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Globalization, Terror, and the Movements of People

ARTHUR C. HELTON* AND DESSIE P. ZAGORCHEVA**

The war against terrorism has brought home forcefully that we share a common planet, that we are interdependent, and that if we are to address the world's central problems, we will have to work together. If ever there was a compelling argument for globalization, that is it. Yet the events of Sept. 11 have also greatly increased the incentive for the U.S. to think harder about globalization and the policies and practices needed to make it work.¹

While the September 11th terrorist attacks dramatically affected all aspects of globalization, most discussions have focused almost exclusively on economic impacts. The movement of people is often under-appreciated as a fundamental feature of our globalizing world—most attention is given to trade and capital. But more people are moving across borders, both pushed or pulled, with or without permission. Each year, 330 million non-U.S. citizens enter the United States; 11.2 million trucks and 2.2 million rail cars cross into the United States, while 7,500 foreign-flag ships make 51,000 calls in U.S. ports annually.² Over recent years the United States has admitted approximately 800,000 immigrants. These individuals join a society in which seven to eight million unauthorized non-citizens are present, about 40 percent of whom initially entered with permission to remain temporarily, but who remained beyond the terms of their temporary visas.³ Data from the U.S. Census Bureau shows that about thirty million foreign-born reside in the United States, representing about 11 percent of the total U.S. population. This represents a 57 percent increase

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1. See Joseph Stiglitz, *You Have to Walk the Talk*, FORTUNE, Nov. 2001, available at <http://www.business2.com/articles/mag/0,1640,35407,FF.html>. Joseph Stiglitz, Professor, School of International and Public Affairs and School of Business, Columbia University, Former World Bank Chief Economist and Senior Vice President, Development Economics, Nobel Prize Winner (2001).

2. Securing America's Borders Fact Sheet: Border Security. Action Plan for Creating a Secure and Smart Border, White House, Office of the Press Secretary, Jan. 25, 2002, available at <http://www.whitehouse.gov/news/releases/2002/01/20020125.html>

3. See D'Vera Cohn, *Illegal Immigrants Total Is Raised*, WASH. POST, Oct. 25, 2001, at A24. See also Arthur-

since 1990.⁴ This compares to a world today in which 170 million international migrants are outside of their home countries.⁵

There is also a dimension of forced migration. In the United States in recent years, approximately 25,000 individuals have been granted asylum and 70,000–80,000 are admitted from abroad as refugees,⁶ although both totals may well be diminishing in this new fearsome environment. These numbers compare to nearly twenty million refugees around the world who are outside of their countries with a well-founded fear of persecution upon return, plus another twenty-five million or so internally displaced by reason of armed conflict.⁷

Before September 11, immigration was not considered to be at the top of the list of threats to national security. But the tragic events of that day dramatically shifted the immigration debate to a security imperative. A serious side effect of the attacks against the United States has been a backlash against migrants and asylum seekers. The fight against terrorism necessarily implicates immigration and refugee policy, but an adverse unintended consequence could be the erosion of the rights of these individuals. Immigration rules must be designed where feasible to avoid or prevent terrorism. But the main challenge currently facing policy makers is to maintain the openness of society and, at the same time, the openness of the United States to the world. The post-September 11th backlash against migrants, asylum seekers, and refugees threatens to undermine a clear comparative advantage of the United States in an era of globalization, namely, its diversity and the effectiveness of its economic and educational opportunities. Hence, the key problem is how to strike the right balance between effective anti-terrorist policies, including stricter border control, on the one hand, and freedom of movement, on the other.

Unfortunately, our understanding of the links between globalization and terrorism is insufficient at best. Globalization undoubtedly has many positive attributes, such as enlarging the world economy, promoting technological innovations, fostering universal political participation, and enhancing international cooperation.⁸ But analysts warn as well that the underside of globalization could contribute to the causes of terrorism. Linking globalization to terrorism underscores the widening gap between the rich and the poor (at least in the short run) and this can be a source of anger and resentment against the haves by the have-nots. It could also facilitate transnational crime and violence. As one international affairs specialist at the Congressional Research Service argues, “globalization can facilitate the ability of drug traffickers, terrorist, and other criminal organizations to operate in relatively

Helton, *A speech on the occasion of receiving the award for Distinction In International Law and Affairs of the New York State Bar Association*, Jan. 23, 2002, available at <http://www.cfr.org/public/resource.cgi?pub!4311>.

