

Cooperative Arrangements to Share Burdens and Responsibilities in Refugee Situations short of Mass Influx

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Introduction

The best-known cases of international cooperation in refugee situations have occurred in response to mass flows, as in Southeast Asia (the Comprehensive Plan of Action) and Central America (CIREFCA). But States often cooperate with each other to resolve, or at least manage, smaller-scale movements of refugees and asylum-seekers — or even in the absence of current refugee flows, as States take action to avert such flows. The opportunity to cooperate arises, for example, in the context of search and rescue operations or interdiction at sea, in irregular secondary movements of refugees and asylum-seekers from first countries of asylum¹, in the gradual attrition of protracted refugee situations through cooperative resettlement schemes, among other situations that do not rise to the level of large-scale movements. States also often seek cooperation in the context of mixed flows of people, in which relatively small numbers of refugees travel irregularly alongside large numbers of non-refugees.

Burden sharing is a subset of international cooperation in which States take on responsibility for refugees who, in terms of international refugee law, would fall under the protection of other States or assist other States in fulfilling their responsibilities. In the context of this kind of international cooperation, it is useful to distinguish between burden *bearing* and burden *sharing*. The burden or responsibility of protecting refugees — arising from the international obligation not to return refugees to a place where they will face persecution or other serious harm — falls on the country who finds refugees on its territory and/or subject to its jurisdiction, and it is often unfair in terms of its distribution. Other States may volunteer to share these burdens, but few would acknowledge any legal obligation to do so.

States agree to cooperative arrangements for many reasons, ranging from a purely reciprocal “back-scratching,” to the desire to maintain a political community or institutions, a basic sense of fairness, or the need to avert (or avoid exacerbating) a political crisis. A commitment to refugee protection also generates cooperation, for example when the asylum system in a particular setting comes to a breaking point because one State (or a small group of States) cannot shoulder the burdens of protection alone.

Many smaller-scale cooperative arrangements and actions have their roots in situations of mass influx. The US-Cuba Migration Agreements of 1994 and 1995, for example, had their origins in the large-scale departures of Cubans by boat in 1980 and 1994, which also gave rise (along with departures from Haiti in the early 1990s) to US cooperation with Panama, Australia, and several other countries. Similarly, the Kosovo Evacuation Plan originated in the mass movement of refugees from Kosovo into Macedonia. Other cooperation actions start and remain small. The US-Australia Mutual Assistance Agreement envisions no more than 200 refugees per year being relocated from one country to the other. These and other examples will be discussed below. A

¹ The first country in which a refugee finds international protection.

brief case study of cooperation between the United States and Cuba in the mid-1990s will illustrate some of the central points of the paper.

Mechanisms of International Cooperation

The mechanisms of international cooperation to share burdens and responsibilities in this policy arena are many and varied. For smaller-scale flows, as with mass flows, the mechanisms tend to fall into one of four categories:

1. Physical relocation of refugees to the territories of various States.
2. Provision of technical assistance in managing flows and establishing legal and institutional frameworks.
3. Financial assistance for care and protection.
4. Agreements on common frameworks for dealing with refugees and asylum-seekers, often with an agreed division of labor among the participating States.

Domestic politics often play a central part in the design of burden-sharing arrangements. They are frequently discussed as if they are not legitimate in the context of refugee protection, but they must be dealt with, otherwise support for burden-sharing arrangements is not likely to be forthcoming.

Physical relocation of refugees – temporary relocation and permanent resettlement

