

PART 1

1. MEXICO AND THE REFUGEE PROBLEM.....1
 Mexico's Historical Experience with Refugees1
 The U.N. Concept of Refugee Compared to
 the Mexican Concept of Political Asylum4

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CHAPTER 1 MEXICO AND THE REFUGEE PROBLEM

MEXICO'S HISTORICAL EXPERIENCE WITH REFUGEES

The refugee issue, in its complexity and its enormous scope, is one that both Mexico and other countries have had to face for decades.

Following the First World War, the League of Nations made the first attempts at comprehensive resolution of the problems arising from the presence of contingents of refugees in several parts of the world. After the Second World War, the issue grew dramatically in scope, with more than one million people unwilling or unable to return to their countries of origin.[1] In response, the newly created United Nations approved the establishment of the Office of the High Commissioner for Refugees in 1949, to begin its operations in 1951. The refugee situation arising from the war was magnified thereafter by events in Africa, Asia, and Latin America. Decolonization, national liberation movements, localized wars, and internal power struggles have all dislocated substantial population groups in recent decades. As a result, at the beginning of the 1980s, the number of refugees worldwide had reached 10 million.[2]

As part of these flows, in recent years hundreds of thousands of Central Americans have been displaced within their countries or have fled to neighboring countries, including Mexico, seeking refuge from violence.[3] Their numbers far exceed those of earlier refugees who came to Mexico. Moreover, they differ from earlier refugees in their economic and social characteristics and in the circumstances of their entry into Mexico.

Mexico has a long experience and solid tradition of receiving political refugees. During its history as an independent country, Mexico has opened the doors of its diplomatic missions and its borders to thousands of persecuted people who have encountered a generous welcome from the Mexican people and successive political administrations. In many cases, asylum was granted on an individual basis, as to Leon Trotsky before World War II or Hector Campora, ex-president of Argentina, barely a decade ago. People have also been given refuge in Mexico as members of national groups.

The presence of refugees in Mexican society is well known. However, it is difficult to quantify the numbers of past refugees in Mexico. With the exception of Spanish refugees, who are discussed below, precise information concerning the numbers of past refugees or their legal status is not available from the Mexican government, either in official published reports or in response to requests for information.[4]

As a result of the Spanish Civil War, which ended with the defeat of the Second Spanish Republic in 1939, Mexico admitted thousands of Spanish Republicans under a law enacted for that purpose. Estimates of their numbers range from 15,000 to 22,000.[5] The administration of Mexican President Lázaro Cárdenas admitted them under a law enacted for that purpose. Their numbers included illustrious intellectuals, jurists, politicians, and others. The *Casa de España en México* was created for them in July 1938.

These Spanish refugees were rapidly integrated into Mexican life. In this period, conditions in Mexico were very different from those of today. The Cárdenas government in its *Plan Sexenal* (plan of the six-year presidential term) considered the possibility and desirability of inviting foreigners to colonize some zones of the country, given the sparse population and the need to develop national territory.[6] Neither that sparsity nor that need exist in today's Mexico.

Once World War II began, Mexico received other groups of Europeans who fled the violence of war. For example, Mexico admitted more than 600 Polish refugees, for whom the "Colonia de Santa Rosa," near the city of León in the state of Guanajuato, was founded.[7]

In the post-World War II period, more particularly during the past three decades, refugees who have sought security and protection in Mexico have been predominantly Latin American. These refugees have also been distinguished from earlier refugee flows by the massive numbers of people now seeking protection. The new refugees have come in three waves: from the Caribbean, from South America, and from Central America.

In the 1950s and 1960s, the Mexican government welcomed Cubans who left the island, first in opposition to the regime of Fulgencio Batista and later in opposition to the Fidel Castro regime. Many of the latter used entry into Mexico as a bridge to the U.S. Haitians who fled the repression of the Francois Duvalier dictatorship also found refuge and security in Mexico. Similarly, though in reduced numbers, the country received Dominicans who fled after the fall of the government of Juan Bosch.[7]

In the 1970s, Mexico admitted thousands of South Americans who escaped political persecution after military coups overthrew the constitutional regimes of their countries and established dictatorships. This was the case in Bolivia in 1972; Chile and Uruguay in 1973; and Argentina in 1976.[8]

The total number of refugees who came to Mexico from the Southern Cone and the Caribbean was relatively small. Their numbers in Mexico have lessened in recent years because of the movement toward democracy by some South American governments. This has led to the return of Argentines and Uruguayans. Even some Chileans have returned to their country.

Even before the recent political convulsions in Central America, Mexico received groups of Central American refugees. For example, Guatemalans applied for and received asylum from the Mexican government in order to escape the aftereffects of the 1954 coup that overthrew the legally constituted government of Jacobo Arbenz.[9]

However, these refugees were fewer in number and from higher social backgrounds than those in the more recent flow of Central Americans. The

Guatemalans who left after the 1954 coup only amounted to a few hundred people. They were in good part distinguished writers, professors, intellectuals, and well-known political figures. They obtained, individually, diplomatic asylum at the Mexican embassy in Guatemala. In contrast, the Guatemalan refugees of recent years number in the tens of thousands and originate in rural, indigenous communities.

