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Refugee Traditions and Practices of the United States

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SUMMARY



People have been migrating to the United States since the earliest days of the republic. Official sources show that between 1820 and 1980 approximately 50 million immigrants came to the area now encompassed by the United States.¹

They have come from many countries throughout the world. From 1931 through 1960 more than half came from Europe. In 1980, 44 percent came from Asia and 29 percent from Latin America; Europe made up less than 14 percent. In 1910, there were fifty states and empires in the world; in 1980, immigrants came from 194 nations. These included more than 50 African nations.²

Persons persecuted by their governments for their religious, political or other personal beliefs were allowed to enter the U.S. through normal immigration programs for much of our history. However, the escalating refugee and displaced persons problems after World War II found these systems too inflexible to meet mounting and varied challenges. A series of unique "paroles" or special statutes were provided for victims of succeeding crises. As we jumped from one problem to another, we continued to hope that each would be the last. A limited but more permanent mechanism was created in 1965 with the introduction of the "7th preference" for refugees. In 1980, the Refugee Act provided finally the flexible, adjustable mechanism that the solution to these problems seemed to require.

This report attempts to trace the evolution of America's traditions and practices regarding help to the persecuted and the oppressed. The report reveals that after years of alternating among openness, restrictiveness and avoidance, we recognized, starting in 1965, that refugee and displaced persons problems were a permanent feature of the international landscape. In 1980 the President signed the landmark Refugee Act, which signaled to the world that we were bringing the American program into conformance with internationally approved mechanisms for attacking this problem. What has been our experience since?

This report documents the accomplishments of the U.S. refugee program over the last decade and also addresses some of the major criticisms that have been leveled against it. The report reviews critics' concerns about an apparent inconsistency between our generosity to the refugees overseas and our seeming reluctance to address the plight of asylum applicants here in our own country. The paper provides several suggestions for dealing with these complaints.

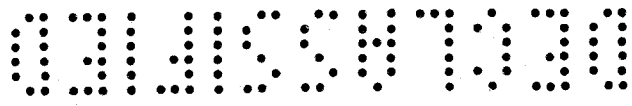


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INTRODUCTION

This past December, Father Harold Bradley, S. J., Director of the Center for Immigration Policy and Refugee Assistance at Georgetown University, invited me to join a small group of people with experience in and concern for immigration. Our task was to consider: (1) the consequences of immigration during the next ten years and (2) the impact of those consequences on the internal affairs of the United States.

The results of ensuing conferences and seminars are expected to assist in preparing a draft agenda for the scholar who will soon be appointed to the new Donald Herzberg Chair in Migration Studies at Georgetown.

As a basis for reviewing the refugee component of our task and as background for other participants, I agreed to prepare this paper which traces the evolutionary development of U. S. involvement in refugee matters and discusses some of the most important current problem areas.

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REFUGEE TRADITIONS AND PRACTICES OF THE UNITED STATES

The Early Years

George Washington declared that America would be open to "the oppressed and persecuted of all nations and religions." From its very beginning this country was a haven, absorbing an astonishing number of people within expanding borders in its first century and a half.

The story of American immigration stands out in the history of human mobility for its scope, speed and magnitude. The ancestors of our "Native Americans" were immigrants who came to North America from Siberia many centuries ago. By the time white explorers appeared, the American Indians had developed their own cultural and linguistic diversity.

Colonial settlers were immigrants as well. They laid the cultural groundwork for the Western Europeans who followed them, mostly from the same countries. They blazed the trail for those who began to arrive later from different lands and continents.

America's development in the first half of the 19th century coincided with a lull in immigration. In Europe, meanwhile, historic changes were taking place that would lead more than four million people to emigrate to America between 1840 and 1860, an amount roughly equal to America's total population in 1790.³ The great migrations of the latter 19th century were fueled by the pull of America and the push of Europeans out of their homelands.

The most important push factors included the following:

- (1) The Irish famine, which began in 1845, led many to escape to America to avoid starvation or death.
- (2) Religious discontent inspired thousands of Europeans to seek a new homeland. Among others, these included Norwegian Quakers, Jews from many German states, as well as Ulster Presbyterians and Irish Catholics who rebelled against the Penal Laws of English rule.
- (3) Decades of war and political upheaval also fostered emigration. The French revolution fueled radical new notions of liberty and equality, prompting revolutionary movements in other countries as well during the 19th century.

Becoming an American was easy in the early days. The alien would report his arrival at a court of record, whose clerk would give him a dated certificate. After five years of proven residence, assuming he gave allegiance to his new home, he could receive his certificate of naturalization, which allowed him to vote, or even hold office.

By the late 18th century, America was ready for its own freedom. While the Declaration of Independence defined the grievances of the colonies by the rights of Englishmen, it

asserted the dignity of the people in a unique way: "...That all men are created equal...endowed by their Creator with certain inalienable rights...". America was pictured as a haven for people of all races and backgrounds, as an "asylum." Thomas Paine said, "...for the persecuted lovers of civil and religious liberty from every part of Europe."

And thus it was. Between 1820 and 1910 over 28 million immigrants arrived in the United States. Although specific data were not collected to quantify motives for flight, informed observers estimate that many of these new immigrants were fleeing religious and/or political persecution. These people were what today we would call "refugees."

"Refugees have existed throughout recorded history and probably since the dawn of the human community. In 1283 B.C., Pharaoh Ramses II sought the return of refugees to Egypt in a treaty with the Hittites. Greek antiquity left us both the concept of asylum and the word (from "asylon") that expresses it. Orestes was a refugee. So were Dante, Wagner, Einstein and innumerable other creative political or religious personalities. So were whole nations or groups, such as the Huguenots of France or the Jews of Spain."⁴

The flight of the French Huguenots clearly demonstrates the role America was to play in sheltering Europe's persecuted. In 1685, Louis XIV signed the revocation of the Edict of Nantes, a document which had recognized the existence of the reformed religion and laid down regulations governing its worship, opening up the Huguenots to retaliation. Persecuted without mercy, approximately 250,000 Huguenots sought to flee France. Most of them resettled permanently in other countries of Europe; some went as far as Russia and South Africa. Others crossed the seas to America.⁵

Many experienced America as the "land of the free."

Emerging Restrictionism

While Americans welcomed newcomers during our early nation-building phase, our attitude toward immigration later began to change. Except for the short-lived Alien Act of 1798, we welcomed newcomers, even encouraged them as contract labor during the Civil War. In 1875, however, a federal law was passed that barred convicts and prostitutes. The first general Immigration Act of 1882 excluded undesirables, among them persons who might become public charges.

The escalating flow of Chinese peaked in 1882 at nearly 40,000, and was halted abruptly that year by the Chinese Exclusion Act. For the first time we barred a whole national group from the U.S.

Burgeoning immigration was provoking mistrust and fear. In 1891, the Secretary of the Treasury wrote that immigrants "do not readily assimilate with our people and are not in sympathy with our institutions."⁶ Restrictionism was gaining momentum, reinforced by economic downturns.

For the first time, in 1921, a law was enacted to limit the number of admissions. . . . Soon after, the Immigration Act of 1924 set quotas based on national origins, clearly set to keep less preferred nationalities out. . . . Many feared the patterns of racial discrimination these quotas inspired. Minimal quotas were assigned to new nations formed after World War I. Barriers against Asians and Africans remained. The spirit of the 1924 law would guide overall policy until 1965. On yet another front the Great Depression reduced immigration in 1933 to only 23,068, the lowest total since 1831.⁷

Refugees were among the victims of this new restrictionism, as efforts by concerned Americans on their behalf began to fail. In 1939, for example, President Roosevelt, concerned by growing anti-Semitism, ignored a bill introduced in Congress to allow the immigration of up to 20,000 German refugee children.⁸ American Jews were unable to sway Congressional or public opinion on their behalf.

As the war was ending, American policy-makers were opposed to any liberalization of immigration, either because it might lead this country to become "the dumping ground of the persecuted minorities of Europe" and encourage the influx of an "army of people who speak foreign languages, and insult the American flag," or because it would "add to our national immigration at...a time when at least 10,500,000 of our people are out of employment."⁹

Representative Albert Johnson, the principal author of the legislation that established national origin quotas, charged that refugees were a bad influence in America. "Today, instead of a well-knit homogeneous citizenry, we have a body politic made up of all and every diverse element. Today, instead of a nation descended from generations of freemen bred to a knowledge of the principles and practices of self-government, of liberty under law, we have a heterogeneous population no small proportion of which is sprung from races that, throughout the centuries, have known no liberty at all, and no law save the decrees of overlords and princes. In other words, our capacity to maintain our cherished institutions stands diluted by a stream of alien blood with all its inherited misconceptions respecting the relationships of the governing power to the governed."¹⁰

So much for the notion that every man is created equal. Restrictionism was so entrenched that it would take a compelling tragedy to shake it.

