RESEARCH PAPER

The Challenge of Mass Asylum

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U.S. COMMISSION ON IMMIGRATION REFORM

The massive refugee resettlement of Indochinese boat people spurred Congressional action on the Refugee Act of 1980. The Act, however, was rooted in more than the immediate challenge of resettlement resulting from the pledges made by the United States at the Geneva Conference of 1979. The original version of the bill introduced in the Senate by Senator Edward Kennedy of Massachusetts was aimed at addressing the longstanding issue of orderly decision making and Congressional-Executive responsibilities in determining levels of refugee admissions. Federal responsibility for the costs of refugee resettlement in the U.S. were also taken up in detail in House consideration of the bill.

The Refugee Act of 1980 was a major step in codifying the decision-making process about how many refugees to resettle in the U.S. annually and from where they would come. It also spelled out a new framework for federal-state-private voluntary agency cooperation in the reception and settlement process. The implementation of the settlement process has been controversial in many aspects, but the Act provided a working basis to address issues of refugee integration.

The ink was hardly dry on the new law, signed in March of 1980, when the Mariel boat lift crisis began. Mariel was important for many reasons but, for the purposes of this analysis, it was particularly significant as the first experience of the decade (and a searing one, at that) of what was to emerge as the most challenging refugee problem of the 1980s and 1990s for industrial countries, flows of asylum applicants.

The Refugee Act of 1980 had set up a working arrangement to address problems related to choosing refugees from overseas for resettlement in the U.S. Until Mariel, U.S. refugee policy virtually meant how to decide how many and whom, among those given safe haven in countries other than their own, to invite to settle in the United States, as well as whom to allow to come directly to the U.S. as refugees from persecution (as in the case of the former Soviet Union).

The Refugee Act of 1980 solved a past problem but did not address the emerging issue of asylum applications. The Act took some note of asylum, but almost in a passing way. It authorized up to 5,000 persons approved for asylum in a given year to adjust to permanent resident alien status. (The number of asylum applications—some applications include many family members—in 1992 was 103,946.)

The number authorized in the legislation to adjust to immigrant status had no par-

ticular basis, according to recollection of Congressional and Executive staff who worked together on drafting the legislation. It seemed more than sufficient for the trickle of persons who sought asylum, be they defectors of strategic value, prominent athletes and artists, crew members who sought refuge, or others. Others includes those who sought to stay in the United States when, due to their prior political activities, religious beliefs, or ethnicity, political turmoil left them stranded and in danger if they returned to their country. The law took no note of the possibility of acute, mass asylum movements, that is, large numbers coming in a short period with little notice or preparation.

The United States was not alone in facing the challenge of asylum. Other industrial countries, notably in Europe, encountered similar increases in asylum applications in the 1980s. Many of the stronger economies of Western Europe had relied on temporary labor (guest workers in the translation from the German) to help their economies recover from wartime devastation and grow spectacularly in the late 1950s and 1960s. Some hesitations were voiced about the economic wisdom and, especially, the social costs of temporary labor programs. As early as 1968, Switzerland held a referendum about reducing temporary worker reliance due to "over-foreignization."

The oil boycott of 1973 and the subsequent economic downturn found European labor importers ending the practice. Some countries developed programs to encourage the noncitizen labor to return home. Most of these incentive programs, however, were not successful in spurring significant returns. There was reluctance to develop a wholesale deportation policy, due probably to a combination of structural reliance on the "temporary" workers to perform permanent jobs (and so opposition of employers to a wholesale deportation policy) and objections from sectors of the public in these European liberal democracies on equity grounds.

Although the issuance of new work permits virtually halted, in many cases workers in place were permitted to stay and allowed to reunite their families in Europe. Many social problems developed related to citizenship, education, minority group status, employment and training opportunities, housing, and so on. The type and severity of the issues varied by country and the origin of the worker population. Every European country with the remnants of a guest worker program

faced some significant social and political problems related to the sequelae of migrant worker programs.

