

The Judiciary as Pacemaker? Considering the Role of Courts in an Expansion of Protection for War Refugees and People Fleeing Natural Disasters

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Abstract : Migration flows, resulting from war, climate change or economic crisis cannot be tackled by single states but need to be addressed as a transnational and international responsibility. The traditional architecture surrounding the work of the UNHCR and the 1951 Convention, however, is not equipped to deal with these challenges. Widely excluded from legal protection are people not individually persecuted for the statutory criteria, people that flee from the indiscriminate effects of an armed conflict as well as people fleeing natural disasters. With the lack of explicit legal protection and the political reluctance of nation states worldwide to extend their commitment in new asylum laws, the judiciary must be put in focus: it plays a unique role in interpreting and potentially expanding the application of existing regulations. This paper as part of an ongoing Ph.D. Project deals with the current and partly contradicting approaches to the protection of war- and climate refugees. Changing jurisprudential practice of national and regional courts will be assessed, as will be their dialogue to interpret the international obligations of human rights law, migration laws, and asylum laws in an interacting world. In recent judgments refolement to an armed conflict as well as countries without adequate disaster relief or health care was argued as violating fundamental human and asylum law rights and therefore prohibited - even for applicants without refugee status: The first step towards access to subsidiary protection could herewith be established. Can one observe similar developments in other parts of the world? This paper will evaluate the role of the judiciary to define, redefine and potentially expand protection for people seeking refuge from armed conflicts and natural disasters.

Keywords : human rights law, asylum-seekers, displacement, migration

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