US REFUGEE POLICY: A STUDY OF THE CUBAN REFUGEES SINCE 1980s.

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DECLARATION

I declare that the dissertation entitled "**US Refugee Policy: A study of the Cuban refugees since 1980s**" submitted by me in partial fulfilment of the requirements for the award of the degree of **Master of Philosophy** of Jawaharlal Nehru University is my own work. The dissertation has not been submitted for any other degree of this University or any other university.

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CERTIFICATE

We recommend that this dissertation be placed before the examiners for evaluation.

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Abbreviations /Acronyms

ACS	American Community Survey
AEDPA	Antiterrorism and Effective Death Penalty Act (1996)
BIA	Board of Immigration Appeals
CAA	Cuban Adjustment Act (1966)
CANF	Cuban American National Foundation
CDA	Cuban Democracy Act (1992)
CIA	Central Intelligence Agency
CMEA	Council for Mutual Economic Assistance
CORU	Coordinación de Organizaciones Revolucionarias Unidas
CPA	Comprehensive Action Plan (1989)
CRS	Congressional Research Service
CWS	Church World Service
DHS	Department of Homeland Security
DOD	Department of Defense
DOJ	Department of Justice
DOS	Department of State
ECLAC	Latin American offices of the UN
i.e.	that is.
GAO	Government Accounting Office
ICARA	International Conference on Assistance to Refugees in Africa

IIRIRA	Illegal Immigration Reform and Immigrant Responsibility (1996)
INA	Immigration and Nationality Act
INS	Immigration and Naturalization Service
IRC	International Rescue Committee
IRCA	Immigration Reform and Control Act (1986)
LIBERTAD	Cuban Liberty and Democratic Solidarity Act (1996)
LON	League of Nations
LPR	Legal Permanent Resident
NCWC	National Catholic Welfare Conference
NSC	National Security Council
OAU	Organization of African Unity
OAS	Organization of American States
OIS	Office of Immigration Statistics
ORR	Office of Refugee Settlement
PD	Presidential Determination
PL	Public Law
PRM	Bureau for Population, Migration and Refugees
QDR	Quadrennial Defense Review
RECE	Representación Cubana del Exilio
RRA	Refugee Relief Act (1953)
UN	United Nations

UNHCR	United Nations High Commissioner for Refugees
US	United States
USAID	United States Agency International Development
USC	United States Code
USCIS	Bureau for Citizenship and Immigration Services
USCRI	United States Committee for Refugees and Immigrants
USINT	United States Interests Section

Preface

The Cuban refugees after the 1959 Cuban Revolution were one of the recipients of the US refugee policy during the Cold War when the structure of the US refugee system hadn't evolved to the strictly procedural form after the Refugee Act of 1980. The initial intent was political with a foreign policy prerogative. What made the case unique to policy-making was a collusion of variety of factors—namely US as a first time asylum state, the proximity to Cuba and the specific circumstances of US-Cuban relations, the standardisation of US Refugee and Immigration laws to the international norms and laws and strict adherence to protocol in US soil, and finally, the political capital that the Cuban-Americans have begun to represent as a group. At the core of the privileges that the Cubans as a group benefit is the 1966 Cuban Adjustment Act (CAA), which wasn't ever repealed per se; but there is also a development of an alternating discourse on Cubans as immigrants through the very attempts at the level of state agreements to leap beyond the transcription that was the norm during the Cold War period.

Both the US and Cuba participated in the massive exoduses from Cuba after 1959, filtering them to the US, with the former initially enticing the group and also initiating extensive resettlement programs and then later, a leeway in legal residency. But what started off as a jab at Communist regimes eventually began to evince a dissonance with an embittering public opinion, and official concern towards mass immigration in particular. Concerns began with the Mariel incident which occurred right after the passage of the Refugee Act of 1980, evidenced by the 1984 migration agreement between US and Cuba. But the terms of arrangement between US and Cuba regarding migration did not experience major structural transformation until the Balsero crisis and the Clinton administration's migration agreements with Cuba. All through these events, the US and Cuba established an involuntary relationship of migratory arrangement that even inclined towards reciprocity of measures from both sides, especially when the 1994-1995 migration accords were formatted.

Then, there was the definitive shift of US refugee structure to the very existent international norms and laws on refugees. It brought the question of the Cuban political refugees at the juncture of US refugee structure's transformation itself. The aim of the

evolving US refugee system was to gouge the generalising tendency of refugees under the immigration bracket to the particularistic definition of refugees and peoples of that ilk. The tilt towards procedural and legal arrangements in a domestic refugee policy adhering to international refugee norms and laws and the indiscriminate acceptance of Cubans as necessarily political refugees by various US administrations created a discord in the discourse of an equalising US refugee structure with the US foreign policy preference of Cuban refugees.

Finally, amidst these developments, the Cuban diaspora emerges as another influencing factor especially after their evolution as an active political participant in domestic politics, significant by the very nature of their migratory destinations in the US (the concentrated settlement in Florida specifically) and their relationship vis-a-vis Cuba after the 1959 revolution. All the while, the general tone of US-Cuban relations were that of hostility ebbing in degrees between different administrations, but their engagement as far as migration was concerned was highly communicative and even cooperative.

The study is principally an attempt to understand policy-making in the US, by analysing the dynamic interactions between various vantage points of views and the influences that ensue when different mechanisms play out and also examine the contradictions in policy-making. It seeks to examine the following hypothesis:

- The United States refugee policy towards Cuban refugees has evolved and departed from the context of a foreign policy directive within a Cold War paradigm to a more comprehensive international refugee policy.

The questions that will be raised to assist in testing the hypothesis are:

- Within the broad context of US Immigration policies, how did the US refugee policy evolve?
- How does the US refugee policy towards Cubans fit into its foreign policy objective and directive? What are the linkages between the State Department and the Immigration and Nationality Act in terms of decisions on refugee policy? Is *political viability* still a major factor?

- To what extent did the US Refugee Act of 1980 impact the US refugee regime? What were the causal factors that necessitated it?
- What are the specific governmental assistances that are unique to the Cuban refugees as opposed to other refugee groups? How do domestic compulsions affect the US policies on Cuba?
- How did the Balsero crisis lead to a realignment of US refugee policy towards Cuba? How did it alter the terms of asylum for Cuban refugees?
- Whether the War on Terror impacted US Refugee Policy towards Cuba?
- When did political activism begin among the Cuban diaspora, if activism did exist? And how did they impact US migration policies towards Cuba?

The study will attempt to analyse the historical development that brought about the particular role of Cuban refugees in US-Cuban engagement. It will descriptively look into how the evolution of the US refugee structure and the uniqueness of Cuban refugees coalesced and brought about a discord in the specific Cold War arrangement between the US and Cuba. It will trace the various legislative developments that created the US refugee structure and then, highlight the unparalleled Cuban refugees' case under the general course of the evolving US refugee system; explaining thus the various circumstances that created it. The Diasporic contour will also be stressed upon. The study will also focus on the foreign policy decisions that the US applied towards Cuba under the light of their relationship after the 1959 revolution and identify the various layers that engendered the present trends in US refugee policy towards Cuba. This study will have employed both primary and secondary data. The sources will range from public statements by various governmental agencies, hearings at the level of Congressional Committees and sub-Committees, online research portals, journals, statistical data from DHS records, reports by government and private institutions, books and articles.

Chapter 1

Legislative History of US Refugee Policy: Interlinking International Norms to Domestic Parameters

Regulation of refugees through institutionalised mechanisms both in the US and at the international level emerged only in the latter half of the 20th century. In the US, it was not until the 1980 Refugee Act that a definite structural arrangement presented itself for the refugees, making the laws particularistic to it and separate from US immigration laws. Before this Act, all refugee legislations in the US were impromptu responses to the incoming groups of peoples, or peoples who were anticipated; as such it was group-specific and issue specific. The US Refugee Act of 1980 was the cynosure upon which the standard refugee laws of the US would base its present procedural form from. The Act was a response to the lacuna in the provisions of the Immigration and Nationality Act (INA) in dealing with subroutine refugee admissions. What the US Refugee Act of 1980 successfully accomplished was move the discourse on refugee policy from the exceptional to the centre of the bureaucratic process, by amending the communist prerequisite. Not only that, the whole admission process became part of the mainstream of legal procedures and thus eliminated its marginalisation as a practise and as a concept. This act relegated a distinct standard for refugee admissions, partitioning refugee legislations from immigration legislations in general.

After the Refugee Act of 1980, Cuban refugees still continued in large part to be treated under extra-legal mechanisms in the Immigration and Nationality Act (INA) and not under the established provisions of the INA for refugees, just as their use as political refugees found cognisance within US foreign policy towards Cuba before the Act and after the 1959 Cuban revolution. The migration agreements that were initiated between US and Cuba in the 1980s and the 1990s were attempts to normalise these exceptional elements of the migration framework. The status of Cuban refugees as a political variable within the hostility of US-Cuba relations were in large part responsible for the exceptional treatment that Cuban refugees received; made further intractable by view of the ideological Cold War and the priorities of US foreign policy, the geographical proximity in the Western hemisphere and the politics of the exiled Cuban-Americans themselves.

Thus, while the US refugee policy was emerging as a distinctive policy area within the US immigration policy but separate from its general parameters; on the other hand, US

refugee policy was also threading the path to extreme formalisation of refugee admissions, definitions and numbers—by referring to the standards underlined under 1951 and 1967 Conventions on the Status of Refugees (UNHCR 2010: 14-19, 46-50). From another vantage point, the Cuban refugees' case remained particularistic and the US administrations after 1980 were attempting to correct this by manoeuvring within the embargoed fabric of US-Cuba relations; and at the same time seeking to regulate and enhance a more formalistic and rigorous US immigration policy. But the discretionary element of the US refugee laws also brought in influences of US foreign policy; just as US refugee policy was an element of it during the Cold War. Thus, refugees by their transnational character pose a serious question as to their definitional standards and even the very question of 'who constitutes refugee' has become a matter of contention among law-makers, bureaucrats and international law experts.

The many facets to this issue will be examined in the subsequent chapters, but this chapter will look into the specific legislations that structurally expanded the refugee specific laws separate from the immigration legislations; and analyse the linkage between international norms and the US national norms on refugees. It will also deal with the inception of the first major refugee reform of 1980 Refugee Act, the factors that necessitated it and the specific provisions that expanded its mechanisms later on. The sections that analyse the issue are—section one which examines the positions that US national laws take vis-a-vis International laws and the particular location of US refugee laws in the nation-state territoriality and International jurisdiction; section two which chronicles the genesis of US refugee legislations during the initial years between 1948 and 1980. The next section will elaborate the circumstances that necessitated the Refugee Act of 1980 and the broader implications for US refugee policy. The fourth section will present the various expansions, modifications and amendments made to the 1980 refugee structure and the broader significances they hold for US refugee laws. Under this light, the questions of import to this chapter are:

- Within the broad context of US Immigration policies, how did the US refugee policy evolve?

- To what extent did the US Refugee Act of 1980 impact the US refugee regime? What were the causal factors that necessitated it?

1. US Refugee Policy: Genesis and Development

1.1. Background on 'refugee' as a concept

First applied to the Huguenots, the term Refugee has often been generically referred to those fleeing masses seeking another place of refuge, technicalities varying between internationally ascertained definitions and those laid out by various States. But the running theme here is 'persecution'. While retaining itself as such a term, several scholars have from different vantage points opined that it included under it the broad expanse of socio-economic situations, psychological circumstances, religious conundrums etc., thereby lacking a precise academic explanation as to its specialised character—thus ambivalence and vagueness has been atypical as far as term goes (Black 2001; Malkii 1995: 496; Zetter 1988; Beyer 1981; Richard Ferree Smith 1966). It is in such a light does the term find usage in academic studies—a *chaotic conception* as Andrew Sawyer puts it (Black 2001: 63). The very identification of refugee being policy-dependent, has made the nature of definition and issues dependent on it. Though when refugees are defined at all, the 1951 Geneva Convention is usually the bar most adhered to; it identifies refugee as one who had fled his/her country due to a:

> 'well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, unwilling to avail himself of the protection of that country; or who, not having a nationality or 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'[1] (UNHCR 2010: 14).

Questions of citizenship and ensuing rights that followed it meant that a particular set of peoples had been identified so and thus their rights remain particularly exclusive as opposed to those who are not; resonating in Aristide Zolberg, Timothy Mitchell and John Guy's observations about 'national "us" from the rest of the world's population—a large universe of "thems"' (Scanlan 1994: 80-81). In fact one writer quoted, 'Without the

[1] Revised 1951 UN Convention Relating to the Status of Refugees [Article 1(2)]. The US is a party to the 1967 protocol but not the 1951 Convention. The 1967 protocol removes the geographical and temporal specifications of the 1951 Convention (UNHCR: 2). In this manner, even parties to 1967 Protocol are expected and obliged to assent to the 1951 Convention especially with regards to the definitions proposed.

other, without the foreigner, there could be no citizen' (Farer 1995: 259). Alison Brysk and Gershon Shafir termed this 'disparity of rights' between citizens and non-citizens as 'Citizenship gap' (Choules 2006: 276).

It has been justified by the very formation of Nation-States, whose very nature demands absolute Sovereignty within its territory, since it is a particular state for a particular people—citizenship's very principle (though the permeability of their boundaries and sometimes even authority is not denied). Under this light, refugees attain an unenviable position of being rejected (either blatantly so by States or by creating situations that bring about the same) from their original countries due to consequences of war-situation; political prosecution; economic un-sustainability and so on. This rejection makes continued living in the same countries improbable, bringing them to seek refuge somewhere else, somewhere where they may or may not ever be given refuge or would not even want to uproot to. And while Nation-State politicking is limited to boundary; the refugee issue is not defined by it.

The semblance of any kind of development in legal regulation, in the Refugee sphere was a deliberate creation that was possible due to practises that were already in place amongst States in their dealings with one another. What had been unique were not the masses fleeing from prosecution, in fear of their lives but the institutional arrangements that ensured the legitimacy of being protected in such a situation. Malkii posited that popular policy discourses pictured a deprived refugee, whose needs could only be satiated by the state; since under the Westphalian order of nation-state (Aristide Zolberg added to it that) the notion of being state-less and nation-less was both 'absurd in theory and unusual in practise' (Gill 2010: 626). Farer opined that the practise of 'Safe Haven' as against extradition in a Nation-State framework introduced the concept in practise, i.e., a refuge for those fleeing for any variability of reasons especially if political in character (Farer 1995: 258-264). Governments refusing extradition of citizens of other states became then reactionary states who contributed profusely[2] to the practise.

[2] Those that availed these developments were for instance—supporters of the liberal revolutions (1848) in Germany and Hungary; Christian minorities (Turkey); Jews escaping pogroms (Russia) etc. 'While states like US, Australia, Argentina etc were simply populating themselves through immigration policies', the

Eventually First World War would occur, which spewed migrants across international boundaries like the Greeks of Anatolian plateau, Russians escaping Bolshevik revolution, Armenians fleeing genocide in Turkey etc. The first international response was a 1922 program[3] under the LON, to issue identity certificates as a substitute for passport and afford movement for refugees (LON, Treaty Series Vol. LXXXIX, No. 2004). Legal regulation as it exists today has forayed into humanitarian issues and ethicality of practises, expanding further into allegations of security threat and debates regarding welfare priorities. The shift from conceptualised-lukewarm practices by states into institutionalisation shows an instance where norms become laws and why this kind of incorporation is crucial to how the US in its refugee laws had too, seen a similar manner of incorporation after a lot of inner dialectics in the history of its refugee legislation.

1.2. Interlinking International Laws and National Laws

The first half of the 20th century for the US in the Immigration chapter was distinctively marked by a closed approach to claimants and entrants, especially to those who could not claim origin from 'the desired ethnic group'. The refugee specific legislations that were introduced by emergent situations during the second half of the 20th century were often the only unrestrictive element in a bounded Immigration policy. This was under the background of nativist sentiments[4] and the national preference quota which was the norm then. The spatter of group specific and issue-specific refugee legislations that emerged after World War Two was only a build-up to the standardisation of the refugee structure that was to be, through the 1980 Refugee Act to the international norms. This can be

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1905 British Aliens Act enacted exceptionally at the height of Jew pogroms in Russia allowed specifically those escaping persecution on religious or political grounds (Farer 1995: 262-263).

[3] It was specifically for Armenian and Russian refugees, it even 'considered the possibility' of covering transportation costs of these refugees (LON, Treaty Series Vol. LXXXIX, No. 2004).

[4] Evidences reveal that states like:

> 'Texas, Florida, Arizona, California and New Jersey have filed suits against the federal government for the billions of dollars spent on illegal aliens' (Teitelbaum and Weiner 1995:16-17).

Eventually it is not only alarmist inclinations but the very nature of welfare state where legal and 'rightful citizens' would want their representative governments to prioritise its expenditure on the accepted group and issue, since tax dollars are at the core of this quagmire.

explained by the fact that ever since the beginnings of an international refugee regime[5]—Eurocentric though it may have been, the post-Second World War and its consequences had necessitated an institutional response. Initially thought to be temporary, refugee flows have today become persistent as part of intra-state violence especially in many developing and under-developed countries of the world (Kaysen 1995: 244-245). And serious attempts and debates to institutionalise and regulate these movements only thus only began in the 20th century.

So, the primary preoccupation in the US like all other sovereign states has been about participation, 'whether not to' or 'to do so and to what extent, if so'. In fact, through the Cold War period, US dealt with the refugee issue by arrangements other than the instrumentalities of the UNHCR, even though US contributed to the agency's budget. Even the definitional standards accepted either explicitly or implicitly was limited by questions of sovereignty. The 'restrictive definitional efforts were motivated...to keep numbers down' (Gallagher 1989: 581). There eventually emerged two primary positions with regards to considerations of international law and national laws—monist and dualist approaches.

For monists, international law always prevails over domestic laws, as international law retains a higher hierarchy in legal norms; both international and domestic laws are considered parts of a single legal system and 'individuals have international legal personality'. Watson opined that the authorities of Lauterpacht and Higgins are often times cited for the monist view to be upheld as legitimate (Watson 1999: 205). An example of such an approach is captured by Christina Cerna, who opined that regional

[5] The regime centres on the United Nations High Commissioner for Refugees (UNHCR) as a prime agency, for international law it refers to the Conventions on the Status of Refugees (1951) and its addendum, the Protocol on the Status of Refugees (1967) and additions over the decades. It has however evolved further to include some specific sections of the UN like the Representative of the Secretary-General of the Internally Displaced Persons and the Office for the Coordination of Humanitarian Affairs etc. The beginnings of the refugee regime can be traced to the years after World War One when the League of Nations (LON) was requested by the International Committee of Red Cross on behalf of the Russian causalities in the Bolshevik Revolution. Then to it were later included the displaced peoples by war, basing it on the Charter of the Organisation of African (OAU) unity and the Cartagena Declaration for the Western Hemisphere. It is essentially Eurocentric as its very inception dated pre-1951 events as the metre for refugees requiring international protection through the above instrumental mandate.

and universal systems are not competing or contradictory in norms and thus there was no cause to interpret them any other way than complementarily (Cerna 2000: 103).

Dualists, on the other hand, approach international law and domestic laws as two separate systems, both operating at different levels. International law in this case is only applicable to the extent it is integrated into the mechanisms of national legal systems, and further subjected to constraints and limitations of national laws. Dualists also stress the 'international legal personality of the states' (John F. Murphy 2004: 75). Thus, the issue boils down to domestic jurisdiction and international jurisdiction. At the heart of this monist-dualist debate is Article 2(7) of the UN Charter[6], which essentially forbids any international organisations like UN from trespassing on affairs that are within the jurisdiction of states. Now, human rights have been generally regarded within domestic jurisdiction (Watson 1999: 203). So what it portends for US refugee policy is the perpetual tug-of-war between standardising to the international norms or developing it only to suit America's specific purposes.

As such, Article VI of the US Constitution declares treaties (as well as Constitution and US laws) as the 'Supreme law of the land'; while Article III, Section 2 provides for judicial jurisdiction for cases arising under treaties. Similar other minor provisions in the Constitution exist but none are precisely indicative of the status of international agreements[7], other than treaties or customary international law (John F. Murphy 2004: 75-76). Refugee legislations fall under the umbrella of human rights instruments and as Ambassador Nancy Rubin, US representative to the UN Commission on Human Rights had put it succinctly, 'no nation's human rights records are above international scrutiny'[8]

[6] Article 2(7) of the UN Charter states that:

> 'Nothing contained in the present Charter shall authorise the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require Members to submit such matters to settlement under the present Charter…' (UN Charter, Chapter 1, Article 2/7).

[7] Under Article II, Section 2(1) of the US Constitution, 'treaty' only refers to international agreements – which become binding on the US only when ratified by the President on the advice and consent of the Senate by a two-third majority vote.

[8] This was stated in advance of the vote for the People Republic of China's 'no action motion' in the fifty-sixth session of the UN Commission on Human Rights in April 2000.

(Marks 2012). So, the scope of international law expanded, traditional areas that were originally only under domestic jurisdiction began to be included in the former's agenda[9].

As mentioned before, immigration laws are subject to the US national laws, and even though US isn't a signatory to the 1951 convention, some of its obligations are considered 'derivative' (UNHCR 2012: 2) through the protocol of 1967. Charter-based human rights system derives its efficacy from the notion that states being members of the international community are accountable to some degree or the other. US has, however, relegated human rights treaties or the even more ambivalent international agreements to being 'non-self-executing' (Cerna 2000: 96-100; Schabas 2000: 112-115). The courts in particular take special cognisance of the fact. In 1829, in the case of *Foster and Elam v. Neilson,* Chief Justice John Marshall distinguished between self-executing and non-self-executing. The proviso to US laws on treaties was that treaties were to be regarded by courts as equivalent to legislative acts, even when an accompanying legislative provision did not exist. However, in the same case the Chief Justice interpreted that, when treaties are not self-executing it was not a rule for courts unless the legislature enacts a legislation to ensure it so (Foster & Elam v. Neilson - 27 U.S. 253, 1829). Then again in another instance, in the case of the *Haitian Refugee centre, Inc. V. Baker* (1992), a panel of the US Court of Appeals of the Seventh Circuit by a 2-1 vote held that treaty provisions with Human Rights implications was non-self executing (Civil Rights Litigation Clearinghouse 2008).

This is in keeping with the dualist approach that the US has long favoured. Simply put, it means that international law and the domestic laws of the US are separate and independent of each other. As such international law is only practised to the extent where it becomes part of the US legal system (John F. Murphy 2004: 6; Schabas 2000: 112). Even this process where domestic laws internalise international standards is quite prolonged as issues of beliefs[10] and culture enter the debate. This stance is not unique in

[9] 'Criminal law, environmental law, the jurisdiction of US courts, human rights, economic, political and social activities of states etc' (John F. Murphy 2004: 6).

[10] Cultural notions like abortion, death penalty, freedom of expression etc., but also the ultimate gesture of territoriality and rule of law which is at the heart of this complexity.

the sense that states have only recently developed the practise of using universal laws in domestic courts. The scepticism with the use of international law and institutions especially during the George W. Bush administration was captured by Senator Helms in January 2000 while informally addressing the Security Council stated—that all states wanted an effective UN, but for the UN to be effective, it's institutions should be of use to democratic states; that Americans saw it as simply 'another diplomatic tool' and 'not an end in itself'; that no UN or any other international tribunals or courts is fit to adjudge America's foreign policy and national security decisions (Helms Informal speech before the Security Council, January 2000).

Yet the US had openly avowed its support for the rule of law[11] in the world, but simultaneously continued to offer reservations[12] regarding a 'monolithic system' wherein the only 'moral legitimacy' belonged to the UN (Helms Informal speech before the Security Council, January 2000). Charles Keely wrote of the international refugee regime whose preferred solutions were repatriation when the country in question had been deemed safe for return, settlement in the first place of refuge (asylum in the first host country) or resettlement in another country; whereas the preferred practise still remained 'permanent incorporation' into the host-state in Western Europe and North America (Keely 2001: 304-305). But since no country's 'self-image' (Forsythe 2000) is scathed by a commitment to human rights, the US has attempted through it legislations to affect a human rights angle to its refugee policy.

One of the primary issues of international obligation is the issue of 'non-refoulement'—i.e. 'to not to return'. The first distinct case of not providing asylum on US soil and relocating the incoming Cuban refugees was in the Balsero influx—Guantanamo was

[11] In September 1990, President George H. W. Bush addressing a joint session of the Congress stated that America had to support the rule of law in a world where rule of law supplants the rule of the jungle. Secretary of State, Madeleine K. Albright in a speech on October 28, 1998 put the issue of rule of law for the Clinton administration:

> 'Law is a theme that ties together the broad goals of our foreign policy. It is at the heart of everything we do at the Department of State...the rule of law and global prosperity go hand in hand'

[12] They have generically been labelled as 'RUDs' by US human rights jargon (Schabas 2000: 112).

used as the base for admission entry under the refugee laws of the US. Technically, no state is bound to admit any refugees if it so decides, however under customary international law the general understanding is that of non-refoulement and asylum. In practise, US generally provided first asylum to the Cuban refugees till the Clinton reversal. The Cuban refugee case presented a break from the Cold war paradigm but relocating boat-people from Cuba to another location, also treaded the fine-line of violating non-refoulement.