Displaced Persons of Central Europe

World War II's revelation of the persecution and murder of European Jews was the tragedy that eventually would lead to a wrenching reappraisal of America's moral obligation to the world's oppressed. Even with this horrifying revelation, America's response was not without its share of strains, delays, discriminations and abuses. Between 1945 and 1950, concerned public and private American officials, working with counterparts in other

Western nations, designed and began to implement rescue programs. The concern that launched these programs was humanitarian. Yet, pragmatism and ideology were also present. Not surprisingly, a program initiated to resettle Jewish holocaust survivors took on additional colorations as it emerged. Dependent as it was on the support of the executive and legislative branches of government, as well as the general public, it was subject to the emotionalism of American immigration politics and grew progressively more concerned with people resisting repatriation to communist-dominated countries. Ultimately, the rescue program itself became caught up in cold war politics.

To deal with these refugees and stateless exiles after World War II, the Displaced Persons Acts of 1948 and 1950 allowed "mortgaging" of future quotas. The first Displaced Persons Act was signed into law on June 25, 1948. It had been so cluttered with restrictive and discriminatory provisions designed to favor groups other than surviving European Jews that President Truman's signing statement criticized it as forming "a pattern of discrimination and intolerance wholly inconsistent with the American sense of justice." He said that more than 90 percent of the persecuted Jews would be denied the Act's benefits.¹¹

Almost immediately, lobbying began to amend the Act by stripping away its most onerous provisions. These efforts produced the second Displaced Persons Act of 1950. The need for such legislation demonstrated the extent to which ethnic discrimination and restrictionism still existed in America at that time.

The Internal Security Act of 1950 and the Immigration and Nationality Act of 1952 (McCarren-Walter Act) further tightened restrictions on ideological grounds.

From December 31, 1951, when the second Displaced Persons Act expired, until the summer of 1953, the restrictive quota system was our only legal method for bringing immigrants, including refugees, to the United States. However, on August 7, 1953, President Eisenhower signed into law the Refugee Relief Act of 1953, which made available 209,000 visas outside normal immigration quotas, approximately one-half to be used by recent escapees and political refugees. This marked the first time we recognized the extraordinary and compelling need to place refugee admissions outside normal immigration quotas.¹²

Since 1945, approximately one-half million refugees and displaced persons have been relocated in the United States from Central and Eastern Europe. As important as these numbers, however, was the reawakening of America to its moral responsibilities and humanitarian obligations.

The Hungarian Liberation

When Hungarian liberation forces were squashed in 1956, tens of thousands fled into Austria and Yugoslavia. President Eisenhower shouldered America's partial responsibility for this defeat by stretching American immigration law to admit to the United States some 32,000 Hungarians who were not thought to be

eligible under existing programs or legislation. However, the Attorney General advised the President that he had authority under existing immigration legislation to temporarily "parole" aliens into the United States "for emergent reasons or for reasons deemed strictly in the national interest." Even though this was the first time this unique interpretation had been used, Congress did not object out of sympathy for the "freedom fighters." This authority was further expanded by President Kennedy a few years later to admit anti-Castro Cubans. Thus emerged an executive-dominated method of bringing refugees to the United States which skirted the rigidities of the restrictive normal immigration statutes. This method was henceforth used for refugee admissions until the passage of the Refugee Act of 1980 created a more appropriate legal mechanism.

The Cuban Revolution

On January 1, 1959, Fulgencio Batista fled Cuba and Fidel Castro established a revolutionary government. Cubans dissatisfied with the Castro regime began fleeing to the United States. Some came as legal immigrants. Others arrived with non-immigrant visas and simply refused to return home when they expired. Some came with no documentation. Between January 1, 1959, and April 1961, approximately 125,000 Cubans arrived in the United States. Their arrival and resettlement, mostly in South Florida, was unplanned and unregulated. U.S. government policy was to avoid impeding the arrival of Cubans into the United States. The major reason for this laxness can probably be explained by the fact that both the Eisenhower and Kennedy Administrations regarded the Cuban flow as temporary. The Cuban exile community in Florida was planning and training for a possible future invasion of Cuba.

The Bay of Pigs fiasco, April 17, 1961, forced a significant change in the Kennedy Administration's policy toward Cuban exiles. Repatriation became a more remote possibility, and the United States was forced to begin considering the exile community as a permanent new population. Apparently, the Administration gave no consideration to closing the border to Cubans. Instead, Cuban migration continued until October 22, 1962, when, in response to President Kennedy's Cuban missile crisis speech, Castro stopped it. After the Bay of Pigs, it would have been politically impossible to shut the door on fleeing Cubans.¹³

Most of the arriving Cubans were eventually permitted to regularize their status and obtain U.S. citizenship. Combined with the later Mariel boatlift, the total number of Cubans eventually entering the U.S. was about 800,000. In addition to those who came as normal immigrants until October 22, 1962, significant numbers of others were parolled in by the Attorney General.

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The 1965 Immigration Act and 7th Preference

The Kennedy-Johnson years brought major changes in immigration policy. On October 3, 1965, legislation was enacted which abolished the old quota system. In its place the new legislation set up "preference categories." The first six preferences favored family ties and the skills an individual immigrant might offer in a high-technology society. The Immigration Act amendments of 1965 also added a new feature of interest to refugee admissions. This was a seventh preference category, which reserved 6 percent of visas available under the new system for the Eastern Hemisphere, for aliens who "...because of persecution or fear of persecution on account of race, religion, or political opinion have fled... from any Communist or Communist-dominated country or area, or... from any country within the general area of the Middle East...or are persons uprooted by catastrophic natural calamities as defined by the President who are unable to return to their usual place of abode."¹⁴ Although this legislation liberalized procedures and made predetermined numbers of visas available exclusively for refugees, it retained ideological and geographical restrictions favoring those fleeing communism. The 10,200 annual "seventh preference" visas, later raised to 17,400 when the Western Hemisphere was also included, generally met applicant needs for the next few years. About 68,000 refugees were admitted to the United States between 1965 and December 31, 1972, under the "seventh preference." Most of them were Cuban and Czechoslovakian.¹⁵

In submitting his proposals to Congress to replace the old quota system, President Kennedy said, "Under existing law...the huddled masses were welcome only as long as they come from Northern Europe, are not too tired or too poor or slightly ill, never stole a loaf of bread, never joined any questionable organization, and can document their activities for the past two years."¹⁶

In the signing ceremony for this legislation on October 3, 1965, President Johnson said, "For it does repair a very deep and painful flaw in the fabric of American justice...(It) will really make us truer to ourselves both as a country and as a people.... The days of unlimited immigration are past. But those who come will come because of what they are, and not because of the land from which they sprung."¹⁷

While the 7th preference provisions regarding refugees were replaced by the Refugee Act of 1980, the concepts of the 1965 legislation continue to guide normal immigration programs.

The United Nations Involvement in Refugee Matters¹⁸

The United Nations has had a mixed, but increasingly important, involvement in refugee affairs since the World War II period. Specifically:

1. While the allies were considering contingency reconstruction plans toward the end of World War II, the United Nations created

the United Nations Relief and Rehabilitation Agency (UNRRA). Its mandate was restricted to relief assistance and it was authorized to promote repatriation but had no power to arrange third country resettlement.

2. Because of its opposition to UNRRA's repatriation of displaced persons to Soviet-occupied territories, the U.S. led actions in late 1946 in the U.N., over Soviet objections, to replace UNRRA with the International Refugee Organization (IRO), whose chief functions were to be the resettlement of refugees and displaced persons created by World War II and the protection of those fearing repatriation. Because it was adamantly opposed to resettlement, the Soviet Union and its Eastern bloc allies refused to join the IRO. The organization remained in operation until the end of 1950.

3. IRO was replaced by the U.N. High Commissioner for Refugees (UNHCR) in 1951. The growing American antipathy towards refugees caused it to insist that UNHCR be given no resettlement and virtually no relief responsibilities. The U.S. withheld financial support until 1955. Today, and for most of the past decade, the U.S. has been UNHCR's largest and most vocal supporter.

4. The UNHCR has promulgated two key documents, the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees. The Truman Administration, reacting to anti-refugee sentiments at the time, refused to submit the 1951 accord to the Senate for ratification. However, President Johnson did submit the 1967 Protocol, and it was ratified in October, 1968. The 1967 Protocol incorporated all provisions of the 1951 Convention and removed time and territorial limits contained in the earlier document. Presently, over 100 nations have ratified one or both of these agreements. They are important because they establish an internationally-approved refugee definition (well-founded fear of persecution) and oblige signatories to avoid "refoulment" (forced repatriation) of refugees. The international system of refugee protection flows from these documents.

