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Refugee Act of 1980

Edward M. Kennedy

This article traces the legislative history of the Refugee Act of 1980, identifies the goals Congress intended to achieve, discusses its implementation in relation to the recent influx of Cuban refugees and shows how it can be utilized beneficially in the future.

On March 4, 1980, Congress completed final action on "The Refugee Act of 1980"—the first major reform of the refugee provisions of American immigration law in nearly three decades. On March 17th, President Carter signed the bill into law,¹ culminating an intensive year and a half effort by Congress and the Executive Branch to move this important reform legislation through some very difficult times.

Yet, the ink was hardly dry on this historic reform when the new law faced its first test: the massive influx of Cuban refugees to the United States, which began a few weeks after the Act became effective on April 1, 1980. At the outset of the Cuban crisis, the Carter Administration used the new authorities of the law by invoking the emergency provisions contained in Section 207(b). However, as the Cuban exodus increased—and faced with the uncontrolled arrival of over 114,000 Cubans in Florida—the Administration abandoned use of the Act in favor of an *ad hoc*, short-term solution: temporary use of the so-called "parole authority".² This decision simply delayed a solution to the problem and a resolution of the ultimate immigration status of the Cubans. The resettlement costs involved in dealing with the problem were largely dumped upon the states, local communities and voluntary agencies. All of these undesirable consequences could have been avoided by continuing to use the 1980 Act. The *National Law Journal* concluded in a headline: "Carter Helps Refugee Law Flunk 1st Test."³

The decision to ignore the new law poses some troubling questions about the future of the Act. Congress worked many years to achieve the

¹The "parole authority" is contained in Section 212(d) (5) of the Immigration and Nationality Act of 1952, as amended. Prior to the Refugee Act of 1980, this was the authority utilized to admit large groups of refugees beyond the 17,400 admissible under the former seventh preference.

²The Refugee Act of 1980, Public Law 96-212, approved March 17, 1980.

³A. Klement, "Carter Helps Refugee Law Flunk 1st Test", *The National Law Journal*, July 7, 1980, p. 1.

refugee reforms contained in the new law, and to many, it was discouraging to see the new tools available to the government ignored. The Administration's decision was based largely upon fiscal concerns and the assumption that the costs of dealing with the Cubans under the Refugee Act would be too high; but Congress subsequently enacted special legislation providing full funding for the costs.

There was also the concern that admitting the Cubans as "refugees" under the Act would establish a precedent inviting millions more to come directly to the United States. Yet, accepting the Cubans under the parole authority was hardly less of an invitation. The subsequent legislation offered by the Administration to adjust the status and to assist the Cubans simply made them 75 percent refugees instead of 100 percent refugees under the terms of the Refugee Act.⁴

The challenge ahead will be to implement the new law as it was intended to be used, and not allow the Cuban crisis to establish an unfortunate precedent. The legislative history of the Act clearly reveals the goals Congress intended to achieve. With a better understanding of the Act, we can lay the groundwork for more effective use of the Act in the future.

GOALS OF REFUGEE ACT

Not since 1952 had the laws on admission and resettlement of refugees been fundamentally reformed. In the Refugee Act of 1980, Congress gave new statutory authority to the United States' longstanding commitment to human rights and its traditional humanitarian concern for the plight of refugees around the world. But it was also attempting to assure greater equity in the treatment of refugees and more effective procedures in dealing with them. The Act also sought to assure full and adequate federal support for refugee resettlement programs by authorizing permanent funding for state, local and voluntary agency projects.

These basic goals were stated succinctly in Title I of the Act:

SEC. 101. (a) The Congress declares that it is the historic policy of the United States to respond to the urgent needs of persons subject to persecution in their homelands, including, where appropriate, humanitarian assistance for their care and maintenance in asylum areas, efforts to promote opportunities for resettlement or voluntary repatriation, aid for necessary transportation and processing, admission to this country of

⁴S. 3013, A bill to create a Cuban/Haitian Entrant Status, U.S. Senate, August 5, 1980, Congressional Record, p. S10825.

refugees of special humanitarian concern to the United States, and transitional assistance to refugees in the United States. The Congress further declares that it is the policy of the United States to encourage all nations to provide assistance and resettlement opportunities to refugees to the fullest extent possible.