Between international law, domestic law and state practise, there have thus been various contestations. For instance—in the case of asylum seekers, US courts and policy-makers cite the criminal clause in denying claimants refugee status and an asylum by that. This was especially a typified official response after the spectre of Fidel Castro using mass influxes to influence the US embargo to the alarm of states like Florida. Human rights proponents however decry the violation of the non-refoulement principle in international law. The US Supreme Court on the other hand, ruled during the 1994 Balsero crisis that interdiction by the Clinton administration wasn't illegal, since by US domestic laws non-refoulement could only be applied on US soil and not on the waters (Sean D. Murphy 2003). Interplay between these three factors was seen more distinctly in the Elián González case, wherein US Courts eventually supported the return of Elián González to Cuba after having being found floating ashore. It was an instance of the long formalisation process that entailed application. The decision of the courts however, affirmed the discretionary powers of the executive in US immigration laws and the limitations that reviews by judiciary held. At the same, there was an inconsistency in the adjudication process in determining who is or nor deserving and thus a 'lack of uniformity' (Said 2006: 873) thereof. It is also however, a part of the dominant discourse in industrialised nations wherein the major impetus has been to protect citizenship rights (Choules 2006: 275-277), hence the sordid path to restriction-based immigration policy.

2. US refugee legislations 1948-1980

Right after the Second World War, the US had led a successful campaign for a Western-dominated international refugee system for the resettlement purposes of displaced peoples. According to John A. Scanlan and Gilbert Loescher, the Truman administration

was converting the refugee issue into a Cold War appendage thus affording a new basis of support from traditional interest group politics (Scanlan and Loescher 1986: 14-15). So, despite a lack of specific national policy on refugee, refugees were being granted entry through a slew of situation-specific laws and directives, i.e., each incoming group required the same.

As such, the first refugee legislation in the US was a law enacted in 1948, the Displaced Persons Act, which granted entry to 202,000 persons by borrowing from entries of the future quotas of the originating countries[13] (PL 774: 1009-1019, 1948). It was mainly to address children of war (Gage 2004: 90). Next was the Refugee Relief Act (RRA) of 1953, which was amended in 1954. The RRA allowed entry to the Eastern and Southern European refugees as well a restricted number of those from China and Arab countries[14] and this was significant as it included Asians, thus departing from the broad US Immigration Policy then. It was followed by the Refugee-Escapee Act of 1957 or Public Law (PL) 85-316. Between the RRA and the Act of 1957, definitions for refugee and a new category 'Escapee' were created. Eventually they were amalgamated as 'Refugee-Escapee' entrant too and the definitions presented themselves as follows:

> 'Refugee means any person in a country or area which is neither Communist nor Communist-dominated, who, because of persecution, fear of persecution, natural calamity or military operations is out of his usual place of abode and unable to return thereto, who has not been firmly resettled, and who is in urgent need of assistance for the essentials of life, or for transportation...Escapee means any refugee who, because of persecution or fear of persecution on account of race, religion or political opinion, fled from the Union of Soviet Socialist Republics or other Communist, Communist-dominated or Communist-occupied areas of Europe, including those parts of Germany under military occupation of the Union of Soviet Socialist Republics and who cannot return thereto because of fear of

[13] Before this, President Truman had issued a directive on December 22, 1945 to admit 40,000 refugees from Europe.

[14] A 1953 National Security Council Memorandum identified it as a mechanism to:

> 'encourage defection of all USSR nations and key personnel from satellite countries in order to inflict psychological blow on Communism and though less important…material loss to the Soviet Union'.

It indicated a brain-drain of professionals. (Zolberg 1997: 123-124)

persecution on account of race, religion or political opinion' (Refugee Relief Act, PL 83-203, Section 2-a,b).

These Acts by themselves were however unable to cope with the stream of over 200,000 Hungarians[15] who couldn't be represented in the limited immigration quota. The Justice Department had to literally invoke an 'obscure provision' of the US immigration law, allowing the Attorney General to grant entry without visas temporarily (Richard Ferree Smith 1966: 46). This case is significant, as it garnered the beginnings of the parole provisional entry in the US.

The Fair Share Law of 1960 (PL 86-648) provided the acceptability of the US of one in every four refugee-escapees from Europe and Middle East with the conditionality that they accept resettlement opportunities offered by other countries. Between 1961 and the end of the century, it would allow the entry of 19,800 applicants (Statistical Yearbook of INS 1997: 94). One writer opined of it, that the Congress had enacted it in response to the World Refugee Year, to relieve refugee crises world-over (Richard Ferree Smith 1966: 47).

The 1960s also marked the arrival of escaping refugees from Cuba, which President Kennedy with the Department of Health, Education and Welfare took responsibility for them both administratively and financially. A Migration and Refugee Assistance Act for permanent settlement was devised in 1962 (US Federal Register, Executive Order 11077, 1962). The all-weather entry to all Cubans before 1980 was indicative by the use of the term 'Cuban refugee' and by the 'Cuban Refugee program (CRP)' that began on February 1961. By it, any Cuban would be a refugee if s/he 'registered at the Cuban Refugee Emergency Centre in Miami who left Cuba after 1 January, 1959, bearing proper identification from the Immigration and Naturalisation Service and holding the status of parolee, permanent resident or student, or granted indefinite voluntary departure' (Scanlan and Loescher 1983: 119).

[15] Unlike the Hungarian case, another law PL 85-892 allowed entry to Dutch-Indonesians, 'a doubly-rooted group…Unpublicized and generally unheard of by the American public' (Smith 1966: 47), though the entire burden of resettling costs from health insurance, language training courses to transportation costs were borne by the Netherlands government.

The Amendments of 1965 to the Immigration and Nationality Act (INA) abolished the nationality quota that had been the norm for US immigration since 1920s. But for the refugees it allocated six percent of visas for the refugees under the seventh preference; that the departure of these refugees involved flight from Communist country or Middle East countries and that it was induced by fear of persecution from race religion or political opinion—still made it captive to the Communist clause. In 1966, it was amended to form the Cuban Adjustment of Status Act of 1966 or the CAA (PL 89-732, 1966) through which Cuban refugees could become permanent legal residents (LPR)[16] after a year of being a parolee. After its inception till 1990, it would grant exactly 493,964 Cuban refugees an LPR status (INS Statistical Yearbook 1997: 92). This act is the most significant measure by which US policy towards Cuban migration had been held to. While it has never been revoked directly, attempts to adjust its status and also null its implementation during the Clinton administration and after has led to the point where US Cuban migration policy has essentially seen reversals from the Cold War norm. As for the earlier assumption regarding the Cuban refugees' transient residence upon US soil before 1966, the Act officially nullified the option. These developments eventually culminated in the birth of the Refugee Act of 1980.

3. 1980 US Refugee Act

3.1.Causal factors that necessitated the Refugee Act of 1980

The build-up of asylum crisis throughout North America and Europe after World War two had led to a discourse in the industrialised states to balance humanitarian concerns with the ultimate pressures on the domestic society and foreign policy priorities (Gallagher 1989: 591). International institutions and international norms had eventually begun to realise the magnitude of the refugee problem and this concern trickled down to the representatives in states. The US was one such case.

3.1.1. Congressional concerns and the genesis of Refugee Act of 1980

According to Edward M. Kennedy, the Refugee Act of 1980 originated from hearings:

[16] LPR has been defined as 'foreign national who has been granted lawful permanent residence' in the US; it is also known as 'green card recipients' who are allowed to 'live and work permanently' in the US (OIS Factsheet 2004).

> ‘conducted during 1965-1968 by the Senate Judiciary Subcommittee on Refugee...[culminating] in a bill submitted to the Senate in 1969 entitled *US Assistance to refugees throughout the world*’ (Kennedy 1981: 143-144).

The recommendation he particularly stressed that found expression only in the 1970s was that, the Congress should seek to reform legislation by initiating a more ‘flexible authority in...basic immigration statute for admission of refugees in reasonable numbers’. As such, after the 1965 reforms, the Senate Committee on Immigration and Naturalization to whom the bill was recommended to, held no hearings for ten years, and other refugee and immigration bills referred to it also did not report any general immigration legislation (Kennedy 1981: 144).

This reference is significant because congressional statements are noted by executive branch officials or members of Congress, as they are eventually laws or take that form in the future. This is so, because by their very generality and being not self-binding in nature, they continue to induce Congressional interest—and the Congress ‘subsequently strives to oversee executive interpretations (evasions) of them’ (Forsythe 1988: 8). In September 1978, (before his eventual chairmanship of the full Judiciary Committee in 1979) Senator Edward Kennedy wrote letters addressed to the Secretary of State, Secretary of Health, Education and Welfare, the Attorney General and the Chairman of the American Council of Voluntary agencies that urged for joint effort on the creation of new national policy on refugees (Senate report 96-256: 2-3). The earlier unreported precedence changed with this letter.

The concern that Congressional members had, was regarding the parole authority of the attorney general, which they deemed were being misused in admitting large groups of refugees (Kennedy 1981: 44), simply on political grounds. There were members who also disagreed. But largely, the case revolved around the ‘pell-mell and standard-less refugee admission system’, wherein through an:

> ‘extralegal mechanism, hundreds of Vietnamese and Cubans were admitted to the United States, in occasional mass waves between 1965 and 1980’ (Gibney 2000: 56).

That is why the Mariel influx right after the Act’s inception was very crucial in determining the efficacy and the spirit of the act’s implementation.

Now, the nature of law-making is such that beyond its first inception, it cannot be directly located in reports by committees or initiation by law-makers themselves in the law-making bodies. The modifications, contractions and expansions usually ingratiate themselves through other legislators, executive recommendations and so on, thereby making the final result a potpourri of various inclinations. Edward Kennedy remarked that many in the Congress found the earliest form of bill for the act limiting the parole authority—and that it required a great deal of consensus-building to have it passed (Kennedy 1981: 146).

Following the international conference on Indochinese refugees[17], earlier blockers and refuters like the then Senator Strom Thurmond of the Judiciary Committee, assented to it. It was passed in the Senate by a unanimous vote of 85-0 (Kennedy 1981: 147). What resulted after this was an assortment of differences between the versions approved by the House of Representatives and the Senate on the issues of—definition, admission numbers, admission status of refugees, asylum provisions, limitation on parole and domestic resettlement assistance. It was resolved later in the Conference Committee held in February 1980.

3.1.2. Policy lacuna

The emergence in the US in 1980 of a Refugee Act was not only a response to the domestic lacuna but also reflected the international mood regarding the whole affair of refugees and responsibility. John Gallagher wrote that by the late 1970s, there had developed a complicatedly prominent system that espoused 'international, regional and national responsibilities and relationship' (Gallagher 1989: 584).

Former Senator Dick Clark (was also the US Coordinator for Refugee Affairs) testifying before the hearings that had opened for the proposal of the new bill on national refugee policy stated:

[17] The conference was convened in Geneva and prior to it, the bill had been blocked but not after. According to Edward Kennedy, most of the attending countries 'doubled the number of Indochinese they were prepared to admit'. Japan had also pledged to cover 50 percent of the UNHCR budget in Southeast Asia, reducing the share that US had to contribute. These facts placated the Congress's concerns and helped facilitate the new law (Kennedy 1981: 147).

> '...we...carried out our refugee programs through a patchwork of programs that evolved in response to specific crises. The resulting legislative framework is inadequate to cope with the refugee problem we face today...' (Hearing Committee on the Judiciary, March 1979: 9).

Similarly, the Carter administration also attested to the need for 'comprehensive and equitable' standard for US refugee programs (Palmieri, Statement before the House Judiciary Committee 1980). As such, Congress only responded to this dearth of structural system in dealing with refugee issues, by according specificity where generalisation earlier existed.

3.1.3. Human Rights

As mentioned earlier, refugee legislation before 1980 were only ad hoc responses. Human Rights lobbies consisting of large private non-state actors to congressional members were adamant about US refugee policy taking a humanitarian bias. In the US, the dramatic coverage of the boat people in 1979 exacerbated the urgency of needing, 'a specific refugee legislation' (Wm. Reece Smith Junior 1981; S. S. 826-827: 1980; The Nation 1980: 579-581; National review 1980: 956, 958). All of these factors coalesced and aided the passage of the Refugee Act of 1980.

Ellen Dorsey observed that cross-national citizen efforts on human rights primarily through religious and labour organisations along with the continued action of Amnesty International 'amplified the human rights message in public discourse...mainstream media'. That the very mention of a human rights rhetoric reflected the tenacity of human rights movements in channelling leverage over policy process (Dorsey 2000: 177)[18]. So, what was once conceived as an 'academic reification' (Dorsey 2000: 180), while referring to a combined plethora of social, political and economic forces that had begun to develop into a transnational civil society, part of which constituted the human rights movements, had begun to sinuate itself in policy circles.

As such, the human rights lobby in Washington encompassing religious groups, labour unions and international NGOs amounting to more than 50 organisations with a specific

[18] This human rights impetus originated from the Westphalian system,

> 'where state to state leverage is applied to demand an accounting of internal practices' (Dorsey 2000: 178).

human rights agenda often exercised 'considerable clout' by the late seventies (Korey 1998: 186). Along the same lines, Gilbert Loescher and John A, Scanlan argued that foreign policy controlled refugee admissions and numbers allocation were often arrived at after supporters of increasing numbers for humanitarian reason colluded with the other groups to achieve the same goal for different purposes (Loescher and Scanlan 1986). For instance during the Ford administration anti-war liberals like Edward Kennedy colluded with conservatives like then Louisiana senator John Breaux to question the effective quality of the embargo on Cuba and the former also introduced a bill to revoke it (Schoultz 2009: 267-268).

By forming the US Refugee Act of 1980, the Congress according to Edward M. Kennedy had given 'new statutory authority' to the long-term commitment of United States towards human rights and refugees all over the world (Kennedy 1981: 142). This was too then, part of the self-image US was trying to cultivate.

3.1.4. Changing demographics

The 1970s and 1980s were decades that was crucial to immigration legislation and also refugee policy in particular because US for the first time was seeing changed residence patterns not only due to the influx of Mexican immigrants but also because of the 'geographic dispersal of the foreign-born population' in its small and medium-sized communities, especially in the South and Midwest. It was assumed that opinions amongst peoples of different political predilection were exacerbated by new migration patterns in 'non-traditional domain' (O'Neil and Tienda 2010).

This development is important because the happenstance of both the Refugee Act of 1980 and Mariel incident during the same decade produced an inimical public opinion against immigrants in general and at that level, distinct categories lose efficacy. There was thus a need to distinctly identify 'the immigrant' from 'the refugee' both legally and also for bureaucratic purposes. To temper American foreign policy with a human rights agenda, the American mainstream also needed to be reminded of the particular situation of the refugee and the specific obligations that it might entail for states.

3.2. US Refugee Act of 1980 and implications for US refugee policy

Title I of the Refugee Act of 1980, emphatically points to the purpose of the act. Section 101 (a) stated that it was the:

> 'historic policy of the US to respond to humanitarian assistance...maintenance in asylum...promote resettlement or voluntary repatriation, aid for...transportation...admission to this country of refugees of special humanitarian concern to the United States...' (PL 96-212 1980: 703).

While Section 101 (b) provided that permanent and systematic procedure for refugee admissions was the objective of the act; that they would be 'absorbed' through comprehensive, equitable provisions for efficient resettlement (PL 96-212 1980: 703). The attempt thus was to encompass a broad range of services along with definitional modifications. It was also an attempt to standardise to a US refugee policy that adhered to the international refugee laws as opposed to the earlier processes of exceptional policy-making as will be shown below.

First, the definitional laws of the US refugee policy was for the first time brought under the standards of the 1951 Convention and the 1967 Protocol to the Status of Refugees, despite the US being a party only to the latter. Section 201 (a) Section 101 (a) paragraph (42) in Title II of the Act labelled 'admission of refugees' describes the term *refugee* to mean those fleeing or expressing a fear of persecution established through race, religion, nationality, membership in a particular social group or political opinion (PL96-212 1980: 703). The Communist conditionality was explicitly removed. The definitional expansion coincided with the civil wars of Central America and asylum applications also soared[19] since eligibility expanded too (see figure 1).

The Refugee Act of 1980 sought to distinctly separate refugee and immigration legislations. Not only that, it also removed the 'geographic distinctions' (Gibney 2000:

[19] The INS noted that the vast majority of applicants:

> 'cited concerns about generalized violence, civil war and/or poor economic conditions rather than fear of persecution, thereby invalidating their claims' (Gallagher 1989: 592).

This statement is representative of the kind of loophole that exists between developed and developing states wherein the former is bound to an approach that strictly adheres to definitional correctness.

56) along with the ideological distinctions; those that had existed under the 1965 Immigration Act and the Refugee-Escapee Act of 1957 or even the RRA. The exclusionary clause in the same paragraph excluded anyone who committed the same crimes on the grounds of persecution stated above—'...ordered, incited, assisted, or otherwise participated...' (PL 96-212 1980: 703-704). The Refugee Act of 1980 was (and is) significant in the sense that it was the first major effort at constituting a streamlined refugee policy within the folds of INA regulation.

Second, the Congress enacted this legislation to bring US law in compliance with the principles outlined in the protocol, distinguishing between asylum and refugee status (DHS Annual Flow Report 2010: 2); and also provided for in-country processing (which is what the Clinton administration provided for with the 1994 and 1995 migration agreements with Cuba). The Refugee Act of 1980 subjected refugee laws to the norms at the international level and 'mandate[d] the creation of systematic asylum regulations' (Salehyan and Rosenblum 2008: 105). The asylum provisions explicitly conform to the United States obligations under the treaty pertaining to the protocol on the Status of refugees, of which the US was a party to.

This act thus incorporated 'refugee and asylum principles into the INA' (CRS 2007: 2). Asylum proceeding-either of accepting so or revoking of its status were under the discretion of the attorney general. During the George W. Bush administration and the passage of the REALD ID Act of 2005, one of the clauses included the Secretary of State, who could on an advisory level request the attorney general in revoking the asylum status under the exclusionary clauses (CRS 2005).

Thirdly, the act provided for a baseline limitation[20] for 50,000 till the year 1983 and was an attempt by the Congress to set a ceiling for refugee admissions (Gibney 2000: 56). From there on forth it would be affixed by the President every fiscal year after consultation with the Congress. By instituting such a law, the Refugee Act of 1980 'sought to ensure that each claim be adjudicated on its merits'. The refugee admissions

[20] By the INA guidelines, per country ceiling was set around 7 percent of the world wide estimation. This per country ceiling is different from the quota system. DOS states that the per country ceiling 'is not an entitlement but a barrier against monopolization' (CRS 2010d: 5).

decisions could be made separately as long as the numbers seeking so were small, thus separating immigration and refugee policy (Stein, Federation for American Immigration Reform 1995).

Fourth, the act provided a legal alternative to the earlier routes of being a 'conditional entrant' or 'parolees' etc., after the passage of one year of after which the subject could adjust to an LPR status. This is the permanent settlement option that is the approach among industrialised states[21], unlike the temporary refuge approach that developing countries usually adopt. In both the approaches, 'inadequacies' exist; like the approach taken by the developed states, which is patterned without flexibility to meet generously the requirements of those areas which are of less political concern (Gallagher 1989: 595). As such, after a period of one year a notice is sent to all refugees and asylees to report for an interview, wherein upon determining refugee status as admissible, LPR status would be granted (US Federal Register 107 1980: 37392-96).

Fifth, the act as an appendage to the fourth point wrote out the 'clear legislative intent of both Houses that the parole authority could no longer be used to admit groups of refugees' (Kennedy 1981). The reason being an amended Section 207 (b) (1) of the Refugee act that provided for a:

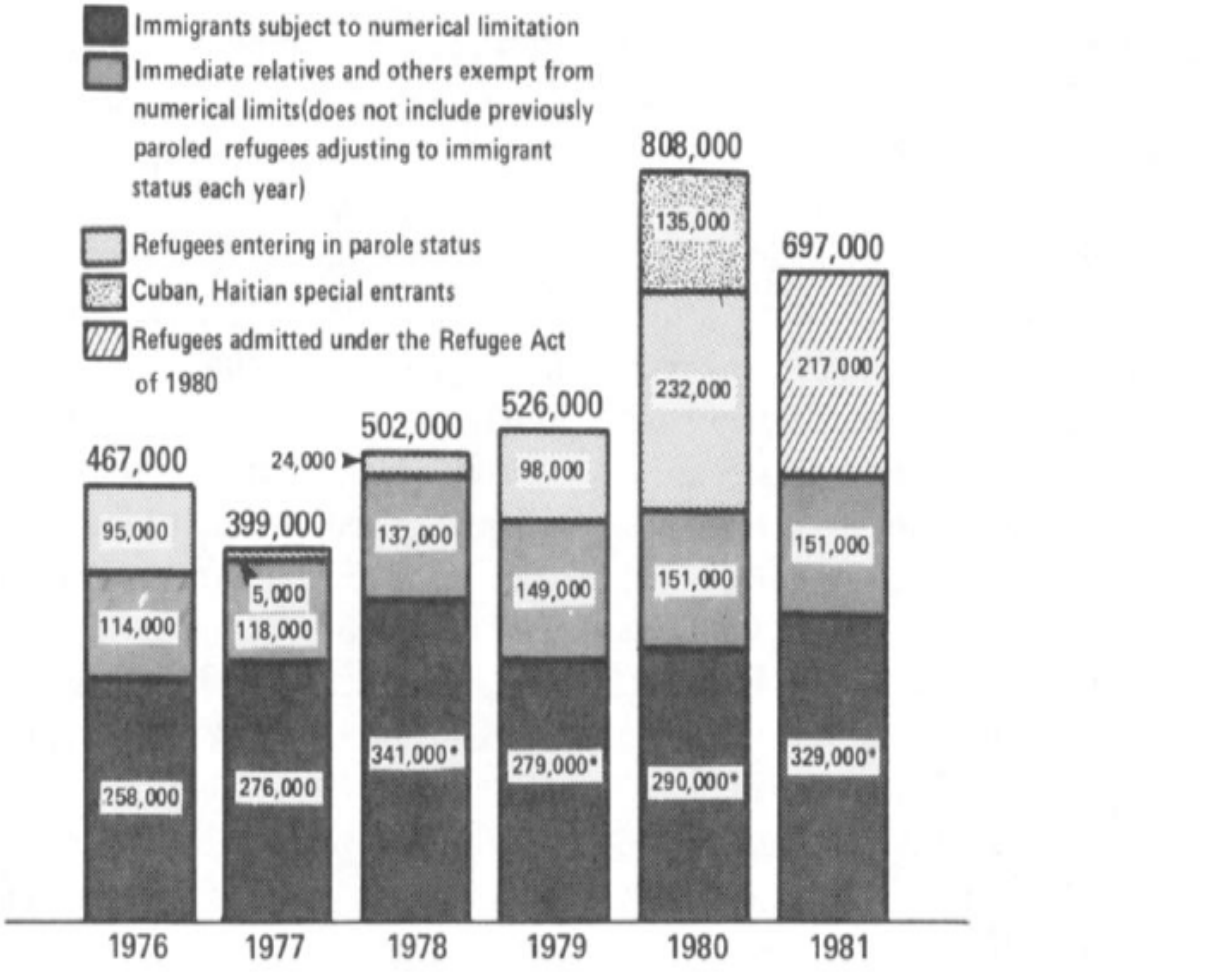
> 'unforeseen emergency refugee situation...justified by grave humanitarian concern or is otherwise in the national interest' (PL 96-212 1980: 704).

It had been invoked during the Peruvian embassy affair by the Carter administration but latter passed over for parole authority in the Mariel influx.

Sixth, the act created a provision for federal responsibility in resettlement of refugees especially if they are on American soil. It set in place a formal assistance mechanism for all groups of refugees without particularly singling out a group as the sole beneficiary. It

[21] Though in the US, a category called TPS (Temporary protected Status) which technically provides for a temporary safe haven to those non-citizens that do not meet the legal definition of refugee but are fleeing some dangerous situation or 'reluctant to return' thereof. The situations vary from environmental disasters to armed conflict or threat to personal safety (CRS 2010e: 2). This status is issued by the Secretary of DHS or Secretary of State. Some countries which have been availed of this status are Liberia (March 1991 to October 2007); Kuwait (March 1991 to March 1992); Rwanda (June 1995 to December 1997); Lebanon (March 1991 to March 1993); Kosovo province of Serbia (June 1998 to December 2000); Bosnia-Herzegovina (August 1992 to February 2001); Angola (March 2000 to March 2003); Sierra Leone (November 1997 to May 2004); Burundi (November 1997 to May 2009) etc (CRS 2010e: 3).

FIGURE 1: Number of legal Immigrants and refugees: 1976-1981



Source: Select Commision on Immigration and Refugee Policy, U.S. Immigration Policy and the National Interest, Final Report (Washington, D.C.: 1981).

* Includes some of the 145,000 extra-numerically limited visas issued as a result of the Silva v. Levi court decision, implemented 1977-1981.

Source: Huyck and Bouvier 1983: 42

Note: The year 1981 directly reflects the expansion process of Refugee Act of 1980 (both in terms of numbers and definitional baseline eligibility).

had shown the widest difference between the House and the Senate due to the federal element involved (Kennedy 1981: 151). But the act itself, provided authority for discretionary grants for special projects, programs, services for the refugees. The implementation bit of the act involved the creation of an Office of the US Coordinator for Refugee Affairs and an ORR (Office of Refugee Settlement). The file noting in the first part of the US Refugee Act of 1980 stated:

> '...to revise the procedures for the admission of refugees...to establish a more uniform basis for the provision of assistance to refugees and for other purposes' (PL 96-212 Mar. 17, 1980: 703).

The free rein that this section of the Act provided enabled later administrations to co-opt private groups whose interests coincided with certain groups. For instance—CANF's (Cuban American National Foundation) Cuban Exodus Relief would in 1988 with an agreement with the INS enable a unification of at least 10,000 Cuban families in three years with no cost to the US taxpayers (CANF White Paper 2012).