4. See U.S. Census Bureau, *The Foreign-Born Population in the United States: Population Characteristics*, Jan. 2001, available at <http://www.census.gov/prod/2000pubs/p20-534.pdf>.

5. See Arthur Helton, *A speech on the occasion of receiving the award for Distinction In International Law and Affairs of the New York State Bar Association*, Jan. 23, 2002, available at <http://www.cfr.org/public/resource.cgi?pub!4311>.

6. See IMMIGRATION AND NATURALIZATION SERVICE, *STATISTICAL YEARBOOK OF THE IMMIGRATION AND NATURALIZATION SERVICE*, Table 21, available at <http://www.ins.gov/graphics/aboutins/statistics/99YrbkREF/RA99tables.pdf>.

7. U.S. COMMITTEE FOR REFUGEES, *WORLD REFUGEE SURVEY 2000*.

8. Arguing that globalization has many benefits are, for example, Jagdish Bhagwati, *Coping With Antiglobalization: A Trilogy of Discontents*, FOREIGN AFF., Jan./Feb. 2002, and David Dollar & Aart Kraay, *Spreading the Wealth*, FOREIGN AFF., Jan./Feb. 2002.

unregulated environments. Moreover, the development of the world economy and modern communications systems have made it possible for relatively small groups and even private individuals to amass wealth at a levels generally attainable [previously only] by nation states.”⁹

This complex relationship between anti-U.S. terrorism efforts and globalization further complicates the devising of appropriate policies. Often what fosters globalization could be counter-productive or even impede anti-terrorism efforts. As one migration expert puts it:

Whereas globalization demands and fosters the expansion of international travel, extending across all social strata and poor as well as affluent countries, national security calls for the imposition of restrictive controls that will impede movement. Within the state, evidence of vulnerability to terrorist attacks by outsiders enhances the value of protection while downgrading the social costs that heightened protection imposes, notably on residents who share an ethnic origin with the putative terrorists or who are thought to resemble them. The two processes are interactive, as globalization itself brings about greater population diversity so that, whoever the dangerous group turns out to be, the targeted society is likely to have such people in its midst.¹⁰

Globalization can facilitate terrorism by making the movement of people and funds much easier. In the words of one policy analyst:

Several trends associated with globalization—the greater ease of moving people, resources, and information across borders, the greater transnational reach of institutional structures—thus have sustained or worsened international terrorism even as other trends, such as the precipitous decline of Marxist terrorism at the end of the Cold War, have tended to lessen it.¹¹

Due to faster and cheaper information and communications, the losers of globalization witness the prosperity of the winners. Radicalization ensues and exacerbates already existing cultural and religious divides.

Immigration lies at the core of U.S. national identity and is a significant component of the U.S. economy in an era of increasing global interdependence. As President George W. Bush stated: “Migration is one of the major ties that bind our societies. It is important that our policies reflect our values and needs, and that we achieve progress in dealing with this phenomenon. We agree there should be an orderly framework for migration which ensures humane treatment, legal security, and dignified labor conditions.”¹²

Terrorists are specifically excluded under law from immigration admission and refugee protection.¹³ The Refugee Convention defines categories of individuals who should be excluded from refugee protection. The “exclusion clauses” of article 1 include perpetrators

9. See *Organized Crime, Drug Trafficking, and Terrorism in a Changing Global Environment, Statement Before the House Judiciary Committee, Subcommittee on Crime* (Dec. 13, 2000) (Statement of Raphael Perl).

10. See Aristide Zolberg, *Guarding the Gates in a World on the Move*, Social Science Research Council, available at <http://www.src.org/sept11/essays/zolberg.htm>.

11. Paul R. Pillar, *Terrorism Goes Global: Extremist Groups Extend Their Reach Worldwide*, 19(4) BROOKINGS REV. 1 (2001), available at <http://www.brook.edu/dybdocrot/press/review/fall2001/pillar.htm>.

