Canada — A Country of First Asylum

Is Canada a country of first asylum? If so, do visa requirements for countries such as Guatemala prevent Canada from carrying out its legal, international and moral responsibilities as a first asylum country? These questions were not so much asked as loudly and unanimously answered and affirmed by all the Canadian NGOs — the Canadian Bar Association, the Canadian Council of Churches, the Canadian Jewish Congress, the Canadian Labour Congress, the Canadian Section of Amnesty International, all in attendance at the "Amnesty International Seminar on Canada — A Country of First Asylum" at the Park Plaza Hotel in Toronto on November 21st, 1984.

One theme was carried through all the briefs. Parliament legislated that Canada had a responsibility and obligation to provide protection for convention refugees, and refugee claimants in Canada had a right to make a claim for such protection and status. This law was reinforced by a moral responsibility for Canada to share the burden for the world's refugee population. Responsibilities for burden sharing are not simply financial, but entail territorial obligations. Finally, with the new modes of transportation and virtually direct flights to Canada from far away, whatever the intentions of the law makers, however developed or underdeveloped our sense of moral responsibility, Canada had *de facto* become a country of first asylum.

The practical issue which stood in the way of that vision was the imposition of a visa requirement on Guatemala.

> *"The Canadian section of Amnesty is opposed to the imposition of a visa requirement on countries to which Canada is a logical and accessible country of refuge, where the number of claimants from the country in question is manageable, and the immigration abuse insignificant."*

The briefs argued that whether or not visas were appropriate for controlling immigration flows, they were totally inappropriate in principle as a mode of managing refugee flows. Further, in practice visas put individuals in danger who could not reach our embassies, who feared to go to embassies because they believed they would be under surveillance, who endangered themselves because embassies were in fact under surveillance as demonstrated by recent seizures of nationals after they left Canadian consulate property. The briefs argued further that refugee procedures were not adequate abroad — the lack of counsel for the refugee, lack of time for such issues, and lack of rigorous training in refugee law and interview techniques. The image projected was of a Canadian government which sought to control refugee intake and to use visa requirements as a mode of obstructing legitimate refugee claimants from Guatemala.

What a contrast with the picture painted by Pierce Gerety, the UNHCR Senior Legal Officer, who flew in from Geneva to present an international perspective. In Gerety's opening speech, Canada was lauded as an important leader in refugee matters, as one of the top countries in resettlement and the top one on a per capita basis. Not only were Canadian NGOs praised for their leadership, but the Canadian government's constructive approach to protection was especially noted. Canada's status determination procedure was, in most respects, cited as a model of its kind. The published guidelines were highlighted as exceptional. The processes of consultation and review only added to Canada's esteem.

Which picture of Canada was correct? Are we hard-hearted and discriminating, or humanitarian leaders in forging new frontiers in refugee policy? Some of Gerety's analysis, however, seemed to imply Canadian shortcomings while explicating the meaning of qualifying the Canadian model's merits to "most respects", even though the UNHCR representative was too diplomatic to point those shortcomings out directly. And the shortcomings were not simply matters of overload and delays plaguing many systems, and which the Plaut commission is presently examining, but were matters of principles.

Canada was not only bound to the convention definition of a refugee as a standard by which to evaluate a claim, but Canada was obliged not to expell or return refugees to situations and homelands where they are in danger. Although Canada has no obligation to admit a refugee, it has an obligation to hear a claim. Was the non-refoulement obligation met if the right to present a claim could only be made in an embassy under possible surveillance and, upon leaving the embassy, claimants may place themselves in danger by going to the embassy? If visas prevented alternative routes to escape, and if claims made in a country of origin conflicted somewhat with the definitional requirement of being *outside* a country of origin, while at the same time placing the claimant in danger, was Canada not in fact practicing refoulement if not legally, then in spirit? These were questions which one could not help asking oneself as Gerety reviewed the principles.

The recommendations on access (agreed to by the 41 members of the Executive Committee of the UNHCR this year) that, for example, a competent refugee/border officer refer *all* claimants to a higher central authority raised the question if Canada was in breach of such a consensus in the mode of handling claimants in Guatemala as well as in Canada? Similarly, when the principle of burden sharing was noted as the provision of resettlement *and* asylum, was Canada in its commitment to the former ignoring its responsibility in the latter area?