The Indochina Program

Following the withdrawal of American forces and the fall of Saigon in 1975, many of America's former allies in Vietnam, Cambodia, and Laos were subjected to unusually harsh retribution by the triumphant communist forces. Almost immediately, 132,000 Vietnamese allies were evacuated from Saigon to the United States. Even though we hoped for the safety of those remaining, events proved otherwise. From 1975 to early 1980, Presidents Ford and Carter requested and were provided by the Congress ten separate paroles for Indochinese refugees. Until events really worsened in 1978, Administration spokesmen justified each parole as the last that would be needed to cap the flow of refugees.

But it was not to be. Starting in 1975, over two million people have been forced to flee the communist Indochina states. Untold thousands were killed in their countries or died trying to

escape. Because of our previous involvement in this region, the U. S. has taken the lead within the international community to fashion escape and rescue programs for these victims. The passage of the Refugee Act of 1980 changed the basis for admitting refugees and has been used since. To date, over 810,000 Chinese refugees have been admitted to the United States, and about an equal number have gone to other countries. Admissions are continuing, but at substantially reduced numbers. Since 1979, the U. S. has also contributed over \$400 million to overseas relief and assistance programs to these refugees and displaced persons. 19

The Refugee Act of 1980²⁰

The Refugee Act of 1980, patterned in large part after the 1967 U. N. Protocol, defines a refugee as "any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to avail himself or herself of the protection of that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group or political opinion."

The Act includes separate provisions regarding the overseas admission of refugees and the granting of asylum to refugees already in the United States. Both, however, are based on the refugee definition as contained in the Protocol. Refugees processed overseas are limited to a fixed number each year (determined through executive and legislative consultations); asylum determinations, however, are made in the United States, and there are no fixed limits. Admission under either is granted at the discretion of the government. The U. N. Principle which bars "refoulement" (forced repatriation) was also incorporated into the Act. A "withholding of deportation" provision states that "the Attorney General shall not deport or return any alien to a country if the Attorney General determines that such alien's life or freedom would be threatened in such country on account of race, religion, nationality, membership in a particular social group or political opinion."

This withholding of deportation provision of the Act does not use the term "refugee" or the phrase "well-founded fear of persecution." It speaks, however, of any alien whose "life or freedom would be threatened."

Thus, the Refugee Act of 1980 incorporates the fundamental international principles of refugee protection. Most importantly, it formalized and confirmed the humanitarian traditions espoused by the Founding Fathers. American recommitment to these values has, in turn, bolstered the international refugee protection system.

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The U.S. Refugee Experience

Since the end of World War II, more than 2 million refugees have been permitted to enter the United States outside the ordinary immigration stream. Additional thousands have been granted political asylum and others permitted to remain until the fear of mistreatment in their own country subsided. In the 1975 to 1985 decade, the United States accepted more refugees than the rest of the world combined.

We were also the largest contributor of money, medicines, food, and other goods and services needed to keep a burgeoning refugee population alive while the search for solutions continued. Yet the world's refugee population continued to grow.

The State Department estimates that the worldwide population of refugees in first asylum and in need of protection and assistance as of May, 1986 was 10,065,700, an increase of 235,800 over the same time in 1985. The May, 1986 figures were distributed as follows:²¹

Africa	2,721,800
East Asia	254,800
Latin America/Caribbean	232,500
Near East & South Asia	6,856,600
Total	10,065,700

Within these figures, Africa and East Asia were down slightly from the previous year, while Latin America and the Caribbean were up by 35,300 (about 18 percent) and the Near East and South Asia increased about 337 thousand (or about 5 percent). These figures are truly staggering.

The international community has tried each of the recognized refugee durable solutions in an unprecedented and unparalleled attack on this global problem over the past decade.

For example, in the last five years, major refugee groups have been able to return voluntarily to their homelands in Argentina, Chad, Ethiopia, Uganda, Zimbabwe, Djibouti and elsewhere. Some limited repatriation has also been possible in Southeast Asia. Hundreds of thousands of refugees have repatriated informally in the Horn of Africa.²²

Refugees have also in many instances settled permanently in their countries of first asylum or elsewhere in their region, especially in Africa where numerous countries have offered land, permanent residence, and even citizenship. Hundreds of thousands have settled in Burundi, Rwanda, Sudan, Tanzania, Uganda, Zaire, and Zambia. During the summer of 1985, for example, Tanzania formally accepted the settlement of 35,000 Burundi refugees in the highlands of western Tanzania at Mishamo, an agricultural project almost as large as the state of Rhode Island.²³

Third country resettlement has also been used on a massive scale. For the U.S. alone, 1,075,249 refugees have been selected abroad and brought here for resettlement since 1975.²⁴ Between June, 1983 and September, 1986, an additional 18,701 were awarded refugee status here in the United States when INS approved their

political asylum petitions. Almost 810,000 of these refugees were from Indochina.

In addition, massive amounts of money have been contributed to aid refugees. More than \$5 billion have been spent by the State Department since 1979 in the aid of refugees.²⁵ The Department of Health and Human Services, which has domestic assistance responsibilities for refugees in the United States, has devoted equally large sums during this same period. Other contributions, both materially and in kind, by private American citizens, churches, voluntary agencies and other concerned individuals and groups cannot even be estimated, but they are large.

There are no firm estimates regarding the cumulative expenditures of other donor and asylum governments, but they are large. Individually, none comes close to the United States, but cumulatively they are estimated to cover about 60 to 65 percent of government contributions for refugee assistance. Asylum governments, like Pakistan, provide their land and local support for logistics and administration. For these poor and struggling countries, again, the investments are substantial.

Although much remains to be done, unquestionably, millions of people throughout the world owe their lives and well-being today to the generous international responses to multiple refugee crises over the past decade. As a key leader in those responses, the United States can take just pride.

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MAJOR POLICY CRITICISMS AND DILEMMAS

If it is true that the U.S. has such a good record regarding refugees, what accounts for the continuing criticisms about that policy from a number of advocacy groups and individuals in this country? In this section, I will attempt to characterize the most commonly heard criticisms, illustrate them by representative statements from critics, and offer my analysis of the policy dilemmas they raise, drawing from my experiences as a former director of the State Department's Refugee program, and the informed observations of other authorities.

1. Is it true that the world's refugee crisis is not getting any better, even after the massive rescue efforts of the U.S. and other donor governments over the past few years? Are any of the major refugee programs showing signs of ending? Are there steps we could take to speed the solution process?

Senator Mark Hatfield: "The Refugee Act of 1980 provided clear statutory language which in 1981 granted permanent asylum to more than 200,000 persons fleeing persecution in their homeland and involved the expenditure of over \$1.5 billion.

"But in just four short years, the same public which embraced the refugees with open arms is perceived to have become fatigued, discouraged, burnt-out. There are many reasons to assume this tired condition exists. Despite our heroic involvement in refugee protection and resettlement during this decade, the worldwide refugee problem has worsened. There are at least nine million refugees in the world today, and the geopolitical climate offers little hope that the numbers will remain constant....While a comprehensive approach to refugee assistance and protection in the embattled regions of the world is laudable, the resettlement leg of U.S. refugee admissions policy is absolutely vital. If removed or weakened, the refugee policy of the U.S. will collapse. That sobering fact must mobilize supporters of a solid American refugee policy to act as capable stewards in the critical years ahead."²⁶

In a previous section, I discussed durable solution programs that have been used to attack the global refugee problem over the past few years, involving voluntary repatriation, regional settlement, and third country resettlement. These actions have not, however, resulted in a net reduction in the total world refugee population, but they have kept it from getting larger, which is something of an accomplishment in today's world. Some of the largest refugee groups have remained in place and even grown (especially in Africa, the Near East and South Asia), and new groups have appeared. In one year alone, about 550,000 new refugees arrived in the Central African Republic, Papua New Guinea, Somalia, Sudan, Zaire and Zimbabwe, with smaller groups or individuals arriving in dozens of other countries. This does not even include the millions of persons dislocated in their own countries, such as in Ethiopia. The global number of refugees has thus

remained constant at a very high level. As crises converge, and, as new conflicts have obscured old ones, the world has been unable to absorb fully the consequences of one refugee flow before another one starts.²⁷

Is it then hopeless, and have our efforts to date simply prolonged the pain? Categorically, I would say "no." It would have been naive to think that "humanitarian" actions alone could solve what are basically "political" problems. Solutions must be addressed as part of the political dialogue among nations. As an example of the types of actions that must occur if we are to move in the direction of permanent solutions, the Soviet Union must agree to withdraw its forces from Afghanistan, the Vietnamese from Cambodia, the Mengistu government must cease its hostile actions toward the Ethiopian people, and a permanent solution to the Palestinian problem must be negotiated, among other things. In the refugee area, what we and other like-minded governments and organizations are doing is to care for the victims while diplomacy works to resolve the conflicts which created their plight.