12. See George W. Bush, Fact Sheet on Migration, White House, Office of the Press Secretary, Sept. 5, 2001, available at <http://www.whitehouse.gov/news/releases/2001/09/20010905-11.html>.

13. See Convention Relating to the Status of Refugees, July 28, 1951, United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons convened under General Assembly resolution 429 (V) of 14 December 1950, available at http://www.unhcr.ch/html/menu3/b/o_c_ref.htm [hereinafter Refugee Convention].

of gross human rights violations and other serious crimes. Article 1(F) of the Refugee Convention specifically states:

The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that: (a) He has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes; (b) He has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee; [and] (c) He has been guilty of acts contrary to the purposes and principles of the United Nations.¹⁴

Also, article 33(2)¹⁵ stipulates that: "The benefit of the present [non-return] provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country."¹⁶ But the issue is vexing in practice. Policy makers must reconcile the investigation, prosecution and punishment of terrorists with a tradition under law of immigration admission and refugee protection.

The horrific attacks against the United States on September 11 have made many things more vivid, including the issues of security in immigration and refugee policy. Background checking is more exacting, security upon entry is more probing, efforts are increasing to monitor stay and remove those who lose status. Temporary visitors, including foreign students are to be monitored more carefully. For example, a survey conducted by the American Association of Collegiate Registrars and Admission Officers finds that federal investigators, either from the Federal Bureau of Investigation (FBI) or the Immigration and Naturalization Service (INS), have at least once contacted administrators of 220 colleges in order to inquire about the status of foreign students (mainly from Middle Eastern countries).¹⁷ About fifty of those institutions have reported multiple contacts. The most often asked questions are about such matters as the subjects students are studying, their performance in class, students' views on Osama bin Laden, and their plans after graduation. Students themselves have been interviewed and asked similar questions.¹⁸ Stricter measures are applied to immigrants, visitors, asylum seekers, and refugees being admitted from abroad. One likely result is that fewer people will come to the United States, and those who do will feel a bit less welcome in their stay. Increasingly they may be subject to measures such as detention and swift removal from the country.

After September 11, countries everywhere are tightening border controls in relation to the movements of goods, capital, and people. Around the world, government authorities have responded to the events in the United States with tightened immigration and asylum policies, and sometimes rushing through emergency legislation. For example, Romano Prodi, president of the European Commission, called for an integrated European police force and tighter border controls to fight terrorism.¹⁹ Some countries, such as the United

14. See *id.* art. 1(F).

15. *Id.* art. 33(2), Prohibition of expulsion or return ("refoulement").

16. See Refugee Convention, *supra* note 13, at 10.

17. See Jacques Steinberg, *A National Challenged: The Students; U.S. Has Covered 200 Campuses to Check Up on Mideast Students*, N.Y. TIMES, Nov. 12, 2001, at A1.

18. *Id.*

19. See Ian Black, *Prodi's European Police Hope*, THE GUARDIAN, Nov. 13, 2001, available at <http://www.guardian.co.uk/ukresponse/story/0,11017,592525,00.html>.

States and the United Kingdom, have proposed increased use of prolonged detention with limited judicial review. Regarding the U.K. anti-terrorism law adopted on December 13, 2001, Human Rights Watch stated that it "marks another step in the U.K.'s retreat from human rights and refugee protection obligations."²⁰ Some of the main concerns focused on a broad definition of terrorism that could make someone "guilty by association."²¹ According to a Human Rights Watch analyst: "... now the U.K. is departing from the European Convention [on human rights] and adopting a law that permits indefinite detention without trial and a denial in some cases of the right to seek asylum."²²

International human rights standards and due process protections have been subordinated to security concerns in the United States as well. Human Rights Watch has charged:

New laws permitting the indefinite detention of non-citizens, special military commissions to try suspected terrorists, the detention of over 1,000 people, and the abrogation of the confidentiality of attorney-client communications for certain detainees, demonstrated the administration's troubling disregard for well established human rights safeguards as it sought to protect national security. Indeed, in taking steps to defend the U.S. from terrorists, the government adopted measures that eroded key values and principles it said it sought to protect, including the rule of law.²³