Immediate danger of physical attack, *refoulement* or other grave rights violations sometimes prompt cooperative efforts to move refugees, temporarily, to a place of greater safety. The Kosovo Evacuation Plan of 1999 was one such situation. An initial, unilateral relocation of Kosovar refugees from Macedonia, undertaken by the government of Macedonia, was chaotic. Some 25 busloads of refugees were reportedly taken to Turkey, Greece, or Albania.² Some of those transported did not know where they were going; many were given no choice; families were separated in the process. In response, the United Nations High Commissioner for Refugees (UNHCR) and the International Organization for Migration (IOM) organized a more orderly evacuation designed to preserve first asylum in Macedonia and provide humane conditions for temporary protection of the refugees. The evacuation was voluntary, and respectful of family unity. Sixteen countries accepted refugees from Kosovo for temporary protection. Between April 6 and April 28, 1999, the agencies evacuated 20,016 refugees. The largest number (about 10,000) went to Albania, while about 5,500 went to Greece and about 2,000 to Turkey. In addition, the United States offered to give temporary protection to 20,000 refugees at its naval base in Guantanamo, Cuba, but the offer was not taken up.³ (The United States did accept thousands of refugees from Kosovo for permanent resettlement.) Macedonia was reassured by

² US Office of Foreign Disaster Assistance (OFDA), Center for International Disaster Information, [Alert: Kosovo](#), No. 19, April 8, 1999.

³ Ibid.

the evacuation (along with many other steps to share the burden of the refugee exodus from Kosovo) that it would not be overwhelmed and reopened borders through the duration of the crisis.

A number of other instances of smaller-scale relocation illustrate the use of this mechanism of burden sharing. In 1999-2000, approximately 1,500 Tutsi refugees from Rwanda who were considered to be in danger in the Democratic Republic of Congo (DRC) were evacuated to Benin and Cameroon, whose governments allowed them to enter and stay temporarily in order to complete the required processing interviews for resettlement. Between 1999 and 2002, 4,500 refugees from Bosnia and Herzegovina and Croatia were evacuated to Romania for processing. Romania also agreed to accept 450 ethnic Uzbek refugees from Kyrgyzstan in 2005-2006, and 38 Eritrean refugees who had been subject to detention in Libya.

The evacuations to Romania worked so well that the Government of Romania signed an agreement with UNHCR and IOM in 2008 to establish an Emergency Transit Centre for Refugees outside of Timisoara. The Centre hosts persons in urgent need of protection for up to six months, until arrangements are made for transfer to a third country. It can host up to 200 refugees at one time, and has hosted more than 600 since its opening, including Sudanese and Palestinian refugees from Iraq. In April 2011, the Emergency Transit Centre received 30 Eritreans who had fled the violence in Libya; after a stay of about six months, they were expected to be resettled in the United States and the Netherlands.⁴ Romania permits visa-free entry to the Emergency Transit Centre.

From the 1990s until 2008, Israel offered temporary residence status to small groups of refugees in need of a safe haven until circumstances would permit their repatriation. In 1993, 84 Bosnian Muslims received temporary protection in a kibbutz; in 1999, at the request of UNHCR, the country instituted a humanitarian protection regime which benefited refugees from Sierra Leone, Liberia, the Democratic Republic of Congo and Côte d'Ivoire, for periods of several years.⁵ By 2008, however, the number of asylum-seekers entering Israel across the Egyptian border had risen almost 20-fold from its 2005 level, and the humanitarian protection program was ended.

Resettlement of limited numbers of refugees is one of the pillars of the Mexico Plan of Action (see further below), a framework designed to help Latin America cope with the impact of the massive displacement associated with Colombia's long-running internecine violence. Argentina, Brazil, Chile and Uruguay have resettled small groups of displaced people who are in danger in countries of first asylum or within Colombia, together accounting for more than one thousand people since 2004. Brazil, which has also taken Palestinian and Sudanese refugees out of

⁴ UNHCR, "Eritrean Refugees arrive in Romanian emergency transit centre from Tunisia", 20 April 2011, (<http://www.unhcr.org/4daef2e39.html>).