(b) The objectives of this Act are to provide a permanent and systematic procedure for the admission to this country of refugees of special humanitarian concern to the United States, and to provide comprehensive and uniform provisions for the effective resettlement and absorption of those refugees who are admitted.

The Refugee Act accomplishes six basic objectives:

1) It repeals the previous law's discriminatory treatment of refugees by providing a new definition of a refugee. The new definition no longer applies only to refugees "from communism" or certain areas of the Middle East; it now applies to all who meet the test of the United Nations Convention and Protocol on the Status of Refugees.

2) It raises the annual limitation on regular refugee admissions from 17,400 to 50,000 each fiscal year.

3) It provides for an orderly but flexible procedure to deal with emergencies if refugees of "special humanitarian concern" to the United States cannot be resettled within the regular ceiling.

4) It replaces the use of the "parole authority" with new statutory language asserting Congressional control over the entire process of admitting refugees.

5) It establishes an explicit asylum provision in the immigration law for the first time.

6) It provides a full range of federal programs to assist in the resettlement process, and creates the Office of the United States Coordinator for Refugee Affairs and the Office of Refugee Resettlement to monitor, coordinate and implement refugee resettlement programs.

Together, these provisions are designed to enable the United States to meet any refugee situation, anywhere in the world, and to deal with it effectively and efficiently. The new law is intended to end years of *ad hoc* programs and different policies for different refugees by putting the U.S. refugee programs on a firm basis.

LEGISLATIVE HISTORY

The origins of the Refugee Act of 1980 date from hearings conducted during 1965-68 by the Senate Judiciary Subcommittee on Refugees, which I served as chairman. These hearings culminated in a bill and a

report submitted to the Senate in 1969 entitled *U.S. Assistance to Refugees Throughout the World*.⁵

Some of the recommendations in this 1969 report found early support and were implemented. But the crucial recommendation—that “Congress actively consider pending legislation providing for a worldwide asylum policy and a more flexible authority in our basic immigration statute for the admission of refugees in reasonable numbers”—did not find full expression until a decade later. In part, the delay was due to the inaction of the Senate Subcommittee on Immigration and Naturalization, to which the bill was referred. Following the major 1965 immigration reforms, this Subcommittee held no public hearings for 10 years, and it reported no general immigration legislation. Refugee and other immigration bills died within the Subcommittee during every Congress.

This cycle of inaction was finally broken in mid-1978 when it became clear that I would have the opportunity to become chairman of the full Judiciary Committee at the beginning of the 96th Congress in 1979. On September 11, 1978, I wrote to the Secretary of State, the Secretary of Health, Education and Welfare, the Attorney General and the Chairman of the American Council of Voluntary Agencies' Committee on Migration and Refugees, urging that we begin a joint effort to shape a new national policy on refugees.⁶ My proposals followed the general outlines of a bill I had introduced earlier that year in the Senate (S. 2751), and bills introduced in the House of Representatives. These bills sought to bring long overdue reform to our laws dealing with refugees, ending what many Members of Congress saw as the misuse of the Attorney General's parole authority in admitting large groups of refugees.

Intensive consultations began in November 1978 through February 1979 between the Congressional Committee staffs and officials in the Executive Branch in an effort to draft consensus legislation. The initial approach of the Carter Administration largely reflected the conservative and restrictionist bills introduced by Congressman Joshua Eilberg (H.R. 2056 and H.R. 7175 in the 95th Congress), rather than my broader bill (S. 2751). After repeated negotiations and redrafts, and continuing pressure from the Senate and House Judiciary Committees, an acceptable Administration draft was submitted to Congress by the Secretary of State, the Attorney General and the Secretary of Health, Education and Welfare.

