



## **The U.S. Refugee Admissions Program: Reforms for a New Era of Refugee Resettlement**

Bureau of Population, Refugees, and Migration

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### **Introduction**

The US Refugee Program is at a crossroads, and many people would say it is in crisis. The most obvious symptoms are a steep fall-off in refugee admissions for fiscal years (FY) 2002 and 2003, to below 29,000 annually, even though the Presidential Determination for each of those two years authorized 70,000 admissions. (For a comparison, actual refugee admissions for the previous five years averaged almost 76,000.) Because FY 2002 began 20 days after the September 11 terrorist attacks, observers often attribute the program's travails to the enhanced security measures introduced in response. Those measures played a role, but they are by no means the only source.

In fact, FY 2002 brought the United States to the end of several familiar elements of past refugee programs, placing us into a significantly new context for U.S. refugee resettlement -- a difficult transition whose dimensions were obscured by the September 11 responses. Largely gone are the massive, steady, and more predictably manageable programs that had dominated U.S. admissions since the passage of the Refugee Act of 1980 -- the Indochinese and Soviet programs, followed for a few years by programs for those fleeing the former Yugoslavia. We are in a distinctively new era for refugee resettlement, and we need to recognize the true dimensions of the change.

For the future, refugee admissions will be characterized by the combination of many smaller-scale resettlement programs, mostly originating in difficult locations that will shift from year to year, each presenting significant and distinct policy challenges. The challenges consist not only of processing and logistics, though these are substantial, especially in an era of heightened security concerns. They consist also -- and more importantly -- of the complicated steps required to achieve agreement among the relevant U.S. government (and often international) players on the groups and individuals that should be the beneficiaries of resettlement. A sensible system that does not make it too hard to say yes to new priority categories for resettlement is absolutely essential to our post-Cold-War refugee admissions program. Without that development, even expansive gains in operations, including in the security screening system, will not achieve significantly improved admissions.

The refugee resettlement system must evolve in response to this distinctly new climate, in both outlook and operations. Several useful changes are in the works, but others are missing or underdeveloped. This report, commissioned by the Bureau of Population, Refugees, and Migration (PRM) in the U.S. Department of State, represents an effort to describe the program, identify the problems and challenges, and provide concrete suggestions for improvements, both short-term and long-term.

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### **Chapter I The Context**

Critique of the past two years' admissions performance often takes this form: "There are 12 million refugees in the world. Why can't they find 70,000 to admit?" To many it seems an obvious question, and its unspoken premise suggests a lack of will, lack

of effort, or outright resistance to a vigorous resettlement program on the part of those running the system. The question is well worth asking, but the underlying premise is not fair to the dedicated individuals who work in the various offices responsible for pieces of the admissions system or to the real dilemmas that must be faced honestly in making decisions to resettle. There are often good reasons *not* to resettle particular populations, or at least to defer any resettlement until other possible responses to the situation have been fully explored and allowed to develop. Moreover, even when a decision to resettle a particular group is made, actual movements may be delayed for lengthy periods because of unforeseen political complications or simple bad luck. Many of these factors -- combined with the historical reality that we now lack a large and steady anchor resettlement program from a particular region that can be counted on to bring tens of thousands as part of an established pipeline -- help to account for low admissions totals in FY 2003.

Section A of this chapter explores these genuine barriers and obstacles to resettlement, as well as factors that might properly counsel against a resettlement initiative in specific circumstances. Critics of the US refugee program often underestimate or obscure these challenges, while government officials take umbrage at critiques that do not do justice to the constraints under which they labor. In fact, refugee migrations and refugee resettlement represent highly complex phenomena. Resettlement decisions must take careful account of the inherent dynamics of refugee situations, which vary greatly from place to place. A candid and rigorous look at those challenges is not antithetical to the vital humanitarian aims of refugee resettlement; in fact, it is necessary in order for the program to serve those aims more effectively.

But to acknowledge these points -- to be more judicious in giving them their due weight -- does not require surrendering to them. Reasons not to resettle a particular population may be legitimate, but they are rarely decisive. A major flaw in the current system is the lack of an institutional framework that effectively brings to bear the good reasons *in favor of resettlement*, at least for specific and carefully chosen groups, so that balanced and sensible choices can be reached to produce a US Refugee Program on the scale determined by the President at the beginning of the fiscal year. Section B therefore begins an examination of the reasons for this flaw, dissecting an ambivalence about the aims of the system and about the outlook that should govern. It recommends an end to this ambivalence and firm acceptance of objectives that go beyond resettling those in immediately life-threatening circumstances -- adopting an outlook that treats the annual refugee number set by the President as a goal and not a mere ceiling. If such a shift is accepted, then it becomes easier to determine how to reshape other operational elements of the system -- an issue that is taken up in detail in later chapters.

## **A. Obstacles, barriers, and possible reasons against resettlement initiatives**

### ***1. Pull factors, migration choices, and host country considerations***

Decisions to resettle have political impact, arousing political support and political resistance, both domestic and international, that must be worked through before deciding whether, and if so exactly whom, to resettle. A key feature is this: *The refugee populations that make up the estimate of 12 million refugees worldwide are not a static pool* that can simply be dipped into to ladle out however many the United States or other resettlement countries might want to admit. The act of resettling, even the act of openly discussing a major resettlement program, affects both future migration and the attitudes and actions of existing camp populations. It can affect the politics in the country of origin as well as the country of asylum, and it can have unintended consequences in discouraging other -- and sometimes superior -- durable solutions. Effective resettlement must take into account each of these elements, realistically and tough-mindedly.

Refugees are not a breed apart. Nearly all have had prior settled lives, often thriving existences -- as farmers, merchants, herders, teachers, businesspeople, students, government officials. They are not just the passive objects of domestic or international policy -- the helpless or inert victims -- often portrayed in the media. They are subjects, persons with objectives and life-plans and the capabilities to take action to better their own lot if given a reasonable chance. Most never expected to find themselves tagged with the label of refugee, and most find the restrictions and boredom that are characteristic even of a well-run refugee camp stifling and diminishing.

Although we often speak of refugees as having been driven from their homes, in fact the exit decision is rarely so stark. Short of truly desperate emergency evacuations, refugees exercise choice over whether and when to leave and, to some extent, where to go. Moreover, the escalation of dangers is often gradual. Conditions deteriorate in the home country -- economically, politically, militarily, ethnically, or a combination. At some point the conditions (threats, persecution visited on associates, ethnic conflict, the depredations of a civil war) reach a point that an individual or a family or a clan or a village decides to pick up and leave. They may head for another part of their own country, becoming internally displaced persons (IDPs), or they may cross an international border, definitionally a key element in their being counted as refugees. But in most such situations, even when the dangers are great or the persecution widespread, others choose to remain behind -- based on courage, optimism, folly, patriotism, inertia, or simple devotion to their own home or farm or village..

Where refugees go and when they leave is obviously influenced by their understanding of what awaits them in the destination (measured against the dangers if they remain at home). This is the source of one of the major complications in resettlement

decisions. Dangers in the home country are always matters of degree. Many choose to stay in familiar territory and cope with risks, even severe risks -- particularly if life across the border appears to offer little prospect for a meaningful existence for oneself and one's children. But if that cross-border picture changes because the chance for resettlement out of the camps to a prosperous and stable country is introduced into this mix, the dynamic is altered. If the resettlement offer is perceived as open-ended, then the potential refugee's calculus for departure can be significantly influenced. Resettlement offers therefore can create a magnet effect -- what the office of the UN High Commissioner for Refugees (UNHCR) tends to call a "pull factor." Carelessly managed resettlement, even on a large scale, may actually wind up increasing the size of camp population, if out-migration fails to keep pace with new arrivals drawn primarily by newly enhanced chances for resettlement. To say this is not to disparage the real dangers that propel refugee movements. It is simply to recognize that human beings often choose to put up with dangers. Refugee flight is rarely a clear-cut decision, and refugees consider more than just the condition of their home territory when deciding to leave.

Host countries are certainly aware of these effects. They (or at least certain key factions within the host government, such as the military) may resist the beginnings of a U.S. resettlement program from their country, precisely because of fears about the potential for new migration -- migration that otherwise would be deterred by knowledge of the conditions of camp life. U.S. ambassadors too may be acutely sensitive to such concerns or factions within the host government, and they may weigh in with this viewpoint forcefully early in the internal U.S. government process for considering new resettlement initiatives.

In the large refugee programs of the past, for reasons specific to each, the magnet effect was of more limited concern, at least in the most important stages. In Indochina, the United States felt a sufficient historical responsibility for the persons fleeing that early moves were essentially premised on the idea that this country and its international partners would find room for all who escaped. When the numbers leaving Vietnam moved upward in the late 1980s after an earlier decline, however, the international community became more openly concerned about pull factors. In response, it introduced, through the Comprehensive Plan of Action (1989), a screening process, coupled with potential returns, that was meant to reduce further outflows. With the Soviet program, a similar Cold War dynamic undergirded a broad welcome for virtually all who could manage to leave. Significantly, in that context, any magnet effect was de facto counterbalanced by the continuing presence of Soviet exit controls. When the Soviet Union disbanded, some observers predicted huge new outflows, especially to Europe. Had they occurred, resettlement programs would probably have had to adjust in response. But flows on that scale did not materialize, and the continuing U.S. resettlement program from the former Soviet Union experienced a natural decline during the succeeding decade, despite specially generous eligibility standards introduced by the Lautenberg Amendment in 1989.

As that experience indicates, predictions about pull factors are not an exact science. Moreover, several deliberate tools can be used to minimize this impact -- to be explored in Chapter \_\_\_ below. But any responsible system must factor the risk of a magnet effect into resettlement decisions. In any event, it can certainly be expected that host governments, as well as the State Department's regional bureaus, among others, will often press this consideration during debates over new resettlement initiatives. Obviously, in the absence of host government support or at least acquiescence, resettlement processing cannot take place.

## ***2. Effects on other possible durable solutions***

Resettlement also has an impact on the decisions of existing camp populations. Voluntary repatriation is usually considered the most desirable of the three main durable solutions for refugee crises (the others being local integration in the first-asylum country or distant resettlement). Over the past 15 years, international action has helped broker the settlement of many long-standing civil wars, permitting wide-scale returns. Other international initiatives during this period, including the modestly increasing use of humanitarian military intervention, have helped to remove abusive regimes from power, allowing the regime's past targets to repatriate in relative safety. Successful repatriation has reached a surprising and gratifying level that few might have expected in 1990, and resettlement should not serve to discourage or hamper such outcomes.

Repatriation often requires careful negotiations involving the host country, the source country, and various international actors (including the UNHCR), and it must take account of reactions by the refugees and their leaders. Initiatives to this end may be skewed or complicated if a resettlement country introduces an offer of resettlement for camp populations at an inopportune moment.<sup>2</sup> Similarly, negotiations to achieve agreement on local integration could be disrupted if resettlement elsewhere is suddenly on offer. UNHCR has on several occasions counseled against resettlement for given populations that otherwise might seem eligible for U.S. resettlement, precisely because the Office believes that negotiations might soon open the way for voluntary repatriation -- or indeed for local integration. Of course, such predictions are themselves always open to debate, and they can sometimes be employed simply to avoid taking a fresh look at a wider range of possible solutions. But they cannot be simply dismissed.

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<sup>2</sup> Resettlement possibilities, of course, are not to be wholly excluded in these circumstances. Sometimes a modest opening for distant resettlement of "residual populations" can provide a critical ingredient in repatriation arrangements agreed upon by a host

government and the government of the source country. (These are small numbers of persons who for some reason are unlikely to find a safe place in the repatriation program -- for example, families that are based on ethnically mixed marriages.)

### **3. Other political effects, including equity concerns**

Some refugee situations do not lend themselves to resettlement for other reasons. Possibly the largest single group among the conventional total of 12 million refugees worldwide consists of an estimated three million Palestinians. Both the politics of the host countries and of the United States have precluded any significant resettlement program for Palestinians. Other populations, though lacking the same political obstacles, may present other difficulties. For example, the scale may simply be so large that resettlement could never conceivably produce a durable solution for more than a tiny proportion of the population (this was the judgment for many decades regarding over \_\_\_ million Afghans displaced to nearby countries).

Viable resettlement must then be based on a transparent selection principle that both is manageable logistically and does not worsen relations among various subgroups that will remain in the camp population. Some such factors can be challenged on equity grounds: is it really fair to resettle, say, the few who have made their way to a more easily accessible processing site, while ignoring others who face graver dangers in other locations? Family or other close ties to the United States could be one possibility as a basis for selection, or length of stay in the camps. Still, determining those features is often difficult, particularly if the chaos of flight or the disorder of camp governance has prevented the maintenance of reasonable civil records (births, deaths and marriages), or in the absence of a reliable registration system that can be used to demonstrate the length of a refugee's stay. And if the selection grounds are not clear or easily determined, the risk of a pull factor rises. On the other hand, the equity concern has sometimes been significantly overplayed in debates over U.S. resettlement. Taken to its extreme, it would bar virtually any resettlement -- unless all who are similarly threatened can be included, a virtually impossible standard to meet. The inability to respond to all need of a certain kind must not be allowed to prevent even those responses that are feasible.

### **4. Fraud and corruption**

In any selective system, fraud is an inescapable problem. Out of desperation or manipulation (or based on the coaching of an entrepreneur charging for such advice), applicants for resettlement may tailor their stories to fit what they understand to be the requirements of the program. Resettlement, after all, usually represents major gains in life prospects, often well beyond even what the nondisplaced local population living near the refugees can claim. The temptation therefore is great, and some programs, particularly family-based programs in West Africa, have been marred by a high level of fraudulent claims. The temptations have also sometimes resulted in damaging corruption or manipulation on the part of certain UNHCR officials or others in a responsible role. On occasion, resettlement from some locations has been suspended until UNHCR dealt with the issue. It is important to note that UNHCR has indeed taken serious steps in response, and is working to implement genuine checks and balances to counter corruption in new management and registration systems. Moreover, US government initiatives over the last two years, many developed in close coordination with refugee NGOs have provided important new tools to detect and deter fraud. Continued vigilance is necessary, but tools are available to address fraud, and the agencies involved are equipped to refine their techniques as needed.

### **5. Definitional issues**

A further factor complicates efforts to agree on 70,000 refugees to resettle out of a conventionally counted world total of 12 million. The popular conception of refugee differs from the legal definition governing U.S. refugee admissions. That legal definition, based on the 1951 UN Convention relating to the Status of Refugees, defines a refugee as a person who is outside his or her country of origin owing to a "well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion." When strictly applied (as it is in the U.S. asylum program, which is administered solely in U.S. territory), the definition requires a fairly specific showing that the person, or a group with which he or she is identified, is likely to be targeted for persecution on the basis of one of the five grounds. Civil war and domestic disturbances, without more, do not provide a basis for meeting the Convention refugee definition. Those who flee even intense fighting are not covered, unless the combatants had one of the stated reasons for targeting the individual or group that has fled. Even though the definition is usually applied less strictly in the overseas refugee program than for purposes of asylum, overseas officers still must find some plausible basis in the information provided during the interview or other circumstances affecting the applicant for making the legally required findings.

Some persons readily labeled refugees by the press and public cannot make this showing. That is, the popular conception of "refugee" is more expansive than the legal definition. Quite understandably, the popular view tends to include anyone who has crossed a border because of real dangers in the home country, whatever their precise nature. Flight from civil war is sufficient, and flight from a country where persecution goes on, without any close attention to whether the individual can show good reason why he or she is likely to be targeted (much less whether the harm would be based on one of the five Convention grounds), can also result in application of the label. Moreover, in many circumstances, broader *legal* definitions than the one

enshrined in U.S. law are employed. For example, the Organization of African Unity's treaty on refugees embraces both the UN Convention definition and also those who have been compelled to leave their homes "owing to external aggression, occupation, foreign domination or events seriously disturbing public order." UNHCR uses this definition for much of its work in Africa. It is also authorized, in some settings, to use group-wide "prima facie determinations" of refugee status as the basis for its involvement, particularly to provide assistance to displaced individuals. And for certain purposes, other UN legal instruments also bring populations that do not meet the Convention definition within the UNHCR's mandate. In each case, there are good reasons, founded in an overall assessment of genuine dangers, for treating the group as refugees, particularly for purposes of generating broad and urgent international action to feed and shelter the displaced and to provide them elementary protection. The usual estimates of global refugee populations (including the most widely used current estimate of 12 million) employ the broader definitions, at least for some regions.

The law governing U.S. admissions provisions does not incorporate these wider conceptions, even when they have been the basis for international assistance in which the U.S. generously participates. (Chapter \_\_ considers whether some further flexibility on this point should be introduced through statutory amendment.) Criticism of U.S. admissions performance sometimes overlooks these constraints. Planners cannot uncritically use these global totals in choosing groups to process for U.S. resettlement, but instead must be sensitive to the legal constraints that ultimately govern decisions by DHS interviewing officers. Understandably, DHS finds it a poor use of its resources to send circuit rides to locations where only a small percentage of those interviewed, however sympathetic their cases, wind up qualifying for the resettlement program.

## **6. Complexity and luck**

Even when a decision is made to resettle a particular group, the actual movement to the United States may be delayed by months or years, owing to operational factors that are not wholly under the control of US government officers. The refugee resettlement machinery is highly complex, and dozens of pieces must line up successfully before resettlement takes place. (Chapter \_\_\_ describes this machinery in greater detail.) If one piece is knocked out, a host of other good work to promote resettlement may produce no concrete results (and may then go totally unnoticed by critics). At the very least, time will be lost while that one piece is brought back into alignment. For example, just when PRM expected to move significant numbers of approved refugees from Nairobi toward the end of FY 2003, the Kenyan government suddenly announced that departures would require approved exit permits, which virtually none of the Nairobi cases possessed. On other occasions, populations that had undergone most of the pre-interview processing could not receive final INS or DHS review because sudden deterioration in the security situation at the interview site resulted in cancelling or postponing a circuit ride. Often the program cannot simply pick up where it left off once the immediate problem is overcome. Delay often requires redoing certain laborious steps in the process, because fingerprints and other security clearances, for example, as well as medical clearances, are valid only for a limited period -- six or 12 months. The various delays and complications in 2002 and 2003 have frequently necessitated new clearances of this sort before actual movements could resume. That the pipeline has functioned routinely most of the time over the life of the USRP is a testament to the NGOs and government officials, along with UNHCR and IOM personnel, who play the key roles and are often quite resourceful in coping with sudden complications. But the effects of the program's unavoidable complexity, which has compounded since September 11, 2001, are sometimes overlooked by critics of recent performance.

The resettlement of the Somali Bantu provides an example of the possible difficulties, as well as the role that ill luck can play. Here the problem was not any difficulty in reaching US government agreement on designating the group for priority resettlement, because some 11,000 Somali Bantu were approved as a P-2 priority group early in FY 2000. They were not expected to move immediately, because time was clearly needed for UNHCR to undertake a challenging verification exercise to assure the integrity of the lists to be used for access to US interviews. As it happened, it took until December 2001 to complete that exercise. Meantime PRM decided it had to move the Somali Bantu to another camp in Kenya, because processing in the original camp was too dangerous. That expensive move, a bus trip of 900 miles, was completed in the summer of 2002. It was then expected, however, that the Somali Bantu would provide a substantial portion of the resettlement caseload at least by FY 2003, as the system worked to regain its balance in the aftermath of September 11. Owing to a striking series of complications and even natural disasters, however, interviews had to be postponed on several occasions, and movement to the United States in that period was limited to about 800. (**See sidebar.**) Nonetheless, the processing does now appear to be unstuck, and most of that population should resettle to the United States in FY 2004. Overall admissions performance could have been some 20-30 percent higher in FY 2003 if the Somali Bantu program had not encountered these difficulties. Fortunately, few programs have been as relentlessly beset by misfortune and delay as the Somali Bantu effort, but that history and the pitfalls it exemplifies need to be kept in mind in judging admissions performance. Above all, it signals that the Program needs to manage the refugee pipeline in a way that can accommodate such complications and delays without losing all momentum for a robust admissions level.