4. US refugee legislations 1980-2008

The period right after the Vietnam War, thus saw legislative initiatives which were largely influenced by major refugee flows. Sergio Díaz-Briquets opined that these legislations were also in response to the general domestic and international debates regarding refugee definition and the 'proper role of ideological versus humanitarian criteria in the selection of refugees' (Díaz –Briquets 1995: 169). So, the making of the 1980 Refugee Act did really begin years before its true inception on April 1, 1980 the date when it became effective. Beyond the structural framework it provided, it also offered policy-makers the chance to expand the span of US refugee laws either by situational demands like Mariel; or by implementation problems with clauses like refugee assistance and detailing, with regards to the 'length of federal responsibility' (Kennedy 1981: 151) and the method of administrating it.

4.1. Removal of the Communist Clause

The 1980 Refugee Act was the beginning of the legislations in US refugee policy in accurately applying standardised rules for conduct regarding refugees without the shadow

of Cold War behind it. It presented specifically three things namely— the erasure of the Communist Clause from being defined as a refugee under US domestic laws thus incorporating the definitions under the international UN Convention and expanding the scope of refugees; established the principle of asylum in US statutory laws; and finally, established the principle of resettlement assistance for refugees. In totality, it expanded the scope of those considered as refugees under US laws. The definition for being a refugee now read as:

> '(A) any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any such country in which that person last habitually resided, or who is unable or unwilling to avail himself or herself of the protection of that country because of persecution or a well founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion' (PL 96-212 1980: 703).

As far as definition went, the US refugee policy was definitely shifting to the standards of 1951 Convention and the 1967 Protocol, but due to the federal element in the admission of refugees other interests, foreign affairs tended to enter the case. For instance the 'Lautenberg amendment' (1989) or the 'Specter amendment' (2006), provided for 'reduced evidentiary standard' (CRS 2006a: 28) in designating certain categories of peoples as refugees[22] (by the Attorney General formerly and currently the Secretary of DHS)—the former for former Soviet and Indochinese nationals and the latter for Iranian religious minorities (CRS 2006a: 28).

Its first test case was the Mariel incident and different levels responded differently as to its successful application. In the immediate aftermath after the Act's inception, the Carter administration had initially invoked section 207(b) of the INA to allow 10,000 Cubans thronging the Peruvian embassy citing 'unforeseen emergency refugee situation' (PD 1980: 28079). But during the Mariel influx, the administration resorted to invoking the 'parole authority'[23] instead. The category used to allow the entry was 'Cuban-Haitian entrant' since the administration wanted to avoid 'blatant discrimination' (Calavita 1989:

[22] Even provides for adjustment to LPR status to former Soviet and Indochinese nationals who had been refused refugee status (CRS 2006a: 28).

[23] Parole authority exists in part to the INA of 1952 and had been the method in allowing huge groups to enter.

805), thus following an 'ad hoc administrative approach' (Kennedy 1980) instead of strictly utilising the 1980 Act's provisions. As a National Law Journal headline read 'Carter Helps Refugee Law Flunk 1st Test' (Kennedy 1981: 141), the application of the Act was a botched effort as the insufficiency of the Act was revealed further by resettling procedures and fund allotment.

4.2. Legalisation of Illegal aliens

Immigration Reform and Control Act (IRCA) of 1986 was significant for legalising those persons illegally residing before 1982, mainly targeting a huge undocumented section of Hispanic population (Public Law 99-603, 1986). Haitians which had also turned up in boats during the Mariel influx were legalised too as part of this legalisation. They'd been entered under refugee status, but their stay was ambivalent unlike the Cuban refugees who could be on their procedural way to legal permanent residency through the CAA after a year of being a parolee. An 'Immigration Emergency Fund' was also created to:

> 'provide federal aid to regions and communities...unsuitable living conditions that arise when mass migrations occurs' (CRS 2009b: 1).

Thus, expanding the ambiguity that the 1980 Refugee act provided for domestic refugee assistance.

4.3. Expansion of persecution categories

The Immigration Act of 1990 put Asylees and refugees under quota limits, if admitted (PL 101-649, 1990). The attorney general was further allowed to widen the categories and numbers as so required, under 'temporary protected status' for victims of natural disasters, civil wars etc. It also mandated the US Commission on Immigration Reform for examining and 'making recommendations regarding the implementation and impact of US immigration policy' (US Commission on Immigration Reform Report to the Congress 1997). This kind of structural development only further demonstrated a favourable attitude towards a procedural form of refugee policy, since it presents an opportunity for administrative review involving both the Congress and the Executive branch. Exclusionary exceptions were straitjacketed into the categories of which those applicable to refugees/asylees were 'health-related grounds, criminal activity, security and terrorist

grounds, public charge, ineligible for citizenship and aliens previously removed' (CRS 2011e: 2).

Illegal Immigration[24] Reform and Immigrant Responsibility Act (IIRIRA) of 1996 was the next major legislation wherein grounds for persecution now precluded 'state-enforced family planning' (something along the lines that China espouses) (PL 104-208, 1996). The IIRIRA along with AEDPA (Antiterrorism and Effective Death Penalty Act) also of 1996, also amended asylum procedures including determining 'credible fear' more convincingly; thus officially responding to the frequency of fraudulent documentation; thus it aimed 'to reduce fraudulent claims and limited judicial review of removal orders' (CRS 2005: 2; US Commission on Immigration Reform Report to the Congress 1997: 30-31). This was an extension of the international criminal law, an area which US was severely concerned about at the judicial level and also for reasons of national security. The restrictions under immigration procedures also encompassed the categories of refugees and asylees; as such admission process became of concern to human rights activists due to the avid tendency for stricter process. But the erstwhile INS interpreted it as not only encompassing an extended list of criminal offences but also making procedures so much more difficult under IIRIRA to obtain relief for deportation (Sean D. Murphy 2003: 311). One other section that dealt with the CAA was 606; unable to repeal the CAA outrightly, the Congress verified the language stipulating that 'CAA would be repealed when Cuba becomes a democracy' (CRS 2007: 2).

On one hand, definitional standards were at par with international standards, so were resettlement packages and access to citizenship. Organisations like US Committee for Refugees and Immigrants continually rate US amongst those states with the highest opportunities to those refugees given asylum (USCRI 2007: 9; USCRI 2008: 23). However, on the flip side of the issue, adjudication and rules were getting designed to strictly sift out criminals and one of the process meant detention under US soil before the status of claimants are determined. In October 1998, Amnesty International filed its first

[24] The unauthorised immigrant population (the arrivals that has accumulated between 1980 and January 2008) continued to be a consistent controversial issue for immigration. An amalgamated data of US DHS, OIS and Pew Hispanic Center showed this category at 10.8 percent and 11.9 percent respectively on January 2008 (2010a: 3).

report against a Western nation i.e., US for the consistency of violations of human rights; the report noted that asylum seekers on arrival were 'placed behind bars as if they were criminals', shackled indefinitely (Sean D. Murphy 2003: 293-294).

4.4. Criminality clause

Criminality clause has begun to be the mark by which asylum and refugee rights has ceased to exist both under international law and national laws, due to the expansion of international criminal law; and also the fact that most of the 'perpetrators of gross violations of the laws of war and crimes against humanity' (Gilbert 2002: 429) have essentially sought refugee status after fleeing abroad[25]. The usual state practise under US domestic laws has been 'deportation' after asylum status has been revoked or was never accorded, after having failed procedures both at the administrative and judicial level. The term deportation used under US laws specifically means 'removal' either to the country chosen by the subject himself/herself; to the original country of origin; or a country with a neutral status to the background of the subject.

Refugee Act of 1980 had also included within its definition for refugee its non-inclusion of 'any person who ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion' (PL 96-212 1980: 703-704). This clause was extended by USC 2000, wherein the attorney general could detain a non-citizen if found inadmissible. An example of its usage and judicial interpretation was the case of—Sergio Suarez Martinez and Daniel Benitez, Cubans who had arrived in the US from Cuba during the Mariel influx, paroled through the attorney general's authority. Normally, they would have been adjusted to a permanent legal status. However, due to having being convicted

[25] Article 1F of the Convention Relating to the Status of Refugees 1951 excludes certain persons from refugee status. It states:

'The Provision 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;
(c) he has been guilty of acts contrary to the purposes and principles of the United Nations' (Gilbert 2002: 426).

of felonies during the 1990s, their parole statuses were revoked and taken into custody by the INS in 2000. Cuba declined to take in convicted felons and the two had to appeal to the US courts against indefinite detention, though each court cited their removal being unforeseeable in the near future. Eventually, the Supreme Court found indefinite detention not viable due to the characteristics of the aliens involved (Sean D. Murphy 2005: 230-231). This was a progression from an earlier case (*Zavydas v. Immigration and Naturalization Service*) regarding indefinite detention and the US Supreme Court ruling that it wasn't permitted, noting that reasonable time of detention was only to reassure the non-citizen's presence at the time of removal. This decision was reiterated by the same court in 2005.

The UNHCR Executive Committee at its 37th session in 1986 and the 1987 UNHCR 'Guidelines on the Detention of Asylum Seekers', had adopted the conditionalities under which detention may be resorted to, namely—verification of identity, claims of refugee or asylum status, document fraudulence and protecting national security or public order (UNHCR No. 44, XXXVII, 1986: ; Goodwin-Gill 2001: 224-225). A corollary issue that follows after removal proceedings has been passed, is the inclusion of US obligations under the UN Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (or the 'Torture Convention'). Under immigration laws this interpreted itself as not deporting any persons to a state where the subject(s) may face torture. The Department of Justice as directed by the Congress amended regulations to incorporate the fact in 1999 (Sean D. Murphy 2005). Under it, those facing deportation may avail protection by virtue of the Torture Convention, otherwise not available in the Convention Relating to the Statute of Refugees for certain peoples under Article 1F. The US courts have thus, shown a deliberate tendency in incorporating the norms underlined in international law as can be seen in the cases after 1990. But strict procedural rules still faced the refugee/asylee-claimant at both ends of the spectrum—reception and qualification process.

4.5. Real ID Act 2005-Terrorism clause

The stringency with which US refugee laws adhered to particular provisions of the 1951 convention and 1967 protocol took off especially during the George W. Bush

administration; particularly with regards to definitional standards depriving many of refugee or asylee status, as the entire 'burden of proof' fell on the claimant[26]. This was also due to the proliferation of claimants who had grossly violated peace and committed crimes against humanity claiming refugee status abroad—so, there was a definite tendency to only grant refugee status to the 'deserving' (Gilbert 2002: 429).

After the September 1, 2001 terrorist attacks on the US, the National Commission on Terrorist Attacks upon United States reported cases of exploitation of immigration law by terrorists (CRS 2005: 2) and this evidence led to simultaneous changes in management and America's perception of the global security environment in general. The massive overhauling of management also saw the passing of the USA PATRIOT Act of 2001. The priority was that—International Terrorism was recognised as 'a threat to US foreign and domestic security' (CRS 2003b: 2-5). It culminated in the REAL ID Act of 2005. By March 1, 2003, under the Homeland Security Act of 2002 and Reorganisation Plan under the act, the now defunct INS had transferred to the Department of Homeland Security (DHS); however, due to the provisions of the INA, most cases still referred to the Attorney general. The main element in this Act was the precision with which asylum applicant could be subjected to, for determining his/her credibility of claim and the evidence to support the claim. It had earlier been left to the case law of the Board of Immigration Appeals (BIA) and federal courts, wherein cases were granted asylum if the applicant testified credibly of his/her case or there existed no contrary findings on evidences. This was in keeping with the Handbook of the UNHCR that expected applicants to provide evidences to support their statements or at least give a satisfactory explanation for the lack of it (CRS 2005: 4).

The main changes that this act introduced and amended were—first, both the attorney general and the Secretary of Homeland Security could exercise authority over asylum issues, the latter only with regards to revoking the status of refugee granted if found defaulting on any of the conditionalities under the INA regulations; second, section 101 (a) (3) of the REAL ID Act created a new standard wherein the applicant possessed the

[26] The 'burden of proof' had existed in the INA prior to the REAL ID Act; however it made the element more explicitly to be proven before asylum could be granted.

burden of proving his/her eligibility for refugee/asylum status—to establish 'at least one central reason'; third, it broadened the INA inadmissibility standards due to reasons of terrorist activities—including then not only active perpetrators but also those supporting indirectly by funds, material support etc., (Prior to this act, the terrorism of any group or individuals were determined by the Secretary of State in consultation with and upon request by the Attorney General) (CRS 2005: 5-8, 19, 21-22). All in all, 'security related issue of immigration enforcement' (CRS 2006a: 1) remained a consistent concern with the Congress from border security to illegal immigration to the specific enforcing roles that officials (US military, civilian patrols and state and local law enforcement agencies) had to play (CRS 2006a: 1; CRS 2004: 1-7). At the core of this predicament for the Congress is whether broad-based comprehensive reforms would be initiated or gradual revisions are attempted to existing structure (CRS 2010d)

The rabid internalisation of the terrorism clause in the immigration laws was because prior to September 11 attacks, terrorism was thought to be 'primarily...an international and foreign policy issue' (CRS 2003b: 2), with the DOS reporting[27] too that the vast majority of such acts were on foreign soil. September 11 attacks re-prioritised America's focus on national security and its resolve against terrorism (CRS 2003b). The consequent changes that occurred in immigration laws in general were in large part related to whether the national policies and the organisational capacities of the US were capable of handling the various forms of terrorist movements/acts directed against it.

Both federal laws and court interpretation were also coalescing to lend a stringent standard by which persons who were to be granted asylum or refugee status (or not) were to be treated. At the same, there was an inconsistency in the adjudication process in determining who is or nor deserving and a 'lack of uniformity' (Said 2006: 873).

5. Conclusion

This chapter has thus found four different conclusions based on the discussion so far. First, before the 1980 Refugee Act US refugee legislations and arrangements were only

[27] DOS data indicated that around 100 US nationals were killed by terrorist attacks abroad between 1991 and 2001; but the its annual report released in 2002 put the toll at 3,547 in 2001 alone, while its 2001 Patterns report put Cuba as one of the 7 amongst the state sponsors of terrorism (CRS 2003b: 2-3).

particularistic to each incoming groups, involving drawn out political negotiations at the domestic level (though the latter practise continued even after the Act was established). Second, the processes for standardisation towards a strict adherence to the definitions laid out in the 1951 convention and the 1967 protocols became the norm to citing national interests in denying applications for refugee-status and asylum privileges. In fact, refugee policy, in practise, moved towards strictly defining a refugee, thereby decisively binding the asylum status to be accorded. As such, US asylum policy under the US refugee policy has become stricken by increasing determinants like criminality and terrorism, in particular. Third, regarding the asylum considerations for those applicants both before and after the 1980 Refugee Act, procedural restrictions in no way limited the ability of the attorney general directed by the Executive to employ the clause of permitting entrance; since entry is left to his/her discretionary capacity. Lastly, US's approach to refugee policy has increasingly shifted to procedural restrictions, pettily slicing every clause of international refugee laws to restrict mass inflow. While not denying those who had managed to reach its territory (in fact it accorded one of the best welfare benefits according to UNHCR and USCRI data), in its enthusiasm however for a rigorous subroutine, it has made the very act of attaining privileges that is due to a refugee status quite scarce.

Chapter 2

US Foreign Policy: Linkages with US Refugee Policy towards Cubans

The US refugee policy towards Cuba was an extended appendage of the hostility that the US and Soviet Union shared, which in particular after the Cuban missile crisis reminded US (in Cuba's case) of the abrogation of the Monroe doctrine[28] that had since its introduction, given the USA a position in the Western hemisphere. In the Cuban refugees case, they were automatically ascertained as political refugees after the Castro regime placed itself in Cuba; and in some periods between 1960s and 1970s they were even directly facilitated by both governments; as such between 1959 to 1980 'approximately 650,000 fled' (Beyer 1981: 32) from Cuba.

The actions that were initiated to accommodate Cuban refugees in American soil ranged from automatic asylum under political refugee status to extensive resettlement options to permanent residency to white-washing of their public image in the initial years. While other refugees like the Indo-Chinese and the Hungarians were also beneficiaries of the US refugee legislations, the kind of foothold that the Cuban refugees gained by its constructed imaged representation at the inception of their allowance and the particular exiled Cuban American politics that engendered in the US, make the case particularly crucial by linking policy-making and foreign policy.

While it is impossible to directly link refugee outflows from Cuba to any US policy towards Cuba (Scanlan and Loescher 1983: 117), it is possible to reconsider the overwhelmingly welcoming attitude by the US towards the Cuban refugees in different periods and study it under the shadow of foreign policy stances of various administrations. Host governments are influenced at four levels in its response to refugee crises or refugee issues or refugee policies, namely—the entities and institutions comprising the international refugee regime; domestic constituency which receives the refugees and questions regarding Welfarism becomes crucial; the particular association that the host country and the sending country shares; finally, the particular domestic politics of the diasporic community that had been implanted by previous migrations, if any at all. The Cuban refugees' case applies in all of these variables.

[28] President Monroe's annual speech to the Congress, December 2, 1823 (National Archives and Records Administration, 1995: 26-29). The doctrine pronounces the Western Hemisphere as being under America's sphere of influence. The intensification of this factor was due to the Cold war, as America urgently tried to 'resist the entry of foreign communist powers into the region' (Withana 2008: 168).

In this light, this chapter examines the political role of the Cuban refugees amidst the US-Cuba relations before 1990. It would trace the impact of Cold War legacy especially from 1960s to 1980s on the Cuban refugee issue. It would continue to outline various executive actions and agreements signed by various presidents in order to provide a chronology of how US policy towards Cuban refugee developed. Divided into specific sections—the two sub-sections of section one examines the various circumstances that engendered for the US to deem Cubans fleeing as political refugees and how it got linked to US national interest; sections two and three will analyse the various circumstantial usage of the Cuban political refugee and the question of the Cuban political refugee in the light of anomalistic mass influxes like the Mariel influx. The questions that are of import in this chapter are:

- How does the US refugee policy towards Cubans fit into its foreign policy objective and directive? What were the foreign policy goals of the US and the problem of Cuban refugees in the Cold War?
- What are the linkages between the State Department and the Immigration and Nationality Act in terms of decisions on refugee policy? Is *political viability* still a major factor?

1. The inception of US-Cuba hostility

1.1. Fidel Castro and 1959 Revolution

The complicated history of Cuba by view of being a colony, plus the onset of hostility between US and Soviet Union made the migratory element of the Cubans as another stratum in the US-Cuba relations. As such, the plethora of mainstream discourse in the US regarding Cuba or the US-Cuban relation in general is replete with themes from abject demonization of the anti-Fidel Castro/anti-Communist rhetoric to the questionable efficacy of the policy tools that the US employed towards Cuba. For the Fidel Castro led government, the Cuban revolution only represented a persistent and creative resistance to the 'historical control of the Caribbean labour', which had fuelled many states like the US and rendered Cuba unsustainable to much of its domestic population (Watson 1988: 7, 12, 15). Objective nuances of the Cuban issue in the US have not witnessed a profuse growth.

Thus, the gist of the history between the two countries must be noted to understand the particular nature of their conflict and the role that Cuban Americans and refugees would play in it. As far as migrations to the US by Cubans are concerned, it predated the Fidel Castro revolution by about a century (Max J. Castro 2002: 3). The 1890 US Census rated Cubans in New York at 57.5 percent among approximately six thousand Hispanics in the city. This was during the heights of Cuban cigar manufacturing, but most of the establishment had closed by the 20th century (Miyares 2004: 158). Cuba continued to be a country that one could immigrate to; however after the 1930s economic crunch, and the crumbling of the world sugar market, Cuba changed to a country of emigration (Fullerton 2004: 542).

Cuba had become a colony when Columbus had 'claimed the island for the Spanish Crown' (Bergad 2007: 12), but it was only in the sixteenth and seventeenth centuries that Havana was of great import to the Spanish empire. Its economy was diversified into commercial crops like tobacco, sugarcane, small-scaled industries for basic consumer goods etc., and it was not until the early nineteenth century did sugar begin to be the central focus of the Cuban economy[29]. Right after Cuba's independence from Spain, the colonial elements of the US moved in more powerfully during the earliest years of the twentieth century; that Cuba was unable to pursue the state of being completely independent especially with the existence of the Platt Amendment (Treaty between the United States and Cuba Embodying the Provisions Defining the Future Relations of the United States with Cuba Contained in the Act of Congress 1904) which had become part of the Constitution of Cuba in 1902 after independence from Spain (CRS 2011c: 4; Library of Congress 2006: 1).

So, when Colonel Fulgencio Batista for his first attempt[30] took over formally from Colonel Mendieta the mantel of governance in 1934, he was faced with a nation 'resigned to or expectant of radical reform', however the US government during his reign

[29] On the circumstances of Cuba's place in history, details can be found in Laird W. Bergad's 'The Comparative histories of slavery in Brazil, Cuba and United States (Bergad 2007: 12-21) and Hugh Thomas's 'Cuba: A History' (Thomas 2010: 7-45, 73-514).

[30] The military coup in 1952 was another one, and the reign lasted till 1958 after which he fled after Fidel Castro's 1959 triumph.

continued to remain 'the effective master of the Cuban economy' (Thomas 2010: 418-424, 427, 461, 751). Prior to 1959, US was the largest investor in Cuba too. Even otherwise, this regime was associated with repression of political opponents, media censorship etc. US Ambassador to Havana Willard Beaulac in 1953 emphatically stressed to the Department of State (DOS) that the very visible American military personnel were noticeable to the Cuban people, who more than often associated it as the regime's open subservience to the will of the US and also America's implicit condoning and support of the repressive regime (The Ambassador in Cuba, Beaulac to the Department of State January 9, 1953). This was further augmented by the fact that the Batista regime was using US-bought munitions meant for defence of Western hemisphere against the rebels, who had popular support by the late 1950s. The Latin American bureau under the DOS writing to the US Secretary of State Dulles in 1958 advised an arms embargo as these US-sourced munitions were also being criticised in both branches of the Congress (Schoultz 2009: 74); and the Department of State obliged by providing such a policy in 1958.

As one account reveals, when Batista fell from power from Fidel Castro's revolutionary efforts, the country had not only been through massive upheaval and unrest; but was subject to the most indolent kind of poverty and socioeconomic nightmare[31]. Fidel Castro was initially met with popular support from the Cuban society in general, as there was support not only from the Afro-Cuban community (Moore 2008) working class and the peasantry, but the movement also drew 'sympathy with [Fidel]Castro...even among the opulent middle classes' (Thomas 2010:626-627)[32].

[31] A 1950 World Bank study mission report observed that the gap between the haves and have-nots was very wide, even minimal education was closed to most rural population and the Cuban average per capita income touted as the highest amongst Latin American states was a misnomer as it was only half of that of Mississippi, America's poorest state. Further a survey conducted by the Agrupación Católica Universitaria rendered the Cuban countryside as a 'public health nightmare' (Schoultz 2009: 52-54). All in all, the socioeconomic situation was further made abysmal by Cuba's monoculture sugar economy and the persistent corruption that was associated with Fulgencio Batista.

[32] The frustration of the middle class was due to the 'stagnation in the economy'; felt also by young men just having left university; the factors were 'alienation of the business world'; centuries of repressive white racism towards the Afro-Cubans; a large section of abused peasantry; around 600,000 wage workers, etc (Thomas 2010: 251-257). Fidel Castro's success in part due to all these factors culminating at the moment of his revolution's end that made it so popular initially, since he was promising Cuba to the Cubans.

The revolution was associated more with nationalistic zeal than any communist bending by the Cubans themselves[33]. The Communist accusations began with Fidel Castro's association with alleged Communists like Raul Castro and Ernesto Che Guevara[34]; though US had not determined it definitely. Diplomatic despatches also allude to rise of communist influences (Despatch From the Embassy in Cuba to the Department of State 1958). CIA director Allen Dulles in a closed session of Senate Committee on Foreign Relations even reported that Fidel Castro did not have Communist leanings (Schoultz 2009: 84). In 1961, however, after the successful passing of the 1959 Cuban Revolution, Guevara stated that the revolution was 'agrarian, anti-feudal, and anti-imperialist', 'by which the movement had declared itself as a socialist revolution' (Harris 2009: 30). In the first speech after ousting Batista, Fidel Castro declared that the revolution would succeed fully;

> 'This time the revolution will not be frustrated! This time, fortunately for Cuba, the revolution will achieve its true objective. It will not be like 1898, when the Americans came and made themselves masters of the country' (Fidel Castro *Santiago de Cuba*, Oriente Province, Cuba 1959).

The centrality of the 1959 Cuban revolution was its anti-hegemonic tilt, that the US casted over Caribbean and Latin American states. And as a Cuban scholar wrote, for Cuba 'every nuance and component' of the policies that the US engendered was acutely felt at all levels in Cuba (Mariño 2002: 47). Either way, the histrionics of accusations and counter-accusations began.

1.2. 1959 Revolution and America's conclusions

For the US, the revolution eventually began to represent intense discomfiture, which was felt at various levels. Economically, Cuba by the late 1950s was still an established

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[33] In fact, the 'Pact of Sierra' that Fidel Castro signed mentioned a great deal about non-corruption and lessening of gambling; agrarian reform with distribution of uncultivated lands amongst the landless; increase of industrialisation; conversion of tenant farmers and squatters into proprietors etc (Thomas 2010).

