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Refugee Policy**

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Safe Haven: International Norms, Strategic Interests, and U.S. Refugee Policy

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Introduction

There are over 14 million refugees and asylum seekers in the world today (Figure 1, U.S. Committee for Refugees 2000). These are people who have crossed national boundaries – not in search of economic opportunities – but because they fear political persecution or violence in their countries of origin. Recent conflicts in Afghanistan, Yugoslavia, Sierra Leone, and Colombia, among others, have forced hundreds of thousands of people to flee their homes in search of safe haven elsewhere (table 1). Receiving countries, for their part, face substantial burdens when large numbers of refugees and asylum seekers turn up at their borders. Most refugee flows are between developing countries in which states facing their own political and economic hardships must provide for unexpected migrants. In more industrialized countries such as Germany, the United Kingdom, and the United States, political asylum has become an issue of intense debate as the number of asylum seekers rose sharply during the 1990's (Keely and Russell 1994).

This paper seeks to understand why states admit refugees and asylum seekers and why they fund international refugee aid agencies. What are the primary reasons that states engage in refugee protection efforts? While some researchers have argued that the influence of human rights and humanitarian norms have greatly impacted governmental decision making, I will argue that refugee policies have more to do with material and strategic interests than global norms.

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FIGURE 1 HERE

TABLE 1 HERE

Theories of International Norms

While international labor migration is covered by very few global agreements, refugees are protected by a relatively dense set of international as well as regional² institutions and treaties. This year (2001) marks the 50th anniversary of the adoption of the United Nations Convention Relating to the Status of Refugees, the major legal document of the post-war refugee protection regime. The UN High Commissioner for Refugees (UNHCR), the main international organization for refugee protection, operates on a budget of over one billion dollars (\$US), and provides emergency services to millions of people uprooted by violence.

Some scholars have claimed that international human rights norms, often embodied in formal international declarations and treaties, have had an important impact on domestic political discourses and governmental practices (Donnelly 1986; Finnemore and Sikkink 1998; Keck and Sikkink 1998; Risse, Ropp, and Sikkink 1998). While many such arguments have been loose and amorphous, recently several Social Constructivist scholars in international relations have attempted to demonstrate specific causal mechanisms through which global human rights and humanitarian norms influence the state. Countries, according to the argument, undergo a process of "socialization" which eventually leads to norm "institutionalization" and "habitualization" (Risse and Sikkink 1998).

Three mechanisms of norm diffusion and socialization are often cited in the literature. First, non-governmental organizations and transnational advocacy networks actively pressure

² Regional refugee agreements include the 1969 Organization of African Unity Refugee Convention, the 1984 Cartagena Declaration, and various agreements of the European Union.

and persuade governments to comply with international human rights principles (Risse and Sikkink 1998; Keck and Sikkink 1998). These actors operate domestically to effect change from within the state, as well as internationally as an external pressure on norm-violating countries. Secondly, formal international organizations such as the UN Human Rights Commission serve as an additional external pressure that can mobilize resources and information, shame human rights abusers, and persuade governments to abide by global norms (Keck and Sikkink 1998). Lastly, once human rights declarations and treaties become widely accepted, states may abide by these norms in order to increase their international legitimacy and prestige (Finnemore and Sikkink 1998). States undergo a form of "peer pressure," because they desire to maintain a positive international reputation and because their leaders wish for a favorable self-image.

This reasoning about the impact of global human rights principles has also been applied to immigration and refugee policies (Gurowitz 1999; Martin 1989; Tolley 1989; Sassen 1998; Soysal 1994). It is sometimes claimed that United Nations' conventions on refugees, racial discrimination, and labor rights, among others, have altered the traditional sovereignty of states to determine who is allowed to enter and what rights these migrants are to be granted. Amy Gurowitz (1999) argues that in the Japanese case, international norms – through a combination of domestic NGO work and the desire to enhance Japan's international reputation – have produced gradual but significant changes in immigration policies. Howard Tolley, Jr. (1989), has shown that advocacy groups in the United States have frequently invoked international treaties such as the UN Refugee Convention to challenge U.S. refugee policies in the courts. Similarly, David Martin (1989) has claimed that human rights agreements have strengthened the role of NGO's in debates over immigration and refugee policy. He writes, "since the adoption of such statements, [NGO's] are often able to wield a more powerful weapon in the debate, for they

may then claim that the government practice is not merely bad policy but rather 'violates international law'" (p. 555).

Overview

This paper questions the ability of global human rights and humanitarian regimes to influence refugee and asylum policies in particular.³ While I do not deny that international norms are sometimes important and have produced results in certain cases, I take issue with the claim that refugee and asylum policies are primarily motivated or significantly influenced by humanitarianism or concern with human rights. Instead, I argue that the decision to accept or reject refugees is based upon state interests and strategic foreign policy concerns⁴. International norms about refugee protection and human rights are not absent from the decision-making process; however, an interest-based analysis offers greater explanatory power in this issue-area.

In the first part of this paper, I will develop a model of refugee policy-making that is primarily based on state interests and international strategic concerns. I argue that refugees create international instability and can potentially lead to conflict. States with an interest in preserving order in the refugee-producing region may agree to a burden-sharing arrangement in which the costs of managing the refugee flow are distributed among them.⁵ In other words, the orderly management of refugee crises is an international public good, which interested states

³ This paper focuses exclusively on refugee and asylum admissions policies. Although I choose not to address other aspects of immigration policy such as labor migration or family reunification, many – but not all – of the claims made here can be extended to other issue-areas.

⁴ The decision to accept or reject migrants is, of course, different from policies regarding their integration in the host society and the rights they are allowed once there. For a good debate about the impact of international regimes on the rights of migrants in their host countries, see: Christian Joppke. 1998. *Challenge to the Nation-State: Immigration in Western Europe and the United States*. New York: Oxford University Press.

⁵ In my readings, I have only come across one article which touches upon international burden-sharing in the refugee arena: Astri Shukre. 1998. "Burden-sharing During Refugee Emergencies: The Logic of Collective Versus National Action." *Journal of Refugee Studies* Vol. 11, No. 4. This paper seeks to improve upon Shukre's argument.

contribute resources to provide. Funding international aid agencies such as the UNHCR and/or resettling a share of the refugees within their territories are ways in which states can mitigate the often chaotic effects of forced population movements. Foreign policy as well as domestic concerns also effect the decision as to whether or not states will accept asylum seekers headed for their territories. When the costs of accepting refugees exceed the expected benefit of managing the refugee crisis, states will be reluctant or unwilling to do so, despite the influence of human rights norms.

In the second part of this paper I will examine U.S. refugee and asylum policy during the post-WWII era. The United States is an interesting case to look at for several reasons. First, its position as a world superpower and an economic giant has spread the scope of U.S. foreign policy to all parts of the globe as well as making it an attractive destination for many migrants. Secondly, the United States is a country in which one would expect to see a great influence of international refugee protection norms, such as those found in the UN Convention Relating to the Status of Refugees. Human rights groups and refugee advocacy organizations are numerous very active in the United States and have frequently lobbied for their cause through democratic channels. Furthermore the United States, as the self-proclaimed "leader of the free world" and a liberal democracy, should be influenced by the actions and pronouncements of other liberal states. The UN Refugee Convention is one of the most widely accepted international legal documents in the world, therefore, prestige factors should affect U.S. refugee policies if Constructivist arguments are correct.⁶

Yet as I will demonstrate, human rights principles, advocacy groups, and international prestige, have failed to influence U.S. refugee policies in any meaningful way. International

strategic considerations are, and for the foreseeable future will remain to be, the primary motivation for refugee admissions policies.

