

**Domestic Uses of International Law:
Refugee Policy in the United States and Canada.**

Idean Salehyan

Senior Thesis
Political Science Department
UCSD
Fall 1999-Winter 2000

I. Introduction

International migration is a persistent feature of the world system. For centuries people have crossed national boundaries in order to find employment, reunite with loved ones, escape famine and natural disaster, and flee from political oppression. This paper will examine one of these types of migration, the phenomenon of refugee flows - movements of people who leave their country of origin or residence owing to a well-founded fear of persecution.¹ Specifically, this paper asks: what are the policy responses of advanced industrial democracies towards refugees and asylum-seekers? Why do states adopt the policies that they do? And in particular, what role do international regimes play in influencing refugee and asylum policies? Using both theoretical and empirical approaches, this essay will mainly focus on the admissions policies of liberal democratic states. Resettlement policies are also an interesting topic, but for the sake of space, they will not be examined here.²

The questions raised here are of profound practical and ethical importance, especially in today's increasingly global society. At the end of 1997, there were over 13 million refugees and asylum seekers worldwide (U.S. Committee for Refugees 1998, 4-5). Newspapers abound with stories of people fleeing persecution and civil strife. Kosovo, Rwanda, Bosnia, Afghanistan, Chechnya, these are only a few recent examples

¹ Although there have been attempts to broaden the meaning of the term "refugee," this paper uses the definition adopted in the 1951 UN Convention Relating to Status of Refugees and the related Protocol which defines a 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] and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country..." (See UN Convention Relating to the Status of Refugees, Article 1)

² Resettlement policies refer to government practices towards refugees once they have been admitted into the state. They include geographical distribution, provision of social services and education, and assistance with employment.

of places in which political violence has forced people to leave their homes in search of safe haven. Receiving countries, furthermore, face substantial burdens when multitudes of people turn up at their borders. Contrary to popular belief however, most refugee movements are not from the less developed nations to the more developed ones, but between Third World states. Iran is currently the largest refugee recipient, hosting nearly two million, principally Afghan escapees. In Jordan, one out of every three people is a refugee (U.S. Committee for Refugees, 1998). In Europe and North America, the economic, political, and social impact of immigrants and refugees has gained increasing attention. In Germany and France, for instance, right-wing parties have won much public support with their vehement attacks on the asylum system (Hollifield 1994, Martin, 1994). Moreover, boatloads of people escaping places such as Vietnam, China, Cuba, and Haiti, have elicited strong public reactions in Canada and the United States. Hence, states must find ways of balancing their national self-interests with the humanitarian needs of those seeking their protection.

Sparked in part by the growing importance of immigration issues in the political debates of advanced industrial democracies, there has been a renewed scholarly interest in international migration among social scientists and historians . This essay adds to the current research in this field. Theoretically, an analysis of the refugee and asylum programs of advanced industrial democracies is intriguing on many accounts. First, these policies stand at the cross-roads of domestic and international politics. Policies are debated and decided at the national level and have significant effects on society, yet they are not immune from external pressures including foreign policy concerns and the role of international regimes. Secondly, this essay deals with an issue often overlooked by immigration experts; while focusing predominately on labor migration, the immigration literature has often neglected refugee flows.³ Lastly, this paper is of interest to scholars

³ There are some notable exceptions. See especially Joppke, 1998 and Ucarer, 1997.

of human rights as well as those interested in the role of humanitarian ethics in policy making.

A Critical Overview of the Current Refugee Literature

Despite the growing interest in the politics of immigration, the current scholarly debate lacks a clear set of organizing principles around which the research is framed. Furthermore, the research on refugee movements is often entangled within two separate bodies of literature - the literature on international migration and that on human rights - both of which, at best, glance over refugee issues. Notwithstanding these shortcomings, Christian Joppke, in a edited work, has perhaps made the most constructive attempt to focus the discussion on immigration and refugee policy by asking whether state sovereignty has been constrained by contemporary trends in international migration. He further stirs the debate by inquiring whether the international human rights regime has had any appreciable effect on the ability of states to regulate immigration as they see fit (Joppke, 1998, Ch 1).

Using this as a starting point with which to analyze our question, contemporary scholars can roughly be divided into two camps: those who view the nation-state as the sole authority in refugee policy making, and those who view international regimes as influencing government practices. Those who hold the former view can be further categorized in one of three ways. First, some scholars view the protection of human rights, including the human rights of refugees, as a fundamental aspect of liberal democracies. Democratic states, according to this view, enshrine the protection of basic human rights in their constitutions. On this note, Joppke (1998) comments that, "All Western constitutions, epitomized by the French Declaration of the Rights of Man and Citizens, contain a catalogue of elementary human rights... (p. 18)." This perspective,

which I shall label Constitutionalism,⁴ asserts then, that the protection of refugees and asylum seekers is not so much a function of an international legal order, but rather an intrinsic element of liberal constitutions. This is especially true after entry, where refugees are granted the equal protection of the laws, but similar reasoning has also been applied to admissions policies as well (Joppke, 1998 p.19). Joppke goes on to explain how the courts in liberal nations have interpreted their legal codes as extending protection to those seeking refuge within their borders (1998, Ch. 4). It is the judiciary, then, that is the ultimate guarantor of human rights in Western states.

This argument, however, ignores several important facts. Liberal norms, embodied in national constitutions are important, but they are not a fixed, intrinsic element of democracies - they are often debated and reworked depending on the circumstances at hand. Liberal states, the record will show, have at times been perpetrators of human rights abuses and have quite often failed to offer protection to refugees, despite their bills of rights. The West's failure to protect Jews escaping Nazi Germany stands as a sufficient counter-example to this argument. It may be correct to assert that most liberal states guarantee the equal protection of the laws to immigrants *once they are admitted* (at least most of the time), but trying to explain admissions policies using a constitutionalist argument is a bit dubious. Liberal constitutions, for the most part, do not extend rights to persons outside of their territories. *Bona fide* refugees and asylum seekers, while they are not to be returned to dangerous situations, do not have the *right* to be admitted into the state under any national constitution. Germany was the one exception - Article 16 of the Basic Law did grant asylees the right to remain - but even this has recently been changed by the German legislature. Laws are, after all, determined by parliaments and congresses, not by the judiciary, although there is some

⁴Joppke (1998) uses the term Constitutional Politics (p.18), but the meaning of the term is essentially unchanged.

room for legal interpretation.

A second important strain of thought sees refugee policies as being shaped primarily, or in part, by foreign policy considerations (See, Loescher, 1994; Joppke, 1998; and Zucker and Zucker 1991). This line of reasoning closely follows the Realist theoretical tradition in international relations. Refugee admissions, according to this view, were influenced, if not determined, by Cold War rivalries between the Eastern and Western Blocs. Gil Loescher (1994) best articulates this point of view when he wrote, “the rapidly developing Cold War critically affected the lens through which [the United States] viewed refugee policy (p. 357).” Western states, at times unquestioningly, admitted persons escaping communism in order to bolster their claim that communist regimes were inherently “evil.” The U.S. was eager to accept people fleeing from Hungary, Cuba, and Vietnam, to name a few, who were “voting with their feet,” thus confirming the virtues of liberal democracy in the eyes of the world. On the other side of the coin, Western states were reluctant to accept refugees from their allies - doing so would be tantamount to acknowledging that the ally has a human rights problem, thus jeopardizing mutual trust. Hence, the U.S. admitted relatively few asylum seekers from El Salvador and Guatemala - regimes which it actively supported - despite widespread human rights abuses in both countries. The international refugee regime, according to this claim, was established to foster Western unity, but it did little to shape actual policy.

This “refugee policy as foreign policy” approach seems sound as there did appear to be an ideological bias in refugee admissions among Western countries. Yet to demonstrate that there was a certain bias in admissions does not sufficiently explain how policies are made in the first place. There is no clear correlation between the admission of a group of refugees and the attainment of foreign policy objectives. Discrediting a rival’s regime seems to be a weak basis for admitting potentially hundreds of thousands of people into the nation. Again using the example of W.W.II, Western nations, despite

being strongly opposed to Nazism on ideological grounds, still refused to take in refugees escaping Nazi persecution. Furthermore, Cold War foreign policy objectives do little to explain the existence of refugee programs prior to 1945 nor do they account for refugee and asylum policies since the collapse of the Soviet Union. Much has happened in the ten years since the end of the Cold War, yet refugee programs remain intact and are constantly being reworked. In sum, foreign policy considerations may be an explanation for *who* gets in - and all evidence shows that refugee admissions have been less discriminatory since the conclusion of the Cold War - yet it does not explain the deeper reasons as to *why* refugee programs are formed and maintained to begin with.

A third view regards immigration policies as being shaped by the multiplicity of interests which bargain for primacy in liberal democratic states. I shall term this perspective democratic pluralism. According to this view, best articulated by Gary Freeman (1995), migration into the state creates a set of 'winners' and 'losers' who then compete at the national level to have their policy preferences implemented. Accordingly, employers, ethnic lobbies, human rights advocates, immigration attorneys, and the like, have generally been supportive of expansive immigration policies, while the general public - viewing the influx of people as threatening job security and posing a cultural 'threat' - has often supported greater immigration restrictions. However, because the benefits of increased immigration is often concentrated on a relatively small, well-organized constituency, and the costs of immigration to the largely unorganized masses are diffuse, liberal policies generally prevail. Reversals of such policies do occur however, and may attributed to poor economic performance and prolonged periods of high immigration levels, both of which raise the salience of immigration to society and lead to more organized anti-immigration movements. Charles Keely and Sharon Stanton Russell (1994) use similar reasoning in explaining the policies of advanced industrial democracies toward asylum seekers. They contend that because of the increased burden

placed upon Western asylum systems since the fall of the Soviet Union and the concomitant growth in public interest over immigration issues, more organized movements have come to demand greater immigration restrictions. In sum, democratic pluralism suggests that depending on which interests are stronger at a particular point in time, immigration policies will be more or less generous toward refugees.

Democratic pluralism, of the perspectives examined thus far, offers the best model for explaining policy outcomes in Canada and the United States in particular as well as in the advanced industrial democracies in general. Gary Freeman (1995) has successfully shown that the pro-immigrant/refugee lobby has, by and large, been effective in having their agendas implemented because of their relative degree of organization. Nevertheless, the argument Freeman develops could be stronger on two accounts. First, the role of the state as an arbiter of conflicting interests as well as an entity with interests and values of its own must be examined in greater detail. The state ultimately takes final responsibility for the enactment of policies. Second, this approach thoroughly neglects the role that international regimes may play in shaping public discourse and policy outcomes.

In sum, democratic pluralism, Constitutionalism, and realism, all hold that national or sub-national actors have the final say in determining immigration policies. Pluralism sees decision making as involving a complex process of competing interests, Constitutionalism views judicial systems as shaping policies, and realism sees states themselves as the central actors. Each of these perspectives view the international human rights regime as exerting little or no influence on government practice.

Moving beyond this 'state sovereignty' perspective, a second theoretical camp sees international regimes as being quite consequential in the formation of refugee and asylum programs (see Sassen, 1998; Goodwin-Gil, 1983, 1989; and Martin 1989). Refugees, unlike many other categories of migrants, are protected by a relatively dense

network of international laws, declarations, and organizations. The 1951 United Nations Convention Relating to the Status of Refugees (Refugee Convention), the related Protocol, and the United Nations High Commissioner for Refugees (UNHCR) are the most important legal and institutional embodiments of the current refugee regime. International law provides a common definition for determining who is a refugee;⁵ maintains that refugees are not to be returned to a state or territory in which they face a credible fear of persecution (*non-refoulment*); that they are not to be precluded from admission on the basis of race, religion, beliefs, or national origin (*non-discrimination*); sets basic standards for processing asylum claims; and contains guidelines for resettlement. The regime, furthermore, is part of an even greater body of international human rights law. Viewing international law as having real effects, Saskia Sassen (1998) argues that, “The invocation of international covenants to make national policy signals [a] type of displacement of government functions... (p. 69).” In other words, international institutions have supplanted national governments as the sole source of immigration policy making by limiting or eliminating state practices which would violate international principles. States, according to this standpoint, must take into account international norms of conduct when forming their refugee policies.

This view of international regimes is often poorly expressed as its proponents frequently fail to sufficiently explain causality. The mere *existence* of a body of international law does not necessarily indicate that such codes and regulations have any tangible *effect*. Domestic laws do not function solely because they have been legislated into existence, but because the state has powers of adjudication and enforcement to ensure compliance. The current world system, on the other hand, operates under a condition of anarchy; therefore, one cannot show that international institutions function merely because they have been summoned into being.

⁵See f.n. 1

However, lest this critique go too far, I contend that the claim that international regimes ‘matter’ need not be jettisoned entirely. This perspective is not wrong *per se*, it is merely underdeveloped. Although it may be true that international human rights law does not function in the same way that domestic laws do, it is possible to demonstrate a causal relationship using different reasoning. In the section that follows, I will construct a theory of refugee policy which takes into account the role of international institutions and illustrate that the key to explaining causality lies in understanding the relationship between global regimes and the domestic politics of liberal democracies.

Making Refugee Policy: a Framework for Analysis

The theories contained in the current literature offer, at best, a partial understanding of the refugee policies of democratic states - a more appropriate model would eliminate certain explanations and combine others. In this segment, I wish to create a theoretical framework to apply to the case studies contained in later sections. I will argue that the international refugee regime *does* matter in explaining policy outcomes, but it must be conceptually differentiated from other types of regimes. While there are certain international-level effects of the regime, its function is mainly to express and promote common standards of behavior that are then heralded by immigrant/refugee advocacy groups operating at the domestic level. These groups urge compliance with the regime and create costs for its violation. Such organizations do not go unopposed however. Anti-immigration organizations offer a different perspective on what constitutes desirable refugee policy. In this section, I will propose this two-part hypothesis:

- 1) Refugee admissions create a set of “winners” and “losers” within society who then compete to have their policy preferences implemented by the state. The beneficiaries of

such admissions want more liberal policies, the aggrieved demand greater restrictions.

2) Advocates of liberal refugee programs use the international refugee regime as tool with which to assess their government's policies. Given that the state has acceded to the regime, these groups then promote adherence to international law and create costs for non-compliance.

Though before I proceed any further, it is necessary to clarify certain important terms and concepts.

First, we need to differentiate between refugees and asylum seekers. The distinction between the two is not so much substantive as it is procedural. 'Refugees,' the broader term of the two, are persons 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] and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country..." (UN Convention Relating to the Status of Refugees, Article 1)

Hence, 'refugee' refers to any person fleeing persecution for the above stated reasons⁶. Procedurally, however, refugees are persons whose claims are processed outside of the country of resettlement (they are selected overseas), while asylum seekers are persons whose claims are processed within the host state's borders. Kosovar refugees huddled in camps, for example, were considered refugees in a broad sense, but also in the specific usage of the term as their claims were reviewed in the camps and only later were they sent to various countries for resettlement. Asylum seekers, on the other hand, are people who cross national boundaries, claim that they face persecution, and then have their cases reviewed. Admitting refugees, as opposed to asylum seekers, is a relatively 'cleaner' process - and therefore preferred - because such persons are pre-selected before entry,

⁶This UN definition excludes persons fleeing famine, war, natural disasters, abuses committed by non-governmental actors, and internally displaced people. There have been attempts to broaden the definition, but for clarity, I will use the one given here. See also f.n. 1

they do not impose a burden on social service agencies while their claims are being reviewed, and they need not go through the complicated procedural ‘mess’ (hearings, appeals, deportation proceedings, etc.) that asylum seekers do.

Secondly, it is also necessary to define what is meant by the term ‘international regime.’ The commonly used definition, expressed by Stephen Krasner, characterizes regimes as, “principles, norms, and decision-making procedures around which actor expectations converge in a given issue area.”⁷ However useful this definition may be, I will limit the term to include only those regimes which have been made formal through their articulation in international treaties and covenants and/or the creation of an actual organization such as the UNHCR. I admittedly have been using the terms regime, international institution, and international law in a bit haphazard manner, but when referring to the refugee regime they denote the same thing: the UN Refugee Convention, the Protocol to the Convention, and the UNHCR.

This having been said, let us proceed to the task at hand. First, it is useful to differentiate human rights regimes from other international agreements. Conventional international relations wisdom on regimes regards them as being cooperative endeavors which enable self-interested states to achieve mutual gains which would not otherwise be achieved. Furthermore, if one party to this relationship were to defect from the regime, the other members of the system would face a loss. Hence, regimes are based upon the principle of reciprocity and shared interests (see, Axelrod and Keohane, 1993; Keohane, 1984; Stein, 1993).

For example, a free-trade regime enables member states to achieve the benefits associated with the mutual reduction of trade barriers. If one state were to defect and unilaterally raise tariffs, other states would face a loss in their export revenues. Because

⁷Krasner, Stephen. 1982. “Structural Causes and Regime Consequences: Regimes as Intervening Variables.” *International Organization* 36, p.185.

such states are harmed in this situation, they are inclined to persuade or coerce (through various means of sanctions) the defecting nation back into compliance. Furthermore, they have the option of raising tariffs on imports from the defecting state themselves, thus retaliating in-kind. Similarly, in an arms reduction regime, a defection by one state (i.e., greater weapons production) decreases the feeling of security among other members of the system, signaling them to retaliate in-kind, potentially leading to an arms race.