[34] William Wieland, former director of the DOS's Office of Caribbean and Mexican Affairs would comment:

> '…Fidel Castro is surrounded by commies. I don't know whether he is himself a communist… [But] I am certain he is subject to communist influences' (Thomas 2010: 650).

mono-culturist sugar economy with a third and a quarter of sells going to the US (Thomas 2010: 770-782) and with the nationalisation of the economy through the revolution, most of the properties of Cuban businessmen[35] (who were essentially North Americans) too were subjected to such change; the rationale being that officials would confiscate if it was in the 'national interest' of the Cuban revolution (Dunning 1998: 215). This confiscation became one of the focal points for the conflict between US and Cuba[36]. Jules R. Benjamin posited that considering the magnitude of US foreign investment in Cuba, a clash was inevitable (Benjamin 1977).

Historically and politically, these affirmed declarations of independence against Western imperialism in the midst of a Cold War and the fear of Fidel Castro's Communist leanings did not sit well with America, especially in a region it considered well within and only under its geographical influence. Former President Truman would remark that the reason Cuba was lost to US influence was because former President Eisenhower did not have the 'guts to enforce Monroe Doctrine' there (Truman's speech to Hartford Democrats 1962). Assistant Secretary of State Rubottom commented that Castro's unacceptability of a hemispheric solidarity under US leadership, with a preference for an African bloc kind of arrangement was detrimental to the inter-American solidarity against Communism that US espoused through the OAS (Organization of American States). Later on, Cuba had also taken on the policy of supporting rebellions abroad in Latin American and African states which the Cuban leadership continually espoused.

Strategically, a Communist Cuba could and would be a significant Soviet foothold (as was only proved too true by the October missile crisis and the 'flotilla of Soviet naval ships that were deployed' (Schoultz 2009: 251-254) by periodical manner after 1969). Late into the Carter administration, the White House statements and those by then National Security Adviser Zbigniew Brzezinski allude to the conclusion that Cuba was

[35] Many of them were Spaniards or North Americans. Legally referred to as 'foreigners', they couldn't take part in politics. They held large shares in capital—thus powerful, but however, were not held responsible (Thomas 2010: 755). A. Roller opined that many of these North American enterprises imposed their own regulations, establishing an industrial territory; that companies like United Fruit Company had even built whole villages to house their staff (Nodal 1986: 258).

[36] The consensus for economic penalty was supported overwhelmingly by both Houses of Congress during the Eisenhower and Kennedy administrations; it had of course begun with suspension of sugar quotas.

increasingly being viewed as an 'instrument of Soviet foreign policy (Schoultz 2009: 291-296).

Symbolically, the ideology of Communism would have presented itself 'as furthered' in this former colonial state. The US was also anxious about the leeway that the Fidel Castro regime provided to Communist parties in active political participation. The policies that US would employ against the Cuban state would expansively amount to being isolationist and 'by its very degree unequalled and unparalleled' (Gordy and Lee 2009)—by sanctioning a complete stoppage of commerce through economic sanctions and it also entailed removal of Cuba from OAS and IMF loans, invoking the Trading with Enemy Act, shipping ban initiated during the Kennedy administration (which was essentially meant to cripple the island's trading capacities) the symbolically more significant soft diplomacy of utilising Cuban refugees as mandating USA's righteous stance by their very fleeing.

All of this was meant to contribute to a regime change. This was based on the understanding that the State machinery being intricate is replaced sectorially by administrative change or change of ruling regime—this change is then affected by 'planned step-by-step radicalisation of political and economic life' (Kunz 1973: 137). This unity in decision against Cuba was calcified only after the Cuba signed a trade agreement with Soviet Union involving weapons stash, sugar quota and petroleum. The involvement of Soviet Union in the dispute between US and Cuba converted the issue in general of Cuba's defiance into a test of public diplomacy for US; wherein its self-image was brought to the forefront. Eventually US reconciled itself to having a Cuba poised with Fidel Castro (the period after 1973 when the 'freedom flights' were stopped). When the regime changed in 2006 unto Raul Castro's management in 2006, the popular analogy on the Cuban revolution in Nicholas Righetti's conceptualisation was that its representation as the last vestiges of the promise that socialism held were now dead in its 'political extinction' (Gordy and Lee 2009: 237). However, other scholars opined that the revolution itself hadn't failed; that it survived all the US administrations and continued to do so under the present Obama administration (Rumbaut and Rumbaut 2009: 93-95; Treto 2009).

In this continuity of unchanged political stance between US and Cuba, the Cuban migration case had become another issue wherein the two states have had to cooperate at various times to facilitate, streamline and even control the flow, especially after the post-Cold War. Joan Fitzpatrick had used 'political expediency' to present the view that when states deal with certain refugee groups, their expediency is taken into account (Arulanantham 2000). In this broader construct, the rationale of the Cuban refugees' 'political expediency' seems to present a more interests-based impetus. The following sections will examine this 'expediency' and the pressures of adhering to a humanitarian norm in this regard.

2. US Refugee policy towards Cuban refugees as foreign policy during Cold War 1959-1980

'All foreign policy decisions occur in a particular context' (Bolton 2001: 177). Being a dependent variable, the US foreign policy is subject to the tugs of the President, Congress and bureaucratic machinery like the Department of State. M. Kent Bolton posited that the foreign policy behaviour of the US is 'a product of a large and diverse foreign policy bureaucracy'. One other scholar commented that the Cuban refugees' issue being migratory by nature not only assumed a position of being subject to foreign policy objectives (pursuant to the US-Cuba relations within the framework of a Cold War) but was also subject to internal bureaucratic warfare both in US and Cuba (Torres 1999: 9). By that, the foreign policy behaviour of the US is the deliberate action taken with the perceived calculation of threat or losses that the US might incur. However, even though the most rationalistic course of action could be chosen, due to the intermingling pressures from various vantage points, what results isn't necessarily a 'neat solution yielding a rationally evolved refugee policy' (Jacobsen 1996: 655).

Then again, what ensues after policy actions are taken and implemented sometimes cannot anticipate anomalies—the massive influxes of Mariel and Balsero were anomalies as far as responsive means were in consideration. For instance, the Mariel case was not only a representation of the legal lacuna in handling temporary admissions. Having now a permanent immigration system through the Refugee Act which had just been instituted in

1980, Arnold H. Leibowitz[37] opined that the Carter administration chose to adhere to the views of the DOS and permit entry to the flush of 125,000 Cubans through parole authority prompting 'deep concern by many senators' (Kennedy 1981: 154); thereby indirectly placing the attorney general above the institutions and 'affording formal recognition of the State Department['s] foreign policy expertise' (Leibowitz 1983: 169). As such, the foreign policy of any state is ultimately a 'result of a two-level game in which domestic values and pressures combine with international standards and pressures to produce a given policy in a given time' (Forsythe 2000: 2).

There are three prevalent approaches that have become prominent with regards to US approaches to the Cuban state. The first, supported 'maximum pressure on the Castro regime by maintaining embargo till reforms are initiated'; the second, called for 'constructive engagement' by lifting some sanctions and relieving the Cuban people; the third called for the immediate 'normalisation of relations between US and Cuba' (CRS 2003a: 33). All legislative initiatives introduced by different administrations have reflected various versions of these approaches. Between 1959 and 1980, the foreign policy stances of the various US administrations was generically 'hostile'—with the factor at its fiercest pinnacle during the Cuban missile crisis and ebbing in between periods, especially during the 1970s when the US was boggled down by the Vietnam war—though the main foreign policy goal was to somehow overthrow or help change the revolutionary government in Cuba. The official call for regime change mantra lasted till about 1964 from 1959; and thereafter imbued the greater terms of agreement between Kennedy and Khrushchev; rapprochement for normalisation was undertaken only during the Carter administration but the terms of hostility returned with the subsequent administrations during the Cold War era (CANF 2009: 2-3).

[37] Andrew Leibowitz was formerly a special counsel to the US Senate Subcommittee on Immigration and Refugee Policy and also to the Select Commission on Immigration and Refugee Policy.

2.1. Self-Image

Now, one of the four major underlying principles[38] of the US immigration system is the *protection of refugees* (CRS 2011b: 34). As such, the initial handling of the Cuban refugees was a 'test case' (Keely 2001: 309) to determine whether an exodus would induce such a change in government, and thus lead to the ultimate crumble of the Communist hold in Central America. Immigration policy towards Cuba was thus meant to complement with the foreign policy goal.

The commonality that preceded all the various US policies by which Cuban refugees were allowed in, were that they were necessarily political refugees and their very escape to freedom represented the abysm of decay that was Communism. David P. Forsythe spoke of the 'self-image' that nations harboured (Forsythe 2000: 2). The repeated recurrence of the word 'freedom' and 'democracy' that met mention amongst the different US administrations, present a picture of self-image as a 'free haven' either from Communist countries or otherwise too. The point here is that this positive self–image acted as a deterrent against any backlash from overtly voyeuristic, self-interested ventures. In a world system where images have reinforced itself both in the medium of political institutions and the medium of post-national instruments like the internet, states are pressured in some ways (but not entirely) to have a legitimate reason for their actions albeit with a human rights angle to it. David P. Forsythe posited that the US was the first country to place 'the rights of man... human rights—at the heart of its national self-definition' (Forsythe 2000: 312). Hence the correlation between the allowance of Cuban refugees, and America's self-image as a country of 'freedom'.

2.2. Cuban refugees' various roles

Political refugee as a concept had gained traction amongst nation-states in the 20th century. As early as 1938, Myron C. Taylor[39], in 1938 spoke urgently of the refugee

[38] The other three being 'reunification of families, the admission of immigrants with needed skills and the diversity of admissions by country of origin' (CRS 2011b: 34).

[39]The vice-president of the Inter-governmental Committee on Political Refugees stated in a speech over radio, in 1938. The Committee by itself is significant, as it is a representation of the states' policies to particularly pay attention to political refugees—resisting other expanded meanings to the term refugee.

problem that was quickly garnering international attention, reminding American people to determine for themselves whether the materialism of life had driven the very reason that made civilisation possible (i.e., urging public sentiment to be more favourable to providing refuge, in this case the German Jews) (Taylor 1938). What was more significant was the organisation to which he was vice-president to—*Inter-governmental Committee on Political Refugees*. Arousing humanitarian sentiment for refugees especially political in nature was thus already a tool that was blatantly in practise. Even the 1951 Convention, by its very motive was a response to the European people's situation after World War Two.

Sergio Diaz-Briquets observed that during the 1940s and 1950s, the immigration policy as a rule always included the foreign policy element, how to advance it or, at the least not to trammel it (Diaz-Briquets 1995: 161). After vetoing the 1952 INA, President Truman unsuccessfully requested the Congress to bring the immigration and nationality laws under the aegis of 'our national ideals and our foreign policy'. Right after that, the Executive sanctioned Commission on Immigration and Naturalization reported that the INA legislation 'frustrated and handicapped the aims and programs of American foreign policy' in its report titled *Whom We Shall Welcome* (Díaz-Briquets 1995: 165). Similarly, in a National Security Council memorandum of 1953, the RRA of 1953 was viewed as a 'means to discourage defection and thereby inflict psychological and economic damage on the Soviet bloc' (Newland 1995: 191). These are evidences that the US immigration laws were meant to concur with the foreign policy objectives, thereof determining the extent to which Cuban refugees were viable to the US in its ideological warfare against Communism in totality.

Now, during the Eisenhower administration, the Department of State replying to Fidel Castro's accusations at the UN general Assembly in October 1960 on radio-subversion stated that the radio broadcasting in Spanish by Gibraltar Steamship Company (a CIA-owned frontal company) had had its broadcast time purchased by 'Cuban political refugees' (Schoultz 2009: 136). The term had already seeped into the foreign policy bureaucratic system by the 1960s and the use of Cuban refugees weren't simply reduced to symbolic status either but also for subversive works against the Fidel Castro led Cuban

government as the Bay of Pigs incident would indicate. A charge which the US would officially deny any involvement in, though in reality the exile leaders were simply marionettes in these plans that were known to the highest officials in both the Eisenhower and Kennedy administrations; with opposing stances by Department of State (DOS) on one side cautioning against and DOD (Department of Defense) and CIA (Central Intelligence Agency) on the other side (Schoultz 2009: 142-169). This use of exiles for sabotage attempts were officially abandoned by the Kennedy administration as it announced all attempts to block such acts which were 'launched, manned or equipped from US soil' (Department of State and Department of Justice Press release 1963; National Archives 2012). Similarly, a Senate Committee reported in 1975 that the Johnson administration reaffirmed the discontinuation of the same on April 7, 1964. The definitive nail on this issue was however the presidential directive issued by President Carter in 1977.

For the US, the logic of an all-weather welcome invitation to the Cuban refugees stood for many things. The follow-through of a liberal US immigration policy towards the Cubans was a 'political safety valve and economic crutch' (Newland 1995: 191), siphoning both valuable human resources and by the very fleeing proving America's rightful moral mandate in the conflict; by that to assent implicitly to the humanitarian principle that people have a right to leave as enshrined in the Helsinki records (Teitelbaum and Weiner 1995: 22). The second major wave began by the 1965, and even though thousands had left Cuba for improving their economic circumstances and rejoining their families, they were welcomed only as refugees; because by their very rejection of Latin America's only Communist state they accorded a 'symbolic value' to it (Scanlan and Loescher 1983: 116). Similarly, Silvia Pedraza-Bailey pointed out that amidst the contestation between the two blocs for the superiority of their respective political and economic systems 'the political migrant symbolised the successful flight to freedom' (Pedraza-Bailey 1985). The US thus encouraged the very migration movement that it would later in the 1990s force a hand to interdict.

For Fidel Castro, these refugees eventually began to be a means for a threatening posture in streamlining the relation between the two countries; especially after the 1980s when it

was understood that the Cuban government was also getting rid of social undesirables[40]. Also, it was an opportunity to get rid of any political dissidents[41]. Another reason posited by an analyst was that mass influxes held economic benefits to the country sending it. That short-term benefits included collection, exit fees and the profitability of seizing the assets; whole long term benefit included remittances (Newland 1995: 191). In the Cuban refugees' case, the regime had fixed the exit fees at a high exorbitant rate, prompting responses from US governments (CRS 2007); while remittances were a major part of the discourse of migration between US and Cuba and also a major source of income for the economy, it prompted a trend also otherwise termed as 'dollarization of the Cuban economy'[42]. Another benefit that the Fidel Castro regime accrued was considerable domestic support in Cuba, by denouncing and charging US embargo as the source for economic deterioration (Teitelbaum and Weiner 1995: 21).

2.3. Communism and the first two waves

Historically, Cuban refugees had only attained that prerogative, amongst all other groups of refugees attempting to reach American soil, only by having met the standard of being a runaway from a Communist state and that they were necessarily assumed to be anti-Communist. Even the vociferous 'anti-immigrant sentiments' (Hearing Before the Subcommittee on International Development Institutions and Finance of the Committee on Banking, Finance and Urban Affairs House of Representatives 1977) during the Carter and Reagan administrations did not deter them from being accorded the same treatment. They remained thus outside the conditionalities of the Refugee Act of 1980, i.e. until the Clinton administration reversed the practise and made their entry more formal.

[40] Mentally-ill patients, gays, flesh-traders, criminals etc., (Kennedy 1981). Cubans didn't face any numerical limitations as per the national origin requirements of the INA introduced in the 1920s, thus found entrance easier than other groups. Though, even then they were subject to the existing prohibitions against undesirables such as 'criminals, prostitutes, anarchists, vagrants, those with contagious disease' (Fullerton 2004: 549).

[41] Carlos Moore in his memoir notes the Cuban side of the story of what was soon to be labeled the Mariel incident. When the Cuban government suddenly authorized a boatlift in the 1980s, tens of thousands of Cubans thronged embassies and ports. 'They were armed with 'baseball bats, iron bars and stones' to club the escapees, a regime inspired demonstration against its fleeing enemies' (Moore 2008: 331).

[42] Carlos Moore would observe that in Havana, all the best services were accessible only to those who had dollars, with some high establishment places like restaurants, pubs and hotels accepting only that currency.

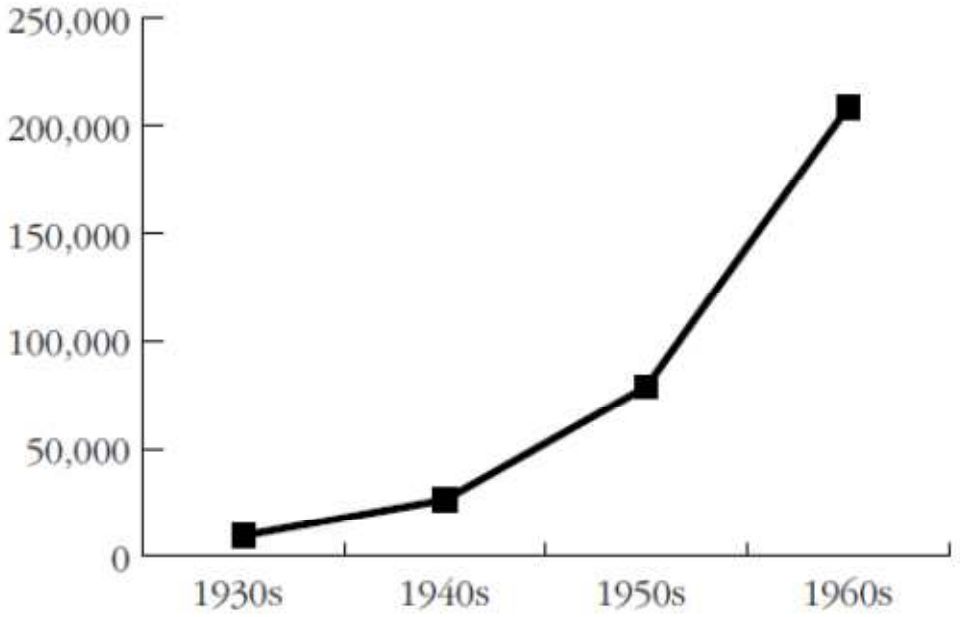
In the aftermath of the Cuban Revolution, *Batistianos* arrived in the US, numbering approximately '136,712' (Torres 1999: 72); they were the conduits of what eventually would be the Bay of Pigs invasion (National Security Archive Electronic Briefing Book No. 353). The captured exiles after the failure of the invasion were then exchanged for sixty million dollars worth of food and medicine after the October missile crisis was resolved in December 1962 (Schoultz 2009: 169). By the 1960s, especially after the nationalisation of industries by the Cuban government, Cuba's elite who fled were 'upper and upper-middle classes who were not tied to Batista's government'. According to some experts, these elites were convinced that the US wouldn't permit a socialist regime in the island, being bound to the very patronage of 'political and economic structure of the American capital' (N.V. Amaro and A. Portes 1985). Both the exiled community and the US assumed that this was only a temporary situation. After the failure of Bay of Pigs invasion, the first phase of exiled flight ended.

The second phase of the first wave lasted from April 1961 to October 1962, 'peaking at 78,000' in 1962 (CRS 2009b: 1)—when it took a hiatus due to the Cuban missile crisis. Also US had severed all diplomatic ties with Cuba in 1961. Accordingly, the regularly scheduled flights were stopped and asylum seekers began to set sail for Florida from Cuba. In the 1960s, economic sanctions had been the method that US employed to isolate Cuba and a US-sponsored support for human rights activists and broadcasting (CRS 2009b: 1). The posture of an eminent military threat suddenly re-prioritised America's routine acceptance of Cuban refugees , which had only been a soft deploy to undermine the regime—like ceding that foreign policy pose and anticipating a far more sinister possibility involving Soviet Union. Thus, the US refugee policy in this instance was subservient to the greater emergencies of foreign affairs.

After normalisation (at least reverting to the state of situation before the Cuban missile crisis i.e.) and resumption by 1965, President Johnson through an arrangement with Cuba was even airlifting persons from Havana to Miami ('Freedom Flights') when the Camarioca boatlift induced the departure of several thousands of Cubans. He stated 'I declare...to the people of Cuba that those who seek refuge here in America will find it'; and further added that the US was going to uphold the long tradition of being an asylum

for the oppressed[43] (Fullerton 2004: 553). It represented 'a high degree of efficiency and cooperation between the United States and Cuban officials' (Richard Ferree Smith 1966: 49). Between 1962 and 1979, the US invoked attorney general's parole authority to admit 'hundreds of thousands of Cuban refugees (CRS 2009b: 1). The surge in admissions could only be answered by amendments and adjustments to the existing structure to the INA. While parole authority was invoked earlier to affect entry, by 1966, through the CAA, the Cuban refugees could also adjust their status to legal permanent resident (LPR) after a year in the US. Between 1961 and 1980, paroled Cubans who had

FIGURE 2: Cuban Immigrants Admitted to the US by Decade (1930-1970)



Source: Statistical yearbook of INS, 1999 (Washington D.C, US Government Printing Office).

Note: the admitted immigrants from Cuba were respectively: 1931-1940 (9571); 1941-1950 (26,313); 1951-1960 (78,948); 1961-1970 (208,536) (Max J. Castro 2002: 3). The steady increase after 1950 alludes to the liberal Immigration policy with regards to Cubans.

[43] This was in response to the speech given in Havana by Fidel Castro on 28 September 1965, who had taken exception to the accusation to the fact that Cuba was restricting travel to its citizens and thus in response had opened its port of Camarioca, which induced the rush of fleeing lasting till 1973.

been granted LPR status through the CAA numbered at 388,066 (INS Statistical Yearbook 1997: 92). Subsequently, Nixon and Ford administrations adhered to sanctions against Cuba. National Security Adviser (NSA) Kissinger commented that President Nixon opposed any resumption of normalisation with Cuba a far cry from his stance as a candidate in 1960 (Debate with Richard Nixon, Washington, D.C. October 7, 1960). By this period Cuba had been incorporated into the communist bloc's Council for Mutual Economic Assistance (CMEA), furthering its economic arrangement with Soviet Union. Slight overtures towards normalisation were made by the Ford administration with the House brimming with resurgent anti-war democrats (291-144 advantage in the House after the Watergate scandal). Assistant Secretary of State Rogers stated to the Congress that the Ford administration had left the 'policy of permanent hostility' behind (Schoultz 2009: 274).

However, it was not until the Carter administration did the issue of reconciliation (end of travel ban, negotiating agreements on fishing boundaries, resumption of interests section) and immigration resurge again. Well through previous administrations, the US had been concerned about Cuban involvement in Africa and Latin America and hostility persisted thereof. However, through Undersecretary of State Newson, NSC (National Security Council) officials, moderate Cuban exiles like Bernardo Benes and Fidel Castro's close confidant José Luis Padrón, President Carter assented to an agreement between US and Cuba wherein close to fifteen thousand Cuban prisoners and their families were released to the US; amongst them were also Cuban exiles who had been perpetrators of terrorist acts against Cuba and Fidel Castro. Initial slow processing by the INS were hastened after President Carter prodded the attorney general, as the former was edged on by Cuban American Community presenting concerns to the Secretary of State Vance and also the US Interest Section (USINT) at Havana which was submitting reports as to Cuba's concerns regarding delays in processing (Schoultz 2009: 320-328).

In a way, migration became one of the salient features and a concurrent issue in US-Cuba relations, cooperating at times to facilitate it (and not facilitate it after the 1994 agreement). That is not say that migration was the end itself, but rather the means to

articulating a pro-human rights stance, indicating in particular, that it was part of the decision-making process and thus part of the foreign policy agenda for the US.

2.4. Mariel boatlift

A surging mass of around 125,000 Cubans (and 25,000 Haitians) thronged South Florida in an attempt to be offered asylum status (Miami Herald 2005a; Miami Herald 2005b; Miami Herald 2012). This second wave had a different demography from the earlier elite rung, as it included Afro-Cubans, Cuba's social undesirables such as gays, flesh-traders, criminals etc, who Fidel Castro himself described it as 'dregs of society' (Fidel Castro May 1980). When faced by a massive influx, the host government is left with three choices with respect to response: 'it can do nothing, it can respond negatively towards the refugees, or it can respond positively' (Jacobsen 1996: 658). L. Gordenker expanding on this added that if it did nothing, it suggested an incapacity to handle the situation, unwilling to act or didn't consider the refugees important to its agenda. The US responded positively with President Carter professing 'open heart and open arms' to refugees seeking 'freedom' from Communist domination (Carter May 5, 1980), though he suspended normal visa processing at Havana after weeks of Cubans thronging the embassy.

Now, the boat people have been a consistent phenomena since the Fidel Castro regime in Cuba and also for other Caribbean countries like Haiti—though only Cubans have been welcomed unrestrictedly, even though the UN Handbook on Procedures and Criteria for Determining Refugees provided that 'what may be originally thought to be an economic migrant, may in reality also involve a political element' (CRS 2005: 6). In the Mariel case, these masses were entered under the new category of 'Cuban-Haitian conditional entrant', and while the Cuban refugees could alter their status after one year to LPR, the Haitian refugees remained in a limbo until the IRCA legalised their status in 1986. The preferential treatment that Cuban refugees received was an affirmation of not only their 'political refugee status' but also an ongoing alignment under which US and Cuba had unwittingly arranged their migration relationship.

Before this incident, the diplomatic spat between US and Cuba had built up with regards to the Peruvian embassy in Havana wherein 10,000 Cubans had thronged the said embassy demanding asylum[44]. President Carter under an executive order and a PD invoked the provision to the Refugee Act of 1980, to permit them admission to the US as 'it is [was] the foreign policy interest of the United States to designate such persons at this Peruvian Embassy as a class of refugees eligible for assistance...even though they are still within their country of nationality or habitual residence' (Executive Order 12208 1980: 25789-90; PD No. 80-16 1980: 28079). Fidel Castro responded by opening the Mariel port, in whose case President Carter responded by invoking parole authority instead of the provisions of the Refugee Act of 1980.