## **7. Summing Up**

For all these reasons, one cannot simply think of throwing a dart at a map, even in a region marked by large refugee flows and genuine privation, and begin resettling refugees. Nor should the U.S. program be based on fixed criteria that trigger resettlement

when a single factor is satisfied (such as populations spending more than X years in a camp). The factors that must be considered are inevitably complex and interconnected. Because of host-country resistance, desires not to torpedo chances for repatriation, difficulties of equitable and manageable selection through processes that assure integrity, definitional disconnects, and particularly concern not to induce unmanageable further migration, *choices to resettle specific groups or categories must be done carefully and case-by-case*. Moreover, for almost any refugee situation, serious reasons can be presented for why resettlement should not be pursued, or why it should be postponed to see whether other solutions to the displacement might develop. If each refugee situation is only viewed in isolation, those reasons can be made to appear far more concrete and solid than the arguments in favor of resettlement. In almost any such circumstance, voices will be heard stating that the less risky course for American policy is to deny or defer any resettlement initiative.

But to note these real and important complexities is not to suggest acceptance of the current performance. All these factors may deserve attention, but they are *simply cautionary considerations, not absolute trumps that should defeat the initiation of significant refugee resettlement from given regions*. The challenge is to reform the US decision-making system, in an era that will require multiple decisions each year on resettling specific groups, so that it takes better account of the positive arguments in favor of resettlement and of the measures available to overcome the obstacles.

The next Section considers certain foundational questions that must be addressed in order to strengthen such a system. Later chapters turn to more specific operational recommendations.

## **B. Fundamental choices for the US Refugee Program: aims and nature**

The US Refugee Program has suffered from a lack of clarity regarding its principal aims and fundamental character. Many players in specific debates over new resettlement initiatives hold subtly different conceptions of the primary objectives, so that what looks like a debate on whether to resettle a specific group is really an unspoken dispute over underlying objectives. Getting that deeper debate out in the open would help unclog deadlocks in deciding on specific groups. Clear direction on these points from the President or the Secretary of State would also structure and simplify future decision-making. And such clarity would also be quite helpful in making specific decisions on how to improve the details of operations.

The different views can be placed in two different camps, marked by these interrelated polarities:

- rescue-focused resettlement vs. resettlement that accounts for a wider range of dangers
- resource priority for assistance vs. for resettlement
- the number in the Presidential Determination as a ceiling vs. a target or goal

To paint it this way is to oversimplify, of course. No one wants refugee resources to go only to assistance in first-asylum countries or only to resettlement. No one in the second camp wants to eliminate the capacity to use the program to rescue people who would be gravely threatened, harmed, or killed without swift resettlement initiatives. Indeed, under any system, the first claim on admission spaces should always be for such rescue, and further, we should try to prioritize the use of admissions, wherever a resettlement initiative is otherwise feasible, based on the degree of risk or suffering that the particular population faces. Moreover, good and respectable arguments support both approaches, so that the choice between them (or among various shadings) is not any easy one. Nonetheless, considering the different views in this simplified fashion can help illuminate some fundamental choices that those guiding the program need to make.

### **1. Rescue vs. a wider range of dangers**

#### *a. The contending positions*

One view sees U.S. resettlement spaces as a scarce resource to be used only when needed in order to rescue persons whose lives would otherwise be in grave danger. The beginnings of the Indochina resettlement program in the late 1970s have been seen as an example of this approach. As the numbers exiting Vietnam surged in 1978, some first-asylum countries in the region pushed refugees back across their borders, or repelled vessels overcrowded with desperate families, sending them back out to likely death at sea. Only when the world community in 1979 pledged essentially to resettle elsewhere all who were permitted first asylum did those countries relent. They agreed to permit landings and ongoing care and maintenance in camps on their territories, where the processing for resettlement then geared up in earnest. Macedonia's treatment of those fleeing Kosovo in early 1999, holding them in deeply hazardous conditions in fields near the border, also prompted a similar rescue initiative. When many other countries offered to take at least some of the population sheltered there, for either permanent or temporary haven, Macedonia changed its approach and began to allow the care and maintenance of new arrivals in more secure facilities.

This rescue-based view also countenances launching resettlement when persons who had found a tolerable welcome across the border suddenly become highly vulnerable in the first asylum country. The current resettlement program for selected Liberians from Cote d'Ivoire provides an example. Until recently, the Ivorian government and populace had generally accepted

Liberians displaced by Liberia's long-running and brutal civil war. A great many were able to find a fairly stable existence in the western part of the host nation or in the capital, Abidjan. But when civil war erupted in Cote d'Ivoire itself in September 2002, the populace blamed much of the problem on foreigners. Tolerance changed to vituperation. Liberians sometimes became the targets for community violence, and many were forced to relocate to a handful of camps where their protection and subsistence remained tenuous. Based on a group referral of "vulnerable Liberians" by UNHCR in early 2003, the United States speedily initiated a resettlement program focused on approximately 8,000 Liberians from specific camps.

A resettlement program built on the rescue principle is inherently volatile. Acute vulnerability waxes and wanes, and resettlement volume could be expected to rise and fall in response. Small populations chosen under this approach can perhaps be wholly rescued with a few months of processing and transportation, and new resettlement initiatives will not necessarily fill the gap, unless of course a new life-threatening crisis materializes elsewhere. Larger populations raise other issues. If the launching of a resettlement program succeeds in securing acceptance of first asylum in countries close to the source country, or in diminishing popular backlash among the host population, then the immediate vulnerability is reduced. Over time, the interim arrangements, including international aid for the care and maintenance of refugees in the first asylum country, may ease the host country's resistance to longer-term stays in camps or even to local integration for a portion of the refugee population. If so, vulnerability has diminished and resettlement may be curtailed or stopped, or at least arguments for reducing or ending the resettlement program will be pressed with greater vigor. That is, it is always open to argument just how serious the current vulnerability may be. On the other hand, the first asylum countries may believe that they have an ongoing deal, and may object to even modest efforts to trim resettlement flows -- perhaps to the point of threatening to renew rejections at the frontier. Something of that latter dynamic persisted through the 1980s with the Indochinese program, wherein resettlement did not significantly diminish even after pushbacks had been curtailed.

The Indochinese program demonstrates that rescue-based premises can result in a steady stream of resettlement, extending over many years. But such circumstances are likely to be rare, and for such a program to continue taking in large numbers for a lengthy period will probably require support that derives from other sources. The Indochinese program of course had such wellsprings of support -- based on this country's lengthy involvement in Vietnam and links to many of the people who were potential victims, as well as the program's congruence with Cold-War objectives. But even so, a current of resistance to Indochinese resettlement was evident in the later years of that program, arguing that the program had outlived its original rationale and perhaps had transmuted into a tacit immigration program.

The primary alternative approach is to see resettlement, in addition, as a durable solution that should be used to respond to a wider range of dangers. This approach does not deny that resettlement is a scarce resource, but it sees a broader spectrum of circumstances as justifying concerted action to resettle, even if the persons involved are not in immediate life-threatening danger. Proponents of this view argue that the United States should actively consider resettlement, for example, for populations that have spent many years of stay in a refugee camp, if the conditions are severe and feature little productive activity for the refugees, limited educational opportunities for their children, or other features that betoken a lingering and profound waste of human potential. Not all such circumstances will necessarily be good candidates for US resettlement, of course. Such initiatives should not thwart voluntary repatriation, if it is reasonably imminent. They should be designed to augment, not to overcome, the possibilities for improved camp life and even local integration. And they should generally be launched only where other circumstances, such as a good camp registration system, can help minimize any magnet effect and provide safeguards against fraud.

This view shares with the rescue outlook an understanding that the US refugee program must be reserved for use to alleviate serious human suffering, but it finds that criterion satisfied even if conditions are not immediately life-threatening. In particular, when camp life is little better than human warehousing, and where it has persisted in this mode for several years, resettlement must enter the picture as a potential durable solution. In interviews for this project, proponents of this view often recalled their own experiences visiting bleak refugee camps years after the initial flight and coming face-to-face with the profound wastage of human lives represented by such an enforced existence, particularly for the children forced to grow up under such conditions. They argued that this approach is simply a different species of rescue -- saving people from a prolonged strangling of their life chances and not just from fast-working dangers. Bill Frelick describes the need in these terms:

Millions of refugees worldwide have been relegated to a limbo existence, warehoused in camps or settlements with no prospects for voluntary repatriation or local integration. Children born and raised within the confines of camps often never see normal life outside the fences. These populations often become dependent and despondent, with predictably negative social consequences.<sup>3</sup>

A program founded on the second outlook can more readily be designed for stability of flow and predictability over time. Although this approach would by no means preclude the use of resettlement spaces for the situations targeted by the first view -- indeed, they should claim first priority -- it permits greater balance and advance planning for that (normally) substantial part of the program that would not be based on the narrowest version of rescue. Moreover, this wider perspective better allows for an approach that is coming to be known as the strategic use of resettlement. That is, the United States can use resettlement offers

to help encourage receiving states to maintain first asylum, to break up negotiation stalemates that keep refugees stuck in human warehousing, and especially to use resettlement as one component in a comprehensive solution. Such solutions work to end refugee exile through a combination of voluntary repatriation with resettlement for those sub-populations (such as ethnically mixed-marriage families) for whom repatriation remains too dangerous despite a general settlement.

No official, to my knowledge, has definitively declared that resettlement should be limited to immediate rescue and acute vulnerability. But my interviews for this project did produce accounts of times when key decisions, for example to turn down or at least postpone the designation of additional groups for priority access to the USRP, were ultimately swayed by arguments seemingly based on the narrower rescue principle. Quietly, at crunch time, the fact that the potential beneficiaries are not in life-threatening situations can prove decisive in rejecting the initiative. At the least, opposition to a new initiative put forward by other bureaus or agencies involved in refugee resettlement may gain force from the claim that resettlement is not needed for the immediate saving of lives.

*b. The narrow rescue perspective offered as an antidote to interest-group politics*

Several interviews for this project produced this observation: The narrower rescue-focused perspective has been embraced (and some said should be embraced) as a reaction against distortion of the admission program's true goals. Unless the program is limited to life-saving initiatives, it will be diverted too easily into serving other foreign policy goals, or it will be captured by interest group politics and will devote too many spaces to groups whose main claim to priority is simply a strong constituency in the United States -- thereby straying from the program's true humanitarian purposes.

Some who voiced this complaint pointed to the Indochina resettlement program, which in their view continued far longer than it should have -- moving from a legitimate rescue effort in the late 1970s to a de facto immigration program. Many UNHCR officers apparently share this outlook; the Indochina experience has contributed to a negative attitude within UNHCR toward giving prominence to resettlement as a durable solution -- an attitude the organization is now working to reverse.<sup>4</sup>

The example most frequently mentioned in connection with this type of complaint was the Lautenberg Amendment.<sup>5</sup> Originally passed in 1989, the amendment responded to a sudden change of policy by the executive branch in 1988 that imposed highly rigorous application of the refugee definition on all overseas refugee processing. As a result, many applicants in the Soviet Union and, to a lesser extent, in Indochina found their cases unexpectedly rejected. After debating several possible legislative remedies, Congress enacted this provision, which authorized the approval of refugee applications from specific categories of applicants in the Soviet Union and Indochina based on a markedly less demanding showing of risk. The Lautenberg Amendment was adopted as a temporary measure, destined to sunset after one year, but it was then extended for an additional two years, and has been routinely extended ever since -- even though the Soviet Union has since disappeared from the map. Some of the current critics accept that respectable arguments supported the original enactment and perhaps even the continuation of some of the special categories (most of which focus on Jews and other religious minorities) during the uncertain period that immediately followed the breakup of the U.S.S.R. But they question the continuing need for such a special provision under current conditions, believing that normal refugee standards allow ample scope for resettlement of those truly endangered. Many people interviewed for the project voiced skepticism about these differential standards under current conditions, yet none expected Congress to allow the Amendment to expire.

Others have expanded on the critique of interest-group actions. In their view, the voluntary agencies that have long participated in US refugee initiatives, both overseas and domestically, have to a significant degree captured the process and turned it to serve their own narrower interests. Sometimes these critics mean simply that the USRP often favors admission of groups that are tied by ethnicity, religion, or other features to a particular US volag. But a stronger version of this critique alleges that a different type of self-interest governs -- the desire to maintain the flow of federal funds to the volags themselves and their top officers. Even the campaign to return resettlement numbers to their historic levels is sometimes seen as a mere self-interested effort to hold on to volag contracts with the government and to keep volag offices fully staffed.<sup>6</sup>

NGO representatives reject the charge of narrow financial self-interest as the basis for their actions or for their recommendations on groups that should have priority access to the USRP. But some interviewed for this project defended placing at least some priority on choosing groups that have a support base already present in this country. In selecting among millions of genuinely good candidates for resettlement, they maintain, taking those with a support community already in place maximizes successful resettlement outcomes as well as long-term support for the US Refugee Program. They emphasized, however, that such a rationale should not be the sole criterion for setting resettlement priorities, and they pointed to many counterexamples, like the Somali Bantu, to show that the NGOs do not limit their support solely to persons or groups closely identified with a volag's prior missions.

The stronger version of the interest-group capture claim is unfair. Although there have been isolated instances of financial or management abuses, the NGOs active in this field have historically been energized not by federal contracts but by their officers' and volunteers' real-world experiences with refugees -- both in camps abroad and in the process of resettlement in this country.

Today, these organizations generally bring to bear their own resources -- usually in significant proportions -- and most got into the refugee assistance and resettlement business decades before the current structure of contracts and grants was in place. Many draw upon a faith-based tradition of assistance to the needy, and the secular organizations as well can generally point to a long history of humanitarian action wholly divorced from federal largesse. There is some variation in the picture, however. For some volags the tradition of greatly augmenting the public resources (especially the reception and placement grants provided by the Department of State) with independently raised funding has unfortunately withered -- to the point that successful domestic resettlement may suffer. All volags should strive to live up to the historic public-private sharing, in the interest of more successful resettlement experiences.

As to the gentler version of the interest-group claim, one cannot expect that persons deeply involved with refugee assistance and resettlement will be agnostic on resettlement priorities or that they would shy away from supporting refugee groups to which they have ties. Our democratic system makes such advocacy legitimate, even on the part of those who have certain contractual ties with a government program. Those with decision-making responsibility may properly consider such background factors in assessing particular proposals for resettlement initiatives, but they should not be surprised or offended at the very fact that NGOs will press their proposals doggedly and criticize government decisions with which they disagree.

Of wider effect may be a related feature which requires attention. Interviews for this project turned up a surprisingly widespread feeling, including among congressional circles, that the refugee program has gotten away from resettling "real refugees" -- a development many attribute to exaggerated interest-group influence. Although this theme has been submerged in public statements in recent years,<sup>7</sup> it almost certainly will find more prominence as the program regains its momentum and reaches higher admission levels. Given that the new era will probably require dozens of decisions a year on new resettlement initiatives, there will be more occasions for critics to charge improper influence. Some recent legislative proposals, meant to give NGOs wider authority to help set admissions priorities through "refugee response teams" perhaps composed exclusively of NGO personnel, are freighted with long-term peril of this sort.<sup>8</sup> They might succeed in getting numbers up, but at the likely cost of expanding a backlash against what critics will see as interest-group distortion. This is a subtle point, and the devil is in the legislative details. It is of course appropriate and desirable for the government to use the expertise of NGOs more systematically in casting a wide informational net and developing the best possible data for identifying manageable and appropriate resettlement initiatives. (This approach has been taken in PRM's recent initiatives to include NGO representatives in "targeted response teams.") But such legislation should make it clear that the ultimate decisions, both to initiate a detailed look at a population and of course ultimately to decide to target it for resettlement, remain in the hands of government officials.<sup>9</sup>

The concern about possible distortions of refugee policy is legitimate. But we do not require a tightly narrow rescue principle to avoid them. A better designed decisional structure -- one that proves it really can produce regular decisions on resettlement initiatives after a rigorous examination of need, broadly understood, as well as of constraining factors -- can accomplish this objective. Chapter II recommends such a structure.

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<sup>3</sup> Bill Frelick, *Rethinking U.S. Refugee Admissions: Quantity and Quality*, 2002 World Refugee Survey 28, 35.

<sup>4</sup> Cite van Selm report; Frederiksson report?

<sup>5</sup> Pub.L. 101-167, Title V, § 599D (1989). It has been frequently amended since enactment, primarily to extend the expiration date.

<sup>6</sup> See, e.g., Don Barnett, *Out of Africa: Somali Bantu and the Paradigm Shift in Refugee Resettlement* (Center for Immigration Studies Backgrounder, Oct. 2003), at 1, 6-8 (charging that resettlement is dominated by "a constellation of hundreds of interrelated government funded non governmental organizations (NGOs) pursuing their own institutional interests," including narrow or personal financial considerations).

<sup>7</sup> But see the House Judiciary Committee letter on the FY 2004 consultations, Oct. 15, 2003.

<sup>8</sup> See, e.g., the initial versions of Congressman Christopher Smith's proposed amendment to the Foreign Relations Authorization bill.

<sup>9</sup> The final provision to this effect included in the FY 2004 foreign operations appropriations bill has been scaled back to a more modest mandate for NGO involvement, which would be consistent with the approach recommended here.

## **2. The resource competition between assistance and resettlement**

The pull of the narrow rescue outlook draws additional force from another element sketched in the introduction to this Section. To a certain real extent, resources for resettlement are in competition with resources for assistance, and it is a fact that funds spent on assistance will go further and immediately aid many more people. Resettling a single refugee costs many thousands of dollars. That same sum of money, applied in the first asylum country, could perhaps feed and shelter many dozens of persons in a refugee camp for a year. Many persons in the refugee field, both government officials and NGO workers, are drawn to this "more bang for the buck" argument in giving a strong priority to assistance over resettlement. Of course resettlement must be

preferred, they would acknowledge, if the alternative is *refoulement* or death, or if conditions in the camp are excessively dangerous for a vulnerable individual or group. But short of such a threat, protracted refugee situations should evoke an assistance response, not resettlement. (Another way to describe this view, using UNHCR terminology, is that it emphasizes resettlement as a tool of protection, rather than as a durable solution in its own right.)

If the competition for resources is viewed as a zero-sum game, where money given to one function inevitably diminishes the resources available for the other, the assistance side has a strong case. But that is probably an inaccurate way to view the issue. In the long run, resettlement almost surely enhances the support and resources available for all parts of US refugee activity. The US Refugee Program has brought over two million refugees to a new life in the United States over the past 25 years. They have settled in all 50 states, and a great many communities have developed vibrant support networks to welcome the new arrivals. The participants in those networks often find themselves drawn increasingly into wider efforts to support refugees, including many participants who previously had no real acquaintance with or interest in international human rights or refugee issues. In interviews for this project, some recounted what a profound impact their first experiences in private resettlement work had had on them and their fellow volunteers. Even US citizens not directly involved in such networks wind up gaining personal acquaintance with fellow community members who -- they eventually learn -- came to the United States as refugees. This personal contact, this immediate sharing of the stories of flight and survival and gratitude at the opportunities that US resettlement provided, has created warm local support for refugees in a wide range of communities. Such support readily translates into personal donations and political initiatives for refugee-assistance activities of all kinds, both in the United States and abroad. Of more focused significance, members of Congress often invoke their own personal experiences with refugees in their home-state communities as a way of explaining or justifying or trumpeting their own support for refugee funding and refugee initiatives -- funding that includes ample support for assistance to refugees and displaced persons outside the United States.