The increasing securitization of migration and refugee policy is reflected in U.N. Security Council Resolution 1373,²⁴ adopted on September 28, 2001, which includes a provision calling on countries to cooperate to prevent and suppress terrorist acts and to complement such cooperation with additional domestic measures. Besides freezing the financial assets of terrorists, the U.N. calls on States to ensure that asylum seekers have not participated in or planned terrorist acts and that refugee status is not to be abused by perpetrators, organizers, or facilitators of terrorist acts. Resolution 1373, if properly interpreted and applied, is in line with principles of international refugee law. However, political leaders may well be tempted to overreact and use this resolution improperly to justify violating the basic rights of non-citizens.

New security measures taken by the United States include executive orders and internal regulations, which allow the government to monitor, question, detain, exclude, and deport non-citizens suspected of terrorist involvement. The President's 2003 Budget raises the money allocated to the Immigration and Naturalization Service for enforcement by \$1.2 billion, for a total of \$5.3 billion. This includes the resources necessary to implement an Entry-Exit visa tracking system. These resources are meant to give the INS the wherewithal to implement priority "missions related to homeland security, including border patrol, inspections, and the implementation of a technologically advanced system for monitoring the entry and exit of foreign visitors."²⁵

The USA PATRIOT Act of 2001,²⁶ signed into law on October 26, 2001, broadly enhanced law enforcement prerogatives relating to terrorism, including strengthening im-

20. See Press Release, Elizabeth Andersen, Human Rights Watch, U.K.: New Anti-Terror Law Rolls Back Rights, Dec. 14, 2001, available at <http://www.hrw.org/press/2001/12/Ukbill1214.htm>.

21. *Id.*

22. *Id.* at 1.

23. Human Rights Watch, Human Rights Watch World Report 2002: United States, available at <http://www.hrw.org/wr2k2/us.html>, at 1.

24. See S.C. Res. 1373, U.N. SCOR, 56th Sess., 4385th mtg, U.N. Doc. S/RES/1373 (2001), Threats to International Peace and Security Caused by Terrorist Acts, Sept. 28, 2001.

25. See Borders Fact Sheet, *supra* note 2, at 2.

26. See Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Pub. L. No. 107-56, 115 Stat. 272.

migration enforcement against suspected terrorists. For this purpose, it broadened the definition of terrorist activity and increased the categories of non-citizens barred from entry or subject to deportation for involvement in “terrorist activities.”²⁷ It also added new mechanisms for the Attorney General (AG) to both certify non-citizens as terrorists and detain them for extended periods before removing them. The legislation created new grounds for inadmissibility for persons associated with terrorist organizations and for those who plan activities that could “endanger the welfare, safety or security” of the United States.²⁸ The term “engage in terrorist activity” is defined expansively and includes: “to incite to commit” terrorist activity; “to prepare or plan” such activity; “to gather information on potential targets”; “to solicit funds or other things of value” for terrorist activities or organizations; to solicit an individual to engage in proscribed behavior or join a terrorist group; or to commit an act that the “actor knows, or reasonably should know, affords material support” to terrorist activities or terrorists.²⁹

Expanded visa monitoring and stricter visa issuance and inspection procedures have also been added to the policy mix. Proposed legislation after the terrorist attacks increased the latitude of the AG in immigration matters and included controversial powers such as the open-ended authority to arrest and detain non-citizens suspected of terrorist activities or any affiliation with terrorism. The USA PATRIOT Act subjects to mandatory detention persons who the AG certifies as suspected supporters of terrorists. These include aliens who the AG has “reasonable grounds to believe” are not to be admitted or are to be deported for terrorist and other unlawful activities.³⁰ The AG can certify for detention aliens “engaged in any other activity that endangers the national security of the United States.”³¹