Strategic Interests and the Management of Refugee Crises⁷

Mass movements of refugees have the potential to create instability in other countries, and are often viewed as security threats (Teitelbaum 1984, Weiner 1995). Large and unexpected flows of people from the sending state to countries of first asylum⁸ place great burdens on receiving states, which must play host these refugees (see figure 2). Providing refugees with basic services and integrating them into the host country can prove extremely costly and may lead to social tensions. Refugees demand food, shelter, sanitation, health care, and other basic needs, which countries of first asylum might find difficult to provide. Refugee flows may also upset the ethnic balance in receiving states and their interactions with the host society may lead to conflict. Lastly, accepting the refugees of others can threaten a country's foreign relations. Receiving countries are often blamed for hosting the sending state's dissidents, which can lead to reprisals and cross-border raids. Accepting the refugees of others is also a tacit acknowledgement that the sending state is a human rights violator. Thus, alliances, trade, and diplomatic relations might be upset by accepting the refugees of friendly countries.

Given the costs, states may be tempted to erect greater border and immigration controls as a way to keep refugees out. This approach, however, may be problematic. First, states may not have the capacity to completely seal their borders (not even in Europe, Japan, and North

⁶ Refugee protection is also a component of America's self-identity as a "nation of immigrants," many of whom came to flee persecution. International refugee protection norms are congruent with the American national folklore; thus, norm-breaking should have an added negative impact on leader's 'self-esteem'.

⁷ For an excellent discussion of the strategic choice approach to international relations, see Lake and Powell, 1999.

America. See Cornelius, Martin, and Hollifield 1994). Effective border enforcement is itself very costly and difficult to maintain. Secondly, border and immigration controls merely deflect refugees to other states (Keely and Russell 1994). This type of deflection is understandably unpopular internationally and it threatens foreign relations as the costs of the refugee flow are diverted to others.

Countries of first asylum will accept refugees if doing so is less costly than border enforcement. Furthermore, there may be certain benefits to accepting asylum seekers – in certain cases. Taking in the refugees of one’s enemies can be a useful political tool as it discredits the enemies’ regime, drains it of its human resources, and facilitates the creation of opposition groups in exile (Teitelbaum 1984; Weiner 1995) So asylum policy – the decision on the part of the initial refugee recipient to accept or reject the migrants – is determined by domestic cost and foreign policy considerations.

FIGURE 2 HERE

Thus, countries of first asylum are often in a no-win situation. To accept refugees entails a certain set of costs and to keep them out entails another. Either scenario has destabilizing effects on the region’s economy, social relations, and political institutions. Given the costs and the threats to regional security and peace, third countries often find it in their interests to accept some of the burden of managing the refugee flow (Suhkre 1998). Managing the crisis is an international public good that produces clear benefits as refugee movements become relatively more orderly and better contained. Third states may agree to cooperate in managing refugee

⁸ Countries of first asylum are those territories to which refugees go first, whereas countries of resettlement are third states that agree to accept a portion of the flow.

flows because they fear mass migration will cause the conflict to spill over to other states. The military forces of sending countries sometimes follow refugees into neighboring states and receiving countries have been known invade the sending state in order to halt the refugee flow. In either case, regional peace and security are threatened. Furthermore mass migration may upset trade as well as cause general instability in countries friendly to the third state. Thus, states intervene because of economic and strategic interests in the region, but they may also have genuine humanitarian concerns - although these are seldom the sole reason for intervention. Furthermore, intervention reduces the likelihood that an 'unacceptable' number of refugees eventually seeks asylum elsewhere – including the third country.

International burden-sharing to manage refugee crises takes two forms. First, states may transfer resources to countries of first asylum; in other words, provide humanitarian aid. Countries send food, temporary shelters, health supplies, and other equipment and logistical expertise. Aid may be bilateral, coming directly from the donor country, or it may come through established international organizations such as the United Nations High Commissioner for Refugees⁹ (see figure 3). Funding the UNHCR and other international aid agencies is usually the preferred strategy because such multilateral organizations are often seen as impartial actors. Aid coming directly from donor countries may be viewed as 'taking sides' in the conflict, whereas multilateral assistance has more legitimacy and avoids diplomatic problems between donor countries and refugee-producing states. Furthermore, funding permanent organizations such as the UNHCR ensures a rapid response to refugee crises and the development of valuable expertise in handling such emergencies.

FIGURE 3 HERE

The second burden-sharing strategy that states can take is to resettle a portion of the refugees within their own territories (see figure 4)¹⁰. Instead of moving resources to the refugees, the refugees are brought to the resources. Normally, this strategy is not preferred for several reasons. First, the costs of resettlement are more long-term and cannot be properly estimated in advance. Donors can determine the amount of aid they give, but estimates of the costs of resettlement in terms of social services and labor market impacts is difficult to determine. Secondly, accepting these migrants may lead to social tensions and nativist backlashes, which are politically costly. Thirdly, many countries have family reunification laws which means that the principal refugee can bring an unforeseeable number of future migrants to the country of resettlement. Lastly, the refugees themselves often prefer to be near their home countries out of hope for return, but also because neighboring countries may be similar in terms of language, customs, economic systems, etc. But if countries of first asylum find it far too costly to admit any more refugees – despite donor assistance – resettlement in third countries might be the only workable solution.

FIGURE 4 HERE

Such collective action to contain refugee flows is not without its problems. The benefits of reducing migratory instability are non-excludable, meaning that all states benefit (though not necessarily equally) from the management of the crisis, regardless of their level of contribution. If countries believe that others will bear the costs of relieving the refugee burden, they may find it in their interests to do nothing and “free-ride” off of the actions of others. As the free-rider

⁹ Of course, private non-profit organizations are also frequently engaged in refugee assistance.

problem and solutions to it have been dealt with at length by other authors, I will not address it again here (see Martin 1993, Olson 1971). Suffice it to say that problems associated with the provision of this public good do exist, and must be taken into account.

Although all actors (with the possible exception of the sending states) – countries of first asylum, donor countries, countries of resettlement, and the refugees themselves – are worse off because of forced population movements, cooperation on the management of crises can lessen the impact borne by any one actor. Countries of first asylum benefit because they do not have to bear all of the costs of hosting the refugees. Importantly, the availability of international resources greatly affects the willingness of recipient countries to admit the migratory flow (see for example, Hartigan 1992). If such states can be certain that others will provide funding and agree to resettle a share of the refugees, they will be more amenable to accepting them. Donors and countries of resettlement benefit from helping their trading partners and allies in the region and reducing political instability in the region. They may further find it in their interests to provide resources and admit a *pre-determined* number of refugees so that an unwanted flow of asylum seekers does not turn up at their borders. The refugees – the most vulnerable group of all – also benefit from having a reliable source of assistance while coping with their tragedy.

Thus, providing safe haven and emergency resources is not explained through "humanitarianism" or the influence of human rights norms. States have real interests in the orderly and predictable management of refugee crises. To be sure, humanitarianism is not entirely absent from the decision-making process. Government leaders often use the language of human rights in order to win popular support for their policies. They may also be sincerely concerned with the plight of others – human actions are best understood as having mixed

¹⁰ While a large percentage of the refugees in Figure 4 are resettled refugees, many are in fact asylum seekers who have fled directly to these countries.

motives. However, humanitarianism is an unreliable predictor of when states take action. Those most in need are often not the ones who receive the most assistance – states have looked the other way during countless refugee disasters (Sierra Leone and Rwanda for instance). Only when real, palpable interests are involved and the costs of assistance sufficiently low, do states choose to cooperate in a meaningful way. The unfortunate reality is that when powerful countries do not have material or strategic interests in the refugee producing region, they are unwilling undertake costly actions to help, despite the dictates of conscience. Importantly however, the existence of the UNHCR – which is impartial and has a clear mandate to respond to refugee emergencies wherever they may be – ensures that most refugees are given some level of support.