With the ending of fresh recruitment into the ranks of temporary labor, Europe faced an increase in undocumented or illegal migration. Attempts to reduce or control the level of illegal migration had some, albeit limited, success. In the 1980s asylum seeking became an alternate to illegal migration, which itself had developed as a substitute for temporary labor programs.

Note that the cycle of events in Europe gives support to the hypothesis that, given supply of and effective demand for labor, change in policy to restrict one migration channel will result in pressure for other modes of entry. Ending temporary worker recruitment after 1973 led to increased illegal migration. Crackdowns on illegal migration, including fines for hiring illegal migrants, led to pressure on the asylum system as a means of entry for those who in large part are labor migrants. The logic would lead to the prediction that the current attempts to restrict access to asylum procedures by manifestly unfounded applicants will result in a new round of increased illegal migration in Europe.

Most Western European countries are signatories to the Geneva Convention of 1951 on the status of refugees and the 1967 New York Protocol that removed the temporal and geographic referents in the refugee definition of the 1951 Convention. Western European countries have asylum adjudication systems and a strong commitment to asylum, in no small part in reaction to Nazi-era experiences. The commitment to asylum, like that in the United States to refugee resettlement, primarily was expressed in reception from Communist countries in the East of Europe. Since Communist governments' exit policies were strict, the flow of asylum seekers until the 1980s was generally not great and not perceived to be out of control.

Around 1984, the large movement of Iranian asylum seekers from Turkey, the increase noted in Third World asylum seekers coming through the Warsaw Pact countries, and the threat of terrorism led to initial meetings among Western European states about asylum in Europe.[1] As asylum became a route for entry in Europe, states perceived the flows as increasingly

[1] For a review of events in Europe around multilateral discussions of asylum see: Russell, S.S.; Keely, C.B. Forthcoming. The Diplomacy of Multilateral Efforts to Harmonize Asylum Policy Among Industrial Countries. In *Towards a New Refugee Regime* (R. Rogers, S.S. Russell, eds.).

an abuse of the asylum system. The vast majority of asylum seekers were found not to qualify as refugees under the Convention and Protocol. An asylum system is to provide protection for politically persecuted people, not to be an alternate route to the European labor market.

European governments continue to wrestle with policy and programs related to individuals arriving in Europe and applying for asylum. More recently, acute flows (large numbers in a short time) of European asylum seekers due to war and political turmoil have been added to the more individualistic asylum flow. Italy felt the impact with the boat loads of Albanians seeking asylum during the overthrow of the former, extremely repressive government. Currently, many people from former Yugoslavia find haven within its former components, now new countries (e.g., Bosnians in Croatia). Large numbers have sought and found a temporary haven in Germany, Austria, Switzerland, and Sweden. In both the Bosnian and Albanian cases, calls by the recipient countries for burden sharing in providing a safe haven, especially by other European countries, have fallen on deaf ears. The potential of additional flows from Central Europe and the former Soviet Union continues to worry European capitals.

In short, Europe faces large-scale asylum flows from both individuals (coming to the country and asking for asylum on entry or if detained for migration irregularities) and mass flows in concentrated periods of people escaping violence.

The United States continues to face both sorts of asylum seekers. (The U.S. NAFTA partners share in these pressures to some extent already and perhaps increasingly in the future.) The Mariel flows represented a large inflow in a short time, similar in that respect to the recent Albanian and former Yugoslav cases of Bosnians and Croats. During the 1980s, the U.S. also received an increasing number of asylum applications at ports of entry.

Central Americans, especially from El Salvador and Nicaragua, and more recently from Guatemala, have come in continuous streams of significant size. While many applied for asylum, many did not. The interpretation of their failure to apply varies between their fear of being turned down by an unfair, politically tainted adjudication system and their disinterest because they are economic migrants who know they do not qualify for asylum.

In addition to the individual asylum seekers arriving at points of entry or requesting asylum at time of arrest for immigration offenses, and besides the Central Americans whose entry is related to political events (even if they do not qualify under the Convention definition contained in U.S. law), the U.S. continues to face the threat of large-scale, time-concentrated asylum flows from Cuba and Haiti.