Human rights regimes, on the other hand, do more to articulate and promote common norms than to regulate a cooperative relationship between states. According to Jack Donnelly (1986),

[T]he primarily national character of human rights violations and the basis of the regime in perceived moral (rather than material) interdependence drastically increase the need for, while at the same time reducing the likelihood of, international implementation and enforcement. Other states are not directly harmed by a government's failure to respect human rights; the immediate victims are that government's own citizens, making the incentives to retaliate for violations of regime norms low or at least intangible (p. 619)

Reciprocity, then, is not the fundamental tenet upon which human rights regimes are based because human rights standards are applied domestically and do not affect the well-being of other nations. Defections are not likely to directly harm, at least in any tangible way (although they may harm sensibilities), other states in the system; thus, those observing the norm violation are not very apt to retaliate. Furthermore, retaliation in-kind (i.e., committing human rights abuses in response to other's human rights violations) is not a viable option. The affective nature of human rights regimes and the moral outrage that people experience as a result of gross human rights violations are very real, but they are often not the only nor the most important basis for inter-state relations.

A discussion of the refugee regime - which is firmly rooted in the human rights regime- merits a few qualifications to these general observations. The Refugee Convention establishes the norm of international burden sharing to 'lift the load' off of

states that experience a mass influx of refugees. This *does* imply a cooperative relationship, but such a relationship is aimed at distributing the costs of resettlement rather than achieving expected gains. A refusal to take in refugees (a defection from the regime) violates the norm of burden sharing and increases the number of refugees that others must resettle. For example, if country Y, which normally resettles 40,000 refugees *per annum*, were to refuse admissions altogether, other states would find themselves *collectively* having to take in 40,000 more persons. Asylum-seeking implies the same sort of problem; applicants rejected from one state have been known to reapply in other states, a phenomenon known as ‘asylum shopping’ (Keely and Russell, 1994).⁸ This added burden on other countries, however, is relatively small and dispersed across a large number of states, thus limiting incentives to take any strong action against defectors. Viable options for retaliation, moreover, are limited in ways similar to other human rights agreements.⁹ The regime does bring a degree of orderliness to the management of refugee flows, which have the potential of straining relationships between states. Nevertheless, in discussing international refugee law, the general rule still stands: human rights regimes, including that on refugees, function at a more affective and promotional level than do economic or security regimes which are based upon state self-interest and reciprocity.

Based upon this observation, one might expect that the refugee regime - or any other body human rights law for that matter - has little effect on actual policy. There are few mutual gains to be made from admitting large numbers of refugees, states have little incentive to promote regime compliance among one another, and they have relatively few

⁸European states participating in the Dublin and Schengen Agreements have made attempts to unify asylum policies and limit asylum shopping. For a more detailed discussion, see Ucarer (1997).

⁹However, when states cannot achieve their goals through retaliation, they may choose to link the issue in question with other items of import; take for example the current discussion about linking trade with China to human rights. While I have not found evidence of states exhibiting such behavior on refugee matters, it would be an interesting avenue of further research.

effective tools (e.g. sanctions, adjudication, retaliation in-kind, etc.) to enforce compliance should they wish to do so. The creation of a body of international refugee law, some may argue, was little more than wishful thinking on the part of a few idealists and peaceniks. Yet, we *do* see widespread compliance with the regime; could this occurrence be a mere coincidence? There are many reasons to think not. In getting at the heart of how the refugee regime functions, I contend, one must take into account the *domestic* as well as the *international* variables at play. The internal political processes of the state are often what drives it toward greater compliance or non-compliance with the regime. Again, our discussion will be limited to the domestic politics of liberal democratic states - although many of these assertions may be extended to other political types.

As was mentioned above, the international refugee regime serves a tool which defines and expresses what is considered 'good behavior.' Moreover, it acts as a 'yardstick' for refugee advocates to measure national policies against norms of conduct which the state, through ratification of the Refugee Convention, has affirmed in principle. On this note, David A. Martin (1989) writes,

Before the development of these international instruments, opponents of a government practice might have been able to argue only that the measure was a bad idea. Since the adoption of such statements, those opponents are often able to wield a more powerful weapon in the debate, for they may then claim that the government practice is not merely a bad policy but rather 'violates international law' (pp. 554-555)."

Martin finds that when initially forming global human rights standards, states were wary of the effects that international law might have on their sovereignty; hence, they purposefully avoided creating strong enforcement mechanisms. Thinking human rights agreements would have little teeth, nations had no qualms about speaking in ambitious terms and ratifying documents which were more progressive than they were actually

willing to comply with. In other words, states were being hypocritical when signing on to these covenants. Quickly however, policy makers found that their respective publics called for more than mere lip service to human rights norms and demanded their implementation (Martin, 1989; Keck and Sikkink, 1998, 24-25).

Using Freeman's (1995) pluralist model then, refugee advocates, consisting of human rights groups, immigration attorneys, churches, and ethnic groups, form a strong lobby in support of adherence to international standards of behavior. These groups, through a variety of methods, actively and consciously promote compliance with the global refugee regime. They lobby for better legislation; praise policies and policy makers which uphold the international norm; mobilize opposition to regime-breaking behavior; reproach specific policy makers who would violate the regime; and engage in high-profile civic education and media activities which help shape public opinion. Thus, this well-organized constituency raises the salience of the Refugee Convention in domestic policy circles and creates costs for norm-breaking.

Because the burdens of increased refugee admissions are diffuse, thus curtailing the creation of a strong restrictionist lobby, groups advocating immigration limits are generally weaker and less organized than pro-immigration organizations, but they do go through periods of relative strength. Anti-immigration lobbyists have not only tried to limit labor migrants and undocumented aliens, they have also sought limits on refugee admissions; indeed, they have at times been effective in doing so. When should we expect this to be the case then? Two related factors have been cited as raising anxieties about immigration, and hence, the increasing the strength of the restrictionist lobby: 1) prolonged economic recession, and 2) periods of high immigration levels.¹⁰ Economic

¹⁰,"High" levels of immigration are, of course, a subjective determination. Each society may perceive various levels of immigration differently. Nations such as Australia and the United States, which have long histories of immigration, may tolerate greater numbers of immigrants than Western European nations where immigration is a more recent phenomenon. For a more detailed discussion, see Freeman (1995).

insecurities lead to concerns about the effects of immigration on employment, and high levels of immigration may lead to fears about demographic (including ethno-racial) change (Freeman 1995).

For instance, in the early 1990's two international events sparked a renewed interest in, and concern over, immigration in the West, especially in regards to asylum-seekers: poor economic performance and a massive influx of refugees from the failed communist states of the East. These two trends contributed to a more robust anti-immigration movement. In Germany for example, as unemployment mounted, 438,200 people applied for political asylum in 1992, an increase of over 300% from 1988 levels (Cornelius, et. al, 1994, p.421). This led to racist neo-nazi attacks on immigrants and policy reversals which limited access to the asylum system (Martin, Phillip; 1994).

Despite the importance of civic participation, to look *solely* at societal factors leaves out an important piece of the puzzle - the state. It is, after all, the responsibility of governments, not the public, to regulate immigration. In this regard, there are important differences among democratic states as to the types of institutions which are given the task of deciding upon immigration and refugee policy. For example, in the United States, refugee policy is conducted by Congress, whereas the Cabinet and various government agencies often direct policy in Canada. Accordingly, state policies may be categorized as being either politician-led or bureaucrat-led. In the former case, those responsible for regulating refugee admissions are popularly elected, therefore they are more sensitive to public opinion; in the latter case, it is bureaucratic appointees, who are more sheltered from public pressure, that determine policies. This dichotomy implies that although politicians may hold opinions of their own, they will generally support liberal admissions policies only as long as the pro-immigrant/refugee lobby is dominant - which is most of the time- but will take a more restrictionist stance when public sentiments turn in such a direction. Conversely, bureaucrats will push ahead with their own policy preferences

while being less bendable, though not entirely unresponsive, to anti-immigration sentiments.

Furthermore, immigration and refugee matters tend to be peripheral issues in governmental policy debates.¹¹ For the most part, other items such as healthcare, crime, taxes, and education, are of greater concern, and refugee policy is low on the agenda. During times of crisis, however, massive refugee flows trigger the discussion and signal legislators to formulate appropriate policy responses. So we can expect refugee crises to coincide with periods of policy debate and formation. It is during these periods, moreover, that interest groups are most active in promoting their preferences.

In sum, the international refugee regime operates differently from other types of regimes. Whereas economic and security agreements involve mutual self-interests and reciprocal relationships which are monitored and enforced at the global level, the power of international refugee law must be understood from a domestic perspective. Advocacy groups pressure governments to adhere to the norms of behavior expressed in formal international agreements and raise the costs of non-compliance. These groups are usually more organized and more effective in actualizing their policy preferences than are anti-immigration groups. Thus, through the work of domestic refugee advocates, the international regime is observed. Nevertheless, owing to several economic and social factors, anti-immigration sentiments do flare up at times, placing greater pressure on governments to adopt more restrictive refugee and asylum policies. Depending on the type of national institutions which manage immigration and refugee affairs, restrictionist pressures will be more or less successful in these circumstances. Lastly, international refugee-producing crises are often what trigger debates about admissions policies.

Table 1-1 (at the end of this chapter) summarizes the refugee policy model

¹¹ While this may generally hold true, immigration debates in Western Europe have often become quite heated. In North America and Australia, which have much longer histories of immigration, the public tends not to view immigration as extremely important when compared with other issue-areas.

proposed in this introduction. As a refugee crisis creates a wave of migration, government policies may respond by restricting admissions or liberalizing them. I define restrictive policies as those which do not conform to the minimum protection standards prescribed by the UN Refugee Convention such as returning refugees to dangerous situations and discriminating against various groups of refugees. Liberal policies, conversely, meet or may exceed the basic protections guaranteed by the Convention. Economic hardship, “high” levels of immigration, politician-led policies, and the absence of international agreements contribute to greater restrictiveness while a strong refugee advocacy lobby, bureaucrat-led policies, and the ratification of international agreements contribute to greater liberality. I also argue that the ratification of international agreements, which are promoted by advocacy groups, is the single most important factor in securing liberal policies which endure over time. Policies rarely violate international law once the refugee regime has been acceded to.

In demonstrating this hypothesis, I will be drawing upon empirical evidence from the United States and Canada since the Second World War. I choose to conduct an in-depth analysis of these two states rather than a less rigorous analysis of a larger number of cases because many of the nuances of each system would be lost otherwise. Nevertheless, these two examples may serve as a reference point for a discussion of other democratic, refugee-receiving nations.

The United States and Canada are interesting and appropriate cases because they are remarkably similar in many respects, but they also exhibit notable differences in their refugee admissions policies. Immigration was vital to the nation-building process in each and continues to be an important feature of both societies. Furthermore, both nations are long-standing, stable, democracies and have a high level of socio-economic development.

Despite these similarities, Canada is often thought of as having a much more progressive refugee and asylum system than does its neighbor to the south. Canada continues to be a leading donor to the UNHCR, it has expanded its own refugee definition well beyond the UN definition, and it regularly admits a large number of refugees and asylum seekers. Furthermore, in 1986, Canada received the United Nation's Fridtjof Nansen Medal for its contributions to international refugee protection, marking the first time that an entire nation received this award. The United States also has a tradition of refugee protection, but its humanitarian commitments have often been called into question. It is the largest single donor to the UNHCR (but not the largest per capita) and it admits a sizable number of refugees. Nevertheless, several government practices have deviated from its pledge to protect those fleeing persecution. Summary hearings, expedited removals of asylum-seekers, and the interdiction and deportation of refugees on the high-seas are among the most pernicious examples of such behavior (U.S. Committee for Refugees 1998, pp. 237-241).

In conducting these case-studies, I will be primarily looking at significant changes in legislation in both the U.S. and Canada during the years in question while paying special attention to refugee policies before and after ratification of the UN Refugee Convention. If policies change significantly after ratification, we may suspect that the regime has had an impact. Furthermore, in looking at changes over time, it is important to ask the following questions: 1) how do policies adhere to, or deviate from, the international regime? 2) has policy changed significantly after ratification of the regime? and, 3) how have NGO's used international agreements to their advantage in policy debates? In answering these questions, I will examine important pieces of legislation in detail, investigate the tactics and organizational strengths of domestic pressure groups, and look at the bodies responsible for policy making in each state. This approach will portray a rich and detailed picture of the political process at the popular as well as the

governmental level.

Chapter 2 will develop a historical context for the issues at hand. It will give a broad overview of the development of the international refugee regime and the trends in refugee flows. Chapters 3 and 4 will examine the refugee admissions policies of the United States and Canada, respectively. As mentioned earlier, these cases will be comparative as well as historical, looking at changes in policies over time. Finally, Chapter 5 will draw some conclusions based upon the findings contained in the research.

II. History of the International Refugee System

This chapter will trace the origins of the contemporary international regime on refugees from its inception immediately following the First World War to the present. I identify four main historical periods in the regime's development: 1) the establishment of rudimentary protections under the League of Nations and during the Second World War; 2) the developmental stages of more recent international institutions from the end of W.W.II through 1967 when the Protocol to the Refugee Convention was adopted; 3) conceptual and organizational expansion of the regime from 1967 -1990; and 4) the new challenges and opportunities which mark the present post-Cold War era

Two seemingly contradictory historical trends are worth mentioning here. First, at all periods in time during the development of the refugee system, national governments were hesitant to relinquish authority on immigration and refugee matters to international bodies. Though willing to make some concessions, they were wary of the regime's perceived encroachment on their sovereignty. Second, despite this hesitancy, the regime *did* expand considerably, both in its organizational resources (i.e. funding for the UNHCR and like bodies) and in its mandate. Nations came to understand that cooperation on refugee matters could further their interests. This demonstrates that when deemed necessary, states are willing to make trade-offs between their sovereignty and the achievement of their goals. It is important to understand, furthermore, that these goals are two-fold. First, states are concerned with the instability that mass movements of refugees may create; thus, cooperation contains an element of self-interest. Refugees may threaten domestic security as well as diplomatic relations between nations because a refusal to admit such persons does not deter flows, but merely deflects them to other

countries. Hence, states may prefer to cooperate in the orderly management of population movements. A second objective, which is far too often overlooked in the international relations literature, is the achievement of moral goals. While these goals may not be as tangible as material gains, they are nevertheless quite real. One must not overlook the fact that governments are administered and acted upon by *people*, and, as such, norms and values do at times influence state behavior.

The Inter-War Years

World War I and the events immediately thereafter lead to the displacement of hundreds of thousands of people. The dissolution of the Ottoman Empire as well as the downfall of empires in Eastern and Central Europe created migratory flows which threatened stability in Europe. Russian, Greek, Turkish, Armenian, and later, German and Austrian refugees, fled their homes in search of safe-haven. Fearful of this mass exodus, governments were quick to erect protective barriers, close borders, and expel thousands of people from their territories (Loescher 353).

Realizing that unilateral attempts to ameliorate the refugee problem were not proving successful and had the potential to spark conflict, the League of Nations created the High Commissioner for Refugees in 1921 and appointed Fridtjof Nansen, a Norwegian political leader and Arctic explorer, as its first commissioner. Nansen's early efforts established refugee protection as a legitimate goal of the international community. The League issued travel documents, known as "Nansen Passports" which gave refugees a legal identity, and facilitated the repatriation of over 1 million people - including prisoners of war. In 1922, in recognition of his pioneering work to establish a system of refugee protection, Nansen was awarded the Nobel Peace Prize.

These initial efforts by the League, though praiseworthy, were nonetheless weak

attempts at cooperation which proved inadequate in addressing later events. States were not enthusiastic about acceding to more binding and extensive agreements which were seen as impinging upon their sovereignty. For example, a comprehensive convention on the international status of refugees, proposed in 1933, was ratified by only eight states - most choose to abstain (Gordenker 21). Gil Loescher attributes this resistance to three beliefs held by most Western governments: first, they believed that economic hardships including high unemployment levels and fiscal constraints curtailed their ability to engage in humanitarian causes; second, that no foreign policy objectives would be met by putting pressure upon refugee-sending countries to alter their behavior or by accepting their dissidents and minorities; and third, that strict national control of, and limits on, immigration were in their national interests (354-355). As a result, the League and the High Commissioner were limited in their powers to respond to refugee emergencies.

This deficiency proved to be catastrophic as Nazi persecution of Jewish minorities escalated during the mid-1930's. Western governments were unwilling to give sanctuary to Jews escaping from the Holocaust despite the fact that they publicly condemned Hitler's fascist regime. In this regard, the reaction of the United States is indicative of the sentiments of other Western powers. The U.S., during the early 1900's, had just experienced one of the largest waves of immigration it had ever known. This, coupled with the hardships of the Great Depression, stirred fears about the economic and cultural impact of accepting greater numbers of immigrants - especially Jews who were not highly esteemed by the public. In May 1939, a poll asked, "what's your attitude toward allowing German, Austrian, and other political refugees to come to the United States?" A resounding 68% of respondents answered favored exclusion. Similarly, in 1939, when asked if Jewish exiles from Germany should be allowed to come to the United States, 71% of those polled answered "no." (Simon and Alexander, 31). Given that there were only a handful of refugee advocacy groups in existence at the time to counter these

exclusionary pressures, Congress, responding to public opinion, allowed only very few Jews to enter; millions more lost their lives. This failure proved to be the *coup de grace* of the early refugee regime.

Then, in 1943, forty-four nations agreed to establish the United Nations Relief and Rehabilitation Agency (UNRRA) which was tasked with facilitating the repatriation of people displaced by the war. The organization was in large part funded and operated by the United States; consequently, the Soviet Union opposed many of its designs (Gordenker 22-24). Its directors were always Americans and included former Senator Herbert Lehman as well as the former the mayor of New York, Fiorello LaGuardia. Although the UNRRA helped millions of people return safely home, it was not a refugee organization *per se*: it only inadvertently assisted those who were escaping political persecution. Nor was the organization authorized to facilitate the resettlement of refugees to safe third countries. These operational limitations were, again, due to the reluctance of governments to relinquish their jealously guarded sovereignty to international bodies. Then in 1947, after helping over 7 million displaced persons return to their countries of origin, UNRRA's mandate ended and its operations ceased.

