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# The evolution of US immigration and refugee policy: public opinion, domestic politics and UNHCR

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## Introduction

This paper was commissioned by UNHCR and presented at the Technical Symposium on International Migration and Development held in July 1998 in The Hague, the Netherlands. It explores the relationships between United States' domestic and foreign policies and immigration and refugee issues, with particular attention to Central America and the Caribbean; how those policies have evolved in the 1990s; the various tensions which exist in developing and implementing those policies; and their current and possible future impact on refugees and immigrants who seek to enter the United States.

The first section considers the historical evolution of immigration and refugee policies; how immigration policies have been influenced primarily by domestic and economic issues; and how refugee policies have been the product of foreign policy and ideological concerns. Special attention is given to the development of these policies with regard to Cuba and Haiti in the Caribbean and Nicaragua, El Salvador and Guatemala in Central America.

The second section discusses recent developments in US immigration and refugee policies. It examines the debates over Proposition 187 in California and the welfare and immigration reform acts passed by Congress in 1996, and comments on the role immigration and refugee flows from Central America and the Caribbean played in these debates. This discussion points out inconsistencies in US policies, the complex matrix of actors who participate in these debates, and the impact these factors have on policy formulations in the United States.

The third section explores how the United States implements the policies discussed in earlier sections with especial emphasis on the US Immigration and Naturalization Service (INS), the extent to which this implementation conforms to international guidelines, and the problems the implementation process presents to immigrants and refugees from Central America and the Caribbean as well as those from other countries.

The final section presents recommendations which the Office of the United Nations High Commissioner for Refugees (UNHCR) and other organizations might follow in order to influence American public opinion, the implementation of international standards, regional cooperation, and long-term planning within the United States regarding immigration and refugee policies.

## Historical patterns in immigration and refugee policy

The 1990s have witnessed continued migration and refugee flows on an unprecedented scale. Developing nations have served as receiving countries for millions, but many industrialized states which have traditionally welcomed migrants and refugees have more recently shown a reluctance to admit them. Government officials and the public at large, in particular in Europe and the United States, have reflected concerns about the impact of immigrants on their economies and cultural homogeneity and, in some cases, have displayed signs of xenophobia. While the right

of sovereign states to determine who may, and who may not, enter their territory is not being questioned, these governments have begun to pursue more restrictionist policies which threaten to undermine the international guidelines established by the 1951 Geneva Convention relating to the Status of Refugees and its 1967 Protocol and present new obstacles to those seeking asylum and protection from *refoulement*. These actions have been the subject of a number of recent studies comparing refugee and immigration policies in, among others, Germany, Japan, and the United States (Bade, 1997; Kubat, 1993; Münz, 1997; Teitelbaum, 1995; Weiner, 1998).

A restrictionist approach has not always been the norm in US policy. In 1991 a Ford Foundation report on migration noted:

> America is deeply implicated in the migration flow and its destiny. American employers fuel the immigration, American foreign policy embraces it, and American family values maintain it ... As a nation, we have been there before. America thrives on its immigrant heritage. Part history, part ideology, immigration embodies the theme of national renewal, rebirth, hope. Uprooted abroad, newcomers have become transplants in a land that promises opportunity. (Papademetriou, 1991, p. 303.)

Demetrios Papademetriou, after citing the Ford Foundation report, goes on to suggest that managing the "delicate tensions" that underlie immigration and refugee interests is at the root of a sound immigration and refugee policy (Papademetriou, 1991, p. 303). Yet, only a few years later, those tensions have escalated to a point where US immigration and refugee policies are in disarray and threaten to undermine the humanitarian values and international agreements to which the United States publicly subscribes.

While the international community views immigration and refugee policies from a humanitarian perspective and through the parameters provided by international agreements such as the 1951 Refugee Convention and the 1967 Protocol, nation-states, especially receiving countries, tend to view these issues through a combination of humanitarian, domestic, and foreign policy considerations. This has been the case in the United States throughout the post-Second World War era. American policy toward refugees has been influenced significantly by foreign policy objectives, and US policy towards immigration has reflected a variety of domestic concerns. Since these policies are frequently interrelated, the distinctions between immigration and refugee policy and the treatment of immigrants and refugees have often been blurred, leading to some confusion regarding the nature of US policy which will be discussed below.

*Immigration policy*

The United States is, of course, other than its indigenous peoples, a land of immigrants, many of whom were refugees, and has had a history of welcoming immigrants and refugees to American shores. The number of immigrants who came to the United States after the Second World War grew at a steady pace; a total of over 18 million people immigrated during the years from 1946 to 1992, with an average of close to 700,000 a year during the last ten years of that period. But as the US

immigrant population increased and began to place a strain on governmental budgets, or was perceived as a threat to cultural homogeneity in some communities, public pressure led Congress to place limits on the numbers who would be welcomed to the American melting pot.

Such limits were rare prior to the end of the Second World War, but did occur as early as the nineteenth century. The first to suffer such discrimination were the Chinese whose immigration into the United States was precluded by legislation passed in the 1880s. Other Asians were restricted through the Immigration Act 1917, and general limits were placed on all immigrants during the 1920s (Russell, 1995, p. 61). Restrictions on Chinese immigrants were eased by the USA during the Second World War to promote better relations with its war time ally.

The Immigration Act 1952 reduced restrictions on Asians in general (Russell, 1995, pp. 61-2). The Act also removed racial and sexual bars to immigration and naturalization and established preferred categories of immigrants: first, those with high levels of education and then various types of relatives, including parents of US citizens, spouses and children of permanent resident aliens, and, finally, brothers, sisters, and married children of US citizens. Immediate relatives of US citizens were exempt from any limitations (Díaz-Briquets, 1995, pp. 163-4).

The Immigration and Nationality Act 1965 eliminated the national origins quotas that had been in operation since the 1920s and "embraced an immigration selection system based on family reunification and needed skills". However, the Act did place a ceiling for the first time on immigration from the Western hemisphere while contributing to an increase in immigration from Asia (Díaz-Briquets, 1995, pp. 166-7). The lack of restrictions prior to the 1965 Act was due in part to the desire for cheap labour which came from those regions and in part to promote "good neighbour" relations (Russell, 1995, pp. 61-2).

Since the 1940s, the major source of immigrants to the USA has been Mexico. The reasons for this extensive migration are well known (Castillo, 1994; Hamilton, 1996; Mitchell, 1997a; Papademetriou, 1991, 1992). A long, porous border, economic opportunities, and the need for cheap labour have all contributed to this movement. From 1941 to 1964 the Bracero Programme for Mexican farm workers helped establish the pattern, and an economic recession in Mexico in the 1970s provided additional incentives. During the period from 1946 until 1992, over 4.3 million legal immigrants arrived from Mexico; hundreds of thousands more came illegally (Russell, 1995, p. 69).

The huge number of illegal immigrants and the perceived threat they presented to the host country led to the passage of the Immigration Reform and Control Act 1986. The major components of the Act provided for legalisation of over 3 million undocumented aliens (approximately 1.8 million of whom were Mexican), established sanctions against employers who hired illegal aliens, and, supposedly, improved border controls to limit further illegal migration (Díaz-Briquets, 1995, pp. 169-71; Keely, 1993, pp. 74-7; Papademetrious, 1992, pp. 317-22).

The 1986 Act was soon followed by the Immigration Act 1990. This Act increased

the annual ceiling on immigration to 675,000, and reformulated the preference system into family-based and independent migration categories, with the latter including a diversity component to provide for immigration from underrepresented countries. In addition, the Act gave the Attorney-General the authority to grant Temporary Protection Status (TPS) to "citizens of countries facing natural or human made crises" (Díaz-Briquets, 1995, p. 172). The net result was the granting of such status to approximately 187,000 Salvadorans. When their grant expired at the end of 1992, they were given "deferred enforcement departure" (DED) until 31 December 1994, since their return home was considered a potential threat to the Salvadoran economy (Russell, 1995, p. 52).

The 1990 Act remained in effect until pressures for reform led to passage of immigration reform legislation (discussed below) in 1996. That new legislation was influenced in part by an increase in the number of refugees coming from Central America and the Caribbean.

*Refugee policy*

In the aftermath of the Second World War refugees from Eastern Europe had raised a new set of issues for US domestic and foreign policy. The USA not only participated in the establishment of the Office of the UNHCR, but opened its doors to hundreds of thousands of refugees themselves. Unlike US immigration policy, which often rested on economic concerns and domestic pressures, the initial response to refugee flows reflected humanitarian and foreign policy concerns. The USA came to view the refugee situation as symbolic of the problems of living under communism and saw the departure of refugees as a means of weakening communist regimes. This was reflected in a 1953 National Security Council memorandum which cited the 1953 Refugee Act as a way to "encourage defection of all USSR nations and 'key' personnel from the satellite countries' in order to 'inflict a psychological blow on communism' and ... material loss to the Soviet Union" (Zolberg, 1995, pp. 123-4).

United States refugee policy evolved through a series of laws which welcomed those fleeing "communist oppression" while providing little relief for those leaving other parts of the world, especially countries considered US allies. The Displaced Persons Act 1948 provided for 205,000 (later raised to 415,000) refugees, although the number was charged against other immigration allowances. The Refugee Relief Act 1953 admitted another 214,000, and the Refugee Escapee Act 1957 (following the 1956 Hungarian Uprising) accepted several hundred thousand more and dropped the practice of charging the number of refugees against immigration allotments (Russell, 1995, p. 47). The 1957 Act also included a provision to admit as refugees "persons fleeing persecution in Communist countries or countries in the Middle East" (Zolberg, 1995, p. 125).