The recent arrival of boats of Chinese asylum seekers raises the additional specter of continuous flows from a distant country where the U.S. desire for normal relations, including trade, and the questionable human rights situation present difficult problems. Even if the boat loads of Chinese are economic migrants caught in a sophisticated international smuggling business, the return of such persons raises human rights issues if their government punishes them for exercising what the Universal Declaration of Human Rights of 1948 declares to be a basic right, to leave and reenter one's own country.

Table 1 indicates the level and sources of asylum applicants to the United States from 1980-1993. The data give an idea of current demands on the asylum adjudication system. Asylum seekers' applications are decided by an asylum officer corps specially trained to judge the *bona fides* of the cases. The 1980 Refugee Act mandated an asylum officer corps, but it took a decade to establish the corps and supporting services to provide political, human rights, and other information necessary to judge the facts presented to adjudicators in specific cases.

Asylum adjudication systems like that in the United States were established in a number of industrial countries in the 1980s. The U.S. system was helped in many ways by the Canadian experience in establishing an asylum system. A goal of these programs is to establish an adjudication process that is and is perceived to be fair, independent of immediate foreign policy interests of the sitting government, and reasonable in the outcome of cases.

These objectives fulfill two desiderata. Democratic governments want to encourage human rights values in other societies as ends in themselves and as a basis for trade, diplomatic, and other state-to-state interaction. Second, public opinion in democratic countries objected to asylum systems perceived as virtual captives of Cold War (especially anti-Communist) policy, with scant attention to persecution by rightist governments. Citizen groups

Table 1.

REFUGEE STATUS APPLICATIONS
FISCAL YEARS 1980-1993

YEAR	Applications pending beginning of year	Applications filed duirng year	Applications approved during year	Applications denied during year	Applications otherwise closed during year	Applications pending end of year
1980 (Apr-Sept)	16,642	95,241	89,580	6,149	1,197	14,957
1981	14,957	178,273	155,291	15,322	3,998	18,619
1982	18,619	76,150	61,527	14,943	6,631	11,668
1983	11,668	92,522	73,645	20,255	2,489	7,801
1984	7,801	99,636	77,932	16,220	604	12,681
1985	12,681	80,734	59,436	18,430	1,842	13,707
1986	13,707	67,310	52,081	9,679	3,362	15,895
1987	15,895	85,823	61,529	13,911	6,126	20,152
1988	20,152	105,024	80,282	11,821	5,632	27,441
1989	27,441	190,597	95,505	33,179	4,005	85,349
1990	39,524	135,251	99,697	29,805	24,904	20,369
1991	20,369	123,492	107,962	12,644	5,700	17,555
1992	18,238	133,786	115,330	14,886	6,780	15,028
1993	15,028	127,676	106,026	20,280	5,107	11,291

Note: The Refugee Act of 1980 went into effect on April 1, 1980. The pending beginning of fiscal year 1990 does not match the pending end of fiscal year 1989 due to changes in the processing of Soviet refugees residing inside the Soviet Union. The figures beginning fiscal year 1990 exclude the initial questionnaires submitted by refugee applicants residing in the former Soviet Union. The number of applications for refugee status pending at the beginning of fiscal year 1992 has been revised upward from the 17,555 reported at the end of fiscal year 1991. The increase of 683 applications is due to revision in the data from one reporting office.

Source: INS. 1994. *1993 Statistical Yearbook*.

in the U.S. and elsewhere pressed governments to develop human rights policies with a single standard for friends and enemies alike.

The U.S. asylum adjudication system has been adjusting to a heavier workload of individual asylum applications at ports of entry or after arrest for immigration violations. The workload of the asylum adjudication corps was impacted tremendously by the addition of Central American asylum seekers as a result of the American Baptist case and by the 1990 Immigration Act's mandating of rehearing of some cases.

It is important not to minimize the caseload problem and the resource requirements needed to avoid incessant "catch-up" (the image of Sisyphus comes to mind). While the problem of resources to dig out from the current backlog and workload needs attention, there is general support for a set of procedures that are fair, independent, and contribute to maintaining a global standard of protection from political persecution.

