

## GENERAL ASSEMBLY RESOLUTION NO. 8330

### RESOLUTION

#### CONCERNING FIRST ASYLUM IN THE UNITED STATES

##### Background Information:

The United States (US) has had a great deal of experience being a country of "second asylum." Immigration and Naturalization Service (INS) officers have had the opportunity of visiting refugee camps overseas and selecting those refugees to be admitted to the US. Except for the isolated instances of the defection of a Soviet ballet dancer or athlete, refugees have applied somewhere outside the US. Their arrival in the US has been expected, and arrangements have been made to receive them.

National attention was focused on the issue of "first asylum" in November 1970 when a Lithuanian seaman, Simus Kudirka, was forced to return to a Soviet vessel moored to a Coast Guard cutter in US territorial waters. Public outrage over that incident resulted in a set of new guidelines from the Secretary of State approved by the President in January 1972. The guidelines required that "the request of a person for asylum or temporary refuge shall not be arbitrarily or summarily refused by US personnel," and stated that the basic objective of the policy on right of asylum was "to promote institutional and individual freedom and humanitarian concern for the treatment of individuals."

Today the US is facing a growing first asylum crisis already of overwhelming proportions. Over the last few years, as many as one half million people have arrived on US shores or crossed US borders seeking haven from persecution in their homelands. Many of these persons have applied for asylum in the US. The number of asylum applications on file with the INS is greater now than at any other time in history.

##### 1. Change in Policy

Wars, revolutions, invasions, dictators, and human rights violations have all contributed to the surge of applications for asylum. But the main reason is a change in the immigration law enacted by the US Congress in 1980. Until

that time US law defined a refugee as a person fleeing communism or the Middle East. This meant that unless a person was fleeing communism, or fleeing a country in the Middle East, the US could not grant that person asylum. The Refugee Act of 1980 (Public Law 96-212) adopted the United Nations (UN) definition of a refugee as one who has a "well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group or political opinion."

This re-definition opened the way for asylum applications from many persons from Central America and the Caribbean who previously would not have been given consideration for asylum in the US. The deterioration of conditions in Central America and the Caribbean suggest that there will be a continued, if not increased, exodus of people from this area of the world who will seek asylum in the US.

## 2. Interdiction and Exclusion

Despite the ideals and traditions of the US as a land of refuge for the persecuted, and despite the Refugee Act of 1980, the welcome that the US government has given to asylum seekers has often been one of hostility rather than hospitality. There also has been inconsistency in the treatment of the various asylum seeking groups. Cubans who fled a communist country were welcomed while persons fleeing Haiti, El Salvador, and Guatemala were greeted with hostility. They were sent back at the border, their ships were turned back while still at sea; or if they reached the US, they were put in detention centers.

The position taken by both the Department of State and the INS has been that, in general, Haitians, Salvadorans, and Guatemalans are fleeing to the US because of the economic conditions in their homelands. Their position is that these refugees have no more reason to fear persecution upon their being returned than those who have made no attempt to leave. The US supports the governments these people are fleeing, and it would be embarrassing for the US to grant asylum to people from "friendly governments."

Since September 1981 the Executive Branch of the US government has implemented a program of interdicting boats on the high seas between Haiti and the US, and returning to Haiti undocumented persons aboard those boats. This program of exclusion was undertaken, in part, on the theory that it would serve as a deterrent to those in Haiti who were considering coming to the US.

In addition, Salvadorans and Guatemalans who have been caught trying to cross the Mexican border have often been sent back into Mexico without ever being advised of their right to apply for asylum. They have been excluded from the US without an opportunity to contact attorneys, family members, or friends.

These practices (interdiction at sea and exclusion at the border) have been challenged by US citizens, congress persons, churches, and international bodies such as Amnesty International and the UN.

### 3. The Principle of Non-refoulement (not expelling or returning)

As a signatory of the 1967 UN Protocol Relating to the Status of Refugees, the US agreed to the principle of non-refoulement. This principle states that a refugee cannot be returned by force to any country where he or she fears persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.

