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Short Assignment: States as Enforcers: U.S. Civil Litigation (27 April).² A real case: Alabama Sues U.S. Government Over Plans For Syrian Refugee Settlement

I – INTRODUCTION

Before me, my colleagues addressed the main issues related to the *States as Enforcers*. So, in this paper we will discuss the topic suggested, but going straight to the debate about another theme included in our course: the issue about the refugees and its internal reflections in United States.

Indeed, State of Alabama is processing U.S Government over plans for Syrian Refugee Settlement.

Trying to justify this attitude, Alabama Governor, Robert Bentley, said: "It is my duty as the governor of the state to secure and protect the people of Alabama," he said at the time. "I am not able to do that if we don't know who is coming from foreign nations and we know nothing about them and we don't even know where they go when they leave the state."

On the other hand, President Obama affirmed the following: "These are the same folks, oftentimes, who suggest that they're so tough that just talking to Putin or staring down ISIL or using some additional rhetoric somehow's going to solve the problems out there. But apparently they're scared of widows and orphans coming into the United States of America as part of our tradition of compassion." The case is still being processed and there are several legal arguments on both sides.

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² Apud by Laura Wagner - <http://www.npr.org/sections/thetwo-way/2016/01/07/462274762/alabama-sues-u-s-government-over-plans-for-syrian-refugee-settlement>. Paper mainly based on the following doctrines: ALSTON, Philip and GOODMAN, Ryan. *International Human Rights – the successor to international human rights in context*, Oxford, 2013; S. LEE, Debra, HALL, Charles and M. BARONE, Susan. *American Legal English*, the University of Michigan Press, 2015; School of the Public Ministry of the Union (Brazil). *Practical Handbook of International Human Rights*, Coord. Sven Peterke, ESMPU, Brasília: 2010; http://www.al.com/news/index.ssf/2016/03/us_government_seeks_dismissal.html, By Kelsey Stein, on March 09, 2016.

II - BRIEF HISTORICAL ASPECT

First of all, it is necessary to say that we (most of the people who live in American Continent) are somehow refugees, because our parents, or grandparents, or great-grandparents came from other parts, running away from the war, mainly the First Great War (1914-1918) or the Second Great War (1939-1945). In my case, for example, my ancestors came from Lebanon and from Germany.

They were suffering and starving in Germany and in Lebanon and left their relatives there, running away from the war, bringing in their luggage only their hope and their dreams. Here in Brazil they built a new life, they worked a lot and now their great-grandchildren are very proud of them and carry in their blood the DNA of the brave.

Then, from a historical perspective, it does not take much thought to understand that we have a moral obligation to the current refugees. Indeed, we are all responsible for these human beings! And the responsibility of some countries is even greater than others, because somehow they also have liability in the merits of the war itself, in the historic quest for more power and wealth, even at the cost of thousands of lives.

In my point of view this is the case of USA, Russia, France and England. We realize that we are talking about the same countries directly involved in the two Great World Wars, with the exception of Germany and Japan. For some this may be a coincidence, but not for me. By the way, this is another question, complex and can be discussed at another time.

But, in conclusion of this topic, we must agree at least that these countries contributed to the escape of these people and now they have an obligation to receive them!

III – THE LEGAL ASPECT AND CONCLUSIONS

Regardless these arguments above there is a legal system which provides several rules concerning about the issue of refugees. At the level of international law, there is a general rule recognized by States in the form of Article 14 of the UDHR (Universal Declaration of Human Rights), which provides the following sentence:

“1. Everyone has the right to seek and to enjoy in other countries asylum from persecution. 2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.”

As well written by ALICE EDWARDS³, “The origins of the ‘right to seek and to enjoy asylum from persecution in other countries’ can be traced back to the ‘right of sanctuary’ in ancient Greece, imperial Rome and early Christian civilization. Its modern equivalent was recognized by States in the form of Article 14 of the UDHR.”

And despite the UDHR is a non-binding instrument, Article 14 is implicit within the 1951 Convention and its 1967 Protocol and is ‘an important emerging norm of customary international law’⁴ (the Declaration of States Parties to the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, Geneva, 13 Dec. 2001, recognizes ‘the importance of other human rights and regional refugee protection instruments).

But even in the local scenario no one can deny the validity and clear writing of the Refugee Act of 1980⁵, which confirms and regulates the procedures for the admission of refugees, corroborating the right of asylum.

According to US Government, “refugees are initially screened by the U.N. High Commission for Refugees. Then — if they are headed to the U.S. — NPR's Brian Naylor says they must be vetted by the National Counterterrorism Center, the FBI's Terrorist Screening Center, and the Departments of State, Defense and Homeland Security. And there's another

³ EDWARDS, Alice. *In* Human Rights, Refugees, and The Right ‘To Enjoy’ Asylum. Published by Oxford University Press. www.ijrl.oupjournals.org.

⁴ S.R. Chowdhury, ‘A Response to the Refugee Problems in Post Cold War Era: Some Existing Emerging Norms of International Law’, 7 IJRL 100, (1995). n. 4, at 105. Apud: EDWARDS, Alice. *In* Human Rights, Refugees, and The Right ‘To Enjoy’ Asylum. Published by Oxford University Press. www.ijrl.oupjournals.org.

⁵ PUBLIC LAW 96-212—MAR. 17, 1980 - Public Law 96-212 - 96th Congress - An Act - Mar. 17, amend the Immigration and Nationality Act to revise the procedures for the [S. 643] admission of refugees, to amend the Migration and Refugee Assistance Act of 1962 to establish a more uniform basis for the provision of assistance to refugees, and for other purposes. Be it enacted by the Senate and House of Representatives of the Refugee Act of United States of America in Congress assembled. "Refugee Act of 1980".

layer of screening by U.S. officials to determine whether they are indeed refugees.”⁶. So, the process to accept the refugees is a lengthy and multistep system. Then the process is safe as far as possible.

Besides that there is another point that gives reason to the US Government against the pretensions of the State of Alabama: **the legal competence to address the issue of refugees!** In the US Constitution, the amendments and the laws governing the matter, there is no power assigned to States, as Alabama. Only the US Government can address these issues! So, the attitude of the Alabama Governor seems more a political act than a real preoccupation with the population of the State.

IV - BIBLIOGRAPHY

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<http://www.npr.org/sections>.

⁶ Apud: <http://www.npr.org/sections>.