To provide an example of international cooperation on refugee management, burden sharing was clearly evident during the Kosovo crisis of 1999 (see table 2). During NATO bombings of Yugoslavia, Kosovar Albanians moved *en masse* to neighboring states, including Macedonia. NATO wanted the full cooperation of its members as well as states in the region during its operation. The coalition forces were also concerned that the refugee flow would cause the conflict to spread to other parts of the region. Macedonia's response early on in the crisis was to keep the refugees out (UNHCR 2000, Newsweek 1999). The country was ill-prepared to deal with the large numbers of refugees that were headed there. President Kiro Gligorov stated in an interview with Newsweek Magazine: "With such an enormous influx of refugees in a small country such as ours – the figure is now estimated to be about 140,000 --- it was an organizational and economic difficulty to take in so many (Newsweek 1999)." The refugees required housing, food, sanitation, medical treatment, etc., and created worries about the ethnic balance in Macedonia, which has a large Albanian minority of its own. The UNHCR, NATO,

and non-governmental groups offered assistance to Macedonia – which was the key in Macedonia's decision to allow the refugees in – and they quickly established camps that cared for the needs of the Kosovar Albanians (UNHCR 2000). The United States, Canada, Japan, and several European countries offered additional humanitarian aid totaling well over (US\$)100 million. Many of these countries also agreed to resettle a share of the refugees as a further way to reduce the costs borne by Macedonia. Such measures were seen as critical to the continued cooperation of the Republic of Macedonia in the overall NATO operation and preserved political stability in that country.

TABLE 2 HERE

Several other examples may be given. During and after the Gulf War, thousands of Iraqi refugees – many of whom were Kurdish – fled into neighboring Turkey, which has been battling Kurdish separatist groups for decades. The actions of the UNHCR in providing aid to the refugees, as well as the willingness of the United States and other coalition partners to accept a share of the Iraqis was an important strategy to keep Turkey (and its airfields) in the alliance. Similarly, burden sharing was evident during the Vietnamese refugee crisis following the end of the war in 1975. Malaysia, Thailand, and Indonesia were ill-prepared to deal with the hundreds of thousands of refugees who fled Vietnam, and they repeatedly asked the international community for help. In response, nearly 700,000 refugees were resettled overseas, primarily in the United States, Canada, Australia, France, and Japan. An additional 400,000 people fled directly from Vietnam to Western countries (Suhkre 1998). While humanitarian and human

rights norms are evident in these cases, the primary explanation for why such cooperative endeavors occurs lies in understanding the material and strategic incentives for states to act.

United States Refugee Policy in the Post World War II Era

The refugee admission's policies of the United States are consistent with the interest-based analysis given above. The U.S. selectively admits refugees as a way to mitigate international instability and conflict caused by mass migration. These policies are shaped by the concern that large refugee flows harm allies and trading partners, and ultimately harm U.S. interests. When asylum seekers are destined directly for the United States, the costs and benefits of accepting the flow – in terms of domestic and foreign policy considerations – are weighed against one other.

The analysis presented in this section tests the above hypothesis against theories of norm diffusion and influence. Non-governmental actors have promoted the international human rights and refugee protection regime in their lobbying efforts. Furthermore, the United Nation's Refugee Convention is one of the most widely ratified human rights treaties and the UNHCR is a well-respected international body that promotes refugee rights. This, combined with U.S. national identity as a liberal democracy and a 'nation of immigrants,' has failed to produce significant *practical* results in the refugee arena. Rights groups have won minor victories, and human rights discourses do turn up in policy venues, but such efforts cannot be said to have determined the course of refugee policy in any meaningful way.

Ad Hoc Policies Following WWII: 1945-1965

The millions of people that remained displaced after World War II demanded international attention. Hundreds of thousands of people refused to return to countries in Eastern Europe, where Soviet control was beginning to take hold. The United Nations General Assembly voted to create the International Refugee Organization (IRO), which was responsible for administering refugee camps and facilitating repatriation and resettlement efforts. Furthermore, a common definition of the term 'refugee' was developed as a person fleeing their native country out of fear of persecution (Gordenker 1987, Ch.2; Loescher 1994). Between 1947 and 1950, under the auspices of the IRO, 1.3 million refugees were resettled in third countries, most notably the United States, Australia, Israel, and Canada (Suhkre 1998). The IRO was short-lived and in 1950, it was replaced by the UN High Commissioner for Refugees (UNHCR). The UNHCR was given a meager budget and a limited mandate, but most damagingly, the United States refused to take an active role in the organization's funding and programs, preferring instead to develop its own policies.

U.S. refugee policy immediately after World War II was aimed at alleviating the burden on European nations that suffered from an massive influx of refugees displaced by the war. The U.S. response to the refugee crisis was seen as part of the larger process of post-war rebuilding and development. The United States provided humanitarian assistance to the refugee camps and agreed to accept a portion of the refugees who were unable to return the their home countries. These efforts were viewed as temporary and were greeted with widespread support by the American public, which deemed European reconstruction as a legitimate foreign policy objective and refugee admissions as part of that goal (Zolberg 1995).

The first formal refugee admission and resettlement provision passed by Congress was the Displaced Persons Act (DPA) of 1948. The DPA was a temporary measure that's' explicit

aim was to assist in the European reconstruction effort by allowing refugees to resettle in the U.S. While such efforts had already been taking place, Congress decided to formalize the admissions process. In total, the DPA allowed the entry of over 400,000 people, mostly from Eastern Europe. These admissions, however, were counted against the annual immigration ceilings which were part of U.S. immigration law at the time (McBride 1999).

Then in 1951, the United Nations adopted the Convention Relating to the Status of Refugees, which was largely aimed at managing the wartime refugee crisis. The Convention defines the term "refugee" as a person who, "owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside of the country of his nationality [or residence] ... " (UN Refugee Convention, Article 1). However, the definition was temporally limited to 'events occurring before 1951.' The Refugee Convention also expresses the basic rights of refugees. People meeting the definition are not to be forcibly returned to countries where they fear persecution (Article 33); legitimate refugees are not to be discriminated against on the basis of race, religion, nationality, etc. (Article 3); and they are to be granted an adequate standard of living in host countries. The Convention was very popular internationally, and by 1960, it was ratified by all Western European nations with the single exception of Spain.

The United States, however, did not become a party to the Convention despite its popularity and international pressure for ratification. President Truman did not present the treaty to the Senate, feeling that it was not necessary to do so. The Convention mainly applied to refugees displaced by the war, and Truman felt that the United States had already responded to the crisis through its own legislation, the DPA. Signing on to the treaty, it was felt, would have no added value (see U.S. Senate, 1968: *Testimony of Laurence Dawson, Department of State*).

Furthermore, as international treaties become binding under the U.S. Constitution, it was felt that ratifying the Convention would unnecessarily constrain national sovereignty over the issue.

In the years that followed, the United States adopted a series of *ad hoc* measures in response to specific refugee emergencies. These legislation included the Refugee Relief Act (1953) which was in response to the remaining refugees displaced by the War, the Refugee-Escapee Act (1957) and the Hungarian Refugee Act (1958), which were both in response to the 1956 Hungarian uprising. All together, these pieces of legislation allowed nearly 250,000 refugees to enter the U.S.