⁵U.S. Senate, Committee on the Judiciary, Subcommittee to Investigate Problems Connected with Refugees and Escapees, “U.S. Assistance to Refugees Throughout the World: Findings and Recommendations”, November 3, 1969, U.S. Government Printing Office, pp. 71-73.

⁶Text of Senator Edward M. Kennedy's letter appears in Senate Report 96-256, The Refugee Act of 1979, July 23, 1979, pp. 2-3.

On March 9, 1979, the proposed Refugee Act was introduced in the Senate by myself (S. 643), and in the House of Representatives (H.R. 2816) by Chairman Peter Rodino of the House Judiciary Committee and Chairwoman Elizabeth Holtzman of the House Subcommittee on Immigration, Refugees, and International Law. The cooperative spirit and the strong desire to move on this long overdue reform legislation, was clearly reflected in the statements of the sponsors.⁷

On March 14, when hearings opened on the new legislation, former Senator Dick Clark—the newly appointed United States Coordinator for Refugee Affairs—articulated the need for permanent and systematic procedures governing the admission of refugees. He testified that:

Until now, we have carried out our refugee programs through what is essentially a patchwork of different programs that evolved in response to specific crises. The resulting legislative framework is inadequate to cope with the refugee problem we face today. It was originally designed to deal with people fleeing Communist regimes in Eastern Europe or repressive governments in the Middle East in the immediate post-war period and the early cold war years. This framework still assumes that most refugees admitted to the United States come from these two geographic areas, or from Communist-dominated countries.

The current law assumes that refugee problems are extraordinary occurrences. It provides for only a very limited number of refugees to enter the United States each year, on a conditional basis. But it also recognizes the Attorney General's power to parole additional individuals into the United States in case of unusually urgent humanitarian circumstances.⁸

These statements and accompanying background information clarified the legislative goals of the Committees and the Executive Branch. The reforms and efficiencies to be achieved were considered important enough to risk the possible negative or restrictionist amendments that might be attached as the bill worked its way through Congress.

CONGRESSIONAL ACTION

The political climate at the time the Refugee Act was introduced worked for and against it. On one hand, the dramatic plight of the "boat people" captured the attention and concern of millions of Americans in 1979. But

⁷See, remarks of Peter W. Rodino, Jr., Congressional Record, House of Representatives, March 13, 1979, pp. H1308-1309. Also see, Remarks of Elizabeth Holtzman, Congressional Record, House of Representatives, March 13, 1979, pp. H1310-1312 and remarks of Edward M. Kennedy, Congressional Record, United States Senate, March 13, 1979, pp. S2630-2634.

⁸Hearing, U.S. Senate, Committee on the Judiciary, "The Refugee Act of 1979", March 14, 1979, p. 9.

the same year also saw the greatest need for the resettlement of refugees from around the world—over 200,000 would come to the United States during the year, mainly Indochinese refugees and Soviet Jews. These numbers dramatized the need for a new law to deal with refugee resettlement in a more efficient manner, but the numbers also alarmed many in Congress who had not previously paid attention to our refugee programs.

One of the key arguments in gaining Congressional acceptance of the refugee bill was that we were already admitting refugees in large numbers. Most were being admitted under direct Congressional action, such as the Jackson-Vanik amendment encouraging Soviet Jewish emigration or the authorization for Indochinese refugees in 1975. Congress agreed that new legislation would accommodate this influx in a rational, effective manner and in a less costly way.

Another concern in Congress was the use of the Attorney General's "parole authority". I felt that Congress had provided ample approval and constitutional justification for the authority. However, many disagreed, and the issue was of deep concern to many in Congress, especially in the House of Representatives. One of the principal arguments for the Act was that it would bring the admission of refugees under greater Congressional and statutory control and eliminate the need to use the parole authority.

However, in doing so we needed to provide flexibility similar to the Attorney General's parole authority. The goal of the Act was to codify that authority by writing into law what we were doing by custom and practice. To avoid crippling the parole authority and the ability to respond to emergencies, the Act needed emergency provisions similar to the parole authority.

Since many in Congress viewed the Act as limiting the parole authority, the codification of the authority required a great deal of consensus building. The proponents of the bill also had to address the concerns that surrounded the issue of admitting large numbers of refugees.