In an attempt to investigate the September 11th attacks and to prevent new ones, federal officials arrested hundreds of non-citizens, primarily of Muslim and Middle Eastern background. Some of those were arrested for technical immigration violations; others were charged with criminal offenses unrelated to terrorism. Some were material witnesses in the anti-terrorism investigation. A total of 1,147 persons had been arrested by November 2001, more than half on immigration charges. These charges were mainly for violations such as overstaying a visa. The Department of Justice stated that in mid-December 548 foreign-born persons remained in detention, the majority of whom (204) were from Pakistan.³²

After September 11, the INS, a sub-agency within the Department of Justice, increased the scrutiny of refugees to the United States and their relatives. Currently, investigators are checking criminal and immigration histories at the beginning of the refugee’s admission process rather than at the end, as it was the procedure before. Relatives listed on refugee resettlement applications are also carefully scrutinized for links to terrorist groups or activities. While the tightening of procedures has affected refugees from around the world, it has become particularly difficult for those coming from countries the FBI has identified as harboring terrorists: Lebanon, Syria, and Iran.³³ According to the new rules, before

27. *Id.* § 411(c).

28. *Id.* § 411(a)(1)(G).

29. *See id.* § 411(a)(1)(F).

30. *Id.* § 412.

31. *Id.*

32. *See* Human Rights Watch, Human Rights Watch World Report 2002: United States, available at <http://www.hrw.org/wr2k2/us.html>; *see also* N.Y. TIMES, Nov. 3, 2001, B1.

33. *See U.N.*; *Bush Warns Countries That Harbor Terrorists*, Nov. 10, 2001, available at <http://www.rferl.org/nca/features/2001/11/101110082342.asp>.

boarding a plane for the United States refugees must meet with a representative of the International Organization for Migration (funded by the State Department), who will compare them with photographs in their application documents. Refugees are fingerprinted at major ports of entry in the United States before they are allowed to go to their final destinations.

Refugee and asylum procedures are likely to be more expensive by reason of additional security measures. To that extent, they will become more vulnerable in the annual budgetary process in Congress. Applicants for asylum will surely more often be detained before they establish their identity and will be required to apply for release while they pursue their protection claims.

On October 1, 2001, the United States introduced a moratorium on refugee admissions during the pendency of a security review of the program.³⁴ About 23,000 refugees were affected by this moratorium, some of which were especially vulnerable.³⁵ (For example, the UNHCR declared about 700 refugee women in the pipeline, stranded in Pakistan during the moratorium, "at risk" of sexual abuse and psychological trauma.) A month later, President George W. Bush authorized the resettlement of 70,000 refugees in fiscal year (FY) 2002.³⁶ This annual Presidential Determination for refugee admissions has actually set the lowest resettlement "ceiling" in more than a decade.³⁷ The United States admitted only 68,426 refugees in FY 2001 despite the 80,000-person ceiling and 4,085 fewer than were admitted in FY 2000, 16,576 fewer than in FY 1999, and 42,592 fewer than in FY 1991.³⁸ However, it is expected that the actual admission number will continue to decline in 2002.³⁹

Also, public support for a military presence on the borders with Mexico and Canada has grown since the September 11th terrorist attacks. Every day, about 800,000 people arrive in the United States from Mexico, and more than 250,000 come in from Canada. As Senator Sam Brownback (R-Kan) noted, finding the "bad guys" among such a huge mass of people is enormously difficult. "You're not just looking for a needle in a haystack," he lamented, "you're looking for a needle in a hayfield."⁴⁰ On December 3, 2001, Attorney General John Ashcroft announced a United States-Canada agreement to help safeguard the 4,000-mile porous northern border, dubbed the longest "undefended" border in the world. The agreement includes posting of about 600 National Guard troops at the border (to assist Customs and INS for up to a year.⁴¹

The United States and Canada recently concluded an agreement to pursue harmonization of aspects of immigration and asylum policy.⁴² But this effort at creating a North American

34. See Somini Sengupta, *A Nation Challenged: Immigration; Refugees at America's Door Find It Closed After Attacks*, N.Y. TIMES, Oct. 29, 2001, at A1.

35. See generally 22(9/10) REFUGEE REPORTS, Sept./Oct. 2001, available at http://www.refugees.org/world/articles/aftermath_rr01_9-10.htm.