The Hungarian uprising in 1956 was important both in the U.S. and internationally. The revolt, which was in response to Soviet repression, was dealt with harshly and lead tens of thousands of refugees to flee to Western Europe – mainly Austria and Germany. The UNHCR, whose mandate had been extended, was given increased UN funding to provide humanitarian assistance, establish refugee camps, and facilitate resettlement in third countries. The effective an impartial management of the Hungarian crisis by the UNHCR and its commissioner, August Lindt, won the approval of the U.S. as well as many Eastern Bloc countries and proved critical for the organization's long-term viability (Gallagher 1989). Importantly, the U.S. became more involved in its funding. But perhaps most significantly, the UN Refugee Convention experienced a *de facto* expansion beyond its original purpose – namely, resolving the WWII refugee crisis – and its provisions became part of accepted international custom.

The 1957 Refugee-Escapee Act, which was passed during the Hungarian refugee crisis, was significant from a U.S. standpoint. While only about 30,000 people were allowed to enter under the Act, it was important in that it established a definition of the term 'refugee' as a person fleeing persecution in communist countries or countries of the Middle East. This limited

definition was in line with America's Cold-War foreign policy objectives and demonstrated the types of refugee flows the U.S. was willing to respond to. The United States saw that by admitting refugees from communist countries such as Hungary, it could show the world the supposed horrors of Soviet control and the virtues of democracy. Significantly, this definition was clearly counter to the widely accepted UN refugee definition and constituted the type of discriminatory admissions policies that the Refugee Convention had sought to eliminate.

Although the U.S. had not ratified the UN Convention, the norms contained therein were nearly universally accepted by liberal democratic countries (among others), and by this time, non-governmental organizations advocating refugee rights had begun to emerge.

Then in 1959, the Cuban Revolution prompted many thousands of asylum seekers to come to the United States. This was the first time that such a massive flow of refugees came directly to the country. The U.S. viewed the refugees as being in need of temporary asylum and agreed to host them on a short-term basis (Zolberg 1995). Quickly the U.S. came to view the admission of Cubans as an important foreign policy tool. While there were definite domestic costs of admitting the asylees, especially to heavily impacted counties in Florida, there were good foreign policy reasons to let them in. First, as in the Hungarian case, it was a way to show the world the evils of communism. These people, it was argued, were 'voting with their feet' and escaping an inherently repressive regime. Secondly, the initial wave of refugees were among Cuba's best and brightest citizens. It was hoped that allowing the refugees to enter would drain Cuba of its human resources, thus destabilizing the Castro government. Lastly, the United States felt that it could organize Cuban opposition groups in exile. The botched Bay of Pigs invasion was an important example of such thinking.

Between 1945 and 1965, well over 700,000 people came to the United States under various refugee laws. The post-WWII refugee crisis and the Hungarian crisis clearly demonstrates U.S. involvement in burden sharing arrangements. European states were struggling to cope with the refugee flows, and the U.S. among others, agreed to grant foreign aid as well as to resettle some of the refugees in order to assist its allies and discredit Eastern countries. Accepting Cuban refugees was also in line with U.S. foreign policy goals.

Despite the international popularity of the 1951 UN Refugee Convention and the proddings of other liberal states, the U.S. did not ratify it and instead adopted a more restrictive refugee definition. While there were still very few human rights and refugee advocacy organizations during much of this period, there were groups that were beginning to make their voices heard in Congress and elsewhere. But what became clear to all was that *ad hoc* policies were not adequate in dealing with such crises – more systematic policies would be needed.

INA Reforms and the Indochinese Crisis: 1965-1980

In 1965, Congress passed a sweeping immigration reform bill, the Immigration and Nationality Act (INA). The legislation eliminated national origin quotas and developed a preference system for the admission of immigrants. The seventh preference, refugees, was held at six percent of the total number of annual entries, or just over 17,000 people. This was the first time that refugee admissions became a permanent part of U.S. immigration policy. While in years past, refugees entered through specific pieces of legislation, now there was a provision in the immigration law that allowed for regular admissions.

However, the definition of the term 'refugee' remained limited to persons escaping communism or countries of the Middle East. The U.S. viewed the acceptance of such refugees

as a useful foreign policy tool, while refugees falling outside of this narrow definition were seen as unnecessarily burdensome. International human rights norms and accepted standards of refugee protection could not be said to have influenced governmental decision making. By 1965, 46 countries had ratified the UN Refugee Convention including every Western democracy with the sole exceptions of Canada and the U.S. The UNHCR and other liberal governments sharply criticized this fact. If international prestige factors and human rights norms were indeed influential, in 1965 the U.S. had the opportunity to change its refugee definition to conform to international standards. Simply put, it did not.

By that time, domestic NGO's had also begun to argue for greater refugee protections and were important in political debates about immigration reform. Religious groups such as the National Catholic Welfare Conference, the American Friends Service Committee, the Unitarian Universalist Association, and the Lutheran Immigration Service agreed with making refugee admissions a permanent aspect of immigration policy, but they lamented the limited refugee definition (United States HR, 1965). David Carliner of the American Civil Liberties Union called the definition, "unnecessarily limiting" and "restrictive" (CQ Almanac 1965:475). James Read, a former UN Deputy High Commissioner for Refugees, testified before Congress in 1965 on behalf of the American Friends Service Committee, suggesting that the definition, "be expanded so that some refugees could be admitted on a continuing basis regardless of country of origin" (CQ Almanac 1965:475). Although these groups, and others like them, argued for adherence to internationally accepted standards of refugee protection, they were not able to pressure Congress to alter the INA. In governmental circles, it was felt that accepting refugees from non-communist countries – which were actual or potential allies – would jeopardize U.S. strategic interests during the height of the Cold War.

A major breakthrough came in 1968, however. The year before, the UN adopted the Protocol to the Refugee Convention which eliminated the temporal and geographical restrictions of the 1951 agreement. The Protocol mainly acknowledged international reality. The UNHCR had by this time responded to dozens of emergencies all over the globe and the provisions of the 1951 Convention were accepted as standard international practice – the Protocol formalized this reality. In 1968, in part due to the growing rights movement at home and growing international criticism of U.S. policy in Vietnam, President Johnson signed the treaty and the Senate quickly ratified it. According to Lawrence Dawson of the State Department, 86 organizations had, "petitioned the government on several occasions to take all necessary steps with a view to securing U.S. assent to the Protocol" (United States Senate 1968). These NGO's also had the support of key governmental actors. Senator Claiborne Pell (D-RI), who sat on the Senate Foreign Relations Committee, also served as the Vice President of the International Rescue Committee, was on the board of the American Immigration Conference, and was a member of the National Council for Refugees. President Johnson himself issued a statement to the Senate in favor of ratification: "It is decidedly in the interests of the United States," he declared, "to promote this United Nations effort to broaden the extension of asylum and status for those fleeing persecution" (Johnson 1968).

But ratification of the treaty was mainly a symbolic gesture. International treaties, to take effect, must not only be ratified by the Senate but also be implemented through Congressional legislation. The Immigration and Nationality Act was not changed and the refugee definition remained limited for more than a decade. While refugee advocates were certainly pleased that the U.S. had finally signed on to the UN Refugee Convention, they were discouraged that in practice, things remained as they had been. On paper the U.S. was committed to the

international norm but in actuality, Cold-War biases and strategic foreign policy concerns dominated refugee and asylum policy making.

In 1975, the Theiu government in South Vietnam fell to the communist forces in the North. This prompted hundreds of thousands of Vietnamese and later Cambodian and Laotian refugees to flee Indochina. Refugee camps in Thailand, Malaysia, Indonesia, and Australia quickly became overburdened with the massive influx of people. The UNHCR was on board to provide humanitarian assistance, as were several private organizations, but the exodus was clearly creating problems for neighboring countries. Despite polls showing that the American public was opposed to Indochinese immigration (Simon and Alexander 1994), President Ford felt that it was necessary to help U.S. associates in Vietnam as well as allies in the region. Several NGO's working with officials in the State Department, formed the Citizen's Commission on Indochinese Refugees to assist with humanitarian operations and resettlement efforts (Zolberg 1995). Congress also got involved by passing two Acts, one in 1977 and another in 1978, which allowed the entry of over 300,000 people – well beyond the INA limit.