A major concern was the "flood gate" issue—the fear that the new legislation would somehow open the "flood gates" to millions of refugees around the world. Proponents answered that under current law there were no real statutory limits or Congressional controls on the admission of refugees. The new Act would establish a normal ceiling of 50,000 refugees a year, based on the average refugee flow into the United States over the past two decades. The Act also created statutory procedures controlling the admission of refugees during emergencies. These procedures were justified as essential restrictions on the existing parole authority and its potential abuses.

Proponents of the Act also pointed out that in the *per capita* acceptance of refugees, other nations were far ahead of the United States. The

ceiling of 50,000 refugees would represent less than 10 percent of the total annual immigration flow to the U.S., or one refugee for every 4,000 Americans. By comparison Canada, France and Australia, among others, exceed this *per capita* figure.

Nevertheless, many feared that the United States was being too generous compared to other countries. Repeatedly the question was asked: "What are others doing to help refugees?" An effective answer came in part from an international conference on Indochinese refugees in Geneva in July 1979. The Conference was convened by United Nations Secretary General Kurt Waldheim and the United Nations High Commissioner for Refugees Poul Hartling, and it dealt with the principal refugee problem confronting the United States and the international community at that time. The success of the conference, which was attended by Congressional observers, answered the concerns of many in Congress. Earlier, Senator Strom Thurmond, the ranking minority member of the Senate Judiciary Committee, had blocked the bill in the Committee, pending the results of the Geneva Conference. Two days after the conference he enthusiastically urged favorable consideration of the bill. When it was reported on July 23rd, Senator Thurmond reflected a widely held view in Congress:

I rise today to express my favorable reaction to the action taken by the United Nations Conference on Refugees in Geneva, Switzerland . . . The Nations of the world have responded well to the plight of the 'boat people' of Vietnam and the 'land people' from Laos and Cambodia.⁹

After the Geneva conference, most participating countries doubled the number of Indochinese refugees they were prepared to admit. Japan increased its financial contribution to cover 50 percent of the total budget of the U.N. High Commissioner for Refugees in Southeast Asia. As a result, the United States was able to reduce our contribution to less than a quarter of the total cost, and Australia and France surpassed this country in *per capita* resettlement of Indochinese refugees. These facts were reassuring to Congress and helped to facilitate enactment of the new law.

A separate concern was the potential cost of resettlement of refugees. However, the average cost of resettling an Indochinese refugee was approximately \$4,000. Statistics were also available to show that within a short time the vast majority of refugees were working and earning their way in local communities. Indeed, preliminary statistics indicated that after a few years, most Indochinese have paid back in federal income taxes

⁹Remarks of Strom Thurmond, Congressional Record, United States Senate, July 23, 1979, p. S10391.

more than the cost to the federal government of resettling them in this country.

Of course, it is impossible to put a dollar value on saving the life of a refugee. The humanitarian concern for refugees goes beyond economic statistics or cost-benefit ratios. Those figures are impressive for most refugee groups. But, far more important, refugees and all migrants bring other benefits to the United States—richness in culture and diversity, new economic vitality, and other themes as old as the country's history. America's immigrant heritage, more than any other factor, was responsible for successful Congressional action on the refugee bill.

On September 6, 1979, the bill was adopted by the Senate by a unanimous vote of 85-0. No destructive or crippling amendments were adopted. The bill emerged from the Senate essentially intact.

Three months later, the House of Representatives acted on a substantially different version of the refugee bill, as recommended by the House Judiciary Committee. On December 20th, the House adopted that bill by a vote of 328-47, after many difficult moments on the House floor. While the Senate had been able to resolve many contentious amendments prior to floor action, the House had to deal with fourteen separate floor amendments, many of them controversial.

As reported by the House Judiciary Committee, the House bill differed on a number of substantive points from the Senate bill, especially the issue of domestic resettlement assistance; here, the Senate provided a general and flexible authority compared to the detailed and structured authority suggested by the House Committee. In addition, the Senate limited 100 percent federal assistance for medical and welfare payments to two years, whereas the House Committee accepted a longer four year commitment.

