



Public Lecture Series Spring 2017

Crossing Borders – and Then?

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Thursday, 9 March 2017

Borderline Decisions: *Non-Refoulement* at the Border

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10:15 – 11:45 h, University of Lucerne, Frohburgstrasse 3, Room 4.B55

Abstract

Today it is beyond dispute that the principle of *non-refoulement* applies at the border, and that it includes non-rejection at the frontier of those at risk of harm if returned or denied entry. *Non-refoulement* is such a powerful rule in the defense of and protection of refugees and human rights that States have long looked for ways to avoid it being triggered. The applicability of *non-refoulement* will thus continue to be contested, so long as States remain unwilling or unable fairly and equitably to manage migration, and so long as the drivers of movement are unaddressed. Interception and interdiction programs will remain attractive, and third State co-operation will be bought in and operationalized as far as possible from the borders and judicial oversight of Europe and other destinations. Already, there is a resurgence of interest in “off-shore” detention, holding and processing facilities, the rule of law notwithstanding.

Despite the reality of fence building and the rhetoric of walls, borders are no longer purely physical and territorial. Instead, they are fluid and changing, represented by the official or “liaison officer” at the airport, or by the extent to which States and alliances are able to project power, whether on the high seas, or within the territorial waters or even the territory of third States. The question is, whether such control measures can have any meaningful impact on a phenomenon with so many varied and complex causes.

Non-refoulement, however, such as many of the rules protecting fundamental human rights, is universally applicable. It does not exist in isolation, and neither is it confined to the refugee facing persecution or torture. As an overarching principle, *non-refoulement* is engaged whenever and wherever State authorities seek to exercise sovereign competence over the individual in search of protection. As an obligation of result, it demands process and capacity to identify the refugee and those at serious risk of human rights violations. Operating in the international and inter-dependent context which is the movement of people between States, *non-refoulement* has a yet wider contribution to make – the process which it demands also allows States to identify all those who are themselves a source of risk to the receiving State and its community, or more broadly, to international peace and security.

The effective implementation of the principle of *non-refoulement* at the border thus entails not only substantive assurances of non-return, but also systemic guarantees consistent with the rule and due process of law.

Curriculum Vitae

Professor Guy S. Goodwin-Gill is Emeritus Fellow of All Souls College, Oxford, Emeritus Professor of International Refugee Law in the University of Oxford, and a Barrister at Blackstone Chambers, London, where he practices in public international law generally, and in human rights, citizenship, refugee and asylum law. He is an Honorary Associate of the Refugee Studies Centre, Oxford, a Visiting Professorial Fellow at the University of New South Wales, and an Honorary Senior Fellow of Melbourne Law School, University of Melbourne. He is the Founding Editor of the *International Journal of Refugee Law* (Oxford University Press) and was Editor-in-Chief from 1989-2001. Professor Goodwin-Gill is the author, with Professor Jane McAdam, of *The Refugee in International Law* (OUP, 3rd edn., 2007).

Selected Publications

- “The Movements of People between States in the 21st Century: An Agenda for Urgent Institutional Change.” *International Journal of Refugee Law*, 28(4) (2016): 679–694.
- “The Mediterranean Papers.” *International Journal of Refugee Law* 28(2) (2016): 276–309.
- “The Dynamic of International Refugee Law.” *International Journal of Refugee Law* 25(4) (2014): 651–666.
- A video lecture on “Migrants’ Rights”, which is available in the UN Audio-Visual Library of International Law.

This lecture is part of an international conference on borderline decisions, 09:30 – 17:30 h at the University of Lucerne. Registration for the full conference is mandatory. Please send an e-mail to lehrstuhl.caroni@unilu.ch until 5 March 2017.