A study of resettlement in Europe and the United States, undertaken jointly by the European Council on Refugees and Exiles and the US Committee for Refugees, commented on these spin-off benefits:

Finally, there are political and educational benefits to resettling refugees, as shown by the outpouring of public generosity in Europe and the United States toward Kosovar refugees evacuated from Kosovo and Macedonia during the Kosovo crisis in the spring of 1999. The resettlement of these refugees . . . helped to educate the public about the plight of refugees and generated considerable public support, not just for refugee resettlement but for other humanitarian programmes as well.<sup>10</sup>

Nonetheless, in the short run the competition for resources can remain quite real and immediate -- and proposals for specific resettlement initiatives have usually come up for consideration individually, demanding short-run decisions. The annual budgeting arrangements for the refugee function compound the pressures. They leave it to the State Department, in the main, to divide up refugee funding annually (the Migration and Refugee Assistance (MRA) account) between resettlement and assistance, and to adjust the totals during the year through the standard reprogramming procedures. If a group access proposal comes up at a time when assistance budgets are stretched, or where new flows have prompted UNCHR appeals for additional assistance funding, incentives will obviously exist to preserve the resources for assistance, in order to benefit the greater number of people. This tension is likely to grow more acute if budget pressures over coming years reduce the MRA account. In any event, the dilemmas are real and must not be underestimated.

**Recommendation: The US Refugee Program should be explicitly based on a broad perspective about the use of resettlement. The President, the Secretary of State, the Secretary of Homeland Security, the Assistant Secretary for PRM, and the Director of USCIS should make it abundantly clear that the USRP is not limited to rescue from life-threatening situations, but will work actively to include displaced individuals and groups who face a wider range of dangers, including the wastage of human potential that can result from protracted stay in a refugee camp. These needs are real and compelling, and there are large populations meeting these wider criteria. Therefore the program can still be prudent and selective in choosing among them, with full attention to countervailing factors such as possible magnet effects, other political impacts, and near-term prospects for voluntary repatriation. This approach should be accompanied by a determination to sustain fully viable budgets for refugee assistance, minimizing as much as possible any direct financial competition between assistance and resettlement.**

On the other hand, if the Administration and the Department are unprepared to make a firm declaration of this sort, they should then be candid about the likely outcomes in the current era, which lacks large-scale programs like those formerly in place for Indochina and the Soviet Union. That is, without new initiatives premised on this broader perspective, admission totals will almost surely remain low and admissions will fluctuate widely, whatever other operational improvements are introduced for processing those given access to the program. Without candor on these points, officials responsible for the system are placed in an extremely difficult position. They will be judged by most outside observers against a high admissions total placed in the annual Presidential Determination, but not given the more specific policy directives indispensable to meet that benchmark.

<sup>10</sup> ECRE & USCR, *Responding to the Asylum and Access Challenge: An Agenda for Constructive Engagement in Protracted Refugee Situations* (April 2003) at TAN 75. Other comparative studies, after attending closely to the US experience (as the country with the most extensive resettlement program) have noted the ways in which positive resettlement experiences help shape public attitudes toward all parts of refugee assistance and protection. Joanne van Selm, et al., *Feasibility of Resettlement in the European Union 118-19* (Migration Policy Institute 2003).

### **3. The Presidential Determination: a ceiling or a target?**

#### *a. The contending perspectives*

The rescue-oriented approach coexists comfortably with the view that the number of refugee admissions set annually by the President is simply a ceiling and not a policy goal. That number is established following the submission of a report to Congress that sets forth a range of information required by statute (INA § 207(e)) and a proposed level and allocation of admissions. Following Cabinet-level consultation with the Judiciary Committees, usually carried out by the Secretary of State, the President issues a final Presidential Determination (PD) that sets admission levels and broad regional allocations of the numbers that will govern for the coming fiscal year. The law includes an additional provision for increasing the numbers mid-year through a new PD based on “an unforeseen emergency refugee situation,” but such an increase has occurred only three times since the adoption of the Refugee Act in 1980.

Over the years PRM officers have often repeated, in response to criticism of admissions totals that fall below PD levels, that those numbers are ceilings, not policy goals. In this conception, if conditions unfold such that we do not need to use the full PD number -- or even a significant fraction of it -- this outcome does not contravene the President’s decision; perhaps it should even be seen as a triumph for overall refugee policy. Critics counter that millions of refugees remain in conditions of stifled development and more subtle dangers, even if not in immediate life-threatening jeopardy, and that it is a shame to let the precious resource of presidentially determined admission slots simply lapse. This debate is simply one version of the controversy between viewing resettlement as rescue or resettlement as a durable solution for a wider array of circumstances.

#### *b. Why the Refugee Act does not settle this issue*

It is probably correct that the “ceiling not a goal” view predominated at the time of the adoption of the Refugee Act of 1980 and also provided an appropriate way to understand the PD number in the early years of operation under the Act. NGO critiques should perhaps be more understanding of this pedigree of the outlook they disfavor, and be more willing to acknowledge that the burden of proof may well fall on those who would take a different tack. But it is a burden of proof that can be carried. The early predominance of the “ceiling not a goal” view was largely a product of the particular times and of carryover attitudes deriving from the statutory structure that immediately preceded the Refugee Act. Moreover, the legislation by no means mandates that the President’s determination serve only as a ceiling. *In deciding how to treat the PD number today, we should take into account the significant evolution of our refugee admissions system since 1980, as well as the functional implications of each of the competing visions of its role.*

Before adoption of the Refugee Act, US law had provided for a statutorily fixed ceiling of 17,800 “conditional entrants” annually. Until 1975, when Saigon fell, most of these numbers had been used for a modest and steady stream of East Bloc refugees who made it to western Europe and were processed by voluntary agencies that had been in that business for decades. On those occasions when greater needs arose, including 1975, they had been accommodated through use of the Attorney General’s parole power, but there was widespread dissatisfaction with that mechanism. The effort to pass a new Refugee Act was meant to provide an alternative to parole for larger numbers of refugees by raising the numerical ceiling, to expand the definition of eligible refugees (previously only those from Communist countries and the Middle East could qualify), and to make sure that those brought as refugees could eventually secure full permanent residence status without the need for discrete special legislation.

It is essential to keep in mind, however, that the Refugee Act was considered and adopted in the midst of a rapidly changing resettlement program, and the views of many legislators and executive branch officials evolved considerably during that time, as events forced rethinking of the types of refugee needs that were likely to be encountered. (This evolution also sheds light on isolated statements in the legislative history seemingly favoring an annual admissions total of only 50,000. **(See Sidebar on a level of 50,000 admissions.)**) Early versions of the legislation were drafted in 1977 and early 1978, well after the sudden Vietnamese exodus of 1975 (spurred by the collapse of the South Vietnamese government) had ended but before people foresaw any major new wave of boat departures. Resettlement totals in 1977 were low, and the major impetus for new legislation at that moment was lingering dissatisfaction with the limited arrangements that had been available to deal with the 1975 crisis. Early versions proposed to increase the annual ceilings to 40,000 or 50,000 -- a number thought sufficient for foreseeable flows short of desperate emergencies like that of 1975, which was deemed unlikely of repetition. By the time serious consideration of the bills began in the new Congress that convened in 1979, however, an enormous new wave of “boat people” had commenced, with departure levels from Vietnam (both land and sea) reaching as high as 60,000 per month. Major outflows seemed likely to persist for years. By the time of enactment, President Carter had already pledged up to 14,000 U.S.

refugee admissions *per month*, as a response to the severe crisis in Southeast Asia. The US government, along with its NGO partners, was busily deploying resources and developing innovative processing techniques (considerably different from the traditional machinery used in Europe) to deal with this vastly changed refugee scene. **[recheck statistics]**

As American pledges expanded, they clearly outran the 50,000 ceiling that had been confidently placed in the administration's draft bills in late 1978 and early 1979. Not only was that particular ceiling inadequate, but those involved in the legislative effort for the executive branch came to realize that any fixed ceiling was always vulnerable to being overtaken by events. Eventually, in the later stages of the consideration of the Refugee Act, **[check timing]** a new and flexible procedure was introduced -- the provision ultimately enacted as INA § 207(a), which gives the President broad power to set the admissions level at the beginning of each fiscal year. Discussion of this new mechanism generally used the terminology of ceilings, but not out of any deeply considered rejection of the idea that the numbers might also serve as goals or operational targets. That question never came up, as such. Instead, the terminology persisted because administrative practice under the earlier fixed-level laws had always spoken in those terms. Moreover, the participants realized that the extraordinarily high admissions levels of 1980 (which eventually brought over 207,000 refugees to the United States that fiscal year) were not sustainable. Major diplomatic efforts were under way to reduce the emergency pressures and find ways to bring the Indochinese flow within a more manageable framework. In that climate, it was quite appropriate to speak of the new levels as ceilings and to make it clear that the managers of the system were expected to bring admissions numbers below the high maximums the President was setting, whenever conditions enabled such a result. At that specific time, the PD number truly was a ceiling, not a goal.

Over the succeeding decades, the nature of the refugee admissions program has evolved considerably. The new processing techniques hastily cobbled together in the late 1970s, involving heavy reliance on NGOs to handle much of the paperwork and prepare cases for INS review (the joint voluntary agency or JVA system), became more routine and sophisticated, and they were extended to other refugee situations as well. Additional refugee populations were resettled, in greater proportion, from Latin America, the Middle East, and Africa. Refugee resettlement became more institutionalized. Planning mechanisms developed, officers began to speak of a resettlement pipeline, and NGOs added staff and developed an enduring network of field offices throughout the United States to help manage the reception and integration of arriving refugees. This evolution represents a major triumph of the US Refugee Program -- creating and sustaining such a system at reasonable cost levels, importantly involving a major public-private partnership. But with machinery on this scale, it is difficult to make sudden changes, of level or location. Solid planning and clear benchmarks of performance can be of considerable use.

Perhaps most importantly, even after the Indochinese and former Soviet Union streams declined, succeeding Presidents and Congresses kept the admissions numbers (and accompanying budgetary support) at levels that could not have been envisioned in 1980 for non-crisis periods. Refugee admissions have drawn strong support from a coalition that cuts completely across party lines and across the divisions that mark out competing camps on other issues. The annual numbers gradually turned into an increasingly well-established *humanitarian resource* to be employed to in service of the nation's historic humanitarian objectives. This shift has come about in significant part because of what this nation has learned about the human value of refugee admissions. There are countervailing currents, to be sure, and remaining skepticism about some elements of the refugee program that deserve to be taken seriously. But the reality of this highly successful program suggests the value of a steady and reasonably high-capacity resettlement program, even after the decline of what had been its major resettlement components.

### *c. Evaluation*

If the admissions program becomes based on the broader perspective on refugee resettlement needs, as is strongly recommended here, then the U.S. Refugee Program should treat the PD number as a goal and not an optional ceiling. Once the focus is expanded beyond immediate rescue, a great many refugee situations come into view as candidates for possible resettlement, with real humanitarian gains to be realized by offering thousands of men, women and children the chance to escape from human warehousing. Refugees should not be left either in immediately dangerous situations or in multi-year misery in a refugee camp when such a valuable humanitarian resource, set by the President and supported by the Congress, is available. Seen as a goal or target (with appropriate tolerances given the volatility of refugee situations), the PD number then provides a useful *baseline for accountability* -- for both pipeline development and operational management. This outlook would help all relevant players gauge their own performance and plan proactive efforts accordingly.

Such an approach would carry an additional structural advantage. As noted, it is often easy to marshal arguments against new resettlement initiatives. There truly are risks and imponderables with virtually any such effort, which are quite properly factored in before making an access decision -- chances of triggering a new pull factor or of upsetting other political developments, or logistical and security challenges involved in processing the particular group. But it has often proven difficult in governmental deliberations to assure systematic consideration of steps that can minimize those risks or of the reasons why it may be time to nudge the political calculations in a different direction. At a time when many new group-access decisions will be required each year to achieve a reasonable number of admissions, the system sorely needs ongoing incentives that can counter the momentum toward letting the negative case win the day. Treating the PD number as a target provides exactly such a counterbalance. The central question in the current era of refugee resettlement must be which resettlement initiatives present the fewest drawbacks or disadvantages -- not which have none, for that will almost never be the case.

One further caveat is in order. For the PD number to serve this accountability role effectively, it must be set at a realistic -- even if designedly challenging -- level. Large programs like this cannot easily make sudden changes. The refugee program has had to cope with difficult operational alterations in the wake of September 11, and it has taken a couple of years for the systems to adjust to the new requirements. Many of these pieces are just now beginning to settle into ordinary and predictable operation, which holds real promise for FY 2004. But the system has not yet been sufficiently retooled to deal with the second challenge, that of having to identify a host of new group resettlement initiatives each year. Resources are only now beginning to be dedicated to that function on the scale needed -- partly because until recently so much time and energy had to be devoted to the more pressing operational tangles. Throughout this time, the annual PD number has been set at 70,000 -- with the best of goodwill, but perhaps without sufficient realism about the system's limitations and the timeframe needed to overcome them. It will be a notable (although reachable) achievement if the system can exceed 50,000 admissions for FY 2004, and such an outcome would provide welcome momentum for continuing the upward trend for succeeding years. But this means that a full transition to a workable goal-not-a-ceiling approach may not come until FY 2005.

**Recommendation: The number of admissions set in the annual Presidential Determination should be treated as a goal, not a ceiling. It should therefore provide a firm benchmark for accountability of the offices that have a role in access decisions and management of the system, including not only PRM and USCIS but also the regional bureaus of the Department of State and the enforcement bureaus of the Department of Homeland Security. Because of the potential volatility of refugee flows, and the program's vulnerability to unforeseen problems, the benchmark should apply with reasonable tolerances, which can probably diminish once a system built on this new approach has matured.**

**Access decisions should still pay attention to countervailing factors, both logistical and political, that might appropriately weigh against a resettlement initiative. Such decisions must still be done case-by-case, with full attention to the context. But treating the PD as a firm goal by which performance will be measured will help counter a long-standing tendency to overvalue the disadvantages of a proposed initiative.**

## **Chapter II**

### **Reforming the System for Deciding on Resettlement Initiatives**

As Chapter I recounted, the United States finds itself in a new era of refugee resettlement. Not only must we deal with new operational challenges triggered in part by the dangers of terrorism, but we must sustain the admissions program largely out of a host of smaller, short- to medium-term resettlement initiatives. Improvements for operations will be addressed in later chapters. This chapter focuses on the system that provides the precursor to field operations -- the system that decides which groups and individuals will receive access to the US Refugee Program. The Program is only beginning to come to grips with the dimensions of the new challenges.

This Chapter is premised on the underlying stances recommended in Chapter I: that the Program be expressly mandated to go beyond the narrow rescue principle in identifying possible candidates for admission, that it affirmatively seek to resettle persons whose lives are subject to serious long-term impairment and not just immediate hazards, and that it treat the PD number as a goal, not an optional ceiling. The PD number thus becomes a benchmark for holding the various offices and players in the system accountable and for measuring their performance. Reforming this access system is primarily a job for the Department of State, but it must be done in a way that appropriately draws on the expertise and cooperation of the Department of Homeland Security, as well as the other key partners, particularly the voluntary agencies and the Office of the UNHCR.

#### **A. The scale of the challenge**

It is essential, first of all, to be clear on the scale of the challenge now faced.

Refugee admissions have historically derived from three distinct processes. Even if the current admissions priority system is revised, these basic functional categories are unlikely to change significantly:

- *Individual case referrals.* Individual referrals largely come from UNHCR, usually based on its assessment that compelling protection needs require moving the individual from his or her current location (typically along with immediate family). These referrals have provided the overwhelming majority of the admissions in the P-1 processing category, which is open to any nationality, since PRM revised the priority system in 1994. P-1 also allows for individual referrals from U.S. embassies, and certain initiatives are under way to enhance the ability of NGOs in the field to generate individual referrals as well.
- *Family-based access.* The current priority system provides access to refugee admission interviews for spouses, parents, and minor children of refugees and asylees (and formerly of other aliens in the United States as well), as part of the P-3 processing priority. P-3 is currently applicable to nationals of nine countries, up from four in FY 2003, but down from as

many as 18 in earlier years. The US priority system, in the abstract, also contemplates admission of more distant relatives as P-4s or P-5s, but those priorities have not been used since the end of the Bosnia program. In each of these instances, access to a DHS interview is triggered by the filing of an Affidavit of Relationship (AOR) by the anchor relative already in the United States. Beyond this, the spouse and minor children of a refugee may also "follow to join" the principal alien without independently qualifying under the refugee definition. This process, not limited to specific countries or nationalities, is also triggered by a filing from the anchor relative -- in this instance an I-730 form -- but review and approval of the person's qualifications typically is done by a consular officer in the country where the family member is located.

- *Group-based access.* The most visible part of refugee admissions is probably that which focuses on particular groups that are given access to the program under the P-2 processing priority, based on a judgment that the group is of special humanitarian concern to the United States. Group-based access for Vietnamese and for large categories from the former Soviet Union provided a mainstay of the US refugee program for many years, and broad eligibility categories remain in place for the three nations where in-country processing has regularly been authorized: Vietnam, Cuba, and the former Soviet Union. Additional, more focused P-2 groups have in the past included the so-called Lost Boys of Sudan, certain Burmese ethnic leaders and political activists, and mixed-marriage families from Bosnia (along with a wider list of victimized groups from Bosnia). For FY 2004, P-2 groups include: Somali Bantu from Kakuma camp in Kenya, Baku Armenians in Russia, and Iranian religious minorities. FY 2003 also witnessed a relatively new development in group access, which has come to be known as "P-1 groups." The pioneering example was the initiative to resettle vulnerable Liberians from specific locations in Cote d'Ivoire, referred by UNHCR based on its own verified registration list. The P-1 group approach can be expected to expand, because UNHCR is now working to develop a systematic capacity to go beyond its labor-intensive individual referral process and refer for resettlement selected groups in need of a durable solution outside the country of current asylum.

All three of these broad categories hold potential for expansion in order to restore historical levels of US admissions, but the third will be the key. Despite initiatives to increase individual referrals from UNHCR, US embassies, and NGOs, such referrals will likely increase only gradually and in modest increments. Adding more countries to the P-3 family list would generate more admissions, as would needed improvements in the I-730 process. But the P-3 program has encountered a high level of fraudulent submissions. Although program changes in the last two years have gotten a good handle on the problem, none are foolproof, and P-3 expansion is likely to take place slowly. This means that improving the pace of admissions will have to focus in major part on group designations.

What follows is a very rough illustration of the group designation challenges to be faced, using as an example a PD number of 70,000. For the next couple of years, it is a reasonable (though quite rough) assumption that individual referrals and family-based access will generate roughly 12-15,000 admissions. This leaves over 55,000 to be generated in other ways. The long-established Moscow and Havana programs can perhaps produce another 8-10,000. It is not a stretch to conclude, then, that other group-based initiatives will have to produce another 45-50,000 admissions, in order to reach the 70,000 figure -- roughly 4,000 admissions per month through this mechanism. Work should begin now, and urgently, in order to develop additional candidate groups, do the detailed further inquiry needed before final designations can occur, select among those so developed, and initiate the pre-interview machinery. Six to twelve months might be thought a good allowance of the time needed for this process, from early consideration until DHS circuit ride. The time frame can be compressed if conditions are favorable (the Liberian P-1 group process got off the ground in about three months), and it can also take far longer if conditions prove unfavorable (nearly three years before the first admissions of Somali Bantu, and closer to four years before sustained processing).