Of the fourteen amendments on the House floor only three were considered destructive by the House sponsors of the bill and were defeated on voice votes or division votes. Under the leadership of Chairman Rodino, Congresswoman Holtzman and Congressman Hamilton Fish, the bill emerged relatively unscathed. Efforts to cripple the emergency admission provisions of the bill were defeated; an attempt to subtract the number of refugees admitted beyond the normal flow of 50,000 from the annual immigration ceiling was also defeated. Also, a proposal to take family reunion visas away from persons standing in line around the world whenever the United States admitted a refugee was also soundly defeated. Although a one-House veto over emergency refugee admissions was accepted by the House, it was later dropped in Conference.

The two versions of the bill differed on some important points, but they were similar enough—and there was sufficient goodwill and cooperation on both sides—to assure that the differences could be easily resolved

by a Conference Committee. In fact, this resolution was achieved in only two afternoon meetings, following extensive staff consultations.

At my request, Senator Dennis DeConcini led the Senate Conferees. Congresswoman Holtzman was elected to chair the Conference Committee when it met in February 1980. The Committee resolved 21 substantive differences between the two bills. On February 26th, the Senate adopted the Conference Report, followed by the House of Representatives on March 4th. President Carter signed it into law on March 17th.

FINAL PROVISIONS OF THE ACT: CONFERENCE COMMITTEE ACTIONS

The House-Senate Conferees on S. 643 faced eight general areas of disagreement. The other differences had been resolved through staff negotiations, in close collaboration with the Executive Branch, the voluntary agencies, and others. The following paragraphs summarize the Conference Committee's actions and the key provisions of the Act as finally adopted.

Definition of Refugee

The first area of disagreement between the two bills dealt with the definition of "refugee".

The Senate bill incorporated the internationally-accepted definition contained in the United Nations Convention and Protocol Relating to the Status of Refugees. It also covered persons displaced in their own country by military or civil disturbances, or uprooted by arbitrary detention and unable to return to their homes.

The House bill incorporated the U.N. definition. It also included presidentially-specified persons who are being persecuted or who fear persecution in their own country. The House specifically excluded persons who themselves have engaged in persecution.

The conferees adopted the House provision. It provides for situations such as the Saigon evacuation in 1975, where refugees of special humanitarian concern to the United States were directly evacuated from their country. In addition, the legislative history is clear that the definition also applies to people in detention who may be permitted to leave their country if accepted by other governments—such as the "state of siege" detainees in Argentina or the recent Cuban political prisoner release program.

Admission of Refugees

For the first time in over three decades, the new Act establishes realistic provisions governing the admission of refugees—both "normal flow"

refugees and those admitted under emergency situations. The conferees agreed on a normal flow of 50,000 a year until 1983; thereafter, the limitation would be decided by Congress. The limit can be increased by the President after consultations with Congress, prior to the beginning of the fiscal year. In an emergency situation, the President may admit additional refugees after appropriate consultations with Congress.

Admission Status of Refugees

The Senate bill ended years of admitting refugees as "conditional entrants" or "parolees". Instead, it treated refugees like other immigrants, as permanent resident aliens. However, the conferees concluded that a one year "conditional entry" status as a "refugee" would be desirable until the new system and procedures under the Act were implemented. Therefore, the conferees established a new admission status for refugees, different from the previous "conditional entry" or "parolee" status. The new status would end after one year, after which the refugee could adjust to permanent resident status. The one year status would be counted in the five year period required for naturalization.

More important, however, the new Act does not require an officer of the Immigration and Naturalization Service to process all refugee applications. Consular officers in United States Embassies, as well as INS officers, are authorized to process refugee applications. Arrangements between the Attorney General and Secretary of State are needed to carry out this provision and to avoid unnecessary duplication of work between INS and Department of State personnel. In Bangkok, Thailand, for example, Embassy officials complete the interviewing and screening of Indochinese refugee applicants; but INS officers now fly in, on expensive temporary duty, to review the exhaustive paperwork and processing already completed by State Department personnel. The Act is intended to end this waste and duplication. In areas of the world where no INS offices are located, consular officers should be permitted to process refugee applications.

