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CANADA'S PERIODICAL ON REFUGEES

# REFUGEE

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## Indochinese Refugees *Sponsorship and Repatriation*

### Repatriation

*A Solution to the Vietnamese  
"Boat People" Problem in  
Hong Kong?*

*By Lawrence Lam*

#### Introduction

While memories of the "Boat People" of Indochina have dimmed, the exodus of refugees in Southeast Asia continues. While countries such as Canada, the U.S. and Australia select fewer refugees for resettlement, some 107,571 asylum seekers languish in camps in Thailand, Malaysia, Indonesia and Hong Kong. Vietnamese officials admit that a severe economic slump in Vietnam and deteriorating living standards are encouraging more people to try their luck overseas, despite the dim prospect of being resettled. A total of 12,646 Vietnamese asylum seekers arrived in Hong Kong

during the first six months of 1991. As of June 1991, there were 54,847 asylum seekers in eleven detention centres in Hong Kong, in addition to some 6,080 recognized refugees whose resettlement has been assured under the 1989 Comprehensive Plan of Action.

Responding to the declining number of refugees accepted by resettlement countries and the apparent failure of "humane deterrence" measures, Hong Kong considers all arrivals since June 1988 "illegal migrants" unless they can prove their refugee status according to the 1951 U.N. Convention. Overcrowded and squalid living conditions, compulsory screening and increasing camp violence, would suggest that the coordinated UNHCR, U.K. and Hong Kong effort to encourage voluntarily repatriation offers a viable solution to the "Boat People" problem.

Not so. Repatriation numbers are small despite efforts made by representatives from the main resettlement countries assisting the UNHCR in

counselling the Vietnamese "Boat People" to accept repatriation, an aid package of \$150 million from the European Commission to assist with repatriation to Vietnam, the recent campaign launched by the internationally renowned advertising agency Saatchi and Saatchi to persuade them that the life they fled under the Communist regime in Vietnam is preferable to their existence in the detention centres. Less than 10,000 asylum seekers have been repatriated since 1988—including fifty-one who were "forcibly returned" in December 1989, and a large number of those who were "repatriated" under the 1990 agreement between the Vietnamese Government, the British Government and the UNHCR allowing "repatriation of non-volunteers who are not opposed to repatriation." Repatriation, voluntary or otherwise, does not seem to have had the expected result.

Almost everyone has a theory on why the Vietnamese "Boat People" do not volunteer to return, but no one

seems to understand the fears, issues and concerns of these asylum seekers. It is within this context that this paper attempts, on the basis of information collected in the camps, to probe the factors underscoring the asylum seekers' determination not to "return home."

### Factors Affecting Repatriation

Regardless of the objective criteria used to determine if these asylum seekers' claim to refugee status is valid,

based on their own subjective experience, they believe themselves to be refugees. Although the conditions in Vietnam might have improved over the years, the "long arm of the government" and the "drastic changes" that could be instituted by the government are still very much alive in their experience and memory. There is a palpable lack of trust in the "reported improved conditions," economic or political, in Vietnam. This lack of confidence has solidified into a well-founded fear for the asylum seekers who do not volunteer to return nor oppose being repatriated under the September 1990 agreement. The statement by Mr. Nguyen Can, head of the Vietnamese Immigration Department, that these "non-volunteers had to show a correct attitude after their return, otherwise they might be subject to re-education," has caused fear among asylum seekers that they could be singled out by the Vietnamese Government for special attention and scrutiny, if not recrimination if they return. Hence, there are growing numbers of "non-volunteers" coming forward to oppose being sent back to Vietnam.

Since these asylum seekers believe they are refugees, the screening process on their claims has been regarded as "unfair, unjust, invalid, and a breach of natural justice." Information about legal challenges and judicial review on screening resulting in some "screened out" cases being over-ruled has given them "hope" that they will eventually be "successful" in being

screened in as refugees. The report *It's All A Matter of Luck: The Vietnamese Screening Process in Hong Kong*, written by four local legal experts condemning the process and calling for a moratorium because the screening interviews are often conducted by people who know little of Vietnam, are unsympathetic, do not let the claimants fully explain their cases, do not keep accurate records of the interviews, or rely on poor interpretation, has reinforced their conviction that their claim to refugee status has been arbitrarily denied. In addition to their demonstrations in camps supporting judicial review on the screening process and demanding rescreening, it is not uncommon to hear from these asylum seekers that "ultimately, I believe my case will be accepted. I will wait. There is no way that I will return to Vietnam." Importantly, many asylum seekers believe the Immigration Officers deciding their claim are biased and unsympathetic because, as one asylum seeker confided:

*They have low opinions of Vietnamese. They are Chinese. We are not. They don't care about us. They have their own worries about 1997. They can play games with our lives because they have the power to apply the rules which ever way they like. I hope justice will prevail at the end.*

The experience with and policy towards Vietnamese "Boat People" in Hong Kong have undergone a number of changes over the years. Prior to

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the implementation of the Comprehensive Plan of Action, compulsory screening and repatriation were not taken as measures to effectively deal with the continuing "Boat People" saga in the region and in Hong Kong. Though asylum seekers who arrived since 1982 were sheltered in closed camps in Hong Kong and were not allowed to go out and work as compared with those who arrived before 1982, their refugee status was accepted and recognized. The closed camp policy lasted until 1988 and, when the Comprehensive Plan of Action was agreed upon, the closed camps were gradually "liberalized," allowing them to leave the camps and seek employment while waiting for resettlement. These changes were known to the asylum seekers currently sheltered in detention centres. There is hope among them that changes in the current policy, which would result in resettlement, are inevitable. Their strong optimism is related to the following factors:

1. Given the continuing U.S. economic blockade and political and economic strain in Vietnam, the ongoing exodus is no surprise. Knowing that the U.S. is opposed to mandatory repatriation, and its determination to "teach Vietnam a lesson," many asylum seekers believe their "exodus" will meet with sympathy and approval; that the United States will eventually succeed in convincing the international community to accept and resettle them. Also, the "news" attributed to a reported plan by American Congressman, Mr. Robert Dornan, to give asylum seekers in the camps lucrative jobs helping in the reconstruction of Kuwait has not only contributed to high numbers of recent arrivals in Hong Kong, but also strengthened the conviction of those already in camps not to be repatriated.
2. China has been putting pressure on the Hong Kong Government to resolve the Vietnamese "Boat People" problem before 1997 and has reiterated several times that it

will not allow these asylum seekers to obtain Hong Kong residency. In other words, the camps have to be "emptied" by 1997. Repatriation, forced or otherwise, has been endorsed by China and sold successfully to local Chinese people as the means to bring an end to the "Boat People" problem. Ironically, instead of taking China's demands and the local people's outright hostility against them as detrimental to their seeking resettlement, many of the asylum seekers consider these demands to be in their favour, as long as they "stay put" and "resist repatriation." They believe that when Hong Kong reverts back to China in 1997 and if they are still in camps, the international community will have to accept them for resettlement, rather than leaving them subject to further inhumane treatment by the Chinese Government. As one asylum seeker, who has been screened out and is waiting for a judicial review of his case, said:

*I'll wait. I won't return. No way. I don't understand why I was rejected. My case is similar to \_\_\_\_\_ and he has been accepted. Unfair. There is no justice. I am going to stay in the camp. I hope 1997 comes sooner. If China attempts to send me back against my wish, I don't believe the U.S. and UNHCR will allow that. I'll wait.*

Another echoed:

*We know that Hong Kong will go back to the Chinese in 1997 and hope that if we come and stay in the camps, the West will take us.*

Clearly, the desire to return is almost non-existent among the asylum seekers despite the efforts made and promoted by UNHCR and representatives from the main resettlement countries. The statement by the U.S. Consulate Refugee Officer, Mr. Joe Bracken, who told them that "eventually, every non-refugee must go home" prompted no increase in the number of "Boat People" coming for-

ward to be repatriated. Moreover, according to the UNHCR Special Advisor for Southeast Asia, Mr. Alexander Cassella, in the first months of 1991, at least thirty people had returned to Hong Kong compared with ten in 1990. These "double backers" (volunteers for repatriation who come back to Hong Kong) had reinforced the asylum seekers' belief that conditions in Vietnam are not conducive to their return.

