either knew or should have known of the existence of this manual and of its provision to the contras are "war criminals," according to the government's own definition of that term. Congress must insist that President Reagan dismiss all high-level C.I.A. officials guilty of such war crimes.

The American people cannot permit any aspect of our foreign affairs and defense policy to be conducted by acknowledged war criminals.

8. Boyle, "A Legal Analysis of the Resolution Declaring Oak Park, Illinois a Sanctuary Village," Oak Park Village Hall, Jan 31, 1987. *See also* Boyle, "The Sanctuary Movement and International Law," American Branch, International Law Association, *International Practitioner's Notebook*, April 1985 (No. 30).

Good day. My name is Francis A. Boyle, and I am professor of international law and criminal law at the University of Illinois College of Law in Champaign. I will not take the time to detail my scholarly credentials in these fields now, but I do have a copy of my resum that I would like to submit for your further consideration at a later time. I should also point out that I do not appear here today as a representative of the University of Illinois or of the Sanctuary Movement, but solely in my personal capacity as a recognized expert in the fields of international law and criminal law.

In direct violation of the basic requirement of international law mandating the peaceful settlement of international disputes, the Reagan administration has purposefully implemented a foreign policy toward Central America that creates a great danger of escalation in military hostilities to the point of precipitating armed intervention by U.S. troops into combat against both the guerillas in El Salvador and the legitimate government of Nicaragua. The Reagan administration has illegally intervened into the civil war in El Salvador by providing enormous amounts of military and economic assistance to a brutal military dictatorship that has used it to perpetrate a gross and consistent pattern of violations of the most basic human rights of the people of that country. Fundamental principles of international law and politics dictate non-intervention into a civil war by foreign governments because the determination of one state's form of government is universally considered to fall essentially within its domestic

jurisdiction. The Reagan administration's illegal intervention into El Salvador's civil war contravenes the international legal right of self-determination for the people of that country as recognized by article 1, paragraph 2 of the United Nations Charter.

This horrendous civil war in El Salvador, and the illegal U.S. military intervention which has only exacerbated it, have created a substantial number of refugees fleeing the conflict in dire fear for their lives. The 1951 U.N. Convention Relating to the Status of Refugees and its 1967 Protocol, to which the United States is a party, define a "refugee" as: "any person who owing to 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, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence is unable or, owing to such fear, is unwilling to return to it." Congress enacted the U.S. Refugee Act of 1980 in part for the purpose of bringing United States immigration law up to the higher standards enunciated in the U.N. Protocol. The Refugee Act created a statutory definition of "refugee" which corresponds in substance to the definition found in the U.N. Protocol.

One who qualifies as a "refugee" within the meaning of that definition is entitled to apply to the government of the country where he is present for asylum. According to the Refugee Act of 1980, an alien physically present in the United States or at a land border or port of entry may apply for asylum, irrespective of such alien's status, and the alien may be granted asylum in the discretion of the attorney general if the attorney general determines that such alien is a refugee within the meaning of the Act. This right to apply for asylum applies even to those aliens illegally present in the United States so long as they qualify as refugees.

Nevertheless, the Reagan administration has taken the position that those illegal aliens who have fled from the conflicts in Central America are not entitled to qualify as refugees and thus for political asylum because they are alleged to be present in this country primarily for economic reasons. On its face, this claim is at odds with the obvious facts of a prolonged civil war in El Salvador and the brutal genocide practiced against the indigenous people of Guatemala by their own government. The Reagan administration's disingenuous position on

this matter constitutes a clear-cut violation of its obligations under both the U.S. Refugee Act of 1980 and the 1967 U.N. Protocol to the Refugees Convention.