Despite the shortcomings of the international refugee regime during its infancy, these early events inspired the creation of more comprehensive institutions under the auspices of the United Nations. Many of the concepts developed during this period influenced later manifestations of the regime.

The Early Post-W.W.II Regime

Although the UNRRA's mandate had expired, refugee problems persisted and demanded international attention. The devastation of the war had left its mark upon the world's major powers, and, to some degree, governments felt 'guilty' for their inadequate

response to earlier refugee emergencies. Thus, the contemporary refugee system was created as a part of the United Nations system. The first session of the UN General Assembly voted to create a new entity, the International Refugee Organization (IRO), which, unlike the UNRRA, was given the explicit task of caring for the needs of refugees. Indicative of the limited appeal of such an organization, only thirty nations voted in favor of the resolution, while eighteen governments abstained from the vote, and five governments (the Soviet group) opposed it. Of the nations which voted in favor, only seventeen states (including Canada and the United States) became active members, plus an 18th, Switzerland, which was not a member of the UN. This limited participation allowed the United States to take a particularly preeminent role in the operations of the IRO (Loescher 356-357).¹² The organization was short-lived, however, and was dissolved in 1952.

The establishment of the IRO, nevertheless, did signal several important changes in the international effort to aid refugees. First, a universal definition of the term ‘refugee,’ as a person facing persecution or fear of persecution, was adopted by the international community. Secondly, the IRO was not only responsible for the *repatriation* of displaced persons, but was also given the unprecedented task of facilitating the *resettlement* of refugees in safe third countries. It succeeded in resettling approximately 1,000,000 refugees during its rather short life-span. Lastly, the organization extended its purview beyond post-war Europe, spreading its operations to all parts of the globe. While crises in Europe often received greatest attention, the IRO also responded to emergencies in Kenya, India, and China (Gordenker, Ch.2; Loescher, 356). Thus, the international refugee regime and the intergovernmental bodies which dealt with refugee issues experienced a functional expansion with the creation of the IRO.

¹²The U.S., for example, provided two-thirds of the IRO’s funding, (see Loescher 1994). Yet given the economic hardships faced by the other members, this is hardly surprising. As economies in Europe and Asia grew, however, these governments took on a greater role in subsequent organizations.

Then, in 1950, the United Nations created the Office of the United Nations High Commissioner for Refugees (UNHCR), and in 1951, drafted the Convention Relating to the Status of Refugees. The creation of the Convention was in large part due to the prodding of Western European states which bore the brunt of the post-war refugee burden. This multilateral treaty established the current definition of a ‘refugee’ (see Ch. 1); granted such persons the right to seek (but not to obtain) asylum; expressed the norms of non-refoulment and non-discrimination;¹³ and instituted guidelines for the integration of refugees in countries of resettlement. But again, states were unwilling to commit to open-ended, binding treaties; thus, the refugee definition was temporally confined to persons fearing persecution “as a result of events occurring before 1 January, 1951.”¹⁴ Furthermore, the UNHCR was limited to a three-year mandate, given a meager budget of \$300,000, and was limited in its capacity to independently raise funds. Even worse, the United States - which did not ratify the Convention - gave only limited support to the UNHCR, preferring instead to deal with the refugee situation in other ways.¹⁵ Thus, the organization was particularly incapable of exercising an independent authority (Loescher 358).

For the first few years, the UNHCR was in a precarious position and appeared as though it might not survive (Gallagher 582). Then in 1956, an unexpected event guaranteed the organization’s continuation - the Hungarian uprising. Over the opposition of the Soviets, the General Assembly passed a resolution allowing the UNHCR to provide assistance to Hungarian refugees. The international response was resounding. According to Gallagher, during the crisis, “states increasingly began to understand the

¹³Non-refoulment refers to the refugee’s right not to be forcibly returned to countries in which they face a reasonable fear of persecution; the norm of non-discrimination holds that states shall not exclude refugees from entry on the basis of their ascribed traits or political opinion.

¹⁴UN Convention Relating to the Status of Refugees, Article 1

¹⁵The U.S. was an active participant, for example, in the Intergovernmental Committee for European Migration (ICEM). See Gordenker, Ch. 1.

usefulness of having a nonpolitical humanitarian international agency on the scene in situations where significant political interests and sensitivities are at stake (582).”

Furthermore, this episode allowed the UNHCR to supersede its temporal limitations and deal with new emergencies. Perhaps most importantly, the successes of the UNHCR ensured the active support of the United States. In noting this watershed moment, Loescher writes,

With the Hungarian operation, the funding capacities and operational services of the UNHCR grew; the High Commissioner, August Lindt, won the confidence of both the United States and communist authorities in the Eastern Bloc for his repatriation efforts; and the UNHCR became the center-piece of the international refugee regime (359).

With this newly found support, in subsequent years the UNHCR was sent to provide humanitarian aid to refugee camps and assist in the repatriation or relocation of refugees from Algeria, Zaire, China, Vietnam, Bangladesh, and Cuba, among others. It was also given greater autonomy to ask donor governments for funding. Thus, while the refugee regime was originally conceived of as being a short-term remedy for those displaced by the War, it eventually expanded - both conceptually and functionally - beyond its original mandate. This development was a bit unusual, however. While *de jure* (so to speak) the Convention was quite explicit in its wording and scope, it *de facto* became much broader than was intended.

The 1967 Protocol and the Expansion of the Regime

The next major development in refugee affairs was the adoption of the 1967 Protocol to the Refugee Convention. This measure eliminated, *in writing*, the time limitations on the original refugee definition. The Protocol was quickly ratified by the

minimum number of states required for its enactment - this time the United States formally acceded. The importance of this event cannot be understated. It indicated that the international community was willing to make refugee assistance a *permanent* area of concern; previously, such matters were dealt with in an *ad hoc* fashion, assuming the problem to be a temporary one. By the same stroke of the pen, the UNHCR, in effect, was transformed into a permanent humanitarian arm of the United Nations.

The crises of the 1970's and 80's largely centered around anti-colonial struggles and Cold War battles fought in the Third World. The UNHCR proved to be an effective organization when it was called upon to respond to the refugee flows created by such events. Yet, it also became clear that the Convention definition was too narrowly conceived given the nature of the conflicts which bedeviled this period. People fleeing civil strife, colonial interventions, and open warfare, did not meet the "fear of persecution" criteria in the strictest sense.¹⁶ Nevertheless, the General Assembly often agreed to broaden the scope of the UNHCR into areas where the Refugee Convention was silent.¹⁷ For instance, the UNHCR was asked to respond to the displacement of Greeks in Cyprus after the *coup d'état* against president Makarios in 1974, despite the fact that there was no clear threat of persecution on the grounds of race, religion, etc. The regime experienced a similar *de facto* expansion of its mandate in response to the sheer numbers of refugees created by the processes of decolonization in Africa. The Convention and the Protocol required that refugee status be granted on a case-by-case basis, yet, the mass dislocations created in this era made such determinations nearly impossible. The UNHCR responded by accepting *prima facie* evidence for large groups escaping particularly tumultuous situations (Gordenker 39).

¹⁶While such persons were escaping violence, such violence was not directed at particular groups because of their race, religion, political beliefs, etc. For instance, it was difficult to claim that anti-colonial battles fought in Algeria amounted to French *persecution* of the Algerian people.

¹⁷For a more detailed account, see Gordenker 1987.

Although the UNHCR was remarkably effective in broadening the regime during this time period, it was not always successful in doing so. As noted earlier, the Refugee Convention gives people the right to apply for asylum, and it precludes states from returning refugees to danger, yet, states are not obliged to admit persons granted refugee status. Governments reserve the right to decide upon who and how many people they admit (although the Convention does prohibit certain forms of discrimination). Responding to this perceived shortcoming, the High Commissioner sought to create a *right* of asylum during a two decade long campaign, culminating in a conference initiated by the General Assembly in 1977 (Gordenker 43). This effort proved to be overly ambitious and ultimately failed. States were not willing to give up their authority on this matter.

Nevertheless, the regime had become considerably stronger. By 1981, the UNHCR had annual budgets reaching \$500 million,¹⁸ a marked contrast from its \$300,000 budget in earlier days. It had twice received the Nobel Peace Prize for its humanitarian work - first in 1954, and again in 1981. But its work did not end there. During the 1980's the organization received international notoriety for its response to emergencies in Indochina, the Horn of Africa, and Central America. Thus, the refugee regime, of which the UNHCR was the organizational embodiment, had moved beyond its humble beginnings and became a major force in international affairs.

Refugees in the Post-Cold War Era

The management of the international refugee system since W.W.II had at all times been affected by Cold-War rivalries of the Superpowers. The United States and its allies - both in Europe and in other parts of the world - were quick to accept refugees fleeing

¹⁸In the 1990's this budget grew to over U.S. \$1 billion.

from Communist-controlled states and vice-versa. The impugning of one another's political system was not the only goal which states pursued in their admissions policies, but it was an important one. Furthermore, the establishment and strengthening of the international refugee regime was often compatible with the foreign policy interests of Western states (who provided much of the funding for the UNHCR). In sum, there was a greater degree of clarity as to the aims of refugee admissions during this period.

There is much evidence supporting the often-made claim that the international effort to protect refugees has waned since the end of the Cold-War (Keely and Russell 1994; Newland and Papademetriou 1999; UNHCR 1997). The demise of the Soviet Union signaled four important changes in the international refugee situation. First, a short term problem was created as the number of asylum-seekers from Eastern European nations increased. The Soviet Bloc had tightly controlled the exit of its nationals; with the collapse of communist regimes, thousands flocked to nearby European countries as well as to more far-off destinations. According to Keely and Russell, the number of asylum applications (many but not all from former communist countries) submitted in Europe, North America, and Australia, grew from 90,444 in 1983 to approximately 825,000 in 1992 (461). Such mass asylum-seeking was one of the factors which lead to the rise of xenophobic, right-wing parties such as the National Front in France, the Republikaner Party in Germany, and the Vlaams Blok in Belgium (Cornelius, et al., 1994). Fearing the negative consequences of such an exodus in terms of burdens on asylum systems, social services, the domestic economy, and the loss of 'cultural cohesion,' states responded by streamlining their asylum procedures, expediting hearings, and deterring potential claimants. Thus, roughly 19 out of 20 asylum applications in Europe were rejected during the late 1990's, a sharp increase from earlier years (Newland and Papademetriou, 4).

Secondly, on a more structural note, the diplomatic interests of smaller states in

the international system has changed since the collapse of the Soviet Union. Under the condition of bipolarity, lesser powers in Europe and the Third World sought to gain favor with one or the other Superpower. Thus, refugee policies often reflected the views of the more powerful partner. With the changes in the international system, nations are now much more concerned about maintaining good relations with their neighbors (UNHCR 1999, 15). The push toward regional integration, manifested in groupings such as the Southern African Development Community (SADC) and the Association on South-East Asian Nations (ASEAN), has caused governments to be more reluctant about accepting the exiles of neighboring states - a move which could jeopardize friendly relationships.

Thirdly, powerful states have become less concerned with events in the Third World, where a majority of refugee crises take place. During the Cold-War period, the U.S. and the U.S.S.R. viewed relatively minor conflicts in other parts of the world as threatening the delicate balance of power between them. Hence, they became actively involved in the national politics of El Salvador, Nicaragua, Vietnam, Angola, and Afghanistan, as well as numerous others. Now, central powers are less likely to view uprisings in other parts of the world as vital to their interests. The lack of prompt international attention into the hostilities in Rwanda, and the concomitant refugee catastrophe during the early 1990's, proves this point.

Lastly, the nature of political violence and persecution has changed as ideological struggles between competing factions has subsided and ethnic and communal strife has grown more prevalent (Loescher 363-364). Accordingly, these parochial conflicts do not resonate as deeply with international audiences. In the past, Western observers felt a degree of solidarity with 'freedom fighters' in the communist world who were committed to a cause that they could identify with; hence, they were sympathetic toward refugees created by such regimes (i.e. Cubans, Vietnamese). Similarly, the Soviets were supportive of communist partisans who suffered under right-wing dictatorships. The

same power of empathy is not as compelling when persecution is based upon traits (such ethnicity or religion) which people in refugee-receiving countries do not share with the victims.

Yet, there are some positive changes in the international system which have taken place since the end of the Cold-War. Most importantly, the rivalry between the major powers - which often impeded cooperation - has diminished, thus making coalition building for refugee protection more feasible. This was demonstrated when a large multinational force, approved by the UN Security Council, invaded Iraq, liberated Kuwait, and helped thousands of Kurdish, Iraqi, and Kuwaiti refugees escape. While disagreements in the United Nations persist they are not as divisive as they once were. This may, though it is not at all certain, lead to a reinvigoration of mechanisms of refugee protection as partisan debates subside.

Secondly, though not a direct result of the Soviet Union's demise, non-governmental organizations (NGOs) have experienced a tremendous growth in recent years, both in terms of the number of organizations in existence and in the resources available to them. NGOs have often responded to refugee emergencies earlier than national governments or even the UNHCR, providing material assistance and emotional support to those uprooted by violence. For instance, the Red Cross, the International Rescue Committee, and similar NGOs proved their worth through their timely assistance to refugees from Kosovo during the Balkans Crisis of 1999. Furthermore, such groups have held their governments accountable to their international commitments by advocating refugee protection whether it be through direct aid or resettlement.

In sum, there have been significant changes in the international refugee regime over the last several decades. During the 20th Century, the world has moved from having

little or no formal mechanisms for refugee aid and protection to having an extensive system of assistance. The inter-war years marked the first steps toward defining and ameliorating a common problem in Europe. Nevertheless, because states were reluctant to cooperate on refugee matters, the first High Commissioner was not able to provide much protection for those displaced by W.W.II. During the Second World War and in the years immediately thereafter, refugee assistance was conducted in an *ad hoc* fashion as states remained hesitant to offer their support for permanent international agencies. Yet, as the value of the UNHCR was demonstrated to them, governments became more willing to tolerate the expansion of the regime. Now, refugee protection has become an established area of international collaboration. Despite evidence that the commitment to assist those facing persecution has waned since the end of the Cold-War, multilateral cooperation on this issue is likely to continue for the foreseeable future.

Now that a brief history of the international refugee regime has been given, the more important task of explaining how it functions awaits. As explained in Chapter 1, the existence of a body of international law does not necessarily indicate that it has any discernible effect - especially in the absence of mechanisms of adjudication and enforcement. Moreover, methods of mutual enforcement and self-regulation, which exist in several other international regimes, do not apply as strongly here. Nevertheless, there are costs to be borne by governments for non-compliance to the regime. As advocacy groups have grown in scope and influence, they have often been responsible for holding governments accountable to international law - especially in democratic states. The case studies contained in the following chapters will illustrate how refugee policy is made in advanced industrial democracies and will make the claim that the international refugee regime is indeed consequential to government practice.

Table 2-1: Chronology of Major Events in the International Protection of Refugees

1914	World War I begins
1917	Russian Revolution
1918	World War I ends
1920	Formation of the League of Nations
1921	First Office of the High Commissioner for Refugees created
1922	Fridtjof Nansen awarded Nobel Peace Prize
1930's & 1940's	Millions of Jews flee Nazi Germany
1939	World War II begins
1941	United States enters war
1943	United Nations Relief and Rehabilitation Agency created
1945	World War II ends
1946	United Nations supersedes League of Nations
1948	United Nations adopts the Universal Declaration of Human Rights
1948	International Refugee Organization established
1950	UN High Commissioner for Refugees created
1951	UN Convention Relating to the Status of Refugees adopted
1956	Hungarian uprising
1959	Cuban Revolution
1967	Protocol to the Refugee Convention adopted by UN
1975	U.S. troops withdraw from Vietnam
1980's	Refugee emergencies in Africa, Central America, and Southeast Asia
1989	Fall of the Berlin Wall
1991	USSR collapses
1990's	Refugee emergencies in the Balkans, the former Soviet Union, and Central Africa

III. Refugee and Asylum Policy in the United States

The United States has a long history of refugee migration to its shores; the earliest settlers to the country included those who faced religious persecution in Europe. Until the mid-to-late 19th century, vast open spaces in the country's interior justified virtually unrestricted migration as a way of creating new settlements and fostering economic growth. Moreover, immigrants and refugees were not distinguished from one another during this period as nearly all new arrivals were welcome. In fact, it was not until after W.W.II. that the first refugee policies were developed.

This chapter will first outline the major actors in the American immigration and refugee debate, and then explain the major changes in refugee policy since the end of the Second World War while paying special attention to the possible role of international law. According to the theory outlined in the introduction, I contend that while public opinion has largely opposed high levels of immigration (including refugee admissions) refugee advocates have generally been more successful in implementing their policy preferences than have immigration restrictionists. These advocates give "teeth" to international instruments through their invocation of the UN Refugee Convention and Protocol.

The National Debate Over Refugee and Asylum Policy

Refugee policy is a divisive issue in the United States. There are those who advocate helping as many of the world's homeless as possible and there are others who feel that the United States should be concerned with taking care of its own problems, not

the problems of others. Yet, immigration issues generally play a peripheral role in the national debate, especially in comparison with issues such as gun-control and abortion. Keeping this in mind, the remainder of this section will outline the major forces which come to bear on the direction of refugee policy in the United States: public opinion and interest group pressures. Then, a few general remarks on how refugee policy is made in Congress will be offered.