Are we less concerned, or burnt out? Again I would say "no." In terms of global refugee involvement, the U.S. has been more involved, in more places around the world, and with greater results in the last five years than at any previous time in our history. Here, I am thinking specifically of the heroic work of U.S. officials in responding to the disastrous refugee/displaced person/drought crisis in the Horn of Africa, or in facilitating the escape of black Ethiopian Jews to Israel, or in the unpopular cause of Palestinian refugees, or in Southeast Asia, just to mention several of the most prominent. Enthusiasm in the program is high and private sector involvement remains active. You just cannot equate the level of involvement with the size of the resettlement program, when there is so much involved in the U.S. response to refugee problems.

Senator Hatfield's statement also seems to suggest that, since the worldwide population remains high, we must pay special attention to the "resettlement leg" of our refugee policy. I agree that resettlement is important, probably the only lifesaving alternative we have in some refugee situations. But realistically, it has limited potential if our major concerns are for solutions capable of substantially reducing the worldwide refugee population. For example, worldwide refugee resettlement was only slightly over 140,000 last year;²⁸ yet the worldwide refugee population was over 10 million. That means that only a tiny fraction, less than 1.5 percent of the total population, benefited from resettlement. Of greater importance to most of the world's refugees are efforts to assure adequate support, not only for programs to support their maintenance in first asylum but also to assure that when conditions permit they can either return home safely or settle elsewhere within their region. Of equal importance in places like Africa, are programs to bolster first asylum governments' abilities to continue to provide hospitality to large refugee populations. Programs to assist African asylum governments, for example, were proposed at the second International Conference on Assistance to Refugees in Africa (ICARA II) held in Geneva, Switzerland, in July, 1984. But virtually no funding has

yet to be made available for such programs. The problems ICAMA II projects were designed to address only got worse when the drought hit the affected countries later.

We must remember that the U.S. and the donor governments, including the United States, have often stated that third country resettlement was to be used only as a last resort, when other alternatives are not available. That was the case in Indochina over most of the last decade, and resettlement played a valuable, life-saving role for many people. But, unless those critical conditions exist, the international community should, in my opinion, devote the bulk of its time and energy to assuring safe repatriation and regional settlement programs. If regional solutions are "removed or weakened," then we will have no choice but resettlement.

2. Are declining refugee admissions programs indicative of a more restrictive refugee program? Are there limits on our generosity?

Gil Loescher and John A. Scanlan: "The Congressional and public reactions to the uncontrolled refugee migrations of the late 1970's and the early 1980's has imposed new limits on generosity. When early in 1985, Khmer refugee camps along the Thai-Cambodian border were razed and 230,000 Cambodians streamed into Thailand for protection, the American response was muted. The threat to Thailand's stability, as much as the threat to the refugees, prompted the Administration to promote continued generosity, but no demand was made for bigger refugee allocations; instead, the sole concern of the State Department was "holding the line" on numbers available in the preceding year....Thus, despite the persistence of the rhetoric of welcome, a politics of limits has again assumed an important role in the American response to refugees and colored the Reagan response to new arrivals."²⁹

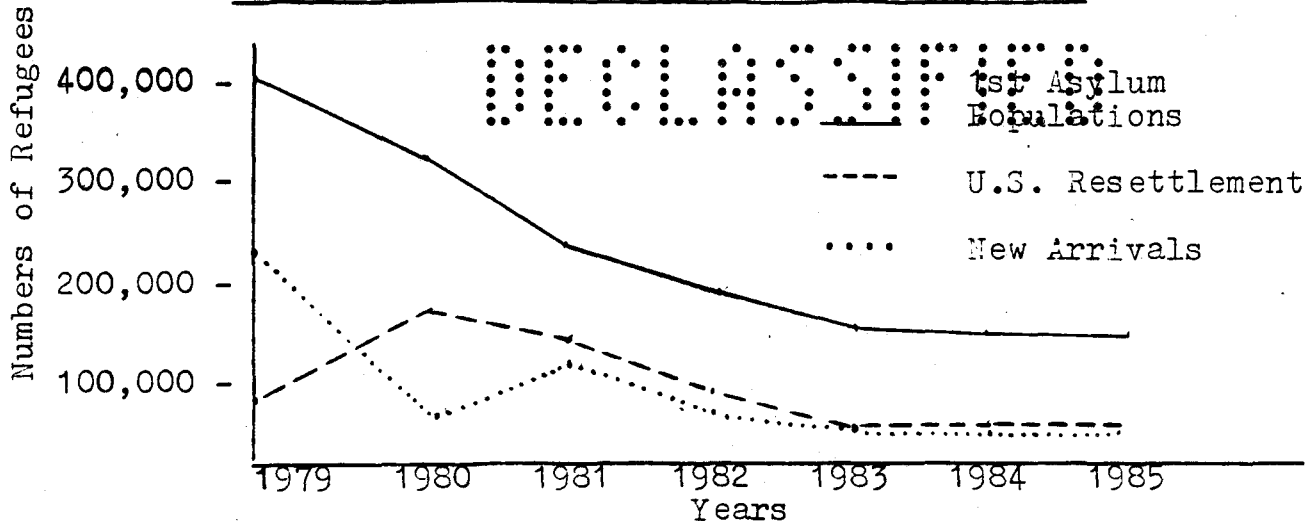
Before attempting to answer this question it is important to set out a few facts. In 1979, total U.S. refugee resettlement was 111.4 thousand. It peaked at 207 thousand in 1980, dropped to 159 thousand in 1981, dropped further to 97 thousand in 1982, and has stabilized at between 60 thousand to 70 thousand annually since.³⁰ Two factors account for these patterns.

(1) The Indochina resettlement program. Rather than attempt to explain this narratively, I have included the following chart which depicts the relationship between U.S. admissions levels, first asylum populations, and new arrivals into first asylum, since these are several of the more important factors influencing the size of the U.S. resettlement program.

03:45:57:03:0

Indochinese

Refugee Arrivals and Resettlement - By Year



As this chart shows, when the need for large-scale resettlement was high, as in 1979-81, it was high. When the requirement began to decline, the resettlement levels likewise declined.³¹ There was no lessening of interest, simply a reduced need for resettlement.

(2) Resettlement from the Soviet Union, especially Soviet Jews and other religious minorities. The levels of resettlement from the Soviet Union has been as follows:

<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>
24,449	28,444	13,444	2,756	1,409	715	640 ³²

These were all who could get out. U.S. policy has been, and continues to be, an open door for Soviet Jewry and other religious minorities. If they could have gotten out, we would have taken them. Again, no lessening of interest, but a reduced resettlement demand.

When you adjust for these two programs, you see that the resulting figures for the rest of the world totalled 10.5 thousand in 1979, rose to 14.8 thousand in 1981, further advanced to 21.1 thousand in 1982, and has averaged slightly under 20 thousand since. It was slightly lower in 1986 because (1) Fidel Castro reneged on the U.S.-Cuba migration agreement, thereby limiting admissions, and (2) the new military government in Sudan put a moratorium on movements from that country for much of the year. These calculations show that admissions for the rest of the world (excluding Indochina and the Soviet Union) have almost doubled since 1979 and are about four times higher than the average level between 1975 and 1978.³³

Yes, the overall numbers worldwide, and from Indochina, and from the Soviet Union, are declining. No, these patterns do not indicate growing restrictiveness by the U.S.: but are reflective of reduced requirements in the two programs mentioned above, and growing attention to the rest of the world, in keeping with the spirit of the Refugee Act of 1980.

3. Does the United States coldly calculate its responses to refugee crises so as to involve ourselves only where we perceive either a vital interest or an ability to make propaganda points? Does the United States, as the quote below says, regard only opponents of communism as deserving of rescue?

Gil Loescher and John A. Scanlan: "When the United States has perceived that no vital interests will be served by welcoming refugees, or no propaganda points made, its generosity has been even more limited. Thus it has responded to famine in Africa with food and money, but not admission slots, and has completely ignored the desperate situation of thousands of refugees from East Timor, who have been driven from their homes by the Indonesian army's "scorched earth" policies there. Nowhere, however, had the calculation of America's refugee politics been more apparent than in this hemisphere. Pursuing policies forged in the crucible of the Cold War, the United States has grown accustomed to regarding only the opponents of communism as deserving of rescue."³⁴

Before responding to these statements, I will present a few facts that will be useful to set the stage. The World Refugee Report, September, 1986, prepared by the State Department, says that we estimate there are 10,065,700 first asylum refugees worldwide in need of protection and assistance as of May, 1986. In addition there are over 20,000 refugees from the Soviet Union and its Eastern bloc allies who transited through Western Europe on their way to resettlement in the West. These 10.1 million refugees come from 35 countries, 14 of which are ruled by communist governments and 21 of which are ruled by non-communist governments of various types. Of the 10.1 million refugees, approximately 6.7 million fled from the 14 communist-ruled governments and approximately 3.4 million fled from the non-communist-ruled governments. These 10 plus million refugees are receiving asylum from 62 countries, 6 of which are communist-ruled and 56 of which are non-communist.³⁵

Governments, including the United States, approach the task of providing relief and assistance to these refugees as an international responsibility. This means supporting the programs of major international organizations who care for refugees and seek solutions to their plight on a non-political basis. Most governments, some to greater degrees than others, also supplement their multilateral contributions with bilateral support to asylum governments. This affords greater discretion in choosing whom or what you will or will not support. Less than 5 percent of U.S. overseas support is given bilaterally, with the remainder going to the multilateral organizations.

