

The Comprehensive Plan of Action and the ROVR program.

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I first heard about the Comprehensive Plan of Action (CPA) when I served as General Counsel of the INS from 1991 through 1993, during the early stages of the plan's implementation. I never had much directly to do with it, because no one ever asked my office for a legal opinion on any aspect of the plan. But the CPA was occasionally mentioned by colleagues in INS and the State Department as a model of how responses to mass departures of asylum seekers should work: the "real" refugees are screened in and promptly resettled in the United States or some other free country, while economic migrants attempting to take unfair advantage of the world's generosity are screened out and humanely repatriated. Those who have been returned to Viet Nam and other countries in Indochina are visited by UNHCR monitors who make sure they are not being mistreated. It sounded great.

Subsequently, as a law professor doing research on U.S. refugee policy and then as a staff member for the International Relations Committee of the U.S. House of Representatives, I learned that the reality of the CPA was quite different. The plan, which was agreed to at an international conference in Geneva in 1989, was a product of compassion fatigue. Its primary goal was to stop the flow of boat people. The central principle was to deter further departures --- proponents of the plan spoke of this as avoiding a "magnet effect" or "pull factor" --- by screening in only a very few people and sending everyone else back to the countries from which they had escaped. (When, at

about the same time, INS Asylum Officers screened in about 30% of the Haitian asylum seekers interviewed in a makeshift refugee camp at Guantanamo Naval Base and brought these to the United States for further processing, many of our INS and State Department colleagues attributed the continuing flow of Haitian boat people to the “pull factor” of what they regarded as an outrageously high screen-in rate.)

The unofficial target for the CPA --- never written down as far as I know, but occasionally mentioned by various participants in private conversations --- was that the screen-in rate should be no higher than 10%. Anything higher was deemed to be a “magnet.” This unofficial quota was achieved in a number of ways, which collectively represented an unprecedented lowering of substantive standards and procedural safeguards in international refugee policy:

--- First, the mantra of the CPA, the one big thing that every interviewer and everyone else connected with the program knew, was that “Viet Nam Has Changed.” This was partly a reference to the so-called “Doi Moi” (reform and renewal) policies that were announced in the late 1980s. But these reforms were almost exclusively economic. During the 1990s and up until today the government of Viet Nam has gone right on arresting and imprisoning people for advocating democracy, practicing unauthorized religions, and exercising other human rights that the government regards as “injuring the national unity.” Nevertheless, the CPA adjudication process effectively treated these tentative and limited reforms as the equivalent of a complete change of government. No matter how serious the persecution an asylum seeker might have faced in the 1970s or even in the 1980s, he or she could almost never

bear the burden of proving that this past persecution was evidence of a well founded fear of future persecution --- because “Viet Nam had changed.”

--- The interviews were conducted by host country law enforcement officers (and in some cases military personnel) who typically had little or no experience or expertise on refugee issues. This was presented by UNHCR and other CPA enthusiasts as a benefit of the program, since in theory it would have built capacity and made these governments comfortable with the idea that asylum seekers should be interviewed and that those who had a well founded fear of persecution should not be repatriated. In practice, however, some of the host governments seem to have learned an almost opposite set of lessons. Since the CPA interviews generally gave short shrift to the asylum seekers’ claims, and since the overwhelming majority of those interviewed were ultimately repatriated --- with the strong support of the governments and UN agencies and NGOs who are known to their admirers as “the international community” --- some Southeast Asian government personnel are now confused and irritated when some elements of that same international community object to similarly harsh treatment of more recent asylum seekers from other countries.

--- There were UN advisors in the interview process, and many of these were genuinely concerned that the standards and procedures be fair. But these advisors were typically on a series of short-term renewable contracts, and in at least some of the refugee camps there seems to have been a pattern that advisors whose screen-in rates were too high did not get their contacts renewed.

--- Similarly, there were UN monitors in Viet Nam to ensure that the Vietnamese government kept its commitments with respect to asylum seekers who had been returned to Viet Nam through the CPA. These monitors never found a single instance of the government violating these commitments, and that magic number --- zero instances of persecution upon return --- was often cited to Members of Congress and others as evidence that the CPA was working and that returnees had nothing to fear. What was not usually revealed was that the only commitment the Government of Viet Nam had made was not to mistreat people *because of their departure from the country*. There was no commitment not to punish people for the same kinds of actions or characteristics that had gotten them into trouble in the first place. Moreover, the monitors almost always interviewed returnees in the presence of Vietnamese government officials. We now know that many returnees were mistreated. But many were afraid to report this mistreatment, and when they did it was always explained away as having happened for some other reason than on account of their departure and return. Ironically, the fact that the government of Viet Nam was pretty rough on almost all its citizens was often used as an argument that returnees were not being singled out for harsh treatment. As one of the monitors told me, “UNHCR does not protect people from the laws of their country.”