The fear of making a hasty decision to return to Vietnam and then coming back to Hong Kong again has raised other issues of immediate concern to these asylum seekers. First of all, it has taken a long time for them to get enough money to pay for the trip. Often times, their trip was made possible with the assistance and sacrifice of other family members and relatives. The sense of obligation to family members left behind is understandably acute. Hence, it is inconceivable for them to accept repatriation as a viable alternative to their predicament. Returning to Vietnam has been interpreted not only as a failure on their own behalf, but as an abandonment of their obligation to the well-being of other family members. While they are waiting in the camps for either screening or the results of their appeal against a negative decision, they have received information directly from family members left behind in Vietnam or indirectly from friends that, as a result of their exodus, their family members have lost their jobs, been reassigned to menial work or are under constant surveillance by local authorities. Therefore, despite hardships in the camps, it is extremely difficult to persuade them to accept repatriation. The level of their unwillingness to "return home" remains high. One asylum seeker asked:

*If I go back to Vietnam, how do I tell my family? How can I disappoint them? There is no way my family can pay for another trip. I am not going back. Hong Kong can put me in a plane and send me back by force. But, I am not going to volunteer.*

Also, the journey between Vietnam and Hong Kong for many was not uneventful. Hardships abounded — rough seas, violence, assaults, and at times degrading treatment and harassment by Chinese officials and villagers along the coastal towns where they bought food, water and fuel, or where they waited out the stormy weather that left many asylum seekers literally paralyzed at the thought of “going back to Vietnam and making another run.”

As observed in the camps, one of the important daily activities among the asylum seekers is coming to the administration centre to see if there are letters to them from family members, relatives or friends either from Vietnam or resettlement countries. Letters from Vietnam invariably ask when they are leaving for countries in the West and elsewhere. The message has no doubt reminded them that their family's and friends' hopes to escape the prevailing intolerable conditions in Vietnam lie with the asylum seekers' success in getting accepted for resettlement. Nuances of the screening process seem to be largely inconsequential. Letters from resettlement countries, however, often present a positive outlook with respect to available economic, social and political opportunities. Photographs taken in parks, restaurants, living quarters with TV and stereo, or outside the house with car(s) further reinforce the asylum seekers' determination not to let the “opportunity” pass them by. Many asylum seekers believe they would have amassed the same fortunes had they been able to leave Vietnam earlier. They simply refuse to accept that “timing” could have had such significance in their life chances and conditions. This is particularly unsettling in their minds, as they deeply believe their situations to be similar to, if not exactly the same as, those who left Vietnam prior to the implementation of screening. It is impossible for them to accept repatriation as fair and just. The feeling of “not missing the boat” again has made repatriation an ineffectual solution to

the continuing Vietnamese “Boat People” drama. According to one asylum seeker:

\_\_\_\_\_ left in 1986 and his family has now made a good living in U.S. My family left in April 1989. \_\_\_\_\_ and my situation in Vietnam are the same. His family gets accepted as refugees and we have to go through screening. Is this fair? My family could have left at the same time as \_\_\_\_\_ if we had enough money to pay the organizer. No way we are going to go back to Vietnam now. We missed once. We are not going to miss another chance.

### Concluding Remarks

Repatriation, voluntary or otherwise, will be vigorously opposed by the Vietnamese asylum seekers in Hong Kong. They believe the screening process is not giving them a fair chance to present their claim, that conditions in Vietnam are not improving, that Hong Kong's policy will inevitably change as a result of political maneuvering between China, the U.K. and the U.S. These factors married with their determination to “not miss the boat again,” have negatively affected the concerted efforts made by the interested parties to promote repatriation, and bring an end to the Vietnamese “Boat People” problem. Unless significant changes are made to address the root causes of the refugee flow through such measures as ending the economic and diplomatic blockade of Vietnam, and expanding the orderly departure program to provide an alternate channel for their departures, the Vietnamese “Boat People” drama will continue. Correspondingly, additional inhumane measures camouflaged as humane deterrence will be taken by governments in the region. These measures cast the asylum seekers as beings no one wants to inherit.

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# Private Sponsorship of Indochinese

*By David Matas*

**T**he Canadian Immigration Act states that one of its objectives is to fulfill Canada's international legal obligations to refugees and to uphold its humanitarian tradition with respect to the displaced and the persecuted. Canada's tradition here has not been solely humanitarian. At times it has been downright inhumane. The Act deliberately does not ask immigration policy makers to uphold the whole of Canadian tradition regarding the displaced and persecuted, but only the humanitarian component of that tradition.