Two other issues remain. First, is adherence to the Convention definition adequate to meet the needs of those innocently escaping violence, especially the violence of war or civil unrest, even if they are not personally persecuted? Should an asylum option that does not automatically assume permanent settlement be developed for such situations by the U.S. and industrial countries generally? This is the familiar issue of the adequacy of the refugee definition and the accompanying problem of how to accommodate truly temporary asylum with effective return or removal policies when political conditions allow for safe return.

The second issue is what to do in the face of acute, mass asylum flows, like those during Mariel and feared during recent years' events in Haiti?

These two issues are analytically distinct but are related in concrete cases. Each will be addressed in turn, with attention to their intersection in possible mass movements to the U.S. in the foreseeable future.

The Conditions of Asylum

Despite the adoption of the international (Convention- and Protocol-based) definition of a refugee in the Refugee Act of 1980, the U.S. still feels the legacy of anti-Communism in refugee programs. Until the reform of refugee law in 1980, the

definition of a refugee in U.S. statutes referred to persons from a Communist-dominated country and certain areas of the Middle East. Even with the change in definition, inspection of the proposed and actual admissions of refugees under the 1980 Act reveals a dominance of resettlement of citizens from countries with Communist governments.

Currently, the lion's share of proposed admissions to the U.S. are from the former Soviet Union and Vietnam. These figures to a large extent represent redeeming past promises. They are based not only on foreign policy considerations like maintaining trust in the word of the U.S., but also on domestic considerations about constituency support for continued admission of certain groups. The continued salience of the Cold War is also evident in legislation allowing refugee status to people from Cuba, a remnant of U.S. policy preference not accorded citizens of other countries.

On the other hand, the U.S. is quite strong in its policy position that asylum applicants should meet the Convention criteria and that the United States does not support an expansion of the international definition. The U.S. does supply funds to the UN High Commissioner for Refugees [UNHCR] for protection and assistance activities in countries that accept a broader definition of refugee, such as those in the Organization of African Unity Convention and the Cartegena Declaration as it applies to Central America. In both these instances, persons fleeing war or civil disturbance are afforded international protection under UNHCR auspices with U.S. financial support. Policy to help finance international agencies to provide protection and assistance is a different matter than policy to accept persons for permanent residence in the U.S. In Europe, Germany, Austria, and Switzerland receive Bosnian refugees and provide (at least for now) a purported temporary safe haven with an expectation of return. The decision is based on providing safety from war and is provided generally without inquiry into meeting Convention definitions.

During the 1980s, the U.S. policy was to review asylum applications (which would result in permanent settlement in the U.S.) on the basis of meeting the Convention definition. Especially in regard to applications from Central America, this resulted in very low acceptance rates. Low acceptance rates, in turn, provided the basis for the claim that asylum seekers were economic migrants. That they were fleeing devastation of war, massive civil unrest, or gross human rights violations (with or without complicity of parts of the U.S. military, intelligence, or diplomatic agencies) was presented as not relevant to

asylum policy, unless and until the refugee definition of political persecution were altered to extend beyond the individual victim of persecution. The successive administrations of both Democratic and Republican parties opposed extending the refugee definition to include those fleeing the general danger of war or unrest.

An honest analysis of the dynamics of the political differences on Central American policy concludes that to some extent the criticism of asylum policy in the 1980s was a proxy for opposition to U.S. policy in Central America. The U.S. government was accused of double standards on human rights, complicity in human rights violations, and lack of responsibility toward victims of a policy of material, military, and diplomatic support to the governments accused of large-scale human rights violations.

Conversely, discussion of inadequacies of asylum and refugee definitions, policy, or behavior (including an asylum adjudication system reflecting current foreign policy that continued for almost a decade before the development of an independent asylum officer corps) was dismissed by supporters of U.S. Central American policy as nothing but a smoke screen for political opposition to that policy. Opponents of Central American policy carried the burden of being presumed to be naive or fellow travellers for Communist expansionist policies. Discussion of refugee and asylum policy (and Central American policy) was poisoned by these sorts of views.