The international response to the Indochinese crisis is another clear example of international burden sharing (Suhrke 1998). The refugees threatened to overwhelm countries of first asylum in South East Asia. Third states such as the U.S., Canada, France (former colonial masters), Australia, and even Japan agreed to cooperate in providing resources and accepting a portion of the refugees as a way to bring order to the region. The United States accepted the lion's share of the refugees because of its involvement in the war, its relations with other states in the region, and because it had the greatest capacity to absorb the migrants. Such actions were only partially motivated by humanitarianism; indeed as mentioned earlier, most Americans were opposed to accepting such a large number of refugees. The main reason why the United States

and the other international partners got involved was to protect their commercial and military interests in the region.

Congress was dissatisfied with the handling of the Indochinese refugee crisis – especially the extensive use of Executive authority – and debates about refugee policy reform gained importance on Capitol Hill. By 1979, several bills were introduced that would streamline U.S. refugee and asylum policies. These efforts culminated in the passage of the Refugee Act of 1980

The Refugee Act of 1980 and Current Policies: 1980-Present

The Refugee Act of 1980 accomplished several things: it substantially raised the ceiling for refugee admissions; it eliminated the practice of counting refugee entries against annual immigration limits; it changed the definition of the term 'refugee' to conform to the UN definition; created a system for the orderly adjudication of asylum claims; and it created social service agencies that were responsible for refugee resettlement. The President would have the authority to determine the annual number of refugees admitted and would be able to raise the limit in response to unforeseen circumstances. Congress had the authority to accept or reject the President's annual numbers. These changes in the legislation were primarily aimed at limiting the Executive's broad parole powers. During the Indochinese crisis, the President was able to use his authority to admit refugees without the approval of Congress. The Refugee Act was an attempt by Congress to limit such authority and maintain control over the resettlement process.

Leading up to the passage of the 1980 Act several non-governmental organizations and refugee advocates actively promoted compliance with international legal standards. While there was some resistance to expanding the number of refugee admissions, human rights and refugee protection organizations forcefully pressed their issue. Such groups spoke strongly in favor of

the principle of generous refugee protection and adherence to international law. For example, a representative from the AFL-CIO in his testimony before the House of Representatives stated:

the American labor movement, many of whose members and leaders came to this country as refugees, has a deep and binding commitment to aid refugees from discrimination and oppression...

The new definition of the term 'refugee'... is a change which is necessary if the United States is to maintain a credible human rights policy. The language *conforms closely with that in the United Nations Convention and Protocol Relating to the Status of Refugees*. Above all, it reflects international reality (US House 1979: 356-357)

Similarly, Wells C. Klein of the Committee on Migration and Refugee Affairs, an umbrella organization for several refugee-oriented NGO'S, remarked:

...the operational definition of 'refugee' *is at last brought into conformity with that of the United Nations 1951 Convention on the Status of Refugee and the 1968 Protocol* to which the United States is a signatory. This new definition finally reflects U.S. traditional humanitarian concern for refugees... (US House 1979: 248).

Further, representatives from Amnesty International commented:

The increase in the 'normal flow' of refugees to 50,000... and the adoption of a new definition of 'refugees' *which conforms to the UN Convention and Protocol Relating to the Status of Refugees* expresses meaningful and overdue amendments to current practice (US House 1979: 168).

These organizations had actively lobbied for greater refugee protection for years and made a strong push for the passage of the 1980 Act, which did alter the refugee definition to conform to the UN Refugee Convention. The work of such groups and their support of global human rights norms produced a change the wording of the legislation, yet in practice, U.S. refugee and asylum policy was still bound by foreign policy concerns.

Despite the influence of NGO's and the confirmation of U.N. principles in the 1980 Refugee Act, U.S. refugee and asylum policies continued to discriminate between refugee claimants. This practice violated international refugee protection principles, as given by the

Refugee Convention. Overseas refugees from Eastern Europe and the U.S.S.R as well as communist controlled parts of Asia were given priority over others (Figure 5; INS Statistical Yearbook, Various Years). Asylum seekers headed for the U.S. were also routinely denied entry based on their countries of origin. While asylum seekers from communist Cuba and Nicaragua found it relatively easy to win asylum, those fleeing conflicts in El Salvador and Guatemala – U.S. allies in Central America – were systematically denied entry. The United States during the Reagan administration provided billions of dollars military aid to El Salvador and Guatemala in order to fight leftist guerilla movements. Military equipment and training were often used in committing human rights violations against the rural poor in both countries. Accepting refugees from El Salvador and Guatemala, from a U.S. perspective, would damage relations with its Central American allies as well as implicate the U.S. in its tacit support of atrocities committed by government forces during the civil wars. Such refugees were often dismissed as 'economic migrants.'

FIGURE 5 HERE

Similarly, at the same time as Cuban refugees were regularly admitted, Haitian refugees were often denied not only entry, but also due process. State and local officials in Florida regularly complained about the impact of Haitian refugees, not only on social services, but also on local communities (U.S. Senate 1979). President Reagan began a policy of routinely interdicting refugee-carrying vessels at sea and returning them to Haiti with little, if any, procedures to determine the status of those on board. This action, which clearly defied the

principle of non-refoulement, was justified on the grounds that as long as the refugees were not in U.S. waters, they were not entitled to the protection of U.S. law (Tolley 1990).

The refoulement of Haitian refugees led to a series of legal actions and protests by groups such as the Haitian Refugee Center, the American Civil Liberties Union, Amnesty International, and the Lawyers Committee for Human Rights (Tolley 1990, Amnesty International 1994). Despite their efforts, interdiction at sea was continued by Presidents Bush and Clinton. In fact, in 1992 the U.S. Supreme Court supported the Executive's claim that as long as asylum seekers have not crossed into U.S. territory, they may be returned to their countries of origin without formal asylum hearings. Even after the fall of the Aristide government 1991 by military coup and the well-documented reports of human rights abuses in Haiti, forcible return of Haitian asylum seekers continued under Clinton. Amnesty International and several other human rights NGO's scorned the violation of international law:

This policy is a gross violation of the *internationally-recognized principle of non-refoulement*, binding on all states, which puts an obligation on states not to send any person against their will to a country where they would be at risk of serious human rights violations (Amnesty International 1994: 1).

The crisis was temporarily brought to an end by the landing of U.S. troops in Haiti and the reinstatement of President Aristide. These cases clearly show that despite global norms, NGO advocacy, and even ratification of international human rights treaties, the United States has violated human rights principles when domestic and foreign policy interests are in conflict with them.

In the post-Cold War era, refugee and asylum admissions policies have become somewhat less discriminatory, but international strategic interests still account for the decision to admit refugees. U.S. involvement in conflicts in the Middle East, the Balkans, and the Horn of Africa have led to the admission of thousands of people uprooted by violence. Iraqis, Somalis,

Bosnians, and other areas of Eastern Europe are the main sources of entries (INS Statistical Yearbook). As I have already mentioned international burden sharing during the Gulf War and during the conflicts in the Balkans, I will not address them again here. Suffice it to say that regions in which refugee flows threaten U.S. interests are the same regions from which the majority of refugees are resettled in the U.S.

Yet another example of U.S. disregard for international law came in 1996 with the passage of a sweeping immigration reform bill. During the mid-1990's, a recession as well as concerns over the growing number of immigrants – legal and illegal – lead to increased anti-immigrant pressures. The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) was mainly focused on undocumented migration but also made changes to asylum procedures as many felt that political asylum was merely a 'back door' for otherwise inadmissible immigrants. IIRIRA requires asylum seekers to submit an application no more than one year after entry; it created a team of immigration officers – who are not qualified immigration judges – that have the power to remove asylum seekers at ports of entry; and it calls for the detention of asylum seekers while their cases are under review. All of these measures made the asylum process more burdensome.