This pattern continued throughout the next two decades, although the major source of refugees varied. In the 1960s approximately 130,000 Cubans who fled the regime of Fidel Castro were granted permanent resident status. The 1970s saw a mass influx from Vietnam and other parts of Indo-China. From 1971 to 1980, 96.8 per cent of all refugees entering the USA came from communist or Middle Eastern countries, but,

aside from the criterion that special priority be given to those regions, there was little coherence to the US approach to refugees.

The Refugee Act 1980 attempted to change this and establish "the first permanent and systematic procedures for the admission and effective resettlement of refugees of special humanitarian concern to the United States". The act also established a definition of "refugee" that conformed to the 1967 Protocol and made clear the distinction between refugees (those outside US borders and their country of origin) and asylees (those in the USA or at the border) (Russell, 1995, p. 49).

Despite this attempt to provide a more balanced refugee approach, the figures for the 1980s followed the pattern that had been established earlier. From 1981 until 1990, 94.6 per cent of refugees came from communist or Middle Eastern countries. This was due in part to the Bush and Reagan Administrations' application of the phrase "of humanitarian concern" to include those from communist systems, in particular Soviet Jews (Zolberg, 1995, p. 139). But in the latter part of that decade there was a major shift in the primary source of refugees. From 1984 until 1990 over 60 per cent came from the Caribbean and Central America, in particular from Cuba, Haiti, Nicaragua, El Salvador, and Guatemala (Russell, 1995, pp. 49-51).

This shift in the source of refugees presented the United States with a new challenge in the refugee arena (Keely, 1993, p. 73). For refugees from the Caribbean and Central America, the United States was often the country of first asylum. The USA had to revise its refugee policy to deal with those who were on its doorstep rather than an ocean away, especially since the end of the Cold War reduced the propaganda value of an open door policy for refugees from former communist systems.

Two other factors contributed to the need for revision. First, as noted above, there were increasing domestic pressures to limit immigration to the United States and US public opinion did not always see a distinction between immigration issues and refugee concerns. Second, the vast increase in those seeking asylum (629,000 between 1980 and 1992, with the greatest increases being registered after 1988) had overwhelmed the capacity of the INS, leaving a backlog of over 400,000 cases by the end of 1992 (Russell, 1995, p. 51). The re-examination of policy had its greatest impact on immigrants and refugees from the Caribbean and Central America.

*Cuba and Haiti*

Nowhere have the shifts or inconsistencies in US refugee and immigration policy been felt more than in the Caribbean, specifically Cuba and Haiti. As noted above, the USA pursued an open door policy for refugees fleeing the Castro regime from 1959 in the hopes of embarrassing the communist leader and drawing off some of the more highly educated segments of the population. Over half a million Cubans came to the United States, most of them settling in or around Miami, establishing a significant minority community which has been active in lobbying Congress regarding US policy toward Cuba. Approximately 200,000 refugees fled Cuba in the period following the revolution from 1959 until 1961. Another 250,000 arrived between 1965 and 1973. These large numbers did lead to some concerns in Congress and the public about the

costs of welcoming new immigrants as well as the possibility that Castro was actually using the exodus to his advantage by ridding himself of unwanted opponents. This became even more apparent with the Mariel Harbor episode (Zolberg, 1995).

This incident followed the announcement in 1980 by Castro that anyone wishing to leave Cuba could do so. Included in the group were approximately 8,000 criminals and others considered undesirable by the Castro regime. After initial hesitation, the Administration of President Jimmy Carter agreed to accept the new flow of immigrants and an extensive boat lift was organized to bring close to 125,000 people from Mariel Harbor to the United States. The shift in Administration policy was in part a response to Ronald Reagan's presidential campaign strategy, which had made an issue of providing support for those wishing to flee. Eventually the USA and Cuba reached an agreement in 1984 whereby the USA began to accept Cubans on a regular basis and Castro agreed to take back most of the 8,000 who were regarded as excludable. Nevertheless, US opposition continued to mount regarding increased immigration from Cuba; some observers believe that the Mariel boat lift and a subsequent riot among Cubans confined in Fort Chafee in Arkansas led to Carter's defeat in the 1980 presidential election and Bill Clinton's loss of the Arkansas governorship that same year (Zolberg, 1995).

US-Cuban relations deteriorated over the next decade reaching a critical level in 1994 when the USA shifted from the open-door policy it had followed since the beginning of the Castro regime. Several factors contributed to this situation. First, with the end of the Cold War, there was less need to try and embarrass the communist regime in Cuba, although the USA maintained its embargo against the island. Second, there was continuing pressure to stop accepting Cubans automatically from those who were opposed to immigration in general or those who associated refugee flows with illegal immigration. This included officials in Florida, whose budget was being stretched by increasing numbers of Cuban refugees. Finally, it became apparent to some US officials that Castro would continue to use refugee flows as a way of causing problems for the United States while ridding himself of opponents or undesirable elements of the Cuban population (UNHCR, 1997c, p. 218).

In order to stem the flow, the US Government announced in August that Cuban rafters picked up at sea would be taken to the US naval base at Guantánamo Bay in Cuba or another centre in Panama. Eventually the USA and Cuba reached an agreement in September 1994 on four points: the USA reaffirmed its earlier decision to stop accepting the refugees automatically; Cuba agreed "to prevent unsafe departures using mainly persuasive means"; both governments agreed to take effective measures against Cuban hijackers of ships and aircraft; and the USA agreed to issue 20,000 entry visas to Cubans each year. Eventually 30,000 rafters who were still being held at Guantánamo were also allowed to enter, but others who were picked up at sea after the agreement was made were returned to Cuba (UNHCR, 1997c, p. 219).

While this new approach appeared to limit the numbers fleeing Cuba to a manageable size and may have appeased public concern over mass influxes of refugees or immigrants, refugee and human rights organizations expressed concern that the US policy did not meet the needs of those who may have had a genuine fear of persecution, or uphold the USA's international obligations towards such people, and

did not provide monitoring of the treatment of those who were forcibly returned (UNHCR, 1997c, p. 219).

In effect, the US Government had reached agreement with another country to deny people their "right to leave". This implicit, though perhaps unintended, consequence of the US approach mirrors the complex nature of US refugee and immigration policy not only toward Cuba but the region in general. This policy is a matrix of humanitarian concerns, ideological and foreign policy interests, and domestic pressures stemming from the Administration, Congress, state officials, the Cuban-American ethnic community, and, as will be discussed below, a number of other interest groups which focus on various aspects of refugee or immigration issues in the United States.

Unlike the situation with Cuba, refugee flows from Haiti served neither US foreign policy nor domestic interests. Consequently, even though Haitian immigrants have been coming to the United States since the 1970s, they received different treatment and few refugees were admitted. This changed briefly in 1980 when the Carter Administration, reacting to charges of discrimination from the African-American community, awarded Haitian arrivals the status of "entrant", a new category which allowed them to stay while their status was resolved, but one which did not allow them to apply for permanent residence.

This policy was quickly reversed by the Reagan Administration, which reached an agreement with the Haitian Government in 1981. Haiti agreed to accept those interdicted at sea and returned by the USA, a policy that remained in effect even after the election of Jean-Bertrand Aristide as Haitian President in 1990. The INS maintained that interdiction arrangements allowed for determination of refugee status, but by 1989 only six out of over 20,000 interdicted were brought to the United States for further processing (Zolberg, 1995, pp. 142-5; Legomsky, 1991, p. 183).

Aristide's overthrow by a military coup in 1991 led to the flight of even greater numbers of refugees who were suffering from human rights abuses. The US Coast Guard interdicted over 40,000 Haitians in the two-year period from 1991 to 1992, sending 34,000 of them to Guantánamo Bay after a temporary court order had prevented their immediate repatriation. Approximately 10,000 of these were granted asylum and allowed to enter the USA (UNHCR, 1997c, p. 220).

A number of factors contributed to the failure of the USA to open the door as widely for Haitians as it had for Cuban refugees. The USA had a better relationship with the Haitian leadership and ties to Haitian economic interests (Mitchell, 1997a, pp. 52-4). Therefore, it had little desire to embarrass the Haitian Government by accepting large numbers of Haitian immigrants, many of whom were assumed to be fleeing for economic rather than humanitarian reasons. In addition, Haitians were subject to racial prejudice since they were black rather than Hispanic, a concern which has surfaced periodically in relation to this issue.

The door was closed again in 1992 just prior to the beginning of the presidential election campaign. This was made possible by a US Supreme Court ruling which upheld the right of the United States Government forcibly to repatriate those

interdicted at sea since they had not "entered" United States territory. While some critics argued that this ignored US obligations not to engage in *refoulement*, it enabled the USA to reinstate its earlier policy (Legomsky, 1990, pp. 181-90; Goodwin-Gill, 1993b, pp. 461-2). All Haitians stopped at sea were returned and the only means available for those seeking asylum became in-country screening, which exposed those using the process to possible persecution. As a presidential candidate, Bill Clinton opposed this policy, but he reversed his position upon taking office to protect his political base in Florida (Zolberg, 1995, p. 153).

Several shifts in policy occurred again in 1994. In June the USA set up an asylum screening process on a hospital ship in Kingston, Jamaica, but it was quickly overwhelmed by the number of applicants. This led to a US Government decision to send those who were intercepted (over 21,000) to Guantánamo once more. Following the restoration of Aristide to power in October 1994, most of them repatriated voluntarily to Haiti, although 4,000 were sent home against their will (UNHCR, 1997c, p. 220).

This must certainly have been a difficult issue for President Clinton since restrictions on the entry of Haitians were strongly criticized by the Black Caucus in Congress and by other civil rights and humanitarian organizations. Yet faced with opposition from those who wanted to limit immigration, Clinton was in a no-win situation. The almost obvious solution was to prevent the mass exodus at the point of departure so that the issue did not arise on the high seas or at points of entry in the USA. As early as 1993 he had promised to put more pressure on the military junta. Eventually, of course, Clinton took the lead in calling for and participating in the intervention, which restored the Aristide Government to power. This led to an immediate reduction in the flow of potential refugees, satisfying both sides in the domestic power struggle. But it also reflects the impact which domestic concerns regarding immigration and refugee issues had on the formulation of US foreign policy and the extent to which the United States could disregard the humanitarian or legal issues involved.