The reason why the Reagan administration has denied reality in these cases is that for it to act otherwise by determining that such refugees are entitled to asylum would constitute a tacit recognition by the U.S. government of the heinous nature of the violations of fundamental human rights being perpetrated on an everyday basis by the military dictatorships that are actually ruling El Salvador and Guatemala. This in turn would undercut the pseudo-legitimacy of the democratic facades surrounding the Duarte government in El Salvador and the Cerezo government in Guatemala in the perceptions of both U.S. public opinion and the international community. Furthermore, in the event foreign governments such as those in El Salvador and Guatemala are found to be engaging in a gross and consistent pattern of violations of the fundamental human rights of their own citizens, a number of U.S. statutes should be triggered that would mandate the cut-off of various forms of U.S. military and economic assistance to the offending governments. The Reagan administration seeks to forestall that inevitable day of reckoning by denying these legitimate refugees their recognized right to asylum under both U.S. domestic law and international law.

As if that were not enough, there is a second and independent principle of both international law and U.S. domestic law that is being violated by the Reagan administration here. In the event the Immigration and Naturalization Service (INS) apprehends an illegal alien, in addition to asylum, he is entitled to apply for a form of statutory relief known as Withholding of Deportation. The U.N. Refugees Convention and Protocol expressly incorporated this basic right of customary international law known by its French name as *non-refoulement*. The U.N. Refugees Convention article 33, section 1, states unequivocally: "No contracting state shall expel or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion." The Refugee Act of 1980 amended U.S. immigration law to bring it into conformity with this requirement. The attorney general cannot deport or return any alien to a country if the attorney general determines that such alien's life or freedom would be threat-

ened in such country on account of race, religion, nationality, membership in a particular social group, or political opinion. The attorney general must withhold deportation of that alien even if he is in this country illegally.

By contrast, the Reagan administration has continued to deport refugees back to Central America even in the face of mounting evidence that many suffer the fate of certain persecution, torture and death upon their return. This fact has now been documented by the American Civil Liberties Union and Amnesty International. Furthermore, the Catholic Archbishop of San Salvador has publicly stated that Salvadoran refugees who are returned home by the Reagan administration are currently being persecuted by their own government.

In other words, the Reagan administration is sacrificing the lives of these innocent human beings in the name of its own perverted determination of what the U.S. national security interest requires despite the rules of international law and U.S. domestic law to the contrary. That is the stark dilemma which inspired the creation of the Sanctuary Movement in the United States. Nevertheless undaunted, the Reagan administration decided to target its founders for prosecution because of their assistance to innocent human beings illegally deprived of refuge in this country. And most tragically of all, the judge in the Sanctuary Case ruled that the above matters could not even be raised by defense counsel in the presence of the jury despite the fact that these considerations were clearly relevant to determining the defendants' guilt or innocence.

The judge's granting of the government's motions in limine to exclude such testimony unconstitutionally deprived the Sanctuary defendants of all the defenses they might have been able to establish under international law and the First Amendment. In my professional opinion, this was the gravest of all the injustices that have so far been inflicted by the United States government during the course of its persecution of the Sanctuary Movement. Perhaps the only point of consolation we might derive from this unsavory incident is that in their ruthless endeavor to destroy the Sanctuary Movement by making martyrs of its founders, the Reagan administration has heedlessly overlooked that famous aphorism by the early Christian apologist Tertullian: "The blood of martyrs is the seed of the Church."

It is that same terrible and tragic predicament which has led to the

submission of the Resolution that is before you now. I would respectfully suggest that the Village of Oak Park owes an obligation to its employees to ensure that they do not become accomplices in any way, shape or form to the commission of such gross violations of international law, of U.S. domestic law, and of the fundamental human rights of these completely innocent people, that are undeniably being carried out by the Immigration and Naturalization Service on a daily basis. Even more seriously, by its policy of deporting innocent civilian refugees back to El Salvador and Guatemala, the INS has rendered the United States government an accomplice to the commission of international crimes. Hence you *must* act to completely disassociate the Village of Oak Park from any degree of complicity in the commission of such international criminal activity by means of adopting this Resolution.