This state of affairs, in tandem with the logistical problems of providing for reception and maintenance of mass movements like the Mariel experience (to be discussed below), has resulted, since the early 1980s, in an unstated policy that the U.S. is not a country of mass first asylum. The Convention definition has been rigorously applied, in deep contrast to prior mass determinations to accept escapees from Eastern Europe or the Soviet Union (including Hungarians in 1956 and asylum seekers after the Czech Spring), Cubans, and Indochinese. In those cases, to have been in their own countries was considered persecution enough. To escape was to merit asylum and resettlement. The United States as late as 1989, in discussions of the Coordinated Plan of Action [CPA] for Indochina, insisted that those denied asylum under processes monitored by the UNHCR in Hong Kong were not to be returned to Vietnam.

The contention that implicit U.S. policy since Mariel has been that the U.S. is not a country of first asylum is borne out by rejection rates of Central America asylum seekers and by the policies of in-

terdiction and, more recently, return without review of Haitians picked up on the high seas who wish to claim asylum. The reported demarche to Cuba not to interrupt the 1992 U.S. elections lends further support to this thesis. Even in the case of Cuba, the U.S. has not encouraged or given signs of support for large-scale emigration, despite domestic support for accepting escapees as an indication of continued opposition to Castro.

The debates on Central American policy, including the role of asylum decisions, and the desire to avoid being a country of first asylum have created a highly charged atmosphere. No administration since the Mariel incident in the Carter presidency has supported expansion of the refugee (and, by extension, asylee) definition. Even to suggest such discussion carried policy baggage. Reasoned discussion in this atmosphere has hardly been possible. Human rights supporters and those concerned about innocent victims of war and civil unrest welcomed the establishment of the asylum officer corps as a step in support of universally applicable standards of protection from persecution. All victims of war's destruction may not be eligible for asylum, but at least those suffering or realistically fearing persecution as defined by the Convention would be more likely to receive asylum. Further, the establishment of Temporary Protective Status [TPS] in the 1990 Immigration Act moved another step in the direction of providing protection temporarily to a group of people in the United States who would face danger if required to return to their country of citizenship. But the issue of the adequacy of the refugee definition remains.

What should be the policy toward persons (inside or outside the country) seeking a safe haven from the general devastation of war or civil unrest but who are not personally the targets of persecution as specified in the Convention definition contained in U.S. legislation? The definition should not be broadened to make such persons eligible for permanent settlement in the U.S. under asylum law and procedures. It would be impossible to implement fairly or fully because the global probabilities of civil unrest in the wake of post-Cold War realignments is so great. It is logistically not possible for every citizen of any country engaged in civil or international war to become a permanent resident alien (immigrant) in the U.S. through asylum procedures. It would hamper progress in burden-sharing agreements and would be politically insupportable in the U.S. once the general public understood the dimensions of such a policy decision.

Making this recommendation does not end

the matter. Practice around the world has been to offer safe haven to war victims. It has happened in Africa, Asia, and Latin America on numerous occasions. The generosity, even if sometimes reluctant, of very poor countries to citizens of neighboring countries has been striking. In Europe, a safe haven is accorded to Bosnians in large numbers by Germany, Austria, Switzerland, and Sweden. The first three of these countries have offered temporary safe haven and not permanent settlement under their asylum procedures. (Sweden, which offered settlement, now requires a visa for Bosnians, effectively ending asylum, which means settlement or temporary safe haven for Bosnians.)

Following these examples of past and current practice, the U.S. should be open to providing temporary safe haven as necessary to the citizens of *neighboring* countries. This requires either new U.S. legislation to create such a status, including a procedure the President can invoke in consultation with the Congress, or amendment of TPS in current law. Safe haven, especially in the cases of mass movements in short periods (like the Mariel case) should provide shelter in camps for up to one year. After that, protectees should be permitted into the general population with work authorization. Three years after admission, protectees should be permitted to petition for adjustment to permanent resident alien. The three-year period is proposed as a reasonable time to test whether safe return is a plausible possibility.