This case then presented an instance of the posture US takes in a foreign affairs case, thereby indirectly engendering massive migration, which in turn inundated beyond the capacities of the procedural immigration process of the US, which had just been mandated by the 1980 Refugee Act. Foreign policy element then triumphed over the lacuna of legal procedures or the pressures on domestic constituency, arresting the entire process that was the US refugee policy.

3. US refugee policy under Ronald Reagan and George H.W. Bush

The period from 1980 till the end of the George H. W. Bush administration was marked by high hostility towards Cuba in general. President Ronald Reagan stated,

> 'We don't have any dealing with Cuba. If they would ever like to rejoin the civilized world, we'd be very happy to help them. But not under the present circumstances' (Reagan April, 1982).

and during the campaign for elections had even suggested blockade of Cuba. President George H. W. Bush similarly bespoke, 'There will be no improvement of relations with Cuba' (George H. W. Bush 1989). This in summation was the theme of the two administrations' attitude towards Cuba and their Cuba policy. US-embargo, travel ban,

[44] By the 1928 Inter-American Conference, embassies were deemed as foreign sovereign territory, exclusive of the jurisdiction of the host state (CQ Researcher 2012).

economic sanctions[45] continued back to the same level as it was during the Johnson-Kennedy administrations, naval exercises held by US warships and condemnation of the Fidel Castro led regime in Cuba was to remain unabated. During the Reagan administration, the hostility between US and Cuba escalated especially with the US invasion of Grenada and continuing support for armed insurgency in Latin America by Cuba kept Cuba in the priority radar of the US foreign policy.

3.1. Mass Immigration

One of the main concerns of the Reagan and George H. W. Bush administrations was 'mass immigration', the kind of event which Mariel had generated (a discourse that been building up earlier through hearings like the Hearing Before the Subcommittee on International Development Institutions and Finance of the Committee on Banking, Finance and Urban Affairs House of Representatives 1977). For instance, between 1978 and 1982 before the inception of the Amerasian Immigration Act of 1982, Congressmen like McKinney and Denton providing reasons to the Congress and various committees to convince them of the need to adopt Amerasian children, also attested to the reluctance of both Carter and Reagan administrations to pass it. The Reagan administration finally did so, with a conditionality of allowing only those children born between January 1, 1950 and October 1, 1982. Even then, they were allowed as immigrants and not citizens[46] (Gage 2004: 87, 89). Another scholar writes that the Reagan administration in its Central

[45] Economic sanctions was first laid out by the Treasury Department in July 1963 by the CACR (Cuban Assets Control Regulations); it included prohibitions 'on most financial transactions with Cuba and a freeze of Cuban government assets in the US' (CRS 2011b: 21). It proceeded to such an extent where even third country trading of US goods was held as defaulting. The aforementioned administrations even applied the pressure of stoppage of comprehensive aid to achieve the goal. For instance, when Spain continued allowing the shipment of Soviet oil through tankers registered in its country—Washington declared the closure of millions of military aid citing violation of legal criteria; though it was revoked when Spain rebutted that the arrangement was an obligation under the treaty that allowed Washington to employ Spain's help in case of emergent situations and also use of bases.

[46] Rules of US citizenship first established in 1790 decreed that:

> 'children of citizens of the United States that may be born beyond the sea, or out of the limits of United States, shall be considered as natural born citizens: Provided, that the right of citizenship shall not descend to persons whose fathers have never been resident in the United States (Act of March 26th) (Gage 2004: 89).

Thus, one can only surmise that by violating on earlier laws of citizenship, the Reagan administration was trying to take precautions against unaccountable immigration to the US.

American policies warned of mass of 'foot people' who could arrive if Communist governments were not proscribed from being launched in the region to gain public support (Keely 2001: 305).

As such, this period saw legal proceedings on asylum claims strictly adhering to the definitions as underlined in the UN convention and the corollary protocols. That is except for the Cubans 'for whom precedent and law led to fairly generous treatment of arrivals', especially made attractive by the provisions of CAA (Keely 2001: 305). But even then, the Reagan administration took up what the Carter administration failed to convince Cuba of—accepting the *Marielito*s who were excludable under US immigration laws as per the exclusionary provisions. In 1985, by invoking a clause in the INA the President directed the Secretary of State to disallow entry to any officers or employees of the Cuban government or the Cuban Communist Party[47]. The same year, US-sponsored radio station *Radio Martí*[48] was launched and in 1990 *TV Martí* was too (CRS 2011b: 44), with the approval of the Congress—ideas which had been deferred during the Eisenhower administration and later during the Kennedy administration.

George H. W Bush administration continued the hard-line position taken by the previous administration. For instance 1992 Cuban Democracy Act[49] (CDA) (Cuban Democracy Act, USC Title 22, 1992) tightened economic sanctions as it forbade foreign subsidiaries of American companies from trading with Cuba nor allow entry for 180 days to any sea-borne vessel that had docked in Cuba (CRS 2011b: 21). The Cubans apprehended at sea were interned at Guantanamo and eventually allowed to enter the US.

[47] INA Section 212 (f) gives the president right to deny entry to 'any class of aliens into the United States [that] would be detrimental to the interests of United States'.

[48] To work along the lines of 'Radio Americas', Cita Con Cuba and 'Voice of America', which were all propaganda mechanisms for public diplomacy. According to the Broadcasting Board of Governors in a budget request for 2010, 'both the mediums were dedicated to providing reliable and accurate news and information—both support the Cuban people's right to seek information and ideas through media of any kind' (CRS 2011b: 44)

[49] Civil penalty authority for violations of economic sanctions and the creation of an administrative hearing process.

Post-Mariel US and Cuba had initiated a migration agreement[50] in 1984 that would place the annual quota limit for Cubans emigrating legally to US at 20,000 and Cuba's agreement in turn to allow the return of 2,746 who by their criminal behaviour had been incarcerated in the US since after their arrival from the Mariel boatlift (Fullerton 2004: 562). The agreement was however suspended in 1985 pursuant to the launch of *Radio Martí*, but resumed in 1987. The USINT at Havana only issued 11, 222 immigrant visas from 1985 to 1994. In the period between 1981 and 1990 only 144,758 Cubans were admitted; lower even than the count from the period 1991 to 2000 (Max J. Castro 2002: 6). This agreement was kept thus only in spirit and is a precursor to the migration agreement of 1994 and the modifications of the terms of migration between US and Cuba.

3.2. Guantanamo and interdiction

Interdictions had begun noticeably by the administrations of Reagan and Bush administrations, however interdicted Cubans were allowed to reside in US after processing, even those plonked in Guantanamo naval base. The US effort for a regional safe haven in Guantanamo had been approved by the UNHCR; the latter surmised that 'satisfactory protection could sometimes be provided in regional safe havens' (GAO Report to Congress Requesters 1995: 2). As such, these regional safe havens were meant to be a temporary situation wherein individuals after being deemed unsuitable for refugee or asylum status or their return to the country of origin is deemed feasible, are then returned to their country of origin. Between 1980 and the end of George H. W. Bush administration, any and all interdicted Cubans were allowed to enter the US (Max J. Castro 2002: 8).

At the core of the use of this regional haven is the legality of the territoriality of state and provisional implications for the Refugee Act of 1980 and possible violation of non-refoulement clause and by that violation its principality in international refugee law. 'Sovereignty' being the core issue as Cuban and Haitian migrants held there could

[50] The writings sourced from US government websites point to the agreement of Cuba to take back the social desirables from Mariel, talks for which had begun in July 31, 1984 (US interest Section, government archives).

exercise their askance for asylum depending on the resolution of the very question. Since the legal status of Guantanamo Bay[51] is pursuant to a legal agreement between US and Cuba in 1903. 'It provided that the Republic of Cuba would lease Guantanamo bay to the US for use as coaling or naval station and that it would 'continue in effect' until both parties agree to terminate or modify it' (Sean D. Murphy 2005: 264-266). The rationale being that since Guantanamo wasn't really the territory of US; it wasn't in violation of the international refugee law of refoulement (this was the US Supreme Court's decision during the Clinton administration in a case regarding the same).

As such, the refugee stop created by the US at Guantanamo naval base became a 'creative bureaucratic procedure' (GAO Report to Congress Requesters 1995) to avoid flooding of its over-burdened constituencies like Florida and at the same time respond to the humanitarian crisis of Cubans at sea and the Balsero rafters later on during the Clinton administration. The Balsero spillage of Cubans had begun much before the purported swell of 1994.

The fall of Soviet Union had crippled Cuba's economy[52] (Department of State Telegram 13596, 1994: 3), since all preferential trade agreements and technical support to Cuba had ceased. Prior to it, both Gorbachev and Yeltsin were being told by the Bush administration the conditionality for Western aid—stoppage of any aid to Cuba (Perez Jr. 1995: 381-387). When it did occur, 'Cuba's GDP fell more than 40 percent between 1989 and 1993' (Max J. Castro 2002: 4). A 1980 DOS report had placed the subsidy to Cuba by Soviet Union at $ 5.5 billion, of which $ 4 billion were for economic aid projects (like the nuclear power plant at Juragua, nickel refinery at Camarioca, and an upgraded oil refinery at Cienfuegos) and subsidies in trade (oil, sugar, etc) and $ 1.5 billion for

[51] 'While on one hand the United States recognizes the continuance of the ultimate sovereignty of the Republic of Cuba over the described areas of land and water, on the other hand the Republic of Cuba consents that during the period of occupation by the United States of said areas under the terms of this agreement the United States shall exercise complete jurisdiction and control over and within said areas' Lease Agreement, article III (Sean D. Murphy 2005: 264-266). The new Cuban constitution after independence from US was changed to conform to an amendment in a congressional bill, also called 'Platt Amendment', to allow for the lease of the said bay as long as US saw fit to use it (Rumbaut and Rumbaut 2009: 85, 96).

[52] The Cuban economy had become increasingly dependent on the Soviet Union after the US embargo during the 1960s and 1970s. Max J. Castro regarded it as one of the push factors for the Balsero phenomena, adding further to the pull factor of CAA and the benefits it entailed (Max J. Castro 2002: 4).

military aid. However after the awaited and foreseen collapse of Soviet Union, Fidel Castro himself reported to the Cubans that the promised Soviet aid of grain, oil and consumer goods by its very non-deliverance had been rendered void (Fidel Castro Speech 1991). Since 1960s, 70% of Cuba's trade had been with Soviet Union and 15-18% with the CMEA countries and after 1989, all of it ceased abruptly (Perez Jr. 1995: 381-387). The turmoil that had struck Cuban economy during the 1980s with its international debt crisis was minuscule in comparison to what occurred during this period.

The George H. W. Bush administration began to anticipate the fall of the Fidel Castro regime, with Assistant Secretary of State Aronson guaranteeing the Congress that Castro's Communist regime was nearing its end (Committee on Foreign Affairs, Subcommittees on Europe and the Middle East and on Western Hemisphere Affairs 1991). Cubans began to arrive in batches into US shores and this proliferated to the extent where the incident of approximately 30,000 Cuban landing in one-go brought attorney general Janet Reno to deny entry into the US for the first time (CRS 2009b).

4. Conclusion

As such, Reagan and George H. W Bush administrations did not prompt any new discussions of change to the terms of US-Cuba relations either politically or in terms of migration except set a quota limit. It remained arrested by the postures that ensued pursuant to the US involvement in the Cold War. And in that sense, the political expediency of the Cuban refugees remained vitally useful to US interests at least in practise. This generated the hope and predictions of the possibility of change in policy during the Clinton administration, as it were under the new light of a historical shift in the world' discourse. While too much weight cannot be given to it alone, the US refugee policy and the subsequent migration arrangement with Cuba must be observed within this new placement.

Chapter 3

Post-Cold War Developments in US Refugee Policy towards Cuba: Clinton and George W. Bush Administrations

In the post-Cold War period, the Clinton administration had reversed a three decade long practise (of indiscriminate allowance of Cuban refugees) by a swift arrangement for sea-interdiction and an agreement was undertaken with the Cuban government not to send huge mass inflows. This issue gained traction not only in terms of refugee laws, but also revealed the interplay between US foreign policy interests and the dilemmas regarding unauthorised immigration which had and has continued to be 'a vexing issue for policy makers' (CRS 2011a: 5). Cuba which was no longer a major foreign policy priority for the US in terms of having being a Communist threat coincidentally saw its salience remain prominent in the US through the domestic communities, especially in Florida. The Clinton administration then took the opportunity to regularise the exception, albeit with a migration agreement involving the Cuban government altering thus the terms of an anachronistic Cold War Practise.

The US refugee policy towards Cuba as it is today, remains crucial and also intractable since it showed a confluence not only between domestic underpinnings and foreign policy in policy making but also brought to light questions about nation, sovereignty and territoriality that are at the heart of every Nation-State. While national standards guide Immigration laws, due to the transnational character of Cuban refugees, considerations must be made beyond the traditional framework of nation-state towards US foreign policies in the Cuban case and also international norms and laws. The Cuban refugee case also intersperse on the main issues that envelop refugees' situation in the US i.e. 'numbers', 'definition', ' resettlement' and '*non-refoulement'*.

The chapter focuses on analysing the significant changes, if any, that were made to US refugee policy towards Cuba after 1990 and the Balsero reversal in particular. The first section seeks to examine the implementation procedures which followed the 1994 and 1995 migration agreements between US and Cuba. The second section of this chapter traces the linkages between national security and immigration amidst the George W. Bush administration's avowal against Terrorism's threat and the implications for US refugee policy towards Cubans. The question it tries to answer is:

- How did the 1994 *Balsero crisis* lead to a realignment of US Refugee Policy towards Cuba? How did it alter the terms of asylum for Cuban refugees?

- Whether the War on Terror impacted US Refugee Policy towards Cuba?

1. US- Cuban relations after Cold War

The terms of engagement between US and Cuba remained intact even after the collapse of the Soviet Union, one scholar attributed it to a deficiency of 'vision and courage' on Clinton administration's part and the Cuban-American right wing's opportunistic usage of political capital for retaining the embargo (Mariño 2002: 47). Others experts opined that most of the lobbies against the US embargo tended to forget that Cuba was a country that violated human rights and freedoms on a continuous basis, the reason why the embargo was placed in the first place (Woodrow Wilson Center Latin American Program, Update on Americas 2010: 2). The first Department of State report released on terrorism (1993) during the Clinton administration indicated that Cuba was not helping armed rebellions across Latin America (CRS 2011d: 4). The tone of the US policy towards Cuba, was set however not by the amicability of the position that Cuba was now rendered to be in, i.e., stoppage of armed insurgencies abroad, withdrawal of the Soviet military brigade (a factor that hadn't failed to chafe and alarm all US administrations since Eisenhower) etc., but by the inability to incorporate the changing realities of the Cuban situation after the end of Cold War. This posture compounded further with America's changing perceptions regarding global security after September 11 attacks.

In 1993, Anthony Lake, Clinton's National Security Advisor in the speech 'From Containment to Enlargement' stated that rogue states were more likely to resort to terrorism, pose military threats to both regional and global stability, violate human rights, possess weapons of mass destruction and not abide by international norms and laws (Speech at John Hopkins, September 21, 1993). These criteria appear to have trickled down to the Clinton and the George W. Bush administrations, since Cuba was now being adjudged not only by continuing hostility but by newer standards too (Gordy and Lee 2009: 232-233).

Internationally, the US faced severe criticisms for the reinforced sanctions both from the Organisation of American States (OAS)[53], international organisations and heads of states

[53] The 1962 suspension of Cuba from OAS was only lifted on 2009. The conditionality being its adherence to the OAS principles (Amnesty International 2012).

(Amnesty International 2012; Department of State Telegram 24106, 1994: 1-3[54]). For two continuous decades since the collapse of Soviet Union, the resolutions at international organisations at the UN have been against the US embargo on Cuba (GA/11162 2011)[55]. On issue after issue, the US found itself sidelined by the criticisms from the international community[56]—the sanctions against Cuba were one such issue. Acts like the Helms-Burton Act (PL 114-104 1996) or the Cuban Liberty and Democratic Solidarity Act (LIBERTAD) of 1996 [which according to one scholar was passed after two civilian aircrafts carrying anti-Castro Cuban-Americans were shot down (Dunning 1998: 216; US Interest Section 2012)] have even evinced vociferous criticisms from international trading partners as it allowed US citizens to recover damages in US courts from entities that were benefitting from US-owned property in Cuba which the Cuban government had through its nationalisation reforms leased them out (Dunning 1998: 213-214).

1.1. Freedom and Democracy

During the first year of his the first term President Clinton continually themed the US policy towards Cuba as 'freedom and democracy' (Schoultz 2009: 455). The logic being that the regime under Fidel Castro must need fall and that the extra pressures will soon induce the change. In 1996 President Clinton appointed Ambassador Stuart Eizenstat as the Special Representative for the Promotion of Democracy in Cuba. The Office of the Coordinator for Reconstruction and Stabilisation under the DOS even included Cuba amongst those states requiring intervention for the same (Lutjens 2006: 66). The lifting of travel bans during the Clinton administration was only to induce a democratic change in Cuba through 'people-to-people contact' (CANF 2009: 3). Subsequently, the George W. Bush administration created entities like Commission on Assistance for a Free Cuba

[54] Page 2 of the same telegram states:

> 'The 34-Year Old embargo 'NOT VALID' since it was declared unilaterally by the US without UN backing and that France never associated itself with the embargo, neither before nor after March 1993' (Department of State Telegram 24106, 1994: 2).

[55] The discussions continue on even after two decades since the voting. In 2011 UN General Assembly, 3 abstained (Marshall Islands, Federated States of Micronesia, Palau), 2 were absent (Sweden, Libya), 2 voted against (US and Israel) and 186 voted for the lifting of the embargo against Cuba (GA/11162 2011).

[56] International community here is used to refer to states as well as non-state actors.

(Report to the President, Secretary of State, Condoleezza Rice 2006), Cuba Transition Coordinator for the same and additionally instituted stringent restrictions on educational exchanges, travels [57], humanitarian aid gift parcels, remittances, etc. The Obama administration, on the other hand espoused a change from these reforms that are externally manifested. President Obama (at the CANF Cuban Independence Day Luncheon, May 23, 2008) would state that decades of top-down reform would have to change and to instead encourage democracy from the bottom-up (CANF 2009:1).

Now, while Washington continued to adhere to this posture, Havana's position got increasingly conciliatory (Department of State Telegram message 93613, 1995: 81-82; Department of State Telegram message 90030, 1995: 81-82). The efforts for anti-drug cooperation with US officials, the Fidel Castro-led government's decision to accept fifteen hundred more jailed Cubans who had been incarcerated after committing crimes having arrived after the 1984 agreement (US Interest Section 2012), and in the same year even offered to negotiate the claims settlement from 1959 to the early 1960s. After the official date of disintegration of Soviet Union (September 1991), the Fidel Castro led Cuban government were faced further with the task of reviving a failing economy and thus efforts were undertaken to integrate with world at least economically. New reforms[58] for liberalisation ensued—invitation to foreign companies for joint ventures, permission for self-employment styled private enterprise, private farming and finally, the legalisation of US dollar usage for Cuban citizens (Library of Congress 2012; Dunning 1998: 220). Prior to these alterations, Cuba wasn't a recipient of any non-Soviet aid, direct investment or even loans (Eckstein 2004: 316).

[57] 'What the George W. Administration accomplished by its restrictions was to reduce both family visits, quite drastically in its immediate inception from 115,000 in 2003 to 57,154 in 2004 and licensed humanitarian groups also reportedly declined from 160 to 20 in the same years' (Lutjens 2006: 69). This travel ban imposed first during the Cuban missile crisis and only lifted in 1977 during the Carter administration and was only reinforced in 2004 during the George W. Bush administration.

[58] Restrictions still persisted though with 49% being the set limit for ownership by foreign companies till1995, but a law passed in the same year allowed for even 100% ownership under certain circumstances. The companies had to pay the Cuban government in dollars for Cuban employees' salaries; the government in return paid the Cuban employees in pesos. Similarly, a strict regulatory mechanism existed for self-enterprising individuals to avoid the rise of a bourgeoisie class. Then, in private farming—famers were to lease both land and equipment from the state and also ensure fixed quota sell of production to the state. Sugar production also fell drastically from8.1 million tons to 3.3 million tons in 1995 (Dunning 1998: 220).

Amidst these developments, the Clinton administration seconded the support for the CDA (Cuban Democracy Act) which had passed in 1992 (Cuban Democracy Act, USC Title 22, 1992). Economic sanctions were also tightened, with acts like the Cuban Liberty and Democracy Solidarity Act (LIBERTAD) of 1996, commonly known as Helms Burton Act (PL 104-114, 1996)[59]. Both the acts evinced massive international criticism[60], criticisms from business groups and raised the very legality of such expanded span of economic sanctions. It would though enable a direct telephone service between US and Cuba. It also codified the US embargo in the US law and only Congressional initiation could alter the case, i.e., no longer would an executive order suffice. The Trade Sanctions Reform and Export Enhancement Act of 2000[61] would however lessen the severity of sanctions (Public Law 106 387, Title IX: 2000).

1.2. Recalibration of US foreign policy under the exigencies of September 11 attacks

The George W. Bush administration's policies showed a heightened sense of antipathy which were disquieting even to some sections of the Cuban American community in South Florida, many of whom in a 2007 poll supported a more 'conciliatory approach' (Gordy and Lee 2009: 232). Even the most powerful organisation representing Cuban American interest, CANF, would criticise this administration for forming a Cuba Policy in an attempt to 'placate perceived domestic political interests' (CANF 2009: 3). This was because after the September 11 attacks, America's re-prioritised focus on national security was specifically against terrorism (CRS 2003b). President George W. Bush's 'New Initiative for Cuba' was at its core, a call to the Department of Homeland Security (DHS) to tighten travel and trade sanctions against Cuba (Lutjens 2006: 68). There were radical restrictions on travel and remittances to Cuba by Cuban-Americans and also

[59] The first part of the Act states:
'To seek international sanctions against the Castro government in Cuba, to plan for support of a transition government leading to a democratically elected government in Cuba, and for other purposes' (PL 104-114, 1996).

[60] United Kingdom and Canada immediately passed legislations that prohibited companies that operated in their territories in complying with the CDA (Dunning 1998: 218).

[61] Allows the US President to exempt embargoed agricultural and medical exports by lifting unilateral sanctions, even Cuba (Public Law 106 387, Title IX: 2000)

bounded academic exchange between Cuba and US. The stringent realignment can also be directly traced to the foundational goals of CANF (CANF White Paper 2006). This administration also recorded the highest level of interdictions reaching 2868 and 2199 in the years 2007-2008 (CRS 2009b); which only alighted down to 799 in 2009 to 422 in 2010 during the Obama administration (CRS 2011b: 49).

The meaning of security had evolved from its traditional cocoon of military threat alone, as it now involved threats from food insecurity, population explosion, cyber crimes, epidemics of diseases, transnational terrorism and so on. The Quadrennial Defense Review (QDR) 2010 discussed 'hybrid threats' wherefrom US national security and defences could be overwhelmed by a whole spectrum of asymmetric means of warfare—this would then require maximum flexibility in capability (Quadrennial Defense Review Report 2001; Department of Defense, Quadrennial Defense Review Fact Sheet 2010: 1-2). The theme seems to be to anticipate potential dangers instead of reacting to an event overdue. The area of homeland defence took precedence in the context of a changing global security environment, wherein the Department of Homeland Security (DHA) was recognised as the primary agency to secure 'domestic security challenges'[62]—the premise being that the US homeland was no longer a sanctuary, that the global capacity of the new technologies might mean that US could be another area of where subversion could be operated from (CRS 2010b: 2-4, 16-17, 31-32).

As such, the George W. Bush administration had initiated the USA PATRIOT Act[63] (PL 107–56 2001), which 'had augmented the executive's authority in the area of economic sanctions'[64] (Lutjens 2006: 63). Formed under alarmist perceptions regarding national

[62]These policies towards 'who constitutes a criminal?' aren't without critics. Examples cited by them are:

> 'someone who shoplifted years ago, an elderly LPR of color who was arrested by the police in the 1960s by a police department known at that time for racism…'etc (CRS 2010c: 7).

[63] The Act's purposive statement says:

> 'To deter and punish terrorist acts in the United States and around the world, to enhance law enforcement investigatory tools, and for other purposes' (PL 107–56, 115 STAT. 2001: 272).

[64] Economic sanctions at the heart of US Cuba policy are legally based on 'Trading with the Enemy Act of 1917' and 'International Emergency Economic Powers Act of 1977' and is monitored by OFAC (Office of Foreign Assets Control). In May 2004, the Department of Treasury had only four employees tracking down Osama Bin Laden and Saddam Hussein's assets, while more than five times that number worked on the Cuba embargo (Lutjens 2006: 65).

security concerns, America's combat with terrorism faced 3 things—first, 'providing security from terrorist acts'; second, 'maximising individual freedoms, democracy and human rights'; lastly, it was 'complicated by the global trend towards deregulation, open borders and expanded commerce' (CRS 2003b: 5). As such the 9/11 Commission reported, 'targeting travel' is akin to targeting money trials, noting the millions of legal and illegal border crossings by non-citizens (Lutjens 2006: 60), further complicated by the same report's findings of the arrival of certain terrorists through the immigration mechanism. Since 1982, DOS's list of state sponsors of terrorism has mentioned Cuba's name by which, some of its various sections[65] even trigger further economic sanctions (CRS 2011d: 2, 4-6). The 2009 DOS report even alluded to the fact that while armed insurgency support in Latin America was no longer supported by Cuba, the impediments to it being in the list was also due to its sympathetic policy of providing safe haven to members of certain organisations that the US deemed as terrorist organisations (CRS 2011d: 1-5).