Moreover, it is not enough simply to designate groups consisting of 4,000 members each month, because clearly not all refugee applicants granted access to the interviewing process will be approved. If we assume a modestly optimistic DHS approval rate of 80 percent, group designations will have to embrace over 5,000 per month in order to produce an annual total of all admissions at the 70,000 level. And the pre-designation exploratory work will of course have to include groups totaling a still larger figure, perhaps 7,000-8,000 per month, because not all initially promising groups will prove to merit access, and others may be placed on hold while the full range of other durable solutions is explored. With limited exceptions, most candidate groups on the current horizon fall at or below 8,000. We can therefore expect to have to designate one or two new groups each month, on average, using either the P-1 group referral process or the P-2 category.

## **B. PRM's role**

### **1. Findings**

PRM has introduced improvements over the past few years that further this pipeline development process, such as a reporting matrix that pulls together the key information on potential target groups in a standard format to facilitate comparisons. But the group identification and designation process is not currently oriented toward the necessary volume. Some persons interviewed

for this report worried that there is little *sense of urgency* in PRM -- little sign of the energy level that will certainly be needed under today's conditions. Others complained that the actual selection criteria and the precise decision mechanism for getting a group on the approved P-2 list are obscure. As a result, some of the groups under discussion have been kicking around for years, without discernible progress toward a clear go or no-go decision.

Several persons interviewed, including many in government positions and in PRM itself, lamented the current state of relations between the admissions office and the resettlement NGOs, believing that much could be done from both sides to overcome this divide. NGOs, some suggested, need to nurture a more complete understanding of the obstacles and complications that have affected the program over the past two years, and curb the tendency to read bad faith into outcomes that prove disappointing. But PRM could also do much to help revive the traditional spirit of public-private partnership that was a traditional hallmark of the program, treating the volags as allies and fostering ways to improve transparency and communication. A healthy partnership includes candid and ongoing two-way critique. Such give-and-take -- frank, robust, even harsh -- is a legitimate part of the democratic decision-making process, and PRM should not take offense when criticism is voiced.

A few examples of communication difficulties are worth describing. Cooperative working groups were initiated a few years ago. The one that dealt with fraud issues worked well and produced a useful report, whose recommendations are now largely being implemented. Its operations were widely commended. But other working groups did not go well, and most fell into disuse. I heard from many people about one particular meeting of the "Rest of the World" working group (so labeled to distinguish it from the group focused on Africa). The meeting was attended by PRM staff, regional bureau officers, and NGOs. The NGOs came to the meeting intending to present ideas for eligible group initiatives and to work through the advantages and disadvantages of each. The meeting was apparently conducted in such a way, however, that an initial NGO recommendation was immediately met by a strong State Department statement of the reasons why such an initiative would not work -- in a fashion that was perceived by the NGOs as an intended conversation-stopper instead of a mutual effort to examine pros and cons. Some participants felt that the regional bureau officers had been brought to the meeting precisely in order to knock down the ideas the NGOs were going to offer. Accounts from the State Department side, while agreeing that the meeting went badly, attributed the problems more to clumsiness in meeting design and maybe a misunderstanding of the best ways to foster effective communication.

Involving NGOs more completely in the design and field implementation of certain initiatives would also be beneficial. For example, I heard from stateside NGO representatives who had offered support when they were initially told of a planned training session in Nairobi for NGO personnel (mostly from assistance-focused NGOs), to enable them to make NGO referrals of highly jeopardized individuals for processing as P-1 refugees. The persons making the comments were then disappointed that the later parts of the training initiative were developed without the input they had offered to provide. The ultimate results of this NGO referral initiative have been disappointing; perhaps it could be more successful with greater input from NGOs more closely familiar with resettlement. Of course, the unfortunate ongoing tensions between resettlement-focused NGOs and assistance-focused NGOs, for which PRM is not responsible, may also have contributed to these difficulties.

Joint PRM-NGO working groups are now being revived -- a welcome and useful step. PRM should be sure that meeting agendas and operating rules truly do provide for a productive give-and-take. The exact methods of course will depend on the subject matter and the state of development of the initiative or operation being discussed. But more use of meetings designed largely to have State Department personnel listen actively to NGO ideas without a need for immediate and definitive response might be useful. Even if a proposal presents apparent difficulties, it will be much more productive to react with questions meant to probe the challenges. Asking "how then would you deal with the magnet effect risk, given that there are X thousand still in the country of origin from the same group?" is more effective than simply declaring that the initiative cannot work because of a pull factor. The response and resulting dialogue may produce unexpected ideas for how to diminish the problem. There will be adequate time away from the meeting for government players to hash out their fully considered positions. After such government deliberations, it will often be useful to provide one more round of interaction and comment on a position that is well-formed and fairly far along in the decision process, but before it goes final. This will improve the sense of full partnership and involvement, even if the position remains unchanged in the final outcome.

This is a key attitudinal point. The Admissions office often gives the impression that it views the acceptance of input on a wider scale as tantamount to surrendering control over the program's decisions or implementation to the NGOs. There need be no such equivalence. PRM properly asserts authority to decide in the end how the program should run. But input can produce ideas that deserve acceptance on the merits. And even if the agency largely sticks with its original approach, the dialogue can produce useful refinements and tweakings -- and a better sense of why the original approach is judged best. Moreover, NGOs would be much happier with a framework that invites their suggestions in a candid and ongoing way, even if their advice on a particular matter is not followed. A respectful disagreement is better than a feeling that one's views were not even invited or considered. It must be acknowledged, however, that fostering effective communication requires considerable staff time and energy, a commodity that has been in short supply. Augmenting the limited staffing of the PRM Admissions office, discussed below, would open up better possibilities.

Resolving differences among the various bureaus and agencies involved in refugee processing away from public meetings is also quite important. I heard several accounts of finger-pointing toward other government agencies or offices in public meetings, or open displays of sharp intragovernmental differences. These not only hampered relations with NGOs, but they also sometimes made it difficult to reach constructive resolution among government players. The last two years have been times of great difficulty for the resettlement program, producing unusual strains for all involved. Even in such times, however, the program will work best if such differences, when they exist, are fought out and resolved in internal forums.

## **2. For the future**

A clear sense that the PD number is a firm target rather than a ceiling, as recommended in Chapter I, should both energize PRM's scouting for eligible resettlement initiatives and fortify the Bureau during the interagency discussions that have to take place before new resettlement initiatives are approved. This does not require that PRM become an indiscriminate cheerleader for any resettlement proposal that may be advanced by the NGO community -- a concern some expressed in interviews for this project. It is admirable and indispensable that the Bureau maintains its own critical perspective in evaluating such suggestions. Nonetheless, PRM's admissions office has to be the component in the decision-making system that gives the benefit of the doubt to resettlement, as a counterweight to the negative arguments that will readily appear from other governmental or international quarters. PRM also has to be the part of the system that maintains a global perspective on resettlement, to help assure that particular initiatives are not simply picked off and squelched one-by-one.

The group designation process requires obtaining preliminary information on candidate populations; identifying their needs and the conditions of life in the current first-asylum or in-country situation; assessing the political landscape and the impact that a new resettlement initiative would have on the target population, host and neighboring governments, and on others who might migrate in response; identifying other features or steps (such as registration practices) that might minimize adverse impacts; estimating the likely interview success rate if resettlement is offered; and eventually clarifying logistical needs and ways to meet them (such as safe interview sites). NGOs can be of real assistance with many of these stages. The annual admission recommendations in the RCUSA volume already provide a useful starting point. Specific NGO missions, without direct government involvement, have also produced detailed reports that triggered real PRM interest and additional steps to investigate resettlement possibilities in detail. Such NGO reports or suggestions are likely to be most effective along these lines if they attempt to deal in detail with the hard questions about obstacles and limitations that are outlined in Chapter I, Section A. Moreover, UNHCR's nascent group referral process holds real promise in assisting along these lines, although it will probably require a few years (and successful pilot implementation) before that mechanism will produce significant volumes of referrals.

But even with such assistance, managing all these access-development tasks sets a highly ambitious agenda for an office of the size of PRM's admissions office. Through much of 2003, it functioned with approximately 12 permanent officer positions, plus five Refugee Coordinators posted to field offices globally whose primary duties focus primarily on admissions (one each in Accra, Nairobi, Cairo, Havana, and Ho Chi Minh City). The overseas program unit in headquarters has had only four officers, although its work has been augmented in various ways by the three officers on the Domestic Programs side of the house (whose primary tasks involve monitoring the resettlement agencies operating under reception and placement grants from the State Department), and by certain other arrangements. Nonetheless, the tasks assigned to these officers cover a huge range, leaving relatively little time for the crucial group-development work. For example, they must help deal with logistical difficulties that arise during a DHS circuit ride, with congressional inquiries, and with individual problem cases, including inquiries from family members whose relative in a camp is stuck somewhere in the process. And many of them have come in on nights or weekends over the past year to help do vital, but largely clerical, tasks entailed in the new security screening process. Some temporary staff has now been added, primarily to handle these security-related functions, and three new officer positions are in the works.

Even with these additions, this staffing level is insufficient for the new era of refugee resettlement. Additional officer time must be freed up to focus on group development, and also for better communication with the office's public and private partners. An addition of five officer positions to the Admissions Office would not be out of line, in view of the vastly changed landscape of refugee admissions as compared to the previous decade. These additional officers should not come on as specialists doing only group development, however. It is salutary for Admissions staff to share in many parts of the resettlement work, from individual problem-solving to wide-scale group scouting to some familiarity with domestic resettlement, so that they gain a complete picture of the resettlement process. The Department should also find more efficient ways to handle security screening tasks.

Enhanced PRM staffing, with a shift in outlook as outlined above, should help energize the group development process, and it will importantly give PRM the capacity needed in order to sustain the quality of decisions on resettlement initiatives. It will not serve the cause of the refugees, nor provide credit to the program, if sloppy decisions are made in the service of a new drive to increase resettlement numbers. The office needs to have enough potential initiatives under consideration -- to have enough options going at any one time -- so that the refugee program can afford to be selective, including attention to those factors that might counsel against a particular initiative, while sustaining a steady flow at the needed level.

**Recommendation: PRM, as the lead office on the process of group designation, must develop a sense of urgency about adding one or two new groups to the pipeline development process each month. PRM must impart energy and vision to this mission, in a way that will promote added efforts on the part of the other players in the process, both governmental and nongovernmental. It must seek innovative ways to accomplish the various functions involved. The Admissions Office staff should also expand in view of the very different requirements in this new era of refugee resettlement. Without abandoning its own critical perspective on admissions proposals, the Admissions Office must come to think of itself as the component in the decision-making system that gives the benefit of the doubt to resettlement, so as to serve as a counterweight to negative arguments that will readily appear from other governmental or international quarters.**

### **C. The involvement of the rest of the Department of State**

If the burden of meeting the President's target in this new resettlement era is seen as falling solely on PRM, the target probably will not be met. Approval of new P-2 groups (and indeed acceptance of a UNHCR group referral) must be cleared more widely within the Department of State. In particular, such approval generally requires the assent or acquiescence of the appropriate regional bureau. It must also have genuine support from DHS. Persons interviewed for this project recounted marathon efforts by some within PRM during FY 2002 to propose and develop new group initiatives, only to meet with resistance of varying degrees from the regional bureaus or DHS, and sometimes from UNHCR. Resistance ranged from security concerns about the refugee populace to skepticism about the logistics of processing (including safe interviewing sites) to warnings about pull factors to dire predictions about the reactions of host governments or their neighbors. The point is not that these concerns were illegitimate or unworthy. Instead, I was told, they were often seized on early in the process as complete trumps of any further consideration -- blocking PRM's efforts either to probe the concern more thoroughly or to develop additional strategies, in cooperation with the objecting office, that could overcome the problem. The possible disruptions and imponderables deriving from a new resettlement initiative tend to loom large for desk officers or ambassadors, too few of whom have historically felt a real responsibility for bringing admission totals up to the level set in the PD. If the numbers fall short, that outcome has often been seen as essentially PRM's problem, not the Department's.

These last comments overgeneralize, of course, and there are important counterexamples. In fact, many successful resettlement initiatives owe a great deal to vigorous support by the ambassador posted to the first-asylum country or to an officer in a regional bureau in Washington.

But the key point is that this outlook, this feeling of shared responsibility for meeting the resettlement targets, must come to be more widely shared within the Department under today's conditions. A more energized and better staffed PRM can help, as could a clear directive from the Secretary stating that the PD number is a goal, not simply a ceiling, and that all offices are charged with helping to meet that objective. But bureaucratic processes respond only sluggishly, if at all, to exhortation. Short- to medium-term institutional or procedural changes may also be useful in order to make sure that such views become deeply instilled in the actual operations needed to restore the refugee program.

### **D. Suggested procedure for deciding on group initiatives**

#### **1. Refugee Admission Committee**

The Department of State was faced with a somewhat comparable need for institutional and attitudinal change in the 1970s, when human rights was introduced as a systematic foreign policy priority. At that time the need for such change derived from a major new policy thrust, whereas here the challenge is essentially to meet a continuing policy objective but in significantly changed world conditions -- marked by both greater operational hazards and the end of predictable large-scale multi-year resettlement flows. Nonetheless there are enough points of similarity between the two challenges to make the earlier experience instructive.

In the 1970s, not only had President Carter directed the Department to give more prominence to human rights, but more concretely, Congress passed several statutes specifically mandating human rights considerations in decisions on foreign aid, including economic and social assistance, military assistance, and U.S. votes in the international financial institutions. In order to be sure that these mandates were followed, and also to develop a consistent set of policies and criteria for implementing them, the Department provided that many of the key decisions, especially on aid, would be made at periodic meetings involving the regional bureaus, the human rights bureau, and other interested units. Because these sessions were chaired by the Deputy Secretary, Warren Christopher, the body came to be known as the Christopher Committee. Representatives of all the regional bureaus were expected to attend each session, in order to help facilitate an accurate comparison with earlier decisions and thereby develop a more consistent set of criteria and standards, and also to help assure that a full understanding of those criteria would be worked back in to each bureau's internal deliberations in the future. The process also assured that a final decision was reached in a timely fashion, because the meetings concentrated attention and forced action.

An adapted version of this model, a Refugee Admissions Committee to be chaired by the Assistant Secretary for Population, Refugees, and Migration, could bring benefits, at least as a transitional measure to be used for a couple of years while all concerned gain familiarity with the requirements of this new era of admissions. Each regional bureau would be asked to designate a senior officer for regular attendance, as would other appropriate offices, such as the Bureau of Democracy, Human Rights and Labor (DRL). Representatives of DHS and the National Security Council should also be invited to participate. Additional officers would attend specific meetings as needed, based on their own expertise or responsibility regarding a particular nation or situation slated for consideration in detail. Committee meetings should be placed on a firm schedule set well in advance, meeting no less often than bimonthly -- as an action-promoting timetable. If agreement can be worked out in advance among the relevant bureaus, then the meeting could simply hear a report on the plans, including an account of the most difficult issues and how they were resolved. This would be instructive for all involved, providing a growing sense of consistent criteria that are relevant in designating a group, and of the range of creative steps that can be taken to overcome obstacles.

The Committee could also be called into session quickly if needed to consider an urgent group resettlement need. Alternatively, if wide agreement among all relevant bureaus to designate a particular group is achieved between meetings, the Committee may want to have a supplementary procedure for such additions without having to convene a special meeting or waiting until the next regular meeting is scheduled.

## **2. Refugee Admissions Committee procedures**

The Committee will of course need to develop and refine its own procedures in light of experience, but a clearer structuring of the decision process could be quite useful for all involved. I recommend using three categories for group consideration, labeled *potential groups*, *candidate groups*, and *designated groups*.

PRM would prepare a list of *potential groups*, casting a fairly wide net and working with counterparts in the appropriate regional office. Some judgment and discretion are necessary in compiling even this preliminary list, of course, but extensive investigation would not be expected, and the existence of disadvantages or concerns, even if they initially seem fairly significant, would not necessarily knock a group off the list of potentials. Each Committee meeting could begin by considering this list, in order to identify those that are appropriate to raise to the next level as candidate groups.

*Candidate groups* are those that are seen as reasonably promising for a resettlement initiative, though they need not be problem-free to be moved to this list. Inclusion as a candidate would mean that the group is appropriate for more intensive investigation, usually including field visits. The field inquiry team should include DHS and could also involve NGOs, UNHCR, IOM, and other players as appropriate. This investigation is meant to develop more detailed information about the characteristics of the proposed group, including camp conditions, the level of risk or harm or inactivity its members face, the political impact of a resettlement decision, obstacles to a successful program, and steps that might be taken to overcome the obstacles. For example, the candidate group might be located in an area seen as relatively unsafe for DHS interviewing. The field inquiry would examine, in cooperation with the embassy security officer, whether changes could be made to facilities in the area where the refugees are located, in order to reach a satisfactory level of safety. Alternatively, the team could explore possibilities for moving the population to another site for processing, as occurred with both the Liberians in Cote d'Ivoire and the Somali Bantu in Kenya. Or if the main problem is the risk of a magnet effect, the team could determine whether existing registration records or a new UNHCR verification might provide an adequate basis for limiting the resettlement program to persons who had already been in first asylum for X number of years. Field inquiry may find that only a subset of the candidate group is appropriate for resettlement. In order to avoid generating unrealistic expectations among refugees in the area, decisions to name a candidate group generally should not be publicized, and the inquiry team should strive to work behind the scenes and without advance publicity of the purpose of its visit. This investigative procedure would fit very well with efforts PRM is already launching for "targeted response teams."

Any group referred by UNHCR for resettlement (so-called P-1 groups) should be immediately included on the candidate list, and enjoy a presumption of support. Further investigation can be more limited for such submissions, but they should still come to the Committee for a final decision before the group is approved for resettlement to the United States.

The results of the field investigations and other inquiries regarding candidate groups would be reported to the next Refugee Admissions Committee meeting, and would provide the basis for choosing which candidate groups would actually be *designated* for priority resettlement -- the final stage in the group-development process. Once a group is designated, the logistical steps for actual resettlement would be put into motion. PRM would make arrangements for OPE processing and eventual medical screening and transportation. DHS would be asked to prepare a schedule of circuit rides and to work with the embassy to resolve other preliminary issues, such as final approval of interviewing sites. And the resettlement volags would be notified so that they can begin preparing reception and placement plans as necessary.

Obviously some candidate groups will prove, upon investigation, not to be good possibilities for resettlement, and the

Committee can then make a firm decision not to proceed. Or the Committee may decide to postpone decision on certain groups, awaiting other political or logistical developments. For these reasons, there will always be attrition as groups move from one level to the next. Therefore it will be essential to assure that there are enough potential groups and candidate groups in the works at any given time to produce designations on the scale needed to meet the target, even allowing for attrition and postponements.

### **3. Advantages**

The Committee provides a structure for considering resettlement options in a comprehensive and consistent fashion. The current diffuse process, wherein proposals circulate separately, sets up a dynamic of discussion and negotiation primarily involving only PRM and the regional office at issue. This setting often undervalues the positive features of the proposed resettlement and gives undue weight to the disadvantages, allowing the initiatives to be more readily disapproved or delayed one-by-one. In contrast, the Refugee Admissions Committee process will facilitate -- even require -- disciplined comparative judgments. It will help assure that all participants remain mindful of the Program's positive humanitarian mission and of its ultimate target numbers, even while giving close scrutiny to the disadvantages and obstacles affecting any particular group. Participants in the meetings who are skeptical about resettling a certain population may find their doubts diminished when they learn of steps taken to overcome similar disadvantages initially encountered with regard to another group in a different region. Even when doubts cannot be wholly eliminated, this comprehensive approach allows an informed comparative choice of those groups that present the fewest concerns and disadvantages.

Dealing with group initiatives through the Committee also better allows for well-calibrated adjustments throughout the fiscal year, going further down the list of promising candidates if necessary in order to assure a more even flow. The Committee will be a forum, in other words, for keeping track of the pipeline and admissions progress to date, making its new decisions in light of that information. It provides a better framework for building up to and then sustaining a steady pace of admissions throughout the year, minimizing the current year-end rush.