For those already in the United States and in the general population as nonimmigrants (like students) or even illegally, who are judged to be in danger from war conditions if they return home, safe haven in the general population with work authorization could be provided. (The case of illegal migrants may merit consideration of safe haven in camps. The logistics and incentives inherent in this suggestion require further thought). These cases would be similar to current practice under TPS. Under a safe haven policy, these persons would be given protection for *up to* three years from the start of protection to anyone in their situation. (Thus, if a student is still in studies and on a valid student visa, he or she could be given safe haven after the student visa expired. The three-year clock would run from the date safe haven was given to people from his or her country who did not have any visa to be in the U.S.)

The phrase “up to” is emphasized to make it clear that safe haven is meant to be temporary and provided only for the time needed. The three years of protection is

not a right, regardless of events in the homeland. If events change in six months, then protectees ought to be required to return home. The proposal presumes that the usual opportunities be extended for status adjustment in cases of genuine marriages to U.S. citizens or other immigrant-qualifying circumstances.

The current TPS has been interpreted not to be applicable to persons outside the United States. Thus, it was not used for the Haitians and presumably would not be used for a massive asylum movement that was declared a migration emergency in which migrants would be accepted and even assisted to enter the U.S. by federal authorities (as for example was done in the Mariel case as it unfolded). The proposed safe haven protection could be used in cases of people outside or in the United States.

New legislation may be preferable to amending TPS because TPS carries meaning and interpretations and amendment often leads to more unforeseen consequences than necessary. TPS also is the U.S. version of European policies creating categories like Status B refugees, humanitarian entrants, persons with extraordinary leave to stay, and so on. A major problem in these cases is that there is usually no effective removal policy and little pressure on the government to use whatever good offices or persuasive powers at its disposal to work to change the conditions that led to the humanitarian gesture to offer temporary safe haven. In the U.S. case, if safe haven protectees were in a camp for a year, state authorities would surely keep the issue before the federal government. The need to decide at the end of a year to release the protectees into the general population with work authorization would at least require conscious attention to a "problem," that is, the conditions that led the government to offer safe haven. Again, at the end of two years (or whatever is deemed a reasonable period to test is return is viable), a decision and process must be undertaken to give permanent resident alien status.

The safe haven proposed here, therefore, has three aspects that improve the TPS policy. First, the procedure sends a clearer message that safe haven is meant to be temporary. It will save lives but is not intended or structured to be a route to residence in the United States.

Second, the procedures keep a safe haven population in the consciousness of federal authorities and build in incentives for federal and local authorities to urge action (in so far as is reasonable) to help change conditions in sending countries.

The safe haven procedure is not draconian and it echoes attempts of some countries to move away from immediate work authorization policies (e.g., Canada and Australia). It provides a safe haven, but in a camp. It allows for a reasonable test of whether conditions can change so that return is feasible.

Even safe haven as proposed may develop into a program in which settlement after three years is more the rule than the exception. Perhaps additional incentives need to be built in to encourage the federal government to focus on conditions that lead to giving safe haven instead of seeing safe haven as a convenient way to put an issue on the back burner. Like TPS, safe haven is a step in the direction of recognizing that providing an escape route from death and destruction during war and civil unrest is not the same as providing a new home. Unlike TPS, the safe haven proposal tries to build in criteria about lengths of stay, conditions of stay (one year in camp), and incentives for continued federal attention to do what is possible to change conditions that allow for and underscore the expectation of repatriation.

Third, safe haven is intended either for persons who find their way to the U.S. or for assisted entry.

Invoking safe haven preferably will require consultations on burden sharing with neighboring countries in anticipation of such events and close coordination in the actual event. A decision to provide a temporary safe haven is, by its nature, an *ad hoc* decision and should not be automatically triggered by criteria in a law. But offering safe haven should be clearly separate from asylum leading to permanent residence.

Such a policy would codify what some other countries' and international practice has been in terms of acceptance of victims of war and unrest, while leaving the President flexibility to judge when the safe haven would be offered. It allows for mass determinations to escape war conditions. It recognizes regional responsibilities that are a function of geography. It is not unreasonable for the bulk of safe haven granted to Bosnians to take place in Europe. Likewise, the North American partners in NAFTA can reasonably be expected to do the same for victims of war in a Caribbean or Central American country.