⁵ Karin Fathimath Afeef, "A promised land for refugees? Asylum and migration in Israel", Research Paper No. 183, *New Issues in Refugee Research*, UNHCR, December 2009 (<http://www.unhcr.org/4b2213a59.html>).

dangerous or non-viable first-asylum situations, has a fast-track resettlement procedure that, according to the Minister of Justice, can approve cases in 48 hours.⁶

A darker side of physical relocation as a form of cooperation to share the perceived burdens of refugees can be seen in agreements between the US and Australian Governments to transfer refugees intercepted at sea by one country for resettlement in the other. Both governments came under severe domestic political pressure to halt the flow of asylum-seekers by sea into their territorial waters and then into their territories for settlement. The cases of concern to the US government were Cuban and Haitian refugees; in Australia's case, a variety of nationalities were intercepted or rescued at sea having transited through Indonesia or Malaysia in most cases. Eventual access to protection in the US or Australia, respectively, was believed by both governments to create a magnet for refugees, and other persons without international protection needs, to embark upon the dangerous, unauthorized maritime journey. Stopping short of *refoulement*, the two governments believed they could minimize these pull factors by preventing the few who managed to pass the high hurdle of recognition as refugees from reaching their desired destination — by sending them to settle on the other side of the world.

The numbers of people involved in the US-Australia arrangements were small. Australia agreed to resettle 40 Cuban refugees in 1981. Later formalized under the US-Australia Mutual Assistance Arrangement, the US and Australian governments agreed to resettle up to 200 refugees processed in the other country every year, although that ceiling has never been reached. In April 2010, *The Australian* newspaper reported on an alleged “swap” of three Cuban refugees held by the US for 28 Tamil refugees rescued at sea by the customs ship *Ocean Viking*. Another 50 Tamils from the same incident went to New Zealand, Canada, Norway and, a few, to Australia.⁷

Although the numbers are tiny, the principle that even *bona fide* refugees cannot choose a particular destination country is important to the US and Australian governments. The US government will not permit refugees from Cuba and Haiti interdicted at sea to settle in the United States, even after they have been determined by US authorities to have valid claims to international protection. They are held at the US naval base in Guantanamo Bay, Cuba (although not at the prison that houses terrorism suspects), or until a third country agrees to accept them for

⁶ UNHCR, “Q&A: Brazil’s Justice Minister committed to helping the displaced and stateless”, 9 November 2010 (<http://refuniteaustralia.wordpress.com/tag/mexico-plan-of-action/>). These are only few examples of the resettlement programmes which exist worldwide, see UNHCR, “Resettlement” (<http://www.unhcr.org/pages/4a16b1676.html>).

⁷ Paul Maley and Paige Taylor, “Cuban Refugees from US arriving here in exchange for Tamils,” *The Australian*, 8 April 2010 (<http://www.theaustralian.com.au/politics/cuban-refugees-from-us-arriving-here-in-exchange-for-tamils/story-e6frgczf-1225850083681>).

resettlement.⁸ Australia is the only country participating that has obtained a formal *quid pro quo* for its cooperation.

Resettlement of refugees can serve international as well as internal political ends. The US Congress passed the “North Korean Human Rights Act “in 2004, to ensure that North Koreans would not be denied asylum in the United States on grounds that they had automatic access to citizenship in South Korea. The Act also authorized funds to support “organizations or persons that provide humanitarian assistance to North Koreans who are outside of North Korea without the Permission of the North Korean government. These include refugees, defectors, migrants, orphans and victims of trafficking.”⁹ Members of Congress were concerned that several countries near North Korea do not recognize its citizens as refugees, and do not want to create tensions with its government. Refugee cases must be handled with discretion, and often involve lengthy and intense negotiations before permission is granted for the United States to process these cases for resettlement and receive exit visas for the North Koreans.¹⁰

Physical relocation can be difficult to negotiate when governments are reluctant to accept refugees. In March 2011, EU Home Affairs Commissioner Cecilia Malmström asked EU Member States to help resettle a few thousand refugees stranded on Libya’s borders who were unable to return to their countries of origin such as Eritrea and Sudan.¹¹ Presented as a high-stakes initiative to help Egypt and Tunisia cope with the outpouring of third-country nationals from Libya, the Commission, working with UNHCR, was unable to persuade European States to take more than a few hundred of the stranded refugees.