This principle is also embodied in US immigration law, notably in provisions allowing persons to apply for asylum in the US. (Section 208 of the Immigration and Nationality Act), and in provisions requiring the Attorney General to withhold the deportation of any person to a country where his or her life or freedom would be threatened because of persecution (Section 243 (h) of the Immigration and Nationality Act.) In addition, the Supreme Court has ruled that a treaty automatically abrogates any state or federal law in conflict with it.

After an extensive tour through the Southwest to review the INS treatment of Salvadorans in October 1981, representatives of the Washington Liaison Office of the UN High Commissioner for Refugees prepared a lengthy report which suggested that the US is failing to fulfill its international obligations because "...there is a systematic practice designed to forcibly return Salvadorans, irrespective of the merits of their asylum claims."

### 4. Detention

INS policy regarding detention of applicants for asylum has varied from time to time. Most Cubans who came in the 1980 Mariel boat lift were freed from detention centers shortly after their arrival. Many other asylum applicants have remained in detention over extended periods of time.

Haitians have been detained until released by a court decision, and Salvadorans and Guatemalans are detained until high bonds are posted. Several Salvadorans and Guatemalans who have decided not to apply for asylum have been held in detention for several months as material witnesses against the smugglers who helped them cross the border.

Technically, the asylum applicants are detainees rather than prisoners, but the conditions and practices in the detention centers are harsher than in some prisons in the US. Most centers are overcrowded and lack adequate medical services. Access to phones has been severely limited so that attorneys have had trouble contacting their clients. Families are split up with wives and husbands held in different detention facilities and children placed in foster care or even on occasion placed in a separate detention facility. Detainees spend hours with nothing to do, since books, TV, and recreational activities are minimal.

The INS detention policy is challenged by many who feel that it is a violation of the Fifth Amendment to the Constitution, which does not make any distinction between the rights of citizens and non-citizens when it provides that no person shall be deprived of life, liberty or property without due process of law. The detention policy is also seen as a violation of the UN Protocol which prohibits unnecessary restrictions on the movements of those seeking asylum.

##### 5. Judicial Review

In response to these challenges to its detention policy, the INS has suggested streamlining the asylum proceedings by abolishing judicial review. The policy of judicial review means that the asylum applicant has the right to have his or her case tried before a judge and appealed through the judicial process, as opposed to having it decided solely by the INS.

Under current laws, asylum decisions are subject to full judicial review. The INS has suggested that eliminating these proceedings would allow for persons to be released or deported sooner, thus shortening the long detention periods. This would put the decision of who is granted asylum totally in the hands of the INS, which could lead to the danger of abuses of that power.

## 6. Due Process

The upsurge in asylum applications has so clogged the processing system that it has caused long delays in getting final decisions of asylum applications. In October 1982, the INS estimated a backlog of some 123,000 cases. The largest number of these cases were Cubans who came in the 1980 Mariel boat lift.

Long detention periods for Haitians, Salvadorans and Guatemalans have caused some to give up and return to their homelands. Others have left "voluntarily" because they signed a form that they were instructed to sign by the detaining officers, without understanding what the form meant. According to the findings of a federal judge in Los Angeles, the INS and Border Patrol have used "physical abuse....coercion and intimidation" to force Salvadorans to sign "voluntary departure" forms. In these ways, asylum applicants were deprived of their due process rights and agreed to leave the US without formal deportation proceedings.

There are proposals currently being considered that would give the President emergency powers to deport large numbers of persons. These emergency powers are seen as a way of handling the possibility of another large influx of persons similar to the Cuban boat lift of 1980 or the possibility of even larger numbers of Central Americans entering the US. The granting of these emergency powers would prevent any of these persons from applying for asylum and thus would prevent their access to due process.