Unlike the European response to burden sharing on Bosnia, this proposal includes prior discussion and agreement of countries in the region about strategy and roles

(burden sharing) in the event of emergencies involving mass movements. It also has built in incentives to underscore the expectation of return. Like disaster preparedness, prior discussions cannot anticipate every detail, but they allow coordinated reaction in actual emergencies based on prior understandings and agreements.

Burden sharing agreements will take time and an emergency can happen in the meantime. That is not a reason to dismiss this recommendation. The recommendation to develop a legislative basis for temporary safe haven in camps for a reasonable period for victims of war and civil strife in this region assumes that preparedness and burden sharing discussions will be pursued with vigor in order to make safe haven a reality if necessary in the region.

Individual asylum procedures also ought to be changed so that a person granted asylum must wait for three years before being permitted to adjust status to permanent resident alien. During this time she or he should have all the rights and resources afforded refugees admitted. The distinction underlying this proposed change is that asylum should be, in the first place, temporary refuge from persecution. If events warrant return because the threat of persecution is past, then an asylee should return or be returned to his or her homeland. If, after three years, the well-founded fear of persecution remains, then a person should be permitted to focus on developing a new life in the United States.

The thrust of these two recommendations is that asylum for those who fit the Convention definition under current U.S. law and the proposed safe haven for victims of war and civil unrest are to provide temporary refuge. If events do not change in a reasonable time (three years), permanent resident status ought to be available. In the cases of acute, mass movements (perhaps literally to save life and limb), no more than a year should be spent in temporary camps and no more than three years in the U.S. before immigrant status is offered.

The hope in all asylum and safe haven situations is that conditions will permit people to resume life in their own country with safety. The proposals made here are meant to engender discussion about a proper balance between safety, incentives for victims to repatriate, incentives for the federal government to press as far as reasonable for changes in conditions leading to exit, and limiting life disruption to a reasonable level.

Acute Mass

Asylum Flows

The second issue is what to do about the possibility of mass asylum flows from Haiti, Cuba, China, or elsewhere.

The last acute asylum flow to the U.S. was Mariel. The U.S. probably did not learn as much as it could from the experience. The following recommendations are based on review of documents, interviews, and an unpublished narrative of Mariel events by Victor Palmieri, who was U.S. Coordinator of Refugees at the time.[2]

At the outset of Mariel, Palmieri was put in the chair of meetings in the White House situation room, a position for which he was unprepared. No one in the room mentioned the prior experience of Camarioca. The political nature of the events (in an election year) meant that this was not just a logistics exercise but carried major political implications. Expectations and mind sets of actors (military, State Department, Coast Guard, INS, etc.) had to be understood generally by the chair to interpret their input and to garner their cooperation. Recall, for example, that at the time of Mariel the U.S. military were dealing with the effects of the failed desert operation undertaken two weeks earlier to rescue the hostages in Iran.

Palmieri needed to know what existing policies, if any, applied. In the face of a mass movement, a preexisting policy about stopping, containing, working with the sending government, etc. makes a significant difference with respect to efficient implementation of policy and coordination of the many agencies involved.

In the Mariel case, policy had to be forged. Whether to try and stop the boats, with what assets (military, Coast Guard, INS), and so on had not been decided or even discussed beforehand. Such policies were made and changed in an *ad hoc* fashion, including President Carter's response to a reporter's question after a speech of welcoming with open hearts and open arms.

A mass asylum movement is a political crisis and should be coordinated at the level of the White House. Whoever is in charge of day-to-day operations should be from the White House staff or assigned to it and have access to the highest levels of the Executive Branch. Given the likelihood of an asylum crisis, someone should

[2] See: Keely, C.B.; Barrett, R.C. 1992. *The Office of the United States Coordinator of Refugee Affairs: An Experiment in Legislating Crisis Management*. Draft report. Washington, DC: Georgetown University, Center for Immigration Policy and Refugee Assistance.

be designated who actively prepares to fill the role and take the lead, whenever needed. Even if that person hands off to Chief of Staff or some higher official, the line that includes political and logistical considerations ought to be in place.