Asylum Provisions

For the first time, the new Act establishes a clearly defined asylum provision in United States immigration law. The conferees agreed that up to 5,000 numbers may be used to grant permanent residence to persons within the United States or reaching our shores who can claim to be refugees. This provision explicitly conforms the immigration law to our international treaty obligations under the United Nations Convention and Protocol Relating to the Status of Refugees. The conferees also directed the Attorney General to create a uniform procedure for the treatment of asylum claims filed in the United States or at ports of entry.

Limitation on Parole

The conferees wrote into the new law the clear legislative intent of both Houses that the parole authority of the old law can no longer be used to admit groups of refugees. The provisions of the new Act provide ample authority and flexibility to deal with emergencies. However, Section 212(d) (5) of the old law remains intact. The limitation in the House bill applies to individuals or groups of aliens who are deemed not to be refugees under the Act; this exception was used to accommodate the influx of Cubans in April and May 1980.

Domestic Resettlement Assistance

The widest difference between the Senate and House versions of the Act was on domestic resettlement assistance. Because the admission of refugees is a federal decision and lies outside normal immigration procedures, the federal government has a clear responsibility to assist communities in resettling refugees and helping them to become self-supporting. The basic issues here were the length of time of federal responsibility and the method of its administration. State and local agencies were insistent that federal assistance must continue long enough to assure that local citizens will not be taxed for programs they did not initiate and for which they were not responsible.

As originally proposed by the Administration, the bill contained a two year limitation on most resettlement programs. However, both the Senate and House Judiciary Committees felt that the limitation was too brief in light of the long-term resettlement needs of many refugees. The Senate Committee amended the bill to remove all limitations on social service and training programs and on special projects. On the Senate floor, the bill was further amended to provide a one year transition period for all refugees, followed by a two year limitation on reimbursement for cash and medical payments. The House approved a two year transition period, followed by a four year limitation. The conferees compromised on a one and a half year transition and a three year limitation. This compromise, coupled with other authorities in the Act with no time limitation, adequately fulfills the federal responsibility in helping to resettle refugees.

The Act also authorizes \$200 million annually for discretionary grants and contracts for special projects, programs and services for refugees. The conferees intended these funds to be administered entirely by public and private nonprofit agencies, including state and local government agencies, private voluntary agencies, post-secondary educational institutions and other qualified private nonprofit agencies. Helping individual refugees adapt to new lives in new communities is an area where voluntary and community agencies have historically served best. The new Act

emphasizes this principle, while strengthening the ability of the federal government to support these efforts.

Administration of Refugee Programs

The House bill contained highly specific provisions on the administration of refugee programs. It created a new Office of Refugee Resettlement in the Department of Health and Human Services, and established a United States Coordinator for Refugee Affairs in the Executive Office of the President. The Senate bill provided the flexibility for such offices, but did not mandate their creation.

The conferees' agreement reflects the goals of both bills: flexible authority, but clearer instructions from Congress on the need for coordination and better management. The Act establishes a United States Coordinator for Refugee Affairs, appointed by the President with the advice and consent of the Senate; previously, the Coordinator's office was created by Executive Order. The Act gives the President the discretion to locate the Coordinator in the most appropriate agency. However, it was the view of most of the conferees that the President should move the Coordinator to the Executive Office, to give the Coordinator the government-wide authority the office needs. The Act also establishes the Office of Refugee Resettlement to work "in consultation with and under the general policy guidance of the U.S. Coordinator for Refugee Affairs".

IMPLEMENTATION OF THE ACT: THE CUBAN CRISIS

The Cuban boat exodus of April and May 1980 was the first test of the new Act. The chaos surrounding the flight of the refugees, the uncontrolled character of their movement and the public perception that no one was in charge generated a public backlash against the Cubans and refugees generally.