Some governments also earmark their multilateral pledges to direct money away from certain programs they do not wish to support or to direct money to activities they wish to encourage. U.S. earmarkings are at an absolute minimum, generally used to comply with limitations imposed by U.S. law or for new program initiatives. We do not earmark our contributions to reflect

communist vs. non-communist or any other such ideological distinction. This allows the U.S. to treat assistance programs for the world's 10 million refugees without regard to ideological considerations.

The level of U.S. support is worth noting also. For the UNHCR, the major U.N. agency, the U.S. provided 31.6 percent of voluntary funding raised for 62 country programs in 1986. Japan was the second highest with 12 percent and everyone else below 10 percent. For the U.N. Relief and Works Administration for Palestinian refugees (UNRWA), the U.S. contributed over 40 percent in 1986. For the special appeals of the International Committee of the Red Cross (ICRC), the U.S. was again in first place with over 26 percent. For the organization providing relief to the border Ehmer, the U.N. Border Relief Operation (UNBRO), the U.S. is the largest donor with over a 30 percent contribution. For the Intergovernmental Committee for Migration (ICM), the figures are about the same. None of these funds are specifically directed away from or toward any specific ideological program or activity. The courageous and humanitarian work of these organizations would not and could not exist without the continued generous support of the United States.³⁶

It is interesting to note that of the list of largest donors to these organizations (those whose cumulative contributions total 98 percent of income received), only one communist government is included, the People's Republic of China, which is number 20 in UNHCR's list of its 20 largest donors.

On the resettlement side, the report shows that 18 non-communist governments provided resettlement to 142,928 refugees in 1985, 70,583 in the United States and 72,345 in the countries of Western Europe, Canada, Australia, Japan, and New Zealand. No refugees were reported resettled by communist governments.³⁷

Since over 90 percent of the refugees resettled in the United States come from communist-ruled countries, many of the critics maintain that proves a bias in the program. I maintain that it proves nothing more than the harshness of the governments from which they fled. Communist governments regard flight as an unlawful act and threaten severe punishment if the person is caught or returns. There is little wonder that few return or wish to return. If regional settlement is also precluded, as it is in Southeast Asia, then you are left with no option other than resettlement. That is why the proportions are so high.

I believe the analysis provided here belies the assertions that the United States responds only to make propaganda or ideological points. I believe it also lays to rest the notion that the United States regards only opponents of communism as worthy of rescue. The record is full of examples that refute such assertions.

I cannot close this section without commenting on the quoted authors' criticism that the U.S. only responded to the African famine with food and money and not resettlement slots. My first reaction is to ask what better way to respond to a famine than with food and the money to secure other life-saving services. In the situation we faced, resettlement was just not the issue. Notwithstanding the fact that the Sudanese authorities unilaterally shut down our small resettlement program for fear of creating

a security crisis, such a response would have been inappropriate in this crisis except in a handful of instances that could better be handled quietly.

I am reminded of the African government leaders' pleas to the U.S. delegation at the first ICARA conference: "We will take care of our brothers and sisters in Africa. But we need help and financial assistance. These people will be needed here." Peter Onu, the interim head of the Organization for African Unity, said at the second ICARA conference, "In Africa, we are our brother's keeper."

Again, it is a matter of the appropriate solution for each problem.

4. Why should we continue bringing refugees to the United States when we still haven't met the needs of many of our own disadvantaged poor, we have suffocating federal budget deficits and we haven't been able to stop massive illegal immigration into this country? Are we stretching the law to allow some people in under the more generous and expedited procedures of the refugee program when they should, more properly, be coming as normal immigrants?

(1) State Department letter of May 10, 1982, to Congressman Romano Mazzoli responding to his concerns about the initiation of resettlement programs for the Khmer: "...at the September (1981) hearings we testified that additional call-outs of Khmer from the holding centers in Thailand were not being proposed at that time because we did not want to endanger on-going negotiations between UNHCR, the Royal Thai Government (RTG) and the Phnom Penh authorities regarding voluntary repatriation of a substantial number of the Khmer. However, we also stated that if those negotiations did not produce a timely or successful repatriation program... steps would have to be taken to relieve that problem....Our subsequent decision to admit a limited number of Khmer to this country was a direct result of the lack of progress in negotiating a viable repatriation program....Our planning to call out additional but limited numbers of Khmer for resettlement...substantially avoids a possible threat to first asylum and permits time for other initiatives designed to further scale down the Indochina program, without crisis, a chance to work."³⁸

(2) Jerry Tinker: "What started out between 1975 and 1981 as a genuine refugee flow has slowly but clearly shifted to a migratory flow composed of some refugees, a growing number of family reunion cases, and an ever larger economic migrant component. Unless the international community comes to grips with this fundamental shift, we are likely to see an unfortunate end to what has been a very generous international humanitarian effort to resettle refugees."³⁹

(3) Former Attorney General William French Smith: "Simply put, we have lost control of our borders."⁴⁰

(4) Senator Mark Hatfield: "...Our refugee programs will be held hostage to our inability to deal with illegal immigrants."⁴¹

(5) Representative Romano Mazzoli: "...there is a likelihood

that the House will follow the lead of its Appropriations Committee and reduce the funding level for the refugee program (for fiscal year 1986). We were told that such an action could have the effect of reducing the refugee admissions level to 53,000 (Administration requested 70,000). I am not wedded to an admissions number, but 53,000 may be an appropriate admission level in light of possible funding cuts and in light of the fact that many domestic programs for poor and underprivileged Americans have recently suffered drastic budget cuts."⁴²

So here we see the dilemma: the compelling humanitarian need to bring refugees into the United States and the equally valid domestic concerns against which their admission has to be weighed and balanced. In listing the statements of concern above, I did not intend to imply that those quoted are opposed to refugee admissions programs; to the contrary, they have traditionally been strong supporters of refugee programs.

These dilemmas have been raised repeatedly throughout our history as we have pondered how to best aid vulnerable refugee groups. Let me illustrate with a brief discussion of the Cambodian resettlement program referred to in the first quote.⁴³

When the U.S. left Cambodia in 1975 and the government of Lon Nol fell to the Khmer Rouge, a curtain dropped over that country. A few refugees, probably no more than 30,000, managed to escape between 1975 and 1978 and enter Thailand. Khmer Rouge efforts to establish a classless society devastated and brutalized the country. The Vietnamese invaded in 1978 and ultimately deposed Pol Pot in favor of their puppet, Heng Samrin. Months of Khmer Rouge and Vietnamese fighting further destroyed Cambodia's infrastructure. Starvation, death, and destruction were rampant.

Fleeing Cambodians began arriving in Thailand in great numbers in early 1979 after the fall of Phnom Penh to the invading Vietnamese. Over 100,000 Cambodians crossed the border into Thailand to escape the fighting and to look for relief. Fearful of becoming a haven for even more refugees, Thailand took the harsh step of forcing 44,000 Cambodian refugees back into Cambodia at gunpoint, resulting in extensive loss of life.

As the situation in Cambodia worsened throughout 1979, several western governments, led primarily by the U.S., offered to assist Thailand in responding to the Cambodian tragedy. Thus began one of the great humanitarian rescue efforts of our era. Relief and feeding programs were launched via the Nong Chan Land Bridge to a starving population inside Cambodia itself, to last until 1981. Also, the Thai changed their policy and began allowing fleeing Cambodians to enter UNHCR refugee camps in Thailand. Over 165,000 people were admitted to these camps before the Thai closed the border to Cambodians in March, 1980. Thereafter, Cambodians who continued to flee to safety were forced to remain at the border when they arrived. Border camps were first administered by a joint ICG-UNICEF mission and later by the U.N. Border Relief Operation (UNBRO) beginning in 1982. Between the closing of the border in early 1980 and the present, border populations have ranged from as high as 500,000 to about half

that number. Around 230,000 remain at the border today as political efforts continue to secure a Vietnamese withdrawal from Cambodia, which would allow them to return to their homeland.

The focus of the first quote above, however, pertains to the 165,000 Cambodians who were allowed into Thailand between October, 1979, and March, 1980. Almost from the beginning the UNHCR and the Thai discouraged third country resettlement for fear it would encourage others on the border to attempt to enter Thailand illegally and also would discourage voluntary repatriation. The U.S. and other resettlement governments agreed to these limits while a UNHCR team tried to arrange a voluntary repatriation program.