36. See Sengupta, *supra* note 34.

37. See 22(9/10) REFUGEE REPORTS, *supra* note 35.

38. *Id.*; see also Sengupta, *supra* note 34.

39. See 22(9/10) REFUGEE REPORTS, *supra* note 35.

40. See Siobhan Gorman, *Border Controls Must Balance Security and Freedom*, GOV'T EXEC. MAG., Nov. 30, 2001, available at <http://www.govexec.com/dailyfed/1101/113001nj1.htm>.

41. See Attorney General John Ashcroft, Remarks at the U.S.-Canada Border Security Agreement Press Conference (Dec. 3, 2001), available at <http://www.usdoj.gov/ag/speeches/2001/1203aguscanabordersecurityagreementsigningceremony.htm>.

42. See Joint Statement on Cooperation on Border Security and Regional Migration Issues, signed December 3, 2001, available at http://www.sgc.gc.ca/Releases/e20011204_2.htm.

security perimeter will likely be limited. Just ask yourself, "Whose law should be changed?" At once, the difficulty of genuinely harmonizing criteria, procedures, and policies relating to immigration and refugee affairs becomes evident. As to Mexico, when Canadian officials are asked about the inclusion of America's Southern neighbor in harmonized arrangements, they recoil.

Unlike in Europe, full harmonization of U.S. and Canadian policies is not necessitated by broader political and economic objectives. The European Union required significant integration to achieve the free movement of goods, services, and people within Member States. Without such an overriding imperative, the dissonance between different admissions criteria and procedures, and underlying traditions and values, is likely to be amplified.

The differences, moreover, are many. For example, the United States and Canada provide visa waivers to nationals of different countries and employ different criteria for the admission of immigrants. In terms of immigrant admissions, Canada emphasizes needed skills while the United States favors family unification.⁴³ With respect to asylum seekers, the two countries use different procedures for adjudicating claims, have different standards for non-return, and diverge on the use of detention.⁴⁴ Deportation policies also vary.

The first step toward a bilateral harmonization of policies is the Joint Statement on Cooperation on Border Security and Regional Migration Issues, signed on December 3, 2001, which calls for the coordination of certain visa and asylum requirements.⁴⁵ These include: jointly assessing incoming passengers to identify those requiring closer examination upon arrival; increasing the number of Canadian and U.S. immigration control officers overseas to screen individuals before they reach our ports of entry; developing common biometric identifiers in passports and in residence and border-crossing cards to reduce travel document fraud and allow officials to identify passengers who require closer scrutiny while letting pre-certified travelers pass quickly; and enhancing coordination among law enforcement and other agencies addressing security threats.⁴⁶

A U.S.-Canada Smart Border Declaration issued later in December began to implement some of these measures, yet the United States and Canada must aim for more than a static agreement and develop an effective implementing and dispute resolution process.⁴⁷

One major feature of the U.S.-Canada agreement concerns reviewing the visa-waiver programs in the respective countries. These arrangements permit nationals of designated countries to travel and enter without a visa.⁴⁸ Visitor visa requirements are blunt policy instruments that often draw concerns from business interests who worry that delay in transferring or hiring executives, managers, and professionals will hurt the bottom line. Joan Atkinson, assistant deputy minister for policy and program development with Citizenship and Immigration Canada, related in December 2001 the recent imposition of a visa re-

43. See Arthur C. Helton & Eliana Jacobs, *Harmonizing Immigration and Refugee Policy Between the U.S. and Canada*, 30(2) POPULATION TODAY, Feb./Mar. 2002, available at <http://www.prb.org>.

44. *Id.*

45. CNN, *U.S., Canada Sign 'Smart Border' Declaration*, Dec. 13, 2001, available at <http://www.cnn.com/2001/US/12/12/rec.canada.border/>; see also Government of Canada, Press Release, *Canada-United States Issue Statement on Common Security Priorities*, Dec. 3, 2001, available at http://www.sgc.gc.ca/Releases/e20011203_2.htm.

46. *Id.*

47. The text of the *Smart Border* Declaration is available at <http://www.cme-mec.ca/coalition/documents/declaration.pdf>.