To be specific, both the United States government and the government of El Salvador are parties to the Four Geneva Conventions of 1949. Under common article 1 thereof, the United States government is under an obligation not only to respect the terms of the Conventions itself, but also to ensure respect for the terms of the Conventions by other parties such as El Salvador "in all circumstances." Nevertheless, the military dictatorship that effectively rules El Salvador has perpetrated numerous breaches of common article 3 to the Four Geneva Conventions of 1949 as well as of their 1977 Additional Protocol II—to which El Salvador is a party and the United States has signed and intends to ratify—against the innocent civilian population of that country.

These violations constitute what are popularly known as "war crimes." These international crimes that have been committed by the military dictatorship in El Salvador include but are not limited to: violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; taking of hostages; outrages upon personal dignity, in particular humiliating and degrading treatment, rape and any form of indecent assault; summary executions; collective punishments; acts of terrorism; pillage, etc. For the Immigration and Naturalization Service knowingly to return innocent civilian refugees back to El Salvador where it is highly probable that such heinous war crimes will be perpetrated upon them by the Salvadoran military forces renders the United States government an accomplice to the commission of such war crimes under the Geneva Conventions

and Protocol II, as well as under the rules of customary international law including the well-established Nuremberg Principle VII on complicity.

With respect to the deplorable human rights situation in Guatemala, it has been abundantly documented that the military dictatorship which effectively rules that country has for a considerable period of time engaged in a policy of genocide against its own indigenous people. On Februry 9, 1986 the United States Senate gave its advice and consent to the ratification of the 1948 Genocide Convention. According to article 1 thereof, the contracting parties confirmed that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish. Article 2 defines the crime of genocide to mean any of the following acts committed with intent to destroy in whole or in part a national, ethnical, racial, or religious group as such: (a) killing members of the group; (b) causing serious bodily or mental harm to members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part, etc. Moreover, article 3 provides that genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, attempt to commit genocide, and *complicity* in genocide are all international crimes in their own right. Hence, for the Immigration and Naturalization Service to return innocent civilian refugees back to Guatemala in full knowledge that there is a very high probability that genocide might be perpetrated upon them renders the United States government guilty of the international crime of complicity in the commission of genocide.

In light of the above analysis, I see no problem under United States domestic law or international law with the Village of Oak Park deciding to designate itself as a Sanctuary Village in accordance with the terms of this Resolution. As you already know, the Director of Congressional and Public Affairs for the Immigration and Naturalization Service's Western Region has admitted that a city's decision not to assist the INS in the enforcement of federal immigration laws does not violate federal law. This is because article 1, section 8, clause 4 of the United States Constitution grants Congress the power to "establish an uniform rule of naturalization." The United States Supreme Court has historically interpreted this provision of the Constitution to mean that Congress has the exclusive and plenary power

to determine all regulations that are to be applied to aliens per se in the United States, whether they are here legally or illegally.

In other words, state and local governments have absolutely no role to play in the regulation of aliens per se except, perhaps, with respect to their right to own land and in the case of illegal aliens, to receive certain types of social welfare benefits. Consequently, I see no reason why the Village of Oak Park should expend any of its scarce economic resources by assisting the Immigration and Naturalization Service to carry out its statutorily delegated tasks in a manner that clearly violates both the letter and the spirit of these exclusive and plenary powers that have been granted to Congress by the terms of the Constitution. It would be far better for the Village of Oak Park to conserve its resources in order to implement the beneficient intention of Resolution Section 8 to the effect that the provision of Oak Park Village benefits, opportunities and services shall not be conditioned upon matters relating to citizenship or residency status.

Finally, the adoption of this Resolution designating Oak Park a Sanctuary Village and prohibiting Village employees from providing assistance to the Immigration and Naturalization Service would be fully consistent with the obligation you and your employees have to uphold the Constitution and laws of the United States of America. According to article VI of the United States Constitution, treaties and statutes are deemed to be the "supreme law of the land." Under the terms of this proposed Resolution, Oak Park employees would simply be required to respect the provisions of the 1967 Protocol to the U.N. Refugees Convention, the 1980 U.S. Refugee Act, the 1948 Genocide Convention, as well as the Geneva Conventions of 1949 and their 1977 Additional Protocol II.