In early 1995, a few weeks after I had gone to work for the House International Relations Committee, I had a visit from several refugee advocates. One of them was Dr. Thang of Boat People SOS, who is here today. They wanted Congress to intercede with the State Department and UNHCR in an effort to prevent the imminent repatriation of several hundred asylum seekers -- what they called “particularly egregious cases”. I was later

able to meet with some of these people in the camps in Hong Kong. They included an anti-Communist poet, a double amputee who had received his injuries while fighting on our side in the war, a Montagnard activist who later showed us the seven bullet holes he had sustained in the attack that caused him to flee the country, a Catholic nun whose convent had been destroyed by the government, and Buddhist monks who had been persecuted because they belonged to the Unified Buddhist Church rather than to the “official” Buddhist organization created by the government. All had been screened out as “economic migrants” who were trying to take advantage of the system, and all were about to be placed back into the hands of the government that had persecuted them.

I brought the advocates’ request to Congressman Chris Smith, the chairman of the International Operations and Human Rights Subcommittee, and he decided we should do more than just try to save a few hundred “particularly egregious cases.” If the standards and procedures of the CPA were as bad as they seemed to be, why should the U.S. Government support any forced repatriations at all? So we decided to try to save all 120,000 of the screened-out boat people.

It was easy to come up with a way to do this, because Chairman Smith’s subcommittee had jurisdiction over the bill that authorizes the funding and operations of the State Department, and it turned out that the CPA was being financed primarily with U.S. taxpayer dollars. So when Congressman Smith and Tom Lantos, who was then the ranking Democrat on the subcommittee, introduced the Foreign Relations Authorization Act, they included a provision that said no U.S. funds could be used to repatriate any asylum seeker to Viet

Nam, Laos, or Cambodia unless that person had been interviewed by a U.S. asylum officer and found not to be a refugee. If the CPA wanted our money, it should apply our standards and reflect our values.

As a practical way to implement this idea, we worked with nongovernmental organizations on an idea for a “Track Two” refugee interview process. Variations on such ideas had been kicking around for years, but we thought ours was carefully tailored to address what we regarded as the flaws in the CPA. Every screened-out asylum seeker in the camps would be given a chance to have one last interview, this time with a United States asylum officer using the generous standards provided by U.S. law. Those who passed the interview would be resettled promptly in the United States. Those who were deemed by the U.S. officer to be non-refugees would be repatriated.

The Clinton Administration strongly opposed our pro-refugee provision. We knew that this sentiment was not unanimous within the Administration --- we had spoken with refugee advocates in the NSC and elsewhere who were deeply troubled by some aspects of the CPA, and indeed President Clinton himself often expressed views on refugee issues that were far more generous than those implemented by his administration --- but the decision was driven by State Department personnel who regarded the boat people as an administrative nightmare and an embarrassing obstacle to their plan to move ahead quickly with normalization of relations with the Vietnamese government.

To our surprise, even some refugee organizations were reluctant to join us: the State Department and UNHCR had worked hard to get their acceptance of the

CPA. Some had agreed to set up offices in Viet Nam to help “reintegrate” the returned asylum seekers. Others accepted the argument that it was necessary to stop the flow of Vietnamese refugees and of Jews from the former Soviet Union --- who for the sake of this argument were unfairly characterized as “political” refugees --- so that we could resettle many more “real” refugees such as those from Africa and Burma. (Although some people sincerely believed in this distinction between “political” and “real” refugees, it effectively operated as a divide-and-conquer strategy. Once the numbers of Vietnamese and ex-Soviet refugees admitted to the U.S. went down, they were not replenished with an equivalent number of Africans and Burmese and others. The numbers just stayed lower.)

In the end we were able to assemble a broad coalition including almost all the refugee groups, the American Legion and other veterans’ organizations, religious organizations, and the Wall Street Journal. When the bill came to the floor, an amendment was offered to delete our anti-CPA provision. The Administration strongly supported the amendment, and it looked as though they might put together a winning coalition of administration loyalists, anti-immigration Republicans, and left-wing Democrats who had opposed the U.S. war effort and were still reluctant to recognize that the Vietnamese government was as tyrannical as it had turned out to be. But Congressman Smith offered a counter-amendment that preserved the anti-CPA provision. The amendment was supported by prominent Republicans including Dick Armey, Henry Hyde, Ben Gilman, Frank Wolf, and Ileana Ros-Lehtinen and by leading Democrats including Lantos, Howard Berman, and Zoe Lofgren. The Smith amendment passed the House overwhelmingly. The Administration tried to get it deleted when the bill went to conference with the

Senate, but Senate Foreign Relations Committee Chairman Jesse Helms, ranking Democrat Joseph Biden, and other Senate conferees voted to keep it in.