Public Opinion. Americans tend to view their own immigrant ancestry with pride; they see their forefathers as bringing positive values to the U.S. and contributing to the overall well-being of the nation (Gimpel and Edwards 29). Yet, public opinion on immigration policy has usually favored more, rather than less, restrictions on admissions. A Gallup poll (see Table 3-1) taken over a number of years asked, “in your view, should immigration be kept at its present level, increased, or decreased?” No more than 10% of respondents in any given year have favored increased immigration while much larger percentages, ranging from 33% to 65%, have favored less immigration. Thus, the majority of the population opposes liberal immigration policies.

Table 3-1. Percentage of Respondents Favoring Increase, Decrease, and Same Level of Immigration (all years available).

	Increase	Decrease	Same Level
1965	7	33	39
1977	7	42	37
1986	7	49	35
1993	6	65	27
1995	7	65	24
1999	10	44	41

(Source: Gallup Organization, Social and Economic Indicators - Immigration, 1999)

Although there are no similar polls regarding refugee admissions over time, several surveys have sought to gauge public opinion on specific refugee groups. As was noted in Ch. 2, an early poll found that the overwhelming majority of those surveyed opposed admitting Jewish refugees escaping Nazi Germany. Responding to later emergencies, 34% of the population in 1956 felt that the U.S. was allowing too many Hungarian refugees to enter;¹⁹ 52% opposed Vietnamese refugee admissions in 1975;²⁰ and 57% opposed Cuban refugee admissions in 1978²¹ (Simon and Alexander 34-41). Such negative public opinion often has to do with economic considerations. In 1980, a Gallup poll asked whether the government should permit “persons who leave other countries because of political oppression” to enter the U.S., or whether it should “halt all immigration until the national unemployment rate falls below 5%.” The poll found that 66% favored halting all immigration, while only 26% favored allowing refugee admissions (Simon and Alexander 39). Clearly, as with other categories of immigrants, larger percentages of the public oppose higher levels of refugee admissions than favor it.

Several studies have sought to explain the source of this negative public reaction towards immigration and refugee admissions (Espenshade 1997; Espenshade and Hempstead 1996; Gimpel and Edwards 1999; Simon and Alexander 1993). The current literature cites three main reasons as to why people may wish to see a reduction in American immigration levels. First, many people feel that immigrants hurt the economy by taking jobs away from native-born Americans and depressing wages. The veracity of this claim has yet to be proven, nevertheless, popular perceptions are of greater importance here. Those who feel most insecure in their jobs, especially unskilled and semi-skilled laborers, are more likely than professionals to fear the economic

¹⁹ 11% answered “not enough,” 48% answered “about right”

²⁰ 36% favored Vietnamese admissions, 12% had “no opinion.”

²¹ 34% favored Cuban admissions, 9% had “no opinion.”

consequences of immigration. Secondly, there are those who fear that immigrants and refugees place undue social burdens on society. A 1986 poll asked, “What is the biggest problem immigrants have caused this country?” Eighteen percent indicated social ills such as crime, drugs, and welfare dependency (Gimpel and Edwards 38). Many Americans see immigrants as threatening public health, safety, and as using up social services. Again, whether or not this is true may be debated, we are only concerned with perceptions here. Lastly, there are those who feel that new immigrant and refugee groups, who are largely non-European, are culturally undesirable. Apart from utter racists are those who feel that ‘cultural cohesion’ and ‘group solidarity’ are lost as America becomes more diverse. Indicative of this view, when specific immigrant groups are mentioned in polls, Americans tend to favor European immigration over Asian and Latin American immigration (Espenshade and Belanger 1997; Gimpel and Edwards 1999).

Although when asked the public tends to oppose liberal immigration policies, immigration is not an issue which mobilizes a great number of voters (Gimpel and Edwards 1999, 41-45). The immigration “problem” does not resonate as deeply with voters in comparison to issues such as education, crime, gun-control, or school prayer. Gimpel and Edwards (1999) note, “... the consensus on the issue [immigration] is not supported by much intensity of feeling among opinion holders (45).” This is in part due to the fact that the perceived costs of immigration are not often tangibly felt and are distributed widely amongst large segments of the population. Hence, voters generally do not cast their ballots on the basis of a candidate’s stance on immigration policy and they are not inclined to join organizations which promote their views on this issue.

There are times, however, when public opinion becomes a more powerful force and has the potential of directing policy towards greater restrictions. As stated in the introduction, economic downturns and sustained periods of high immigration may cause

the public to become more vociferous on this issue (Freeman 1995). As unemployment rises and the economy stagnates, people are inclined to find a scapegoat for their ills, and, as such, immigrants are likely to become an easy target. Furthermore, during periods of relatively high immigration levels, the foreign element in society becomes more noticeable, prompting fears about demographic change and the loss of cultural cohesion (Freeman 1995).

Interest Groups. Despite public ambivalence as to immigration and refugee policy, there are several non-governmental organizations (or NGO's) who are deeply involved in the immigration debate. While typical voters may not express their views in any coherent, directed manner, these organizations and pressure groups endeavor to make their presence felt in Congress. These groups, then, become especially influential when the public is silent on immigration matters (Freeman 1995; Gimpel and Edwards 45). Interest groups function by providing information to policy makers, participating in Congressional hearings, assigning praise or blame to specific policies and politicians, and embarking upon public education campaigns.

There are many groups in the United States who exclusively, or in part, work to advocate the rights of refugees and asylum-seekers. These groups are more numerous and often - but not always - more outspoken than restrictionist groups. It must be understood that most of these organizations operate on the basis of their adherence to a set of moral principles and shared beliefs. It is their convictions, not their short-term material interests, which propel their membership towards action.

Refugee advocacy organizations fall into several categories, though many of them take on multiple roles. Moreover, many NGO's are broadly based, working on behalf of all refugees, but others are limited to specific ethnic groups, religious groups, or geographical regions.

First, there are NGO's whose primary mission it is to provide direct humanitarian assistance to refugees, both overseas and domestically. Such organizations may be affiliated with particular religious denominations and many work closely with the UN High Commissioner for Refugees. They provide material assistance, medical care, and other services to those uprooted by violence. Among the refugee relief organizations are the Lutheran Immigration and Refugee Services (LIRS), the U.S. Committee for Refugees (USCR), and the International Rescue Committee (IRC). All three organizations are mainly dedicated to providing humanitarian aid and resettlement assistance to refugees, but each has also been active in lobbying Congress and in public education campaigns. In their annual report, the IRC defines its advocacy role as such: "We are refugee advocates on broad policy matters affecting large numbers of people... We advocate asylum and robust humanitarian aid for refugees... Our position is that the United States can, and should, do more for refugees (International Rescue Committee Report 1998, 26)." The IRC has often testified before Congressional committees and works closely with government agencies responsible for refugee aid. Thus, while the IRC and similar organizations are mainly involved in humanitarian pursuits, they are nonetheless active participants in policy debates.

Secondly, there are organizations who provide legal assistance to asylum-seekers during their hearings. These groups mainly consist of immigration lawyers and others tied in to the judicial system. Such NGO's include the American Immigration Lawyers Association (AILA) and the Lawyer's Committee for Human Rights (LCHR). The both organizations are devoted to other issues as well, but they have, nonetheless, served as strong advocates for the rights of refugees and asylum-seekers. The AILA, more a professional association than an advocacy group, is keenly aware that generous asylum policies are good for business; but, no doubt, many members are also intensely concerned about the plight of refugees (after all, one does not become an asylum attorney for the

salary). The LCHR is much more vocal in its support for the adherence to international refugee standards and often criticizes policies which violate them. It proclaims, "... many nations with traditionally humane asylum policies (including the U.S.) have enacted harsh new procedures to turn away refugees, in clear violation of international law (LCHR website: www.lchr.org/refugee/refugee.htm, parentheses in the original)." Both of these NGO's have been particularly active in lobbying Congress and submitting testimony to committees.

Thirdly, human and civil rights NGO's are often engaged in advocating the rights of refugees and in active campaigning on specific refugee-related issues. The tactics they use may include letter-writing campaigns, protests, rallies, speaking engagements, testifying before Congress, and holding high-profile media events. Among the most prominent human and civil rights groups are the American Civil Liberties Union (ACLU), the National Immigration Forum (NIF) and Amnesty International (AI). The NIF and the ACLU combine advocacy, research, and media work to promote the rights of all immigrants, including refugees and asylum seekers. Amnesty International, a well-known human rights organization with over one million members worldwide and nearly 300,000 members in the U.S., is regularly involved in refugee advocacy. An office in San Francisco provides human rights documentation to asylum-seekers and works with the AI office in Washington, DC to engage in direct lobbying. Amnesty has also been one of the most vociferous proponents of international human rights law. In a 1997 publication entitled *Refugees: Human Rights Have no Borders*, AI strongly insists upon global adherence to international regulations: "The UN Refugee Convention lays down minimum rights to which refugees are entitled, and obliges all states that have ratified the treaty to uphold them (30)." Amnesty activists in the U.S. and abroad - through letter writing, petitions, media events, and rallies - put pressure on Congress to provide better protection to refugees and asylum-seekers. These, and groups like them, have raised the

salience of the international regime to policy makers in Washington

Nearly all NGO's which fall under these three broad categories are deeply committed to the norms contained in the UN Refugee Convention and Protocol, and many actively work for the implementation of the principles contained therein.

Advocates of liberal refugee programs, however, do not go unopposed on Capitol Hill. While very few call for the abolition of refugee admissions altogether, several NGO's have spoken out in favor of greater limitations on the entry of, and the types of public assistance provided to refugees. These groups seldom work to limit refugee admissions alone, but rather seek to reduce or cease all forms of immigration. They are often driven by the fear that immigrants and refugees - especially those coming from the Third World - hurt the economy, exacerbate social problems, abuse social services, contribute to overpopulation, and threaten "American culture."

Among these NGO's are groups such as Zero Population Growth and Negative Population Growth which work towards limitations on the United States population, believing that current demographic trends are environmentally unsustainable. Another group, American Patrol - which is to the far right of the debate - contends that immigrants contribute to the "cultural disintegration" of the U.S.

(www.americanpatrol.org). All three of these groups are active participants in government lobbying. But by far the most well-known and most active immigration restrictionist organization is the Federation for American Immigration Reform (FAIR), which claims to have 70,000 members nationwide. While more moderate than many other restrictionist NGO's, FAIR has proposed stringent limitations on all types of immigration, including refugee and asylum admissions, and is frequently involved in Congressional hearings (www.fairus.org).

On a final note, one would expect that due to fears about the impact of immigration on jobs, labor unions would be one of the strongest advocates of

immigration restrictions, yet, as we will see, this is hardly the case (Gimpel and Edwards 46-47). While unions have at times opposed certain categories of immigration (most notably the undocumented) they have not necessarily been against high levels of immigration. First, union leaders recognize the fact that much of their membership base consists of immigrants so they must avoid alienating these workers; secondly, unions have come to realize that a certain level of immigration, especially in industries in which there is a labor shortage, may prevent firm closure which would cause job loss.

Congress. The bulk of immigration and refugee policy in the United States is debated and drafted in Congressional committees. The most important of these committees are the House and Senate committees on the Judiciary and the committees on International Relations (House) and Foreign Affairs (Senate). This illustrates the domestic as well as the international dimensions of refugee policy.

But because these committees are devoted to such a wide range of issues beyond immigration, the Representatives and Senators who sit on them usually do not develop a particular expertise on refugee matters. Moreover, the general membership of Congress often lacks clear information about the effects of immigration, world-wide trends in refugee flows, and the nations from which refugees are coming. This is where interest groups can become particularly influential as they serve as sources of information about an unfamiliar topic (Gimpel and Edwards 45). This influence is especially pronounced when the public is silent about the issue because refugee advocates then become the dominant voice on Capitol Hill. Furthermore, if there is little public interest in refugee policy at the time, these advocates become one of the few sources of praise or blame to particular Members of Congress for their voting records - even politicians are concerned about how they are esteemed in the eyes of others. Conversely, one could reasonably expect that politicians will follow the restrictionist urges of their constituents during those

periods in which immigration becomes more important to the rank and file voter (see above).

Now that the major actors in the refugee debate have been clarified, we may begin to explain the major changes in refugee and asylum policy in the United States. The following section will outline significant pieces of legislation since the Second World War until the present.

U.S. Refugee and Asylum Policy Since W.W.II:

As events both at home and abroad have developed, U.S. policy towards refugees and asylum-seekers has fluctuated accordingly. How might we account for these changes in policy? First, it must be noted that policy making in this issue-area tends to be more reactive than proactive. Rather than taking steps to foresee refugee-producing emergencies (which is, admittedly, a difficult task), policy makers often react to world events. Therefore, we find periods of policy formation and intense debate during and immediately after international crises. Key events such as the end of W.W.II, the Cuban Revolution, and the end of the Vietnam War, among others, mark periods in which refugee policy has leaped into the national limelight. It must be remembered, however, that these events were viewed with a Cold-War bias for much of the time period in question - the atrocities of enemies were unforgivable, whereas those of allies were often excused.

Secondly, during such periods of debate, NGO's which work on refugee and immigration issues become especially influential in policy circles. Because refugee issues tend to not be part of the "core" policy debate on Capitol Hill and in society at large, these groups - whose main concern is U.S. refugee programs - become a major

source of information and expertise when the matter comes up. Furthermore, such NGO's have acquired the resources and experience over the years which enable them to mobilize an effective lobby, whereas the unorganized masses seldom do. The fact that Committees and individual MOC's have repeatedly called upon these groups to testify before them and submit documentation shows that their opinions are well-respected in Congress. It must also be stated that organizations advocating more liberal refugee programs have generally been stronger than restrictionist organizations in pressing their preferences. This is due to the fact that refugee advocates have much more to gain through liberal policies (e.g. federal matching-funds for resettlement programs, increased caseloads for lawyers, moral victories, etc.) than restrictionists have to lose, thereby providing greater incentives to act, and that NGO's can use international law as a leveraging device in their lobbying efforts.

These advocacy groups, moreover, often use the language of international refugee law in their efforts to persuade policy makers to implement the principles contained therein. These groups have made certain that policy makers cannot overlook America's international treaty obligations. As such, we should expect the invocation of international agreements to be much more effective after 1968, when the US ratified the UN Refugee Protocol. Whereas before 1968, groups were only able to judge whether a policy was "good" or "bad," they have since been able to claim that a policy violates international law.

This having been said, the remainder of this section will outline major refugee crises and the policy debates which have arisen because of them. The section will be divided into two periods - crises and corresponding legislation enacted: 1) before 1968, the year that the Protocol was ratified, and 2) after 1968. I hypothesize that refugee advocates will be much more successful in their calls for the implementation of international agreements in the latter period because of the recourse to international law.

Refugee Policy 1945-1968:

Three crises had a great impact on American refugee policy during this time period: 1) WWII, 2) the Hungarian Uprising, and 3) the Cuban Revolution.

Refugee policy immediately after **World War II** was aimed at alleviating the burden on European nations who suffered from an influx of refugees displaced by the War and were not able to return to their countries of origin. As such, initial U.S. responses were viewed as part of the process of rebuilding post-war Europe and were considered to be temporary in nature. Furthermore, the legacy of the war, which was fresh in the minds of the American people, aroused the sympathies of the public who viewed the reconstruction of Europe as a legitimate foreign policy objective and refugee admissions as part of that goal (Zolberg 173).

The first formalized refugee admission and resettlement policy passed by Congress was the **Displaced Persons Act (DPA)** of 1948. The DPA was more of a temporary provision aimed at European assistance than a coherent policy for the ongoing admission of refugees. Most of those who were resettled in the United States were from Eastern Europe and did not wish to be returned to countries under the Soviet sphere of influence; but far more people were repatriated to their nations of origin. In all, through 1960, the DPA brought just over 400,000 people to the United States; however, these admissions were charged against the annual ceiling on immigration enacted by earlier legislation (*INS Statistical Yearbook 1997*, 94; McBride 4).

As was noted earlier, 1951 marked a watershed moment in the international refugee regime as the UN adopted the Convention Relating to the Status of Refugees, which outlined the basic rights afforded to refugees and formalized the establishment of the UNHCR as a means to ease the burden on European nations. The United States,

notably, did not ratify the Convention, preferring instead to unilaterally create and implement its own refugee admissions policies. President Truman simply did not present the treaty to the Senate for ratification feeling that it was not necessary to do so. This was due to the fact that the 1951 Convention mainly applied to refugees who had been displaced by the War, and the President felt that the United States had already responded to the crisis through its own legislation, the DPA; signing the treaty would have no added value.²²

The **Refugee Relief Act** of 1953, which was similar to the Displaced Persons Act, admitted another 189,000 persons, mainly of Eastern European origin who found themselves outside of their home countries as a result of the War, but who were unwilling or unable to return because of the establishment of communist regimes there. Yet, these two acts were passed with very little pressure from the public; refugee policy was still a new issue-area and strong refugee advocacy groups had yet to be formed.

During the second crisis, the **Hungarian Uprising**, Congress came to see refugee policy as complimenting foreign policy when it passed the **Refugee-Escapee Act** of 1957. Accepting Hungarian refugees fleeing from the communist regime there was seen as a way of discrediting the Soviet camp. While relatively insignificant in terms of people admitted (just under 30,000) the Act was important as it established a definition of the term “refugees” as persons fleeing persecution in communist countries or countries of the Middle East, which ran counter to the more inclusive definition favored by the 1951 Refugee Convention (McBride 4). This limited definition would be used for decades to come.