48. See Helton & Jacobs, *supra* note 43.

quirement on Hungarian nationals, prompted by a stream of Hungarian Roma who had come to Canada claiming refugee status.⁴⁹ The visa requirement sweeps more broadly, however, and Canadian officials were busy assuring businesses that the travel of Hungarian business visitors would be facilitated through devices such as five-year multiple-entry visas.

The United States-Canada agreement also addresses asylum policy, particularly by authorizing a safe-third-country provision that would permit refugee claimants to be returned to the country of first arrival. This provision is likely to prompt the greatest resistance from nongovernmental organizations (NGOs) that uphold refugee rights, according to Atkinson, who said that several Canadian NGOs had already expressed concerns. Indeed, the impact could be substantial. Atkinson said that 37 percent of refugee claimants in Canada (some 12,000 to 13,000) come through the United States and could be returned to the United States under a safe-third-country rule.⁵⁰ Under such a provision, the details of the asylum systems of each country would be scrutinized for divergences in such matters as standards of proof, special criteria for Chinese claimants, and detention practices. Overall implications could be far-reaching. Ultimately, these arrangements could herald broader asylum-sharing arrangements between North American and European Union Member States, which are already embarked on the quest for a common immigration and asylum policy. Canada has indicated an interest in the past in joining such an arrangement.

Even the limited forms of harmonized immigration and refugee policies that are foreseeable are not likely to eliminate future acts of terrorism, although they may in some instances make it easier to investigate and apprehend terrorists after the fact. Astutely targeted law enforcement activities will be far more decisive in fighting the terrorist threat.

Mexico is also part of a new security dialogue in North America. Last year, Mexico's President Vicente Fox placed immigration reform on the U.S. political agenda as a matter of foreign policy. This concerns a possible earned immigration status for undocumented Mexicans in the United States. Under consideration was a program to provide temporary visas for Mexican workers in specific industries with the possibility of lawful permanent resident status for those who stayed in their jobs for sufficient periods of time. But the debate quickly devolved to questions about discrimination and whether only Mexicans should benefit from such largess. These measures of selective generosity were to be in consideration of stricter border enforcement. The events of September 11 have overwhelmed the foreign policy agenda, and consigned to near oblivion this U.S.-Mexico initiative. But the politics are re-emerging and Mexico is keen to reassert the question. Whether its re-emergence can be sustained depends largely on future events, including new acts of terrorism.

One lesson to take from the quick swings in American public opinion and politics in relation to immigration and refugee issues is that these are not enduring positions. Immigration and asylum policy are often relatively cheap surrogates for other problems. Rather than fix education policy, politicians are tempted to limit access to education by undocumented people. Until very recently an underclass of non-citizen undocumented labor has been instrumental to a booming economy and efforts to enforce labor laws have suffered as a result. Sweatshops and migrant trafficking result from this policy disjuncture.

There are limits under law to the securitization process. The U.S. government should ensure that legislation is compatible with international obligations, which prohibit arbitrary

49. *Id.*

50. *Id.*

and indefinite detention or the return of refugees to places where their life or freedom are threatened. The government should also endeavor to prevent discrimination against immigrants, refugees, or asylum seekers on the basis of their race, ethnic origin, religion, or nationality. The authorities should make sure that immigration control measures contain adequate procedural safeguards, including judicial review, for those who are arrested and are subjected to removal.

Measures taken in order to increase the security of citizens and to bring to justice the perpetrators of the horrific attacks on September 11 should not infringe unnecessarily on the civil liberties and human rights of migrants, asylum seekers, and refugees. Special care should be taken to make sure that legislation and implementing regulations do not inadvertently undermine the U.S. government's existing obligations under international refugee and human rights treaties.

A new impetus to international cooperation is a byproduct of U.S. post-September 11th foreign policy. Prior to the attacks, our allies were annoyed with the Bush administration's penchant for unilateral action and dictate. The international community needs to be united in its current struggle with terrorism. The United States should lead this endeavor in part simply because there is no one else who could. Take, for example, the upcoming repatriation of nearly four million Afghan refugees. The international community should assist countries such as Iran, Pakistan, Tajikistan, and others who have to deal with Afghan refugees. Although the Preamble of the U.N. Refugee Convention⁵¹ clearly emphasizes the obligation of states to assist with sharing the "unduly heavy burdens" of host countries admitting large refugee influxes, as history shows, countries will fail to act in the absence of strong leadership.