President Clinton vetoed the Foreign Relations Authorization Act, primarily for reasons having nothing to do with Indochinese refugees. But the Administration had gotten the message. A few weeks later they came back to us with a compromise proposal. It was called “ROVR” --- Resettlement Opportunities for Vietnamese Returnees --- and it looked a lot like our original Track Two idea, with one crucial difference: in order to be interviewed by a U.S. asylum officer, an asylum seeker would have to return to Viet Nam. The State Department had negotiated with the Vietnamese government, which had promised to give us prompt access to the returnees and to let successful ROVR applicants leave for resettlement in the United States.

Congressman Smith and other CPA critics had seriously mixed emotions about the ROVR idea. Think about it: if you were asked to identify the single stupidest place in the world to take someone in order to determine whether he or she would be in danger in Viet Nam, there is only one answer for which you would expect to receive any credit. But from the standpoint of CPA supporters, including host governments in Southeast Asia, doing the interviews in Viet Nam is what made the idea attractive: it provided the strongest possible inducement for repatriation, and it avoided the issue of what to do with anyone who still refused to return after being screened out in a Track Two interview.

We were also concerned about the relatively small number of people who would have access to ROVR interviews. From our perspective, the one good thing about doing the interviews in Viet Nam is that it would then be possible to interview not only the 47,000 or so asylum seekers who had not yet been repatriated, but also the 72,000 who had already been returned. But the Administration proposal was limited to applicants who were returned after the date Congress had voted for the legislation, and it contained other arbitrary limitations that ultimately limited access to only about 19,000 people. But in the end we negotiated a few improvements --- including a crucial commitment that the Department would initiate a “rescue program” in Viet Nam to address the situation of returnees and others who faced active persecution --- and agreed to support the program.

The overwhelming majority of the remaining boat people were then returned to Viet Nam, some voluntarily and some forcibly. (One important exception was in the Philippines, where President Ramos personally ordered an end forced repatriations, reportedly after seeing television footage of asylum seekers being dragged kicking and screaming to airplanes.) Unsurprisingly, the Vietnamese government then reneged on its promise to give U.S. interviewers prompt access to ROVR-eligible returnees. For a while it looked as though that would be that. After 18 months, however, the U.S. insisted on compliance with the agreement as a condition on a trade benefit that was on track to be conferred on the government of Viet Nam. (We heard that the decision to impose this condition was taken only after a serious disagreement within the Administration, and that one of the heroes on the pro-refugee side was Eric Schwartz, who was then at the NSC and who may soon be nominated as Assistant Secretary of State for refugees.) In the end, the

Vietnamese government gave us access, they got their trade benefit, and our interviewers screened in over 18,000 returnees who were then resettled in the United States. This proves, by the way, that unilateral economic sanctions sometimes do work.

Over 95% of those who were eligible for ROVR interviews were found to be refugees by their U.S. INS interviewers --- and, remember, all of those people had been screened out as economic migrants by the CPA process. If we had found it in our hearts to interview all 120,000 returnees, we would undoubtedly have found and rescued many thousands more genuine refugees who had been unfairly screened out.

One INS interviewer later told me that when she was preparing for her trip to Viet Nam she had more or less shared the perspective of government colleagues who regarded ROVR as a “political” refugee program whose purpose was to address Congressional concerns rather than to respond to genuine fears of persecution. But she found that the reality on the ground was very different: the ROVR applicants had some of the strongest refugee claims she had encountered during her INS career. She recalled in particular one former soldier. He and his family had been returned to Viet Nam from Hong Kong. He had been deemed to be a non-refugee although he had spent years in a re-education camp and a New Economic Zone and had never been allowed to have a job or send his children to school the whole time he lived in Viet Nam. At the end of the interview, when she told him she would recommend that he be resettled in the United States, he responded, “I always told my family the Americans would come for us. And now you have come. I knew America would not abandon us.” And then he stood up and saluted.

That old soldier knew something about Americans that some of my former colleagues in government, including too many of those with the word “refugee” in their titles, have too often overlooked. The United States is the greatest country in the world not because of our military or economic strength, but because of our values. We are strongest when we are most faithful to those core values, one of the most important of which is that Americans do not leave their friends in harm’s way.

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