The consequent changes that occurred in immigration laws in general were in large part related to it, and whether the national policies and the organisational capacities of the US were capable of handling the various forms of terrorist movements directed against it. While refugee and asylee legislations are distinct from immigration laws, the legislations undertaken sometimes overlap beyond categories, for instance—family-reunification admissions is one procedure that has augmented the Cuban American community further as data will reveal in chapter four.

2. Interdiction Policy

On one hand, the administrations of Clinton and George W. Bush officially corroborated the implicit affirmation for sea-interdiction by allowing it, with the US courts themselves assenting to it by the logic that it wasn't in violation of the provisions of the Refugee Act

[65] Section 6 (j) of the Export Administration Act triggered the said sanctions and then there is Section 40A of Arms Export Control Act which seeks to blockade arms trial and Cuba is in the list because it was deemed not to be cooperating fully with America's anti-terrorism efforts (CRS 2011d: 2, 4-6). The list itself isn't annual, countries remain in it until the President or the Congress takes measures to remove them from the list. The 2009 DOS report noted that Cuba continued to provide safe haven to members of Basque Homeland and Freedom, Colombian leftist Revolutionary Armed Forces of Colombia and leftist National Liberation Army.

of 1980 or even international law as it wasn't refoulement on US soil. On the other hand, unlike asylum policy wherein applicants choose the host they would apply to, refugee policy necessitates a limit set by the host, selectively choosing those it would give the rights that comes with the status (Salehyan and Rosenblum 2008). In continuance with the understanding from the earlier chapters that refugee policies fall under the Human Rights dictum and that such issues more than often transgress the laws set at the level of international institutions, it appears that it does serve the state positively, image and reputation-wise, if ongoing preference for certain groups coincide with a humanitarian footnote; though it could work otherwise if more urgent cases are bypassed for the not so urgent ones. If latter, the costs then, of political viability of an incoming group especially in first asylum states like US could itself become a liability, image-wise i.e.

After the collapse of Soviet Union and without the overcast of a Cold War, US refugee policies could no longer claim proxy to the obvious overarching national security threat. The generic opinion from the human rights proponents was that human rights and in particular refugee policy had continued to be just another stratum amidst US foreign policy, bringing it to sometimes 'compete with the advancement of US national security...interests' (Sean D. Murphy 2003: 265). A degree of accuracy could be accorded to this by the fact that parole authority under immigration law with the legislative intent allows the executive to employ 'almost unlimited discretion' (Fullerton 2004: 551). The reasons for the use of this proviso varying from 'emergency situations' to 'US national interest' to 'public interest' (PL 96-212 1980: 703-704). Unlike other groups entering US specifically through the refugee or asylee procedures, Cuban refugees who entered as parolees didn't have to demonstrate a fear of persecution—it was automatically assumed; with the added incentive of acquiring LPR status after a year of being one.

Reiterating once again the variables that gain significance in this issue—the policy stances of an administration towards particular groups, the relation between the host and the sending state, and also the political capital of the émigré community that could or not utilise its clout; it can be deduced that certain periods record more influences of one of the variables. Before the collapse of the erstwhile Soviet Union, the US foreign policy tone towards Cuba clearly dominated the viability of allowing Cuban refugees albeit with

TABLE 1: Cubans attempting to enter the United States by Sea (1982-2000).

Year	Interdicted	Landed	Total Attempts	% Success
1982	0			*
1983	44			
1984	7			
1985	51			
1986	28			
1987	46			
1988	60			
1989	257			
1990	443			
1991	1,722			
1992	2,066			
1993	2,882			
1994	38,560	n.a.	n.a.	n.a.
1995	525	n.a.	n.a.	n.a.
1996	411	n.a.	n.a.	n.a.
1997	421	125	546	22.9
1998	903	615	1,518	40.5
1999	1,619	2,254	3,873	58.1
2000	1,000	1,820	2,820	64.5
2001	777	2,406	3,183	75.6
2002	568	667	1,235	54.0

Source: US Coast Guard for interdictions; US Border Patrol for arrival (Max J. Castro 2002: 8)

Note: From 1982 to the mid-of 1994, all interdicted Cubans were allowed to stay in the US. The 1994 surge of 38,350 is to account for the pile-up of Balsero rafters.

the assertion of 'freedom' and 'democracy'. After the dissolution though, the apparent allusions cease due to the dissonance between a Cuba rendered non-threatening and the continuance of antagonism between US and Cuba.

It is thus, hard to conveniently corroborate the change in US refugee policy to a humanitarian cause entirely either because the slant of historical shift after the disintegration of Soviet Union Cuba was no longer even a strategic threat; which it had been by the most extreme assumption in a bipolar world. The Clinton administration did encourage the promotion of better coordination on human rights issues among US executive agencies. Some of the stated objectives were the reiteration of America's obligations under international human rights treaties and by that, supplement the promotion of human rights, which in turn strengthens the internationally instituted mechanisms to advance them (Sean D. Murphy 2003: 271).

There was then the ongoing discourse on securing borderlands that involved the Congress in initiating legislations that achieved the same purpose. The IIRIRA (PL 104-208, 110 Stat., 1996) of 1996; the REAL ID Act (PL 109-13, 2005) of 2005; the Secure Fence Act (PL 109–367, 120 Stat., 2006) of 2006; the DHS Appropriations Act (PL 111–83, 123 Stat., 2010) of 2010 and succeeding bills, were all proof of the larger concern with mass and unofficial immigration routes and attempts to regulate and control it (CRS 2009a: 4-9). The measures that were put in place during the 1994-1995 agreements were precisely a foreign policy situation that was largely guided by domestic concerns. Table 1 from the previous page shows the tally of interdictions that rose dramatically after the Balsero crisis reached its zenith in 1994.

In practise, the procedure afforded to applicants became not only equitous in its stringency but also continued to admit most of those Cubans who were still seeking refugee status under the CAA protocol as long as they reached US soil. Secondly, while clarifying the fact above, it is also a fact that the US refugee policy especially after the 1990s began to adhere to the definitional guidelines given in the 1951 convention and the 1967 protocol, and this especially included 'exclusion clauses[66]. It restricted illegal

[66] See supra note 25 in chapter 1 regarding Article 1F of international refugee law.

departures but maintained an alternative and legal route of entry to the US for Cubans who wanted to enter the US.

One particular case that inspired furious discussions during the post-Soviet era in the Congress, the mainstream media (The Guardian 28 June, 2000; Time 5 April, 2000; New York Times 26 April, 2000; Time 8 May, 2000) and also furtive unrest amongst the right-wing Cuban American community was that of the Elián González case[67] (1999-2000), (mentioned earlier in Chapter 1). Senator Leahy speaking before the Senate Committee on the Judiciary commented that the Republican leadership had declared an intention to 'ram' through an introduced bill in the Senate to keep the 6-year old in the US (though it was later abandoned); also argued the need to opt for family reunification by tracing the difficulties of US parents struggling to meet their so-labelled 'Amerasian' children (Leahy March 1, 2000).

While this was telling in itself as to the Republican endorsement of the position taken by Elián's Cuban American relatives; the point that is of more importance here is the decision for family reunification which the courts also ruled for. It also found greater support amongst members of the Congress, the public, mainstream media—which the administration silently complied towards. This was a stark difference from 1961 when flight operations had been held to initiate what would be termed as 'Operation Pedro Pan'[68], wherein fourteen thousand unaccompanied Cuban children (some as young as six) were sent to the US. The Elián case though acted in synchrony with the UNHCR preference for family reunification instead of the application of political symbolism.

[67] The case was a tug of laws both domestically and internationally between refugee laws and family reunification. One side had Cuban American relatives applying for asylum under the INA and the other side had Elián's father claiming his son back. Eventually the courts ruled in favour of family reunification. But not before, politicisation of claims of anticipated torture under Cuba's Communist regime by Elián's relatives in the Florida area.

[68] María de Los Angeles Torres author of the book 'In the Land of Mirrors: Cuban Exile Politics in the United States' chronicles a personal account of being one of those children who were transported in a clandestine manner (Torres 1999: xiii, 1, 4).

2.1. Balsero Crisis

The wave of boat rafters that turned up from Cuba on US shores between October 1991 and June 1994 was what was termed as the Balsero crisis. Since the inception of the Fidel Castro led government in Cuba, the US has experienced three mass exoduses from Cuba—while the first two experienced wholesome acceptance, the third did not. Kathleen Newland opined that after 1994, US refugee policy towards Cuba in particular was simply an 'outpost of cold war policy in a post-cold war world'; since the major chunk of those admitted before 1990 had been under the political refugee status and even ascertained as such by immigration officials automatically (Newland 1995: 196). Now, the economic crisis[69] in Cuba and the added high-profile hijacking of Cuban vessels by Cubans, interning finally at Guantanamo led to the Cuban government's announcement that it would cease enforcing all laws regarding illegal departures, and immediately rafters increased further in numbers (Max J. Castro 2002: 6). What manifested out of this massive influx were the migration accords which has in some fundamental ways altered the terms of US migration policy towards Cuba.

A conclusive push factor cannot be determined for the sudden on-rush of mass exoduses. However, two consistent reasons have been used to justify the outflow from Cuba by most sources—namely 'Economic crunch' and 'Opposition to regime led by Fidel Castro and his cohorts'. In the Balsero case the first reason was alluded to as more dominating. Largely in part to the sudden shift that Cuba itself had to make with regards to sustaining itself after the subsistence aid from the Socialist bloc ceased. For instance—the Cuban economy was so massively downsized that one of its fastest source of hard currency were the remittances from relatives abroad especially US. Latin American offices of the UN (ECLAC) noted the sudden jump from $50 million in 1990 to around $ 700 by the end of the decade (Perez Jr. 1995: 381-387). The average calorie intake by Cuban citizenry fell by 30 percent from 1989 to 1993 (Eckstein 2004: 317); in a public meeting of the Senate Committee on Foreign Relations chaired by Senator Helms, a Dr. Cordova (who had just

[69] Secondary sources indicate Soviet Union was contributing between $2-3 billion subsidies worth to Cuba, the collapse of the former however reduced both trade and subsidies and exacerbated the reasons that played out as Balsero phenomena.

taken asylum after escaping from one of Cuba's health missions abroad after the Cold War) testified similarly to the lack of sustenance items—'Cuban people had nothing to eat' (Public Meeting of the Committee on Foreign Relations September 20, 2000). All in all both the Cuban state[70] and the Cubans at the individual level were courting the means to receive more remittances (Eckstein 2004: 316-319). The compliancy on the Cuban state was immediately reflected in loosening restrictions on émigré visits and even grew more encouraging to the idea of migration (Eckstein 2004: 321), not only because of the migration accord that would ensue in 1994 but because Cuban workers were being permitted to work overseas.

2.2. 1994-1995 agreements and implications for US migration policy towards Cuba

The core of the Migration agreement signed on September 9, 1994 was to affect 'normalizing [of] migration between the two nations' (CRS 2007: 2; Joint Communiqué Between the United States and Cuba Concerning Normalizing Migration Procedures, September 9, 1994). The normalisation was sought because the siphoning of political opposition groups was found to be stabilising the regimes that US sought to undermine (Newland 1995: 191; Díaz-Briquets 1995: 183). The deal[71] in September, 1994 that eventually brought about the migration agreement stipulated and implied the following:

First, that the Cubans interdicted at sea would now be relocated to Guantanamo naval base, eventually to be returned to Cuba; who could then apply through the USINT at Havana through refugee processing and 'expanded immigrant visa' (DOS Press Statement, 'Cuba: Implementation of Migration Agreement' 1994). The interdicted Cuban rafters would now through the Clinton administration's announcement be placed at a safe haven (at Guantanamo specifically), 'with no opportunity to enter United States

[70] Apart from legalizing dollars, interest-bearing dollar banks were opened, official dollar stores were now opened to the Cuban citizenry—with inflated pricing as an indirect tax on those with access to dollars, exchange booths for dollar-peso exchange, and also entered into partnerships with international money transfer businesses such as Western Union, Canadian firm Transcard etc. (Eckstein 2004: 320-322).

[71] 'The result was only due to a flurry of diplomatic overtures at the administrative level between DOS officials and a confidant of Fidel Castro in New York, Toronto—which the administration hailed as a success in brokering a creative end to the assault on America's Immigration procedures, though 'many Cuban-Americans have called it a betrayal' (Greenhouse 1995).

other than by returning to Havana to apply for re-entry[72] through legal channels at the US Interests Section' at Havana after 'fear of persecution' has been determined (GAO/ Governmental Accounting Office 1995: 1). The consideration of Cubans as not specifically a refugee, a political refugee at that, was a watershed point in migration terminology usage towards the Cubans seeking entry on a yearly basis and the beginning of in-country processing.

Second, in the spirit of the 1984 agreement, the US would simultaneously affix 20,000 annual quotas for Cubans refugees, not including family admissions. Then there was the 'Special Cuban lottery' to accommodate the rest of the 20,000 affixed annually. This was to correct the backlogging that had rendered the 1984 agreement moot. The questions put forth to Cubans (between 18-55 years) were (of which they must answer yes to at least two for eligibility as candidates in the lottery program):

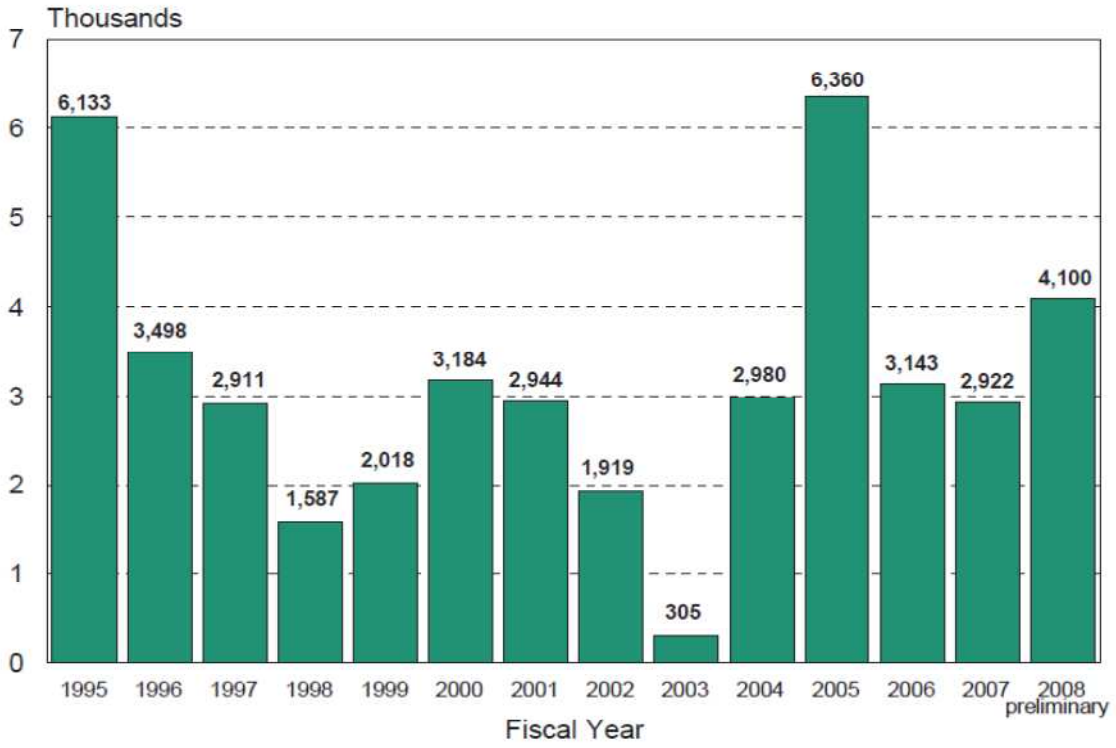
> 'Have you completed secondary or a higher level of education? Do you have at least three years of work experience? Do you have any relative residing in United States?' (CRS 2007: 5).

The nature of these questions does not remotely identify Cubans as refugees or asylum applicants, rather it insinuates a more generalised immigrant procedure—as no categorical question about prosecution is asked, and determining an extreme and ambivalent concept like persecution cannot be done by the above questions alluding to education-level and work-experiences. This development is crucial because, by making the terms of migration part of the immigration procedure, the chances of having to employ parole authority for huge influx would be lessened, as the quota took care of the claimants that wanted entry to US.

Third, the 1994 agreement is the only instrumental agreement between Cuba and US, wherein both the states emphatically agree on censuring mass Cuban refugee influx, by formally acceding to monitor both the pull and push side of the migration. The US stipulation that Cuba control illegal departures is only an extended corollary to the issue of nation-state, and the underlying principle that states must be able to control their

[72] The inspector general of DOS pointed out that in-country processing have their own limitations, as countries producing refugees have substantial control over US resettlement program by determining the type of applicants (US Commission of Immigration Reform Report the Congress 1997: 49).

FIGURE 3: Cuban Refugee Arrivals from In-Country processing (1999-2008).

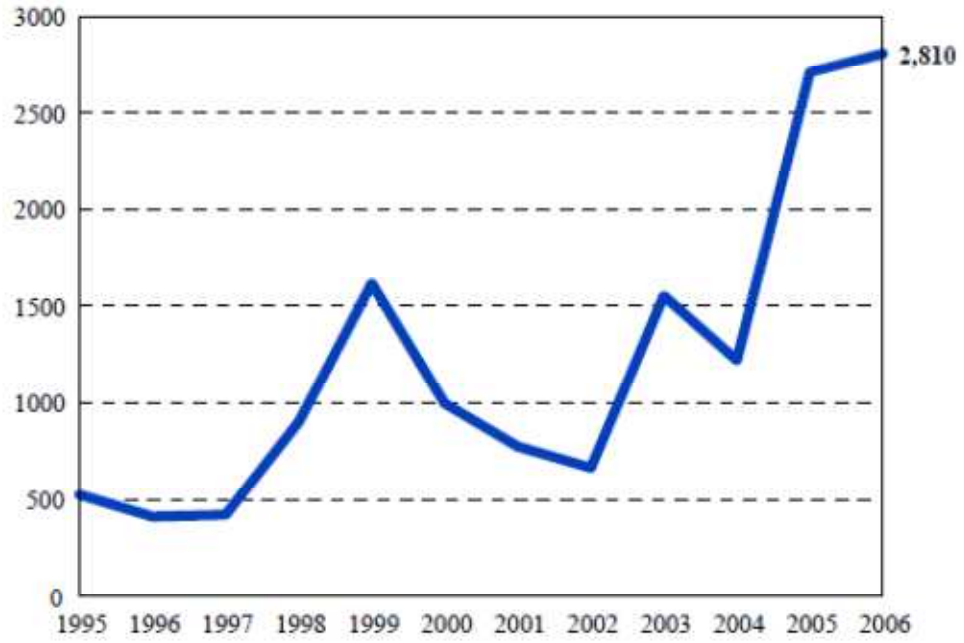


Source: CRS 2009b:11.

Note: The enforcement procedure of apprehending tightened further in the second term of the George W. Bush administration. In 2011, the Department of State allotted 5000 of the 5,500 visas meant for Latin America to Cubans (in country processing) (Barrios 2011: 10).

borders and the peoples that claim its citizenship for efficient functionality. In addition, the US Interests Section (USINT) at Havana continued to process the 'in-country' refugee program wherein Cubans could apply for refugee status in keeping with the 1951 Convention and 1967 protocol even though they weren't outside of their country. The US had even concocted a flight travel route (via Mexico) for specifically these refugees because the rate of transportation through 'Havanatur' was too exorbitant (Department of State telegram 80207, 1995: 81-83).

FIGURE 4: Maritime interdiction of Cubans (1995-2006)



Source: CRS 2007: 4.

Note: The interdictions went even higher up at 2868 and 2199 in the years 2007-2008 (CRS 2009b), and only waned during the Obama administration.

Fourth, after processing the approximately 30,000 or so Cubans at Guantanamo interdicted during the Balsero crisis, the Clinton administration employed the term 'humanitarian parole' to allow them entry to the US, through the agreement in 1995, with 5000 charged annually from the 20,000 quotas (US-Cuba: Joint Statement on Normalization of Migration, Building on the Agreement of September 9, 1994, May 2, 1995; Department of State, Telegram 1996: 81-81). It was the 1995 agreement where interdicted Cubans would be returned to Cuba and not Guantanamo, if unable to demonstrate a fear of persecution. Those found to have a credible fear were however taken 'to Guantanamo for further screening', wherein they are either returned voluntarily or returned otherwise on failing to establish the fear of persecution or resettled in a third country (CRS 2007: 4-5). What emerged out of this conditionality was the 'wet foot/dry foot policy' of the Clinton administration. The main point that emerges out of these

conditionalities is that Cubans still retained the right to an asylum, but the stringency of refugee admissions were now being applied to them like all other peoples seeking right of asylum in the US. So, it's not so much that US had refused to entertain any refugees from Cuba but rather that the possibility of being one was entertained formalistically and stringently.

The US Commission on Immigration Reform's response to the Clinton administration particular modifications of US policy towards Cuban refugees was that:

> 'complex movements require[d] complex responses both to resolve the existing crises and to avert future emergencies' (US Commission on Immigration Report to the Congress 1997: 4).

This is the only definitive proof of the change in migration stance by the US towards Cuba since the 1959 Cuban revolution. For the first time, US was viewing Cubans as immigrants whose status as refugee was yet to be proven. By its very nature, Christopher Sabatini, policy director at the Council of the Americas observed that any change in the embargo was not possible by a straight up-down congressional vote; rather by slight regulatory changes could this be affected. He further added that the scope of this change laid in the executive's authority—such as in areas like travel, telecommunications, cultural and educational exchanges etc. This is so, as dismantling in this manner was 'more palatable to political audiences' (Perales 2010: 2).

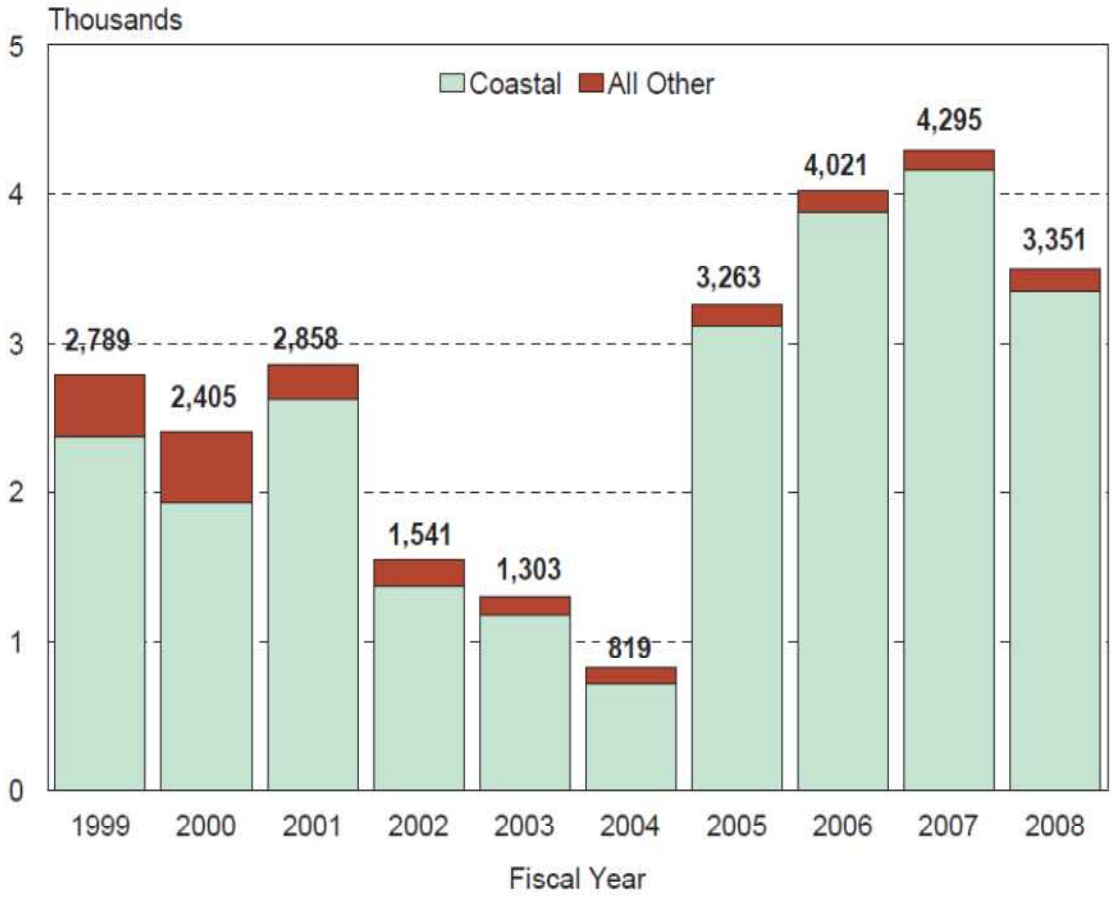
The US Commission on Immigration Reform observed that the refugee admission decisions have important domestic and foreign policy ramifications as it required:

> 'consultation and coordination with a wide range of private agencies, state and local governments, other nations, and international organizations' (US Commission on Immigration Reform Report to the Congress 1997: 39).

Hence, the decision reached by the Clinton managed to alter, not by complete erasure of earlier legal mechanisms but rather by slightly reforming it by modifying the implementation part of the earlier stance regarding all-weather acceptance

That is why the Clinton administration's policy stance and its implications reverberate on different levels: first, simply by procedural means, the Cuban refugees would undergo a

FIGURE 5: US border patrol apprehensions of Cubans (1999-2008).