The Acts of 1948, 1953, and 1957, were passed with little public debate - they

²²This reason for the Convention’s failure to be ratified was offered by Laurence Dawson of the Department of State in his testimony before the Senate in 1968 (the year that the US ratified the Protocol to the Convention.) He argued that President Truman did not feel that ratification was necessary as the United States had already done much to ease the refugee burden on Europe. See: *U.S. Senate. Committee on Foreign Relations. Hearings on the Protocol Relating to the Status of Refugees, 1968.*

were, in essence, initiatives of Congress and owed much to Presidential prodding. The Acts were passed in response to refugee crises brought about by the War and the turmoil caused by the consolidation of Soviet power over Eastern Europe. This area of policy was still very new, and as such, strong opinions one way or the other had yet to materialize among the general public. Outside of a few church groups and ethnic lobbies which appealed to religious and humanitarian sentiments, there was little of what could be called refugee advocacy, nor was there strong opposition to the bills. Furthermore, the post-War economy was booming, which would dispel fears about the economic impact of such admits, and most of these refugees were of European origin who differed little from earlier waves of immigrants.

Still viewing refugee-producing crises as temporary, a series of legislation was enacted in an *ad hoc* manner in response to particular emergencies which were not necessarily related to the European reconstruction effort. Most of these emergencies brought small numbers of refugees the United States, but a major refugee-producing crisis, the **Cuban Revolution** of 1959, forced thousands of refugees to seek asylum. While the American people may have viewed the Cuban refugees with suspicion, fears about a permanent influx of Cubans were assuaged as the public was assured that the Castro regime would soon fall and Cuban admits would only remain temporarily (Zolberg 128). It would not be until 1966 when Congress passed the **Cuban Refugee Act** that Cubans were given permanent resident status.

Between 1945 and 1965, when reforms were made to the Immigration and Nationality Act (discussed below), roughly 700,000 persons came to the United States under the different refugee laws, but legislation lacked regularity and consistency. As crisis followed crisis, it became clear that patchwork policies were not able to adequately respond to world events - more formal procedures would be needed. The United States, moreover, could not afford to turn its back on the world's refugees as it often had in

earlier decades. Emergencies in Europe required U.S. intervention in order to diffuse potentially explosive situations. Similarly, the Cuban Revolution and the exodus which followed was too close to home to be ignored. Still, NGO's on both sides of the fence were just beginning to understand and respond to the influx of refugees - in later years, however, they would become more articulate and vocal about their policy preferences.

The passage of the 1965 **Immigration and Nationality Act** (INA), was not in response to any single international crisis, but was a reform of American immigration policy in general - a part of which was refugee admissions. While the measure brought about major reforms to all aspects immigration law, the most important and hotly debated change was the elimination of the pernicious, racially exclusive immigration quotas which limited non-European admissions. As refugee policy was inadequate in dealing with emergencies abroad, the 1965 Act was important as it created a system by which refugee admissions would become a regularized and permanent aspect of overall immigration. The INA established an annual limit on all immigrant categories and created a preference system through which foreign workers and their families could come to the U.S. The seventh preference, refugees, would be held at six percent of the total (normally just over 17,000 per year). Yet, the definition of "refugee" remained limited to persons escaping communism or countries of the Middle East, and ran counter to the definition in the UN Refugee Convention, which the US had failed to ratify.

INA Debates Over Refugee Policy. The debate around immigration reform on Capitol Hill and among society at large during this period was mainly focused on the elimination of the quota system, but there were, nevertheless, strong opinions voiced in regards to the refugee preference as well. This time around, the NGO community was quite vocal in its opinions as to refugee policy. The religious community was especially strong in its support for a humane refugee policy. John E. McCarthy of the National Catholic Welfare

Conference remarked:

The Catholic Church has always been concerned about the welfare of God's children and has always endeavored to secure a haven for the wanderers of the globe (United States 1965, 208).

Similar testimony was offered by the American Friends Service Committee, the Unitarian Universalist Association, the United Presbyterian Church, and the Lutheran Immigration Service.

All of the refugee advocates who testified before Congress spoke out in favor of the principle of refugee protection embodied in the 1965 law. Yet, several expressed concern over its geographical limitations which were not congruent with the internationally stated norm. David Carliner of the American Civil Liberties Union objected the INA's refugee definition calling it "unnecessarily limiting" and "restrictive" (CQ Almanac 1965, 475). James Read, who incidentally was a former UN Deputy High Commissioner for Refugees, testified before Congress on behalf of the American Friends Service Committee by suggesting that the refugee definition "be expanded so that some refugees could be admitted on a continuing basis regardless of country of origin (CQ Almanac 1965, 475)." But because the US had not signed on to Refugee Convention, these groups could not argue that policy violated international treaties.

While refugee advocates far outnumbered those who expressed opposition to greater refugee admissions, such concerns were far from absent. Groups such as the American Coalition of Patriotic Societies feared that admitting people from communist countries would pose a security threat as such persons might bring with them subversive ideologies. In a similar vein, Karl Speiss of the Homeowners Association of Arlington²³

²³ According to the Congressional record, this group's interest in immigration policy was ill-defined and ambiguous. Several Congressmen who presided over the hearings openly questioned the purposes of the Homeowner's Association.

remarked,

In this day of the Cold War and a world burdened with intrigue and treachery, which, incidentally is rife in our country, it would appear that we must be careful to prevent infiltration of foreign ideologies... It would be a burden on our immigration service and further jeopardize our internal security (United States 1965, 224)

A few private individual also spoke out in opposition to the bill. One woman, in a scathing indictment of liberal immigration policies remarked,

Masses of poorly screened immigrants have too often become undigested lumps of frustrated, undiluted foreign ideology and habits, pawns of some of the world's worst elements (CQ Almanac 1965 477).

Still, because the debate was focused on immigration broadly defined, the nature and direction of refugee policy was not of central concern. While refugee advocates made their presence strongly felt, successfully lobbied in favor of more regularized admissions policies, and supported the idea of refugee protection as a whole, they were not as successful in changing the wording of the law to conform to international standards. Furthermore, neither the INA nor the earlier Acts established a clear system for accepting and adjudicating asylum applications, a practice which was covered under international law. The U.S. had not yet ratified global refugee agreements and NGO's were not able to argue that the U.S. was bound by them. Those who opposed the INA reforms, while few in number,²⁴ were generally more concerned about the overall direction in immigration policy, and as such, very few spoke directly to the refugee question.

During this period, refugee crises did prompt Congress to enact legislation aimed

²⁴In Congressional Quarterly Almanac it was noted, "During the two days of debate, there was little opposition to the bill as a whole." (CQ Almanac 1965, 472)

at the protection of such persons. Refugee advocates, for their part, worked towards humane policies for the world's uprooted - and they were at times successful- but they did not have recourse to international law. They could not argue, as they would in later decades, that the US was bound - through ratification - to the principles of refugee protection outlined in international agreements. This would, as we shall see, soon change.

Refugee Policy After 1968:

In 1967, the United Nations adopted the Protocol to the Refugee Convention which committed states that ratified it to *ex post facto* apply Articles 2-34 of the 1951 Convention and greatly expanded the scope of the international refugee regime (see Ch. 2). This time the Senate was quick to ratify the Protocol - which was considered as a binding international treaty - and went into force in 1968. The composition of the Senate had changed, and the growth in numbers and influence of refugee advocacy groups between 1951 and 1968 produced tangible results as they formed a strong lobby in favor of the treaty's passage and ultimately had their demands met. According to Laurence Dawson of the Department of State, who testified before the Senate on behalf of ratification, 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)." Advocacy groups were thus instrumental in the drive for ratification. Interestingly, Senator Claiborne Pell (D-RI), who sat on the Foreign Relations Committee, was also the Vice President of the International Rescue Committee, on the Board of the American Immigration Conference, and was a member of the National Council for Refugees. Not surprisingly, Senator Pell was fiercely committed to ratification as was Senator Edward Kennedy who also served on the Foreign Relations

Committee. President Lyndon Johnson himself supported the Protocol: “It is decidedly in the interest of the United States,” he wrote, “to promote this United Nations effort to broaden the extension of asylum and status for those fleeing persecution (Johnson, 1968).”

While the U.S. had agreed to follow international standards of behavior in principle, it did not change the INA nor government practice to conform to international law for over a decade. The refugee definition remained limited and a clearly defined asylum policy had yet to be developed. Church groups, immigration lawyers, and human rights NGO’s condemned this failure and actively worked to change the law; yet because new refugee emergencies with direct impact on the United States were largely absent until the mid 1970’s, and Congress and the President had more immediate concerns (notably, the Vietnam War), changing refugee policy was not high on the government agenda. As was noted above, policy in this issue-area tends to be reactive, and because there was no glaring need to change domestic refugee law, the Protocol would have to wait before it was implemented.

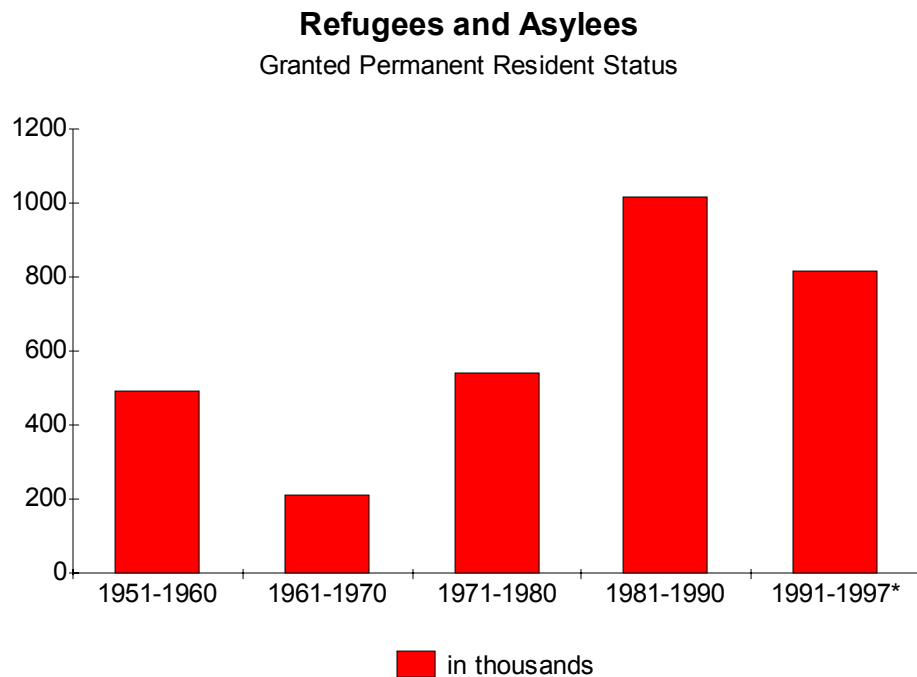
The first major international crisis that the U.S. would have to deal with in this period followed the withdrawal from **Vietnam** and the fall of the Theiu government in 1975. Events in **Cambodia** and **Laos** also sparked a large exodus of people destined for the United States. Despite the polls showing that the public was opposed to massive Indochinese immigration (see above), President Ford, leaders in Congress, as well as several NGO’s and church groups felt that it was America’s duty to help its associates in Vietnam escape the communist takeover. To this end, several NGO’s, working closely with officials in the State Department, formed the Citizen’s Commission on Indochinese Refugees which mobilized support among the public as well as policy makers for the Indochinese (Zolberg 130-131). Given the INA guidelines, which allowed only 17,400 refugees to enter under the seventh preference category, the President had to exercise his

parole authority to deal with the large number of escapees. Congress endorsed this measure, passed the **Indochinese Refugee Act** of 1977 and the **Refugee Parole Act** of 1978 which collectively admitted over 300,000 people (*INS Statistical Yearbook 1997*).

The NGO community was keenly aware that existing laws and procedures - including provisions for resettlement assistance - were not adequate in dealing with the evacuation of the Indochinese nor the influx of “boat people” who were part of later waves of migration. Moreover, they continued to criticize U.S. failure to conform to the principles of the UN Refugee Convention. The 1979 revolution in Iran, which prompted thousands of Iranians friendly to the U.S. to seek asylum, also aroused the concern of both the NGO community and the public at large. Congress, for its part, was unsettled by the exercise of nearly unrestrained authority by the President in directing refugee policy through the use of his parole powers. These forces agreed that the *ad hoc* manner in which refugee policy had been made was far from optimal and had to be reformed.

Debate Over the 1980 Refugee Act. Major reforms to refugee policy came with the passage of the 1980 **Refugee Act** which can be seen as a response to the Indochinese crisis. This Act raised the ceiling for refugee admissions; eliminated the practice of holding refugee admits against annual immigration limits; consciously changed the definition of “refugee” to conform to the UN definition; created a system for the orderly adjudication of asylum claims; and created social service agencies which were to assist refugees in the process of resettlement. The president would have the authority to determine on an annual basis the number of refugees who would be admitted to the U.S. from each of five regions (Europe/USSR, Asia, Near East, Africa, and Latin America) based on world-wide refugee numbers, and would be able to raise the limit according to special unforeseeable circumstances. This allowed for much flexibility and enabled refugee policy to change according to world events. Congress was tasked with approving

or rejecting the annual numbers. As the graph below will show, the Refugee Act had the effect of nearly doubling refugee admissions over the previous decade.



*Last year available

(Source, *INS Statistical Yearbook, 1997; IRC Annual Report 1997-1998*)

The debate leading up to the passage of the Refugee Act illustrates the same tendencies which marked the immigration and refugee debate in earlier decades. While the majority of the public dimly did not wish to see immigration levels increase, they were mostly indifferent to what was taking place on Capitol Hill. The influx of refugees from Vietnam and the Caribbean (now including Haiti) ignited public alarm over the direction of refugee policy, but aside from a few groups and individuals, these concerns were not well represented. Interestingly, several members of Dade County's (Miami)

municipal government appeared before Congress to express their apprehension as to the social impact of increased refugee admissions. The Superintendent of Schools remarked upon the added burden to Dade County's educational system Cuban and Haitian refugees had created, and the County Commissioner raised concern over the \$2.7 million in social services used by Haitian refugees alone (United States HR 1979, 3-31). These individuals made a strong case for federal reimbursement of the costs of refugee resettlement born by state and local governments. Similar testimony was made by representatives from departments of social services in Pennsylvania, California, and New York. However, despite the growing public hostility towards refugees from Cuba, Vietnam, Cambodia, Iran, and Haiti, the isolated voices mentioned above were the only real opposition to the bill from the public.

Notably, much more opposition came from individual Congresspersons who were wary of the bill's purported effects. Especially vocal in his opposition was Senator Strom Thurmond (D-SC) who remarked, "Our nation and other nations must weigh the cultural and demographic impact of the refugee problem (United States S, 1979, 3)" Representatives John Conyers (D-MI) and Barbara Jordan (D-TX) also opposed the bill fearing that refugees would compete with domestic minority groups - potentially depressing wages and hurting their job prospects (Gimpel and Edwards 120). The most debate, however, was over the establishment of social service agencies for refugees and the types of aid they would be responsible for providing. The establishment of the Office of Refugee Resettlement under the purview of the Department of Health, Education, and Welfare (which later became the Department of Health and Human Services) was especially controversial, but ultimately passed.

These voices of opposition were overwhelmed by the concerted effort on the part of numerous NGO's who actively supported the bill's aims. Having honed their skills over the last several decades, these groups proved to be effective advocates for the rights

of refugees. Among the groups which testified before Congress were: the Lutheran Immigration and Refugee Services, Amnesty International, the Church World Service, the Citizens Commission on Indochinese Refugees, the Council of Jewish Federations, and the International Rescue Committee (see table below). Notably, even the AFL-CIO (a prominent labor union) strongly endorsed the measure, “the American labor movement, many of whose members and leaders came to this country as refugees, has a deep and abiding commitment to aid refugees from discrimination and oppression (United States HR, 1979, 356).”

*Table 3-2. Groups Testifying Before Congress (House Committee on the Judiciary)
in Favor of Greater Refugee Protections, 1979*

AFL-CIO
American Civil Liberties Union
American Council on Voluntary Agencies for Foreign Service
American Friends Service Committee
American Jewish Committee
American Refugee Committee
Amnesty International USA
Church World Service
Citizens Commission on Indochinese Refugees
Council of Jewish Foundations
Governor's Information Center for Asian Assistance (Illinois)
International Rescue Committee
Lutheran Immigration and Refugee Services
National Coalition for Refugee Resettlement
Society of Jesus in the United States
U.S. Catholic Conference
United Israel Appeal

(Source: United States, Refugee Act of 1979)

Importantly, many of these refugee advocates and NGO's spoke using the language of the UN Refugee Convention and called for the implementation of its principles. This time, groups could argue that the US was bound by the terms of the refugee regime - both legally and morally - by its ratification of international instruments.

In a prepared testimony praising the changes made by the 1980 Act, several NGO's, represented by Wells C. Klein of the Committee on Migration and Refugee Affairs, remarked:

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

In a statement by the AFL-CIO, it was noted,

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 Conventional and Protocol Relating to the Status of Refugees. Above all, it reflects international reality (United States HR, 1979, 357)

In a similar vein, representatives from Amnesty International commented:

The increase in the number of 'normal flow' 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 (United States HR, 1979, 168).

Amnesty, however, made some reservations about certain provisions of the Act which it deemed as violating the spirit of international law, but such reservations did not deflate the organization's overall support of the changes. It must also be noted that these groups were not merely praising the proposed changes in policy *ex post facto*, but had been active in pursuing change for years. By means of direct action and pressure, these organizations made a strong case for the adherence to international standards of behavior and ultimately achieved many of their policy preferences.