Rather than dealing directly with the Cuban influx—as President Johnson did in 1965 in a similar situation, or as President Ford did in 1975 with respect to Indochinese refugees—the Administration acted in inconsistent ways. Cuban Americans traveling to Cuba to seek relatives were threatened with criminal action by the Coast Guard. Yet President Carter declared that we have "open arms and open hearts" for the Cuban refugees.

Eventually, the Administration settled on a policy of officially considering the Cubans as "illegal" entrants. Boat captains were threatened with fines or imprisonment for bringing refugees to Florida. But many Cuban Americans did not regard the flight as illegal; Cuban boat refugees had been landing in Florida legally, as individuals or in groups, for two

decades and had always been welcomed and treated as refugees. Others felt that if the Cubans were not to be accepted as refugees, the United States should take international action, or use diplomacy more energetically, to halt or control the flow.

At the outset of the Cuban refugee flow, the Administration had considered the Cubans as *bona fide* refugees under the law. On April 14th, President Carter signed an Executive Order¹⁰ invoking the emergency provisions of the new Refugee Act for the first time in response to an international appeal on behalf of 12,000 Cuban refugees in the Peruvian Embassy in Havana. The United States agreed to participate in an international resettlement effort by accepting up to 3,500 Cubans from the Embassy for admission to the United States.

On April 17th, the Senate Judiciary Committee held the first hearing and consultation under the terms of the new Act. The principal issues involved the President's request to use the emergency provisions of the Act for the Cubans and the annual level of admission of refugees for the remainder of the fiscal year. The Senate Committee acted promptly in support of the President's request, as did the House Committee a week later. But within ten days, the orderly international resettlement program for the Peruvian Embassy refugees was superseded by a public quarrel between Cuba and the United States, during which more than 115,000 Cubans reached Florida by boat. The Administration abandoned the use of the Refugee Act and refused to consider any Cubans as refugees.

As I wrote in a detailed letter to former President Carter on May 20th,¹¹ many in Congress felt that this situation could have been handled under the Act. After the President's Executive Order on April 14th, the Senate Judiciary Committee arranged for expeditious consultations. Senator Thurmond and I supported the Administration's decision to admit the Cubans under Section 207(b) of the Act, which states:

If the President determines, after appropriate consultation, that 1) an unforeseen emergency refugee situation exists, 2) the admission of certain refugees in response to the emergency refugee situation is justified by grave humanitarian concerns or is otherwise in the national interest, and 3) the admission to the United States of these refugees cannot be accomplished under subsection (1), the President may fix a number of refugees to be admitted to the United States during the succeeding period (not to exceed 12 months) . . .

Although the character of the refugee situation in Havana changed

¹⁰Hearing, U.S. Senate, Committee on the Judiciary, "U.S. Refugee Programs", April 17, 1980, p. 148.

¹¹Hearing, U.S. Senate, Committee on the Judiciary, "Caribbean Refugee Crisis: Cubans and Haitians", May 11, 1980, pp. 62-65.

after the President's initial finding under this section, the basic emergency situation, as defined in the law, remained the same.

Although the Cuban government suddenly shifted course and stimulated a sealfit of Cubans to the United States, these developments did not create a new refugee situation under the terms of the Act; rather, they created a changed refugee situation. Cubans leaving Havana after April 14th were part of a single "foreign refugee situation" which the President had properly deemed "an unforeseen emergency refugee situation", for which admission was "justified by grave humanitarian concerns" and "otherwise in the national interest". These changed circumstances could have been met by amending the original Executive Order and consulting again with the Judiciary Committees.

The Administration refused to take this course. Officials asserted that Congress never intended the Act to accommodate large numbers of refugees arriving directly on our shores. The Administration cited the asylum provisions of Section 208 of the Act, which authorized only 5,000 asylum cases each year, for persons already in the United States who were unable to return to their native countries because of a well-founded fear of persecution.

