

AT THE BORDER
EU LAW, ASYLUM AND THE SPATIALITIES OF
FUNDAMENTAL RIGHTS



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av

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Abstract

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This study is a contribution to the field of critical migration law studies. Examining the *externalization* of EU migration and border control, it addresses the *asymmetry* between where EU border control takes place and where the obligation to protect fundamental rights applies under international law and EU law. Instead of offering legal solutions on how to bridge the gap of incoherence, the study contextualizes the asymmetry at two sites of EU migration and border control: the Belgian embassy in Beirut and the border crossing point at Beni-Enzar in Melilla. Addressing these sites as *scenes of spatio-legal interaction*, the study offers examples of how EU migration and border control law interacts with *space*, and how this interaction shapes the asymmetry.

The aim of the study is to critically examine and to demonstrate how the spatio-legal interaction of the EU border regime affects the conditions under which individual rights can be enforced at the EU's external borders. Inspired by legal geography – a field that addresses the complex co-constituting of law and space – this study employs a qualitative legal doctrinal method, analyzing the protection of individual rights within the contextual setting of the scenes of spatio-legal interaction. With theoretical perspectives from Massey and Philippopoulos-Mihalopoulos, it applies the concept of *invisibilization* to the EU border regime, subjecting it to theoretical and critical analysis, and demonstrating that fundamental rights – and the state obligations corresponding thereto – are invisibilized through the interaction between law and space. The study concludes that the spatio-legal interaction of the EU border regime generates a web of control, a *borderscape*, that serves to obstruct protection seekers from entering the Union. In borderscape, the border takes a variety of shapes, advancing and retreating in relation to where you are and who you are. It controls space and mobility, but without necessarily triggering the obligation to protect fundamental rights when protection seekers are 'at the border'. Taking account of space and of spatial relationships, this study contributes to an understanding of the conditions under which individual rights can be enforced at the EU's external borders. In the process, it sheds new light on how these borders can be comprehended.

Keywords: EU border control, externalization, asylum, the principle of non-refoulement, borderscape, law and space, critical migration law

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