

Escaping international Law: The unwanted obtrusion of foreign citizens (*Book Review of Ziegler, Fluchtverursachung als völkerrechtliches Delikt, 2002*)

By Christian Hillgruber

Katja S. Ziegler, *Fluchtverursachung als völkerrechtliches Delikt. Die völkerrechtliche Verantwortlichkeit des Herkunftsstaates für die Verursachung von Fluchtbewegungen*. Verlag Dunker & Humblot, Berlin 2002. 976 pp., € 112,-*

The 20th Century has been coined a “Century of Banishment and Refuge”. The number of refugees that have been forced to leave their homes against their will and seek refuge somewhere else has reached all new highs. Katja Ziegler examines the question, to what extent the flight causing behavior of a Country represents an international crime, which consequences it triggers and how these Countries of origin can be brought to justice.

A country commits an international crime when it violates its obligations under international law. Such violations may be constituted by countries defending themselves against being forced to accept refugees and the individual protective rights and guarantees of those afflicted. The unwanted obtrusion of foreign citizens including all the tangible and intangible problems they bring with them compromises the government of the country of refuge, thereby violating its inner and outer sovereignty in the form of an unwarranted intervention. The countries from which the refugees originate cannot free themselves of their responsibility with the claim that those countries accepting refugees could and should close their borders. Not only does this type of ‘walling-off’ conflict with existing international obligations to receive refugees, but it also would drive refugees inhumanely and inacceptedly into a no man’s land. Rejecting refugees would thus not qualify as liability excluding alternative behavior.

The discussion surrounding individual rights deals in particular with the “flight specific” (“*fluchtspezifisch*”) human rights. A “right to remain” as well as a deportation ban towards (*gegenüber*) its own citizens can be derived from the right to enter.

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The context related “Right to Homeland” furthermore exceeds this legal basis. There is a wide open flank to all of these rights, however: in cases of the violation of the subjective “right to homeland”, the originally owed “*restitutio in integrum*” (recreation of the original status) may become impossible over time as well as through new settlements and transform into a claim for compensation just as has been observed with regard to violations of the right to self-determination of peoples and ethnic groups and collective rights of minorities.

On a third normative level, Ziegler discusses such violations of international law that are to the detriment of “international society” as a whole. Because this society doesn’t exist as an organizational unit, it deals with the possible rights of all countries individually or collectively, but also especially with those rights of countries that are not directly impacted. Ziegler draws upon the entire range of international law: the categories of international crimes, the obligations *erga omnes* as well as *ius cogens*. Yet, the returns remain minimal because it is not clear which of these particular legal consequences tie in with the more serious international violations like crimes against humanity and genocide.

The international delict of flight-causation (*Fluchtverursachung*) initiates the legal consequence of state responsibility: the country of refuge can demand that the refugees be taken back, that an end be put to the flight causing and the human rights violating behavior, and that – in case of a threatening repetition of such behavior – the assurance is given of not engaging in such ways in the future. It is not necessary in this regard to seek to construe the otherwise highly complicated claims of those individuals themselves inflicted in these contexts. Such a construction that would consist of a so far non-existent state practice would materialize in the form of turning the principle of diplomatic protection upside down.

In addition, there is the right of the country of refuge to compensation for the financial burdens associated with the acceptance and accommodation of refugees. Third states that may have claims based on international human rights obligations may themselves bring those claims of the individuals against the states of origin as their own claims.

Therefore the displacing country doesn’t only violate its primary international obligations, but also deprives itself of its secondary international responsibility. This leads to the precarious question of enforceability: Any legally infringed upon Country can resort to peaceful remedies. Military force, however, may only be used within the bounds and requirements of chapter VII of the United Nations Charter. While this may appear unsatisfactory it reflects the current level of development in international law.