Again, non-governmental organizations protested what they claimed were violations of international law. In a report which condemned the detention of asylum seekers, the Lawyers Committee for Human Rights Stated:

The current system of detaining asylum seekers, a system which provides no meaningful access to parole for so many, flies in the face of U.S. *obligations under international refugee protection treaties...* (LCHR 2000).

Several other organizations such as the U.S. Committee for Refugees, Amnesty International, and the Cato Institute (Pistone 1998); have expressed similar concerns about the 1996 reforms.

But as of this writing, these groups have not been very successful and the policies are still part of current practice.

Analysis and Conclusions

This paper has demonstrated that foreign policy objectives largely explain decisions on the part of the United States to accept or reject refugees. The crises that the U.S. has responded to, such as in post war Europe, Hungary, Vietnam, Kosovo, etc., clearly show that when the United States has vital interests in the refugee-producing region, it is more willing to accept some of the burden of managing the refugee flow. Equally informative are the dozens of refugee emergencies around the globe that the U.S. has failed to respond to. When refugees create conflicts in non-vital areas, the United States has been content to free-ride off of the actions of others or provide minimal humanitarian aid. When asylum seekers have fled to directly to the United States – as in the Central American and Caribbean cases – domestic costs and foreign policy considerations have dominated the decision of whether or not to grant asylum.

The three often cited mechanisms of norm diffusion and influence – transnational advocacy networks, international organizations, and international prestige factors – have failed significantly impact U.S. refugee policies. While NGO's have won minor victories, as in 1968 and 1980, refugee and asylum policies have in practice continued to reflect U.S. strategic interests and domestic cost considerations. In fact, as the narrative above has demonstrated, when human rights norms are in conflict with cold, hard interests, the United States has frequently broken international laws regarding refugee protection.

Such disregard for international refugee protection standards is not inconsistent with policies elsewhere. While the UN Refugee Convention has been ratified by the vast majority of

countries, it is frequently disregarded not only by authoritarian regimes but also by liberal states (for specific examples, see Amnesty International 1997). During the 1990's and into the current century, countries in Western Europe have been increasingly reluctant to offer protection to asylum seekers and have only selectively granted admission to refugees abroad (Cornelius, et al 1994; Keely and Russell 1994). Discrimination between refugee groups, forcible return, and detention of asylum seekers are commonplace around the world.

In this paper, I have not argued that states should overlook their material and strategic interests and abide by international human rights norms regardless of the costs of doing so – such normative arguments are beyond the scope of this paper. I have merely demonstrated that refugee protection is more likely when powerful states find it in their interests to manage destabilizing migratory flows. Nevertheless, I feel that most people would agree that inaction is also very costly in terms of human suffering. Creative strategies for incentivizing refugee protection while recognizing inherent constraints are sorely needed.

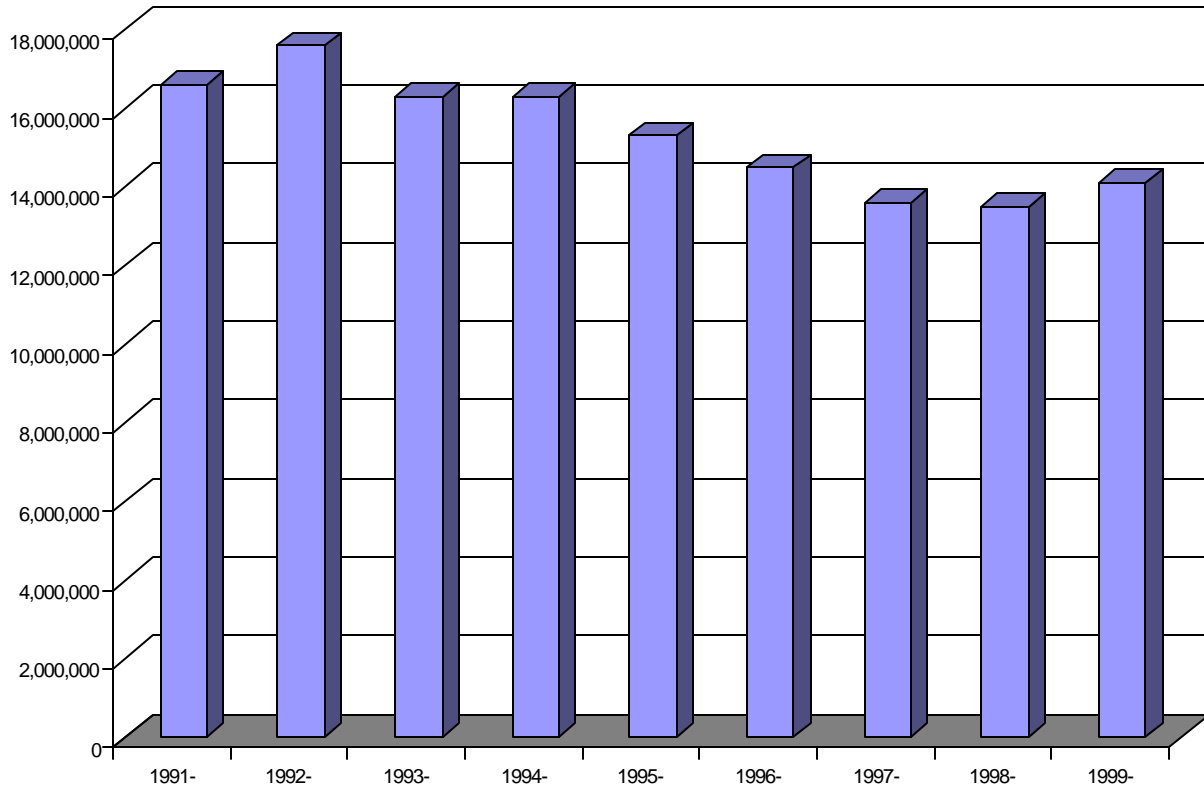
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Fig. 1 Refugees and Asylum Seekers Worldwide; 1991-1999



Source: U.S. Committee for Refugees

Table 1.

