

1995

WORLD REFUGEE SURVEY



U.S. COMMITTEE FOR REFUGEE

THE U.S. COMMITTEE FOR REFUGEES MANDATE

The U.S. Committee for Refugees (USCR) defends the rights of refugees, asylum seekers, and displaced persons worldwide. We base our work on the following principles:

- Refugees have basic human rights. Most fundamentally, no person with a well-founded fear of persecution should be forcibly returned (*refouled*) to his or her homeland.
- Asylum seekers have the right to a fair and impartial hearing to determine their refugee status.
- All uprooted victims of human conflict, regardless of whether they cross a border, have the right to decent, humane treatment, as well as adequate protection and assistance.

For thirty-seven years, USCR has been defending these rights by documenting and reporting the conditions faced by refugees, asylum seekers, and internally displaced people, regardless of their nationality, race, religion, ideology, or social group.

Protecting refugees demands on-site documentation. In 1994, USCR gathered first-hand information in Bangladesh, Burundi, Cambodia, Colombia, Cuba, Dominican Republic, Eritrea, Ethiopia, Guinea, Haiti, Indonesia, Kenya, Malaysia, Panama, Peru, Rwanda, Sierra Leone, Sudan, Uganda, Vietnam, and Zaire.

Following its site visits, USCR works to mobilize quick, effective responses from the international community. USCR presents refugee needs to governments involved, as well as to U.S. policymakers, through its Congressional testimony and briefings. To mobilize the public, USCR ensures that refugees are in the news, with our staff appearing on television and radio, as well as in newspaper and magazine articles. We distribute our own publications, including the *World Refugee Survey*, our monthly *Refugee Reports*, issue papers, and press advisories. We speak directly to the American public—in schools, places of worship, and community meetings.

We believe that when people are informed, and their consciences are aroused, great deeds can be accomplished. Protecting vulnerable, uprooted people is an urgent and difficult task that requires great deeds.

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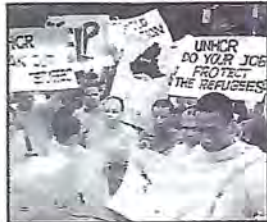
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Cover Photo: *Bosnian Muslims fleeing from Doboij and heading toward government-controlled central Bosnia.* Credit: *Magnum/G. Peress*





So Close to the United States, So Far from God: Refugees and Asylees Under Mexican Law

New U.S. asylum regulations open up the possibility that the United States could conclude bilateral agreements with Canada and Mexico that would assign responsibility for adjudicating asylum claims based on the "safe third country" principle. Susan Gzesh, an attorney in Chicago who visited Mexico in May 1991 to investigate the implementation of Mexico's 1990 refugee law, concludes that Mexico is not now a safe third country. Gzesh's research in Mexico was supported by the University of Chicago Law School, where Gzesh is a lecturer.

by Susan Gzesh

In the wake of the massive Central American influxes of the 1980s and the general increase in hemispheric and worldwide migration during the past decade, the United States came to look upon Mexico as a land bridge for the rest of Latin America that might serve either as a gateway for unwanted migratory flows or as a buffer zone that would keep such flows from ever reaching U.S. borders.

With encouragement from the United States, Mexico decided in the late 1980s to become a buffer zone for third country nationals, tightening its immigration controls, even while trying to keep the door open for the migration of its own nationals to the United States. Mexican enforcement efforts against clandestine entries increased with the creation of additional highway checkpoints and roving patrols on the major routes from the south to Mexico City, where migrants were apprehended as they attempted to travel north on buses and trucks. In 1987, Mexico also restricted issuance of tourist visas to Central American nationals, requiring (as does the United States) that applicants establish financial status by possession of credit cards, stable employment, bank accounts, and ownership of real property. This measure was seen as a means to limit entry by Central Americans who intended to stay and work in Mexico, or travel on to the United States, while at the same time creating an undocumented migration flow from what previously would have been tolerated.

According to Mexican government figures, the number of undocumented entrants summarily expelled from Mexico rose from about 5,000 in 1988 to 80,000 in 1989, and kept rising to 126,000 in 1990, reaching a high of 133,000 in 1991. In 1992 and 1993, expulsions leveled off at about 122,000

per year. The pattern of sharply increased expulsions followed by a decline and leveling off of the numbers expelled demonstrates the deterrent effect of the tens of thousands of failed journeys and dashed hopes brought about by increased vigilance on Mexico's southern border.