Technical Assistance

Many countries that are on the front lines of refugee flows, whether floods or trickles, lack the infrastructure and administrative capacity to adjudicate asylum claims and provide care to refugees and asylum-seekers. Wealthier States often provide technical assistance to reinforce (or in some cases, create) this capacity. One of the more systematic intergovernmental cooperative efforts has been the “Söderköping Process.” Prior to the 2004 enlargement of the European Union (EU), 10 countries along what was then the eastern border of the EU participated in the Söderköping Process, which was initiated in 2001 and chaired by the Swedish Migration Board with the support of UNHCR. IOM is also a partner. The Söderköping Process was an outcome of the 1996 “Regional Conference to Address the Problems of Refugees, Displaced Persons, other

⁸ Cath Hart, “Refugee Swap not binding, says US”, *The Australian*, 20 April 2007, (<http://www.theaustralian.com.au/news/nation/refugee-swap-not-binding-says-us/story-e6frg6nf-111113376696>).

⁹ US Government General Accountability Office, “Humanitarian Assistance: Status of North Korean Refugee Resettlement and Asylum in the United States,” Report to Congressional Requesters GAO10-691, June 2010 (<http://www.gao.gov/new.items/d10691.pdf>).

¹⁰ Ibid.

¹¹ “Displaced Eritreans to be relocated in EU countries,” *Euractiv*, 25 March 2011, (<http://www.euractiv.com/global-europe/displaced-eritreans-relocated-eu-countries-news-503499>).

Forms of Involuntary Displacement and Returnees in the Countries of the Commonwealth of Independent States and Relevant Neighboring Countries” (CIS Conference), which focused the attention of Western governments on the significant movements of people that followed the break-up of the Soviet Union.

The focus of the Söderköping Process is capacity building on asylum, protection, migration and border management issues, including asylum adjudication and other matters such as sustainable return of unsuccessful asylum-seekers. In 2007, for example, the Söderköping Process included an intergovernmental workshop on cooperation with refugee-assisting non-governmental organizations (NGOs). Seven of the original 10 Söderköping countries, as well as Sweden, are now members of the EU, and also cooperate on asylum and border issues through EU structures such as the newly created European Asylum Support Office (EASO) or the EU’s border agency FRONTEX. Söderköping still provides the framework for technical assistance to Belarus, Ukraine, and Moldova; Armenia, Azerbaijan and Georgia have also joined the Process. The EU has established similar processes or discussion platforms to work with other regions on burden sharing.

Some critics accuse the wealthier EU Member States of wanting simply to outsource their border control and shift the burdens of asylum adjudication and refugee protection to other countries, usually with lesser capacity.¹² The Dublin Convention, which assigns responsibility for adjudicating an asylum claim to the first participating EU State that an asylum-seeker enters (with some exceptions), reinforces this suspicion. However, it is inevitable that the Söderköping countries will continue to receive asylum-seekers, and enhanced capacity to deal with them properly reduces the likelihood of *refoulement*.

European countries are not the only States that provide technical assistance to build capacity of host countries in refugee protection. Efforts often include technical assistance for provision of humanitarian relief to displaced people, as well as the development of administrative and legal procedures for refugee protection. The International Refugee Board of Canada has provided technical (as well as financial) support to Mexico and Costa Rica to build their refugee adjudication systems. The Argentine National Commission for Refugees has established a database of asylum-seekers and refugees, which it shares with other governments throughout the region.

Financial Assistance

¹² See, for example, three papers by Bill Frelick for Human Rights Watch: *Stuck in a Revolving Door: Iraqis and other Asylum-seekers at the Greece/Turkey Entrance to the European Union*, November 2008, (www.hrw.org/en/reports/2008/11/26/stuck-revolving-door-0), *Pushed Back, Pushed Around: Italy’s Forced Return of Boat Migrants and Asylum-seekers; Libya’s Mistreatment of migrants and Asylum-seekers*, September 2009, (www.hrw.org/en/reports/2009/09/21/pushed-back-pushed-around-0), and *Buffeted in the Borderland: The Treatment of Migrants and Asylum-seekers in Ukraine*, December 2010, (<http://www.hrw.org/en/reports/2010/12/16/buffeded-borderland-0>).