The first of the most recent current of Central American refugees were the Nicaraguans, who left their country between 1978 and 1979, a period of civil war. Their numbers in Mexico were small. Many of them are thought to have returned to Nicaragua following the fall of Somoza. They were replaced in exile by others for whom Somoza's fall was a signal to leave, rather than to return to, their homeland.[10]

The second recent influx of Central American refugees is made up of Salvadorans. Fleeing civil war and repression, Salvadorans began coming to Mexico in 1979 in waves sometimes reaching tens of thousands of people. The Salvadorans are the most significant element of Mexico's refugee population in total numbers; Salvadorans now in Mexico are estimated to reach several hundreds of thousands.[11]

Guatemalans make up the third current of Central American refugees. They began to enter the country in May 1981, with a group of 400. Along with a group of 2,000 who entered the following month, nearly all these initial arrivals were deported by Mexican authorities a few days after their arrival. Only 46 were granted political asylum by the Mexican government.[12]

Despite their reception, Guatemalans continued coming to Mexico. After protests over the deportations, Mexico permitted groups of Guatemalans to settle or resettle in camps in the south. Only some 42,000 Guatemalans in the camps have obtained government recognition. These officially recognized Guatemalans have been granted a temporary legal status but do not have legal standing as refugees. However, as will be discussed in Part 2 of this report, the actual number of Guatemalans in Mexico is substantially higher.

Current Mexican policy is to limit the number of Central Americans in Mexico. Beginning in 1983, Mexican authorities began to take administrative measures aimed at controlling the flow not only of Guatemalans but also of Central Americans in general. These measures are described in Part 2.

Furthermore, Central Americans outside the camps—those who live along the Mexico-Guatemala border or in Mexico's interior and those who are traveling to the United States—face a variety of deprivations and obstacles. It is practically impossible for them to obtain legal recognition from the Mexican government as political asylees. Instead, the government tends to consider all Central Americans as economic migrants. This view persists despite the civil war in El Salvador, the violence of many years in Guatemala, the war between Nicaragua and the anti-Sandinista *contras* which sometimes reaches into Honduras, and the climate of insecurity resulting from constant debate over increased U.S. military assistance for the *contras* and the possibility of direct United States invasion of Nicaragua.

The earlier movements of political exiles to Mexico involved relatively small numbers whose admission could be regulated. Through the grant of diplomatic asylum in another country, the Mexican government in the past could insure that the exiles met the minimum requirements of asylees. Finally, the proximity and geographic characteristics of the area, along with the long history of population flows from Central America to Mexico, has made physical entry into Mexico a simpler process for Central Americans than for other refugees.[13]

The change in the social characteristics of most refugees—who in the past were largely well-known or at least well-educated political leaders, intellectuals, and cultural figures—means that today's refugees no longer have the economic advantages and the standing in society that their predecessors enjoyed. Refugees today, on the whole, come with no financial resources and limited educational or professional training. Illiteracy is not uncommon. Some of the Guatemalans speak Indian languages rather than Spanish.

In Mexico, as in Latin America as a whole, the grant of asylum has been viewed as the means of safeguarding the life, liberty, and safety of those persecuted for political activity. But that tradition was forged before the mass migrations that characterize the present period. In our time, the refugee phenomenon has surpassed the inadequate legal formulas of domestic Mexican legislation as well as the regional inter-American conventions on asylum.

THE U.N. CONCEPT OF REFUGEE COMPARED TO THE MEXICAN CONCEPT OF POLITICAL ASYLUM

In Mexican as well as international law, the terms most frequently used for people who have fled their countries to seek security and protection in other countries are "asylee" and "refugee." However, Mexican law and international instruments use these words differently. These differences must be kept in mind when comparing Mexican asylum law (as reflected in the Constitution, secondary legislation, and regional treaties to which Mexico is a party) with the international instruments. A comparison of these different concepts reveals the limitations of Mexican law for persons fleeing persecution.

The United Nations Convention Relating to the Status of Refugees of 1951 and the 1967 Protocol Relating to the Status of Refugees define a "refugee" as any individual who:

owing to well-founded fear of being persecuted for reasons of race, religion or nationality, membership in a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.[14]

To date, Mexico has not ratified these instruments, which establish terminology and concepts that do not exist under Mexican law.

