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**REFUGEE RIGHTS IN THE U.S. SCALED BACK BY RECENT  
ANTITERRORISM LEGISLATION: ARE WE VIOLATING THE UNITED  
NATIONS REFUGEE CONVENTION?**

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## U.N. REPORTS

### REFUGEE RIGHTS IN THE U.S. SCALED BACK BY RECENT ANTI-TERRORISM LEGISLATION: ARE WE VIOLATING THE UNITED NATIONS REFUGEE CONVENTION?

*"To pursue security at the expense of human rights is short-sighted, self-contradictory, and, in the long run, self-defeating."*

—*Kofi Annan, United Nations Security General*

The 1951 United Nations Convention Relating to the Status of Refugees<sup>1</sup> ("1951 Refugee Convention") provides the definition of a refugee,<sup>2</sup> describes their rights,<sup>3</sup> and outlines the legal obligations of United Nations member States to uphold those rights. One of the most critical protections mandated by the 1951 Refugee Convention is that of "*non-refoulement*,"<sup>4</sup> which prohibits [nations from] returning a person to a country where he or she may experience persecution."<sup>5</sup> Although the Convention mandates extensive protection of immigrants' rights, recent anti-terrorism legislation in

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<sup>1</sup> Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 137 (entered into force Apr. 22, 1954) [hereinafter 1951 Refugee Convention], available at: [http://www.unhchr.ch/html/menu3/b/o\\_c\\_ref.htm](http://www.unhchr.ch/html/menu3/b/o_c_ref.htm).

<sup>2</sup> See *id.* art. 1.

<sup>3</sup> A refugee's rights include the right to work and pursue an education, freedom of religion and movement, and the right to access travel documents. The 1951 Refugee Convention also describes refugees' obligations to a host government, including respect for laws and regulations of their asylum country. See *id.* art. 2, 4, 17, 22, 28.

<sup>4</sup> "No Contracting State shall expel, or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership or a particular social group or political opinion." In response to State concerns that this provision would infringe on their sovereignty, a paragraph excluding certain refugees from the protection of non-refoulement was added, providing that the right did not apply to refugees who were seen as a risk to national security, or who had been convicted of a "particularly serious crime." See *id.* art. 33.

<sup>5</sup> Ann C. Barcher, *Scope and Sources of Immigration and Refugee Law*, American Bar Association Immigration & Nationality Committee, available at [http://www.abanet.org/intlaw/divisions/public/immigration\\_article2.html](http://www.abanet.org/intlaw/divisions/public/immigration_article2.html) (last visited May 16, 2003).

the United States has severely restricted rights of persons seeking refuge or asylum in this country.

The 1951 Refugee Convention defines a refugee as:

[Any person who is] outside his/her country of nationality or habitual residence; has a well-founded fear of persecution because of his/her race, religion, nationality, membership in a particular social group or political opinion; and is unable or unwilling to avail himself/herself of the protection of that country, or to return there, for fear of persecution.<sup>6</sup>

Anyone with a well-founded fear of persecution based on one (or more) of the foregoing five factors will be given protection and status by the country that received them.

The 1951 Refugee Convention covered only persons who became refugees as a result of events occurring before January 1, 1951. However, in 1967 the Protocol relating to the Status of Refugees<sup>7</sup> ("the Protocol") removed the restriction as to time, expanding the convention's protection to include those who were forced to flee their country of origin after 1951. The Protocol was necessary because "new refugee situations [arose after] the convention was adopted and . . . it is desirable that equal status should be enjoyed by all refugees . . . irrespective of the dateline 1 January 1951."<sup>8</sup>

In 1968, the United States ratified the Protocol, although it has not formally ratified the 1951 Refugee Convention.<sup>9</sup> Nevertheless, "[b]y accession to the Protocol, States undertake to apply the substantive provisions of the 1951 Convention to all refugees covered by the definition of the latter, but without limitation of date."<sup>10</sup>

<sup>6</sup> See 1951 Refugee Convention, *supra* note 1, art. 1.