The most prominent form of burden sharing in refugee situations, large and small, is the provision of financial assistance to cash-strapped host governments. Financial assistance may flow through bilateral channels, regional mechanisms (such as the European Union), or through international organizations and NGOs. In many cases, it funds care and maintenance of refugees in countries of first asylum; in others, it supports infrastructure in first asylum countries that is stretched by the need to accommodate refugees, ranging from roads to schools and medical facilities. The United States Government, for example, provided financial assistance to the Jordanian Ministries of Education and Health to help preserve Jordan's willingness to admit Iraqi refugee children to its public schools and refugees to its public health facilities. The US Agency for International Development also funds education and health services and housing development in some of the smaller cities in Colombia that have been overwhelmed by internally displaced people: Patricia Weiss Fagan gives the example of Florencia, which has experienced a population boom that has left it with a population one-third of which is made up of internally displaced people, almost all of whom are destitute.¹³

Brazil has a Memorandum of Understanding with UNHCR that allows it to fund projects in other countries (the arrangement circumvents legislation that otherwise would require parliamentary approval of every external expenditure). The money has been used to assist Ecuador in hosting Colombian refugees. Like physical relocation, financial assistance may help to preserve first asylum, and can assist to ensure that the country receiving refugees does not feel "abandoned" by other States.

The European Union established the European Refugee Fund (ERF) in 2000 as an intra-EU burden-sharing mechanism. The ERF was allocated €64 million in its third phase covering 2008-2013. The ERF supports national actions in EU Member States across a wide range of activities, including: improving reception conditions and asylum procedures; provision of medical, legal and material support to asylum-seekers, refugees and people who have received temporary protection; resettlement; integration in host countries; the dissemination of good practices; and, significantly, the creation of cooperative networks between government authorities in two or more countries. But the ERF allocates its funds based on a "body count" of how many refugees, asylum-seekers and persons with temporary protection status reside in a given EU Member State. It may therefore be insensitive to small-scale refugee flows that are problematical despite their small size.

Critics have also charged that the ERF is at least as much a burden-shifting as a burden-sharing mechanism, designed to keep refugees away from the EU by paying countries on the periphery

¹³ Patricia Weiss Fagan, "Uprooted and Unrestored: A comparative review of durable solutions for people displaced by conflict in Colombia and Liberia," Policy Development and Evaluation Service, UNHCR, August 2011 (<http://www.unhcr.org/refworld/docid/4e6eed2b2.html>).

of EU Europe to detain them (sometimes literally) there. Funding cannot be considered a form of burden sharing if there would be no burden in the absence of such enticement — because refugees would not choose to stay in the recipient country, and the government would not encourage them to do so.

Common frameworks

States have in some instances sought to share the responsibility of hosting refugees by establishing common frameworks to guide their actions. A common framework, in theory, establishes acceptable standards of treatment of refugees, allocates responsibilities fairly, and prevents a “race to the bottom” among States competing to be less attractive than their neighbors as a destination for refugees.

One of the most sophisticated common frameworks is the previously mentioned Mexico Plan of Action, adopted by 20 Latin American governments in 2004 with the primary purpose of devising a common strategy to deal with the displacement of people from Colombia. As noted, one of the mechanisms of the Plan is a regional responsibility-sharing program focused on resettlement of refugees and internally displaced persons (IDPs). The other two pillars are integration of refugees and IDPs in safe communities (“Cities of Solidarity”) and development of the border regions of neighboring countries to benefit displaced Colombians and their hosts (“Borders of Solidarity”).¹⁴

The European Union has, since 1999, been developing a comprehensive legal asylum framework, the Common European Asylum System (CEAS), with mixed results in terms of burden sharing. An earlier attempt to establish a framework for burden sharing within the EU failed against the backdrop of conflict in the Balkans: Germany received more refugees from the Balkans than the rest of Europe combined, but the proposal by the German Presidency of the EU in 1994 to re-distribute refugees among Member States according to a formula based on population, geographic size, and economic size (GDP) was rejected by other Member States. Even if other European countries had been willing to share Germany’s “burden”, it would have been difficult to compare the contribution made by various countries. Is one severely ill refugee equivalent to five healthy ones? With this history, the CEAS has been difficult to negotiate, and the results of the first phase of harmonization is more of a patchwork of national standards and practices than a unified whole.¹⁵