*Central America*

The factors noted above have also influenced US immigration and refugee policy toward Central America. Large numbers of immigrants and refugees have entered the United States from the Central American region, in particular Nicaragua, El Salvador and Guatemala. As Aristide Zolberg and others have noted, it is difficult to disentangle the economic and political factors which have gone into large-scale movements and virtually impossible to know how different approaches might have affected the outcome. What is clear, though, is that US policy toward these countries had a significant impact on what did happen throughout the region in the 1980s and 1990s (Zolberg, 1995, pp. 148-52 is the major source of data for this section).

In each of those countries economic and geographic factors undoubtedly affected the rate of migration. Limited economic development, changes in economic patterns (especially with regard to sugar production following the US boycott of Cuban sugar), and the fact that immigrants found easier access to the United States via a land route through Mexico contributed to migration movements throughout the 1970s. In the

1980s and 1990s US foreign policy and involvement in their internal affairs led to increased refugee flows and claims for asylum.

In Nicaragua, the Reagan Administration's support for the Contras in the 1980s and the Sandinista Government response to the Contra movement led to the flight of close to 500,000 refugees, many of whom sought protection in the United States. Since they were fleeing communist oppression, most had reason to expect a receptive response from US authorities. In the cases of El Salvador and Guatemala, refugees could not expect the same welcome.

In El Salvador the USA backed the Government against a left-wing insurgency during the 1980s and did not regard those leaving the country as legitimate asylum seekers fleeing persecution. Most Salvadorans entered the United States illegally and sought asylum only when confronted with the possibility of having to go back to El Salvador. Ultimately, when pressured by the government of El Salvador to limit repatriation of its citizens because of the economic strain it would place on the country, the United States found alternative solutions (the granting of Temporary Protected Status) to allow thousands of them to stay.

In Guatemala, United States support for the ouster of President Jacobo Arbenz in 1954 and subsequent aid patterns contributed to the emergence of a civil war which may have taken as many as 100,000 lives from 1966 through the mid-1980s. It took almost another decade before a fragile peace agreement was signed between the government and opposition forces in 1994. As a result of the conflict, close to a million people were internally displaced and another 200,000 may have fled the country. While the largest number of refugees settled in Mexico, thousands came to the USA, many illegally.

The rate of acceptance of asylum claims from Nicaragua, El Salvador and Guatemala continued to reflect the foreign policy considerations that had marked previous US refugee policy. Between 1984 and 1990, the USA granted 26 per cent of the 48,000 asylum requests from those fleeing the communist regime in Nicaragua compared to only 2.6 per cent of 45,000 claims from those fleeing the US-backed regime in El Salvador and only 1.8 per cent of 9,500 claims from Guatemala. In fact, the discrepancy in successful claims was so striking that it led to a case brought by the American Baptist Churches against Attorney-General Dick Thornburgh (the ABC Case) which led the Government to agree to rehear all of the asylum claims from El Salvador of those who had been in the country as of 19 September 1990 and of all those from Guatemala who had been in the country as of 1 October 1990 (*American Baptist Churches* v. *Thornburgh* 760 F.Supp. 796 (N.D. Cal. 1991)). Despite the settlement, there was little change in practice. By 1992, 16.4 per cent of 2,075 Nicaraguan requests were granted while only 1.6 per cent of 6,781 Salvadoran and 1.8 per cent of 43,915 Guatemalan requests were approved (Russell, 1995, p. 51).

The overall acceptance rate for the region was considerably lower than that for Cuba and Haiti. Geography may have contributed significantly to this difference. In the cases of Cuba and Haiti, the fact that most refugees could be interdicted prior to their arrival in the United States meant that interdiction could serve the same purpose as a negative adjudication process and keep the numbers down to satisfy domestic

concerns. In the case of Central America, since most of those fleeing the region entered by a land route, many illegally, and could not be interdicted prior to entry, restrictive asylum procedures served the function of limiting the numbers granted asylum status. In either case – interdiction or restrictive asylum procedures – refugee and immigration policy reflected foreign and domestic concerns rather than international agreements or obligations, except in those cases where humanitarian pressures became too great to ignore.

## US public opinion, domestic politics, immigration and refugee policies

The preceding section on historical patterns has referred to the impact of domestic and foreign policy interests on immigration and refugee policy. The United States' use of refugee policy as part of its Cold War strategy is fairly clear, but the role of US public opinion and domestic politics in this process is more complex and needs further explanation. The impact of public opinion has been most apparent with respect to two issues during the 1990s: the campaign for Proposition 187 in California from 1994 and the debate over welfare and immigration reform in 1996. A brief analysis of these issues points out the remarkable number and diversity of interests which have participated in the debate.

### *Proposition 187*

The debate over Proposition 187 began in early 1994 and continues to this day. The proposition was developed to a large extent by two former INS officials (Alan Nelson and Harold Ezell) as a reaction to the large numbers of legal and illegal immigrants whom they, and many other Californians, regarded as a threat to the state's economy and way of life. The debate on Proposition 187 was the dominant feature of the 1994 congressional and gubernatorial elections in California. Governor Pete Wilson became its most prominent supporter, but it spread to several other states and received national attention from both Republicans and Democrats.

In the 1990s, immigrants in California, both legal and illegal, received numerous benefits from the state including public education, health care, and other welfare services. Supporters of Proposition 187 argued that illegal immigrants placed a drain on the state budget, with education costs alone estimated by some at close to US$2,000 million. While both sides of the debate agreed that many immigrants came to California to find jobs, backers of Proposition 187 also felt that free public education and other welfare benefits served as a magnet for those who could cross the border.

The proposition called for the following changes in the treatment of illegal immigrants: enrolment in all public schools, colleges, and universities would be barred; parents or guardians of all school children would have to show legal residence and school administrators would have to report suspected illegal immigrants; non-emergency public health care, including pre-natal and post-natal services, would be denied to those who could not prove legal status; access to many state programmes which dealt with troubled youths, the elderly, the blind, and others with special needs

would be cut off; law enforcement agencies would be required to cooperate fully with INS officials; and penalties for the sale and use of fraudulent documents were to be increased (McDonnell, 1994).

Those who opposed the measure criticized it on several grounds. Restrictions on education would harm children, many of whom were born in the United States and thus were US citizens. In addition, such restrictions would violate a prior Supreme Court decision (*Plyler* v. *Doe*, 1982) which had declared that children of illegal immigrants were entitled to public education. Many critics argued that the requirement that health care officials report suspected illegal immigrants would lead to a reluctance on the part of many immigrants, legal or not, to seek medical assistance. This could have the long-term effect of spreading contagious diseases and cause even greater health problems for the community at large. Further, the requirements that health care officials, school administrators, and law enforcement bodies report suspected illegal immigrants would place them in the role of "big brother" and, in the case of health care officials, perhaps violate rules of confidentiality. Finally, the system envisioned by Proposition 187 could lead to various abuses and discrimination against legal residents and would be very difficult and costly to enforce.

Public support for the proposition was very high, reaching over 60 per cent in some opinion polls despite the fact that it was opposed by a large number of organizations including police departments, teachers and school administrators, medical groups, lawyers, human rights bodies, and representatives of minority groups. National political figures from both parties also opposed it, including, by the end of the campaign, President Bill Clinton, Vice President Al Gore, Attorney-General Janet Reno, and key Republicans such as Jack Kemp and William J. Bennett.

As opposition mounted, support for the proposition dropped to a ten point differential (51-41 per cent) with a few weeks left in the campaign, but a last minute surge in support allowed it to pass with a 59 to 41 per cent margin of victory in the referendum on 8 November 1994. The proposition was challenged immediately in the courts with at least eight cases filed by opponents hoping to block the measure. There is not enough space here to describe the various legal manoeuvrings that took place over the next two years, but the net result was that a series of federal district court rulings, primarily by Judge Mariana R. Pfaelzer, declared most of the major sections unconstitutional.

Judge Pfaelzer left the section on penalties for the sale and use of fraudulent documents in place, but ruled that public education restrictions did indeed violate the decision reached in *Plyler* v. *Doe* and that welfare services mandated by the federal government could not be cut off by the state. Underlying most of her rulings was the argument that the state was attempting to regulate immigration, a responsibility that belonged solely to the federal government. In a separate case, US District Court Judge Matthew Byrne Jr. noted that the measure might violate immigrants' constitutional right to due process since it did not provide for hearings before or after the denial of services. These rulings effectively blocked implementation of most of the sections of Proposition 187 until the 1996 legislation on immigration reform, discussed below, gave Governor Wilson and the state of California some room to

implement those sections which involved state programmes.

The political rhetoric that emerged during the campaign reflected the depth of feeling held by many. The proposition was referred to as the SOS initiative – "Save Our State." Dana Rohrbacher, a Republican congressman from Huntington Beach, California, stated: "If this doesn't pass, the flood of illegal immigrants will turn into a tidal wave, and a huge neon sign will be lit up above the state of California that reads, 'Come and get it'" (Miller, 1994). Other supporters noted that California "was becoming a third world state"; population shifts "have rapidly transformed once-familiar communities into strange and dangerous places where English is heard less and less"; illegal immigration was "part of a reconquest of the American Southwest by foreign Hispanics" (Martinez, 1994). Critics commented that the measure "would foster a police state mentality, in which legal residents are questioned simply because of their accents or skin colour" (Feldman, 1994, while several Mexican papers condemned the measure as "racist" (*The Los Angeles Times*, 9 November 1994).