Several Members of Congress also gave their support to the principles of refugee

protection and adherence to international law. Especially active in the refugee debate was Senator Edward Kennedy (D-MA) who called for broad protections for the world's persecuted. In March of 1979, Senator Kennedy wrote an editorial piece in Newsday magazine in which he declared his support for many of the positions taken by refugee advocates, including conformity to international law (United States S, 1979, Appendix). Representative Elizabeth Holtzman (D-NY), who chaired the Subcommittee on Immigration, Refugees, and International Law, also advocated stronger protection of the rights of refugees and asylum seekers as part of the nation's "humanitarian tradition (United States HR, 1979, 1)." She further noted,

Current statutory provisions are outdated, unrealistic, and discriminatory. Even the definition of refugee - limited geographically and ideologically to persons fleeing from the Middle East or from the Communist countries - is a cold war relic (United States HR, 1979, 1).

In the end, the measure passed overwhelmingly, thanks in large part to the activities of refugee advocacy groups and a few dedicated Members of Congress. The timing of the Act - during the Indochinese refugee crisis - was also fortuitous as the plight of refugees necessitated immediate attention.

Later events would prove the timing of the Act to be particularly auspicious because in April of 1980, Fidel Castro allowed a mass exodus of political dissidents and common criminals to leave Cuba. During the crisis that followed over 100,000 Cubans sought political asylum in the United States in an operation that came to be known as the **Mariel Boatlift**. At about the same time, thousands of **Central American** refugees, escaping civil war and persecution, came to the US in search of political asylum. These

events had the effect of heightening public anxieties about refugee entries and sparked quite a bit of discussion as to the status of the asylum-seekers. While there was a definite Cold-War bias as to who gained entry (Cubans and Nicaraguans escaping leftist regimes v. El Salvadorans and Guatemalans escaping regimes allied with the US), these flows were largely covered by the Refugee Act and did not necessitate dramatic changes in policy.

Then, what had previously been a steady stream of asylum-seekers from **Haiti**, became a genuine refugee crisis in 1991 after Haitian President Jean-Bertrand Aristide was ousted in a coup. Reagan had initiated the practice (which was continued by Bush and Clinton) of interdicting boats leaving Cuba and Haiti en route to Florida and returning them with little, if any, procedures to determine the refugee status of the people on board - a practice which many claimed violated the non-refoulement principle in international law. This lack of due process was justified on the grounds that such migrants were not thought to be *bona fide* refugees but rather economic immigrants (a dubious claim), and that if they had not reached U.S. waters, such persons were not guaranteed the right to a hearing as U.S. legal protections do not extend beyond its borders. This policy produced many tragic results and drew the intense opposition of refugee advocacy organizations.

U.S. policy towards Haitian refugees aroused the greatest controversy during the Clinton administration as the numbers of asylum-seekers mounted. According to one report issued in 1994, despite wide-spread human rights abuses in Haiti, the United States had returned 30,000 of 42,000 asylum-seekers, most of them with minimal inquiries as to their status, and over 7,000 of those returned received no hearing at all (Amnesty International 1994, 1). The U.S. commitment to the principle of non-refoulement was again called into question as many of these migrants were promptly detained upon their return to Haiti. While many Florida residents had grown weary of accepting ever greater

numbers of Caribbean refugees, many prominent NGO's took up the cause of the Haitians. Several African-American groups, including the Congressional Black Caucus (CBC), viewed the exclusionary policies towards Haitians - who were overwhelmingly black - as blatantly racist (Zolberg 141-148). Refugee advocacy groups again invoked international law; in an Amnesty International publication it was stated:

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 refugee crisis was ultimately mitigated when Clinton authorized 20,000 peacekeepers to land in Haiti and brought President Aristide back to the island. The intervention quelled the emergency before Congress had time to respond to the refugee flow.

During the same period, the Soviet Union had collapsed causing asylum applications to rise, the U.S. was experiencing a major economic recession, and public calls for immigration restriction were becoming more pronounced. Immigrants, especially undocumented migrants, were viewed with increasing suspicion. Nation-wide polls taken in 1993 and again in 1995 showed that a full 65 percent of the population was in favor of reducing immigration levels (see Table 3-1). The public demanded greater border enforcement, stiffer penalties for those that hired illegal immigrants, and the denial of social services such health care and education to certain immigrants. Civil rights and minority groups protested restrictive measures (such as Proposition 187 in California) arguing that such enactments went too far and violated the principles of fairness and equality under the law. While the debate focused on reducing or halting illegal immigration, there were also calls for asylum reforms as the number of applicants

rose dramatically (see table 3-6). “Every single person on the planet Earth,” said one spokesman from the Federation for American Immigration Reform, “can stay indefinitely by saying two magic words: political asylum (Pistone 1998).” While only approximately 20% of asylum applications were approved from 1993-1996 (Immigration and Naturalization Service 1997, 87), the political asylum system, it was argued, had become a back-door by which those with illegitimate claims could avoid being deported.

Unable to resist public demands for immigration restrictions, Congress passed the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). The 1996 Act mainly focused on illegal immigration, but it also made procedural changes to the asylum system. The IIRIRA requires that an asylum-seeker submit an application no more than one year after his or her entry into the country or face expulsion; it created a team of immigration officers (who were not qualified judges) that had to power to review cases at ports of entry and summarily remove asylum-seekers who’s claims are deemed unfounded; it makes ineligible for asylum persons who passed through a “safe third country” before coming to the U.S.; and lastly, the IIRIRA calls for the detention of asylum-seekers while their cases are being reviewed. All of these provisions made it more difficult for an applicant to successfully obtain political asylum, but the changes were not as drastic as some have claimed and cannot be taken as violating international law.

Many NGO’s protested the restrictive changes in asylum policy, feeling that if the measure did not violate the letter of international human rights law, it at least violated the spirit of the law. In a report which condemned the practice of detaining 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, including the U.S. Committee for Refugees and Amnesty International have made similar complaints. As of this writing, asylum laws have been relaxed somewhat as Congress, responding to these criticisms, has loosened a few of the provisions of the IIRIRA. NGO's however, continue in their calls for the repeal of what they perceive to be overly harsh measures enacted in 1996. Their pleas will likely prove successful as with a booming economy, the American public has softened its restrictionist views on immigration (Gillespie 1999; Table 3-1), leaving refugee and immigration advocates with the dominant voice on Capitol Hill.

In sum, refugee policy in the United States is often formed in response to international events which raise the visibility of this issue-area. Most of the time refugee policy receives little notice, both on Capitol Hill and amongst the public at large; but during periods of revolution, war, and other such crises, attention towards the inflow of people grows. It is during these periods that policies are debated, worked out, and revised.

The table below lists the major crises which have prompted policy makers to enact new refugee legislation. World War II, the Hungarian Uprising, the Cuban Revolution, the Indochinese exodus, and the Haitian crises, all precipitated policy responses. Many of the acts - such as the Cuban Refugee Act and the Indochinese Refugee Act - were limited to specific refugee groups. Other policies, namely the 1965 INA reforms and the 1980 Refugee Act sought to better regulate refugee admissions as a whole, and were not geographically nor temporally limited. Yet in all cases, it was events abroad which stirred the national debate and induced changes in refugee policy.

Table 3-3: U.S. Refugee Policy: 1945-Present

Crisis	Response
1945- end of WWII - Hundreds of thousands displaced by the War and unable to be repatriated. Jewish, German, Eastern European refugees.	Displaced Persons Act 1948 Refugee Relief Act 1953
1956 - Hungarian Uprising	Refugee-Escapee Act 1957
1959 - Cuban Revolution - Cuban refugees come to South Florida, initially temporarily, but status later adjusted to permanent resident	Immigration and Nationality Act 1965 (regularizes refugee admissions) Cuban Refugee Act 1966

1968 - Ratification of the UN Protocol on the Status of Refugees

1975 - Fall of Saigon - Events in Vietnam, Cambodia, and Laos prompt thousands of refugees to come to the United States	Indochinese Refugee Act 1978 Refugee Parole Act 1978 Refugee Act 1980
1990's - Huge growth in asylum requests. Haitian refugees.	Illegal Immigration and Immigrant Responsibility Act 1996

It is during these crises, furthermore, and the debates surrounding them, that NGO's become particularly influential. During periods of intense debate, refugee advocates mobilize most actively in favor of their policy preferences. Moreover, because refugee policy is often on the "back-burner" in Congress, and such NGO's are actively involved in this issue-area, they become a valuable source of information and are able to shape Congressional opinion through direct lobbying. Furthermore, as was shown, refugee advocacy groups tend to have higher levels of organization and experience than the relatively unorganized, restrictionist public. Because advocacy groups generally have more to gain through liberal refugee policies than restrictionist organizations have to lose, they are usually more vocal and, as such, more successful in influencing policy.

For these refugee advocacy organizations, the international refugee regime becomes a particularly useful leveraging device in their public rhetoric. Since 1968, when the United States ratified the Refugee Convention, such NGO's have been able to

wield a powerful weapon - appeals to international treaty obligations. They use international law in order to assess US policy and urge reforms which they feel better adhere to international standards.

As such, we may compare legislation enacted before the US acceded to the Refugee Convention to those enacted after such time (see table). All legislation before 1968 deviated in one way or another from internationally recognized principles. The U.S. did not use the widely accepted Convention definition of “refugee,” nor had there been a system for the adjudication of asylum claims. True, NGO’s did make appeals to the international norms outlined in the 1951 Convention, but as the US had not ratified the agreement, there was not a sense of obligation to it. After 1968, however, advocacy groups were better able to use the language of international law in order to press for their policy preference as they could then point to US ratification of the Protocol. Thus, when legislators entered into debates over the 1980 Refugee Act, lobby groups were able to invoke US international treaty obligations, and were remarkably successful in pushing for policies which conformed to international law.

Yet, one may ask why it took twelve years - between 1968 and 1980 - for US policy to conform to international standards. As has already been mentioned, refugee policy is reactive - government practice tends to change only during periods of crisis. At other times, the issue is not hot on the government agenda and little action is taken to change policy one way or the other. It was, therefore, the Indochinese crisis that created an opening for refugee advocates to come out into the forefront and make the case for their positions. Only then were they successful in driving legislation closer to the international norm.

The other major asylum-related legislation enacted after 1968 was the 1996 IIRIA. At that time, popular appeals for streamlining the asylum system were successful, largely because voters, responding to the poor economy, became much more vocal about

immigration. Refugee advocacy groups fought hard against the more draconian parts of the 1996 Act - again by using appeals to international law. While the bar was raised for asylum applicants, the changes to the asylum process were relatively minor, and cannot be taken as violating international law. Without NGO activism and their invocation of international agreements, it was likely that the measure would have gone further in curtailing rights to asylum.

*Table 3-4. Refugees and Asylees Granted Permanent Resident Status by
Enactment²⁵ 1945-1996 (in Thousands)*

²⁵Refugees admitted as part of the 1965 Immigration and Nationality Act not included. Such refugees were part of regular immigration numbers under the seventh preference category.

Total*	3220
Presidential Directive 1945	40
Displaced Persons Act 1948	409
Orphan Act 1953	0.5
Refugee Relief Act 1953	189
Refugee-Escapee Act 1957	29
Hungarian Refugee Act 1958	30
Azores & Netherlands Refugee Act 1958	22
Refugee Relatives Act 1959	2
Fair Share Refugee Act 1960	20
Refugee Conditional Entrants Act 1965	142
Cuban Refugee Act 1966	550
Indochinese Refugee Act 1977	175
Refugee Parole Act 1978	139
Refugee Act 1980	1470
-Refugees	1367
-Asylees	113

(Source: INS Statistical Yearbook 1997)

*Totals affected by rounding

Table 3-5. Refugee Admissions By Region 1989-1996(Selected Overseas)

	Africa	East Asia	Eastern Europe and Soviet Union	Latin America and Caribbean	Near East	Total
1989	1825	35196	48620	2848	7016	95505
1990	3318	30613	58951	1861	4952	99697
1991	4430	33560	62582	2263	5127	107962
1992	5667	31751	68131	4121	5660	115330
1993	6813	38314	52090	3991	4818	106026
1994	5748	40639	48963	2513	7229	105137
1995	4895	23023	45900	1933	3068	78936
1996	9681	11891	47611	982	4246	74491

(Source: INS Statistical Yearbook 1997)

Table 3-6: Asylum Cases Filed With the INS 1973-1996

Year	Cases Received	Cases Approved (Of Cases Completed)	% Approved
1973	1913	380	25
1974	2716	294	11
1975	2432	562	34
1976	2733	590	31
1977	2529	754	39
1978	3702	1218	53
1979	5801	1227	53
1980	26512	1104	55
1981	61568	1175	26
1982	33296	3909	35
1983	26091	7215	30
1984	24295	8278	20
1985	16622	4585	24
1986	18889	3359	30
1987	26107	4062	54
1988	60679	5531	39
1989	101679	6942	18
1990	73637	4173	15
1991	56310	2108	34
1992	103964	3919	38
1993	144166	5012	22
1994	146468	8131	22
1995	154464	12454	20
1996	128190	13532	22
	Total	Total	% of Total Completed & Approved
	1224763	808926	24

(Source: INS Statistical Yearbook, 1997)

IV. Refugee and Asylum Policy in Canada

Much as the United States, Canada is a land of immigrants. Settlers from Northern and Western Europe - particularly England and France - were the earliest non-indigenous inhabitants of the region. Later waves of immigration brought Eastern and Southern European migrants to Canada, and during the last several decades, thousands have arrived from Asia, Latin America, and Africa. These waves of mass immigration was, and still is, vital to the economic growth of the country as labor is needed to cultivate the land and work in manufacturing centers. As in the United States, a large numbers of the original settlers came to the “New World” in order to escape persecution. Canada was also a major destination for Black slaves who journeyed through the Underground Railroad in order to escape their bondage in the US. Yet a clearly defined refugee policy - as a distinct immigrant category - would not be formed until years after the Second World War.

This chapter will proceed much as the previous one and confirms many of its findings. The first section will outline Canadian public opinion, interest group politics, and the role of the Canadian government, as they relate to refugee policy. The second section will give a chronological overview of the major events in refugee policy making. As in the United States, refugee advocacy groups have had considerable influence over policy and have championed international refugee law.

The Debate Over Refugee and Asylum Policy in Canada

Canada, like the US, has always been aware of the need to regulate immigration

in order to bring about the greatest benefit to the country. Yet, as one might expect, there are several differences of opinion as to what good policy should consist of. Who and how many people should be allowed to immigrate to Canada are central concerns in the debate over immigration policy. Refugee admissions are similarly contentious. Should Canada admit as many refugees as possible? If so, just how many *are* possible? In what ways should the government support these refugees? As in the United States, while these questions are important, other issues tend to overshadow the immigration and refugee policy debate - immigration becomes a hot topic only sporadically. "In the United States and Canada," Philip Martin writes, "opinion polls report that most residents want immigration levels reduced, but controlling immigration ranks well below controlling taxes, crime, and health care costs... (87)." This having been said, how do the major actors in the Canadian refugee policy debate line up?

Public Opinion. As in the United States, the majority of Canadians are opposed to liberal immigration policies. Polling data on Canada has consistently shown that Canadians do not favor increased immigration. A poll taken by Decima in 1998 reported that in British Columbia and Alberta - major immigrant destinations - 44.5% and 49.4% of respondents, respectively, thought that current immigration levels were too high, while only 6.8% and 6.4% thought them to be too low. In Toronto, 67% of the population thought that there were too many immigrants in the city (Globe and Mail, March 10, 1994). Thus, a greater proportion of Canadians favor more restrictive immigration policies than a liberal ones.

The arguments against immigration are also nothing new to Canada. A major reason for wanting immigration levels reduced is based upon the perception that immigrants hurt the economy. The same 1998 Decima poll showed that 50% of Canadians favored (compared with 43.95 opposed) a moratorium on immigration so that

unemployment could be reduced ([www.canadafirst.net/ what_the_polls_say.html](http://www.canadafirst.net/what_the_polls_say.html)).

Concerns over the social impact of immigration are also part of people's opposition to liberal immigration policies. Social ills such as crime and drug abuse are often attributed to immigrants. In comparing US and Canadian anti-immigration attitudes, Manuel Garcia y Griego writes, "complaints about immigrants taking away jobs or obtaining access to Canada's generous social welfare system" are heard both in the United States and Canada (131). Lastly, many are opposed to the demographic changes to Canadian society that immigration entails. A 1987 Gallup poll reported that 78% of Canadians expressed some degree of concern that immigration would change the "ethnic and cultural balance" of the country.

Similar polls which deal specifically with the refugee question are harder to come by, but as in the United States, it is generally the case that refugees are not distinguished from other immigrants in the eyes of the public and are viewed with similar apprehension. For example, in 1987, when a group of 174 Sikh refugees arrived on the coast of Nova Scotia, the public viewed the event with alarm and suspicion, fearing that Canada would soon receive waves of "boat-people" to its shores (Garcia y Griego 128-129; Adelman, et. al. 1994, 119).

Still, as noted earlier, immigration and refugee policy does not rank high amongst Canadian's list of concerns. The perceived costs of immigration are diffuse and not palpably felt amongst the vast majority of people. Thus, the public generally remains silent about refugee policy, allowing interest groups with a more direct stake in the matter to take on a greater role in the national debate. Yet as in the US, one may also expect the public to become more vocal in its policy preferences during periods of economic downturn and high levels of immigration.²⁶

²⁶Interestingly, Canada has traditionally had a higher proportion of immigrants relative to the general population than the United States. What constitutes "high levels," then, varies from one country to another.