The “Regional Conference on Migration” (RCM), also known as the Puebla Process, was more successful in devising a framework (though a much less ambitious one) for cooperation on

¹⁴ William Spindler, “The Mexico Plan of Action: Protecting refugees through international solidarity,” *Forced Migration Review*, FMR24, 2005.

¹⁵ Angela Martini, “The Common European Asylum System”, Migration Policy Institute, Washington, DC, forthcoming.

refugee issues. Since the 1994 creation of the Puebla Process, the United States has helped to train officials from Mexico and countries in Central America in refugee determination, detection of false documents, and so forth, while the RCM countries cooperate in dealing with mixed flows of refugees, asylum-seekers, and undocumented migrants.¹⁶

A Case Study of International Cooperation (and its Discontents): the United States and Cuba, 1994-2010¹⁷

In 1994, relations between the United States and Cuba reached a low point as Fidel Castro halted attempts to prevent Cubans leaving by boat to reach US territory. His action came as retaliation for what he saw as provocative instigations to leave and “rescues” at sea by US citizens (many of Cuban refugee origin) of Cubans who managed to evade the authorities’ attempts to obstruct their departure. Castro had played the “migration card” before, in 1981; at that time, he allegedly augmented the spontaneous departures with the inmates of Cuban prisons and asylums for the mentally ill. The 1981 outpouring caused turmoil in Florida as tens of thousands of Cubans arrived, and political repercussions in other states as the Cuban arrivals were dispersed around the country. (One of the states affected was Arkansas, where the young governor, Bill Clinton, saw his re-election prospects undermined by the chaos surrounding what became known as the “Mariel Boatlift.”)

In 1994, President Bill Clinton sought simultaneously to manage the flow of Cubans and preserve US goals of fulfilling its obligation of *non-refoulement* and avoiding a painful reprise of the politically damaging, uncontrolled influx of undocumented migrants from Cuba in the 1980s. His task was complicated by the US policy toward Cuban arrivals, mandated by the US Congress and implemented by previous administration, whereby Cubans arriving in the United States were assumed to be in need of protection and allowed to remain under a refugee-like status. As long as the arrivals amounted to a trickle, this policy remained without serious challenge, but the prospect of a new Mariel demanded a change.

By Presidential Directive, Clinton ordered that the US Coastguard would make a concerted effort to intercept Cuban vessels at sea. Passengers who asserted a need for protection would not be allowed to enter US territory, but would be transferred to the US naval station at Guantanamo Bay for refugee status determination procedures. Resettlement for those found to be in need of protection would be sought in a country other than the United States and those screened out would be returned to Cuba. As the camp in Guantanamo Bay quickly filled up, the US reached

¹⁶ Regional Conference on Migration, “Calendar of Activities January – December 2011”, (<http://iom.int/jahia/webdav/shared/shared/mainsite/microsites/rcps/puebla-process/Cronograma-Calendar-2011.pdf>).

¹⁷ The historical review here is based on a series of public and private meetings chaired by the author at the Carnegie Endowment for International Peace in 1994 and 1995, involving several of the US government negotiators of the US-Cuban Migration Agreement as well as Congressional staff, analysts, advocates and representatives of non-governmental organizations.

an agreement with Panama to relocate some of the Cubans there to relieve over-crowding in Guantanamo. But this “Operation Safe Haven and Safe Passage” could only provide an interim solution.