In October 1993, the Mexican government announced a major structural reorganization of the former Migration Services agency. President Salinas announced the creation of a new Migration Institute under the jurisdiction of the Interior Ministry. However, according to a 1993 report by the National Coordinating Council of Non-Governmental Refugee Aid Organizations (CONONGAR), little changed in government practice regarding enforcement against illegal entrants and access to applications for asylum or refugee status. Another analyst, Manuel Angel Castillo of the Colegio de Mexico, cited frequent turnovers in personnel within the Interior Ministry during the period since the establishment of the Migration Institute for the agency's failure to initiate any meaningful policy review.

Clandestine entrants to Mexico represent a mix of nationalities, primarily Latin American. According to Rodolfo Casillas, a sociologist at the Latin American Faculty of Social Science (FLACSO-Mexico), UNHCR in Mexico counts nineteen different nationalities among southern border entrants and forty nationalities among those attempting to enter the United States along the U.S.-Mexican border. The Mexican government has only recently begun to release deportation statistics, which Casillas has compiled (see chart, p. 38). The largest group are Guatemalans, representing about half of those apprehended and deported between 1990 and 1994, according to this data.





According to Castillo, most of the Guatemalans who are clandestine entrants are part of a seasonal movement of agricultural workers between Guatemala and southern Mexico and should not be considered refugees or potential refugees. However, given the Guatemalan government's and military's repression of indigenous communities and labor and peasant organizations, many of the Guatemalans entering Mexico might qualify as refugees, and should be afforded the opportunity to apply. According to the CONONGAR report, however, the Mexican government continues to treat all clandestine entrants as economic migrants.

U.S. Role in Diverting Refugee Flows

The U.S. government's use of Mexico to divert refugees from its borders apparently has stopped since the late 1980s and early 1990s when Mexico deported tens of thousands of Central American refugees. In a January 1994 letter to Sen. Alfonseca Mikulski, who questioned a \$350,000 FY

93 appropriation that transferred funds from the U.S. Treasury to the Mexican Migration Service for the purpose of deporting third country nationals, a State Department official asserted that the United States pays Mexico only for the costs of deporting third country economic migrants: "We did not help repatriate any third country national from a refugee-producing country. Consequently, we did not help the Government of Mexico repatriate Central Americans."

However, U.S. funds were used to repatriate nationals of China, Peru, Ecuador, India, Brazil, and the Dominican Republic, who according to the State Department are interviewed by UNHCR prior to deportation from Mexico.

In a well-publicized incident in 1993, Mexico agreed to accept and deport three boatloads of Chinese nationals interdicted by the United States, for which the United States reimbursed Mexico \$424,000 in costs. Neither the State Department letter to Mikulski nor reports of the Chinese boat incident mention any applications for status under Mexican refugee or asylum law.



Americans in Guatemala preparing to cross the Suchiate River into Mexico.
USCR/B. Frelick



Since the passage of the Refugee Act in 1980, U.S. law and regulations have permitted the denial of asylum or withholding of deportation to claimants who have traveled to the United States from a third country only if they were firmly resettled in that country prior to their arrival.

However, new asylum regulations, released by the Justice Department on December 1, 1994, will significantly expand the possibilities of denial of asylum in the United States to refugees who have traveled to the United States from a third country. The new regulations (8 CFR 208.14 (e)) provide that:

An application for an alien who is otherwise eligible for asylum may be denied in the discretion of the Attorney General if the alien can and will be deported or returned to a country through which the alien traveled en route to the United States and in which the alien would not face harm or persecution and would have access to a full and fair procedure for determining his or her asylum claim in accordance with a bilateral or multilateral arrangement with the United States governing such matter.

The regulations lay the groundwork for a future agreement with Mexico under which asylum claimants who traveled through Mexico could be sent back, and their claims decided under Mexican law and procedure. Although the United States and Mexico have yet to negotiate a formal treaty concerning the return of third country nationals transiting through Mexico, there is communication and cooperation. In addition to receiving financial assistance, Mexico adjusts its entry standards and enforcement patterns to respond to U.S. government requests on a case-by-case basis.