### **4. Using the Committee process to assure timely completion of the full Presidential Determination process**

Finally, other related tasks, especially preparation of the annual admissions consultation document to be transmitted to Congress, might work more smoothly if they are tied in to the regular meeting schedule of the Committee. Final clearance of the consultation document often bogs down in disputes over recommended numbers, groups, or wording, delaying consultation meetings and helping to push the issuance of the Presidential Determination a few days or weeks into the next fiscal year. Delays have serious operational consequences that seem insufficiently appreciated by some players in the process, including congressional offices. If no PD is in place by September 30, all refugee movement must halt and future flight bookings can be made only at risk of having to pay for unused spaces. Several valuable weeks can be lost. A healthy admissions program should not countenance these significant inefficiencies.

The objective should be to prepare a document in time to assure completion of the full consultation process before Congress's August recess. That timing would allow final deliberations on the congressional feedback, plus the preparation and signing of the PD, by early September, making sure that operations can continue without break. Instead of allowing debates over the document to cause such delays, the document should be scheduled for firm resolution at a stated meeting of the Committee, ideally in late spring (to permit whatever further interagency clearances are needed). A fixed date of this kind should help foster early compromise among competing camps, but if agreement is not reached, the dispute could be crystallized for discussion at the meeting and, if still not resolved, for preparation of the papers needed for resolution at a higher level.

**Recommendation: The Department of State should establish a Refugee Admissions Committee, to meet no less often than bimonthly. In a multi-level decision process, the Committee should consider lists of *potential groups* and *select candidate groups* for more thorough investigation. After the investigation, which could involve field visits by targeted response teams that include representatives of NGOs, DHS, and perhaps UNHCR and IOM, the Committee will ultimately *designate* groups for priority resettlement, at a rate needed to meet the PD target and to keep a reasonably steady flow of admissions.**

**The Committee should also play a central role in the adoption of the annual congressional consultation document. It should schedule its deliberations so as to assure that the document is prepared in a timely and complete fashion that will enable consultation with Congress before its August recess and signing of the Presidential Determination by early September.**

### **Chapter III The Priority System and Arrangements for Urgent Cases**

The priority system structures access to the US Refugee Program. Falling within one of the operative priorities permits a person to apply, be processed for consideration, and usually to be interviewed by a DHS officer, but it does not guarantee approval. The DHS officer still must find that the person meets the refugee definition, is not firmly resettled, and is not excluded by any applicable ground of inadmissibility (many grounds are waivable for refugees). The current priority system was adopted in 1994, partly in order to give UNHCR a larger role in initiating resettlement. This chapter considers proposals to change the overall system or the use of certain categories within it, as well as arrangements for urgent cases.

## A. Overview

The five priorities may be briefly summarized. P-1 cases may be of any nationality and are based on referrals from either UNHCR or a U.S. embassy. The focus of P-1 is individually compelling cases, but official descriptions of this priority usually go on to list specific factors that may support a decision to refer. Many of these parallel the factors given prominence in the UNHCR Resettlement Handbook.<sup>11</sup> The following is a typical list, although the formulations sometimes vary slightly:

- persons facing compelling security concerns in the country of first asylum
- persons in need of legal protection because of the danger of refoulement
- persons in danger because of threats of armed attack in the area where they are located
- former political prisoners or persons who have experienced persecution because of political, religious, or human rights activities
- women at risk
- victims of torture or violence
- physically or mentally disabled persons
- persons in urgent need of medical attention not available in the first-asylum country
- persons for whom other durable solutions are not feasible and whose status in the place of asylum does not represent a satisfactory long-term solution

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<sup>11</sup> Cite

P-2 is for groups of special humanitarian concern to the United States who are designated for resettlement processing. Specific groups from the former Soviet Union, Cuba, and Vietnam (countries where the United States does refugee processing inside the country of origin, under special Presidential designation) have long been named as P-2 groups, and other categories have been added at various times. For FY 2004 this additional list includes Somali Bantu in Kenya, Baku Armenians in Russia, and Iranian religious minorities, primarily in Austria, and other groups are now under consideration.

P-3 through P-5 are based on family relationships to persons in the United States, but these priorities are made available only to specific nationalities designated at the time that the anchor relative in the United States files the Affidavit of Relationship (AOR) that starts the process going. For most of the time that this priority has been in use, anyone resident in the United States (including citizens, lawful permanent residents, persons having refugee or asylum status, and certain parolees) could petition for a relative, but for FY 2004 this privilege is limited to persons initially admitted to the United States as refugees or asylees. This latest restriction is explained on the basis that the US government will have sufficiently complete family information only on those categories of anchor relatives -- information needed to provide a good basis for checking the validity of the claimed family relationship.

P-3 covers spouses, minor children, and parents, whereas P-4 and P-5 cover more distant relatives. P-4 and P-5 have not been made available for several years. P-3 covered only four nationalities in FY 2003, and covers nine for FY 2004. Actual P-3 admissions for any given year, however, typically include a wider array of nationalities, because eligibility is governed by the nationality list that applied at the time the AOR was filed. An AOR only provides access to the process. DHS must still find that each person admitted under P-3 individually satisfies the refugee definition, or is the spouse or child of an accompanying relative found to be a refugee. Many persons who fit P-3 through P-5 might also be eligible, now or after the anchor relative naturalizes, for immigration in one of the family preference categories of the regular immigrant admission system. But backlogs in that system usually make the refugee route advantageous, if the applicant can demonstrate a well-founded fear of persecution.

Dissatisfaction with the priority system usually focuses on the relatively limited use of P-2 group designations (which is addressed in Chapter II) and on the recent trimming of the list of nationalities eligible for P-3. Many people argue for a universal P-3, available to all nationalities. Other critics suggest that too much reliance is placed on UNHCR's role in referring refugees -- a role for which UNHCR was not adequately staffed or supported. They want to see a greater push for embassy referrals and a wider referral role for NGOs, who often know better of individually compelling cases in refugee situations. Some consider that the P-1 system is too diffuse, including a wide range of different types of potential refugees that would better be separated. In

that fashion, the priority system, they assert, might better allow for the truly urgent case. And some critiques call for a complete revamping of the priority structure. The sections below begin with consideration of the latter, then move on to consider specific suggestions with regard to individual, group, and family processing.

## **B. Broad restructuring of the priority system**

### **1. A prominent reform proposal**

Bill Frelick proposed a thoughtful restructuring of the priority system in testimony before the Senate Judiciary Subcommittee in 2002.<sup>12</sup> Frelick perceptively notes the unevenness of the list of factors provided under the existing P-1 category. That list covers a wide variety of situations, some far more compelling than others. He proposes regrouping them with closer attention to their relative urgency, as well as introducing new priority categories based on some factors not directly addressed in the current system.

Frelick would pull together the most urgent refugee cases in countries of first asylum as a new P-1 category, still to be based on UNHCR or embassy referral. These would be the first three categories in the list set forth in Section A above, plus persons in urgent need of medical attention (the eighth factor listed). P-2 would be a new category, although one that is similar to categories used in the pre-1994 system: persons whose fear of persecution is based on actual or imputed association with the US government or US nongovernmental entities. P-3 and P-4 would also be break-outs from the current P-1 factor list. P-3 would be for women at risk in the first-asylum setting and P-4 would cover physically or mentally disabled refugees and survivors of torture or violence. Frelick's P-5 would be what is essentially our current P-2 category, State-Department designated groups of special humanitarian concern, selected based on specific group circumstances. P-6 would become what is essentially today's P-3, but open to all nationalities. And P-7 would be for long-stayer refugees whose situation in the country of first asylum is not a satisfactory durable solution. Frelick lists specific factors to consider in making that determination.

Frelick has subdivided the list and paid close attention to the ordering because he intends these categories to be true priorities: It is more important to use admission spaces for his P-1 refugees than for P-2s, and so on, and admissions should take that hierarchy into account. Significantly, his P-7, long-stayers, is meant to be a category that comes into play in order to assure use of PD admission slots that would otherwise go unused -- and there have of course been such unused slots, sometimes in large quantities, throughout the history of the program. If a given year appears unlikely to make use of the full allotment for persons in the first six priorities, he suggests, then the US should process long-stayers so as to make full use of the PD resource. He is aware of the difficulties of initiating resettlement in the midst of a long-term refugee situation, and he offers specific steps to minimize resentment by those not chosen and to reduce any pull factor.

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<sup>12</sup> Cite. The proposal also appeared as Bill Frelick, Rethinking U.S. Refugee Admissions: Quantity and Quality, 2002 World Refugee Survey 28.

### **2. Evaluation**

Frelick's proposal is a worthy effort to retool the priority system to respond better to real humanitarian need, and the system he proposes would certainly be workable. I recommend making far more modest changes in the overall priority system, however. In my view, the major difficulties in the current system result from the priority system as such. Numbers have gone unused, for example, not because of the lack of a P-7 category that can serve as a reserve pool, but because of a lack of clear signals to treat the PD number as a target and because of problems with the decision-making structure. These problems are addressed directly by the recommendations in Chapter II. Moreover, even if we agreed to fill unused slots with long-stayers, there would still be difficult decisions about just when to trigger that resettlement (Frelick does not contemplate that we wait until the final quarter of the fiscal year to see how large a shortfall we will experience) and above all, which long-stayer situations to focus on. Making those decisions will inevitably require group-based determinations by those in charge of the USRP, not unlike what is now required for the current P-2 process. Although I definitely support the impulse to look more systematically at protracted refugee situations as the source for significant admissions in this new resettlement era, I believe that this objective is best worked in to the group designation process outlined in the previous chapter.

Frelick's ranking of the relative urgency of current P-1 factors (as reflected in the different break-out categories) makes sense, but it seems unlikely that there will often be situations where we must choose the higher ranking categories to the exclusion of the lower. The mechanism will still be individual referrals, if not from UNHCR then from a US embassy or, under expanded arrangements, from NGOs or other partners. That expansion could proceed without explicitly subdividing the different subcategories of P-1. Also, giving priority to admission of persons who are persecuted precisely because of their ties to the United States is a worthy objective, but that factor can be accommodated within the individual referral system. It might be wise to add that consideration to the P-1 list. If groups are targeted for persecution because of such ties, that feature would constitute

a strong argument in favor of P-2 designation.

Frelick's proposal does helpfully point out a major disconnect between one of the P-1 factors and virtually all the rest. The factor based on lack of another durable solution and an unsatisfactory situation in the country of first asylum has less of the immediately compelling quality or short-term risk shared by the other features. Moreover, such a situation is less likely to apply to isolated individuals, but instead will probably be shared by a larger populace. That is, it is more likely to lend itself to a group referral, as happened recently for certain Liberians in Cote d'Ivoire. UNHCR is working to develop a new set of procedures that will facilitate systematic use of group referrals on a larger scale in the future, and a great many of these are likely to derive from the comparable no-other-durable-solution category used by UNHCR in its own resettlement referral system.

I would prefer to use this functional insight and implement only a modest revision in the priority system. The refugee admissions system is going through enough change at present that it may be valuable to keep the priority system as stable and straightforward as possible. We essentially have operated with three sources of refugee access: individual referrals, group decisions, and family-based access. These correspond roughly, but not precisely, to the current P-1, P-2, and P-3 categories. We should bring those correspondences more completely into line, by treating *all* group-based admissions under the P-2 category. When UNHCR refers a group, as it is likely to do with increasing frequency over the coming years, that referral should then be given prompt consideration for inclusion as a priority group within the USRP -- using the Admissions Committee decision process described in Chapter II. Any such UNHCR referral should enjoy a presumption of approval. But there will inevitably be a US decision process for deciding whether we want to participate in such a resettlement effort (as opposed to, say, leaving a certain situation primarily for other resettlement countries). That decision should be worked into the same procedures that will come to be used on a much more frequent basis for the traditional P-2 group decisions.

Beyond this, I agree with Frelick that we now have little need for the current P-4 and P-5 categories as such. Such factors -- more distant family relationships to persons resident in the United States -- may in limited circumstances be of importance. For example, the United States has sometimes felt called upon to respond to a large refugee flow (such as from ex-Yugoslavia or Afghanistan) but under circumstances that make it clear that resettlement can address only a small fraction of the overall need. In these settings, we may occasionally want to employ as a selection factor (probably just one among many) family ties to US residents. But we do not need separate priorities for these purposes. Such qualifications can be worked into the description of the precise group given priority access under the P-2 process.

**Recommendation: The priority system should be revised modestly, so that P-1 becomes the priority for individual referrals from UNHCR, US embassies, or, in some circumstances, other referring entities; P-2 covers all decisions for designated groups; and P-3 remains the category for close family members of US residents. P-4 and P-5, now covering more distant family relationships, should be removed as priorities, although those same family connections might sometimes be characteristics used in specific P-2 designations. UNHCR group referrals should be worked into the group designation process under P-2, although such referrals should enjoy a strong presumption of approval. PRM should consider refining the list of factors for P-1 referrals accordingly, as well as adding a factor for persons facing persecution that is based on their real or imputed ties to the US government or US entities. PRM should post on its website a list of P-2 groups currently being given access to the US system.**

### C. Individual referrals

P-1 admissions derive primarily from UNHCR referrals. This system has worked reasonably well, although a few reforms would be worthwhile. The main complaints I heard about individual referrals were that there are too few of them. This theme has been particularly urgent in the past two years of low admission totals overall. Some have blamed the 1994 redesign of the priority system for the problem, believing that it unwisely gave too much of a gatekeeping role to UNHCR without assuring that the latter was funded and staffed at a level that could keep admissions at historic US levels, even with the decline of the Soviet and Indochinese programs. This view is probably unfair. The 1994 changes did not require that most admissions come through UNHCR. It should have been apparent that retaining a large-scale program would require a significant component of group-based access under the P-2 mechanism.

PRM has provided the UNHCR protection division with additional funding for referrals in recent years, eventually setting performance criteria in the form of a minimum number of expected referrals in return for the enhanced funding. UNHCR has added staff for these purposes and has increased its output of individual referrals, but the demand for specific outputs also stimulated the Office to hasten the development of group-referral procedures -- once it became aware that it would be difficult to produce an adequate volume through the individual referral mechanism. In any event, the individual referral process at UNHCR can be quite cumbersome, often involving an individual refugee status determination (RSD) based on lengthy individual interviews, followed by the completion of a 14-page resettlement referral form (RRF). Some UNHCR field offices have streamlined portions of this process, particularly using abbreviated forms for resettlement referrals to the United States. Further streamlining should be considered. UNHCR should move away from a one-size-fits-all model of individual referrals. Some countries in Europe accept UNHCR referrals based on the dossier only; for those countries, the elaborate UNHCR investigation

and paperwork may make sense. But for interview-based systems like that of the United States, which inevitably include a careful separate inquiry into refugee status and other qualifying characteristics, UNHCR could simplify its process.

PRM should also continue to support ongoing UNHCR reforms that are meant to enhance quality control and consistency in the standards for individual referrals. I was told of situations where some offices are more likely to refer troublesome or pushy refugees from a first-asylum situation, simply in order to be rid of the hassle. The UNHCR individual referral system must reliably focus on individually compelling cases. UNHCR is aware of this issue, however, and is introducing measures, such as greater use of regional resettlement hub offices, that are improving quality-control monitoring and overall performance.

Although US embassies have not produced a high volume of referrals, this mechanism should certainly remain available as a source for P-1 admissions. The Department of State should include in the initial training of foreign service officers more systematic instruction on refugee and humanitarian programs generally and on the specific opportunity and procedures for referrals of this type. It should also consider improvements in the annual instruction cable regarding embassy referrals. And it may be possible to work out better procedures for considering a modest but steady flow of cases brought to embassy attention by NGOs. Nonetheless, one should not expect more than modest increases in referrals from embassies, which are already stretched thin by their other responsibilities.

Others have proposed to expand possibilities for NGO referrals, looking to this in part as a potential source for a significantly increased volume of admissions. IRC developed such a system several years ago that referred a modest number of individual Afghan refugee cases in Pakistan, and HIAS has such a program in East Africa. PRM also initiated a pilot program for enhanced NGO referrals with a two-day training session in Nairobi in early 2003. These initiatives are worthwhile, and PRM should evaluate the experience under each of them, in order to refine the system and expand its operation. In particular, persons interviewed suggested that a less cumbersome procedure than the one set up as part of the Nairobi training would be more likely to produce better results. If the paperwork required is too extensive, busy NGO personnel in the camps will be deterred from triggering the process.

Although an enhanced system for NGO referrals should be developed, it is important to understand what we can expect to accomplish through this mechanism. This mechanism offers an expanded means for finding compelling individual cases in first-asylum countries, drawing on the detailed familiarity with conditions in refugee camps and settlements of NGO assistance personnel already working there for purposes other than resettlement. Such referrals should not be expected to generate large numbers. Many people interviewed for the project, including NGO representatives, emphasized that NGO staff in camps should not be put in a position where they become known as a kind of ticket to admission to the United States. In many first-asylum settings, hunger for resettlement possibilities is so great that knowledge of such a role might leave the NGO staff besieged with supplicants, interfering with their primary operational work. The individual referral role for NGO staff is best done quietly, as a modest addition to the tools of the admissions program. It will be able to focus only on the most urgent needs for rescue from dangers in the camp. NGOs have a role in generating access on a larger scale, but that should come through the group designation process, as discussed in Chapter II and the following section of this chapter.

**Recommendation: PRM should press UNHCR to continue expanding its individual referral capacity, streamlining the referral process, and enhancing its mechanisms for quality control and consistency. PRM should systematically evaluate the past experiences with NGO individual referral schemes, so that the process can be made available elsewhere. Such referrals will ordinarily be done quietly by NGO assistance personnel present in the camp or settlement for other reasons, and can be expected to produce only modest numbers, because they will focus on urgent, compelling cases. State Department training should better equip embassy personnel for their own role in referrals of compelling cases, although numbers cannot be expected to expand significantly.**

#### **D. Group access**

Chapters I and II addressed many key questions surrounding the process of deciding on the groups to be granted priority access to the US Refugee Program, recommending an attitudinal and institutional framework for improvements. An additional word about NGO roles, initially discussed in Chapter I, Section B1b, is appropriate. NGOs perform a considerable service in recommending group initiatives to the Department of State, and they have provided highly valuable information sources for these purposes for several years. Publications like the World Refugee Survey, produced by the US Committee for Refugees, as well as the human rights reports of some other organizations, provide well-organized accounts that can be of great assistance in the process of identifying potential groups for access to the US program. The most focused NGO resource of this type, however, consists of the annual Recommendations volumes produced by the Refugee Council USA, the umbrella organization for the resettlement volags.<sup>13</sup> Each year they provide details, region by region, of needy refugee populations, and make specific recommendations for enhanced individual access or P-2 designation, as appropriate.

No official sanction, such as legislative authorization, is needed for this process. RCUSA and others should continue to provide

this type of detailed non-official input, which should be of great assistance in preparing and refining the list of potential groups for consideration by the Admissions Committee. More visible demonstrations of a Departmental intention to examine these suggestions seriously, coupled with an effective and sustained increase in the use of the group-designation process -- which is decidedly needed anyway -- should decrease the momentum for enshrining this initial NGO process in legislation.

Once a potential group has been chosen as a candidate group, NGOs can play a highly useful and focused role as part of the investigatory process contemplated before a decision on final designation. PRM's current efforts to establish targeted response teams, at roughly the equivalent point in the current group-consideration process, seem to afford a useful model. The teams are to be composed of governmental area experts as well as NGO representatives with particular knowledge of the targeted country or population, as well as of the resettlement program. NGOs should move promptly to prepare a roster of their personnel with the necessary expertise who would be available for service, sometimes on fairly short notice, with targeted response teams.

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<sup>13</sup> See, e.g., U.S. Refugee Admissions Program for Fiscal Year 2004: Recommendations of The Refugee Council USA (May 2003).