U.S. policy makers have acknowledged that terrorism cannot be effectively addressed without international cooperation. The recent events in particular have demonstrated the importance of multilateralism. It is crucial that the international community realizes that this multilateral approach must extend beyond the parameters of this current crisis through a renewed engagement with the United Nations with particular attention to the norms of international law.

Indeed, the United States will have to learn to live and cooperate with others in new ways. This should include an understanding of the increased importance of the United Nations in the fight against terrorism as signified by U.N. Security Council Resolution 1373, which declared that international terrorism constitutes "one of the most serious threats to international peace and security in the twenty-first century"⁵² and condemned "all acts, methods and practices of terrorism as criminal and unjustifiable, regardless of their motivation, in all their forms and manifestations, wherever and by whomever committed."⁵³

It is important in the midst of this new international crisis and the desperate humanitarian situation in and around Afghanistan, to reiterate the need for all States to support the rule of law. If President Bush is determined to "wage war on terrorism," supporting such multilateral agreements should be a central plank of this policy. Since the U.N. is the only truly global forum to assist with such multilateral engagement, then supporting and enforcing

51. See Refugee Convention, *supra* note 13.

52. See S.C. Res. 1377, U.N. SCOR, 56th Sess., 4413th mtg., U.N. Doc. S/RES/1377 (2001), available at <http://www.un.org/docs/scres/2001/res1377e.pdf>.

53. *Id.*; see also S.C. Res. 1269, U.N. SCOR, 54th Sess., 4053rd mtg., U.N. Doc. S/RES/1269 (1999), available at <http://www.un.org/Docs/scres/1999/99sc1269.htm>.

U.N. and other international agreements should be of utmost priority to the United States and everyone else in the struggle against terrorism.

Unfortunately, concerted international agreements and actions have been crippled by the unwillingness of some states to support them. The United States, in particular, has in recent months signaled its intention to remain outside a number of international agreements. The Anti-Ballistic Missile Treaty is in serious jeopardy as the United States plans to deploy its controversial "Star Wars" plans; the U.N. Small Arms Conference to tackle the illicit trade in these pernicious weapons failed to adopt a strong program of action; the entry into force of the Comprehensive Nuclear Test Ban Treaty to ban all nuclear explosions is being seriously hampered by China, Russia, and the United States, and a Protocol that would seek to enforce the Biological Weapons Convention was rejected in July by the United States. Considering the escalating concerns over bioterrorism and the recent anthrax attacks in America the United States should be more concerned about the need to enforce the Convention through the draft Protocol, which could prevent terrorists and others in acquiring or producing biological weapons. Yet, the United States continues its opposition to the International Criminal Court (ICC), which could be, once set up and running, an appropriate forum in which terrorists such as Osama bin Laden could be prosecuted.

The challenge for the United States and other countries is to take advantage of globalization's opportunities while minimizing its risks and disadvantages. Addressing this challenge requires a better understanding of all aspects of globalization (not only the economic and financial ones) and its human dimensions. It also requires more integrated policy approaches and mechanisms for decision-making that will produce sound policies. The movement of people will be central to this calculation in the new century.

The war on terrorism has brought a new dimension to globalization: a common response to a global threat. But globalization can, and should, be used not only to fight against evil, but also to fight for good. We have already seen some of the fruits: Globalized civil society successfully pushed for the anti-personnel-mines treaty, over the objections of the Pentagon, and, through the Jubilee movement, successfully pushed for debt forgiveness, overcoming years of foot-dragging at the IMF. Just as there is an alliance against terrorism, there needs to be an alliance against global poverty and an alliance for a global environment. By forcing us to recognize our common interests, perhaps the events of Sept. 11 will help forge these new alliances.⁵⁴

54. See Stiglitz, *supra* note 1.