In an interview with this author in May 1994, Fernando Gomez de Lara, director of the Department for Asylum and Refugees of the Migration Institute of the Interior Ministry, said, for example, that, at the behest of the U.S. government, Mexico permitted Cubans apprehended after entering Mexico clandestinely to remain in Mexico for six months or until they could arrange to continue on to the United States. This policy was implemented despite Mexico's refusal to recognize fleeing Cubans as refugees. Gomez de Lara also said that Mexico denies visas to nationals of countries on the U.S. list of countries that support terrorism, except where the Interior Minister personally approves the entry of such persons.

If the United States does move toward a bilateral arrangement for the return of third country nationals to Mexico, as anticipated in the December 1994 regulations, the key question will

be whether Mexican law and procedures are "full and fair" under U.S. standards. As set forth in more detail below, they currently are not. Given the prospect that the U.S. government could designate Mexico as a safe third country, an understanding of Mexican law and procedures governing the adjudication of asylum or refugee claims is more important than ever.

Mexican Law and Regulations on Asylum and Refugee Status

Although Mexico's law on political asylum and refugee status meets and surpasses the standards set in the major international agreements, it has two major failings: first, there is a yawning gap between the letter of the law and its implementation, particularly regarding access to the refugee determination procedure; and second, Mexico has never acceded to the United Nations 1951 Refugee Convention or 1967 Protocol Relating to the Status of Refugees. This is especially significant since a provision of the Mexican Constitution authorizes the Executive to deport an alien without a hearing. Mexico did sign the 1969 San Jose Convention on Human Rights, which prohibits massive deportations of aliens, but exempted itself from the jurisdiction of the InterAmerican Court of Human Rights.

Mexican law provides for two classifications of non-immigrants who seek refuge in Mexico fleeing from persecution and repression in their countries of origin—"political asylum" and "refugee".

Political asylum: For decades, Mexico has followed the Latin American tradition of "diplomatic asylum," granting asylum in its embassies in other countries and to persons who reach Mexico. The eligibility for this status, however, is rather narrow, recognizing only persons who are fleeing past, politically based persecution. Eligibility for political asylum in Mexico ("territorial asylum") is more narrowly defined than the UN definition, which allows for claims based on other types of persecution (religion, social group membership, etc.) and for claims based on a fear of *future* persecution.

Refugee: In 1990, Mexico adopted a new law that embodied the broad definition of the Cartagena Declaration of the Organization of American States. The statute defines as "refugees" persons fleeing civil war, foreign aggression, or other situations of generalized violence, while explicitly excluding persons eligible for political asylum. (It is interesting to note that Mexico adopted as part of this statute the promise of *nonrefoulement*, despite its failure to sign the UN Refugee Convention and Protocol.)



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The Mexican government did not issue regulations that would allow for applications for status under the new law until August 1992, two years after passage. According to CONONGAR, the regulations were written without consultation with the many NGOs who were involved in the drafting of the law itself.

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These regulations impose significant limitations on applicants for both refugee and political asylum status. One of the most significant limitations is that applications for either territorial political asylum or refugee status must be presented at entry to the country, and the applicant must wait at the port of entry until permission to enter is given. CONONGAR characterizes this requirement as "absurd," considering that the refugee law was intended to help individuals who entered the country in flight and who would not have known of this requirement prior to entry. The regulations do retain provisions for the receipt of applications for political asylum by Mexican embassies in the country of persecution, with

safe conduct to Mexico for successful applicants.)

Nor do the regulations allow applications for asylum or refugee status by persons who initially entered the country in some other non-immigrant status, and who may want to apply for refugee or asylum status due to a subsequent change in circumstances in their home country. A Mexican government official did suggest that on a case-by-case basis such persons might be given a temporary work authorization, but not granted asylum or refugee status.

Finally, the regulations do not allow for application for asylum or refugee status by persons who entered the country clandestinely, although the refugee law allows the penalty for illegal entry to be excused for successful applicants. When the status of "refugee" was added to Mexican law, refugee advocates hoped that it would provide relief to the many undocumented Central Americans already present in Mexico at the time of passage. However, the regulations eliminated that possibility, in contradiction to the intent of the legislation. NGO repre-

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Photo: USCR/B. Frelick



"With encouragement from the United States, Mexico decided in the late 1980s to become a buffer zone for third country nationals, tightening its immigration controls, even while trying to keep the door open for the migration of its own nationals to the United States."



representatives knew of no applicant already present in Mexico at the time of the law's passage who applied for status.