Those teams should also include a representative of DHS. Until now, DHS (like its predecessor INS) has tended to want to leave the group designation process to the Department of State. It then takes up its role only after designation has occurred. I was told that this reticence traced in part to the diffuse process for group designation. DHS did not want to be fingered as the source of denial of a group designation, when all it might have done was to suggest certain problems or obstacles -- objections which it often did not see as fatal to a proposed designation. But if the process becomes more clearly defined, as suggested in Chapter II, a DHS role should fit far more comfortably. The Department of State would take responsibility for developing the list of potential groups to bring to the Admissions Committee. Only after a formal decision to name a candidate group would DHS be asked to play a role in the future investigation and development of possible plans for resettlement.

Such a DHS role at the stage of investigating a candidate group is needed to assure ample consideration of operational issues and means of addressing them, *before* a final designation is made. Under past practice, I heard of several instances where rather significant operational problems affecting DHS's role had not been spotted until the circuit ride team arrived to begin interviews -- resulting in damaging inefficiencies. Sometimes these had to do with operational issues, like the quality and identity of translators, or the failure to make adequate arrangements for vehicles or other transportation for the DHS team. Other times the overlooked issues were legal questions. For example, a common issue for Colombians has been whether payment of ransom to retrieve a relative from paramilitary kidnappers should be considered "material support" to terrorists, which would render the person inadmissible to the United States. And with regard to Liberians, an issue arose over whether those who had married Ivorians were "firmly resettled" in Cote d'Ivoire, and therefore ineligible for the refugee program. Not all such operational and legal questions can be spotted in advance, and some capacity to respond quickly in the midst of a DHS circuit ride will always be required. But any gain in advance preparation can make for better use of resettlement resources.

Moreover, DHS involvement at this stage can help provide a better estimate of the approval rates likely once interviewing begins. Approval rates have proven a sore point in interagency dealings over the past few years, but my interviews suggest that this usually resulted from an inadequate understanding of the roles and perspectives among the various players in the process. PRM personnel (along with NGOs) have sometimes had unrealistic expectations of near 100 percent approval rates, and have criticized DHS when that did not materialize. Although unevenness in the quality and standards of DHS adjudications has sometimes been a problem, to be discussed in Chapter IV, US law is going to result in disapprovals, sometimes for a significant percentage of a targeted population, precisely because it mandates individual determinations before approval for inclusion in the program. Much will depend on the exact nature of the risks faced by the designated population.

Some exaggerated expectations about approval rates have been based on PRM's or the NGOs' focus on the undeniable vulnerability of a population in the first-asylum situation. But US law, for better or worse, does not allow approval of refugee status based on dangers in the first-asylum country. DHS is usually willing to take as a given the designated population's vulnerability in first asylum (or other good reasons for the P-2 designation) -- because by law it must focus its questioning on whether the person has a well-founded fear of persecution *in the country of origin*, in addition to considering possible inadmissibility grounds. If the applicant during the interview speaks only of crop failures at home or general fears about gunfire in nearby villages, DHS officers probably cannot make the needed finding, even with the generous attitude toward application of the refugee definition usually adopted in such interviewing. Chapter \_\_\_ considers whether some modest statutory changes should be undertaken that would help in this situation.

For now, the key point is that a realistic understanding of DHS's adjudicative role and standards must be built in to group-designation decisions. If the candidate group, no matter how sympathetic, appears likely to include only a relatively low percentage who will meet the US legal standard, then (absent a statutory change) designation is probably not a good use of US resources. Including DHS on the investigatory team considering a candidate group will go a long way toward providing better understanding of this factor, and also toward educating PRM and NGO staff about the realities and constraints of DHS's role.

This process can also bring advantages in the other direction. DHS will thereby learn in more detail about the perspectives of PRM and the NGOs regarding the group, and the DHS member may be better able to convey the real level of need presented by the refugee situation back to all the potentially involved bureaus in DHS headquarters -- thereby expanding understanding and support for efforts to facilitate the process at every stage where DHS is involved. DHS participation in the field investigatory and preparation process should help assure a full buy-in and commitment by DHS when the decision is made to move ahead with admissions.

**Recommendation: The Department of State should give close attention to NGO suggestions, including the annual RCUSA Recommendations report, when developing the potential group list. No legislative sanction is needed or desirable with regard to that sort of input. Once a group has been chosen as a candidate group, further investigation of group needs and characteristics should take place. It will often prove advantageous to proceed through a field mission by a targeted response team, which should include NGO representation and one or more participants from the Department of Homeland Security.**

#### **E. Family-based priorities: issues of processing bottlenecks and of fraud**

Family reunification has been a constant and enduring value throughout the course of modern U.S. immigration policy. It should also play a vital role in the refugee admissions program. U.S. law already provides for an important recognition along these lines. It provides that the spouse and minor unmarried children of a refugee, if accompanying or following to join the refugee, may be admitted without having to meet the refugee definition independently.<sup>14</sup> Thus the nuclear family may be kept together even if only one parent has become the target of persecution. This provision works well enough when the family is interviewed together by DHS and moves as a unit to the United States. It has become more problematic if the principal alien files later to bring the spouse and minor children using this procedure. The reasons derive from problems with the process, known as Visas 93 (or V-93), used for derivative relatives -- which can often result in the file sitting for lengthy periods on the desk of a consular officer.<sup>15</sup>

If that process worked well, one would see far fewer applicants trying to use the P-3 process, because a big part of the eligible P-3 pool overlaps with the class of persons who could use V-93. In fact, because P-3 applicants must independently satisfy the refugee definition individually, there would appear to be significant advantages to using V-93. But that has not been the experience. For any nationality to which P-3 applies, that process has been favored over V-93. (V-93, however, is not limited by nationality.) In any event, a well-designed P-3 process remains a real need, because some of the beneficiaries could not use V-93 -- primarily parents of the principal applicant. The P-3 program has encountered a significant amount of fraud. Although new measures in place for the past couple of years provide improved means to detect and deter fraud, the prior level of fraud soured many government players on the whole category. The following sections explore these issues, leading toward recommended improvements in both the V-93 and P-3 processes, so that both can be used more widely.

<sup>14</sup> INA § 207(c)(2). An administrative limit requires that the application for follow-to-join cases must be filed within two years of the principal alien's admission. This differs from how most follow-to-join provisions in the immigration laws operate; they usually allow such benefits without time limit (provided that the relationship existed before the principal alien's admission). The two-year limitation was explained to me as tied to the fact of the special benefits and public assistance rules that apply to refugees. After two years the principal alien should be better established -- and can then use normal immigration provisions to seek the entry of close family members.

<sup>15</sup> A highly similar process, known as Visas-92, applies to the spouses and minor children of asylees who are following to join the principal alien after the grant of asylum in the United States. Many of the recommendations in this chapter regarding Visas-93 would apply with equal force to the former process, but Visas-92 will not be given further specific attention.

##### *a. P-3 processing*

The P-3 category is available for spouses, minor unmarried children, and parents of persons resident in the United States. It is an access category, not a derivative benefit. This means that such persons can get access to a DHS interview, but must independently satisfy the refugee definition.<sup>16</sup> Historically the process began with the filing with a local volag office of an affidavit of relationship (AOR) by the already admitted anchor relative. The volag office then typically forwarded the affidavit on to the overseas processing location near the site where the family members were located. For many years different volags used their own diverse affidavit forms, and efforts on the part of the volags to verify the family information set forth on the affidavit were uneven at best. The volume of P-3 filings grew, and officers involved in the process began to suspect a significant amount of fraud. (The extent of fraud varied by refugee situation, and people have speculated that the variances trace to some extent to cultural differences and perhaps more to whether or not good civil records systems existed, recording births and marriages for the refugee population at issue.) Access to US resettlement is a highly prized commodity. It is likely that some of those committing fraud used the P-3 process to help more distant relatives or acquaintances who may have been quite needy in their

own right -- even if not technically eligible for P-3. But the scale of the fraud appeared to go beyond that, and some of the misrepresentation was evidently much more cynical, involving the buying and selling of access. The requirement that all P-3s meet the refugee definition might help screen out totally non-needy impostors, but that process too was hardly foolproof.. Some INS officers pushed for reforms for many years, suggesting especially that new AORs be checked against family tree information gathered by the processing team around the time of the principal alien's interview and now contained in his or her INS file, known as the A-file.

Those suggestions did not get far until the September 11 attacks brought heightened attention to all the vulnerabilities of the refugee admission system. At that time, INS set up a Refugee Access Verification Unit (RAVU) to manage a verification process that would apply to all future admissions under P-3. This screening is separate from, and in addition to, added screening for national security purposes. It is not directly targeted at the kinds of terrorist dangers that September 11 revealed. Instead, September 11 provided the impetus to tighten up many parts of the admissions system, and it invited close attention to long-pending suggestions for building better means to respond to fraud in the P-3 process.

RAVU verification involves obtaining the A-file of the anchor relative and checking the currently claimed family relationship against the family information submitted at the time of the initial application.. If discrepancies appear, denial or revocation of approval is likely. But the process generally allows the anchor relative an opportunity to submit additional information, sometimes including DNA testing at his or her expense, to explain the variances and offer more solid proof of the relationship.

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<sup>16</sup> Small exceptions to this generalization exist for derivative relatives of a qualifying P-3 who accompany that P-3 for admission purposes..For example, if a P-3 wife meets the definition, her minor children in the interview room with her need not be found to have a well-founded fear of persecution. Similarly, if a P-3 father qualifies under the definition, DHS need not make a separate refugee status determination with regard to his accompanying wife.

All P-3 cases that had not yet traveled to the United States as of September 11, 2001, were subjected to the new verification process. This meant that a significant number of persons who thought that they had been approved for admission saw their cases reopened and their approvals suspended. Notifications of discrepancies were sometimes delayed, as were notifications of final revocation of approval. (UNHCR and refugee authorities wanted to handle such notifications carefully, fearing public order problems in the camps -- but this sometimes became the excuse for excessive delays.) Therefore many ostensibly approved refugees found themselves in limbo for a months or even years. These cases have received a good deal of media attention, often confusing the issue and blaming the delays and disappointments on security screening rather than anti-fraud review.

Despite these rocky elements in the initial implementation of RAVU, the basic process is sound and much-needed. Fraud has been a genuine problem that needs to be addressed systematically. NGOs agree fully with this position, although many suggest that the prevalence of fraud often reflects the depth of need in the refugee camp. They urge that tightening up on fraud be matched with other efforts to expand access to the refugee program. That idea is consistent with the approach recommended here, but one must be realistic about the impact of expanding other forms of access. There will still be enormous demand or desire for US resettlement that will go unmet. The temptations to fraud will still be substantial. Hence the program must definitely continue to make use of available tools to deter and detect it. In the absence of good civil records, which is the case with many refugee situations, the A-file information (i.e., the family tree information developed when the principal alien applied to the program) may provide the best handle possible on the issue. Of course, there can be innocent explanations for discrepancies, particularly for applicants from societies that are less oriented toward linking important events to clock and calendar. The system needs to make allowances for these problems, and provide genuine opportunities to explain family tree variances.

Other anti-fraud steps have also been implemented, a few of which were initiated before September 11. They include the development of a standard AOR form and instructions that must be used by all volags. The instructions now include a prominent warning about the penalties for submitting false information as part of the process. (DHS is also considering making the AOR, with revisions, into a full-fledged government form.) AORs may no longer be sent directly to the overseas processing location from a local volag office, but must instead be sent to the national volag, which is called upon to review the information for quality control and to report "anomalies" to DHS. The RAVU process is now generally done up-front, before a P-3 case is cleared for interview by a DHS circuit-ride team. Thus DHS interviewers can therefore be equipped with the RAVU information to use in exploring family relationships during the circuit-ride interview.

The NGOs have been supportive of most of these steps, reserving, of course, the right to criticize particular aspects of implementation. The most successful of the recent PRM-DHS-NGO working groups was the one dealing with fraud issues. It came up with 19 specific action suggestions, transmitted in the spring of 2003, many of which are in the process of implementation. DHS also has its own "Operation Fair Refuge," with an action plan containing additional steps in the process of exploration or implementation. Continued vigilance and continued evolution of anti-fraud measures will be necessary, because entrepreneurs in the camps will continue to seek ways to defeat current measures. There have been some reports already of

situations where persons may have been counseled to plant dummy family members when reporting family trees during their own refugee interviews, so as to lay the groundwork for a later fraudulent claim that would not be detected using current RAVU techniques. Nonetheless, DHS's anti-fraud framework is now sufficiently institutionalized that it should be able to find reasonable counters to new fraudulent techniques. The ultimate safeguard for checking many family relationships would of course be DNA testing. It is currently in use in a limited fashion, largely in connection with anchor relatives' efforts to overcome objections deriving from RAVU. We should not rule out going to a wider affirmative use of DNA testing as a regular part of the P-3 program, particularly as the cost of such testing (now approximately \$300) gradually declines. Such testing must be done with caution, but IOM has done useful initial work considering the various possible roles of DNA testing and the needed constraints,<sup>17</sup> and such possibilities deserve careful exploration.

Much of the pullback in P-3 availability over the last several years (from over 18 nationalities to just four in FY 2003) derived from concern over fraud. This may have been an understandable step to take while systematic anti-fraud measures were being put in place. But it came at real cost to the family reunification values that have deservedly enjoyed high station in US immigration history. Now that much better measures apply, and as long as we have not built up the group access process to the point that we are using nearly all the PD numbers, the nationality list should be expanded steadily. The first steps along this road have been taken for FY 2004, leading to a P-3 list that now includes nine nationalities. But it makes sense, at least for the next few years, to do these expansions gradually and case-by-case, rather than opening up a universal P-3 category. This is particularly the case if the reunification of spouses and minor children can largely be provided for through considerable improvements in the Visas-93 process, addressed in the next section. And as expanded individual referrals plus enhanced group access bring admissions totals closer to the PD target, the calls for a universal P-3 will diminish.

<sup>17</sup> See Jackie Taitz, Exploring the Use of DNA Testing for Family Reunification (IOM publication, Dec. 2001).

*b. The Visas-93 process for immediate family following to join an admitted refugee*

A refugee admitted to the United States who wishes to bring in his or her spouse and minor unmarried children begins the process by filing an I-730 form with the [Nebraska?] Service Center of DHS, accompanied by proof of the family relationship. Once the I-730 is approved, it is sent to the overseas post where the family members are expected to apply for their visas. In some locations, Visas-93 work is handled by those involved in the general refugee processing procedures. But in posts where that is not the case, I heard from many people that Visas-93 requests do not work smoothly. They are a relatively exotic form of application, and many consular officers are not familiar with the steps needed to process them. They are usually labor-intensive, meaning that the consular officer may have to leave aside several dozen of the more familiar visa applications in order to process one Visas-93 case. Moreover, they often present access problems in arranging for the needed interview with the visa applicants. Delays and uncertainty over the Visas-93 process have led most volags to counsel their clients trying to bring in spouse and minor children to use the P-3 process if it is available for their nationality.

This situation should not be allowed to continue. Reuniting a resettled refugee with his or her spouse and minor children deserves to be given the highest priority. Indeed the objective need for nuclear family reunification is probably stronger than for other categories, given the usual suffering that refugee families will have experienced. Some initiatives are under way to improve the training of consular officers regarding Visas-93 work and to find other more effective methods to deal with this caseload. In areas where substantial refugee processing is already occurring, it will be advantageous to provide for Visas-93 cases to be handled through the OPE mechanism, including presentation to DHS rather than consular officers for ultimate approval.

[more details to be supplied]

**Recommendation: The Department of Homeland Security, in cooperation with PRM and the NGOs, should continue to refine its anti-fraud methods, assuring that they can evolve in response to changes in fraudulent practices. But the risk of fraud should be confronted directly, and we should avoid as much as possible letting fraud problems force major cutbacks in access to the US program. DHS and PRM should also consider wider use of DNA testing, particularly as costs come down, if needed to preserve access for family members.**

**The Refugee Access Verification Unit (RAVU) has been a worthwhile development. Now that these more systematic arrangements are in place for detecting and deterring fraud in the P-3 process, the Department of State should continue to expand the list of nationalities for whom P-3 is available. But this process should go forward case-by-case, rather than moving to a universal P-3 designation. So that all nuclear families somehow separated in the process of resettlement can be speedily reunited with the anchor relative already in the United States, however, the Department must make major improvements in the Visas-93 process.**

### *c. Functional family relationships*

Interviews for this project produced many comments that the refugee program should make better provision for functional family relationships in the chaotic aftermath of refugee flight. For example, in a conflict like that in Liberia, children left orphaned may be picked up and cared for by distant relatives or by neighbors. This relationship may be established in the country of origin before the flight or only in the refugee settlement. Sometimes it leads to very close ties, functionally the same as family affinities, between the children and their caretakers. In many settings the caretakers refer to themselves as foster parents, but rarely are such relationships formalized through legal procedures. In this context, it can be traumatic for all concerned if only a part of the functional family unit is approved for resettlement in the United States. Some therefore suggested that the concept of family to be used in the refugee program should be broader. Foster children should be treated like blood-children so as to keep the functional family unit together during resettlement.

The impulse behind this suggestion is unassailable. Resettlement should not add family separation trauma for those who have already suffered such separation once before, through the death of their actual parents or children. The system currently takes account of such a situation through the case composition rules that go some distance toward accommodating this need. They provide:

For humanitarian reasons, other family members [besides the spouse or unmarried minor children] may be presented to DHS as part of the same case if they resided together if they resided together prior to flight, continue to reside in the same household, and are part of the same economic unit as the PA [principal applicant]. Such add-on family members may be assigned the same priority as the PA but must establish their own individual claims to refugee status.

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<sup>18</sup> State \_\_\_\_, FY \_\_\_\_ Refugee Admission Processing Guidelines, para. 24 (date).

These guidelines cover many of the functional family situations of concern here, especially since I was told that "other family members" for these purposes can include in practice so-called foster children who lack blood ties, as long as the other qualifications are met.

But because the rules invariably require residence together both before and after the flight, they will miss the situation of those children taken in to another family only in the refugee settlement. Some have urged that co-residence, such that the members all form part of the same economic unit, should be sufficient even if it occurs only in the refugee camp. When I inquired about making such a change, DHS officials explained that such a rule would be too open to fraud. Requiring that the persons in question have shared life together in both settings provides opportunities for questioning about both locations that is more likely expose outright impostors. If impostors only had to get their stories consistent regarding camp life, it would be easier to carry off the fraud. These officers candidly acknowledged that the existing rule will unfortunately bar persons who have formed genuinely close family-type affections through perhaps many years of life together in the refugee camp from being considered as part of the same case. They pointed out, however, that the others might be able to gain access to the program anyway in their own right, particularly when group designations are the source of access. If that occurs, case allocation procedures covering ultimate sponsorships in the United States can often be used to make sure that the functional family members wind up in the same community to restore the family unit, and may even be assured of traveling together.

This concern is real and worthwhile, but I have not found a solution that is superior to the current arrangements without opening up unacceptable chances for fraud. PRM and DHS should nonetheless keep this issue active and continue searching for better methods that might enable keeping genuine family units of this type together.

## **F. Urgent cases**

### *a. General considerations*

The popular image of refugee rescue sometimes thinks of spur-of-the-moment efforts to pluck people from danger and move them swiftly to the haven. The reality of most resettlement is quite different -- understandably, in view of the complexity of the system and the many moving parts that must be put in motion and kept in synchrony. Nonetheless, the system can sometimes gear up for extremely urgent action for large groups, as happened with the Kosovo crisis of 1999. Such a mobilization of course requires a very high degree of political commitment, running all the way to the very top levels of government. Such occasions will perforce be quite infrequent.