At the September, 1981, consultations hearing with House and Senate Judiciary Committees, the State Department testified that we were deferring resettlement while efforts went forward on repatriation. By March of the next year, however, it became apparent that a successful and safe return program could not be arranged.

After reviewing the limited options then available, the U.S. decided that it had no choice but to start a limited resettlement program, both to assure the safety of the lives involved and the continued maintenance of first asylum in Thailand.

That was a difficult decision to reach at the time. The required consultations hearings with the House and Senate Judiciary Committees the previous September had been strained and confrontational. The Administration's resettlement request of 173,000 for fiscal year 1982 had met with opposition. The following summarizes the reactions of key Judiciary committee members:

In a September 31, 1981, letter to the President, Congressmen Peter Rodino, Hamilton Fish and Robert McClory had proposed reducing the request to 140,000. Their letter said, "...we are concerned by your decision to maintain a high level of refugee admissions....At a time when we are sharply cutting social programs urgently needed by the disadvantaged and needy members of our society, it becomes more difficult to justify an annual Federal expenditure in excess of one billion dollars for refugees. Further, this growing competition for reduced federal resources will undoubtedly produce increasing resentment toward refugees in general."

In a separate letter of September 31, 1981, Representative Romano Mazzoli proposed to reduce the request to 120,000. At hearings, the Subcommittee which Representative Mazzoli chaired had expressed strong concerns about costs, increasing welfare dependency, dwindling resettlement by other governments and public health threats posed by incoming refugees.

In a October 6, 1981, letter to the President, Senators Thurmond, Simpson, Biden, and Kennedy proposed to reduce the request to 125,000. They too expressed concerns about costs, as well as the magnet effect of maintaining high admissions levels, rising political asylum petitions, and exceeding again the "normal flow" of 50,000 expressed in the Refugee Act; but they suggested a willingness to consider further unforeseen crises under the emergency provisions of the Refugee Act, as had the House.

The President ultimately agreed to an admissions ceiling of 140,000. This was the background against which the Administration

had to consider whether or not to launch a program to resettle large numbers of Cambodians:

Eventually, we decided there was no other life-saving choice. Approximately 20,000 Cambodians with close family or personal ties to the U.S. were moved to a camp at Kamput, Thailand, and processing preliminaries began. The Congress was officially notified, prompting House Subcommittee Chairman Mazzoli to write to the Department objecting both to the decision to begin processing and the procedures by which it was done. The statements in the first quote are from the State Department's response to Chairman Mazzoli.

After many discussions between the State Department and the Congress, most of the objections to this controversial decision were answered, or at least calmed to the point that processing continued. Why? Simply put, there was a compelling need, and, as in times past when there has been a proven need, America responded. The Cambodians could not go home and they could not remain in Thailand, and there was only limited time to arrange solutions. Lives were at stake for a population that had lived through a modern hell. Eventually most who initially criticized the controversial processing decision came to see that resettlement of this vulnerable population was the only choice available at the time.

The formal processing of these Cambodians, which lasted until about June of 1985 (although some rejected cases are still being reviewed), proved to be one of the most controversial ever undertaken by the United States. Again, because of necessity, the U.S. resettlement program eventually went from a limited program to one that processed the whole population of 165,000 (other than those taken by other governments). Determining refugee eligibility for what was basically a documentless society was fraught with obstacles. In the next section of this report I describe the "NSDD-93" process by which we ultimately revised the system to deal with these factors more equitably and humanely.

In summary, however, over 90 percent of the U.S.-interviewed Khmer were approved for admission to the United States. In spite of the obstacles, this was one of the highest approval rates the U.S. had ever experienced. After taking account of more limited resettlement by other governments, only about 15,000 of the initial population remain as rejected applicants, and further review on some of these cases continues. Continued international attention is also being directed to those who remain along the border, and hopefully that support will remain strong until these people are allowed to return home.

Even though I have said in earlier sections of this paper that third country resettlement is the solution of last resort, I wanted to state strongly here that in some cases, such as the Cambodians mentioned above, it is the only solution. When that is the case, and we can demonstrate that we have seriously considered but had to reject other alternatives, we should then have the courage to move boldly with resettlement. If the case is sufficiently compelling and accurately explained, the American public will respond. We had to come to the same conclusion with the Vietnamese and Laotian refugees from Indochina, as well and with

vulnerable groups from other parts of the world, too. Over all, more than one million refugees have had to seek safety in the United States over the past decade.

Because they understood the seriousness of the Indochina refugee crisis, the American people responded with humaneness and generosity. Working through the inspired and dedicated efforts of the American voluntary agencies, compassionate responses came from many churches, civic organizations, educational institutions, state and local governments, and thousands of other concerned individuals and organizations. Private researchers, such as Dr. Nathan Caplan at the University of Michigan,⁴⁴ are beginning to document the success of what is now being considered the most successful refugee resettlement program in our history.

But we must always be on guard that resettlement programs are geared to verifiable need. In 1984 and 1985, interviews and observations in Southeast Asia began pointing out that the characteristics of the Indochina flow were beginning to change. In addition to people being forced to flee, we were seeing more people leaving for reasons of family reunification, better economic opportunity and simply because they were frustrated with the hard life in their country. The second quote by Jerry Tinker in 1983, then the minority counsel of the Senate Judiciary Subcommittee, speaks to the necessity of recognizing and addressing this critical trend.

Senator Alan Simpson also made this point forcefully in a June 5, 1985, article in the Washington Post: "It is time to adopt a two-pronged approach for future resettlement activities in Southeast Asia. First, we should continue to provide refugee status for all of those who involved themselves and threw in with us and who have suffered persecution because of that association. Second, those Indochinese who have family in the United States should now use the normal immigration process. This last group should then step into the same line of priority as other family reunification immigrants have done all over the world....We have kept our promises and our commitments--moral, financial and political--and we shall continue to do so. Yet the time has come, 10 years after we set out to address a refugee emergency, and did, to weave Indochina back into the established and regulated fabric of our longtime and consistent policies of legal U.S. immigration."⁴⁵

I think it fair to say that majority and minority members on both the House and Senate Judiciary Committees would agree with Senator Simpson's statements.

Also in response to the changing flows, in mid-1985 Secretary of State Shultz established a blue-ribbon panel to review the Southeast Asia program and report to him with its recommendations. Robert D. Ray, former Governor of Iowa, chaired the panel, whose report said:"...At the same time the Panel acknowledges its responsibility to keep our refugee programs in perspective. Large numbers of persons from all over the world are attracted to the United States. The economic and social pressures caused by immigration into the United States, legal and illegal, are real, and demand that our refugee programs must take precautions to ensure that those coming as refugees truly deserve this special status.

The Panel recognizes the validity of these concerns and has taken them into account in preparing its report."⁴⁶.....

The Ray Panel agreed with the notion of a two-pronged (refugee and immigration) program with special features to ease and guide implementation. A State Department Task Force has reviewed their report and has recommended specific implementation steps. Major resettlement allies and the U.N. High Commissioner for Refugees have been consulted. They agree that the time is right for a new approach in Indochina. I would expect that more detailed and specific implementation steps will be started soon. If we are going to be able to continue the generosity we have shown in the past, it is essential that we show a willingness to adjust this or other resettlement programs to changed conditions.

Another part of the long-term solution in Southeast Asia involves setting up and improving immigration-type programs from countries of origin, as the Ray Panel proposed. Otherwise, those fleeing continue to go to first asylum countries, and the all too familiar patterns continue. Implementing new or improved programs will be hard in Vietnam, since we do not have official relations or contact. It will take courage and explanation to our allies in ASEAN, but I believe we should proceed immediately to establish a Humanitarian Liaison Office in Vietnam to work on improvements to the existing Orderly Departure Program. That office could also be a focal point for POW/MIA matters. Given that this office could help relieve a potentially serious burden on the ASEAN countries if it is successful, I do not think they would object to its creation. Short of such steps, the Southeast Asia resettlement program will either go on indefinitely, or could be abruptly terminated in ways that we will not find to our liking.

Apart from Southeast Asia, a similar evolution must occur in our thinking and planning for future resettlement programs in other regions as well.

Lest we forget, however, the letter I received from Ms. Ferne Berry from Kempner, Texas, on July 29, 1985, in response to a Parade Magazine article urging people to write me with their opinions regarding additional Cambodian refugee admissions, reminds us that refugee admissions are being viewed by many in this country in the context of larger migration, political, social and economic factors:

"America is full from shore to shore
So now it is time to close the door.

When to Washington you were sent
It was to represent U.S. and not Tashkent.

Lest you think Parade's Cambodians unique
Come to Fort Hood and take a peek.

Oriental girls: marry young GI blokes
Then import her relatives until he is broke

They have food stamps and welfare, the whole mess

Our own aging parents must exist on much less.

If America goes down and we're poor as sin,
Which country will take starving Americans in?