Even though groups opposing the proposal spent more campaigning against it than those in favour and in spite of the extensive opposition to Proposition 187 from minority groups, lawyers, educators, medical practitioners, law enforcement agencies, members of the business community, and national political leaders from both parties, the Proposition was passed by a significant margin. While opponents of the measure were able to diminish its impact through the court system, that success did not limit the spread of the ideas underlying the Proposition 187 movement to other states or national politics. What the Proposition 187 campaign brought to light were the deep-seated values held by many Americans about immigration and refugee issues. Proposals similar to 187 were initiated in several other states (including Florida and Arizona) and concerns about immigration informed much of the debate over the 1996 immigration and welfare legislation as it made its way through Congress.

*The 1996 debate over immigration and welfare reforms*

After months of debate, fuelled in part by the Proposition 187 campaign, Congress passed the US Welfare Reform Act 1996 and, later that year, the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), which severely limited welfare aid for legal immigrants and signalled a more coordinated attempt by the government to stop the flow of illegal immigration. (See Mitchell, 1997a for a brief overview.) In addition, in 1997 a Federal Advisory Panel on immigration reform concluded a five-year study which resulted in several recommendations regarding the INS and how its various functions should be carried out.

Most of the legislation applied to illegal immigration. In the area of public assistance illegal immigrants became ineligible for most public assistance programmes financed by the Federal Government or states, in particular supplemental security income, aid to families with dependent children, Medicaid, and food stamps. Pilot programmes were to be set up in five states with high populations of immigrants to enable employers to verify the legal status of employees. The legislation provided for 1,000 new border guards and 300 new INS agents each year until 2002 to strengthen border control and investigate unlawful hiring and the smuggling of illegal immigrants; a 14-

mile triple fence was to be constructed along parts of the border with Mexico near San Diego, California. Penalties for fraud or the misuse of identification documents were increased (*The New York Times*, 1996b).

Several provisions of these measures were meant to limit legal immigration or make it more difficult for potential asylum seekers to enter the country. Those who sponsored legal immigrants now had to earn more than 125 per cent of the poverty level ($15,455 a year for a family of four in 1995) to ensure that new arrivals would not need welfare assistance. Anyone trying to enter the country without proper documentation would be subject to deportation. Those seeking asylum would have to prove a "credible fear of persecution" in an initial meeting with an INS asylum officer. The final legislation provided for a review hearing (within seven days) before an immigration judge. There could be no appeal against the judge's decision. Anyone representing a terrorist organization would be deported or denied entry. In addition, those ordered to leave would be held in mandatory detention until departure (*The New York Times*, 1996b).

Other legislation called for cutbacks in aid to legal immigrants in the areas of supplemental security income and aid to families with dependent children. Moreover, the increased requirements for sponsors meant that it would be harder for many immigrants to reunify their families and, since sponsor income would be used to determine eligibility, many legal immigrants would no longer qualify for Medicaid assistance (Vartabedian, 1996).

A few proposals which were later deleted from these measures echoed some of the issues raised during the Proposition 187 debate in California. Many Republicans wanted to pass legislation which would deny public education to illegal immigrant children. This proposal was later modified to allow those already enrolled to finish elementary or high school, but those moving on to the next level would have to pay tuition of $5,000 per year. Critics of the proposal raised the same arguments voiced earlier in California, noting that the bill violated the 1982 *Plyler* v. *Doe* decision. Eventually the issue was put into a separate measure which was defeated in the House of Representatives. Another proposal would have limited legal immigrants to 12 months of welfare benefits; those using more would have been subject to deportation. This proposal was dropped after opposition from the Clinton Administration.

An additional proposal would have required that asylum seekers submit their request for asylum within one month of arrival. It was intended to reduce "defensive asylum claims" made by illegal immigrants after they had been "caught", but was withdrawn after strong criticism from immigration lawyers who made the point that many asylum seekers could not get their case ready within that time frame given language barriers and the difficulties of finding legal assistance.

The overall levels of immigration were also subject to discussion with some congressmen proposing that the level of legal immigration be cut by 30 per cent after five years. This proposal was withdrawn after concerns were raised regarding the impact it would have on certain businesses that relied on skilled foreign labour and the effect it would have on family reunification efforts. Ironically, while Congress was in the process of discussing cutbacks in aid for legal immigrants, it passed a bill which

provided visas for 250,000 guest workers to satisfy agricultural interests in California, Florida and Texas, with much of the support for the bill coming from those most vocal against illegal immigration (Schmitt, 1996a).

While many of the issues noted above were the same as those raised by Proposition 187, the variety of participants was even wider. Several representatives of the House and Senate were very active in pushing for various reforms, most notably Senator Alan Simpson of Wyoming (Rep.), Lamar Smith of Texas (Republican chair of the House Immigration Subcommittee), and various representatives from California and Florida as well as other states. Several state governors originally supported these measures but later voiced concerns, especially when it became apparent that their states might suffer the loss of federal revenue in programmes for legal immigrants.

At some points the rhetoric became incensed. Presidential candidate Patrick Buchanan tied immigrants to declining living standards, the widening income gap, the evils of free trade, high crime, declining property values and the general sense that communities were veering out of control (McDonnell, 1996a). At a San Diego conference on immigration, activists complained that immigrants were "overwhelming schools and welfare rolls, trashing the environment, voting illegally in US elections – even acting as veritable double agents of Mexico". The central message of the Federation for American Immigration Reform (FAIR), one of the strongest advocates of cuts in legal immigration, was that "near-record levels of immigration are deforming the nation's character. The inexorable influx ... could have dire long-term consequences: overpopulation, rampant bilingualism, reduced job opportunities for the native-born, and demographic shifts that could result in dangerous ethnic separatism" (McDonnell, 1996b).

Critics of the reform proposals focused on two major areas. First, with regard to legal immigrants, they expressed concern about the humanitarian impact welfare cuts would have and the obstacles the new policies would present to family reunification. Second, with regard to those coming to the United States, they noted that changes in INS procedures, especially the expedited removal process, would endanger the rights of asylum seekers and subject them to arbitrary treatment and deportation by INS officials without sufficient judicial review of the latter's actions. Anthony Lewis, writing in *The New York Times*, described the immigration measures as an "extraordinarily vindictive piece of legislation" and also raised a question in the minds of many other critics: "Why should Congress choose this moment, a time of prosperity, to turn against our traditions and beat up on refugees and lawful immigrants?" (Lewis, 1996).

Apparently even some Republicans were asking themselves that question because many began to change their positions on the reform measures by the end of 1996. Three factors may have contributed to their shift in attitude. First, the party found that it was losing support among Hispanic and Asian-American voters, an issue that became even more important as many legal immigrants sought naturalization (which would also give them the right to vote) to avoid the loss of benefits which had been curtailed by the legislation. Second, one of the major proponents of immigration reform, Alan Simpson, retired from the Senate. His place on the Senate immigration panel was taken by a more moderate Senator, Spencer Abraham, a Republican from

Michigan. Third, the legislation itself may have satisfied the public demand for reform. President Clinton also expressed concerns about the legislation and vowed to seek repeal of some of the restrictions on benefits to immigrants (Schmitt, 1997a).

A new issue arose, however, by 1 April 1997 when provisions of the new law relating to deportation proceedings came into effect. The provisions affected primarily refugees from Central America, especially El Salvador, Guatemala, and Nicaragua, who had been granted temporary legal protection when they fled civil wars in those countries as discussed earlier. That grant had allowed them to stay in the USA, but prevented them from applying for permanent resident status even though some might have qualified. The new law required that applicants from this group seeking to avoid deportation must have 10 years residency in the USA and prove that their departure would cause severe hardship to members of their immediate family other than themselves. In addition, the time a refugee had spent in deportation proceedings would not count toward the 10 years of residence, making it virtually impossible for some to meet the required standards. This was a change from prior conditions which required only seven years of residency and considered hardship to oneself as a sufficient reason to defer deportation (McDonnell, 1997a; 1997b).

In addition, the new law repealed section 245(i) of the Immigration and Nationality Act 1965 which allowed immigrants, including those in the country illegally, to remain in the country while their application for legalization of status was being processed if they paid a one-time, $1,000 fine. The procedure had been developed to ease the workload on US consulates in other countries and provided approximately $200 million a year for the INS budget. Under the new law, immigrants would have to leave the country while waiting for their applications to be processed, even if this meant leaving family members behind in the United States. Moreover, given the backlog of cases, it might take several years for the processing to be completed. Further, anyone who had been in the country illegally for more than 180 days who left the country for any reason could be barred from re-entry for three years, even if they left simply to await the processing of their green card (residence and work permit); those who had been in the USA illegally for more than a year could be barred from re-entry for 10 years (McDonnell, 1997c; Ojito, 1997; *The New York Times*, 1997b).

There was widespread feeling among both Democrats and Republicans, as well as among immigration lawyers, representatives of Central American groups, and the Clinton Administration, that these measures were unfair to these refugees, many of whom had, in the words of Attorney-General Janet Reno, been “putting down deep roots in our nation and abiding by our laws” (McDonnell, 1997b). In addition, there was considerable pressure from Central American countries to reverse the law since they were ill-equipped to absorb large numbers of former refugees given their struggling economies. Clinton promised these governments he would seek a “fair solution” during a visit to Central America in May 1997 (McDonnell, 1997b).

As a result, Reno acted to suspend deportation until 1 October while the Clinton Administration prepared new legislation on the issue. The stay affected over 300,000 people from Central America. They would be allowed to seek to “block their removal” under the earlier, more relaxed “suspension of deportation” standards that existed prior to the new law. Reno noted that it was unfair to apply the 1996 law

retroactively to people who had arrived in the USA before 1996; Lamar Smith, Chairman of the House Immigration Subcommittee, claimed that the Administration had bowed to foreign pressures (McDonnell, 1997b). Prior to Reno's action, Federal Judge James Lawrence King had blocked the deportation of thousands of Nicaraguans and others until their cases could be heard, a decision consistent with Reno's action (*The New York Times*, 1997a).