<sup>7</sup> Protocol relating to the Status of Refugees, Jan. 31, 1967, 606 U.N.T.S. 267 (entered into force Oct. 4, 1967) [Refugee Protocol], available at [http://www.unhcr.ch/html/menu3/b/o\\_p\\_ref.htm](http://www.unhcr.ch/html/menu3/b/o_p_ref.htm).

<sup>8</sup> *Id.*

<sup>9</sup> The U.S. is one of three member States to ratify only the Protocol (the other two are Cape Verde and Venezuela). United Nations High Commissioner for Refugees, *States Parties to the Convention and the Protocol*, at [http://www.unhcr.ch/cgi-bin/texis/vtx/home/+AwwFqzvvqXs\\_-w6xFqzvvqXs\\_-w6hFqhT0NuItFqr72ZR0gRAFqwDzmwwwwwwwwww1FqrpGdBnqB](http://www.unhcr.ch/cgi-bin/texis/vtx/home/+AwwFqzvvqXs_-w6xFqzvvqXs_-w6hFqhT0NuItFqr72ZR0gRAFqwDzmwwwwwwww1FqrpGdBnqB) (last visited 4/2/03).

<sup>10</sup> UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, CONVENTION RELATING TO THE STATUS OF REFUGEES 6 (1996), available at: [http://www.unhcr.ch/cgi-bin/texis/vtx/protect/+LwwBmeJAIS\\_www3wwwwwwwxFqzvvqXsK69s6m](http://www.unhcr.ch/cgi-bin/texis/vtx/protect/+LwwBmeJAIS_www3wwwwwwwxFqzvvqXsK69s6m)

Although member States, including the U.S., have expressed strong support for the 1951 Refugee Convention and the Protocol, problems raised by immigration violations, rising costs, and increasing national security have created considerable challenges in the practical implementation of their mandates. Recent U.S. anti-terrorism legislation, enacted in response to the September 11th attacks on the World Trade Center and the Pentagon, has led to an especially rapid scaling back of rights of refugees in the U.S.

A series of recently enacted security measures – such as the requirement that certain non-citizens comply with “special registration”<sup>11</sup> through the Bureau of Citizenship and Immigration Services (formerly “INS”)<sup>12</sup> – have led up to the recently unveiled U.S. policy known as Operation Liberty Shield.<sup>13</sup> This policy allows for the arbitrary detention and secret deportation of foreign nationals, including asylum seekers,<sup>14</sup> and the exclusion of refugees<sup>15</sup> from

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<sup>11</sup> Bureau of Citizenship and Nationality Services, Immigration Information, Special Registration, *available at* <http://www.immigration.gov/graphics/shared/lawenfor/specialreg/index.htm> (last modified Mar. 11, 2003). Males were required meet with INS officials to be fingerprinted and have their identification documents scrutinized if they were at least sixteen years of age and citizens or nationals of any of the following countries: Bangladesh, Egypt, Indonesia, Jordan, Kuwait, Pakistan, Saudi Arabia, Afghanistan, Algeria, Bahrain, Eritrea, Lebanon, Morocco, North Korea, Oman, Qatar, Somalia, Tunisia, United Arab Emirates, Yemen, Iran, Iraq, Libya, Sudan, and Syria. *Id.*

<sup>12</sup> Formerly Immigration and Nationalization Services (INS). On November 25, 2002, the Department of Homeland Security was created which abolished the INS and replaced it with two new departments: the Bureau of Citizenship and Immigration Services and the Bureau of Border Security. Homeland Security Act of 2002, H.R. 5005, 107th Cong. (2d Sess. 2002).