The US administration then took the unprecedented step of opening formal diplomatic negotiations with the Cuban Government to staunch the flow and manage the caseload. The resulting US-Cuban Migration Agreement of September 1994 was and remains the only formal diplomatic agreement between the two governments. Under its terms, the Cuban Government would seek to dissuade unauthorized departures, and the US Government would discourage its citizens from facilitating boat arrivals. The US Coast Guard would patrol the straits separating the two countries; Cubans intercepted at sea would be given the choice of return to Cuba or detention at the Guantanamo base for screening. For persons found to be in need of protection, a third-country placement would be sought. Between May 1995 and July 2003, 170 Cubans were resettled from Guantanamo to 11 different countries, among them Australia, Nicaragua, Spain and Venezuela. Cuba agreed not to punish returnees for illegal departure, and the two countries came to an agreement that up to 20,000 Cubans per year could apply for direct entry to the United States in an orderly program implemented through the US Interests Section (hosted by the Swiss Embassy) in Havana.

Implementation of the US-Cuba Migration Agreement has been difficult, and was effectively suspended in 2004 by the United States Government on grounds of non-cooperation by the Cuban Government. One of the long-standing complaints at the root of the impasse was Cuban refusal to allow US diplomats to monitor the welfare of returnees, to make sure that they were not suffering retaliation for having attempted to leave. In addition, annual Cuban arrivals to the United States under the orderly departure arrangements consistently fell short of the 20,000 mark, and both sides blamed each other for creating unnecessary obstacles.

Despite the difficult history, the two Governments agreed to revive the annual migration talks provided for in the agreement in 2009, and they took place again in July 2009 and subsequently.¹⁸ In the US fiscal year ending in October, 2010, only 2,008 Cubans were intercepted at sea.¹⁹

The agreement to cooperate with an adversary demonstrates the importance that both the United States and Cuba attach to more orderly migration. As noted in the section on physical relocation, above, the agreement leaves the United States with several anomalies in its policies, notably the refusal to offer territorial asylum to Cubans (and Haitians) intercepted at sea. Moreover, it persists with the peculiar “wet-foot, dry-foot” policy that permits Cubans who manage to arrive

¹⁸ “US, Cuba discuss migration in sign of better ties,” *Reuters*, 14 July 2009, (<http://www.reuters.com/article/2009/07/14/us-cuba-usa-migration-idUSTRE56D79820090714>).

¹⁹ Mark Frank, “US-Cuba cooperation cuts illegal migration,” *Reuters*, 12 January 2011, (<http://www.reuters.com/article/2011/01/13/us-cuba-usa-migration-idUSTRE70B66720110113>).

on land in the United States (or at its land borders) to be processed and, usually, to stay; whereas those intercepted at sea are turned away. Under the current arrangements, the United States does not forcibly return to Cuba people who are found to have valid refugee claims — but neither does it offer them asylum. It is a minimalist interpretation of its obligations under the 1951 Convention relating to the Status of Refugees, which leaves many Cuban refugees stranded in Guantanamo for long periods, and denies their desire to reunify with families and friends in the United States.

US authorities often seem to be uncomfortable with the arrangement, but find that the benefits justify it. Unauthorized migration from Cuba has been sharply reduced. Some Cubans are able to migrate in an orderly fashion directly from Cuba. Better control of migration has implications not only for border control but for drug trafficking and security concerns, all of which are of common interest to the two countries. It is arguable that the opening of diplomatic negotiations on migration may pave the way for cooperation on other issues, such as the promotion of agricultural trade and easier conditions for family visits and remittance transfers. The migration agreement itself involves many of the refugee-related issues on which international cooperation is sought: mass influx, physical relocation, interception, rescue at sea, safe haven, deterrence, *non-refoulement*, and more.

Conclusion

International cooperation to address refugee challenges should be easier in situations that fall short of mass influx than in the cases involving large numbers of people. A review of recent experiences, as provided above, shows that this is indeed true in some cases, but not in others. As with Cubans intercepted en route to the United States or third-country nationals fleeing Libya, domestic political imperatives often create obstacles to effective cooperation. But there are enough examples of creative use of instruments such as physical relocation, technical assistance, financial support, and broad frameworks for cooperation to suggest that a pragmatic, problem-solving, cooperative approach can contribute to a stronger refugee protection system.