The first order of priority is to develop the capacity to decide the reaction to the flow. How will the decision be made about whether a flow will be designated as an immigration emergency as provided for in the Immigration Act of 1990? The machinery to gather and funnel information and prepare options is as necessary as logistical preparedness. The Immigration Act of 1990 in its provisions about emergencies is properly silent on this issue. The Executive branch should develop the decision-making procedures.

Preparedness for accepting a flow is not the same as assigned roles to attempt to stop or control a flow. Preparedness to stop or contain potential flows also deserves attention. Contingency plans to stop, deter, deflect, etc., a mass migration should complement other contingency plans for various scenarios that assume asylees will be taken in.

The experience and expertise for being prepared is available. The first requirement is the machinery to decide how to respond to a flow. Then government agencies must be prepared either to accommodate or to try to prevent, control, or divert flows. A review of the decisionmaking in the Mariel incident reveals that a basic flaw was the uncoordinated nature of policy development and decisionmaking during the flow. The initial lack of policy on the fundamental reaction to the flow and the subsequent shifting policies about issues of interdiction, impounding of boats, fines for captains, and other matters makes clear that, even if there was a high level of logistical preparedness, much of the chaos still would have taken place.

Recommendations

The foregoing analysis leads to the following recommendations for discussion and consideration by the Commission.

1. The resource needs of the asylum adjudication system, given current caseloads and future caseloads if asylum procedures are legislatively changed, should be projected. A balance should be struck between catching up with current backlogs and possible reduced applications.

2. Reduced access to asylum procedures by screening out manifestly unfounded

cases, to be successful, requires attention to illegal migration pressures as this avenue to entry is narrowed.

3. The refugee definition currently used to decide acceptability of an asylum claim resulting in admission for permanent residence (application permitted after one year presently) ought not to be broadened to include victims of war and civil unrest.

4. A safe haven policy for victims of war and civil unrest ought to be developed. Safe haven ought to be structured as proposed to encourage attempts by the U.S. government to influence events so that those given safe haven can repatriate. Safe haven should be given in camps for one year and then in the general community with work authorization. Safe haven is envisioned as a temporary remedy for mass migration of persons ineligible for Convention refugee status who nonetheless are fleeing danger due to political events. Safe haven ought to replace TPS. Safe haven ought to be developed and legislated as a new procedure incorporating features of TPS that are useful in safe haven/protection situations. Congress should repeal TPS rather than fiddling with it through amendment.

5. Asylees admitted under current procedures (meeting the criteria of persecution in the refugee definition currently used) and those given safe haven as proposed here should be permitted to apply for permanent resident alien status three years after entry to the United States. The presumption should be that the desired outcome in both cases is repatriation to a safe country of origin, free of political persecution. The three-year period provides a reasonable test of whether political changes are likely and whether a person should be allowed to develop a new life in the United States. The three-year period is a suggestion that attempts to balance reasonably and humanely a test of probable political change with the realities of people's tolerance for adjustment and ambiguity in their lives and their dependent children's lives.

6. Negotiations with countries in the region on burden sharing in cases when safe haven is to be provided ought to begin now to ensure a unified response.

7. Mass, acute migration incidents are political crises by definition. They require White House coordination from the beginning because of the political nature of decisions. Immigration emergencies and attempts to stop or control large influxes ought to have political leadership on policy and operations decisions from the start.

8. The fundamental decision in a mass flow of migrants is whether it will be declared an immigration emergency under the IMMACT of 1990. Contingency planning ought to focus on how information and options will be developed and the steps in that decision process.

9. Contingency planning ought to be developed for what to do in the face of a large-scale flow that is not to be accepted as an immigration emergency.

10. Current planning to accept migrants in an immigration emergency ought to continue, even while supplemented with attention to the decision structure to arrive at the immigration emergency declaration and the roles and procedures for attempts to stop or divert migrations that are decided not to be declared immigration emergencies under the IMMACT 1990 provisions.

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