Refugee Resettlement and Permanent Protection in Europe

The Iraq War and the Merging of Immigration and Refugee Law

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The argument

- The war in Iraq and the responsibility of the Coalition for the generation of refugee flows has exercised a significant, but informal and largely unfathomable, normative pressure on the political and judicial system of the Union, leading to expanded refugee rights with direct implication on the length of the stay.
- Refugee resettlement
- Case-law
Line of Reasoning I

- I. The terminology
- II. EU as a junior partner in Iraq
- III. Refugee flows: Generation and responsibility
  - 1. Generation: The factual dimension
  - 2. International responsibility
    - a. Illegal use of force?
    - b. Violation of duties by the Occupying Powers?
Line of Reasoning II

- IV. The Responsibility to Protect Refugees
  1. Resettlement
  2. UK and German courts – the initial phase
     a. UKAIT: The *KH* case (2008)
     b. BVerwG (2008)
  3. ECJ: The *Elgafaji* case (2009)
  4. EWCA: The *QD* case (2009)
  5. ECJ: The *Abdullah and others* cases (2010)
- V. The Long-term Residents Directive
The Terminology

- Resettlement
- Temporary Protection
- Refugee Status
- Subsidiary Status
- Temporariness v. Permanence
EU as a Junior Partner in Iraq

- Participation of Member States in the intervention
- Support to the objectives of the intervention
- Participation in the governance of Iraq
  - EUJUST LEX – ESDP
  - Reconstruction
Refugee flows: Generation and responsibility

- **Generation: The factual dimension**
  - Formal end of occupation: 06/28/2004
  - Bombing of Al-Askariya mosque (Samarra), 02/22/2006
  - Peak: 4.2 Mio refugees/displaced persons (UNSG Rep., October 2007)
Refugee flows: Generation and responsibility (cont.)

- International responsibility: Illegal use of force (2 para. 4 UN Charter)?
  - Precedent: Iraqi compensations to Kuwaitis (1991)
  - The uncertainties of UNSC Res. 1441/2002
  - The constitutional nature of UNSC Res. 1483/2003
  - Authorizing multilateral troops: UNSC Res. 1511/2003
  - Legal consequences of illegality: *status quo ante*, compensation
  - The problem of causal link between wrongful act and injury: proximity and time
Refugee flows: Generation and responsibility (cont.)

- International responsibility - Violation of duties by the Occupying Powers?
  - Art. 43 Convention IV 1907 Hague Regulations: ‘the authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety...’
  - Art. 64 GC IV of 1949: ‘the Occupying Power may (...) subject the population of the occupied territory to provisions which are essential to enable the Occupying Power to fulfil its obligations under the present Convention, to maintain the orderly government of the territory ...’
  - Restoration of peace and security – continuation of occupation
  - Other factors: militias, Iran
The Responsibility to Protect Refugees

- Resettlement
  - 10,000 Iraqi refugees in EU
- UK and German Courts Iraqi cases – the initial phase
  - Subsidiary protection 15 (c) QD: ‘serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict’
  - IHL, indiscriminate violence, armed conflict
- BVerwG (2008)
  - Cessation of refugee status after 2003: fear v. significant and non-temporary nature of the change of circumstances
ECJ: The *Elgafaji* case (2009)

- Subsidiary protection
- Applicant security guard with British company
- 15(c) QD: Community concept (no IHL, ECHR)
  - ‘the person concerned belongs, like other people, to a circle of potential victims of indiscriminate violence in situations of international or internal armed conflict’
  - ‘individual threat’ v. ‘indiscriminate violence’ (non-technical definition)
EWCA: The QD case (2009)

- The non-functionality of the concept of ‘armed conflict’ in 15(c) QD
- The non-significance of the source of violence
- Raising ‘endemic violence’ into standard?
- Transforming the time of protection
ECJ: The *Abdulla and others* cases (2010)

- Cessation of Iraqi refugee status
  - ‘absence of fear of persecution’ insufficient
  - significant and non-temporary nature of change of circumstances
    - reasonable steps to prevent persecution
    - effective legal system
    - access of persons concerned to the system
    - General living conditions/minimum standard of living?
ECJ: The *Abdulla and others* cases (2010) (cont.)

- Cessation of Iraqi refugee status
  - the role of multinational forces
  - refugee status cessation and subsidiary status

- The role of time

- Long-term resident status after 5 years
- Practically permanent immigrant status
- Exclusion of persons under international protection from the status
- The 2007 amendment proposal
- The 2008 impasse
Concluding Remarks

- Iraq war and European refugee law
- The legal structure of the war and the legal structure of refugee law
- Parallel developments and the role of time
- Merging immigration and refugee law?