After considerable manoeuvring the House and Senate agreed on a compromise measure which dealt with both issues: refugees from Central America and section 245(i). Central American refugees (approximately 50,000 from Nicaragua and 250,000 from Guatemala and El Salvador) were allowed to apply for permanent residence under the earlier, more lenient procedures, but in return cuts were made in the number of unskilled immigrant workers allowed entry per year. Section 245(i) was extended for the last time until 14 January 1998; anyone filing by that date would be allowed to remain in the country pending a decision on their residency status.

While this agreement was generally regarded as a victory for Central American refugees and immigrants seeking to use the procedure under section 245(i), some critics argued that the provisions of the law affecting Central Americans (dubbed the "Victims of Communism Relief Act") were unfair to Haitians who were not included in the bill. Others noted that the cut-off date for applications under section 245(i) would be a hardship on those who for various reasons were unable to file by the deadline of 14 January 1998.

The concerns about the implementation of IIRIRA were accompanied by criticism of the INS itself. These criticisms took various forms but generally revolved around the issues of how effective the agency was in controlling US borders, whether it was active enough in deporting those who had been convicted of felonies, how efficient it was in handling the backlog of asylum applications, and how fair it was in its treatment of those seeking asylum. In response to these concerns the Federal Advisory Panel charged with looking at the INS and immigration issues recommended sweeping changes in the administration of immigration and refugee policies. The panel proposed abolishing the INS and assigning its duties to other government agencies. Under the assumption that the INS suffered from "mission overload", the panel suggested that the Justice Department (the INS parent body) retain control of the border issues and removal of illegal immigrants; the State Department would handle immigration services and benefits including citizenship and asylum requests; and the Labour Department would continue to monitor wage and hour laws and be given the responsibility for enforcing rules governing the hiring of foreign workers (Schmitt, 1997b).

While several Congressmen supported the proposals, the Justice Department and INS expressed strong reservations, noting that the various functions went hand in hand and that the INS had just begun to make improvements as a result of the leadership of INS Commissioner Doris Meissner and an increase in the organization's budget which had doubled in four years to $3,100 million (Schmitt, 1996b). While these proposals are still under discussion, the INS has moved forward in carrying out the policies outlined in the 1996 congressional legislation. The reaction to these procedures and the reform proposals in general will be discussed below.

*The immigration and refugee policy matrix*

The US debate over immigration and welfare reforms since Proposition 187 has generally been consistent with the some of the literature on general perceptions of immigration. As Warren Zimmerman notes, US policy often reflects perceived threats to the US economy, culture, and foreign policy interests (Zimmerman, 1995, pp. 88-102). Concerns about jobs and welfare costs contributed to calls for the removal of illegal immigrants and restrictions on legal immigration. Only when business interests intervened was the Republican Congress willing to find exceptions to a policy of retrenchment. The perception that immigrant groups were a threat to American culture and homogeneity often resulted in a rhetorical rather than rational approach on both sides of the issue. Even after the end of the Cold War, the vestiges of anti-communism led to discriminatory policies in the case of Haiti and some Central American countries, policies which were reversed only after domestic and foreign pressures were brought to bear on the Clinton Administration.

While there may be some basis in fact regarding the impact of large numbers of immigrants, many studies conducted in the 1980s found little support for claims that immigration had negative demographic, economic, or social effects (Bean, 1997, p. 140). According to Papademetriou in a recent article in the journal *Foreign Policy*, many of these concerns were based on "myths and half truths" which had been elevated to the status of "conventional wisdom" (Papademetriou, 1997-1998, p. 15). He points out that various studies suggest that immigrants may, in fact, be a benefit to the host country's economic well-being not only through the taxes they pay and jobs they create, but through the energy, ideas, and entrepreneurial spirit they bring with them (Papademetriou, 1997-1998, pp. 18-25).

Not only may the collective wisdom on immigration and refugee issues be wrong and the distinction between different types of immigrants often blurred (Bean, 1997), but the debate on these issues has also been subject to many twists and turns – proposals put forth and discarded, compromises reached and abandoned, legislation passed and modified. If the debate has been anything, it has been inconsistent. This inconsistency should not be surprising, given the complex matrix of actors involved in the debate. Virtually every level and every branch of government in the US political system, along with numerous interest groups or non-governmental organizations (NGOs) have participated in the development of US policy (Teitelbaum, 1998).

Presidents have supported policy on the basis of ideology, foreign policy needs, pressure from other countries, or electoral goals. Within the administration the Departments of State, Justice and Labor are involved (even without implementation of the reform proposals outlined above) in various aspects of implementation. Dozens of congressmen have participated in the formulation of legislative policy representing every segment of the political spectrum. Governors and state legislatures have responded to budgetary concerns and public opinion to support and later call for the modification of federal legislation (Pear, 1997a). The courts have set legal precedent

(*Plyler* v. *Doe*), struck down legislation (Proposition 187), and contributed to modifications of administrative policy (the *ABC* case and restrictions on deportation).

Over 50 corporations or business groups sought to influence legislation on temporary workers. Over 200 business, immigration, and religious groups lobbied Congress about modifying policy toward refugees from the Caribbean and Central America with regard to changes in the 1996 legislation and section 245(i) (Schmitt, 1996b). And a popular movement begun by former INS officials in Orange County, California, resulted in substantial support for Proposition 187 and similar proposals in several other states.

All of the above took place while the number of immigrants refugees seeking entry into the United States remained at near record numbers, contributing to a continued backlog of several hundred thousand cases for the INS to handle. This situation highlights an additional aspect of the complexity surrounding immigration and refugee policy. While Congress or presidential administrations have developed policies which have frequently affected hundreds of thousands of immigrants or refugees with a broad stroke of the pen, the INS must deal with immigrants and refugees on a case by case basis. Yet it must do so in an environment that is subject to push and pull factors from a number of directions: Congress, presidents, Supreme Court decisions, interest groups, US domestic and foreign policy concerns, public opinion, intergovernmental organizations, and international and national guidelines. It is how the INS functions in such an environment that has the most immediate impact on immigrants, refugees, and asylum claimants. The next section examines various reactions to how well this process works and sets the stage for recommendations about how it might work more effectively.

**The INS, immigrants and refugees**

The response from outside the government to the INS reform proposals and new INS procedures used to carry out the 1996 legislation was varied, but collectively pointed to a number of problems regarding the manner in which immigration and refugee policies are implemented in the United States.

Numerous sources expressed concern regarding the reform proposals themselves. The Executive Director of the American Immigration Lawyers' Association noted that "[f]rom years of dealing with State Department officials ... 'we know that they are opposed to review of their decisions, have no mechanisms in place to assure due process of law and are ill equipped to deal with the volume and complexity of cases that INS must adjudicate on a daily basis'" (Pear, 1997b). An official at the UNHCR office in Washington DC commented that, given what the panel must have known about the performance of the State Department in dealing with asylum claims, "it was disappointing" to see that the reform proposals called for the State Department to resume responsibility for that area (UNHCR, 1998).

This view was highlighted by a recent US District Court decision in which Judge Stanley Sporkin found that State Department guidelines for its asylum officers in

consulates in various countries which relied on such factors as physical appearance or national origin were "unfair and unjustified". The case involved a former consulate official who claimed he had been dismissed for failure to follow guidelines which, among other things, directed officials to reject applicants who fell into certain categories: RK – Rich Kid; LP – Looks Poor; TP – Talks Poor; and LR – Looks Rough. In addition, the guidelines cautioned against granting visas to applicants from specific regions (Shenon, 1998).

Discussions of the reform proposals continue, although the Clinton Administration has indicated it does not support the sweeping reorganization suggested by the panel. INS Commissioner Doris Messiner has promised a "fundamental reform" that "would split law enforcement and immigrant-service functions, but keep both under her control" (Wilgoren, 1998). In the meantime, the INS has developed procedures to implement the 1996 legislation. The INS prepared an *Interim Rule on Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; and Asylum Procedure* (INS No. 1788-96). Many portions of the new rule codify earlier INS regulations, but some portions of the rule mark significant changes in procedure as mandated by the IIRIRA.

The rule adds a number of bars to asylum eligibility based on asylum claimants' past history including convictions for "particularly serious crimes", whether they had made previous unsuccessful asylum claims, whether they had delayed in applying for asylum (i.e. if they had been present in the USA for more than twelve months before applying), or whether they were considered a threat to the security of the United States. Further, if the applicant had come to the USA through another "safe" country, he or she could be removed to that country if the USA had negotiated bilateral or multilateral agreements to that effect. While at the moment the USA does not have any such agreements, this provision has the potential of removing large numbers of applicants if such agreements are concluded (Horne, 1997).

The *Rule* also lays out procedures for the expedited removal of aliens. Under these procedures anyone deemed inadmissible due to the lack of valid documents or possessing false documents may be removed unless the asylum seeker expresses a desire to file asylum or can show a "credible fear of persecution". In those circumstances claimants will be given an interview in which they will have an opportunity to make their case. Prior to the interview they will be given information about the interview process and their rights to assistance in that process. While waiting for the interview, the claimant may be held at designated detention centres (Horne, 1997).

The INS solicited comments from interested organizations by 7 July 1997; in response, UNHCR prepared a 35-page document commenting on various aspects of the *Interim Rule*. While the response dealt with asylum seekers in general, and in several cases was positive, many of the concerns expressed had direct relevance to the treatment of asylum claimants from Central America or the Caribbean since these regions provide a major portion of those who would be handled by the procedures outlined in the *Interim Rule*.

There is not sufficient space here to describe all of these concerns, but most of them

fell into two major areas: first, the extent to which the new policies were (or were not) in keeping with international guidelines and previous commitments on the part of the United States, and, second, the potential for arbitrary and unfair treatment of those who might put forth claims before asylum officials (UNHCR, 1997a).