But small-scale urgent cases crop up more often, involving an individual, a couple, or an extended family placed in immediate and life-threatening danger. The volume still is quite low, but the need is acute. Part of the impulse behind the creation of the

current P-1 category was to allow better for timely action to deal with these kinds of urgent individual cases. Unfortunately, as the program has developed, and particularly with the additional screening added after September 11, 2001, it is very hard to get the US Refugee Program to act with the speed needed for these isolated individual cases. UNHCR officials reported numerous occasions where cases of this type were referred to the United States but where the process took so long that UNHCR turned instead to other resettlement countries that are better equipped to act speedily, such as Netherlands or the Nordic countries, or occasionally Canada.

I discussed this issue during several interviews. One opinion voiced during the conversations was that perhaps this is not a wholly bad situation -- but instead marks out a healthy division of labor. The United States is quite good at running a large high-volume program, a kind of aircraft carrier among the fleet of resettlement nations. But this means it cannot turn quickly to deal with smaller scale urgent issues. Nations with smaller programs, especially ones that can accept cases based only on a review of a UNHCR-prepared dossier, are the PT-boats of the resettlement world, and they should be deployed for these purposes. Others acknowledged the difficulties the United States faces, but insisted that we should restore the capacity to move very quickly in a limited number of urgent cases -- and that we should especially have this capacity for rescuing persons placed in immediate danger because of actions taken in support of US objectives or policies. They pointed out that even after September 11, we do sometimes move quickly for such purposes, as in the widely reported case of Mohammad Retaief, the lawyer who helped US forces find the wounded Jessica Lynch in the early days of the Iraq conflict. But nowadays such cases are usually handled through the mechanism of parole, which is discretionary permission to establish physical presence in the United States. In principle, parole permits such presence without regard to usual screening and inadmissibility requirements. In practice, all such cases have been preceded by at least some form of review of the person's qualifications. And the reality is that it is very hard -- nearly impossible -- to remove someone paroled in these circumstances if derogatory information is discovered later. That is why the pre-parole review or screening, however hasty or unorthodox, has remained important.

Parole has several drawbacks, however. Most importantly, it gives the person no clear immigration status in this country, and certainly no direct avenue toward qualifying for lawful permanent residence. In reality, the people paroled in these urgent circumstances are being brought here as resettled refugees. It would make abundant good sense to treat them, as much as possible, within the framework of the refugee program, with its established immigration status, provisions for both private and public assistance, and direct avenue toward permanent resident status. What I learned about the steps needed to achieve agreement on urgent parole led me to believe that it would be no more difficult to put together a similar set of waivers and urgent decisions in order that such persons could qualify as refugees under INA § 207. The program at various times has set up expedited procedures for particularly urgent cases. They should be revisited, updated, and revised for use in the post-September 11 environment. They will still be invoked only in a small number of cases, well below 50 per year.

**Recommendation: PRM and DHS should work together to restore the capacity to act in a matter of days or weeks to approve and resettle as § 207 refugees persons who are in grave and immediate danger and whose cases are referred by UNHCR or a US embassy. This procedure for urgent action cases should replace the use of parole to the greatest extent possible. Such cases will be exceptional and the volume of such cases can be expected to be quite low, thus making such special arrangements feasible.**

*b. Proposals for a universal in-country designation*

As it happens, some urgent cases have to do with persons still within their countries of origin. (Recall the Retaief case, which involved movement directly from Iraq to the United States.) Such persons cannot meet the Convention refugee definition, and so will not be referred by UNHCR. But their need may be no less acute. If such cases arise in one of the three countries normally listed in the Presidential Determination as approved for in-country processing, then inclusion in the refugee program is possible. Some have recently suggested a new approach to in-country designation in order to make provision for this kind of urgent case on a wider scale. They propose that the President designate all countries for in-country processing, although specifying in some fashion more limited criteria to make it clear that this will be invoked only in exceptional circumstances. Others have argued that such a universal in-country designation is not legally authorized.

In my view, such a designation could be done in a fashion that is consistent with the statute. INA § 101(a)(42) authorizes in-country refugee determinations "in such special circumstances as the President after appropriate consultation [with Congress] may specify." To date, the "special circumstances" specifications have been done by country, although with reference to allowing such admissions only for those "otherwise qualified." Other guidance then spells out more precise criteria that govern access to the in-country program. But nothing in the statute requires geographic limitations as the way of honoring the "special circumstances" requirement. Nonetheless, the "special circumstances" requirement must be honored in some fashion. A Presidential specification that covers all countries would have to limit the reach of in-country processing in some other significant fashion. If all that is contemplated is a handful of in-country urgent cases, then it should be quite possible to spell out limiting criteria in the Presidential Determination, in a manner that would be legally sufficient. Whether such a universal specification would constitute wise policy is a closer question. Fuller exploration of possible disadvantages is necessary before taking that policy step.

**Recommendation: The President has the legal authority to designate all countries for in-country processing, provided that other precise limitations confine its effect, thus honoring the “special circumstances” requirement of the statute. Such a designation would hold advantages for a handful of urgent cases each year, involving the rescue of individuals from immediately dangerous circumstances in their country of nationality. But a full exploration of possible drawbacks should be undertaken before deciding on such a step.**

#### **Chapter IV The Role of the Department of Homeland Security**

Interviews for this project raised several issues concerning the role of the Department of Homeland Security and its predecessor, the Immigration and Naturalization Service. This chapter recounts and evaluates those criticisms. Some of these issues are on their way to resolution, such as a better understanding of security requirements at interviewing sites that is now generally resulting in timely deployment of DHS interviewing teams. Further improvements that respond to nearly all the identified problems would be advanced greatly by a step that has gained wide support, although it appears to be only on a protracted path of implementation. That step is the creation of a more centralized Refugee Corps within DHS to handle interviewing and related tasks.

#### **A. Institutional decision-making at DHS**

##### ***1. The need for a better structure for resolving Department-wide refugee and immigration policy***

INS was abolished in March 2003 and its functions transferred to three separate bureaus of the new DHS. The Bureau of Citizenship and Immigration Services (USCIS) inherited the services and adjudication functions of INS. These include most responsibilities relating to the refugee program, which are principally handled by the Office of Asylum and Refugee Affairs Operations. INS's enforcement functions were combined with those of the Customs Service and then divided between two bureaus, according to whether the function relates primarily to border or interior enforcement. The former are handled by the Bureau of Customs and Border Protection (CBP), and the latter by the Bureau of Immigration and Customs Enforcement (ICE).

This split of responsibilities, coupled with the lengthy and sometimes confusing transition to the new Department, has caused problems whenever guidance or policy concerning the refugee program needs to be cleared within DHS beyond USCIS -- that is, on issues with a significant enforcement component or impact. I heard of several instances wherein PRM sought to get approval of such items, but months passed without a definitive response from DHS. As a result, no guidance or policy could be issued, field staff were on their own, and public spokespersons had to avoid commenting on the question. On many of those occasions, the officers in DHS with whom PRM has principal contact apparently had forwarded a proposed response to other DHS offices, but some kind of deadlock emerged, and there was no readily available mechanism within DHS for resolving either deadlocks or simple drift.

This situation reflects a wider problem besetting immigration functions within the new Department: there is no central location for determining overall immigration policy on issues that transcend the somewhat artificial enforcement-services split. Several matters, not just affecting refugee policy or operations, have been bogged down in this fashion. On questions of overall immigration policy, some commented of DHS that there is “no one home” or “there is no there there.” These comments exaggerate, but the issue is real. DHS needs to move promptly both to resolve the pending specific requests and to create a structure for decisive and timely decisions on matters that affect all three immigration-related bureaus. Probably this will require a greater ongoing role for the Deputy Secretary of DHS, who sits immediately above both the immigration services and immigration enforcement functions. The Deputy might also benefit from the creation of a centralized immigration policy unit within his office.<sup>19</sup> Whatever structure is adopted, no time should be lost in addressing this ongoing sore point.

Sometimes the problem is not delay or drift. I heard of some instances where the speaker believed that needed steps had been blocked by DHS opposition originating from the enforcement units. Some State Department officers felt that this problem was especially evident in getting clearance on the consultation document that must be sent to Congress each summer as a prerequisite to issuing the annual Presidential Determination. One described DHS's role as ranging “from difficult to intractable.” In this and in some other instances, some felt that DHS officials who were opposing gave insufficient attention to the real needs of a forthcoming refugee program that can meet the President's target levels. That is, they felt that enforcement personnel were exaggerating risks and underplaying advantages, and that no adequate higher-level mechanism existed within DHS to resolve the clash of views. The enforcement objection could therefore turn out to be a veto, but without an adequate Department-wide airing of the question. To the extent that this remains a problem, a more active policy-setting and dispute-resolution role by the Deputy Secretary of DHS would be of great value. More activist interdepartmental dispute resolution under the auspices of the National Security Council may also be called for.

Moreover, the DHS units other than USCIS sometimes seem insufficiently aware of how great an impact their own decisions

affecting a small part of the refugee process that falls within their jurisdiction can have on the overall program. This is clearly the case with CBP's continuing insistence on limiting arriving plane-loads to 35 refugees, a question addressed more completely in Chapter V.

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<sup>19</sup> For one set of suggestions on better structuring for these purposes, see David A. Martin, Immigration Policy and the Homeland Security Act Reorganization: An Early Agenda for Practical Improvements 9-11 (MPI Insight, April 2003), reprinted in 80 Interpreter Releases 601, 608-09 (April 28, 2003).

## **2. Policy tensions between headquarters and field units**

Another structural issue deserves mention. Government personnel and NGO representatives complained that over the years they would sometimes believe they had achieved resolution of a particular matter with INS headquarters -- only to encounter resistance in the field, coupled with an insistence that a particular overseas district office had a different policy and was not bound by the headquarters decision. Such differences of views, such assertions of independence by district offices, both foreign and domestic, were a longstanding problem within INS, and formed one of the principal reasons typically offered for reorganizing immigration functions. DHS is therefore quite aware of this issue as it designs the details of immigration restructuring, and it is my impression that this problem has diminished. In any event, DHS needs to be sure that it is fully overcome as reorganization continues.

**Recommendation: DHS must place a high priority on developing a system for prompt resolution of internal disputes over immigration- and refugee-related guidance and policy, a problem that arises when a given issue holds implications for both enforcement and services. The system must assure that services-related perspectives are given a full airing and are not drowned out by concerns emanating from DHS enforcement offices. Such a system will likely require a far more active policy role in this realm for the Deputy Secretary, who has direct authority over both the enforcement and services units of DHS, a role that would be advanced by a centralized immigration-policy unit within his office. The Department should also move promptly to resolve currently pending matters for which clearance has been requested by other departments. As it completes the details of the immigration reorganization, it needs to make clear that field offices are bound by policy decisions reached at headquarters.**

## **B. Issues affecting individual adjudications**

I heard from both NGOs and State Department officers about inconsistent standards applied by different INS or DHS officers or circuit-ride teams. Two successive teams interviewing the same refugee population might have widely variant approval rates. And particular officers on their own have sometimes insisted that they should begin applying the refugee definition with greater rigor than had been practiced by other officers. In response to this problem, DHS has taken useful steps to improve the consistency of its adjudications. Each circuit ride now has a team leader who reviews all proposed decisions for quality control purposes and consistency. For large teams, more than one such leader is appointed; the intention is to have one team leader for every [eight?] officers.

Overcoming inconsistency is rendered difficult by the indeterminacy of the underlying refugee standard, which requires a finding that the individual has a "well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion." This broad standard leaves room for varying applications to particular fact situations as they are presented in the interviews, and oscillation between strictness and generosity in its application in the refugee admissions program has been a problem since the adoption of the Refugee Act of 1980.<sup>20</sup>

It makes sense to use a generous interpretation of the standard in the overseas program, even though the government should continue to use a more strict approach in asylum adjudications involving persons who have already reached US soil. This difference in emphasis is appropriate because the United States remains in full control of the volume of overseas admissions in any case. That is, for asylum applications in the United States, the only real control on the volume of ultimate admissions as asylees is the refugee definition. Those who meet that test almost always receive asylum; those who do not may be removed from the country. In the overseas program, the US can apply a variety of other screening tools to assure that admissions do not exceed a pre-set level. That is one basic function of the priority system, which essentially allows the application of these other screening criteria, plus a kind of metering of volume, *before* the case is presented for application of the refugee definition. Therefore a generous interpretation of the definition in the overseas setting makes functional sense. This study found that DHS generally agrees with this conclusion and strives to incorporate a generous application of the definition into its overseas operations. Contrary to the impression held by some NGO representatives, the DHS officers who have responsibility for this function are generally in tune with that approach. But ongoing vigilance to assure consistency is needed.

<sup>20</sup> Some of this history is recounted in T. Alexander Aleinikoff, David A. Martin & Hiroshi Motomura, *Immigration and Citizenship: Process and Policy* 820-28 (5th ed. 2003).

A related problem surfaced in the interviews. Much of the refugee adjudication interview must perforce be taken up with questions directed to the well-founded fear of persecution determination. Interviewing officers, who are responsible for completing a stated number of adjudications each day, often express the wish that they could spend less interview time on the definition and more time asking questions that relate to identity and to possible inadmissibility or security risks -- issues that have properly assumed higher importance in the wake of September 11. (The quotas for daily interview completions were reduced after the terrorist attacks, precisely to allow more attention to identity and inadmissibility questions.) Given that the US government has already made important decisions to favor admission of the population at issue (embodied in the P-2 designation or the priority enjoyed by persons referred by UNCHR), several field officers would prefer a system that allowed them to use more precise or objective criteria to determine initial refugee eligibility, thus freeing up time in the interview to probe any doubts about identity, family composition, or possible links to terrorism or criminal organizations. Not all refugee situations will lend themselves to this approach, but USCIS and PRM could give more emphasis to creating presumptions or other guidance that might facilitate speedier application of the refugee definition. The importance of using the interview for these security-related functions also suggests that carefully crafted statutory revisions should be considered, an issue addressed in Chapter VII.

**Recommendation: DHS should continue and refine existing quality control measures to assure consistency in refugee adjudications. It properly applies a generous interpretation of the refugee definition in overseas processing, and it should give ongoing consideration to other measures, such as guidance containing adjudicatory presumptions -- in order to advance these objectives and also free up more interview time to address questions of identity and inadmissibility, including security concerns.**

### ***C. Deployment of circuit ride teams and the security of interviewing sites***

One of the strongest complaints about DHS actions in the wake of September 11 related to its stance regarding the security of interviewing sites. Some proposed resettlement initiatives in FY 2002 were squelched because INS believed it unlikely that secure interviewing sites could be found. Many in PRM believe the low totals for that year and at least some of the next resulted primarily from INS's unwillingness to deploy to very many interviewing sites. This reluctance caused consternation in many circles because the possible sites usually already had a number of foreign nationals present, including UNCHR officers and NGO personnel, often including many Americans. Sometimes US foreign service officers were also present. Some charged that INS (later DHS) was being overly sensitive about security risks.

Those charges are largely unfair. A sizeable team of US government officers, posted to a particular location for six to eight weeks, provides a far more exposed and tempting target for terrorist action than do NGOs or even UNHCR. (Recent attacks on humanitarian personnel in many countries, including the murder of a UNHCR officer in Afghanistan in November, have muted this criticism in any event.) Moreover, DHS adjudications officers are there precisely to make decisions, some of which will be negative and will therefore create disaffection and anger among the surrounding population. In these settings, extra care about officer safety and security is thoroughly justified.

But such care can certainly be applied while sustaining an active and vigorous refugee program. Part of the consternation immediately after September 11 resulted from misunderstandings over the precise standards INS would insist on for evaluating site security. PRM sometimes believed that it had obtained approval of a site from the embassy's regional security officer (RSO), only to find that INS had additional questions or requirements. It felt that the INS was moving the goalposts. Ex-INS officers thought this criticism was exaggerated and that they had been sufficiently clear from the start. It is not important to resolve that dispute, because as of now the list of requirements has become clear, RSOs are more familiar with the needs, and a good cooperative relationship has developed in most locations. As a result, site selection and site strengthening (installing metal detectors and stronger doors, for example, and assuring adequate exits to be used in case of emergency) now proceed fairly routinely, and the issue has now lost much of its salience. DHS has a full schedule of circuit rides for the early months of FY 2004, and recently has been able to find approvable sites in the areas that PRM wants to target.

There remains a significant ongoing issue, however. Most group resettlement initiatives in this new refugee era will come from first-asylum areas that present dangers -- such a feature is inherent in the nature of refugee flight. Thus DHS needs to continue exploring creative strategies that will permit interviewing even in such circumstances. Greater use of seasoned officers who are deeply familiar with security procedures, for example, could permit deployment in circumstances that might be inappropriate for temporary-duty personnel. Enhanced training on security for both permanent and temporary staff might also help lower the deployment threshold. (Both these improvements would be real advantages of the proposed Refuge Corps, discussed in the next section.) PRM has sometimes in the past wound up moving refugees to safer locations in order to permit DHS interviewing. It will be much more sensible and cost-effective, whenever possible, to find ways to move DHS to where the refugees are already located -- or else to use modern technology to outflank the problem altogether..

Several persons interviewed suggested the use of technology, particularly video connections, that might enable interviewing of persons who are in remote sites by US officers while the latter remain in the capital city or another secure location. In this scenario, OPE personnel would make sure that the proper documentary information is available to the officer and would also be in place at the remote site to manage logistics. Some officers expressed skepticism of such a system, believing that certain qualities of face-to-face interviews should not be sacrificed. I disagree. If such a video system can be deployed, the loss of direct contact is more than made up for by the additional capacity to reach those refugees who may be the most in need of resettlement, precisely because they are located in the most dangerous locations. Most officers were enthusiastic about the possibilities, while still noting major logistical challenges, including protection of confidentiality. Also, some refugee camps are so primitive that creating the appropriate uplink may prove impossible. But there doubtless are sites where using the equipment is technically feasible, and advances in technology will offer expanded possibilities over time. DHS headquarters has been considering potential use of video equipment, among many other technological improvements.

**Recommendation: DHS should continue its cooperative work with PRM and embassy security officers to bring about the creation of secure sites for interviewing refugees designated for access to the program. It should also place a priority on developing new techniques that can expand the range of possible deployments, because a large number of circuit rides to potentially hazardous locations will be needed in the current era of refugee admissions. Better security training of deployed officers and more use of experienced officers permanently assigned to refugee responsibilities, for example, will help lower the deployment threshold. DHS should also continue and enhance its active exploration of video hookup possibilities that could enable effective interviewing, when necessary, from a remote location.**

#### **D. The Refugee Corps**

Significant improvements to the asylum adjudication system came about in 1990 when INS created a specialist corps of asylum officers. Inspired in part by this history, DHS has announced agreement in principle with the idea of creating a Refugee Corps within USCIS. Without such a corps, circuit rides are largely dependent on temporary-duty assignments of other DHS personnel, importantly including asylum officers and some DHS attorneys. Although many of these prove to be effective in the task, others find it difficult to adjust to the rigors of life in a developing country. Using temporary duty officers compounds training problems and can make it difficult to assure consistency in the quality of interviews and the standards applied in judging the applicant. A major issue has also been the consequences of delays in deployment. Unforeseen developments, whether it be flooding in the camp or new security alerts affecting the country of deployment, can require last-minute rescheduling of planned circuit rides. Even if the delay is only a few weeks, many of the temporary staff cannot so easily reshuffle the plans of their normal unit to be absent at a time different than the one originally planned for, and so may have to drop out.