In addition to the restrictions on applications for asylum or refugee status imposed in the regulations, other significant barriers exist in law and enforcement practices. First and foremost, the Mexican Constitution provides the Executive with the power to order deportation without a hearing. Deportation hearings as we know them in the United States do not exist in the Mexican system.

Neither the law nor regulations governing deportation or political asylum or refugee status makes any provision for a judicial or quasi-judicial hearing on an application, although an applicant may be interviewed at the Migration Institute's Central Office. The Migration Institute's manual on the documentary requirements for non-immigrant visa applications for public dissemination to lawyers and visa applicants does not even mention applications for asylum or refugee status.

Enforcement Practices Discourage Applications

The Mexican Migration Institute has its own agents who staff border stations, highway checkpoints, and roving patrols; Mexican law requires the cooperation of the armed forces and all local, municipal, and federal law enforcement agents in the enforcement of immigration law. In practice, these entities cooperate well with the Migration Institute in the detection and apprehension of undocumented aliens, who are turned over to the Migration Institute for depor-

tation. Rodolfo Casillas estimates that approximately 80 to 90 percent of all detentions of unauthorized entrants are made by officials from agencies other than the Migration Institute, including the Army, Navy, and Highway Patrol. As far as NGO representatives know, none of these entities trains its personnel in refugee law.

Neither Mexican immigration law nor the Mexican constitution provides for a right to notice of the possibility of making an application for refugee or asylum status. Gomez de Lara stated that it was the responsibility of the potential applicants to know the law.

All undocumented Central Americans apprehended at or near the Guatemalan border are detained in a three-cell jail at Huixtla, Chiapas, or at the headquarters of the local district (called "delegation") of the Migration Institute in Tapachula, Chiapas. Mexican authorities hand over the detainees to Guatemalan authorities at the border. According to Castillo and Casillas, no distinctions are made between the various Central American nationalities, and no one is given notice of a right to apply for asylum or refugee status, although some UNHCR posters are visible in the detention area of the Migration Institute's delegation in Tapachula.

Occasionally in the southern sector, an undocumented person is persistent in a claim that he or she cannot return home. In such a situation, the immigration officials have the discretion to call the UNHCR representatives to interview the person. In a small number of cases, UNHCR is able to persuade the Mexican government not to deport a potential refugee. However, according to NGO representatives and Casillas and Castillo, no one detained in

TOTAL PERSONS EXPELLED FROM MEXICO BY NATIONALITY 1985-1994

| YEAR | TOTAL EXPULSIONS | GUATEMALANS | SALVADORANS | HONDURANS | NICARAGUANS | OTHER NATIONALITIES |
|-------|---------------------|-------------|-------------|-----------|-------------|------------------------|
| 1985 | 4,452 | 2,238 | 1,786 | 268 | 55 | 105 |
| 1986 | 4,296 | 1,949 | 1,549 | 700 | -- | 98 |
| 1987 | 1,308 | 647 | 300 | 196 | -- | 165 |
| 1988 | 5,333 | 2,446 | 1,820 | 732 | 320 | n.d. |
| 1989 | 80,184 | n.d. | n.d. | n.d. | n.d. | n.d. |
| 1990 | 126,440 | 58,845 | 45,598 | 14,954 | 3,039 | 4,004 |
| 1991 | 133,345 | 69,991 | 40,441 | 18,419 | 1,265 | 3,229 |
| 1992 | 123,050 | 65,304 | 26,643 | 25,546 | 1,682 | 3,875 |
| 1993 | 122,017 | 58,910 | 28,646 | 26,734 | 3,438 | 4,289 |
| 1994* | 26,423 | 13,528 | 5,614 | 5,717 | 693 | 871 |

*Data corresponds to first trimester of year.

n.d.: no data

Source: Rodolfo Casillas, from unedited records, National Migration Institute, Mexico.