Source: CRS 2009b:11.

Note: The enforcement procedure of apprehending tightened further in the second term of the George W. Bush administration.

rigorous examination just as all asylee applicants; second, by migratory measures—US was no longer encouraging immigrants (of any kinds), so any case that emerge must definitely be either desperate and essentially sifts out casual adventurers; third, the signalling of such a policy did not worsen or better the terms of US-Cuba relations, rather it reiterated an accustomed practise of holding migration accords outside of the terms of the US embargo. Fourth, the administration significantly allowed CAA provisions for those who landed on mainland USA, while interdicting those apprehended at sea—thereby implicitly disapproving entrance through illegal ways by assenting to its

preference for legal mechanisms and explicitly changing the all-weather preferential treatment shown to all Cubans seeking entry. This mandate for streamlining all for immigration into a more streamlined legal mechanism is part of the ongoing immigration discourse, that only the 'reform of the legal immigration system will reduce illegal incursions' (CRS 2006b: 73). Deputy Assistant Secretary Michael Skol stated,

> 'we are going to reach out to the Cuban American community in the United States to make sure that they know how to reach out to their own relatives inside Cuba, to make sure that they know their rights, know how to proceed, and help bring these people legally to the United States' (DOS White paper, Cuba Implementation of Migration Agreement 1994).

The emphasis on legal mechanism to process a refugee procedure for the Cubans couldn't be more emphatically put than this.

However, critics of the 1994 migration agreement have opined that though it had substantially normalised the migration process, it also involuntarily encouraged 'unsafe, unregulated, and unauthorized migration' leading to loss of human lives (Max J. Castro 2002), since the Clinton administration's *wet feet/ dry feet policy* entertained asylum application only for those who landed in US soil. Other scholars would similarly cite the emergence of the very profitable and clandestine human-trafficking industries wherein violence is often times employed by the smugglers; at this point though, even migrants cease to be so, but are instead 'victims' (Kyle and Scarcelli 2009: 298-299, 306). This was then directly a result of the bilateral arrangement that US and Cuba helped make during the Balsero crisis. This same factor would induce illegal entries through complicated routes via Mexico after the enforcement procedures that would be placed in the US after the attacks of September 11, to befuddle the US enforcement agencies (Kyle Scarcelli 2009: 308-309). 'Clandestine migration industries' increased considerably with peoples from Cuba and Haiti commanding higher price ranges and more sophisticated human-trafficking operations (Kyle and Scarcelli 2009: 299, 301-302, 306-308, 309-310).

2.3. US Refugee Policy under the Terrorism criterion

Now, if the Communism of Cuba had lost viability in ensuring Cuban refugees flexible entry as before then, state-sponsored terrorism[73] and also America's new sight regarding global terrorism had gained grounds to put it firmly amongst the issues concerning the US both internationally and domestically. In an immigration policy getting increasingly formalised, the issues of security and an immigration regime getting progressively restricted, Cubans attempting to enter through unofficial routes were now subjected to massive interdictions. In the year 2006 of the George W. Bush administration, Cuban interdictions at sea was at a high number of 2810 (CRS 2007: 1), it climbed further up to 2868 in the year 2007 (CRS 2009b: 1).

REAL ID Act (PL 109-13, 2005) of 2005 tightened the immigration procedure for refugees and asylees by placing the entire burden of proof on the claimant; the second new feature allowed both the Secretary of Homeland Security and the Attorney General to grant asylum, determining the standards for establishing a well-founded fear of persecution, even revoke refugee or asylee on 'terrorist grounds' (CRS 2005). The major re-hauling of administration by the George W. Bush administration brought the adjudication of asylee claims under the USCIS (under DHS). Though asylee claims would be 'un-entertained' if immigration officials discovered irregularities in documentation. The removal proceeding would now be adjudged by the immigration judge, and if it was denied, applicant could further appeal to the BIA (Board of Immigration Appeals) or the US Court of Appeals for further review (DHS Annual Flow Report 2010: 4).

The counterbalancing of these factors and an immigration policy arrested by the threat of security and domestic concerns produced the highest encounters of interdiction cases during the length of the two George W. Bush administrations (Figures 4 and 5). On one hand, UNHCR guidelines forbade states from indulging in refoulement of refugees to territories where they could face danger; to ensure economic rights to these refugees as

[73] The DOS has placed Cuba in the list of sponsors of terrorism since 1982, 'pursuant to section 6(j) of the Export Administration Act', triggering economic sanctions (CRS 2011b).

other foreign residents in the country of asylum and prioritise family reunification during the term of temporary asylum (US Commission on Immigration Reform Report to the Congress 1997: 3). On the other hand, border control became a pre-occupation not only in terms of land incursions by Mexicans but also interdicting responses to marine incursions, which was where most Cubans trying to enter US would apply through.

The annual country reports released by the DOS are a reference to the status of the world's countries and their ascertained human rights violations and democracy level—and has continually allotted Cuba's regime as being totalitarian and devoid of democratic implements. As mentioned earlier, DOS had also placed Cuba among sponsors of state terrorism since 1982, placing thus a special list of sanctions for that effect (Department of State, State Sponsors of Terrorism 2012). During the George W. Bush administration, the DOS security advisory opinion which was applied to citizens from such states, there would be noticeable delays in visa-processing and 'de facto denials'—obvious in the case of Cuban 'academics, artists, intellectuals...other then family visitors' (Lutjens 2006: 67).

Enforcement thus took a completely sharper shape through different enforcement methods ranging from,

> 'visa policy at consular posts abroad and border security along the country's perimeter, to the apprehension, detention, and removal of unauthorized aliens in the interiors of the country' (CRS 2010c: 4).

The 'wet foot/dry foot policy' that ensured entry to the Cubans entering by land by availing them the CAA provisions led to major incursions and cases of human smuggling through the US-Mexico border. Both Figure 4 and Figure 5 above (also table 1), displays the apprehensions of Cubans both on land and sea, and also the particularly distinct rise after 2003.

Coast guard interdictions have led to the wet foot /dry foot policy wherein interdictions mostly lead to return to Cuba, while those Cubans touching shore are allowed to stay in the US'. The marine interdictions declined in the years 2009 and 2010 and it was

attributed to three factors—'economic downturn, more efficient coastal patrolling and more aggressive prosecution of migrant smugglers'[74] (CRS 2011b: 48).

3. Conclusion

In conclusion, the Cuban refugees while continuing to be indiscriminately welcomed at all occasions till the reversal by the Clinton administration, still continued to be treated as political refugee[75] claimants, though access to it was more restrictive because of procedural means than ambivalent entrance. The diverse policies that the US had to take with regards to the Cuban refugees could be divided into three responses—the first years were a foreign policy of anticipated refugee movement (freedom flights); the second phase starting from the 1980s lasting till before Clinton's reversal was a foreign policy of tolerant unanticipated refugee movement (Mariel); the third phase was a foreign policy of intolerant unanticipated interdiction (boat rafters). Gil Loescher and John Scanlan opined that strictly national solutions weren't conducive for mass influxes, that it must always be accompanied by multilateral and bilateral attempts for maximum efficacy (Loescher and Scanlan 1981: 388).

Therefore, the migration agreements were creative solutions facilitating the right of the Cubans to migrate as per their international right albeit with national determinations included. For eventually, only those refugees who are deemed as such will be admitted on a case-by-case basis, and that will only be determined by the officials on ground or the numbers affixed by the President after consultation with the Congress. The alteration lay in the creation of extensive legal methods for application for immigration through normal procedures. It drew out the Cubans as a category arrested by the bracket of 'mandatory political refugee' to employ the particularistic definitions as was evolving in the US refugee structure, to ascertain before presuming.

[74] In October 2008, Cuba and Mexico negotiated a migration accord to curb irregular flow of migrants through Mexico (CRS 2011b: 48).

[75] Movements of political refugees are either because of military or political changes, making these individuals witnesses to the specific changes, either political or military (Kunz 1973: 137). In the case of the Cuban diaspora, the intermesh with domestic politics and the foreign policy that spilled forth is quite relative. The estimates by USCRI of the leading country of asylum seekers in the US for the year 2008 were Cubans at 24,700 (USCRI 2009: 32).

Chapter 4

Domestic Dynamics: Cuban Diaspora and lobbies

The Cuban-American community in the US increased significantly after 1959 Cuban revolution. This diasporic group remains one of the best examples of resettlement policies undertaken by the US for immigrants, who in a few decades after being implanted in American soil successfully transitioned to active political participation in the mainstream. The Cuban Diaspora that had grounded itself in the US after the 1959 Cuban revolution had never assumed a non-political role, by either their symbolism or their stance towards the Cuban regime. Initially, the political character of this group remained homogenously against Fidel Castro and his regime, with the zero-sum assumption that the regime must go. Their very labelling was 'exiled', the understanding being that their situation in the US was temporary. Eventually that changed as the US administrations after Kennedy and Johnson concluded that the regime was to stay, and the 1966 CAA offered these refugees to adjust their status to legal permanent residency within a year of being a parolee.

As such, America's treatment of the Cuban refugees altered accordingly with its strategy towards its national security, from being of top priority to of lesser concern. However, in the domestic arena—the Cuban diaspora often found ways to affect the terms of US-Cuba relations. Traditionally having voted Republican especially in states like Florida, hardliner lobbies like CANF (Cuban American National Foundation) have been have able to influence its particular brand of policies for Cuba. There was nothing non-political about the Cuban-American community who had arrived in the US after the Cuban Revolution of 1959; especially those who had arrived before the Balsero crisis. By being exiled, their very status alluded to a politically defunct relationship with the Cuban revolutionary government, which perpetuated itself by the regime's very continuity; and this fact was a constant reminder both to the community and to the US policy-making elites when viewing the US-Cuba relations. There was no escaping that fact; all policies related to Cuba directly or indirectly affected the Cuban American community (who continued to have a hostile relationship with Cuban government) and vice versa.

This chapter examines the unique role that this community engendered for US-Cuba relations—by the emotional singularity of an unavailable and unsatisfying homeland, the inimical relation between the Cuban diaspora and the Cuban regime and the political

capital that this community would represent in US domestic politics. The questions that have been raised here are:

- What are the specific governmental assistances that were unique to the Cuban refugees as opposed to other refugee groups? How do domestic compulsions affect the US policies on Cuba?
- When did political activism begin among the Cuban diaspora, if activism did exist? And how did they impact US migration policies towards Cuba?

1. Demographic Placement

In the words of a scholar placing particular importance to semantics with regards to Diasporic terms:

> '…within the demographic crisis of the modern world, diaspora is a "natural" phenomenon…' a consequence that was the result of injustice at the global level (Fornet 2002: 92).

'Diaspora' as a term, when applied to the Cubans in the US assumes a neutrality, a quality that does not appear in other terms that have been used to describe this group, in particular—'Exiled'[76]. In a 1995 Ansa Cable survey in South Florida, 34 percent would identify as 'an exiled Cuban', while 61 percent viewed themselves as 'Cuban American' (Fornet 2002: 94). Then, in a 2006 national survey configuration, this figure would be 52 percent, wherein the US was considered their place of origin (PEW Hispanic Centre, National Survey 2006). The term *immigrant* is now also being employed for those Cubans entering the US through Havana; it depicted 'their status as ordinary immigrants' (Robson 1996). Such semantic identification in itself does not necessarily portend a demarcation of interest-based grouping amongst the Cuban Diaspora, but only revealed the degrees of their stances with regards to Cuba. For instance the younger Cuban Americans would show the strongest opposition to the continuing US embargo (Florida International University or FIU Public Opinion Poll, 2008). The point is that as a grouping they were not homogenous in the least.

[76] A term that was familiarly and mundanely employed by the nineteen twenties during the Machado regime— of revolutionaries going into exile (Fornet 2002: 93-94). It harps back to the tradition of the nineteenth century, which eventually involved Jose Martí as one of its own.

The Cuban Diaspora in the US today is an assortment of emigrants, native-born and the exiled. Khachig Tölölyan in his introduction to *Diaspora: A Journal of Transnational Studies* wrote of the Cuban Diaspora, who he viewed as a 'transnational collectivity' whose very being was characterised by the events of separation and togetherness, all the while maintaining their unique 'cultural and political institutions' across borders and nation-states (Torres 1999: 26-27).

The nature of Cuban-Americans diaspora had been influenced, in large part by the nature of their immigration itself. Every massive wave that would bring these groups to the US also contributed to new perceptions that would distinctively belong to that group (Massey and Schnabel 1983: 243). Their immigration to the US represented—a dissident group outside Cuba who would symbolise the triumph of freedom for the US and their successful adjustment and upward societal mobility in the US would further enrich this very symbolism; it necessitated their reification as particularly as 'anti-Communists for the US' (Current 2008). For the Fidel Castro led government, this removal of such dissenters not only added to its stability internally, but also represented the success of a revolution, which the exiles refused to acknowledge in their perceptions of a free Cuba. The alternative discourse that this situation bred was then the foundation of the Diaspora's relation with the Cuban government after 1959.

Cubans as a Hispanic sub-group came in large numbers (mainly in waves—Camarioca, Mariel, Balsero) particularly as political refugees. They also constituted an older grouping [averaging 41 as of 2004 American Community Survey (ACS)] owing to selective migration and low fertility rates; they also rated more successful occupationally with higher incomes (Daniel D. Arreola 2004: 19).

1.1. Image-Building

Initially, when circumstances coalesced to eventually warrant America's 'position as the ultimate utopian refuge for all seeking freedom' (Current 2008: 52), the immediate fear was that of a public backlash amongst policy-makers. As such, the kind of image building that went into the public space during the first phases of refugee entry into the US thus cannot be ignored, especially regarding the Cubans as a group. Unfamiliar with the very

concept of having to, suddenly accept throngs of populations that could not entirely be categorised as economic immigrants in the traditional sense, the public had to be reminded of their humane ethic for these fleeing political Cuban refugees.

As mentioned in the earlier chapters, of the endorsement of Cuban refugees by the US through legislations and specific programs like CRP (under the US Department of Health, Education and Welfare)—in addition, were also aided side-by-side with a 'pro refugee publicity' (Current 2008: 43). It seemed to then reinforce America's belief on their stance in the Cold War as CRP's bulletin and popular media advertisements would print as:

> 'Sponsor Cuban Refugees...Fulfill Their Faith in Freedom' (Current 2008: 53).
>
> 'well-educated, well-mannered, business and profession people from the middle and upper income brackets; people of character, too, cheerfully undertaking the most menial of unaccustomed labor rather than continue to accept relief. (Many have in fact returned their relief checks after finding work. Repayments, as of this week, were flowing into the Miami Cuban Refugee Center at the rate of $10,000 a month)' (Cuban Refugee Center 1962).
>
> '...The Whole community gave us a warm welcome and is very kind to us. The people made us forget the troubles we had in Cuba under the regime of terror...' (Cuban Refugee Center 1962).

The initial exodus engendered a need to create a favourable public support and will towards the refugees by labelling them as necessarily 'White' (Dávila 2008: 14), 'anti-communist and middle class' (Current 2008: 42) in keeping with America's interests. Ghassan Hage opined that the 'pressure to be the perfect citizen in the host society' induced diasporic communities to impose a censorship on themselves (Cunningham 2001: 138). The general expectation to be anti-Communist and anti-Castro was the norm for many Cuban Americans.

The refugees also had to prove themselves as necessarily anti-Communist in the way Americans would approve of, and not just show a compliancy towards assimilation (Scanlan Loescher 1986). While the domestic publicity depicted all Cubans as anti-Communists, the anti-Communism of the Cubans even during the 1960s was inaccurate, as one Cuban American scholar would attest to having been a *Fidelista* even after personally being part of the 1961 'Operation Pedro Pan'; and of other families being *Batistianos* (Torres 1999). That Cubans during the first two waves could be deemed as

anti-Fidel Castro but not mandatorily anti-Communist (Current 2008: 48). The generalised grouping of being 'for freedom' erased all kinds of political beliefs (Current 2008: 57), which the Cubans did have.

Now, the very official act of having to convince the public of the Whiteness of a particular group and their state of being homeless and exiled—reveal an existent public perception against immigration from non-White groups in particular during that period. One analyst relates this tendency to the eugenics movement during the first half of the twentieth century, which garnered vigorous American peoples support—the idea being that social degeneracy[77] in various forms were rooted in race. He would further add that this perception of racial wanted-ness was not overt since policy-makers in their non-discussion of racial desirability, imposed 'a racial hierarchy in immigrant and refugee acceptance' (Current 2008: 46-47). It bestowed on the group the racial ideal through these promotions and the commonalities it shared with the Americans at large, seeming thus to assimilate (Dávila 2008: 15-16). The composition of the initial waves (white and middle class) also made it easier for *Whitening* Cuban Refugees (Pedraza-Bailey 1985).

These nuances of rehashing public images of an incoming group are significant because the positivity of possessing certain social capital (albeit constructed) fastens upward mobility for those groups aiming for the same. The Cuban refugees would also embrace this and this representation would find expression in the very identity of Cuban Americans[78]. It would provide Cubans in the US with 'unusual access to citizenship' (Current 2008: 61), which would enrich their economic and political capital as their educational skills came into play.

1.2. Resettlement

The narratives chronicled to rehash a group's characteristics are significant because acceptability into an adopted country is one of the rites that a refugee-asylee must need pass. At least that is the thought as argued by the assimilationist school of immigration

[77] Socially degenerate characteristics such as 'Feebleness of mind, insanity, crime, epilepsy, tuberculosis, alcoholism, dependency' (Current 2008: 46).

[78] In 2004, 86 percent of the Cubans in the US would identify themselves as racially White (ACS 2004).

settlement (Goldberg et al. 2006: 261). That all groups ascended in stages in a host state for successfully being part of the labour market, with the length of two or three generations estimated to acculturate to 'the values, norms and culture of the host society' (Goldberg et al. 2006: 261).

In contrast, the cultural pluralist school maintain that though groups eventually assimilate, the new identity did not necessarily portend the complete melting away into the dominant American culture. That, instead, there is a creation of a new 'hyphenated identity' through shared political interests—that translated into economic upward mobility and political power (Goldberg et al. 2006: 261-262). Gustavo Pérez Firmat would refer to the same identity among Cuban-Americans, to mean that a distinctive Cuban American culture had developed because of accommodation and not conquest, a hyphen of biculturalism (Shirley 1998: 182). Miami, Dade County (Florida) had been found to have undergone 'Hispanization', a process wherein places or peoples absorb Hispanic characteristics, in reversal to the process espoused by the assimilationist school (Haverluk 2004: 277). Successful adaptation of the latter type of acculturation is evidenced by other instances like the 'mambo craze' (Shirley 1998:183) of the 1930s and 1940s; the popularity of singers like Gloria Estefan and Jon Secada; works of Oscar Hijuelos winning Pulitzer prize etc.

Diasporic community settlings are often times influenced by a variety of factors—namely 'nature of immigration', 'resources that immigrants bring with them', and 'host country reception'[79] (Woltman and Newbold 2009: 72). Newland pointed to the role played by specific ethnic and national groups in the US. The Miami's Cuban American community in particular were prepared financially and culturally to take in refugees. The early successful transition would contribute to the creation of Community organisations, which were financed by contributions from this (now) successful community, offering 'a wide range of housing and social services' even (Newland 1995). That resettling and sponsoring efforts for most refugees were 'Americans with the same ethnic background' (Richard Ferree Smith 1966: 51).

[79] The INA also didn't specify quotas for the Americas, a factor that would also account for the unlimited entrance of Cubans in the US.

In1961, President Eisenhower determined that Cuban refugees were eligible for money meant for Communist regimes. As such, the US through the Public Affairs Office of the CRP constructed a Cuban public image and it served two purposes—namely:

> 'easing refugee's transition into the US and gaining broad support for refugee assistance' (Current 2008: 52).

Cuban refugee groups would garner unusual amount of enthusiasm[80] to help the group

TABLE 2: Total number of Cubans residing in the US (1850-1990)

Year	Number	Year	Number	Year	Number
1850	5,772	1900	11,081	1950	29,295
1860	7,353	1910	15,133	1960	79,150
1870	5,319	1920	14,872	1970	544,600
1880	6,917	1930	18,493	1980	803,226
1890	9,970	1940	15,277	1990	1,043,932

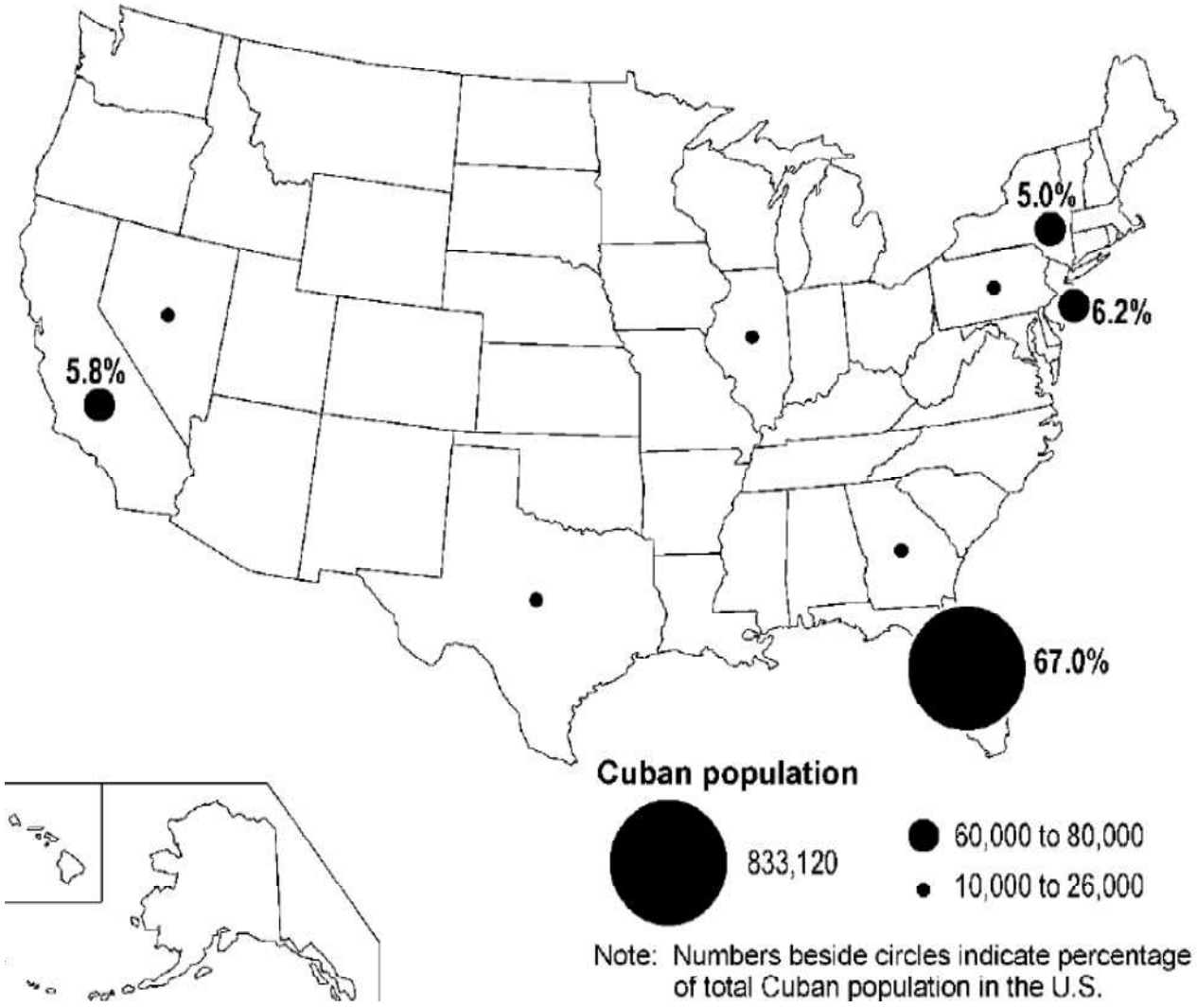
Source: 'US Department of Commerce, Bureau of the Census, historical Statistics of the United States: Colonial Times to 1970, 1975, 1980 and 1990 Census of Population: Supplementary Report, persons of Spanish origin by State...Total for the year 1890 was extrapolated from the combined figures for Cuba and the West Indies' (Torres 1999: 40)

Note: As of 2004, the Cuban population in the US was 1,448,684 and the 2010 decennial US Census put it at 1,785,547. (Various sources claim differing data as far as migration data is concerned). The 1966 CAA and its benefit of an LPR status after a year of being a parolee have been portrayed by the sudden inflation of resident population between 1960 and 1970.

[80] It wasn't without its critics within the host states or even at the people-to-people level. Said City Manager Cesar Odio:

> 'we don't have the infrastructure, we're totally overwhelmed already. We can't handle any large inflow, whether Haitian or Cuban. ... We have no public housing available, we're planning to put up a tent city in South Dade [County] just to house the…still homeless' (Miami Herald 1992).

FIGURE 6: Concentrated settlement patterns of Cubans in the US



Source: US Census Bureau 2000 (Daniel D. Arreola 2004: 28).

gain root itself successful at the different official levels. It would not only go a long way into jolting the community's transitioning in this new society but also enabled a self-generating system of helping itself like no other transplanted community in the US. For instance—the CRP machinery also staffed Cuban refugees themselves, and it provided a chance to the Cuban refugees to 'advocate themselves' (Current 2008: 52). It would latter allow for a coalition between Cuban interest groups like CANF to enter into a mutual

assistance agreement with governmental agencies, beginning during the Reagan administration. The Refugee Act of 1980 also provided for the specific reimbursement of non-federal costs through Section 313 (c) (1) and (2) of the INA (PL 96-212 1980: 711). Even during the Mariel crisis, President Carter would enable a Presidential Determination to assist the Cubans arriving in Florida from the United States Emergency Refugee and Migration Assistance Fund (US Federal Register 1980: 29787).

