveness of border controls and immigration policies in general, controls and surveillance in the immediate vicinity of the geographical external

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1 E.g. ECtHR 28 May 1985, Abdulaziz, Cabales and Balkandali v United Kingdom, Appl. Nos. 9214/80, 9473/81, 9474/81, para. 67.