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has ever applies for status under Mexican law
 to the Migration Institute.
 If any applications for asylum and refugee
 are made, they are to be referred by local
 Migration Institute delegates to its central office in
 Mexico City for adjudication. NGO representa-
 es reported to this author that, as of May 1994,
 knew of no applications that had ever been
 forwarded from a local delegation to the central
 office.

**Legal Standards Are Not Applied in
 Adjudicating Asylum/Refugee Claims**

Within the Migration Institute's central office in
 Mexico City, a three-person section on political
 asylum and refugees within the Non-Immigrant Visa
 Department is in charge of adjudicating all applica-
 tions. All responsibility for statutory interpretation
 rests with that agency, which, according to NGO
 representatives, has no staff competent to adjudicate
 applications. A 1993 CONONGAR report stated
 that government staff lacked any training in refugee
 interviewing techniques and had little knowledge of
 the social and political situations in the applicants'
 countries of origin.

With respect to the few applications that
 are made, Mexican authorities have not developed
 any standards for uniform (or even rational) adjudi-
 cation of applications, and no system of administra-
 tive precedent or decisional law exists. According
 to Gomez de Lara, the staff of the Central Office
 determines if the applications are "viable" and
 whether their "arguments are solid."

In the Mexican legal system, there is no
 judicial interpretation of statutory definitions. Courts
 may not dictate the standards agencies apply, there-
 fore giving agencies broad discretion to interpret
 their governing laws.

So, how does the Migration Institute actu-
 ally adjudicate the relatively few claims that appear
 to be forwarded to it? First, with respect to claims
 falling within the political asylum statute, the Mexi-
 can authorities admit that very few applications for
 asylum are made, although they refused to supply
 this writer with statistics on applications received or
 pending. According to Gomez de Lara, as of May
 1994, 550 persons who had been granted political
 asylum were officially registered in Mexico. He
 admitted that the 550 figure probably included some
 of the 30,000 Chileans granted asylum in the 1970s,
 as well as more recent asylees from Peru, Haiti
 (mentioning that they were associates of the Duvalier
 government), Nicaragua, and Colombia.

When asked how Mexico officially defines
 "persecution" for the determination of applications
 for asylum, Gomez de Lara stated that the standards

were "very discretionary," with decisions made on a
 case-by-case basis. The only definitional standard
 offered by Gomez de Lara was that the persecution
 must be "public and notorious." Gomez de Lara
 stated that with respect to standards for adjudication,
 "we are very localized," admitting his ignorance of
 international standards or definitional debates such
 as the difference between persecution and prosecu-
 tion. A 1993 CONONGAR report criticized the
 "extreme selectivity" with which asylum status is
 given.

Second, with regard to the new law on
 refugee status, Gomez de Lara's interpretation, pre-
 sumably the official interpretation operative at the
 time of our interview, was that no individual appli-
 cations for this status will be entertained. He ex-
 plained that the reason why refugees have left their
 own country must be a "group" reason that has
 generated a massive movement of people, and that
 therefore the designation of refugee status is a group
 designation.

In May 1994, the Mexican government
 said that it was in the midst of an effort to process
 12,000 Guatemalans who have resided in camps
 since the early 1980s for refugee status under the
 otherwise unused law. It was unclear, however,
 which of the 43,000 Guatemalan refugees in camps
 were being selected for this processing, and on what
 basis they had been chosen. In contradiction to his
 statement that the designation of refugee was a
 group designation, Gomez de Lara stated that
 government officials were doing individual inter-
 views of the refugees in the camps. This was to
 make sure that each individual had fled Guate-
 mala for the same group reason, and so that offi-
 cial refugee status would not be given to someone
 who had entered Mexico for economic reasons.
 Mexican refugee advocates charge that the pro-
 cessing of some segment of the Guatemalans
 already in the camps is occurring so that the
 government will be able to say it is at last utilizing
 the refugee law.