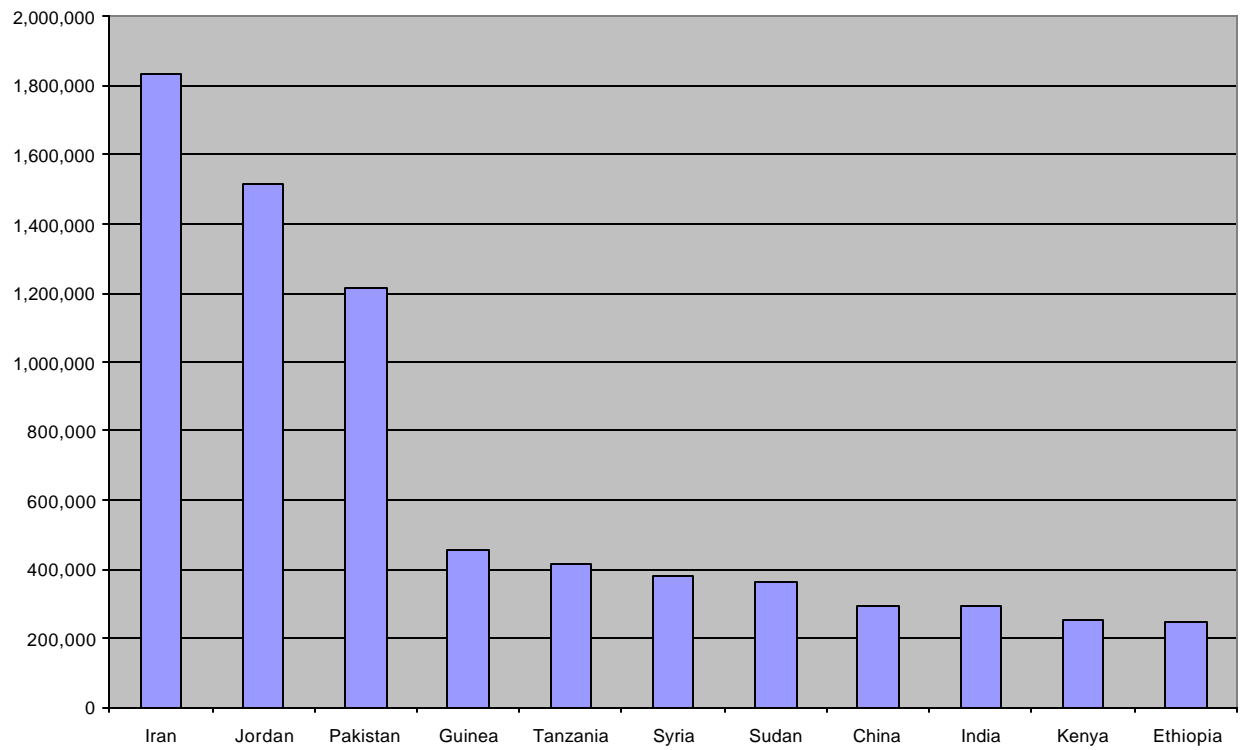
**Principal Sources
of Refugees**

Country	Number
Palestinians	3,931,000
Afghanistan	2,560,000
Iraq	568,000
Sierra Leone	460,000
Somalia	425,000
Sudan	420,000
Yugoslavia	390,000
Angola	340,000
Croatia	340,000
Eritrea	320,000
Burundi	310,000
Bosnia & Hercegovina	300,000
Vietnam	292,000
El Salvador	253,000
Liberia	250,000
Burma	240,000
Congo-Kinshasa	240,000
Azerbaijan	230,000
Armenia	188,000
Guatemala	146,000
China (Tibet)	130,000
Bhutan	125,000
East Timor	120,000
Sri Lanka	110,000

(as of Dec. 31, 1999)