So please you officials, please, no more.
YOU must be responsible for closing the door."

"P.S. If you really want to cause a sensation
Propose a 5-year moratorium on all immigration."

The earlier quotes from former Attorney General Smith and Senator Hatfield accurately define the seriousness of the illegal immigration flow, and its likely consequences to refugee programs unless corrected. The Immigration Reform Act, signed by the President late in 1986, holds promise for addressing some of the more contentious issues giving rise to this problem. Only time will tell.

Meanwhile, we still hear from some that we cannot afford to spend so much on refugees when we have our own budget problems and unmet needs of many of our own people. They say that refugees will take jobs from our people and will therefore lead to conflicts with other struggling minority groups. Others argue that regardless of our situation here, we cannot afford to deny compassion to any people who are denied freedom.

I am reminded of the eloquent statements by members of Leo Cherne's Citizens Commission on Indochinese Refugees in the late 70s as they argued for a compassionate response to the plight of Indochinese refugees. Perhaps not surprisingly, some of the most convicting statements of support came from civil rights and labor leaders, people who represented groups who might have had reason to feel threatened by more incoming refugees. To the contrary, however, Bayard Rustin, among many, argued that the black community would not turn its back on others struggling to be free. America's top labor leaders provided equal support and leadership.⁴⁷

The American spirit, summarized in the words of Leo Cherne, Bayard Rustin, Monsignor Ahearn and other members of the Citizens Commission, would not permit us to allow temporary inconveniences to thwart our concern for the world's oppressed. This was a manifestation of the American spirit at one of its finest moments.

5. As a humanitarian leader, is the United States setting a good example as a first asylum government, or, as some are stating, are we using blind adherence to legalisms to deny humanitarianism in our asylum programs? Do current U.S. asylum practices conflict with our nation's humanitarian spirit and the laws created to assure them? Is the State Department injecting foreign policy considerations over humanitarian concerns in the asylum process?

Claudia Dreifus: Quoting Senator Arlen Specter, who is discussing the preliminary findings of a GAO report on asylum application approvals: "The worldwide approval rate was 24 percent....In cases where the State Department's review was at

variance with INS's decisions, Justice changed its original decision to agree with the State Department in 100 percent of the Salvadoran cases and 98 percent of the Nicaraguan cases. This indicated to me that these decisions are not being made on the basis of merit but on the basis of what is considered best for foreign policy."⁴⁸

The U.S. Committee for Refugees, Issue Paper, "Despite a Generous Spirit: Denying Asylum in the United States." "A humanitarian tradition of granting refuge to those who fear persecution is in jeopardy in the United States. Restrictive and unequally applied asylum practices conflict with the nation's humanitarian values and the laws created to assure them. As a result, the fragile international system of refugee protection is jeopardized as well, and, with it, the lives of countless people....U.S. policy (regarding asylum) is inconsistent with the contemporary reality of refugee movements. The majority of people now outside their home countries who fear to return, fear the dangers of civil war and violent international upheavals. They do not necessarily fear individual persecution."⁴⁹

Jean - Pierre Hocke, new U.N. High Commissioner for Refugees: "...Today's complex world has made the definitions of the early 1950's inadequate to meet the needs of all refugees. I hope that this understanding will encourage nations to resist the temptation to entrench themselves behind the limits of existing texts. Nations should not deny reality in the name of juridical formalism. No government should feel that once it has decided an individual doesn't meet its definition of 'refugee' it no longer has any responsibility to find a solution."⁵⁰

There are two ways a person can be awarded refugee status under U.S. laws:

- (1) He or she can be processed and interviewed at one of many overseas processing locations.
- (2) If already in the United States, he or she can apply for "political asylum" here and, if approved, can be awarded refugee status.

The concerns raised in this issue have to do with the latter, awarding asylum to aliens already in the United States. Domestic asylum applicants can present their applications to INS District Offices around the country. INS forwards all asylum claims to the State Department's Bureau for Human Rights and Humanitarian Affairs (HA) for an advisory opinion, which is designed to evaluate each claim in light of conditions in the applicant's country. After HA reviews the application, it is sent to State's relevant country desk for further review. Their comments are returned to HA, which consolidates the Department's advice and returns it to INS.

By law, INS is required to review each asylum application against the refugee definition, as contained in the Refugee Act of 1980. This means that each applicant must prove that he as an individual has a well-founded fear of persecution on account ofThe applicant must demonstrate that he or she would more likely than not be singled out for persecution for one of these

reasons. Between June, 1983, and September, 1986, 80,418 asylum applications were considered by the INS. Of these, 18,701 or 23.3 percent were approved and 61,717 were denied.⁵¹

Probably no part of the U.S. refugee program has been more controversial than the political asylum process. It has been questioned by the courts, by the Congress, by civil rights and refugee groups, by international bodies and by the applicants themselves. The most frequent criticisms are as follows:

1. Decisions show a distinct and consistent bias favoring applicants fleeing countries whose governments are unfriendly to the United States.

Within the June, 1983, to September, 1986, data mentioned earlier, the lowest approval rates were generally for applicants from countries with governments considered friendly and anti-communist. For example, applicants from Iran had the highest approval rate during that period, 60.4 percent, followed by Romania (51.0), Czechoslovakia (45.4), Afghanistan (37.7), Poland (34.0), and Hungary (31.9). Among the countries with the lowest approval rates were El Salvador (2.6), Haiti (1.8), and Guatemala (0.9). Many of the critics argue that the consistency of the numbers indicates an inescapable pattern of bias.⁵²

2. The government uses an unusually rigid standard in applying the refugee definition to ascertain persecution in asylum cases.

Critics maintain that the U.S. practice of requiring refugees to document and show that they personally face a clear probability of persecution is a rigid misinterpretation of the refugee definition. They maintain that it "places a questionable statistical assessment of objective conditions above the assessment of the credibility of an applicant's subjective fear."⁵³ They refer to the UNHCR Handbook which states that a fear is well-founded "if it is based on reasonable grounds," and that it is probably not likely that applicants will be able to provide documentary evidence to substantiate individual persecution. They would thus give more weight to the applicant's own accounts of why he or she fears persecution. The Supreme Court heard INS vs. Cardoza-Fonseca on October 7, 1986, a case which contrasts the government's view that asylum applicants must prove a clear probability of persecution against the notion that the "well-founded fear of persecution" concept provides a more generous standard. A UNHCR brief submitted to the Supreme Court argues that the outcome of this case will influence how the U.S. and other countries apply the refugee definition in the future.⁵⁴

3. The State Department's advisory opinions on individual asylum claims are based more on bilateral foreign policy considerations than on the objective merits of these cases and therefore contribute to a politicization of the process.

Basically the argument goes that if the State Department advised that people from El Salvador, for example, had reason to fear persecution in their country, then it would be undercutting the government in that country that it is trying to support. How could the State Department certify to human rights improvements, necessary to keep aid flowing, if it were also saying that persons from that country were being persecuted? It would be accused of embarrassing friendly governments. So, the critics maintain, the

government turns its head to evidence of abuse, and, by doing so, says that applicants can be returned to their countries without fear of persecution. Such returns, they maintain, are unlawful in that they violate, if not the letter, then the spirit of the "withholding of deportation" provisions of the Refugee Act.

4. The critics also disagree with our policy of deporting Salvadorans, Haitians and other Central Americans when they are found here without valid visas or are denied asylum. They maintain that such actions violate the Refugee Act's provisions regarding refoulment to countries where they are likely to face persecution. This is especially so, they assert, in the U. S. program which interdicts Haitians on the high seas and returns them to their country, because it denies the Haitian even the opportunity to make an asylum claim.

Critics maintain that the UNHCR and many other governments have recognized the changing nature of refugee movements, but that the United States has not. They maintain that the UNHCR has urged acceptance of a wider interpretation of the refugee definition, at least to protect those fleeing war and civil strife from refoulment and to allow them to remain in safe haven until other solutions are found, whether or not they meet the strict persecution standards of the refugee definition. These concerns give rise to the statements of U. N. High Commissioner for Refugees Hocke, mentioned earlier.

Most of the critics' attention has been directed at gaining statutory Extended Voluntary Departure Status (EVD) for Salvadorans, and consideration of such status for Guatemalans and Nicaraguans. This means that, regardless of their legal status in the U. S., such individuals would not be detained or deported until a determination is made as to their safe return. EVD is currently available to nationals of Afghanistan, Ethiopia, and Poland, and has been available to other countries in the past.

Other than a "Sense of the Congress" resolution, the Congress has not been able to agree on legislation granting EVD for Salvadorans. The Administration has consistently opposed EVD for Salvadorans on the grounds that the objective evidence regarding probable persecution if returned is not sufficient to justify the awarding of such status.