<sup>13</sup> U.S. Department of Homeland Security, *Operation Liberty Shield*, at [http://www.dhs.gov/dhspublic/interapp/press\\_release/press\\_release\\_0115.xml](http://www.dhs.gov/dhspublic/interapp/press_release/press_release_0115.xml) (last visited May 16, 2003). “Asylum Detainees - Asylum applicants from nations where al-Qaeda, al-Qaeda sympathizers, and other terrorist groups are known to have operated will be detained for the duration of their processing period. This reasonable and prudent temporary action allows authorities to maintain contact with asylum seekers while we determine the validity of their claim. DHS and the Department of State will coordinate exceptions to this policy.” *Id.*

<sup>14</sup> “Asylees” or “asylum seekers” are persons applying from within the U.S. or at its borders. See REFUGEE LAW CENTER, INC., *LAW OF ASYLUM IN THE UNITED STATES* (1999), *available at* <http://www.refugeelawcenter.org/rlc/outlinebook2b.htm>.

<sup>15</sup> “Refugees” are persons applying for protection from outside the U.S. See *id.*

countries where terrorist organizations have been active. The question is whether these measures actually advance the "war on terrorism," and whether such security concerns pose an unjustified threat to the rights of these populations as established in the 1951 Refugee Convention.

### I. THE 1951 REFUGEE CONVENTION

The 1951 Refugee Convention provides a basis for a member State's refugee policy, including that member States must apply their laws and make their courts available to refugees as they do to their own citizens.<sup>16</sup> However, the obligations imposed by this instrument are not themselves mandatory even on countries that ratify it, since the convention is not strictly enforceable against signatory States.

However, certain provisions of the 1951 Refugee Convention are also reinforced by other types of international law. For example, customary international law includes the principle of *non-refoulement*,<sup>17</sup> (first formally stated in the 1951 Refugee Convention), which is a prohibition on the forcible return of people to countries where they face persecution. Other treaties use similar language to describe the rights outlined in the 1951 Refugee Convention. The 1976 International Covenant on Civil and Political Rights ("ICCPR"),<sup>18</sup> for example, mandates respect for civil rights such as protection against arbitrary detention, and the right to be recognized everywhere as a person before the law. The ICCPR also prohibits discrimination on certain grounds, including national origin.<sup>19</sup>

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<sup>16</sup> Article 16(2) of the 1951 Refugee Convention states that "[a] refugee shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the courts, including legal assistance." *See id.*

<sup>17</sup> "The principle of *non-refoulement* has acquired the status of *jus cogens*, that is, a peremptory norm of international law from which no derogation is permitted." Jean Allaine, *The Jus Cogens Nature of Non-Refoulement*, 13 INT'L J. REFUGEE L. 533 (2001), available at [http://www3.oup.co.uk/reflaw/hdb/Volume\\_13/Issue\\_04/130533.sgm.abs.html](http://www3.oup.co.uk/reflaw/hdb/Volume_13/Issue_04/130533.sgm.abs.html).

<sup>18</sup> International Covenant on Civil and Political Rights, Dec. 16, 1966 (entered into force Mar. 23, 1976) [hereinafter *International Covenant*], available at [http://www.unhchr.ch/html/menu3/b/a\\_ccpr.htm](http://www.unhchr.ch/html/menu3/b/a_ccpr.htm).

<sup>19</sup> *Id.* pt. II art. 2(1).

The United States ratified the ICCPR in June 1992,<sup>20</sup> signifying an understanding of the importance of these basic rights. Reiteration of these rights throughout international law forms a strong basis for enforcement of the 1951 Refugee Convention's mandates against those member States that would violate them.

The United States has enacted specific statutes to conform its domestic law to the 1951 Refugee Convention. The Refugee Act of 1980<sup>21</sup> adopted the Convention's definition of "refugee", which is the basis for asylum and refugee status, and the Convention's protection against *non-refoulement*, which is the basis for U.S. withholding of removal protection.