This objective is noteworthy not only because it singles out the humanitarian component of the Canadian tradition, but also because it distinguishes between Canada's international legal obligation to refugees and that humanitarian tradition. Fulfilling refugee obligations and upholding the humanitarian tradition are not one and the same objective.

The very mention of both is an indication that Parliament believed what is all too obvious, that the refugee definition does not cover every displaced and persecuted person who, for humanitarian reasons, needs protection. The Immigration Act, at least in its objectives, is generous, stretching Canadian hands out beyond Convention refugees to the displaced and persecuted who may not fall within the refugee definition, but who still justify humanitarian concern.

Mechanically, the Immigration Act provides for the realization of this objective by stating any Convention refugee and any person who is a member of a designated class may be granted admission to Canada as permanent residents. There have been four designated classes: the Latin American Designated Class, later

replaced by the Political Prisoners and Oppressed Prisoners Class; the Self-Exiled Class; and the Indochinese Designated Class.

Admission of Convention refugees and designated classes from abroad is done through either private or government sponsorship. Refugees and designated class members coming to Canada must show they are likely to establish successfully in Canada. Private sponsorship, done by a corporation, or five or more individuals, allows a refugee to show likelihood of successful establishment.

The Government of Canada has promulgated regulations which say that a Canadian organization or group of five individuals can sponsor a person from designated countries in Indochina to come to Canada. The regulations have been passed under the legislative power to designate classes. The admission of designated classes is in accordance with Canada's humanitarian tradition with respect to the displaced and the persecuted.

Until September 1990 the countries designated were Cambodia, Laos and Vietnam. According to the regulations, a person from but residing outside these countries could come to Canada, as long as the person had a sponsor here. The Government of Canada also sponsored people from this class to come to Canada under the Government Refugee Allocation for South East Asia.

For individuals, there was no need to prove they were refugees. They did not have to prove a well-founded fear of persecution. Dislocation and sponsorship had been, in most cases, enough.

Technically, there were two hurdles for an applicant to jump. Applicants had to show that they would successfully establish in Canada; and second,

that they would meet the requirements of the Immigration Act and regulations.

What the second hurdle means is that applicants must not be in a prohibited class. They must not have a communicable disease, nor an illness that would be costly to treat. An applicant must not have a serious criminal record.

For the purpose of successful establishment, a visa officer is supposed to look not only at whether there is a sponsorship, but also at the points system, and other financial assistance available to the applicant. In theory, a person who was a total loss under the points system could be rejected even though there was a sponsor. In practice, most sponsored people are considered likely to establish successfully.

The Indochinese designated class has been one of the most successful programs the Immigration Department has ever run. The class began 7 December 1978. At least in theory, it remained in effect for Vietnam, Laos and Cambodia till 1 September 1990. Most of the large numbers of Vietnamese who came to Canada came by virtue of this class.

I say it remained in effect in theory till September 1990 because in fact it was no longer being operated after 14 June 1989 for Vietnamese and Laotians arriving in Hong Kong after 16 June 1988 or in any other Southeast Asian country after March 14, 1989. While keeping the program on the books as a regulation, the Government ceased to operate it administratively for new arrivals.

The United Nations (U.N.) held an International Conference on Indochinese refugees in Geneva, Switzerland on June 13 and 14, 1989. Prior to the Geneva Conference, the U.N. held a preparatory meeting in Kuala Lum-

pur, Malaysia on 8 March 1989. The Malaysian meeting proposed a draft declaration and comprehensive plan of action on Indochinese refugees. The Geneva meeting accepted the draft.

According to the plan, resettlement of refugees from Indochina would cease, except for those who passed screening procedures. The declaration that accompanied the plan stated that governments were preoccupied with the burden imposed on neighbouring territories by asylum seekers. The declaration also stated that governments were alarmed current arrangements to deal with asylum seekers might no longer be responsive to the size of the problem.

The plan itself had three key components: the establishment of screening procedures, repatriation of those who fail screening, and resettlement of those who pass screening. Early establishment of consistent region-wide refugee status determination processes is required under the plan.