With regard to international guidelines, UNHCR noted that those sections which allowed INS officials to deport claimants who had committed serious crimes (part of the expedited removal process) might contravene the 1984 Convention against Torture, ratified by the USA, which under Article 3 prohibits returning anyone, regardless of previous behaviour, if there are "substantial grounds for believing that he would be in danger of being subjected to torture". Perhaps more significantly, the procedures placed a heavier burden of proof on those who had entered the country without official documents or approval and gave them little recourse if they were ordered to be removed. UNHCR noted further that the 1951 Refugee Convention, the substantive elements of which the USA has accepted through its ratification of the 1967 Protocol on Refugees, states in Article 31: "Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who ... enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence" (UNHCR, 1997a).

Most of the UNHCR response, however, commented on the procedures which would be used in dealing with asylum seekers. Among the major points raised by UNHCR with regard to the "bars to asylum" were the following: (1) some individuals had committed crimes which were now classified as felonies and would be subject to deportation for minor offences (UNHCR therefore recommended a balancing test should be used to determine if such individuals were a danger to the community and, if not, they should be allowed to remain); (2) using the return to a "safe third country" option might violate rights to protection from torture or *refoulement* if those countries did not provide such protection themselves; and (3) the "extraordinary circumstances" guidelines which allowed applicants to apply after the 12-month deadline should be interpreted broadly, as should the notion of "changed circumstances", since many asylum seekers were not in a position to know they should apply for asylum immediately or were unable to do so due to financial conditions or personal hardship (UNHCR, 1997a).

While UNHCR agreed that the government could remove asylum seekers whose claims were "manifestly unfounded", the Office had several concerns about the expedited removal procedures as they applied to potentially legitimate claimants. On the surface such procedures were clearly spelled out, but they were subject to arbitrary interpretation, especially where asylum officers were not well versed in dealing with refugees who had suffered from persecution and, in some cases, torture. UNHCR was especially concerned that claimants be given appropriate guidance as to those procedures, orally and in writing, in a language they could understand; that information be available about how to contact UNHCR (as noted in Conclusion No. 8 of UNHCR's Executive Committee) or obtain legal assistance; that the standards for establishing "credible fear" not be too high; and that there be meaningful review of all expedited removal orders "given the consequences of a mistaken decision" (UNHCR, 1997a).

The guidelines provided to asylum officers and officials in charge of detention centres by the INS reflect most of these concerns (INS Detention, n.d.). What the guidelines cannot account for, however, is the manner in which individual officers carry out their interviews with asylum seekers. UNHCR commented on this in its review of the *Interim Rule*, noting that appropriate training of the asylum officers and judges was necessary to ensure that they could recognize an "indication of fear" and "non-verbal signals" (UNHCR, 1997a).

Concerns about the interview process have a long history, especially regarding the question of persecution and whether an applicant faced "serious and unacceptable risks to life or liberty if returned home" (Aleinikoff, 1991, p. 5; Hyndman, 1994, p. 247). A study published in 1990 reported that claimants were expected to meet an excessively high standard of proof, standards and rules were not clearly stated, inconsistent legal principles were applied, objective human rights assessments were discounted, restrictive evidentiary rules were applied, and adequate interpretation was not always available. The adjudication system was one of "*ad hoc* rules and standards" where "ideological preferences and ... political judgements" influenced the decision-making process (Anker, 1990, pp. 252-5; Hyndman, 1994, pp. 247-8). In a different study, David Martin suggested the need for specialized, well-trained professional adjudicators since so much reliance was being placed on one official (Beyer, 1992, p. 484).

New asylum rules which took effect in October 1990 provided for a larger asylum officer corps with improved training, better supervision, and a documentation centre (Beyer, 1992). UNHCR expressed support for these changes at the time (Helton, 1990, pp. 643-6). Nevertheless, seven years later, concerns about the quality of training and the fairness of asylum procedures remain as evidenced by the UNHCR response to the *Interim Rule* proposals (UNHCR, 1997a).

The INS, quite naturally, does not share this view. An official in the Los Angeles Asylum Office noted that the training and quality of asylum officers has improved "drastically" in the 1990s. Many of the officers have a legal background and virtually all have college degrees. Numerous outside speakers from the legal profession and humanitarian NGOs provide information on current laws and other issues related to the interview process. Asylum officers now have access to a resource centre and average about four hours of training per week. This official further noted that asylum officers now grant asylum to a majority of the cases they hear, in part because the standard of "credible fear" is not as stringent as the earlier "well-founded fear" (Los Angeles District Asylum Office, 1998).

Christine Stancill, a lawyer in one of Los Angeles' most prominent immigration law firms, concurs that asylum officials and immigration judges are well-trained and sensitive to the needs and concerns of asylum seekers and that a majority of applications will be granted. The problem lies with the inspectors who are the first INS officials a prospective asylum seeker comes in contact with at ports of entry (Stancill, 1998). It is these inspectors who have the authority to carry out the expedited removal process.

The guidelines provided to the inspectors by the INS for the expedited removal process are quite explicit:

> Because of the sensitivity of the programme and the potential consequences of a summary removal, you must take special care to ensure that the basic rights of all aliens are preserved, and that aliens who fear removal from the United States are given every opportunity to express any concerns at any point during the process. Since a removal order is subject to very limited review, you must be absolutely certain that all required procedures have been adhered to and that the alien has understood the proceedings against him or her (Bender, 1997, p. 303).

Nevertheless, according to Stancill, these inspectors are not as well trained or qualified as asylum officers; few have legal backgrounds, and fewer have college degrees. She believes their demeanour intimidates many prospective asylum seekers, making them reluctant to put forward what may be legitimate claims. In addition, despite claims to the contrary, applicants are not always given information in a language they can understand and the outcome of an interview may depend on whether the particular officer takes a "benefits" or "enforcement" approach (Stancill, 1998). Another immigration lawyer noted that these officials seem to be "trained to deny" (Perez, 1998).

UNHCR speaking in more general terms, has noted: "Regrettably, the 'front-line' staff employed by many governments – the officials whom asylum seekers first encounter when submitting their application for refugee status – are not always adequately equipped or trained to make such important decisions" (UNHCR, 1997c, p. 205). According to the INS, only 5 per cent of the 15,600 persons who went through expedited removal procedures "were referred to credible fear interviews" (American Immigration Law Foundation, 1997).

The concerns about expedited removal have now reached a US District Court in the case of *AILA* v. *Reno*, where several plaintiffs (individuals as well as organizations) have argued that the manner in which some inspectors carry out the expedited removal procedures violates standards of fairness, due process, and humanitarian treatment (ACLU, 1997; Lawyers' Committee, 1997). The court brief presented by the plaintiffs also argues that inspectors have gone beyond original congressional intent by applying the procedures to applicants who have appropriate documents simply because of a suspicion that there may be something wrong with the documents or through inaccurate assumptions about the intent of the applicant. Finally, the court brief raises the concern, consistent with that of UNHCR and the immigration lawyers cited above, that too much authority had been placed in the hands of inspectors who may act in an arbitrary fashion (ACLU, 1997). While these procedures have not been applied solely to applicants from Central America or the Caribbean, those groups have been affected most since they make up a larger share of the pool of applicants.

Another area of concern to the Central American and Caribbean regions, as discussed earlier, relates to the deportation of illegal immigrants who have overstayed their visas

or entered illegally and were required to leave the USA to apply for permanent resident status. The Clinton Administration responded to concerns in that area by returning to earlier standards regarding who was eligible to apply and by extending the deadline for those using the section 245(i) procedure until 14 January 1998. But the Administration has shown no inclination to relent on the deportation of those who have committed "aggravated felonies" and have just been released from prison, those who included false or inaccurate information about previous arrest records, or those who have served a sentence for crimes that were not considered aggravated felonies at the time of commission and who have been living in the USA for several years following the serving of their sentences.

While the majority of these deportees have come from Central America or the Caribbean, in many cases, they have established roots in the United States, have little attachment to their homeland, and will be forced to leave behind other family members. The loss of remittances which many of them send home will be an economic hardship for the country of origin.

The influx of criminal returnees has raised even more concern among Central American and Caribbean nations. This issue was the subject of a one-day conference, the Inter-American Dialogue, on 21 November 1997. Ambassadors from several countries in the region noted the disparity in treatment accorded Nicaraguans and Cubans compared, for example, to those from the Dominican Republic and Honduras; they also commented extensively on the negative impact criminal deportations were having on their countries. (In 1994 there were approximately 1,000 "criminal deportations" to the region; the number rose to around 50,000 in 1997.) This rapid increase presents a number of problems for the receiving country. Since the deportees often arrive with little advance notice from the United States, receiving countries are not prepared to handle large numbers of returnees. Aside from the difficulties of processing, the returnees also present problems of reintegration. Their presence exacerbates unemployment levels and may cause a drain on welfare services; those who have criminal backgrounds, especially in drug-related areas, pose threats to long-term social stability (UNHCR, 1997b; Mitchell, 1997b).

Several US officials and academics also participated in the conference. INS Commissioner Doris Meissner noted that the major reasons for the passage of IIRIRA were "(1) xenophobia, (2) a culmination of three decades of increases in legal and illegal immigration, (3) voter-support for government controlled immigration, [and] (4) the balancing of illegal and legal immigration" (UNHCR, 1997b, p. 8). Immigration lawyers suggested that the USA should be more helpful in notifying countries in the region regarding deportation, but a State Department official noted that the deportations would not be stopped and, therefore, these countries would have to help the USA develop better deportation procedures (UNHCR, 1997b, p. 5).