Interest Groups. Interest group pressure in Canada is not unlike such pressure elsewhere. Several groups such as employers, refugee resettlement agencies, immigration lawyers, and human rights groups, have a direct stake in Canadian immigration and refugee policy. These groups provide information to public officials, publicize their positions, hold letter writing campaigns, and engage in high-profile events in order to influence policy. There are three broad categories of refugee advocacy organizations: 1) humanitarian aid organizations, 2) legal assistance organizations, and 3) human rights groups. Most, if not all, of these groups consciously herald the principles of international law in their public discourse. As in the US (and for similar reasons), these groups are more numerous, relatively stronger, and more organized than restrictionist groups.

One of the most influential refugee advocacy organizations is the Canadian Council for Refugees (CCR) which serves as an umbrella organization representing dozens of the country's most prominent NGO's. The CCR, furthermore, constitutes a strong voice for the adherence to international law. According to their mission statement,

Refugees, refugee claimants, displaced persons and immigrants have the right to a dignified life and the rights and protections laid out in national and international agreements and conventions concerning human rights.
(CCR website: www.web.net/%7Eccr/whowe.html).

A similar group, the Inter-Church Committee for Refugees (ICCR) represents ten religious denominations in Canada and actively promotes liberal refugee and asylum policies. They are also remarkably vocal about their support for international refugee law and have frequently engaged in parliamentary debates (www.web.net/~iccr/index.html).

Other groups include Amnesty International - Canada, the Refugee Lawyers

Association, the Victoria Immigrant and Refugee Centre, and the Catholic Immigration Centre. Amnesty International - Canada, has been quite active on refugee matters for quite some time and has support from other AI chapters throughout the world. Other organizations, whether they be professional organizations such as the Refugee Lawyers Association, or religiously-based organizations such as the Catholic Immigration Centre, are also well-represented in Ottawa and similarly espouse internationally-recognized principles of refugee protection.

Among the more active restrictionist groups are Canada First, a group which associates social ills such as unemployment, crime, and health threats with immigration. Among its more extreme claims is that Canadian society has become “perverted, changed, and distorted” by non-European immigration. They seek to limit all forms of immigration, including refugee admissions, and can be regularly found on Canadian radio and television (www.canadafirst.net). A similar group, Citizens for Foreign Aid Reform (CFAR), makes similar claims and is especially hostile towards refugees. On their website they claim, “People can simply show up in Canada and declare that they are refugees. Immediately they are given welfare, legal aid, medicare, and other benefits (www.populist.org).”

In response to many of these fears, national political parties have also begun to take positions on immigration policy. According to the Reform Party platform, “It is abundantly clear, however, from our ongoing consultations, that Canadians from coast to coast have serious concerns about Canada’s immigration system. This is a problem which must be addressed quickly and systematically (www.reform.ca/immrep/index.html).” Hence, immigration has become increasingly important in Canada’s political climate.

Parliamentary and Bureaucratic Politics: Canada’s Parliamentary system is modeled

after the British system whereby the Prime Minister comes from the dominant party in Parliament, making legislation relatively easy to implement as the party usually goes along with the Prime Minister's directives. As such, Parliament has tended to allow the Prime Minister and Cabinet much discretion over immigration policy, especially in comparison to "core" issues such as healthcare and crime. Under this system, Canadian immigration policy has often been formulated by the heads of various ministries who are appointed by the Prime Minister. These bureaucratic officials, who have much power over policy outcomes, are not directly elected but are chosen by the government. A commentator in 1975, noting the insular nature of Canadian immigration policy, remarked, "Immigration has always been and continues to be managed by Cabinet and a very small group of senior officials (Freda Hawkins, as quoted in Garcia y Griego 123)." In recent years, Parliament has taken an increasing interest in immigration and refugee issues, but the various bureaucratic agencies still retain much power in directing policy.

The bureaucratic agencies responsible for immigration, naturalization, and refugee policy have changed over the years, taking on new names and identities such as the Ministry of Immigration, Employment and Immigration Canada, and more recently, Citizenship and Immigration Canada. What they all have in common, however, is that the various immigration agencies have been responsible for initiating important policy changes which the Parliament, more often than not, endorses. Another agency, the Immigration and Refugee Board, is responsible for adjudicating refugee and asylum claims, but this quasi-judicial agency has also had influence over the direction of policy.

While Parliament could, if it wished, take a much more active role in regulating immigration, it has tended to defer control over this issue to Cabinet. Parliament cannot be characterized solely as a rubber stamp for the Cabinet's policies however. MP's may introduce and debate policy, and propose amendments to legislation. There have also been lively intra-party debates as to their respective positions on immigration, though

parties often vote as a bloc. Opposition parties in Parliament have also been able to bring public attention to specific government policies which they deem as misguided. Lastly, in times of greatest public concern over immigration and refugee issues, parties have made immigration part of their electoral platforms, and have been called on to keep their promises.

Given this system, we should expect that public opinion has even less of an impact over immigration policy in Canada than in the US. In systems where legislation is bureaucrat-led (such as Canada), policy makers are not beholden to voters for their posts as is the case when elected officials determine policy. Thus, “Canadian policy making,” writes Garcia y Griego, “has tended to be developed in a rather closed fashion through state initiative and relatively insulated from public scrutiny or pressure (123).”

Furthermore, in contrast to the United States - where Members of Congress generally have not developed much knowledge about immigration and refugee issues - in Canada, bureaucrats are selected on the basis of their expertise. This system gives the NGO community considerable influence in Canada. In their capacity to assist in resettlement and legal procedures, they are often able to work together with the various agencies and develop close relationships with them. Moreover, their membership frequently overlaps with the bureaucracies as NGO members are often recruited to work in the government and vice-versa. For example, the current Chairperson of the Immigration and Refugee Board, Peter Showler, was previously an immigration and refugee lawyer, and was the Executive Director of Ottawa-Carleton Community Legal Services (Immigration and Refugee Board website: www.irb.gc.ca/about/chair/index_e.stm). NGO's have the time and resources, which the public at large lacks, to develop close working relationships with the immigration agencies, and are able, through personal connections, to influence policy. These organizations, then, can be thought of as the bureaucracy's “constituency.”

Canadian Refugee and Asylum Policy Since W.W.II:

The same trends which influence U.S. refugee policy also come to bear on policies in Canada. International events often precipitate policy changes; policy reacts to new waves of refugees. Advocacy groups, who espouse the global refugee regime, are particularly active and most effective during these periods of crisis. Yet because the Cold-War was not as central to Canadian foreign policy, policy makers in that country were more flexible in their interpretation of global events. Furthermore, the bureaucratic nature of Canadian immigration policy has had the effect of insulating policy makers from popular demands for restrictions. These factors: the efficacy of activist groups, fewer foreign policy constraints, and bureaucratic decision-making, have lead Canada to adopt liberal refugee and asylum policies.

In determining the impact of the international regime, as in the previous case, we may distinguish between two periods in Canadian refugee policy since the Second World War: 1) from 1945 until 1969²⁷, when Canada ratified the Protocol to the UN Convention on Refugees; and, 2) the period since ratification, from 1969 to the present. As in the United States, refugee advocates were much more effective in their demands for the adherence to international principles in the latter period. Before Canada had formally acceded to the international refugee agreement, NGO's were not able to point to any binding commitment to the global regime. But after ratification, when crises came up, these organizations were able to point to Canada's international treaty obligations and were quite effective in directing policy towards a liberal interpretation of the regime.

²⁷While the UN Refugee Convention came into force in 1968 in the United States, it was not until 1969 that Canada formally acceded to the international agreement.

Refugee Policy Before 1969:

Rather than speaking of early Canadian refugee policy, it might be more appropriate to discuss the lack of it. As Gerald Dirks has indicated, it was not until the 1970's that refugees constituted an admissible class of immigrants, distinct from other immigrant categories (61). This lack of refugee procedures was despite the fact that three important Bills relating to immigration (discussed later) generated much discussion and controversy. Refugees were admitted into the country on an *ad hoc* basis by special orders in council, but these limited programs did not constitute an ongoing, well-specified program for the admission of refugees; nor were they a product of, or subject to, Parliamentary action. They were special initiatives of the Cabinet, not formal policies.

The first international crisis that Canada responded to came in the aftermath of **World War II**, which left millions of people displaced and unable to return to their homes. While Canada, like other western nations, refused to admit large numbers of Jewish refugees during the war, its response to the post-war crisis was markedly different. Of those refugees (Jewish or non-Jewish) resettled abroad between 1947 and 1952, Canada took in a full 10 percent, estimated at 186,000 people (Adelman 1991, p.189). Again, there was no formal enactment of these programs - such persons came under the prerogative of the Cabinet. During this period, the United Nations adopted the Refugee Convention, but Canada failed to ratify the treaty because it viewed itself as a country of *temporary* asylum and it desired to retain control over who was allowed to enter (Adelman 1991, p. 190).

The **Hungarian Uprising** in 1956 also prompted Ottawa to act. Through the special powers of the Cabinet Canada admitted 38,000 Hungarian refugees, bypassing normal immigration criteria (Dirks 61). Many governmental and non-governmental organizations were involved in the Hungarian resettlement efforts. According to Howard Adelman (1991), "Non-governmental organizations, universities, local communities,

private sponsors, and the provincial and federal governments worked in a coordinated fashion to make the resettlement effort a success (191).” Adelman also notes that the influx of Hungarians coincided with a period of economic prosperity in Canada which assuaged possible fears as to the absorptive capacity of the job market (192).

A third refugee-producing event during this period, though smaller in scale, was the **Czechoslovakian crisis** of 1968. In that year, the Soviets sent troops to Czechoslovakia in order to overthrow the Dubcek government which was introducing reforms to the Communist regime there. Thousands escaped into nearby countries and Canada agreed to admit 11,000 of those refugees. As before, the program was initiated without formal procedures and was entirely due to Cabinet initiative. To be sure, during this and the two crises that preceded it, NGO’s and other voices spoke out in response (be it positive or not) to these programs, but they had little influence over policy. These programs, being temporary in nature, were not designed to be subject to public scrutiny and were not products NGO demands for refugee protection.

During this time, non-governmental organizations worked to create formalized procedures for the regular admission of refugees and asylum-seekers, though they were unsuccessful in doing so. There were three major shifts in Canadian immigration policy during the period in question, but in neither case were refugees considered (Garcia y Griego 122-123). First, there was an Immigration Act passed in 1952 which for the first time articulated a comprehensive, coherent immigration policy. Next, in 1962 Canada eliminated racist barriers to immigration, which allowed thousands of immigrants from non-European countries, notably Asia, to enter. Lastly, the 1967 Immigration Act adopted a point system by which applicants for admission were ranked according to their attributes and abilities and were selected on the basis of merit. This last Act also allowed for entries on the basis of family reunification.

None of these three pieces of legislation created a formal system for the

admission of refugees, nor did they establish a system for the processing of asylum claims. Ministers in government still held the view that refugee crises were temporary in nature and that permanent resettlement was out of the question; refugees were to return home when conditions allowed it. Moreover, the government was apt to view such admits as more likely than other immigrant categories (i.e., imported labor) to become public charges (Adelman 191-192). Religious groups and NGO's appealed to Parliament to regularize refugee admissions and to create a system for the processing of asylum requests. Yet while refugee advocates could argue that adding such provisions would be humane and just, they were not able to invoke Canada's obligations under international law because Canada had not yet acceded to the Refugee Convention. This situation would change after 1969.

Canadian Refugee Policy Since 1969:

In 1969, Canada signed and ratified the Protocol to the UN Convention Relating to the Status of Refugees. The reason why Canada had agreed to ratify the Protocol owed much to the fact that several Members of Parliament had changed and the international community had come to view the refugee regime as a valuable tool, whereas they had previously been skeptical of its effects. UNHCR operations in Eastern Europe and Africa gave the international refugee regime much credibility, and governments began to realize that refugee crises were an ever-present feature of global politics. Perhaps most importantly, domestic NGO's in Canada had become more numerous and more influential in the years since WWII, forming a strong lobby for the ratification of the international treaty. But as in the United States, Canada did not implement the provisions of the international regime immediately. It would take a series of refugee crises to stir public debate and signal Ottawa to re-work its immigration and refugee policies, moving them closer to international standards.

The first overseas crisis which Canada found itself having to respond to was the persecution of **Ugandan Asians** by the Idi Amin government beginning in 1972. At first, the Organization of African Unity called for the resettlement of the refugees in neighboring countries, but it soon became clear that the neighboring countries were not able to absorb everyone. As Uganda was a former British colony, Commonwealth nations, including Canada, decided to help assuage the refugee burden. In all, Canada accepted just over 7,000 Ugandans (Adelman 194-195).

A second crisis came with the 1973 military coup in **Chile** which brought General Augusto Pinochet to power and deposed the leftist Allende government. Hundreds of Chileans sought refuge in the Canadian embassy (Adelman 195-198). It is interesting to note that at this juncture, the United States (which some claim was complicit in the coup), quickly recognized the Pinochet government and refused to take in large numbers of refugees fleeing from its South American ally in the fight against Communism. Canada, not being a central actor in the Cold-War, did not have such ideological constraints and admitted 7,000 Chilean dissidents.

The third, and most important crisis, came in 1975 when the US withdrew its forces from **Vietnam**. While Canada was not active in the war, it was sympathetic towards the plight of the thousands of refugees fleeing the Communist takeover; and, as a gesture of solidarity with the United States, agreed to take on some of the refugee burden and admit a share of the Indochinese (Dirks 67). This crisis resulted in one of the largest refugee intakes in Canada's history.

In response to these events, the Canadian Cabinet issued the 1976 **Immigration Act** which was officially promulgated and made law by an act of Parliament in 1978. This Act marked a watershed in Canadian immigration policy as refugees became, for the first time, a distinct immigrant class. While the Act brought significant changes to many aspects of the Canadian immigration system, refugee advocates, which had by then

become quite active, were adamant about changing refugee policy to conform to international standards. This time, they were able to effectively make appeals to Canada's international commitments as a party to the Refugee Convention. In the text of the legislation itself, it was declared that the purpose of the 1976 Immigration Act, as it related to refugees, was to "fulfill Canada's international legal obligations concerning refugees and to uphold its humanitarian tradition with respect to the displaced and persecuted" (Quoted in Dirks, 24). Thus, Ottawa was cognizant of, and responsive to, its commitments under the international refugee regime.

It is worth noting some of the major refugee-related features of the 1976 Act here. First, Canada adopted the UN refugee definition and created a class of admissible persons known as "Convention Refugees" which included people who met the international criteria specified in the Convention.²⁸ These were persons who were escaping direct, personal persecution on account of their race, religion, political opinion, etc.

Secondly, the Act expanded upon the UN definition and allowed for the entry of persons escaping refugee-like situations - but who were not refugees in the strictest sense - under a "designated class" provision (also known as Humanitarian Refugees) (Dirks 24). These people need not demonstrate a credible fear of persecution directed at themselves, but must show that their life would be in peril if they were returned to their countries of origin. For example, persons escaping civil war (e.g. Lebanon, Sri Lanka) rather than individual persecution might be included in this class. The establishment of the "designated class" owed much to NGO prodding; the acknowledgment of international realities (the Convention definition had in many ways become outdated); an understanding that such admits would be selected overseas in a well-regulated, orderly manner, consistent with Canada's absorbing capabilities; and, genuine humanitarian concern. Indeed, it was understood that if the letter of the international definition were

²⁸See chapter 2 for a discussion of the international refugee definition.

followed, many of the Indochinese refugees would not have been admissible, hence a broader category would be needed.

Thirdly, while the above two provisions of the Immigration Act were aimed at the overseas selection of refugees, the Act also established a system for the inland processing of asylum claims. People who came to Canada through a port of entry and made a claim for political asylum would have their case heard by a review board. This policy would, in subsequent years, provoke the most controversy because such entries could not be pre-screened nor could immigration officials predict just how many asylees would enter on an annual basis, making resettlement planning and processing the claims difficult, at best.

Canada's refugee policy since the passage of the Immigration Act has been regarded as a model of refugee protection for the rest of the world. The nation's response to later waves of Indochinese refugees was particularly generous as over 100,000 of them were resettled in Canada between 1979 and 1982 (Adelman 1991, 183). This humanitarianism was not shared by all Canadians however; in fact, Adelman (1991) notes that a clear majority of Canadians were opposed to such high figures (213). Refugee advocacy groups, in contrast to the public at large, were strongly in favor of liberal government policies and actually sponsored 25,000 of the Indochinese refugees in 1979 alone (Dirks 66).

The Immigration Act also covered **Polish refugees** who fled the country after 1981, under the "designated class" provision. In that year, the Polish government, responding to the rise of the anti-Communist Solidarity movement, imposed martial law on the country. Many of the refugees fleeing the Communist government were not refugees in the strictest sense of the UN definition (they could not demonstrate that they were personally being persecuted), but they were allowed to enter as a designated class. As Canada already had a sizable Polish community, the ethnic lobby was particularly supportive of generous government policies towards the refugees and were instrumental

in the resettlement process (Dirks 69). Just under 20,000 of the refugees were allowed to remain or enter temporarily between 1981 and 1984 (Dirks 71).