However, Washington would limit most of the programs for the incoming Cubans after the mass exodus at Mariel (Eckstein and Barberia 2002: 802). Nevertheless, by then, the Cuban Americans had, as mentioned earlier been co-opted successfully into helping the newly arriving waves of peoples from the island.

The initial strategy of the US immigration policy 'was to spread the Cuban refugees all over the US'[81] (Peterson and Meckler 2001: 48), but eventually they all settled in and around South Florida (figure 6). In addition, in some other ways US immigration policy by prioritising 'family reunification' as one of its immigration principles, also automatically gave some kind of 'momentum over time' (Massey and Schnabel 1983: 243) to the increase in population of diasporic communities. It also helped that Havana too tacitly allowed family reunification of an émigré community rooted mostly in 'pre-revolutionary values and memories' (Eckstein and Barberia 2002: 804).

As a refugee, parolee and as special entrants over 1 million Cubans would receive preference until the 1994 decision by the Clinton administration. Federal assistance to this group would expand from resettlement procedures to further include a range of procedures as 'job training, education, medical care, and social welfare benefits' (Nackerud et al. 1999: 177). Between 1961 and 1976, US administrations assisted more than 700,000 Cubans in resettling efforts, amounting to a value exceeding $ 1,000,000,000 (Fullerton 2004: 553).

The 1890 US Census rated Cubans in New York at 57.5 percent among approximately six thousand Hispanics in the city. This was during the heights of Cuban cigar

[81] One scholar explains that it was in response to pressure from the state of Florida, a solution that White North American sociologists had found to fasten the process of assimilation (Torres 1999: 4).

manufacturing, but most of the establishment had closed by the 20th century (Miyares 2004: 158). Now, they are no longer a dominant grouping not only in terms of numbers but also in economic and political significance—as their migration became directed more towards South Florida and New Jersey (Miyares 2004: 148-149).

During the 1970s, 80 percent of the Union City (New Jersey, Hudson County) population were Cubans but this percentage fell to 20 percent by 2000, with most residents there having moved away to affluent suburbs. In contrast, by the end of the century most émigrés (80 percent approximately) expressed an intention to settle in Florida (OIS Statistical Yearbook 2002), so much so that it would incur names like 'Little Havana' or 'Second Havana'. In addition, affluent Cuban Americans remain concentrated in classier neighbourhoods of Miami, Florida (Eckstein and Barberia 2002: 807-808). As of 2004, the ACS presented 66 percent (approx.) of Cubans as living in Florida (990,000), followed by New Jersey (78,000), New York (78,000), California (74,000), and Texas (34,000) (figure). The ethnic geographical diffusion has often times been likened to an 'archipelago' (Daniel D. Arreola 2004: 18, 27, 34).

2. Political Participation

Refugee admissions by their very nature of being selective have implied consequences not only for the procedure as such but are also responsible for the ethnic politicking that have developed in the US domestic arena. As such, the mass of Cubans admitted during different waves coalesce to exert a culture of transnational politics that sometimes stress indirectly or directly on further immigration, and other policies vis-a-vis their country of origin (Russell 1995: 56). By this logic, the policy of refugee admission has led to the very diversification of immigration's span, which would not have occurred 'in the absence of certain US foreign policy interests' (Russell 1995: 61).

One scholar would differentiate between different refugee waves of the same grouping, wherein leaving one's country with distinct 'visages' of that period would represent and colour the very righteousness of their stance (moral and political) and bring them to differentiate themselves from different wave periods (Kunz 1973: 137-138). Thus even within this larger and encompassing grouping, sub-groups exist as one considers the

'time of arrival', the 'circumstances of arrival' and 'the varying response by the host country'.

> 'To understand the changing characteristics of the Cuban exiles', it is necessary to consider the changing phases of the Cuban Revolution (Pedraza-Bailey 1985: 4).

For instance with regards to family visits of the island by the émigrés, the first wave group would largely continue to espouse Isolationism of Cuba—as one Cuban émigré puts it 'I won't visit, I will return (when Castro falls)' (Eckstein and Barberia 2002: 821). The grown-up children of the first wave émigré perceive Cuba differently than their parents, as such travelling to Cuba meant definitely a break both from parents and from relatives. The exile community would even threaten with violence this breach in continuity (Torres 1999: xiv, 8-9). This group would question the virtue of the stance taken by the earlier generation. Now, as for the waves of Mariel and after, the travels by themselves were not emotionally exhausting being newer and possessing 'stronger Cuban ties' (Eckstein and Barberia 2002: 825). This group naturally favoured more travel opportunities, which found expression during the Obama administration with most public opinion polls signalling a less restriction based policy on travel to Cuba. As one Cuban businessperson in Miami would comment on his gardener who had arrived around 1990, that he would 'simply make money and go' (Eckstein and Barberia 2002: 826).

These kind of differences persisted between the generational waves thus—with the first wave émigrés considering the newer cohorts as 'their social inferiors', so much so that little socialising contact existed between these generational waves, even living in different neighbourhoods (Eckstein and Barberia 2002: 805). The Cuban exile community was also vested in the Cuban issue financially, along with political and emotive investment. One of the issue is the unresolved claims settlement with. According to a report written with USAID (United States Agency International Development) the Federal Claims Settlement Commission did not include the claims of this party but the LIBERTAD Act allowed them to pursue it on their own. In addition it also mentioned that the influence of this particular group brought about the LIBERTAD Act itself (Report on the Resolution of Outstanding property Claims between Cuba and United States 2007: 3-4). It is evident that this group managed to influence any US policy

towards Cuba in specificity. Some analysts point out that this factor was unique to the Cuban Americans sub-group from the Hispanic group. They would also add that the Hispanic American Community 'exerts almost no systematic influence on US-Latin-American relations' (Hakim and Rosales 2000: 133-134).

2.1. Phase One

Following the 1959 Revolution, there were variegated 'political and ideological changes' that created political exiles whose unity only existed in their exiled-ness (Current 2008: 43). The first wave émigrés were still at the initial stage of assembling, and would not become anything deemed to have 'political clout' until the Reagan administration. During this stage, they were still unable to articulate a common point of interest in the mainstream and were largely relegated to the backburner of sabotage activities.

The first phase saw Cubans in the US being entirely involved in subversive activities—they did not even skirt the mainstream politics to influence electoral outcome. The plethora of exiled activities had been known to the US administrations and considerable efforts were made to stop freelance activities. The first exiled group had radicals like Rolando Masferrer and allied individuals who were even flying off from the Florida area and dropping bombs, anti-revolutionary leaflets and chemical agents on the Cuban mainland. The Eisenhower administration even issued an executive order for the first time to discourage such acts, especially after the Cuban government protested through diplomatic channels. Groups like Representación Cubana del Exilio (RECE), which was associated with CIA and was a 'coalition of exiled sabotage group'. Its leaders like Jorge Mas Canosa were also part of the Bay of Pigs invasion, and later rose to being one of the prominent leaders of CANF. Then there was Orlando Bosch under the Coordinating Committee of United Revolutionary Organizations (Coordinación de Organizaciones Revolucionarias Unidas [CORU]), the organisation that engineered terrorist bombings at Cuba's overseas airline facilities. They continued to be prominent well into the period of the Reagan administration, with Miami-based exiled groups like Omega 7 and Alpha 66 (History Matters Chapter V: 20; Schoultz 2009: 110-112, 220, 289, 370, 437).

During the Ford administration, when the then Secretary of State Kissinger commented on a possible normalisation of relations with Cuba on 28th February 1975, the chair of Florida's Republican Hispanic Assembly promised to launch a campaign to warn the nation of such a course of action towards Cuba (Schoultz 2009: 264). Similarly letters of correspondence from Cuban-American grass-root leaders, exile leaders and livid voters pushed the negation of such a suggestion, and all of them were support-bases that Reagan would come to depend upon (Schoultz 2009: 263-265) (These were also the burgeoning years of the anti-war liberals and the democratic campaign was firmly influenced by it).

The first Hispanic woman and also the first Cuban émigré to be elected to Congress was Miami representative Ileana Ros-Lehtinen, who along with Bill Chappell another Florida representative and Dante Fascell a liberal Florida democrat opposed any normalisation of relations with Cuba during the Ford administration (Schoultz 2009: 268-269). This overt preference for isolationism towards Cuba did not thwart any larger US foreign policy goal—in the sense that the period and the US posture in general then itself, could empathise with that stance.

During this phase, though homogeneity of interests did exist amongst the Cuban American community, as a political force they would not emerge as powerfully as during the Reagan administration. By the tenure of the Carter administration, they had gradually learned to 'work within the US political system' (Garcia 1998) and began to eventually demonstrate weightage in both Miami and Washington DC.

2.2. Phase Two

During the tenure of the Carter administration, the electoral vote in Florida had increased to seventeen as opposed to eight during the Truman administration. Lars Schoultz writes that Cuban Americans were now 'emerging as a significant political force' in Florida with instances of a Bay of Pigs veteran[82], being elected as chair of the state's Democratic Party and the Carter archives chequered with discussion as to how to garner support among Florida's Cuban American Community (Schoultz 2009: 294-295). During the

[82] Alfredo Duran.

Mariel boatlift, the indecisiveness of the Carter administration led to taunts from the candidate Ronald Reagan as to why the administration was not being humanitarian in its approach to the incoming Cuban refugees(Schoultz 2009: 352-361, 370).

One of the most distinct and successful representatives of the Cuban American community that emerged during the 1980s and the inception of the Reagan administration was the CANF (Cuban American National Foundation). The Cuban American community in the US would evolve into an active participant in the US domestic politics, with the formation of CANF. Its clout as the major representative of Cuban American interests would continue well into the twenty-first century. Under the leadership of Jorge Mas Canosa, the Cuban American interest group 'exercised a virtual veto over Washington's actions towards Cuba' (Hakim and Rosales 2000: 134).

When President Reagan initiated the 'Presidential Commission on Broadcasting to Cuba' through an executive order, Jorge Mas Canosa[83] the chair of CANF was one of its members and even appointed the chairperson of the Presidential Advisory Board for Cuban Broadcasting. The 1985 passage of the Radio Broadcasting to Cuba Act was a direct consequence of the reintroduction of the issue by the Commission. This would start the broadcasting of Radio Martí. During the Clinton administration, the Office of Cuban broadcasting was even moved to Miami from Washington.

> 'The Ronald Reagan administration, understanding the power of symbolic politics, nurtured a group of conservative Cuban exiles and their hard-line policies towards Cuba while at the same time allowing the GOP to claim they were bringing Latinos into foreign policy positions in the federal government' (Torres 1999: 9).

During the middle of the year 1988, CANF brought in the assistance of Miami representative Claude Pepper to affix Section 1911 in the Omnibus Trade and Competitiveness Act of 1988. It instructed:

[83] Jorge Mas Canosa's personal history uniquely note the transition that Cuban American finally made to political activism, to the point where they were making a difference. A veteran of the Bay of Pigs invasion, he would later be involved in radical exiled outfits such as Representación Cubana del Exilio (RECE). By the 1980s, he would become the founder of CANF, the most successful example of Cuban American interest group organisation.

> ‘all relevant agencies…prepare appropriate recommendations for improving the enforcement of restrictions on the importation of articles from Cuba’ (PL 100-148, SEC. 5164., 1988).

It resulted in a tightening of embargo during the last week of the second term of the Reagan administration.

The George H. W. Bush administration would also see the passage of the Television Broadcasting to Cuba Act (GAO Report to Congressional Requesters 1996) through the US Congress in 1990, establishing TV Martí. It was a propaganda mechanism which along with Radio Martí, would consistently see support amongst the Cuban American lobby headed by the CANF (CANF White Paper 2006; CANF 2009: 11-13). President George H. W. Bush would also pass the CDA of 1992 during the last few weeks of his tenure and managed 70 percent of Cuban American votes, keeping Florida, even though he lost the election.

When reforms were initiated in Cuba during the Clinton administration after Soviet Union dissolved, there also rose vociferous criticisms amongst former exiles residing in the US. They formed an organisation called ‘Brothers to the Rescue’—solely for the purpose of assisting Cuban refugees. In 1996, two of their flights were shot down by Cuban fighter planes after they entered Cuban airspace. It met with international criticisms and even garnered support for the 1996 passage of Helms-Burton Act within the Clinton administration and the Congress (Dunning 1998: 222), since one of the provisions of Title I of the Act specifically condemns the same.

The Cuban American community has voted overwhelmingly as Republican since President Reagan managed to consolidate the Cuban American support in the Florida area (with the exception of 1996 election when President Clinton acquired 40 percent of Cuban American votes). The significance of Florida lies in its present twenty-seven Electoral College votes and the concentrated settlement pattern as well as continuity of shared interests amongst the Cuban American community there. Being a swing state too, results in fierce competition among candidates. For instance—during the 2000 elections, President George W. Bush would win by 537 votes.

In 1998, CANF would be the first to propose the 'micro-loan/joint venture program between Cubans abroad and their relatives' (CANF White Paper 2006). In addition, lessening of restrictions on remittances were too advanced in the same paper—a recommendation that the present Obama administration would see to come.

2.3. Phase Three

CANF policy position as written in its 2009 report on US-Cuba relations views it through a new perspective, i.e. to enable democratic change by focusing on the Cuban people themselves and not the regime directly (CANF 2009: 4-5). It also assented to the position of not lifting the embargo without democratic change, a position that was consistent with all the administrations from Clinton to Obama during the post Cold War era. In the same paper, it would present its support for remittances which had been subject to stringent restrictions under the George W. Bush administration; the Obama administration would later loosen these stringencies.

The antagonism between Fidel Castro's (and Raul Castro) Cuba and the Cuban-American community did not show any abatement, evidenced in Representative Lincoln Diaz-Balart (R-FL) in 2004 public call for the assassination of Fidel Castro (Lutjens 2006: 66). Considering the continuance of the Cold policy of embargo against Cuba, many scholars have relegated its continuance to the particularly hard-line Cuban American lobby, led by CANF (Max J. Castro 2002; Mariño 2009). There were other groupings too like Cuban Liberty Council, US-Cuba Democracy Political Action Committee, and Congressional Cuba Democracy Caucus. However, it has CANF's has been centre-stage to the US-Cuba relations. Zbigniew Brzezinski, President Carter's national-security adviser commented in the press:

> 'In my public life, I have dealt with a number of them. I would rank the Israeli-American, Cuban-American, and Armenian-American lobbies as the most effective in their assertiveness' (The New Yorker 2007).

Bill Clinton in his memoir 'My Life' would seemingly allude to Al Gore's loss of Florida to the role played by this particular group. The point is, it is obvious that such an organised group concentrated only in one critical state would influence the outcome of the issues of interest to the group.

CANF's policy positions over the span of US administrations since its inception during the President Reagan's first term could easily in itself disclose the slow shift in the interests that it represents. Till the Clinton administration, there was a blatant support for travel restrictions with Jorge Mas Canosa as its chair. During the Bush administration, there was a breach between 'perceived Cuban American interests' and the stance taken by the George W. Bush administration, which would find criticism in its report in 2009 (CANF 2009: 3). George W. Bush administration had tightened travels, educational exchanges and even restricted remittances and it did not find acceptance with a large section of the Cuban American community. The election that selected the current US President, would present a marked difference in voting pattern than previously done amongst the Cuban Americans in the Florida region (38 percent voted for candidate Barrack Obama, while 51 percent of those who voted for him were under 41). One scholar would comment that the Obama administration stridently adopted its administration's policy as per the 'internal transformation' undergoing in the Cuban American lobby itself (Gordy and Lee 2009: 232).

Burdett A. Loomis and Allan J. Cigler would indicate that the particular sustaining success of the Cuban exile community like CANF is because, having wielded success before hand, they are also protected by the government (Loomis and Cigler 1998). This particular lobby group gains more weightage because of the concentrated settlements in a highly contested area (As shown in figure 6).

Recent scholarly councils allude to the nature of the younger generation of Cuban Americans. That unlike the exiled politics which were majorly anti-Castro and largely homogenous in being politically conservative, the younger Cuban Americans were less homogenous and held fewer emotional ties to the island (Behar 2009; DePalma 2009; Sabatini 2009; Suárez 2009; Wucker 2009). For instance 55 percent of the respondents in a 2008 public opinion poll held by FIU opposed the embargo. In addition, majority of the registered voters would express the need for engagement with the Cuban government on migratory issues or other issues; they also favoured the end of restrictions on travel and remittances (FIU Cuban research Institute Public Opinion Poll 2008). This particular development is significant because Havana and the exile politicking in the US had been a

constant presence during the entirety of the US-Cuba discourse. As these newer generations crystallise themselves more visibly, it will portend changes in that very fabric.

3. Conclusion

What can be surmised about the Cuban Diaspora is that its success and the present placement it holds in the society and in the greater American perception (especially in Florida) began due to the specific policies that US employed both in its foreign policy and in its unique domestic policies towards this group. The kind of social capital that the early Cubans in the US would harvest helped propel their standing in the host society. As the momentum took off, in terms of being economically affluent, political participation and then activism in the mainstream followed. The initial homogeneity of political positions with regards to Cuba amongst the older émigrés would show fractures with the newer waves and second-generation Cuban-Americans. This generational fracture portends the shift of the discourse within the Cuban Diaspora itself. Led not by antagonism alone or even nostalgia of lost homeland, this younger generation and newer immigrants would espouse further engagement for desired change with US relation vis-à-vis Cuba. There is growing trend in earlier hardliners being sidelined[84] as opposed to them taking full centre-stage as was during the Reagan, George H. W. Bush and Clinton administrations, in determining Cuban American interests.

[84] After marked changes in nuances of the position with regards to Cuba, the Cuban American lobby spearheaded by the CANF, would see divisions drawn even within the Cuban Diaspora.

Conclusion

The relationship between US and Cuba had engendered the terms of US policy towards Cuban refugees—it revealed a myriad set of details that are involved in policy-making. The legislations and the executive agreements at hand sometimes revealed a tension with international laws, in that the humanitarian principle wasn't consistently the theme of allowing Cuban refugees in the US. US foreign policy towards Cuban refugees was a combination of foreign policy, pressures of resettlement and domestic political pressures which at times have led the US deny to opportunities to candidates qualifying as immigrants or even political refugees—the phase after 1990 was proof of it. The amalgamation of US foreign policy, US refugee policy and human rights thus presented an unclear picture—rendered not in absolutism but more so in 'bargained pragmatism'.

Though foreign policy decisions were relegated to the Executive by the Courts themselves, the issue of ascertaining applicants as refugees or asylees were still judicially reviewed by courts at various levels. The fact necessarily brought the issue of refugees and the Cuban case in particular at the juncture of this tug-of-war that is involved in policy-making. The Elian Gonzalez case was an instance of this interplay between US foreign policy, US refugee policy and laws, international laws in general and also the distinct disjuncture that some sections of the Cuban American community presented in opposition to the newer narrative for engagement with Cuba for initiating democratic change and the shift from the Fidel Castro-oriented antagonism. The earlier consistent position had been the use of Fidel Castro as a point of reference both amongst US policy-makers and Cuban Diaspora, thus opposing the value of the Revolution itself by not addressing or referring to it. In addition, the discourses against it also did not account for the particular position that Fidel Castro and Cuban revolution were referring from (if Fidel Castro's speeches were to account for)—mainly the historical colonialism and the perceived neo-colonialism, to speak from the victimised position, an uncommon discourse in most countries who had only received their independence during the 20th century.

The intent of Chapter One was basically to determine the position of US refugee system vis-a-vis international refugee law and norms. There were two separate findings. Firstly, America's definitional standards were stringently adhering to the guidelines given in the

1951 Convention and 1967 Protocol (even with the exclusion clauses). Secondly, it fell short of the standards expected of states on fundamental principles like *non-refoulement*, especially when the issue of mass immigration took over the discourse.

To understand the Cuban refugees' legal case alongside their political role, it had been necessary to analyse the development of the entire evolutionary nature of the US refugee structure which had itself been a direct product of the exigencies of World War Two. It wasn't just the adjustment of the Cuban refugees' situation after the 1994-1995 accord that would finally prompt the same standards of US refugee laws as its special status was eroded indirectly, but also the expansion of federal assistance to other refugees and asylees after the major restructuring in 1980. So, this development of a US Refugee structure attempting to formalise procedures and also strictly adhere to international refugee laws and norms proceeded from both ends—erasing the exceptional status of the favoured to basic standards and expanding the benefits of the disfavoured.

Chapters Two and Three simultaneously tried to find out the arrangements regarding migration that was unwittingly set up between US and Cuba, taking into consideration the unique circumstances of the 1959 Cuban Revolution and the shadow of a greater Cold War. It was found that US did indeed follow a policy partial preference for Cuban refugees to make a symbolic statement. While Cubans alone were not beneficiaries to it, the issue catapulted Cuban refugees as unique in America's refugee and migration policy due to it being a first asylum state. After the Cold War, it was forced to relocate its migration polices towards Cuba in a framework that served regulate the frequency of mass influxes.

The hindrances in completely normalising the US-Cuba engagement as far as migration policy was concerned was also however dependent upon the embargoed status quo that had been the case since the 1959 Cuban revolution. At one level, Cuba no longer posed the kind of strategic threat that could have been vis-a-vis Soviet Union during the Cold War. Realistically though after the collapse of Soviet Union and Russia's non-continuance of projects that the erstwhile Soviet Union had helped prop up in Cuba, made the rhetoric of the administrations after George H. W. Bush seem unconvincing in its intent. One can deduce generally that one of the major factors of this continuance is

the powerful Cuban American lobby in the swing state of Florida. However, there are evidences from public opinion polls which showcased a transitional shifting phase within the community itself for greater dialogue and engagement—a factor which would never have presented itself earlier, due to generational patterns and also the kind of exiled politics that strong-armed itself into presenting itself as the sole voice of the community. The latter is of course, a reference to organisations like CANF during the 1980s and the 1990s and also other far more radical exiled groupings.

Chapter Four was thus particularly geared towards understanding the manner in which the Cuban Diasporic community had propelled itself into political significance in the US—to determine whether this group' success had any origins from the peculiar policies that US directed at them. The underlying theme as far as this diasporic group is concerned is that they have emerged as a successful political force. Voting mostly for the Republican Party, since the rise during the Reagan administration, the grouping still remains largely antagonistic towards Cuba under Fidel Castro and his cohorts. But recent findings after 2000 allude to fractures within the Cuban-American community—changes for which revealed in the hard-core conservative CANF taking a more moderate approach in its policy positions. There were linkages found between policy positions taken by dominant Cuban American Interest groups and US administrations, a continuing theme from the US administrations after Ronald Reagan onwards.

The exceptionality of the large population explosion in the Cuban American community in the US, was not just because of liberal admissions on the part of the US but also permissibility from the Fidel Castro regime during the 1960s and 1970s which engendered the high influx of Cuban refugees to the US. As such, the adherence to stringent international standards to refugee laws did not commence till the automatic assumption of Cubans as political refugees ceased in practise. What emerged in this discourse of migratory interaction between the US and Cuba was the equality of level-playing that ensued between two, wherein in terms of realist politics of traditional power holdings the situation could not have emerged. The whip hand that Cuba could deal was far more advantageous than that of US, who had already embargoed the former and done its worst. This was so, because there was an alternative discourse within US Immigration

Policy regarding illegal and mass immigrations in particular. It had entered into migration agreements with countries that are at the heart of this development (Mexico was one). The arrangement on migration may have been driven specifically by a foreign policy impetus before the dissolution of Soviet Union, but the arrangement on migration with Cuba that played out finally during the 1990s and crystallised with subsequent administrations have been engineered largely by this American concern with unregulated immigration and the Security scare after the September 11 exigencies. It is a bracket within which Cubans attempting to reach the US have also been adjudged by, since the nature of their migrations tended to slant towards mass influxes especially a problem for US, it being a first asylum state and all.

As far as definitional standards are concerned, US refugee policy towards Cuba was finally amended to the strict guidelines of the INA, which in turn adhered to the international refugee laws and norms. However, the practise of the detention policy at Guantanamo wasn't legal and it was rectified by the second migration agreement in 1995. The drawback though was in the very decision taken by both Cuba and US—US affirming the return of all interdicted Cubans at sea to Cuba and Cuba's agreement to disallow illegal departures from its soil. While it might have shown an official inclination for legal procedures, it did not account for the fact that refugees by their very nature transverse the realm of transnational borders, having abscised the protection of their original country for the very reasons that make them refugees. The agreement did not thus account for the right of Cuban peoples to leave or even determining for that matter whether they were returning refugees (thus the danger of having violated the refoulement principle of international refugee law, which the US Courts justified it legally with the justification that interdictions did not occur on American soil).

All in all, US Refugee Policy towards Cubans has undergone a nuanced shift from the practise followed during the Cold War. This nuanced shift lay not in the non-continuance of the CAA, but at the implementation level wherein actual policy was applied. But, some of the procedures have been controversial—interdiction in particular. It would also engender illegal entry via alternative routes and mitigate the intentional US policies of regulating immigration. However, there has also emerged an alternating narrative of

Cubans as specifically immigrants and not necessarily political refugees. And, in these details there exists a migratory discourse between US and Cuba that has shifted from the previous arrangement.

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