The term “refugee” is used frequently in Mexican political discourse, in academic conferences, in specialized publications, and the news media. In 1980 Mexico created COMAR, the *Comisión Mexicana de Ayuda a Refugiados*, (Mexican Commission to Aid Refugees) to meet the needs of the increasing numbers of refugees in Mexico. (The executive decree establishing COMAR is reproduced in Appendix A). In addition, Mexico and the United Nations High Commissioner for Refugees have signed two agreements concerning refugees: first, in 1981, for Mexico to be granted international aid for refugees (see Appendix B) and, second, in 1982 for the UNHCR to establish an office in Mexico City. Finally, the term “refugee” or “political refugee” is used in certain domestic law and regional agreements to which Mexico is a party.[15]

Yet, the broad definition of “refugee” found in the United Nations instruments is not recognized in Mexico.[16] Domestic Mexican law and regional inter-American treaties recognize the concept of asylum. But the Mexican concept of asylum and the standards for recognition of asylum status under Mexican legislation and the regional inter-American conventions are not as broad as the definition and standards in the United Nations legal system, although there are major elements in common.[17]

Domestic Mexican law only considers as a political asylee the foreigner who is the object of persecution for political reasons—that is, for his political beliefs, opinions or affiliations, or for the commission of political crimes or common crimes committed for political ends. Under Mexican law, this is the only basis for the grant of political asylum and such a person should be authorized to reside temporarily in Mexico to protect his life and liberty. This concept of asylum as political asylum is in accord with the regional inter-American conventions Mexico has signed.[18]

The United Nations Convention of 1951, however, in its definition of refugee, takes into account not only individual political persecution proven to have occurred, but also the well-founded fear of persecution based on race, religion, nationality, membership in a social group, or political reasons. The fear should not be subjective, but should stem from concrete acts that support the conclusion that the fear is well-founded.[19]

Under Mexican law the terms “asylum” and “political asylum” are used interchangeably to refer to the generic concept of asylum or to one of its two subcategories, diplomatic asylum and territorial asylum.

Mexican law defines the diplomatic asylee as a person who, because of political persecution by his native country, is granted asylum in a foreign embassy or on a foreign ship, military aircraft, or military base.[20] The system of diplomatic asylum is recognized and regulated in Latin American regional agreements but not by international agreements (although it sometimes exists outside of Latin America).[21] It is the kind of asylum historically practiced in Latin America.[22]

Under Mexican law, the territorial asylee is a person who, because of political persecution, gains entry into the asylum-granting country.[23] This is the only form of asylum which is available to the recent waves of Central Americans who have entered Mexico.

In contrast with the Mexican use of the word "asylum," United Nations instruments use the word to refer solely to territorial asylum. These U.N. instruments do not use the term "political asylum" or the category of diplomatic asylum. For example, the Universal Declaration of Human Rights of December 10, 1948, in Article 14 uses the term "asylum" as a synonym for territorial asylum.[24] Similarly, the Declaration on Territorial Asylum, adopted by the General Assembly on December 14, 1967, specifically encompasses territorial asylum, as its title indicates.[25]

There are also differences in the degree to which legal rights of refugees are specified under the U.N. system and under the Mexican system. The legal rights and duties of refugees are established in a very detailed manner in the U.N. Convention of 1951.[26] Each government agrees to not expel refugees, except in certain limited cases and by prescribed procedures.[27] In addition, the U.N. Convention specifically prohibits expulsion or return—*refoulement*—of a refugee to places where his life or liberty are endangered by reason of race, religion, nationality, membership in a social group, or political opinions.[28]

Domestic Mexican law, on the other hand, contains a very small number of provisions directly and specifically applicable to political asylees. As a result, the legal situation of those defined as asylees by Mexican legislation is precarious. The administration of their legal status is based on a series of rules scattered through different legal codes of varied nature and standing. These include the Mexican Constitution, various secondary laws and regulations, and several inter-American regional agreements. These provisions are described in detail in Chapter 2.

In sum, the concept of political asylee under Mexican law is distinct from that of refugee under the United Nations legal system. Under both Mexican law and the inter-American regional conventions, the status of asylum is granted only in cases of persecution for political reasons or for the commission of political crimes. In contrast, under the U.N. system a refugee may be anyone who is persecuted on one of several grounds; in addition to political opinion, the U.N. recognizes persecution on account of race, religion, nationality, or membership in a particular social group. Second, the concept of political asylum under Mexican law requires proof of actual persecution and not simply of the well-founded fear of persecution allowed by the 1951 U.N. Convention. Third, the United Nations system provides a comprehensive code for the treatment of refugees. Mexican law, by contrast, provides a less comprehensive treatment of a more narrowly defined group.

Under both Mexican law and the U.N. system, a person fleeing persecution has the right to solicit and receive asylum, but the state is not obliged to grant asylum. In addition, both the Mexican system and the U.N. system require individual proof, either of persecution or the well-founded fear of persecution. In contrast, the Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa contains a broader definition of refugee.[29] The OAU definition incorporates the U.N. Convention standards but goes beyond them to include as refugees those persons who have fled their countries because their lives, safety, or liberty have been threatened

by generalized violence, foreign aggression, internal conflicts, massive violations of human rights, or other circumstances that have gravely disturbed the public order. Reports of the Inter-American Commission on Human Rights have also included this broader definition of refugee. Despite the fact that neither the U.N. nor Mexico have formally recognized this broader OAU definition of a refugee, they have foregone the individual proof requirement in the case of Guatemalans in official camps in Mexico's south.