Several speakers commented on the need for greater regional cooperation to deal with the problem, including the possibility of establishing some sort of "regional temporary protection status." Finally, a few speakers noted that immigration policy was no longer just a domestic concern, but that it was also related to the foreign policy interests of the United States and, further, that the restrictionist approach that had dominated recent domestic discussions in the USA now seemed to be on the decline

(UNHCR, 1997b).

While this conference itself did not result in any changes in the IIRIRA or its implementation, it may be symbolic of changes to come. First, the participation of a variety of speakers including many from the USA suggests a growing awareness that immigration and refugee policy must be viewed from both domestic and foreign policy perspectives and should not be established or carried out on an *ad hoc* basis according to the pressures of US public opinion. Other countries, most of them with significant ties to the United States, are affected by US policies and the United States needs to recognize that fact in formulating its policies. Second, if those speakers who believe the restrictionist attitude of public opinion in the United States is receding are correct, then some time in the near future it may be possible to take advantage of the swing of the pendulum to formulate policies that take into consideration not just economic and cultural concerns within the United States, but the wider humanitarian and international issues that should also be part of that discussion.

If there is a possibility to reopen the debate, what recommendations can be made to international organizations, to Central American and Caribbean nations, the US Government, and the variety of domestic groups in the United States itself with regard to their role in that process?

**Some recommendations**

Nathan Glazer, commenting on US attitudes towards immigration and refugee patterns, notes that the United States is in an age of "identity politics" in which many Americans feel threatened by the assimilation of immigrants and refugees. Just decades earlier the attitude had been one of welcoming immigrants under the assumption that they would be assimilated into the American life-style; this was symbolized by the rededication of the Statue of Liberty in 1986. But restrictive legislation was initiated that same year in the form of the Immigration Restriction and Control Act (IRCA); this was followed by the debate on Proposition 187 in 1994 and the welfare and immigration reform acts of 1996. Glazer suggests these legislative acts were responses to US perceptions or fears as to whether immigrants and refugees will continue to be assimilated (Glazer, 1998 pp. 56-61). These perceptions include, first, a fear that newcomers will exacerbate problems in such areas as the economy, family ties, the environment, or crime; second, a belief that the availability of welfare encourages some immigrants to stay who might otherwise go home; and third, a concern that the American acceptance of multiculturalism and diversity, which encourages diverse groups to maintain their own cultures within the larger American culture, makes effective assimilation impossible (Glazer, 1998, pp. 61-3; 65-8; 71).

The logical response to these perceptions has been to restrict the number of people coming to the United States. That response, and similar actions in other countries, is disturbing in itself, but perhaps just as problematic is Glazer's suggestion that the perceptions regarding assimilation are not based on a factual or scientific analysis of the situation nor are they likely to be (Glazer, 1998, pp. 61-71). The perceptions correspond to what Papademetriou terms "myths" about the impact of immigration on US society.

Glazer is quite clear in pointing out that we do not have sufficient information at this point to make accurate judgements about the impact of immigration on the US economy or on social issues such as the family, crime, or assimilation in general. But he notes further that, although it might be possible to make a case that building schools for immigrant children will in the long run pay for itself when those educated children enter the labour force, "it will not be on the basis of such analyses that decisions on immigration are taken" (Glazer, 1998, p. 61). In short, he argues that it is the perceptions which count in the formulation of US policy, not the facts. This rather pessimistic analysis forms the starting point for recommendations regarding what to do about the current restrictive policies adopted by the United States towards immigrants and refugees, in particular those from Central America and the Caribbean.

*US public opinion*

Since the perceptions of the US public are a major influence on immigration and refugee policy in the United States, any attempt to modify legislation or administrative procedures must address those perceptions. Several recommendations seem obvious at this point, although many are already being tried in one form or another.

Those organizations interested in a more open or welcoming immigration and refugee policy from the United States will need to engage in an extensive and ongoing outreach programme to raise the awareness of the US public about the benefits (economic, social, and humanitarian) of such an approach as well as to dispel the myths that have arisen in recent years. Where US public opinion goes, Congress will often follow. At the international level, in an ideal world the United Nations and its agencies would not have to market themselves to member states or their publics, but as is apparent from the United States' non-payment of dues, not to mention the problems on the United Nations agenda, this is not an ideal world. The marketing problem applies to UNHCR as well.

Sadako Ogata, in her capacity as UN High Commissioner for Refugees, has spoken eloquently about the needs of refugees, the importance of financial contributions, and concerns about xenophobia which now characterize many governmental approaches in refugee receiving countries. The High Commissioner and many other UNHCR officials have spoken to numerous groups in the United States and elsewhere about these issues. The "Partnership in Action" (PARinAC) process, which was launched by UNHCR in collaboration with the International Council of Voluntary Agencies (ICVA) in 1993 to widen the dialogue between UNHCR and NGOs and improve responses to refugee problems, has initiated greater coordination between UNHCR and many of its implementing partners. Further, UNHCR's internal reform project, launched in 1995 and known as project Delphi, while primarily an internal process, has responded to the general concerns about efficiency and effectiveness within the UN system. In the United States, UNHCR maintains contact with a variety of groups interested in migration and refugee issues. But in many cases these efforts are like preaching to the choir; the audience has already been converted to the cause. Ogata's speeches may be covered in *The New York Times* or *The Washington Post*, but they seldom play in Peoria unless another refugee crisis has arisen.

UNHCR is not unaware of this problem. UNHCR's outreach programme is extensive. It works with the American Council for Voluntary International Action (Interaction) and a variety of NGOs in Washington; presents *pro bono* training sessions for immigration judges, asylum officers, asylum and immigration lawyers, and State Department officials; provides speakers from Washington and Geneva for universities, law schools, and other organizations; and distributes the magazine *Refugees* (35,000 copies in the USA), a newsletter, various posters and other informational materials promoting refugee issues. UNHCR also is working closely with USA for UNHCR to develop greater public awareness of refugee topics. In addition, UNHCR participates in a dialogue with NGO coalitions on legislation and interacts extensively with the INS which, according to one UNHCR official, has been "pretty responsive" to UNHCR concerns (UNHCR, 1998).

UNHCR's Washington office hopes to expand these activities by trying to develop support from policy or community elites and boards, through greater outreach to "generation next", and by disseminating information to organizations such as churches which can redistribute this information to their members, creating a multiplier effect.

But, however well intentioned these efforts may be, UNHCR faces an enormous challenge in trying to influence US officials and public opinion. As noted earlier, policy-makers in the USA include members of the executive branch, congressmen, state and local officials, and the Justice Department. Within the INS itself there are several district directors and three levels of asylum interviewers or adjudicators. There are hundreds of NGOs with some interest in immigration or refugee issues and over 100,000 educational districts across the country. Given the level of staffing, limited financial resources, and other priorities of its mandate, it is virtually impossible for UNHCR to maintain contact with, let alone have a significant influence on, all of these organizations.

Given this scenario, what can UNHCR do to influence US public opinion more effectively?

1. In a society which places its celebrities on a pedestal, UNHCR needs to find some celebrity spokespeople, much as UNICEF and other organizations have done; the Washington Office of UNHCR has already expressed some interest in this approach and USA for UNHCR (an organization devoted to promoting a better understanding of refugee issues and greater support for UNHCR in the USA) has also discussed this possibility.

2. USA for UNHCR has issued a list of speakers on refugee issues in various regions of the USA. The list, mostly volunteers, needs to be promoted and used more extensively.

3. Publications need to be more widely disseminated; excellent publications already exist such as the *Refugees* magazine and various information flyers along with such text books as *The Uprooted: Refugees and the United States* (Amnesty International, 1995), but the audience that receives these materials needs to be expanded, even if this means some additional budgetary allocations.

4. Those who support immigration and refugee efforts need to be encouraged to respond to newspaper stories, opinion pieces, or letters to the editor to counter some of the myths which are often put forth as fact. While UNHCR officials and others have done this occasionally in New York or Washington, it does not seem to occur often in other sections of the country where public opinion is formulated.

5. The ideas embodied in the PARinAC process could be applied more broadly to the United States. While coordination with NGOs has focused primarily on those acting in refugee crisis situations, cooperation with NGOs in the United States could be increased as well. Work with specific organizations such as USA for UNHCR and various foreign policy groups is ongoing, but cooperation with Amnesty International, which is now looking into refugee situations in the United States, and various lawyers' groups could be expanded. An annual conference of representatives of these various groups could be held to regularise communications and the dissemination of information and to develop strategies of outreach to the public at large.

6. Finally, UNHCR itself must recognize that additional resources and staff may have to be devoted to public outreach to promote either the direct involvement of UNHCR or to support the voluntary efforts of others who might be willing to assist in carrying out the recommendations noted above. The US political system is just too big and too complex for UNHCR to be able to reach out effectively to all constituents given the amount of staffing and resources currently available.

Such actions could prove fruitful. In a discussion which categorizes those who favour restrictionist immigration policies in the United States, Peter H. Schuck, in a more optimistic appraisal than that of Glazer, suggests that most Americans are "pragmatic restrictionists" who could be moved by "argument and evidence" to change their views on immigration (Schuck, 1998, p. 245).

The recommendations noted above have focused primarily on UNHCR, but there is nothing inherent in them that would not apply to the International Organization of Migration, and certainly coordination between the two organizations would be appropriate to try and raise public awareness about these issues in the United States. Cooperation between these two organizations is well established in other areas (Goodwin-Gill, 1993a).

*The Immigration and Naturalization Service*

US public opinion is not the only influence on government policy. Schuck argues that "national political leaders, the media, prominent commentators, business executives, and other elite groups tend to support immigration more than the general public" (Schuck, 1998, p. 249). Efforts to influence US immigration or refugee policies must, therefore, continue to be directed at those constituencies. US behaviour should be monitored in light of international guidelines; dialogues between US officials and representatives of various organizations should continue and should encourage the integration of immigration and refugee issues into long-term planning rather than treating them as *ad hoc* problems which receive attention only as crises arise.