Another crisis that Canada found itself having to respond to involved refugees fleeing from oppressive military regimes in **Central America**, notably El Salvador and Guatemala. Partly because there was no sizable Latin American community in Canada to further the cause of the refugees, and also because the government tended to view these conflicts as America's problem, the government was perhaps slow in declaring Salvadorans and Guatemalans as designated classes. Beginning in 1981, however, responding to pressure from Canadian churches and other humanitarian organizations, the government began to extend its protection to the Central Americans. Dirks notes that "Canadian interest groups proved more active in urging generous, liberalized programs on the government in this Central American crisis than in any other refugee-producing situation (73)." Organizations such as Amnesty International, the Inter-Church Committee on Refugees, and the Inter-Church Committee on Human Rights in Latin America were among the most vocal groups during this period (Dirks 72-73). All of them advocated a broad and generous interpretation of the UN Refugee Convention.

These successes were acknowledged by the United Nations when Canada was given the Nansen Medal in 1986 (named after Fridtjof Nansen, the League of Nations High Commissioner for Refugees: See Ch.2). This was the first time that an entire nation, as opposed to an individual or an organization, was given the highly prestigious awards. To this day, international agencies regard Canada as a model for refugee protection.

Despite these triumphs, the Canadian asylum system was experiencing noticeable strains. While the overseas selection system was, by most accounts, functioning smoothly, the processing of inland asylum requests was in need of reform. Canada's multi-stage determination process and appeals system were designed to give asylum-

seekers a fair hearing, but they proved to be inadequate in dealing with the tremendous growth in applications. In 1977, Canada received only 500 claims, by 1983 that number had grown to 6,100, causing a backlog in applications as the system simply could not handle such numbers. By 1989, the determination system was experiencing a major crisis as there was a backlog of 95,000 cases (Garcia y Griego 135-137). Some claimants would have to wait years before their cases were reviewed, and during such time, many were dependent on government support. While pro-refugee organizations were adamantly opposed to making the asylum system any more difficult on claimants, something had to be done to streamline the process. The public was also growing anxious at the growing number of requests as demonstrated by a *Toronto Star* headline which read: “Refugees Flooding Canada’s Borders Could Hit 30,000” (Adelman 1991, 209).

Two bills passed in 1987 were intended to deter fraudulent claims and expedite asylum procedures. The first was **Bill C-55**. This piece of legislation created a three stage process for the determination of claims which was far less cumbersome than the old system, but also far less meticulous. It also created a provision by which claimants could be removed to a “safe third country” where they would wait until their status was determined. Critics argued that asylum-seekers would have no guarantee of appearing in person during some stages of the new process and they viewed the safe third country provision, which was quite ambiguous, with wariness (Dirks 90-91).

Far more controversial was **Bill C-84**, known as the Refugee Deterrents and Detention Act. The Bill was passed in response to the landing of a boatload of 174 Sikhs in Nova Scotia after having been denied asylum in Europe (Garcia y Griego 128). The arrival aroused much public anxiety about the asylum system. Bill C-84 gave the government the power to detain certain asylum-seekers and imposed penalties on those who knowingly brought undocumented claimants to Canada, including major Airlines.

Most contentious was a provision allowing authorities to turn back boats carrying undocumented migrants while they were still at sea (Dirks 90-91).

These two measures were indeed a step away from the more generous, though unwieldy, procedures of the past. Furthermore, the Bills were more a product of a system that had gotten out of hand than public calls for reform. While they were somewhat more restrictive, Canada still retains a comparatively liberal refugee and asylum system. The 1987 changes, to be sure, drew the criticism of refugee advocacy organizations, but such groups could not rightly claim that international law had been violated by them. While international norms recognize a right to request asylum and the right to a fair hearing, they are far less explicit as to the particulars of the determination process. The new legislation was more of a procedural change than a substantive one; the basic provisions of Canada's policy remains in tact. The right to asylum and a generous overseas determination process are still at the foundation of Canada's policy towards refugees. However, if it were not for the work of refugee advocates and their appeals to international law, the restrictive measures passed in 1987 may have gone further in limiting refugee protection.

In conclusion, the same trends which define American refugee and asylum policy can also be found in Canada. First, policy is reactive; it responds to, rather than foresees, international crises. Second, refugee advocacy groups are most active and most influential during periods of intense debate, usually taking place during a major crisis. Third, these organizations hold policy makers accountable to Canada's international commitments by creating costs for non-compliance to the refugee regime. As such, the NGO community was more successful in their appeals to international law after Canada had formally acceded to the UN Refugee Convention.

Table 4-1: The Evolution of Canada's Refugee Policy

Crisis	Response
1945- WWII Ends	No Formal Policy
1956- Hungarian Uprising	No Formal Policy
1968- Czechoslovakian Crisis	No Formal Policy

1969-Canada Ratifies UN Protocol Relating to the Status of Refugees

1972- Ugandan Asians flee Idi Amin 1973- Chilean Coup 1975- End of Vietnam War	1976- Immigration Act
1980's - Unprecedented numbers of asylum requests	1987- Bill C-55, Bill C-84

As the table above will show, before Canada ratified the Protocol to the Refugee Convention, it lacked a clear policy for the admission of refugees. The admission of mostly European refugees was a product of Cabinet decisions, not formal policies. Without such policies, Canada could not conform to international standards during this period. It lacked a definition of who was to be included as a refugee, it did not have an ongoing refugee admission system, and there was no procedures for the inland processing of asylum claims.

After 1969, however, Canada came to adopt policies which adhered to international law beginning with the passage of the Immigration Act in 1976. This move was largely due to the activism of refugee-oriented NGO's who had been pressuring Ottawa to implement formal procedures for the admission of refugees and the establishment of an asylum system. Crises in Uganda and Chile provoked some debate in government, but it was not until the massive Indochinese refugee crisis that Ottawa finally began to think seriously about its admissions program. The 1976 Immigration Act marked a real shift in Canada's refugee policy as a generous overseas selection program

was adopted and a comprehensive asylum system was put into place.

While the overseas selection system was functioning smoothly, problems with the asylum review system soon surfaced. An enormous backlog of cases bogged down the system and had to be relieved. This, coupled with growing public distrust of asylum applicants, many of whose claims were clearly bogus, led to the passage of the restrictive Bill C-55 and Bill C-84. These measures made it harder for claimants to successfully obtain asylum in Canada, but they were not major blows to the remarkably liberal Canadian asylum system, as some have claimed. Instead, they were relatively minor changes to a government practice which was in dire need of reform. Policy can not be said to have broken international law. Indeed, it is mainly due to the protests of several NGO's that these two bills stopped short of violating Canada's international treaty obligations. Interest groups, heralding international legal obligations, are essentially what drove Canada towards the implementation of the Refugee Convention in domestic law and constrained policies which would otherwise violate it.

V. Conclusion

This project began by asking which factors account for the refugee policies of advanced industrial democracies; and, especially, what role do international regimes play in influencing policy outcomes. As the world is beleaguered by increasingly violent conflicts, I suggested that this issue is one of significant importance, not only to individual states, but also to the international community as a whole. In answering the questions posed by this essay, I suggested the following two-part hypothesis:

- 1) Refugee admissions create a set of “winners” and “losers” within society who then compete to have their policy preferences implemented by the state. The beneficiaries of such admissions want more liberal policies, the aggrieved demand greater restrictions.
- 2) Advocates of liberal refugee programs use the international refugee regime as tool with which to assess their government’s policies. Given that the state has acceded to the regime, these groups then promote adherence to international law and create costs for non-compliance.

These two points are the essence of the argument. In passing, I have also indicated that policy changes tend to occur during periods of international crisis; that states differ in the types of institutions which create policy; and I suggested ways to predict which societal forces will be stronger at a particular point in time. While I have paid more attention to some of these details over others, the thrust of the argument has been made clear: *the international refugee regime matters because NGO’s hold participant governments accountable to their promises.*

Activists lobby their governments, mobilize support for their positions, and discredit policy makers who would violate the international norm. The refugee regime becomes a valuable tool in their efforts as they use it to judge policies and urge compliance with the state’s international treaty obligations. I have also indicated that

because the benefits of liberal refugee and asylum policies are tangible and concentrated on this well-organized constituency (resettlement agencies are kept in operation, asylum lawyers get clients, etc.), and that the perceived costs (possible economic competition, social change) are dispersed amongst a wide segment of the population and are not readily felt, refugee advocates are generally stronger. Furthermore, these advocates are particularly active and more apt to be heard during periods of international crisis which necessitate a prompt government response.

The United States, Canada, and the International Refugee Regime

Both of the cases examined in this paper confirm the argument that policy is based upon the plurality of interests operating in society and that the international regime is indeed consequential because advocates of refugee protection appeal to it in their lobbying efforts. In this regard, the variation between the cases becomes relatively minor. Both the United States and Canada have come to conform to the principles outlined in the UN Convention Relating to the Status of Refugees, the Protocol to the Convention, and both are donors to the UN High Commissioner for Refugees.

The United States did not agree to the 1951 Convention but it did ratify the Protocol in 1968. The Protocol, it will be recalled, merely reiterated the provisions of the Convention. The only change that it brought was the removal of the Convention's temporal limitations. In the years after World War II and before 1968, US policy towards refugees did not conform to internationally recognized norms. Despite several refugee-related Acts passed by Congress, the US refugee definition remained out of line with the more inclusive Convention definition and provisions for the processing of asylum requests were not put in place. Refugee advocates complained about the inadequacy of US policy during this period, but they were still few in numbers and resources, and while

they could argue existing procedures were insufficient, they could not claim that they violated America's international treaty commitments as the US was not a party to the regime.

After 1968, the year that the US acceded to the regime, the major international event that gave refugee policy a new importance on Capitol Hill was the end of the Vietnam War which prompted hundreds of thousands of Indochinese refugees to flee South East Asia. This crisis caused refugee advocates to become especially vocal in their demands for a generous response to the mass exodus and it made Congress willing to debate and discuss the issue. These groups indicated that the United States was bound by its ratification of the Protocol to implement the provisions contained therein. The Refugee Act of 1980 finally changed US policy to conform to international guidelines. The Act remains at the heart of current US refugee policy.

In the 1990's as public demands for immigration restrictions in general, and asylum reforms in particular, mounted, America's commitment to the international regime was tested. Although changes were made to the asylum system, refugee advocates continued to stress the US's international obligations. While the reforms challenged the UN Refugee Convention, they did not constitute a violation of the treaty. This non-event was largely attributable to the work of activist groups who would not allow more serious restriction to pass without a fight. Activist NGO's, appealing to international law, served as a constraint on policy makers.

Canadian refugee policy underwent similar patterns. Before Canada ratified the Protocol in 1969, it did not conform to international standards of refugee protection. Indeed, Canada did not even have a formal policy for the admission of refugees; all admits came under the special prerogative of the Cabinet. Although Canada failed to ratify the 1951 Convention, it did offer sanctuary to European refugees displaced by WWII and the turmoil brought about by the consolidation of Communist regimes in the

east. Nevertheless, policy remained haphazard and lacked any coherency. In this context, refugee advocates pushed for the regularization of refugee admissions as a matter of principle, but they could not claim that Ottawa was obliged to do so out of any international legal commitments.

After 1969, the year in which Canada acceded to the Protocol and, by extension, the UN Refugee Convention, policy came to conform to internationally-recognized standards of behavior. As in the United States, the Indochinese refugee crisis provided the impetus for the change in Canadian refugee policy. Activist groups capitalized on this event and drew attention to their pleas for humane policies that were in line with global norms. With the 1976 Immigration Act, Canada came to adopt the UN refugee definition and implemented guidelines for asylum and resettlement procedures. The 1976 Act remains the basis for Canada's refugee policies today, which are regarded as one of the more liberal systems in the world.

Like the United States, Canada also faced challenges to its asylum system. As numbers of applicants mounted, the system became bogged down with an enormous backlog of cases and the public began to question Canada's asylum procedures. Advocacy groups fought any legislation which would make it more difficult for claimants to be granted asylum. Yet as the asylum system was facing serious strains, reforms had to be made. These changes, however, did not go so far as to violate Canada's responsibilities as a party to the international regime; the NGO community would not allow it. Again, these groups placed limits on how far the government was allowed to go in restricting asylum rights.

Limitations and Broader Implications

What can be discerned from these findings on a broader level? First, let me begin

by pointing out some of the limitations of the research. To begin with, there is something to be said about the selection of cases. Both Canada and the United States are fairly similar in their socio-economic conditions, they both have a long history of immigration, and they are both stable democracies. Most importantly, both nations exhibit a considerable degree of civic participation and social activism. This having been said, it becomes immediately clear that to extend the claims made in this paper to non-democratic regimes or to impoverished nations would be difficult; some degree of popular accountability and civic involvement are needed in order for groups to effectively pressure governments to conform to international agreements. The findings are applicable to a relatively narrow group of nations; Europe, Japan, and Australia immediately come to mind.

Another limitation is that while this paper has focused on the mechanisms through which domestic refugee policy is brought into agreement with international law, and has shown that advocacy groups are a major factor in bringing about compliance, it does little to explain why governments should choose to agree to such conventions and treaties in the first place. While I will leave this task to future research, I will make a few comments here. First, states may be concerned with the instability that massive flows of people can create. If a refugee flow is too great for one nation to handle, it may be in the interest of other states to ease the burden in order to prevent a potentially explosive situation. In a recent example, many states agreed to take in some of the Kosovar refugees fleeing Yugoslavia in order to prevent such flows from creating problems in neighboring Albania and Macedonia. Signing on to international agreements and funding agencies such as the UNHCR brings a degree of orderliness and creates a set of mutual expectations in the international system.

Secondly, there exists a sort of bandwagon effect in these types of conventions. In a convincing article by Martha Finnemore and Kathryn Sikkink, the authors refer to

this bandwagoning as a “norm cascade.” They argue that in the beginning, a given norm takes time to develop and take root among a number of states, but once a critical mass of states come to adopt a certain behavior - such as refugee protection - other countries will follow suit. This “cascade” or bandwagoning occurs because of “pressure for conformity, desire to enhance international legitimation, and the desire of state leaders to enhance their self-esteem...” (Finnemore and Sikkink, 895). States, in other words, desire to be “one of the crowd,” and sign on to international agreements out of an interesting type of peer pressure.

Thirdly, there may also be domestic pressures to sign and ratify international agreements. In the case of the refugee regime, the NGO community actively campaigned for the ratification of the Convention in Canada and the US and were especially vocal in the late 1960’s (the height of the “rights revolution”) when the Protocol was being debated. These groups become morally committed to the principles of the international regime and seek to gain their government’s acceptance of it. We may then look for indicators such as numbers of organizations, length of the campaign, and organizational resources to determine when these NGO’s are successful in pushing for ratification. Furthermore, these groups may also compound the bandwagon effect by claiming that, “other states are doing it, why aren’t you?” Current domestic campaigns in the US towards the ratification of the Convention on the Elimination of Discrimination Against Women (CEDAW) and the Landmine Ban serve as examples of this kind of grass-roots pressure.

These limitations having been noted, what does the research presented here contribute to a wider understanding of the refugee regime in particular and international law in general? First, it must be emphasized that states retain a considerable degree of sovereignty in their immigration and refugee policies, but this does not mean that there are not limitations to that sovereignty. While the Refugee Convention covers a broad

range of refugee protections, states have substantial discretion in interpreting and implementing the regime, and reserve a great degree of control over areas in which the regime is silent. For example, the regime does not specify the number of refugees each state is to take in, states are free to admit as many or as few refugees as they wish - though states commit to make a “good faith” effort to resettle as many as they can. Furthermore, states can simply disregard the regime altogether - there are no international mechanisms to enforce compliance. Indeed forcible repatriations are common in several parts of the world. Yet for democratic states in which there is a certain degree of social activism and popular accountability, to disregard one’s international commitments is not without substantial costs. The ability of governments to do as they like is limited by advocacy groups who form a strong lobby for the adherence to the regime.

Secondly, what are the implications for more comprehensive refugee protection measures? As I have indicated in passing, many observers view the current international refugee agreement as too limited and narrow in its focus. While many of its provisions were quite applicable to circumstances 50 years ago, many have argued that the regime needs to be more comprehensive. NGO’s and the UNHCR (see ch. 2) have sought, and continue to seek, the creation of a new Convention which would expand the refugee definition to include those escaping civil war, foreign aggression, and natural disasters, as well as those who are internally displaced but who have not crossed international boundaries. These groups have also attempted to give more comprehensive rights to refugees and asylum seekers, such as the right to be granted asylum in one’s country of choice. I find these efforts unlikely to succeed, however, unless a new global crisis such as WWII alters the current international system and serves as a “wake-up call” to government leaders that more comprehensive measures are needed. The trend over the last decade has been to restrict asylum and refugee systems rather than broaden them, and even in doing this, government leaders have resented the fact that they have been bound

by international treaties and their domestic constituency.

Lastly, this paper has suggested that international regimes, in a broader sense, have real consequences for state actors. While some regimes are mutually enforced by states on the international level (such as an arms-control regime), others express a common set of expectations and guidelines which are put to use in domestic policy debates. Human rights regimes, furthermore, often illicit strong emotional responses in wide segments of society. Regimes on women's rights, racial discrimination, children's rights, labor rights, etc., have the emotive power to mobilize activist groups to hold governments accountable to their stated commitments. These NGO's see such declarations as articulating concepts of justice and morality which are higher than the state, and they work towards the internalization of such norms in government practice. Activists have also sought to compel regime compliance in other issue-areas as well. Environmental groups such as Greenpeace, the Sierra Club, and Earth First! are strongly in favor of international measures to protect the earth's natural resource. Several groups such as Pugwash have similarly sought compliance with nuclear disarmament and non-proliferation regimes.

Activist organizations have not fundamentally challenged the nation-state system. What they have accomplished is that they make international law consequential in governmental decision-making. With their campaigns, protests, and lobbying efforts, they make international regimes visible and give it tangible effects.