## II. ARBITRARY DETENTION

Following the 9/11 terrorist attacks, "the INS issued regulations granting its trial attorneys (the prosecutors in immigration proceedings) the power to overrule an immigration judge who decides, over INS objections, to order the release on bond of an INS detainee."<sup>22</sup> The regulations were ostensibly to "prevent the release of aliens who may pose a threat to national security."<sup>23</sup> In fact, though, the newly granted detention powers were applied to vast numbers of people based on country of origin, rather than alleged terrorist connection, resulting in the prolonged, arbitrary<sup>24</sup> detention of thousands of people. Such arbitrary detention, combined with the reticence of the Justice Department to bring charges against those detained, leaves many imprisoned without access to the court system through which they could clear their names. "In effect, it seems

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<sup>20</sup> See Office of the High Commissioner for Human Rights, *Status of Ratifications of the Principal International Human Rights Treaties* (as of May 2, 2003), available at <http://www.unhchr.ch/pdf/report.pdf>.

<sup>21</sup> Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102.

<sup>22</sup> Lawyers Committee for Human Rights, *Imbalance of Powers: How Changes to U.S. Law & Policy Since 9/11 Erode Human Rights & Civil Liberties September 2002-March 2002*, at 38, available at [http://www.lchr.org/us\\_law/loss/imbalance/powers.pdf](http://www.lchr.org/us_law/loss/imbalance/powers.pdf) [hereinafter *Imbalance of Powers*].

<sup>23</sup> *Id.*

<sup>24</sup> "The prohibition against arbitrary detention is a longstanding principle of international law. A detention is arbitrary if it violates existing laws, if it is for an indefinite or indeterminate period, or if there is no possibility to challenge its lawfulness." Letter from Kenneth Roth, Human Rights Watch, Executive Director, to Donald Rumsfeld, United States Secretary of Defense [hereinafter Letter from Kenneth Roth], available at <http://www.hrw.org/press/2002/05/pentagon-ltr.htm#ArbitraryDetention>.

to require that a presumed connection to terrorism be disproved before final release is approved. This policy . . . has resulted in children, sick people and the elderly, as well as many others, languishing in jail.”<sup>25</sup>

Detention of persons seeking refuge or asylum based on their country of origin violates Article 3 of the 1951 Refugee Convention, which states that “[t]he Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion, or country of origin.”<sup>26</sup> The United Nations Commission on Human Rights (“UNCHR”) has stated that it is:

concerned by a new U.S. government policy to mandatorily detain asylum seekers based on nationality. UNHCR fully recognizes and supports the need for heightened security measures during these tenuous times of increased insecurity . . . [but hopes] that measures to protect civilians and ensure U.S. security would not target those persons who are themselves fleeing persecution and looking for safety in the United States.<sup>27</sup>

Human Rights Watch (“HRW”) expressed a similar position when it stated:

The United States should rescind its new policy of detaining all asylum seekers from countries where terrorist organizations have been active . . . [Operation Liberty Shield] requires the automatic and continued detention of all arriving asylum seekers from a list of thirty-four countries, including Iraq. Many of these countries have well-documented records of human rights abuse that prompt men, women, and children to seek refuge in the United States.<sup>28</sup>

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<sup>25</sup> *Id.*

<sup>26</sup> See 1951 Refugee Convention, *supra* note 1, art. 3.

<sup>27</sup> Press Release, UNHCR, UNHCR Appeals for Protection of Asylum Seekers in the United States (Mar. 21, 2003), available at <http://www.unhcr.ch/cgi-bin/texis/vtx/home/openssldoc.htm?tbl=NEWS&id=3e7b27384&page=news>.

<sup>28</sup> Human Rights Watch, *U.S. ‘Operation Liberty Shield’ Undermines Asylum Seekers’ Rights* (Mar. 26, 2003), available at <http://www.hrw.org/press/2003/03/us032603.htm>.