## 7. Permanent Resident Status

Those persons who are granted asylum must apply for an extension of that status each year. While conditions in the homeland remain the same, an extension can be easily obtained. If conditions remain the same, it is possible to apply for permanent resident status which can lead to citizenship. Five thousand asylees (persons granted asylum) are allowed to become permanent residents each year.

Because there are many more than 5,000 asylees seeking permanent resident status each year, persons who have waited through the backlog of asylum applications also have to wait through a backlog of permanent resident applications. This backlog forces asylees to live, sometimes for years, with the uncertainty of whether or not they will receive permanent status in the US.

## 8. Extended Voluntary Departure Status

The US government has a policy that responds to situations when persons are temporarily unable to return to their own countries because of "compelling humanitarian factors." This policy is called Extended Voluntary Departure and is granted by the Attorney General. In the past, permission to remain temporarily in the US was granted to persons from Ethiopia, Iran, Nicaragua, Poland, and Uganda. It has become known that the UN High Commissioner for Refugees has sent two memoranda to the US government requesting that the US change its policy with reference to Salvadorans and grant them temporary status, but they have not been granted this status.

## 9. The Position of the Church

The National Council of Churches in its 1981 Policy Statement on Immigrants, Refugees and Migrants reaffirmed its commitment to those who are identified as the world's uprooted, pledging to minister to sojourners and strangers and to champion their welfare. In September 1982, Church World Service (CWS) established a funding pool in order to be able to respond to requests from ecumenical organizations around the country who seek to meet the needs of first asylum applicants.

The Christian Church (Disciples of Christ) has a strong commitment to the rights of persons who have applied for asylum in the US. General Assembly Resolution 8159, "Emergency Resolution on Salvadoran Refugees," called upon the US government to stop the deportation of Salvadorans and to facilitate their due process rights for political asylum, and several congregations have provided services to these and other Central American refugees. In cooperation with CWS, sponsoring congregations were found for 27 Haitian asylum applicants who were released from INS detention centers in 1982, and several hundred more Haitians were given physical, legal, and spiritual aid by congregations of the Christian Church (Disciples of Christ).

THEREFORE, BE IT RESOLVED, that the General Assembly of the Christian Church (Disciples of Christ), meeting in San Antonio, Texas, September 23-28, 1983, call upon the government of the United States to:

- abide by the United States Refugee Act of 1980 ensuring that those fleeing non-communist countries will be given the same consideration as those fleeing communist countries (see section 1);

- stop interdiction on the high seas and exclusion at the borders, fully advising persons of their right to counsel (see section 2);
- abide by the United Nations Protocol Relating to the Status of Refugees and all other international agreements ensuring that those fleeing persecution will not be forcibly returned to the country from which they fled (see section 3);
- release asylum applicants on their own recognizance following their application for asylum (see section 4);
- continue to allow judicial review of asylum cases (see section 5);
- accord full due process to those who apply for asylum in the United States, while at the same time expediting the procedures (see section 6);
- increase the number of asylees that can become permanent residents each year (see section 7);
- grant Extended Voluntary Departure Status in appropriate cases such as that of Salvadorans and Guatemalans (see section 8); and

BE IT FURTHER RESOLVED, that the General Minister and President of the Christian Church (Disciples of Christ) communicate the concerns of this resolution to the President of the United States, all major presidential candidates, the Democratic and Republican Platform Committees, the Judiciary Committees of the House and Senate, the Secretary of State, the Attorney General, and the Commissioner of the Immigration and Naturalization Service urging their immediate action in support of these requests; and

BE IT FURTHER RESOLVED, that the general units, regions, congregations, and institutions of the Christian Church (Disciples of Christ) become better informed on first asylum issues (resources available from Refugee and Immigration Ministries Program), and communicate the concerns of this resolution to appropriate government authorities; and

BE IT FURTHER RESOLVED, that congregations and members of the Christian Church (Disciples of Christ) extend their hospitality to asylum applicants and provide physical, legal, and spiritual aid.