**Who Advocates for Refugees and the
 Undocumented in Mexico?**

The active network of NGOs that developed in the
 1980s to assist Central American refugees has al-
 most completely disappeared. As of this writer's
 visit, CONONGAR (the coordinating body) had
 ceased operations and had published its final report.
 Other formerly active agencies in Mexico City were
 either closing entirely or shifting their priorities to
 domestic urban poverty and political issues. Aside
 from organizations that were monitoring the repa-
 triation of Guatemalans from the camps in the south,



Wealthier nations are foisting refugees on poorer neighbors whose systems for determining refugee claims may not measure up to international standards.

only a few religious organizations that provide direct material assistance to refugees continue to function at all. No organization advocates for refugees directly with the Migration Institute or assists potential refugees with applications for refugee or asylum status. However, there appears to be renewed NGO interest in the human rights of migrants following the inclusion of migration control provisions in the 1995 financial bailout agreement between the United States and Mexico.

UNHCR maintains an office in Mexico City and makes periodic trips to the Guatemalan border. The history of relations between UNHCR and the Mexican government is a complex one, considering that Mexico has never signed the UN Refugee Convention or Protocol. At present, UNHCR appears to take the place of the non-existent Mexican system for processing refugee claims. A few detained foreigners who resist deportation because they fear return are held until UNHCR can interview them and make a recommendation to the government concerning the validity of the claim. NGO representatives complained that UNHCR has been overly cautious in its assessments of refugee claims because of the tenuous nature of its right to remain in Mexico. NGO representatives felt that UNHCR wanted to keep down the number of refugees it recognized to avoid antagonizing the government.

Conclusion: Mexico Is No Safe Third Country

Currently, the Mexican system for the receipt and adjudication of asylum and refugee claims cannot be considered a "full and fair" procedure under U.S. standards, as would be required under the new asylum regulations for the U.S. to enter into an agreement to return third country nationals who transit through Mexico. The substantive law provides an adequate definition of status, but there is no meaningful opportunity to apply for status, and the adjudication of applications (if any) is arbitrary and capricious, with no consistent or rational standards. While it may be interesting to compare the substantive definitions of refugee and asylum under Mexican law with U.S. and international standards, until the Mexican system provides for meaningful access to the application process, those questions remain purely academic. Whether the administration of Ernesto Zedillo will reform the practices put in place by the prior administration remains to be seen. One reason for optimism is the recent opening of the archives of the Migration Institute to researchers, after a decade of refusal to do so.

But will the failings of refugee and asylum procedures in Mexico dissuade the United States

from seeking to return asylum seekers there? In Europe, the Dublin and Schengen agreements have established procedures under which would-be refugees are blocked from entering their countries of choice from third countries where they are safe from immediate harm. It appears that wealthier nations are seeking to avoid responsibility for refugees by foisting them on buffer states, poorer neighbors whose adjudicative systems for determining refugee claims may not measure up to international standards.

Confronted with restrictionist tendencies among important constituencies at home, the Clinton administration is following the European trend toward the diversion of refugee flows. Current U.S. efforts to divert refugee flows also include the interdiction of Haitian and Cuban refugees in international waters and their repatriation or confinement to offshore "safe havens." The terms and conditions of the 1995 bailout of the peso by the United States gives this country considerable leverage over Mexico in this area. Calls in the U.S. Congress for Mexico to control immigration can only be realized with respect to the transit of third country nationals. The Mexican government cannot control the emigration of its own nationals, but may respond by imposing tighter controls on foreigners in transit.

On February 15, 1995, the Working Group on Migration and Consular Affairs of the Mexico-United States Bi-national Commission issued a joint communique in which both governments pledged increased cooperation on migration issues, including policies and methods with respect to third country migrants and INS training for Mexican law enforcement and Migration Services personnel. The Mexican delegation announced the creation of a Special Surveillance Unit for its southern border, while pledging due respect for human rights of undocumented migrants from other countries. According to recent reports in the Mexican press, the law passed by the Mexican Congress as a condition of the U.S. financial bailout affirms this increased bi-national cooperation.

These practices keep potential asylum claimants outside the protection of the U.S. Constitution, laws, and treaties, as the Supreme Court confirmed in 1993 in *Sale v. Haitian Centers Council*. The U.S. courts will not provide a remedy for persons affected by extraterritorial interdiction, whether conducted directly by U.S. personnel or by proxy. The December 1994 U.S. asylum regulations, allowing the return of refugees to so-called safe third countries, open the door to a new form of extraterritorial interdiction—on land, in Mexico—that may have equally disturbing consequences for refugee protection in our hemisphere and far-reaching implications for refugees throughout the world.