Human rights organizations agree that individuals who have fled oppressive regimes should not be automatically linked with terrorism just because the countries from which they fled have active terrorist organizations. If anything, the fact that an individual has defied his or her abusers by fleeing persecution indicates that the individual wants no ties to the regime responsible for that persecution. According to Alison Parker, a refugee protection expert at HRW, "Many asylum seekers have spent years in prisons in their home countries. With this new policy, once they reach the United States – supposedly a place of safety – they will be thrown in jail again for months, and perhaps years."<sup>29</sup> Such detention of refugees and asylees on the basis of national origin clearly violates our obligation of non-discrimination toward those populations under the 1951 Refugee Convention.

Even if mass detentions of non-citizens were permissible under international law, this wide-sweeping measure does little, if anything, to advance the war on terrorism. Recent U.S. anti-terrorism legislation is both ineffective and politically unwise.

A striking example of the ineffectiveness of arbitrary detention is that none of the 9/11 hijackers would have been detected by these measures.<sup>30</sup> Furthermore, too few persons with *any* possible connection to terrorist activities have been found since these measures were enacted to justify the vast number of innocent people detained. Lastly, subjecting detainees to the criminal justice system would serve the same goal – discovering any possible terrorist information so we can act on it – while not violating the fundamental rights<sup>31</sup> of those who are still imprisoned without charge or access to lawyers.

Arbitrary detention also sets a bad example to the international community. By violating international human rights norms and treaties,<sup>32</sup> we encourage other countries to do so.<sup>33</sup> This is espe-

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<sup>29</sup> *Id.*

<sup>30</sup> See International Covenant, *supra* note 18, at 36.

<sup>31</sup> The due process and equal protection clauses of the 14th Amendment of the U.S. Constitution apply to "all persons," a phrase which has been construed as conferring fundamental rights to non-citizens and citizens alike. U.S. CONST. amend. XIV.

<sup>32</sup> "The Bush administration cannot hold people indefinitely without charge or send them to countries where they might be tortured," said Kenneth Roth, executive director of Human Rights Watch. "As time goes by and the number of detainees grows, so does the pressure on the U.S. government to act . . . the Bush

cially clear in the context of the aftermath of the war in Iraq. If we are to hold ourselves out as liberators of the Iraqis from an oppressive regime, we cannot then be an oppressive regime to those same Iraqis coming to the U.S. seeking our help.

### III. SECRET DEPORTATION HEARINGS

On September 21, 2001, the U.S. unveiled a new policy to hold secret deportation hearings for those arrested or detained after the 9/11 attacks. The policy, laid out in a memorandum from Chief Immigration Judge Michael J. Creppy, requires immigration judges to deny the public and the press access to their courtrooms during cases that the Attorney General considered to “require special procedures.”<sup>34</sup> One year later, another regulation was enacted that drastically restricted the ability of immigrants to appeal decisions of INS judges.<sup>35</sup> Under these new regulations, some judges have decreased the amount of time spent on each case to only a few minutes and they have begun issuing summary decisions of only a few lines, without any explanation for their decisions.<sup>36</sup> “[A]s the number of cases decided . . . has soared, so has the rate at which board members have ruled against foreigners facing deportation. T. Alexander Aleinikoff, a former INS general counsel . . . said of the scaled back review process that ‘[m]any, many cases are decided at a speed that makes it impossible to believe they got the scrutiny a person who faces removal from the United States deserves.’”<sup>37</sup>

Closure of deportation hearings contradicts Article 16(2) of the 1951 Refugee Convention, which states that “[a] refugee shall enjoy in the Contracting State . . . the same treatment as a national in

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administration has a legal obligation to determine the detainees’ status in accordance with the Geneva Conventions, and then to launch criminal prosecutions where credible evidence exists.” See Letter from Kenneth Roth, *supra* note 24.

<sup>33</sup> According to James Hathaway, an asylum expert at the University of Michigan, “[o]ther countries contemplating more severe detention regimes will take their cue from us that this is OK.” Noel C. Paul, *Drawing the line between asylum seekers and safety*, The Christian Science Monitor, April 3, 2003, at 18.