One area which has surfaced as a result of the 1996 reforms where action does seem appropriate involves the implementation of the expedited removal process. Earlier concerns about improving the training and sensitivity of asylum officials have been addressed to some extent, but the problem of dealing quickly with the large numbers of asylum seekers and other immigrants seeking entry into the United States is now being handled at a lower level, the inspectors who serve as the first "line of defence" in the INS process. Among the actions UNHCR or other organizations might take in this area are the following:

1. Push for the same kind of improvements in the training and quality of inspectors that have taken place with regard to asylum officers.

2. Explore ways to cooperate with INS officials to ensure that other procedures are carried out according to international standards and INS guidelines. These could include efforts to ensure applicants have access to legal assistance, resource materials (in their own language), and adequate interpretation at all stages of the asylum-seeking process. In addition, UNHCR should continue to encourage the INS to allow UNHCR or designated NGOs to monitor secondary inspections of asylum seekers (those conducted by inspectors). UNHCR does not currently have the staffing to monitor these inspections. This would be similar in principle to the system used in Denmark where the five-member Danish Refugee Appeals Board includes representatives of the Danish Refugee Council and the General Council of the Bar and Law Society. As a member of the Appeals Board, the Danish Refugee Council itself is empowered to review cases the Danish Immigration Service has decided are "manifestly unfounded" and can refer cases where it disagrees with such decisions to the normal asylum assessment process (Vested-Hansen, 1998, pp.8-10). Improved training and greater compliance with procedures should enhance the success rate of applications for asylum seekers from Central America and the Caribbean who are often the victims of unfair or inadequate processing of claims.

3. Consider organizing meetings or seminars for immigration judges, asylum officers, asylum inspectors, and their supervisors from across the country in order to promote more consistency in the implementation of INS procedures. This already occurs in some locations, and asylum officials seem receptive to such activities.

4. While working to improve procedures to support legitimate asylum claims, continue to recognize that some asylum claims are manifestly unfounded. UNHCR's request to its Executive Committee to examine the phenomenon of abusive asylum

claims (UNHCR, 1997b, p. 4) must be followed up and the results disseminated to appropriate organizations. In addition to improving the overall process, such actions should enhance UNHCR's credibility with US officials who may regard it as biased regarding refugee issues.

5. Until the changes noted above occur, continue to push, on humanitarian grounds if for no other reason, for a more limited use of detention for asylum seekers and for better treatment of those held in detention or those awaiting their first interview. Better treatment for those waiting for their initial interview with an inspector would include access to assistance, adequate translation support, elimination of the use of shackles, and access to toilet facilities upon request (Stancill, 1998; ACLU, 1997). Better treatment for those in detention would include more open and better equipped detention centres and possibly the use of local NGOs to sponsor or monitor those being held in detention (UNHCR, 1997c, p. 207; Cleland, 1998).

These recommendations require a proactive approach from UNHCR as well as money and staffing. They may also go beyond what some regard as the normal relationships between UNHCR and governments on protection issues. If US officials would be willing to invest the time in promoting such interactions, however, both the USA and UNHCR could spend less time on day-to-day procedural concerns and could devote more time to long-range planning, especially at the regional and international levels.

*The United States and regional cooperation*

Zolberg has suggested that immigration policy in the USA has been driven primarily by domestic concerns, while refugee policy has been shaped by ideology and foreign policy interests (Zolberg, 1995). Now, however, many officials in the USA recognize that immigration policies are no longer solely a domestic matter, and that Cold War conditions which governed the approach to refugees and asylum seekers no longer apply. Thus, it would seem to be an appropriate time for the United States to coordinate its approach to immigration and refugee policies by taking account not only of internal domestic issues, but the impact of external factors. With regard to Central America and the Caribbean, the USA should be encouraged to take a more active role in regional planning and discussions of immigration and refugee issues. Refugee flows and large scale immigration often reflect short-term crises that can only be solved by long-term planning and commitments to economic growth, development and post-conflict peace-building.

Developing an integrated policy, however, will not be easy. As one recent study notes:

The formulation of future US immigration policy confronts obstacles more complex than any it has ever faced. The task is to develop a nuanced immigration policy that gives recognition not only to the realities of difficult domestic labour markets, contradictory affirmative action policies, and financially over-burdened state and local governments but also to the emerging fact that the immigration policies of developed countries increasingly involve environmental, developmental, and foreign policy implications as well (Bean, 1997, p. 148).

Calls for cooperation between the United States and its regional neighbours are not new; they have been proposed by numerous scholars, representatives of international organizations, as well as by representatives of Latin American nations at the recent Inter-American Dialogue (Balian, 1998; Mitchell, 1997b; Papademetriou, 1997-1998; UNHCR, 1997b). New is a willingness on the part of the US Government to participate (UNHCR, 1997b, p. 8). The US Government has been participating in the intergovernmental Regional Conference on Migration (the Puebla Group) consisting of governments from North and Central America since 1996. It is also active in the Intergovernmental Consultations on Asylum, Refugee and Migration Policies in Europe, North America and Australia (IGC) which are headquartered in Geneva. Among the issues which have been or should be discussed in these and other meetings are the following:

1. *The need for cooperation between neighbouring states.* As Papademetriou points out: "[I]nvesting in the bilateral relationship can reduce problems and yield benefits. As the world becomes increasingly interdependent, might it not be time for nations to think about codifying acceptable guidelines on the treatment of one another's nationals?" (Papademetriou, 1997-1998, p. 29)

*2. The impact of trade policies and agreements such as the North American Free Trade Agreement (NAFTA) on immigration flows.* The general assumption appears to be that these agreements will reduce immigration flows in the long run, but that immigration may increase in the early years of such agreements. If so, US planners must not overreact to short-term effects and will need to explain the overall impact of such measures more effectively to the American public.

*3. The possibility of using temporary safe havens or temporary protected status again in the future.* Discussions on these topics have grown out of concern over the treatment of Cuban and Haitian refugees, as well as the realization that new refugee emergencies could arise at any time (UNHCR, 1997b, pp. 6-7). One such proposal has been formulated by the Open Society Institute and includes recommendations on reception of refugees, ceilings on the number accepted by any one state, the conditions and length of stay, and the creation of a regional centre (Open Society Institute, 1995, pp. 6-7). A similar approach would be to coordinate efforts along the lines of the Comprehensive Plan of Action (CPA) used in south-east Asia or the process set in motion in Central America by the International Conference on Central American Refugees (CIREFCA) in 1989 (Balian, 1998, p. 13). Getting US support for such an approach and reaching agreement on the variety of issues would be difficult, but should not prevent discussion of the issues (Balian, 1998, pp. 12-18).

*4. The means of dealing with the impact of US deportations on receiving countries.* The United States must recognize that, however justified these deportations may be, its policy must take into account the economic and social consequences of returning deportees, sometimes with little notice, to countries in Central America and the Caribbean. While the deportations may serve short-term goals regarding immigration within the USA, they may have negative long-term consequences for others. President Clinton's recent visit to the region and the Inter-American Dialogue are positive signs that increased cooperation could occur.

*5. The need for long-term economic assistance to the region.* Virtually all macro-level studies of immigration and refugee issues note the importance of economic assistance in dealing with the root causes of poverty and conflict which often give rise to migration and refugee flows. Unfortunately, the end of the Cold War followed by the apparent resolution of conflicts in El Salvador, Guatemala, Haiti and Nicaragua, may have led some policy makers to place development assistance to Central America and the Caribbean lower on the agenda. Yet this is precisely the time when such aid might be of the greatest assistance. If applied effectively, such aid could reduce emergency migration or refugee flows and enable planners to develop long-term strategies to deal with more "acceptable" forms of migration such as family reunification or the movement (in both directions) of skilled workers.

*6. The means by which countries in Central America or the Caribbean could limit, in appropriate ways, illegal immigration into the United States.* This could occur through bilateral or multilateral arrangements (Zimmermann, 1995). Greater development assistance along with cooperation in some of the other areas noted above could lead US neighbours to be more supportive in efforts to restrict illegal immigration. Given their current economic situations and US policies which have neglected their concerns, these countries, especially Mexico, have had little reason to be as cooperative as the USA would like, but in the long run, both sides would benefit from a more integrated and regional oriented policy approach to this issue.

*7. The means by which countries in Central America, the Caribbean, and neighbouring regions can develop a stronger voice so that the United States cannot dominate the discussions in a hegemonic fashion.* The intergovernmental Regional Conference on Migration (Balian, 1998, p. 11; Mitchell, 1997b, p. 13) and the recent Inter-American Dialogue are examples of how this process might work.

These recommendations are not new, will not bring immediate results, and may not work in the long run. Balian notes that a major difficulty in any regional planning will be to get the USA on board (Balian, 1998). Mitchell points out that many of the approaches to limiting illegal migration (increased border controls, employer sanctions, development support, and negotiations) have yet to prove effective (Mitchell, 1997a, pp. 63-70). But to continue with *ad hoc* policies which respond only to crisis situations will be even less effective and mark a failure on the part of the international community to live up to its obligations.

In addition, it must be recognized that the United States and its relations with Central America and the Caribbean are only one piece of a much broader international puzzle. As Myron Weiner and Rainer Münz suggest in the conclusion of their study of US and German policies toward countries of origin, policy makers in the West must be cognizant of the impact of migration and refugee flows on developing countries (both sending and receiving) and how their policies may influence those movements (Weiner, 1997, p. 355). Finally, efforts to bring together a variety of participants, such as the symposium on international migration and development, need to be expanded, and those countries which have begun to pursue a more restrictionist policy should be encouraged at least to explore the approaches of those which have been more open, such as Australia, Canada, Denmark, or New Zealand, to see if some common ground exists for developing a more consistent and more humane response to

the needs of immigrants, refugees and asylum seekers.

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