The *Legal* Responsibilities of the United States Towards Asylum Seekers[1]

In 1965, 13 international law specialists assembled at the Rockefeller Foundation's Villa Serbelloni in Bellagio to craft a legal instrument that would address contemporary and future refugee crises. Their starting point was the 1951 Refugee Convention, which had been designed to provide protection for stateless persons and to refugees crossing international borders who had suffered persecution in Europe prior to January 1, 1951. These qualifications restricted the Convention's application to the 60 million people who had been displaced by World War II. The challenge for those lawyers was to eliminate these limitations and exactly 50 years ago, the United States acceded to that treaty.

The drafters also had in mind the US government's desire to become party to the new treaty. The administration and the State Department believed that US accession would send a clear message to the world that the United States supported human rights and international law. The timing was interesting, of course, because at that very moment the United States was bombing Vietnam, with devastating and long-lasting consequences. Of course, many of the vulnerable people created by US foreign interventions have ultimately reached US shores and land borders, seeking protection, asylum, and a new life, in accordance with the terms of the new treaty.

Known as the "1967 Protocol," the treaty confirms the definition of refugees, ensconces the principle of *non-refoulement*, and establishes minimum standards for how refugees are to be treated. It is a rather unique international treaty, however, because it both extends the application of the 1951 Convention *and* it stands on its own for the three countries that signed it, without ever signing the Convention (the United States, Cape Verde, and Venezuela). The text and details about its negotiation were integrated into US law through the US Refugee Act of 1980. According to the 1980 Vienna Convention, treaties have to be interpreted in good faith. Where there is any ambiguity, courts can employ supplementary means of interpretation, including the preparatory work and the circumstances of its conclusion. Thus, if there is some ambiguity as to how the 1967 Protocol should be interpreted today, courts can look to "preparatory documents," including memos, letters, and statements made by negotiators at that time.

Our international obligations to refugees and asylum seekers have become heavily politicized over the last several years, most recently by reports about the migrant "caravans" from Central America. So this seems to be a good time to review the *travaux préparatoires* leading up to our acceding to this 1967 Protocol. In hearings before a Senate Committee, State Department legal expert Eleanor C. McDowell stated that it was important for the United States "to project abroad the image of our own liberal practices in this country," and to "use our influence" to encourage liberalism in other countries. In response to a question from Senator John Sparkman asking what the point was in signing a new treaty if the United States was already admitting refugees, McDowell replied that foreign policy interests compel us "to extend the image of the United States as a nation concerned with the persecuted" and that the treaty would "enhance our diplomatic competence and our diplomatic effort to try to produce more and better acceptance of humane and civilized standards in other countries for refugees." Such efforts, she said, "conduce solutions to broader problems and to the removal of tensions and in the end to the preservation of peace."

When in August of 1968 Lyndon Johnson submitted the Protocol to the US Senate, he too explained its significance: "The Protocol constitutes a comprehensive Bill of Rights for refugees

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fleeing their country because of persecution on account of their political views, race, religion, nationality, or social ties." This Protocol prohibits states from expelling or returning refugees "to any country in which they would face persecution," he said, and guarantees them rights which "would enable them to cease being refugees, and instead to become self-supporting members of free societies, living under conditions of dignity and self-respect." In response, the Senate ratified the treaty by unanimous vote, 98-0.

On November 1, 1968, UN representative, Ambassador James R. Wiggins, formally deposited the United States accession to the Protocol to the UN Secretary. In a statement, he referred to the million-plus refugees who, since World War II had been admitted to the United States, and asserted that that proper, legal treatment of asylum seekers and refugees was a credit to our country, not a burden. His words should resonate on the 50th anniversary of the US accession to the Protocol. We are bound to refugees and asylum seekers by our collective humanity, and, through this treaty, by our adherence to the rule of law. The current rhetoric and treatment of asylum seekers who have reached our borders or are on the way, is not just immoral: it is illegal as well.

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