But the Cuban refugee flow was initiated under Section 207 of the Act. It was originally considered to be a "foreign refugee situation" by the Administration itself. Although the circumstances of the refugees' movement shifted, and they began to arrive directly on our shores, the situation itself remained a "foreign refugee situation". A similar case would have existed if Vietnamese "boat people" had reached Guam or Hawaii. Surely they would have been treated as refugees under the Indochinese refugee program, as authorized under Section 207 of the Act. Indeed, contingency plans were developed in 1978 and 1979 to accept Vietnamese refugees reaching our shores. These plans were similar to those we had urged Malaysia or Hong Kong to accept—providing a safe-haven for refugees under the auspices of the United Nations High Commissioner until third country resettlement opportunities could be arranged in the United States or elsewhere.

Not all Cubans who arrived in the United States were refugees. Those who reach America's shores are not necessarily entitled for resettlement, even if they are *bona fide* refugees under the United Nations Convention and Protocol Relating to the Status of Refugees. As a signatory to the United Nations Protocol, the government is required only to provide a safe-haven until the refugees are lawfully admitted to the United States.

The Administration's decision to ignore the Refugee Act of 1980 prompted deep concern by many Senators at a May 12, 1980 hearing of the Judiciary Committee.¹² Repeatedly, members of the Committee urged

¹²*Ibid.*

Administration officials to see both the wisdom and benefit of using the Act. By amending the Executive Order of April 14th and consulting again on a second, more realistic ceiling for the admission of Cuban refugees, the Administration could have utilized the tools made available by the Act.

After two months, the Administration announced on June 20, 1980, an additional *ad hoc* response to the Cuban crisis by exercising parole authority for six months and seeking special legislation to adjust the status of the refugees and provide resettlement assistance. A new temporary status was created: "Cuban/Haitian Entrant (Status Pending)".¹³

On August 5, 1980, the Administration's Cuban/Haitian entrant bill was introduced in both Houses (S. 3013 and H.R. 7978). I submitted a substitute amendment that simply declared that the Cubans and Haitians were "refugees" under the terms of the Refugee Act. Early Congressional action was doubtful, leaving both the Cubans and Haitians in limbo.

IMPLEMENTATION OF THE ACT: THE FUTURE

There are millions of refugees in the world today. In the future, as in the past, the United States will be able to accept only a small fraction of those refugees who wish to settle in this country. In virtually all cases, the United States will join with other countries in providing humanitarian assistance. Some refugees will require immediate food and others relief to sustain life. Others will need local settlement assistance. Still others will need temporary safehaven. A few will seek voluntary repatriation to their homelands. But many will require third country resettlement.

Among refugees seeking third country resettlement, the United States is likely to accept only those for whom the American people feel a special concern. Under the Refugee Act of 1980 the test is whether their admission "is justified by grave humanitarian concerns or is otherwise in the national interest". There are over 13 million persons in the world today who meet the United Nations definition of a refugee, and therefore the definition in our law. But how many are to be admitted for resettlement in the United States is still a decision to be made in accordance with the Act.

What the Refugee Act provides is a permanent, effective and fair framework for making that decision. It provides federal assistance to help those admitted to resettle and to normalize their lives in local communi-

¹³The Haitian refugee crisis had been building for many years and differed from the Cuban situation. Most Haitians had arrived prior to the enactment of the Refugee Act and were not eligible under its provisions. Also, many cases were involved in prior litigation. In a letter to the Attorney General on November 13, 1979, I had urged the Administration to use the spirit of the forthcoming refugee legislation to dispense with all pending Haitian cases and to institute fairer procedures to handle future cases. The Administration's failure to resolve the Haitian issue compounded their problems in dealing with the Cuban refugees.

ties across the land. The admission of refugees is a national policy, decided in partnership between the Executive Branch and Congress.

It is clear that refugees pose critical foreign policy issues for the United States and the international community. We know from recent history that massive refugee movements can unbalance peace and international stability. Threats to the peace do not come only from an arms race or a political or military confrontation.

The Refugee Act is an instrument of policy to meet the needs of the homeless around the world. But it will be an effective instrument only if U.S. leaders use it wisely. If they do, it will serve the country's humanitarian traditions well, and it will also serve the cause of peace.