For all these reasons, the idea of a dedicated Refugee Corps has gained wide support. Apparently several different versions of the idea have been floated, and DHS has not yet chosen a detailed model. The basic notion, however, is to recruit several dozen officers who would sign on for precisely this duty. They should expect to be deployed abroad roughly half the year, and need to be amenable to hasty changes in deployment plans. I was originally somewhat skeptical that there would be enough business for the corps in Washington during their time there, but was persuaded that this will not be a problem. When not deployed to the field, a great many refugee officers would be deployed to the RAVU office or other anti-fraud projects. They would participate in quality control efforts and also help develop better training materials and backup information on country conditions that could make the work of teams in the field far more effective. There still remain questions. For example, some part of the corps could perhaps be based productively in overseas DHS offices or refugee hubs. DHS might not want the corps to completely preclude temporary duty assignments, particularly of asylum officers, whose own training is relevant to the task and who often value the opportunity for this kind of variety in their work. Too many of such persons on a circuit ride team presents the difficulties outlined in the preceding paragraph. But using them as only a small percentage of deployed forces might be worthwhile.

These and other design issues need to be resolved before the refugee corps is deployed. But these are details. An institution like the specialist refugee corps is greatly needed for this new era of refugee resettlement. Remaining decisions on design should be made as soon as possible, funding provided, and recruitment begun -- precisely because the consistent use of well-trained veteran officers offers so many advantages in overcoming the problems identified earlier in this report. Full-time refugee officers are likely to reach more consistent outcomes and to provide for both better-quality interviews and better-quality decisions. They can receive more extensive training on security measures and safe practices, which should enable USCIS to lower the deployment threshold in hazardous circumstances. They are more mobile, and will be ready on short notice if needed to respond to an urgent refugee situation. And the added officer time made available during stateside deployment can be used to improve training, informational preparation for effective questioning of a newly designated refugee population, quality control, and anti-fraud measures like RAVU.

**Recommendation: DHS should move ahead as soon as possible with deployment of an expert refugee corps. This is exactly the kind of creative institution needed to handle the demands of admission processing when future admissions are likely to derive from a multitude of disparate groups located in far-flung and often dangerous sites, to be handled**

by circuit rides rather than permanently stationed staff. Having a corps of full-time and experienced refugee officers should alleviate a great many of the problems that other players have raised in the past with DHS performance. The concept has wide support throughout the government and among NGOs. DHS should resolve the remaining design questions promptly, and it should fight for the necessary funding in the FY 2005 budget so as to begin deployment on an urgent basis. Full deployment is likely to take at least two years, and by then other improvements to the refugee admissions system should have raised the pace of interviews substantially, making this improved capability even more necessary.

## Chapter V Operational Issues [summary]

### A. Overall observations

Interviews for this project raised many operational issues and produced a host of suggestions for more detailed operational improvements. The most important of these are addressed in this chapter. But one overarching insight emerged from the interviews. Many problems arose and produced friction among the various partners, both governmental and nongovernmental. They were ultimately resolved or worked around for that specific resettlement initiative, but on too few occasions did the experience become the basis for broader systemic changes to avoid similar problems in future refugee processing. For example, DHS circuit ride teams on many occasions have located legal issues, on the earliest days of interviewing, that must be resolved in order to reach a final adjudication in a significant number of cases. Earlier referral of such questions to departmental lawyers would have enhanced efficiency. PRM sometimes expressed chagrin at the delays, but neither PRM nor DHS used the occasion to change overall preparations for future circuit rides to better assure that such legal issues could be identified and resolved well in advance. Perhaps each thought this was primarily the other agency's problem. A similar failure to seek out systemic changes marked another example. DHS sometimes is frustrated with PRM's and particular OPEs' abilities to estimate the complexity of the average case for a given population or how many would be ready at the beginning of a circuit ride -- all factors that go into DHS decisions about how many officers to deploy. Hence DHS might have either too few or too many officers as part of the team. In the pressured period of the last few years, finger-pointing rather than long-term problem solving too often characterized the response to problems that interfered with efficient processing.

Now that some of those pressures have eased and many redesigned processes are getting back to more routine and predictable operation, this basic orientation must change. Past operations have too often been marked by ad hoc resolution. Perhaps the very nature of a refugee program fosters such an orientation -- and in true emergencies, creative ad hoc solutions may be the best that can be expected. But in fact most refugee resettlement does not take place under such urgent conditions, and it turns out that there are broad patterns and repeat issues in refugee processing, even for widely disparate groups.

For the future, the ad hoc emergency response mode should be replaced by a *managerial approach* to the process of refugee admissions. Problems in processing, even large frustrations with the actions of another partner in the process, should not result in finger-pointing or temporary work-arounds, but should prompt efforts to derive longer term lessons, and ideally to make changes, incorporated into standard operating procedures, that can avoid similar frustrations in the future. If DHS teams often complain about the quality of interpreters, for example, and days are lost searching for replacement, then PRM should take the initiative to meet with DHS, OPE representatives and others to help derive clear standards in advance for interpreters. Efforts to this effect have improved over the past year, as PRM has started several interagency working groups that might be the forum for this kind of approach. And the most recent efforts to revive working groups with the NGOs, if approached in the right spirit by both sides, could lead to similar gains.

**Recommendation: PRM and DHS need to move away from ad hoc responses to problems, adopting instead a managerial approach that resolutely seeks to adopt or change standard operating procedures when problems recur. Current PRM-DHS working groups and PRM-NGO working groups should help in taking that approach. While that process matures, the regular involvement of DHS officers and NGO representatives on investigatory teams considering "candidate groups," as recommended in Chapter II, should go far toward anticipating possible difficulties, taking steps to avoid them, and collecting a body of experience that will foster changes with wider application.**

### B. Overseas Processing Entities

Many NGO representatives questioned whether IOM can appropriately fulfill the function of an OPE. They suggested deficiencies in advocacy by IOM and also a lack of connection between the OPE work and the NGOs ultimately assisting in the ultimate reception and placement in the United States. On the other hand some government officers preferred IOM, believing it more professional and better managed. But my field visits, though limited, did not bear out the notion of major differences between the two operations. The quality of case preparation probably has more to do with the individual personnel and management of the specific OPE than with broad institutional differences. Although the institutional lingo may vary, the

outcomes do not differ greatly. What IOM considers truly thorough case preparation, seeking to develop all possible elements of the individual's story that would show a well-founded fear of persecution, might in practice turn out to be the same as what an NGO considers advocacy. The boundaries of advocacy in this setting presents more subtle issues that deserve systematic exploration. Perhaps representatives of IOM, the NGOs, and PRM should meet together in a process that would produce better guidance on these matters.

**Recommendation: Both NGOs and IOM can serve well as OPEs, and some ongoing competition between them is probably healthy for the admissions system. In an effort to share best practices and promote productive relations between IOM and the NGOs that operate OPEs, PRM should convoke meetings on common issues. IOM could then find ways to link up better with the NGOs that will receive and place the refugees in communities in the United States, but such methods might productively be adopted as well by many NGO-run OPEs.**

#### C. Training and preparation of interviewing officers

**Recommendation: DHS should arrange for better specific training on country conditions before deployment of an interviewing team, including the provision of high-quality documentary material that the team can continue to use. In preparing such training and materials, DHS should draw on a variety of sources, including its own Resource Information Center, the DOS Bureau of Democracy, Human Rights and Labor, and the Commission on International Religious Freedom. The targeted response team that investigated the particular candidate group now slated for interview should also participate. The intelligence agencies also have a role to play, particularly in helping to develop questioning strategies, tailored to the particular group, best designed to elicit information that might reveal terrorist connections or other security problems. Finally, PRM and DHS should cooperate to develop the guidelines required by the International Religious Freedom Act of 1998.**

#### D. Interview procedures, including the use of interpreters

#### E. WRAPS

#### F. Security screening

**Recommendation: Much progress has been made since the changed security screening procedures were introduced after September 11. After many months of confusion, inefficiency, and delays, security screening is now being worked into the normal routine of processing in most cases. The intelligence agencies need to assure continued full staffing of the security advisory opinion (SAO) process so that all initial review will be completed within the stated time-frames (currently 45 days), and so that hits may be resolved promptly. All agencies involved should set a deadline for closing cases dating to 2001 and 2002, making a firm decision on eligibility or not and promptly notifying those whose cases have been in suspense. Eventually SAO processing for refugees should return to the Consular Affairs (CA) bureau -- certainly no later than completion of the larger SAO reform process -- and that process should include plans for the resumption of this function by CA.**

#### G. Processing at the port of entry

**Recommendation: In the short term, DHS should revise and streamline its procedures for issuing employment authorization documents at the port of entry, so that the per-plane limit of 35 refugees can be significantly increased. Immediate issuance of such a document at the port of entry, as required by § 602 of the Enhanced Border Security and Visa Entry Act of 2002, has carried great advantages for the reception and integration of refugees once they reach the destination city. As DHS considers more extensive medium- to long-term changes in EAD issuance, it should make every effort to assure that refugees receive the document upon arrival.**

#### H. Adjustment of status

**Recommendation: DHS should revise the I-485 form to include specific boxes and questions for use in connection with refugee adjustments.**

### Chapter VI

#### The Role of the Office of the UN High Commissioner for Refugees

[Summary]

#### A. UNHCR's development of a group referral capacity

The UNHCR, with significant support from PRM, has done much creative work in recent years to develop a procedure for resettlement referrals of whole groups that meet the Office's standards for resettlement. The process is not meant only for US resettlement; the office hopes it will stimulate more extensive offers from a wide spectrum of nations. Much careful thought and planning has gone into this effort, and it is structured to gather targeted information that will enable a informed judgment about the suitability of a group for ultimate referral. It remains to be seen whether the regional bureaus of UNHCR, which have historically reflected skepticism of large-scale resettlement, will fully accept this approach. But a few successful early programs based on this model could do much to win over the skeptics.

**Recommendation: The US government should do all it can to support the further development and early deployment of UNHCR's group referral mechanism. It should give such referrals quick and favorable consideration for inclusion in the US Refugee Program, and it should encourage other nations to join in the resettlement effort, perhaps through a pledging conference mechanism.**

## **B. Improving UNHCR registration**

There was wide agreement among virtually everyone interviewed for this project that improvements in UNHCR registration practices deserve high priority. Better registration beginning shortly after the initial flight would not only improve assistance practices, but should provide a highly useful basis for resettlement decisions. Better registration would also provide reliable safeguards against both fraud and a pull factor, once resettlement begins. In order for registration to work in this way, it must be undertaken at a time well before the valued prize of resettlement is in the picture. Early in the unfolding of the refugee situation, the registering officer is far more likely to get a full and honest picture about family structure and dates of arrival. Registration should always employ a photograph, and should whenever possible include a biometric identifier, such as a fingerprint, to guard against impostors.

Some persons interviewed were skeptical of deploying overly elaborate registration early in the process, in part because of concerns about how to provide for safe and accessible filing, as well as updating to take account, for example, of births, deaths, and marriages. They suggested that instead a modest initial registration, followed later by a more detailed verification when the officers have a clearer idea of just what additional information might be most useful -- ideally still gathered before the possibility of resettlement becomes known in the refugee community. But these suggestions really are variations on a theme that remains strongly supportive of more thorough and well-designed registration or verification.

Many logistical challenges must still be resolved, and improvements of this sort cannot be expected to bear fruit for resettlement purposes for many years. UNHCR has done considerable preparatory work as part of a pilot project known as Project Profile. It published the provisional version of a new and highly detailed Handbook for Registration in September 2003. The United States should continue to support this valued initiative.

**Recommendation: The US government should continue to give strong support to early deployment of improvements in UNHCR registration practices. It should also encourage UNHCR to mandate biometric identifiers in registration documents and records wherever possible. Improved registration can provide a payoff for assistance purposes immediately. Its benefits to resettlement will appear only in the long run, but the advances in avoiding fraud, minimizing magnet effects, and improving initial decisions about access will be substantial.**

## **Chapter VII**

### **Possible Changes to the Refugee Statutes**

[Summary]

Proposing statutory changes always runs some risk, because a well-crafted bill may be radically changed in the course of congressional consideration, or even if unchanged, become the vehicle for ill-considered additions. Nonetheless, 23 years of experience under the Refugee Act reveal some portions of the statute that have not worked out as intended or have had unforeseen negative effects. The following changes should be given serious consideration:

**1. Repeal ceiling on asylee adjustments.** Amend INA § 209(b) to eliminate the ceiling of 10,000 on annual asylee adjustments. A large backlog has developed in this process, meaning that persons currently granted asylum will have to wait for as many as [ten?] years to adjust their status to lawful permanent residence. The amendment should still give the President discretion to limit asylee adjustment, by overall ceiling or by category, as part of the annual PD process -- which should be considered a standby authority that might be useful in case of a mass influx, particularly if it is believed that conditions for voluntary repatriation can be established within a few years. But most of the time, under the amendment, all asylees should be able to adjust after one year in asylee status.

**2. Repeal ceiling on refugee and asylee status grants based on coercive family planning.** Remove the ceiling in INA § 207

(a)(5) that limits to 1,000 the grant of asylum or refugee status to persons at risk of persecution as a result of coercive population control methods. Six years' experience with the special provision allowing protection for such persons has not produced large numbers of asylees or refugees in these circumstances, but the ceiling requires burdensome procedures that entail only provisional approval of applications, plus unnecessary paperwork.

**3. Allow congressional consultation by both Cabinet secretaries and deputy secretaries.** Congressional consultation is often delayed because of complications in meshing the schedules of the Secretary of State with the Judiciary Committee chairpersons. Therefore replace the provision in INA § 209(e) that requires "Cabinet-level" consultation with a provision that would permit consultation to be carried out as well at the Deputy Secretary level.

**4. Provide for continued refugee movements at the beginning of the fiscal year, even if the Presidential Determination is delayed.** Any delay beyond the beginning of the fiscal year in issuing the Presidential Determination setting admissions levels causes serious operational disruptions. Even wholly travel-ready refugees must wait until the PD issues, and usually extra days or weeks as well, so that booking of flights can be resumed. An amendment could authorize the continuing admission of refugees, at no higher than the monthly rate allowed by the previous year's PD, in such circumstances. There will be ample time to adjust later flights to assure that refugee admissions conform to the new PD level.

**5. Admit overseas refugees as lawful permanent residents and eliminate the requirement to apply for adjustment of status after one year.** The requirement that § 207 refugees apply for adjustment of status after one year in the United States creates an additional burden for them and requires that USCIS process tens of thousands of lengthy applications each year. The original rationale for this procedure was to assure a second look at an admitted refugee and to allow action if new derogatory information came to light. It is not apparent, however, that this procedure has generated useful information on any significant scale, nor that it makes it any easier to remove an admitted refugee in that eventuality, as compared with a system allowing refugees to be admitted as lawful permanent residents from the beginning. In either case DHS would still have to initiate removal proceedings if it wishes to return the person to the first-asylum country or elsewhere. Refugees are interviewed and their cases are thoroughly reviewed before they reach US soil. This distinguishes them from asylees, for whom a second look after a period of lawful US residence is still appropriate. As an efficiency measure, then, freeing up trained officer time for the enhanced DHS procedures recommended herein, it might be worthwhile to amend § 207(c)(1) to admit refugees in the overseas programs as lawful permanent residents. INA § 209(a) could then be repealed. Alternatively, a detailed study of the actual fruits of the adjustment procedure could be undertaken, permitting an informed judgment about its ongoing utility in serving its stated purposes.

**6. Allow the President to designate specific classes of persons to be admitted as § 207 refugees without requiring lengthy interviews applying the Convention definition.** When the Congress changed the refugee provisions in 1980 to tie admissions to the UN Convention definition, its main purpose was to *expand* potential eligibility for the program. Congress did not fully consider then the fact that the UN definition itself has limits that sometimes fit poorly with mass flight or that it was never intended as a limitation on discretionary admission programs. Nor did Congress appreciate the processing difficulties that could be encountered if officers have to spend major amounts of interviewing time developing the full story of individual persecution.

The Convention definition should certainly remain an important part of the basis for the overseas admissions program, and the definition, applied with some strictness, should continue to be applied as the test for asylum. But there are limited occasions in the overseas program when it may make sense to go beyond these boundaries, while still limiting admissions to cases where the need is serious and the threat to the individuals is quite real. Particularly in cases involving persons who have lived in a refugee camp for 5-10 years, or who have fled a violent civil war, close inquiry into a detailed and targeted threat in the home country is problematic. The US Refugee Program should not initiate group access unless investigation reveals a serious threat to the group at home. But once investigation has led to such a determination for the group, further detailed inquiry into each individual's home-country threat may not be worthwhile. If camp conditions are bleak, the mere fact of the person's remaining there for many years provides hard evidence that the threat in the source country is genuine.

The problem is to find a way to permit occasional action on these insights without opening up other difficulties. One risk is that designations of classes to benefit from the special provision may have a tendency to get "calcified" -- to endure after the original conditions that justified the measure have disappeared. Some argue that this is the case with the Lautenberg amendment. Another risk is that such a step will heighten the perception that the program is no longer resettling "real refugees."

Both those problems can be minimized -- but not eliminated -- if any decision to use this tool must be made by the President and included in the annual Presidential Determination. We already permit the President to go beyond the refugee definition by authorizing in-country selection in special circumstances chosen by the President. Including this special permission as part of the annual PD process assures that it must be revisited each year, and can more readily be allowed to expire (as compared with a statutory designation) once the need has passed. The statute could be worded to provide that such a measure is to be used only in situations of genuine need. The President should use any such power in specific terms, defining the group of beneficiaries by means of objective criteria (such as flight from X counties before Y date, or appearance on an identified

UNHCR registration or verification roster)) that can be readily applied by interviewing officers.

Alternatively, if the main focus for a reform of this sort is the desirability of limiting interview time that must be spent on persecution determinations -- freeing up more time to be spent on questions of identity and inadmissibility, including security concerns -- the President might be given a more limited power. The amendment could permit him, in certain circumstances, to set forth processing presumption, specifying objective criteria that would authorize the interviewing officer, without more, to find that the person meets the Convention definition. Any such specifications should also be exercised by the President in the annual PD process. With either option, it would make sense to sunset the Lautenberg Amendment, but with committee language indicating that the President could use the new power to provide for the admission of the Lautenberg categories for as long as he finds such admissions appropriate.

Possible wording for amendments implementing the two alternative proposals is attached as an annex to this chapter.

#### **Annex to Chapter VII**

#### **Possible Statutory Amendments Affecting Refugee Admissions under INA § 207**

##### **Option 1 -- amend the first sentence of INA § 101(a)(42) to read:**

(42) The term "refugee" means (A) any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, or (B) in such special circumstances as the President after appropriate consultation (as defined in section 207(e) of this Act) may specify, any person who is within the country of such person's nationality or, in the case of a person having no nationality, within the country in which such person is habitually residing, and who is persecuted or who has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion., **or (C) in such special circumstances as the President after appropriate consultation (as defined in section 207(e) of this Act) may specify, any person who is a member of a specific group designated by the President that is unable or unwilling to return to the country of nationality or, in the case of groups composed in whole or in part of persons having no nationality, the country of last habitual residence, owing to a genuine risk of serious harm in that country, and whose resettlement in the United States is justified by humanitarian concerns or is otherwise in the national interest. A designation under subparagraph (C) shall have no bearing on decisions to grant relief under section 208 or protection under section 241(b)(3) or under the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.**

##### **Option 2 -- amend INA § 207(c)(1) to read:**

(1) Subject to the numerical limitations established pursuant to subsections (a) and (b), the Attorney General may, in the Attorney General's discretion and pursuant to such regulations as the Attorney General may prescribe, admit any refugee who is not firmly resettled in any foreign country, is determined to be of special humanitarian concern to the United States, and is admissible (except as otherwise provided under paragraph (3)) as an immigrant under this Act. **In order to enhance the efficiency of the refugee admissions program, the President may, in such special circumstances as the President after appropriate consultation (as defined in subsection (e)) may specify, designate specific groups or categories of persons whose members shall be presumed to meet the definition of refugee set forth in section 101(a)(42) solely for purposes of admission under this section. Any such designation or presumption shall have no bearing on decisions to grant relief under section 208 or protection under section 241(b)(3) or under the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.**