With respect to the Reagan administration's intimations that it will terminate federal revenue sharing funds for any community that designates itself to be a City, Village, or Township of Refuge or Sanctuary, I will circulate to you copies of a formal Memorandum of Law prepared by the law firm of McGrath & McGrath in Champaign, Illinois with respect to the 1986 Urbana City of Refuge Resolution. As you will see, this Memorandum explains exactly why the Reagan administration has absolutely no substantive legal authority or power whatsoever to carry out such a malicious threat in the event you were to designate Oak Park to be a Sanctuary Village. These intimidating statements uttered by federal officials in Washington are simply meant

to frighten state and local government officials such as yourselves from discharging your recognized responsibilities to respect the rules of international law, the principles of the United States Constitution, the treaties and statutes of the United States of America, and the fundamental rights of these innocent human beings.

For all these reasons, then, I would strongly urge you to adopt this Resolution designating Oak Park to be a Sanctuary Village. Thank you.

Appendix
McGrath & McGrath
44 E. Main
508 Lincoln Building
Champaign, IL 61820-3603
February 10, 1986

To The Members of the Urbana City Council:

The City of Urbana receives monies under a federal revenue sharing program through enactment of legislation by the United States Congress. Under this law, Congress has authority to condition the receipt of monies by cities. These conditions are specified by Title 31 United States Code, Sections 6701 et seq. and by regulations promulgated in 31 Code of Federal Regulations, Sections 51 et seq.

Congress has authority to suspend or terminate revenue sharing funds only when those funds themselves are being spent for impermissible purposes. If the City of Urbana, for instance, used federal revenue sharing funds for discriminatory purposes, the United States Congress could investigate and suspend or terminate those monies allocated under federal revenue sharing laws. Congress does not have any oversight, however, into any area of city business which does not involve the expenditures of federal monies. Should the City of Urbana designate itself as a "City of Refuge," Congress would have no authority to intervene by terminating the federal revenue sharing allotment to the City of Urbana.

A related issue involves the executive functions of the president of the United States. The president, acting through his executive offices, is not empowered to suspend, terminate, or impound monies appropriated by an act of Congress. The Impoundment Act, Title 2 United States Code, Section 681 et seq. requires an act of Congress to approve any requested presidential impoundment of congressional

appropriations. Therefore, the executive branch, acting through the Immigration and Naturalization Service, is not independently empowered to suspend federal appropriations to the City of Urbana.

Separation of powers between the legislative and executive branches, as well as between federal and local governments, are the underpinnings of our federalist system. The federal branches of government have only those powers which are specifically authorized by statute. The City of Urbana would not face any loss of revenue by enacting the proposed "City of Refuge" legislation.

Sincerely,

Susan W. McGrath
Attorney at Law
William D. McGrath
Attorney at Law

9. Boyle, "Nicaragua Must Survive," University of Illinois Program in Arms Control, Disarmament and International Security, 6 *ACDIS Bulletin*, Winter 1985/1986 (No. 3).

Despite the terrible circumstances of a war inflicted by the Reagan administration, I accepted the kind and gracious invitation of the Nicaraguan government to visit their country for the week of November 16-23, 1985. During this time I was able to investigate and experience on a first-hand and very personal basis the dire and tragic consequences of U.S. military aggression that has been perpetrated upon the people of Nicaragua by the Reagan administration. What I discovered in Nicaragua has profoundly shocked my conscience and moral sensibility as a citizen of the United States and a member of the human community.

The Reagan administration's campaign of military aggression against the Nicaraguan people by air, land, and sea has demonstrated its blatant disregard and gross disrespect for the fundamental principles of international law, for the maintenance of international peace and security among nations, and for the right of self-determination for the Nicaraguan people. These policies have violated the most sacred principles of the United Nations Charter, the Charter of the Organization of American States, the Geneva Conventions of 1949, and the Interim Order of Protection issued on Nicaragua's behalf by the International Court of Justice in May of 1984. There is no justi-