The critical issue emerged when Gerety was subsequently asked if non-refoulement, which he held to be a fundamen-

tal principle, entails sharing both the burden of resettlement and of asylum. Gerety answered that it only applied to resettlement since asylum was not an issue of choice; it was not possible to parcel out asylum. This seemed to suggest that Canada had no legal or international obligation to be a country of asylum. If Canada had neither an obligation to admit refugees nor to be a country of asylum, it was up to Canada to define itself as it wanted. Canada only had an obligation to deal fairly with refugee claimants and not return refugees to dangerous situations.

The NGOs, however, argued that if Canada did not have an international legal obligation to grant refugees asylum, it was obligated by its own laws, Canadian morality and the *de facto* situation. The problem really resolved into two ideologically contrary views of Canada with respect to refugee policy. For the immigration officials, Canada is a country of resettlement and only in a very tangential way, a country of asylum. As such, refugees are overwhelmingly selected by Canada. Refugees per se do not have the right to come to Canada even if they do have the right to make a claim for protection once they are here. In the process of selection, the choice is made on the basis of both need and the prospect of adaptation to Canada.

The dilemma remains how can Canada be a selector abroad *and*, at the same time, process claims abroad according to convention procedures. If it does the first, then going through the motions of the latter is a sham. If it does the latter, then Canada cannot be managing refugee flows, for it is the situation of the refugee and the number of claims that will determine the numbers who get through the procedures and not Canada's selection criteria. The problem is that briefs, such as those of the Canadian Bar Association, misstate the issue. They argue that visa provisions and the rationale for a selection policy are instruments to define Canada "as a resettlement country *only* and would limit or *eliminate* Canada as a country of first asylum".

The department does not view Canada as a resettlement country only, however, it does see it as primarily a resettlement country and fears that if Canada settles on the basis of refugee "preference", the result will be endless numbers of claimants. The department is not trying to eliminate, it is argued, but is trying to limit Canada as a country of first asylum. The NGOs argue that Canada, as a country of first asylum, has equivalent (or even preferential) status in law and morality to the view of Canada as a country of resettlement. The point is well stated in the brief of the Canadian Section of Amnesty International.

> In one sense the issue of whether Canada presents itself as a country of resettlement as opposed to a country of first asylum is a moot one. In fact, at the present time Canada receives refugees for resettlement as well as providing a procedure for identifying and accepting those who arrive in Canada for the express purpose of seeking asylum . . . the two functions need not be exclusive . . . despite the Canadian government's preference to characterize Canada as a country of resettlement, implicit in the recent efforts to reform the refugee claims procedure is the acknowledgement that to some, Canada is indeed a country of first asylum.

Setting aside the ideological issue of self-definition and whether access to Canada's procedures are extended abroad or limited to Canada, one concrete issue must be resolved. This is the effect of visa requirements on the lives and safety of individuals who would seek Canada's protection. For the NGOs, the issue is not all the refugees who would seek Canada's protection, but only those refugee-producing countries for which Canada is a logical and accessible place of refuge. And the concern is for those refugees who are in imminent danger and for whom lengthy requirements of visas add to danger.

If, in addition, the immigration abuse is minimal and the number of claimants is already manageable, the argument for a visa seems groundless even according to the department's own criteria of "efficient management". If in 1983, over 70 percent of a total of only 244 claimants were granted status, why institute a visa requirement? The absurdity of imposing a visa requirement in such a situation seems so apparent that the NGOs not only deride the policy, disagree with the perception of Canada behind that policy, but even make comparisons between the policy makers of the 1980s and those of the 1930s.

Though sometimes distorting and overstating the case, the basic arguments seemed overwhelming. The rationale for Canada's imposition of a visa requirement, granted the differences in perception, appeared extremely weak. The failure of the Canadian government to participate fully in the discussions (restricting comments to clarifications and some elaborations), did not help the department's position. For example, the abstract position of Canada could theoretically have been made concrete to show that it was, in fact, helping more refugees through the Canadian consulate office in Guatemala than through the immigrants who came to Canada. Individuals being helped were more in need than those who actually got to Canada. No analysis of this type was presented though there were some guesses about general figures. The department would also have had to explain why helping refugees within Guatemala necessitated the inhibition of refugees coming direct to Canada to make a claim by the requirement of a visa. After all the laudatory remarks that the UNHCR made about Canada, it seems ridiculous to compromise our principles and efforts on an issue of such marginal importance in our overall planning and of such major importance, not only to the concerned NGOs, but particularly to the Guatemalans whose lives may have been endangered by the Canadian policy.

"Canada should acknowledge at least the small flow of refugees who choose to come from countries for which Canada is logical and accessible as a legitimate part of its international response to refugee needs, and should remove the visa requirement." — Inter-Church Committee for Refugees, November 20, 1984.