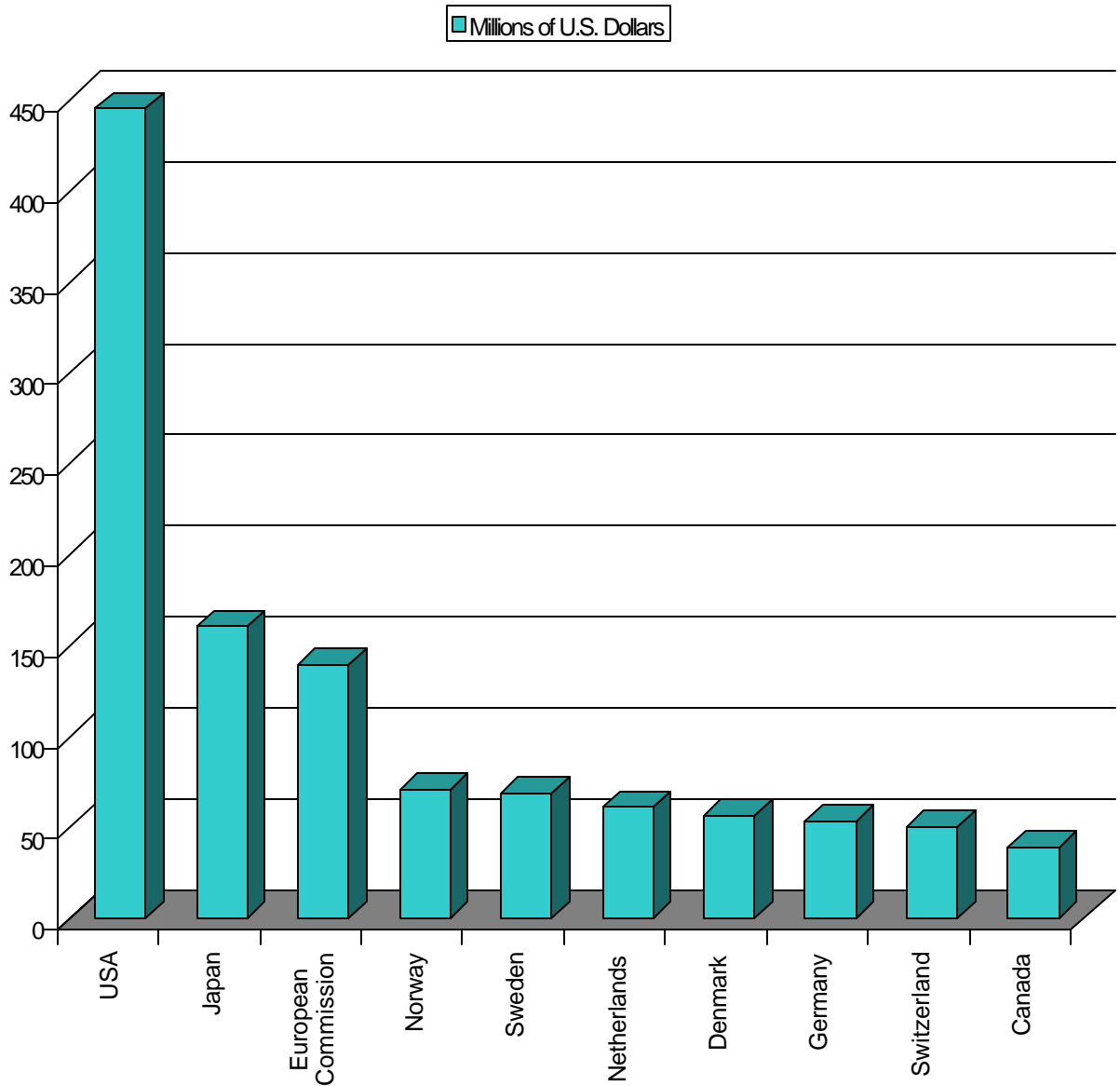
Source: U.S. Committee For Refugees

Fig 2. Refugees and Asylees in 'Developing' Countries



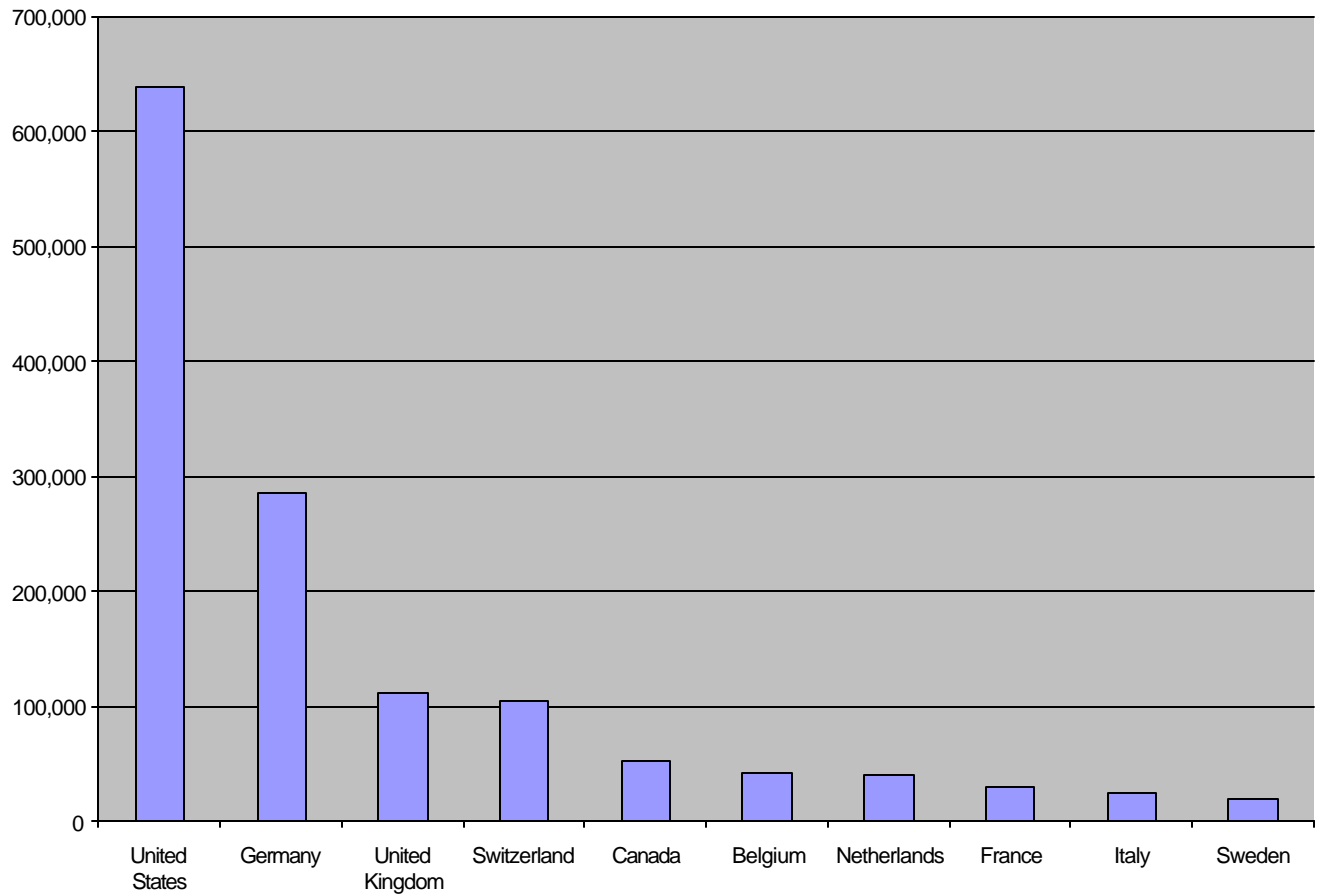
Source: U.S. Committee for Refugees

Fig. 3 Top 10 Contributors to International Refugee Aid Agencies



Source: U.S. Committee for Refugees

Fig. 4 Refugees and Asylum Seekers in 'Developed' Countries



Source: U.S. Committee for Refugees

Table 2.

**Burden Sharing During the Kosovo
Refugee Crisis**

Countries of First Asylum (#of refugees)

Albania	444,200
Macedonia	245,100
(Montenegro)	69,800
Bosnia	21,700

Resettlement Countries (#of refugees)

Germany	14,254
Turkey	8,013
Norway	6,070
United States	5,997
Italy	5,827
France	5,388
Netherlands	4,067
UK	3,446
Sweden	3,245
Australia	2,932
Denmark	2,507
Switzerland	1,517
Portugal	1,271
Spain	1,240
Belgium	1,223
Poland	1,049
Finland	958
Ireland	893
Czech Rep	824
Slovenia	745
Croatia	284
Israel	206
Malta	105
Slovakia	90
Iceland	70
Romania	41

TOTAL **72,262**

Donor Countries (\$US pledged to UNHCR)

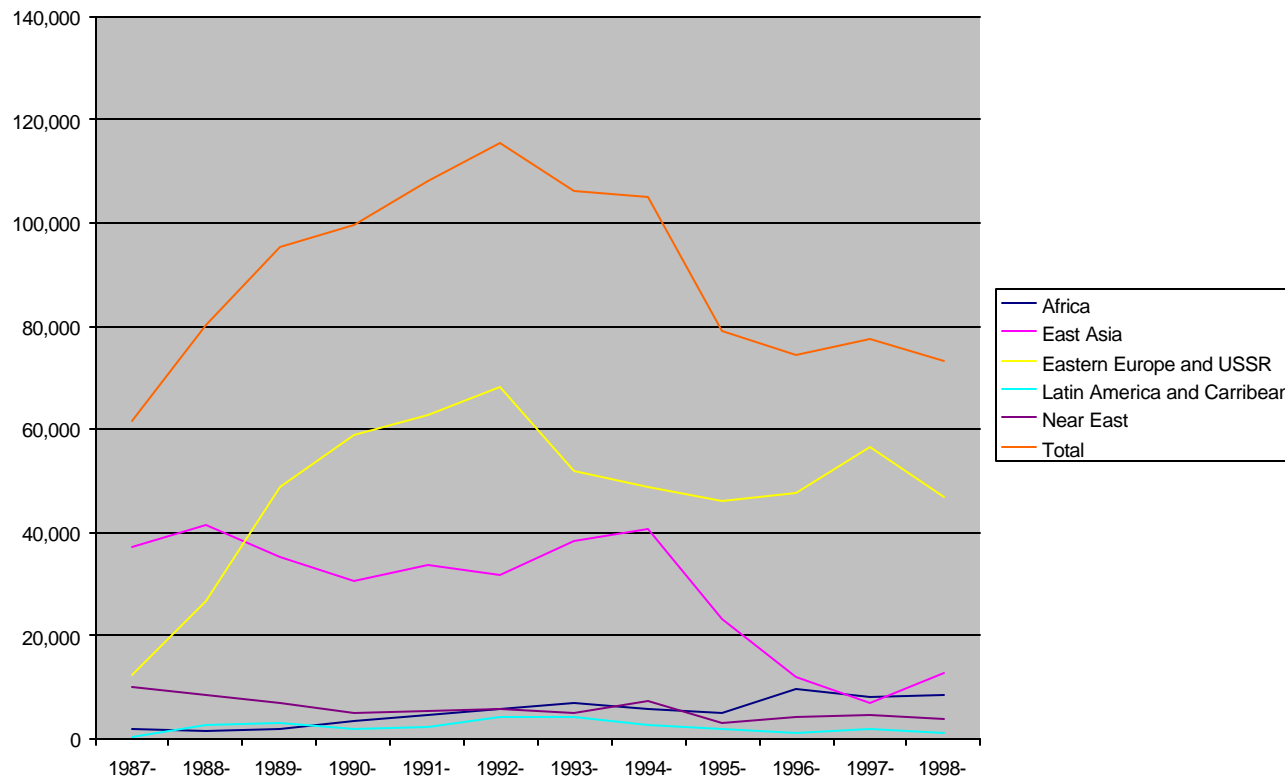
USA	28,500,000
Japan	23,100,000
Italy	547,094
Norway	5,743,289
Switzerland	3,355,705
Canada	3,991,530
Netherlands	3,364,899
Denmark	3,412,969
Australia	2,201,258
France	2,109,801
Sweden	2,054,922
Finland	1,781,651
Spain	1,463,836
Luxembourg	1,528,579
Germany	1,793,486
Belgium	1,000,000
UK	800,000
Ireland	538,025
Austria	339,164
Portugal	300,000
New Zealand	195,650
Liechtenstein	167,785
Others	386,206
TOTAL*	\$ 88,675,849

*does not include contributions by private donors

** donor country data as of 2 June 1999; resettlement data as of 11 June 1999

Sources: *Associated Press, UNHCR*

Fig 5. U.S. Refugee Admissions by Region of Origin: 1987-1998



Source: U.S. Immigration and Naturalization Service