<sup>34</sup> Memo from Michael Creppy to Immigration Judges and Court Administrators (Sept. 21, 2001), available at <http://news.findlaw.com/hdocs/docs/aclu/creppy092101memo.pdf>.

<sup>35</sup> Executive Office of Immigration Review Board of Immigration Appeals, 8 C.F.R. § 1003.1 (2003).

<sup>36</sup> See *Imbalance of Powers*, *supra* note 22 at 45.

<sup>37</sup> *Id.* at 45 (citing Lisa Getter and Jonathan Peterson, “Speedier Rates of Deportation Rulings Assailed,” LOS ANGELES TIMES, Jan. 5, 2003, at A1).

matters pertaining to access to the courts.” Article 32 states that “[t]he Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order. The expulsion of such a refugee shall be only in accordance with due process of law.” U.S. courts agree that “the Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.”<sup>38</sup> Courts have held that secret courts violate due process,<sup>39</sup> so it can be argued that secret deportation hearings of those detained violates the 1951 Refugee Convention’s Article 32 guarantee of “due process of law.”<sup>40</sup> Interestingly, though, the U.S. Court of Appeals for the First Circuit “recently issued a decision declining, on the basis of the facts available to it, to find that the board’s use of summary decisions without opinion violated due process.”<sup>41</sup> Challenges of the closed deportation hearings will continue to wend their way through the courts, since civil and human rights groups have initiated suits challenging the restrictions on deportation hearings as violative of the due process rights of immigrants.<sup>42</sup>

Even assuming that closure of hearings themselves were permissible under the 1951 Refugee Convention, the possibility that hearings could result in *refoulement* – returning a refugee or asylee to a country where “life or freedom would be threatened”<sup>43</sup> – violates Article 33 of the Convention. Without access to deportation

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<sup>38</sup> *Zadvydas v. Davis*, 533 U.S. 678 (2001).

<sup>39</sup> *See United States v. Ginsberg*, 243 U.S. 472 (1917).

<sup>40</sup> Courts disagree whether secret deportation hearings also violate the 1st Amendment to the U.S. Constitution. In August 2002, the 6th Circuit held that secret deportation hearings were an unconstitutional incursion on the freedom of the press and that “democracies die behind closed doors.” *Detroit Free Press v. Ashcroft*, 303 F.3d 681 (6th Cir. 2002). However, the 3rd Circuit recently held that the government’s blanket closure of all “special interest” deportation hearings was permissible due to the national security dangers involved. *North Jersey Media Group v. Ashcroft*, 308 F.3d 198 (3d Cir. 2002) (newspaper publishers challenging the Interim Rule which denied them a right of access to certain deportation proceedings—a right claimed to be protected by the First Amendment of the U.S. Constitution).

<sup>41</sup> *See Imbalance of Powers*, *supra* note 22, at 46 (citing *Albathani v. INS*, 318 F.3d 365 (1st Cir. 2003)).

<sup>42</sup> *See generally* American Civil Liberties Union, Immigrants Rights, Legal Documents, at <http://www.aclu.org/ImmigrantsRights/ImmigrantsRightsMain.cfm?ContentStyle=6> (last visited May 16, 2003).

<sup>43</sup> *See* 1951 Refugee Convention, *supra* note 1, art. 33.

hearings, there is no assurance that only those who will not be harmed upon re-entry to country of origin are deemed deportable.

In addition to the legal issues raised by secret deportation hearings, this new governmental policy will likely have negative political implications. At a time when we are intent on ending terrorism, the U.S. could use the hearings of suspected terrorists as a chance to demonstrate the effectiveness of an open and accountable democracy. Instead, closure of these hearings creates the implication that a representative democracy can be conducted by a few government officials who keep their actions hidden from those they represent. The U.S. should open the deportation hearings in order to demonstrate accountability, to prove that our government is acting on behalf of the people of the U.S. and the world. Refusal to open up immigration hearings sends the wrong message to the international community.