Considering these criticisms, the critics' argument therefore goes that "having been a world's leader in the arduous process of developing the international system for the protection of refugees, the United States, through flaws in its own asylum policies, now contributes significantly to an erosion of that vital system.... How can it encourage nations, often far poorer than itself and more strained to offer hospitality, to continue to provide refuge?"⁵⁵

In other words, how can the U. S. credibly ask Thailand, the Sudan, and Pakistan to uphold their commitments and responsibilities as first asylum governments if, in fact, we are skirting those responsibilities ourselves? Can we be accused of hypocrisy?

The government maintains that it is administering the political asylum program in conformance with applicable laws, which require a case-by-case determination. The government maintains that it has no predetermined country targets. Our goal is not to keep the numbers for Guatemalans low or Hungarians high. The resulting figures simply reflect numbers of cases that meet the

requirements of law, not attempts to skew the numbers one way or the other. It is not surprising that the State Department's advisory opinions are attacked, since they contribute to the results the critics question and help substantiate their arguments. The decision not to grant blanket EVD to Salvadorans is based, according to the government, on a careful consideration of foreign, humanitarian, and immigration policy implications.

One explanation of this dilemma may be found by looking more carefully at the reasons asylum applicants are fleeing to the United States. Many experienced observers say that most Central Americans are not fleeing individualized persecution, but rather the dangers of civil war and violent internal upheavals.⁵⁶ They fear violence but have not themselves been persecuted.

If that is the case, they obviously will come up short if measured against a standard that requires clear proof of individualized persecution. If we have a legal or moral obligation for such people, there is presently no mechanism which would allow them to stay. If we deport them, the issue of whether we then violate the non-refoulement provisions of U.S. and international law is raised.

Presently, U.S. officials have limited tools with which to address these problems. We can award political asylum or send denied claimants home. There is no middle ground. We have steadfastly opposed the granting of blanket Extended Voluntary Departure (EVD) for Salvadorans and Haitians, even though we have been under pressure from many in Congress and the church community to do so. I agree with the decision not to grant blanket EVD to these nationalities, because I believe it would encourage mass illegal immigration. But, to deal with the problem noted above, we could experiment with a system of individualized EVD, under which the INS could cease deportation proceedings for specific persons who, while not individually persecuted, can reasonably establish that they were fleeing violence. They would not be granted permanent status and would be required to return home when conditions permitted. This could operate under criteria provided by State and INS to immigration officers.

Furthermore, I believe the State and Justice Departments should review the way overseas refugee processing works in Southeast Asia to determine whether that system might have some relevance for asylum processing. Prior to 1981, and the passage of the Refugee Act of 1980, refugee applicants from Vietnam, Cambodia and Laos were deemed to be presumptively eligible as a class for refugee status. After a hard-fought battle between State and Justice in early 1981 over presumptive eligibility, it was decided that the new Refugee Act required a case-by-case review and determination of eligibility for each applicant.

It was decided that the State Department would prepare in-depth country condition reports on Vietnam, Cambodia, and Laos to assist INS officers in the field. These reports drew information from many sources: human rights reports; intelligence, outside authorities, updated information from the field, etc. INS officers reported these reports helpful, but the interpretation of persecution was still being applied inconsistently around the

region because it was left to the judgment of each INS officer. This issue came to a head in 1983 over the issue of low INS approval rates for Cambodians.

Time and space do not permit describing how it happened, but the issue came to President Reagan's attention. The NSC then tasked State and Justice to come up with a system that more precisely defined persecution for these three ethnic groups. What resulted was NSDD-93⁵⁷ which, based on the best intelligence available, enumerated groups that shared common characteristics that identified them as targets of persecution in Indochina. These documents were prepared separately for Vietnam, Cambodia, and Laos. This revised system relieved individual INS officers from the responsibility of having to determine what constituted persecution in each case, sufficient to meet the statutory requirements of the Refugee Act.

Results were astounding. Approval rates went up. Consistency was obtained throughout the region, and the whole process was expedited. Interagency collaboration was enhanced. This effort was highly applauded in the Congress, the private voluntary agencies, the media and most of the other actors involved in overseas refugee processing.

Something similar may be useful in asylum processing. The State Department should, rather than using its time on reviewing individual applications, devote its efforts to preparing country condition reports that describe: the political situation, the human rights situation, areas of conflict and types of persons, occupations, or activities that would mark people for persecution. This report could then be used to help define "persecution" with more precision, as we did in Southeast Asia. On an exceptions basis, cases could still be forwarded to the State Department to verify accuracy of claims or provide more in-depth analysis, where needed.

I believe the revisions I have suggested would substantially improve and expedite processing and would remove the State Department from unneeded and unwarranted criticism.

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CONCLUSIONS

"The international community is becoming increasingly concerned with the causes behind the mass exodus of persons -- refugees. It is all too easy to become accustomed to the image of the refugees: displaced persons in Europe after World War II, internally displaced Chinese during the Civil War, the struggle of Jews to enter Palestine prior to the creation of Israel, the flight of Palestinians, the Hungarians and later the Czechs -- the refugees who made the front pages of the world's press and all others too often forgotten. The sum of human misery since the end of World War II has been so heavy and so constant as to have a numbing effect."⁵⁸

However, it was also this period (the end of World War II to the present), that I described as a time of reawakening in America to the humanitarian and moral obligations on which this country was founded. We led the world in every category of assistance to refugees. We took a lead role in helping develop the international system and traditions which now provide protection and assistance to record numbers of refugees scattered throughout the world. Yet the problem continues.

More people are out of their countries today as refugees, or dislocated in refugee-like situations in their own countries, than ever before. People are fleeing for a variety of reasons and usually as a combination of factors rather than a single one: wars and insurrections, the breakdown of law and order, oppression, persecution, and the denial of opportunities. Some may not have been singled out personally for repression; however, they feel that their country cannot provide an adequate future and wish to try their chances elsewhere. Others, especially those who represent ethnic or religious minorities, may be deliberately forced out.

It is important that the community of involved governments and organizations view the problem holistically. It cannot be separated from wars, famine, economic dislocation and underdevelopment or racism, and sectioned off for the crusading "humanitarians" to work on. The solution to refugee problems will come only when we begin to work seriously and collectively to solve the problems which create refugees.

Individual governments must be knitted together in a legally and morally acceptable international, solutions-oriented framework if they are to avoid overlap, waste and irrelevancy. Presently, the U.N. High Commissioner for Refugees is the catalyst that ties most concerned governments together. Considering the obstacles, UNHCR has served the cause of refugees well over the past decade, but like anything else, needs constant reappraisal and updating. As the new U.N. High Commissioner said, "Today's complex world has made the definitions of the early 1950s inadequate to meet the needs of all refugees."

Some critics of present U.S. refugee policies maintain that we too are applying outdated and inadequate definitions to some of today's problems and that by doing so, we are ignoring a reason now impelling many people into flight: fear. These are

people who may not meet the "well founded fear of persecution" test in present law, but...the critics maintain, are nevertheless in need of protection. This issue is raised most often in connection with U.S. asylum policy, especially as it is presently applied to Central American and Caribbean applicants. This issue clearly needs further review. In the meantime, I have proposed in this paper that we consider the granting of "individualized EVD" to such persons if they can prove reasonable grounds for fear resulting in flight to avoid conditions of civil war or violent internal upheavals. They would only be allowed to stay here as long as conditions warranted. I have also made other suggestions to better coordinate asylum operations with overseas refugee processing.

Whether or not a review, as I have suggested above, confirms or denies the critics' assertions of flaws in our asylum operations, we must be concerned about the U.S. image as a first asylum government, which these issues bring to light. America's leadership role in the cause of refugees will decline if other governments perceive us as trying to limit our role or responsibility as a first asylum government, while at the same time urging them to do more and more in the cause of burden-sharing. If we have proven anything over the past decade in this program, it is that other governments follow our lead. The whole international system will suffer if we are accused of moral hypocrisy.

The importance of this issue was made clear in an October 6, 1981, letter to the President from Senators Strom Thurmond, Alan Simpson, Joseph Biden, and Edward Kennedy which said, "The definition of refugee and asylee is the same, except that the former is processed overseas while the latter is processed in the United States; and the domestic resettlement benefits are the same for both groups. Therefore, the Committee (Judiciary) believes that it is of paramount importance, when considering the United States' worldwide participation in assisting victims of persecution, to take into full account the role of our own nation as being now a country of first asylum."

As this paper also points out, there is much misunderstanding in this country about the U.S. program for assisting refugees and asylees, especially about its vitality, objectivity, responsiveness, legality and openness. I have tried to respond to some of these criticisms, many of which are unfounded. What I have also attempted to prove, however, is that we in the government must do a better job in educating the American public to understand the severity of the problem and to reach as much agreement as possible on what America's moral response should be.

What these criticisms miss is an unprecedented American response to the global refugee problem over the past decade. We should build on that record as we reestablish America as "...the land of the free...."

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