#### IV. EXCLUSION OF REFUGEES

Following the enactment of Operation Liberty Shield, refugees from countries where terrorist groups have been active have been automatically detained when they arrive in the U.S. requesting asylum.<sup>44</sup> The rationale behind this provision is that detention until refugees' claims are adjudicated "allows authorities to maintain contact with asylum seekers while we determine the validity of their claim."<sup>45</sup> Opponents of this provision argue that detention based on national origin is inappropriate and violates international law.<sup>46</sup>

Under the 1951 Refugee Convention, a State can detain a refugee only if that person is found to be a security risk because of his or her behavior or background, not based on nationality.<sup>47</sup> "It's pretty clear someone should not be detained unless there is an individual determination for the need of their detention," says Eleanor Acer, director of the asylum program of the Lawyers Committee for Human Rights. The Bush administration cites language in the 1951 Refugee Convention that allows for exceptions during grave circumstances, such as war. But many legal experts agree that the provision applies only to individuals, not to a whole class of people

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<sup>44</sup> See *Operation Liberty Shield*, *supra* note 13.

<sup>45</sup> *Id.*

<sup>46</sup> See Paul, *supra* note 33.

<sup>47</sup> See 1951 Refugee Convention, *supra* note 1, art. 3.

or citizens of a specific country.”<sup>48</sup> Article 8 specifically prohibits disfavoring individuals based on their country of origin: “With regard to exceptional measures which may be taken against the person, property, or interests of nationals of a foreign State, the Contracting States shall not apply such measures to a refugee who is formally a national of said state solely on account of such nationality.”<sup>49</sup> The provision of Operation Liberty Shield that singles out refugees on the basis of national origin is thus in clear violation of Article 8 of the 1951 Refugee Convention.

The practical effect of increased scrutiny of those from the listed countries is that refugee resettlement in the U.S. has declined dramatically since September 11th. In previous years approximately 90,000 refugees settled annually in the U.S., but only a tenth of that number is expected to be settled in 2003.<sup>50</sup> This extreme decline in settlement of refugees means that thousands of people who had hoped to find safety in America are being returned to their countries of origin, where they face the same persecution they attempted to escape, or they are forced into prolonged detention, separated from their families. Humanitarian groups, as well as members of the Administration, have expressed concern over the needless suffering inflicted on persons seeking refuge in the United States. In September 2002, Rep. Christopher H. Smith (R-NJ) wrote to President Bush on behalf of 40 members of the House and Senate. The signatories “urged the President to continue the United States’ long and proud tradition of being a safe haven for those fleeing persecution and tyranny.”<sup>51</sup>

Linking refugees and asylum-seekers with terrorism, as the U.S. has done with recent anti-terrorism legislation, inflicts further suffering on individuals who have already risked their lives to escape persecution and violence, including terrorism, in their countries of origin. From the time of the nation’s founding, the United States has always offered a safe harbor for victims of persecution and suffering in other countries. Especially now, in the aftermath of a war waged in Iraq—a fundamental purpose of which was to liber-

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<sup>48</sup> See *United States v. Ginsberg*, 243 U.S. 472 (1917).

<sup>49</sup> See *Status of Ratifications of the Principal International Human Rights Treaties*, *supra* note 20.

<sup>50</sup> See *Imbalance of Powers*, *supra* note 22, at 37.

<sup>51</sup> See *id.* (citing U.S. Committee for Refugees, *IRSA Applauds Congress’ Appeal to President Bush for Increased Refugee Admissions* (Sept. 27, 2002), available at <http://www.refugees.org/news/crisis/resettlement/092702.cfm>).

ate the Iraqi people from an oppressive regime—it is imperative that we not deny those same people refuge when they come to the U.S. to escape human rights abuses. To deny such victims our assistance now would be to violate not only the 1951 Refugee Convention and international customary law, but also our values as a nation.

*Lori Adams*