According to the plan, the status of asylum seekers must be determined by a qualified national authority, in accordance with established refugee criteria and procedures. The criteria recognized are not restricted to the 1951 Convention. The Universal Declaration of Human Rights and other relevant international instruments are to be borne in mind and applied in a humanitarian spirit. The UNHCR Handbook on Procedures and Criteria for Determining Refugee Status is to serve as an authoritative and interpretative guide and there is to be a right of appeal, with the asylum seeker entitled to advice on appeal. The UNHCR is to ensure proper and consistent functioning of the procedures and application of the criteria.

The plan goes on to say that persons determined not to be refugees should return to their country of origin. Resettlement is divided into two categories — one for long stayers, and the other for newly determined refugees. Long stayers are all those who arrived before a cut-off date (the date screening was established). For Hong Kong the date is 16 June 1988. Long stayers are eligible for resettlement without

going through screening.

For those who arrived after the cut-off date, only those who passed screening are eligible for resettlement. The plan says a resettlement program will accommodate all those who arrive after the introduction of status determination procedures and are determined to be refugees.

The Chair of the Geneva Conference that adopted the plan in June 1989, Dato Haji Abu Hassan Bin Haji Omar of Malaysia, in his closing statement, indicated that the plan's purpose was to discourage Vietnamese from leaving Vietnam. He said "asylum seekers could no longer assume that they would be automatically regarded as refugees and therefore entitled to automatic resettlement."

There are three problems with the structure I have just mentioned. One is that it had no reflection in Canadian law for over a year. The second is that it is an abdication of Canadian sovereignty. The third is the inadequacy of Hong Kong screening.

Between 14 June 1989 and September 1990, Canadian law did not say screening was necessary to come within the Indochinese designated class. Canadian policy was, however, that screening in the country of temporary asylum was necessary to come within the class.

The policy was retroactive. It was adopted 14 June 1989, the date of adoption of the U.N. Comprehensive Plan. But it was retroactive to 16 June 1988, the date of introduction of Hong Kong screening. A person who arrived in Hong Kong between 16 June 1988 and 14 June 1989 and failed screening, would be ineligible for resettlement in Canada under the Indochinese designated class. This was the case even though the law said nothing about it, and the asylum seeker would have known nothing about the 16 June 1988 cut-off. The purpose of the plan is to discourage people from leaving Vietnam. Those who left before the plan was accepted could hardly have been discouraged by the plan, even if they were susceptible to discouragement. Yet the plan applied to them.

Canadian compliance with the plan

was a violation of Canadian law. As long as the designation of Vietnam as part of the Indochinese designated class was on the books, it had to be operated according to its terms. There was a legitimate expectation in both sponsors and applicants that the sponsor system would work.

Even if one accepts as valid the premise that it is necessary to have a screening system to discourage Vietnamese who are not refugees from fleeing Vietnam, that purpose was ill served by the Canadian system in existence from June 1989 to September 1990. The Indochinese designated class served as a lure that became a trap. Canadian law held out the promise that Vietnamese might qualify for resettlement as long as they left Vietnam. It was only after they left Vietnam and arrived in the camps that they found the Canadian law was not being operated according to its terms.

The comprehensive plan has led to forced repatriation to Hong Kong. Just before Christmas 1989, fifty-one boat people who had failed screening were taken from the Hong Kong camps and deported to Vietnam. The United Nations High Commission for Refugees, in a note to the Hong Kong Government, said it had not been able to verify whether those being returned were real refugees or not. The Government of Canada opposed the repatriation of these people, saying it profoundly regretted the decision. Yet the Government of Canada was part of the Comprehensive Plan, which agreed to forced repatriation. By refusing resettlement, even where there were sponsors and the law allowed for resettlement, the Canadian Government helped to make forced repatriation inevitable.

The second problem I have with the change is its abdication of sovereignty. In principle there is nothing wrong with requiring a person to pass through screening before he or she comes to Canada as a refugee. On the contrary, it may be preferable to the system as it was before 14 June 1989.

Bringing asylum seekers over to Canada without screening gives an advantage to some asylum seekers

over others. Refugee claimants from everywhere else in the world have to prove they are refugees to receive protection in Canada. It is unfair to refugee claimants elsewhere in the world to require them to pass screening and yet not require it of Indochinese.

The Indochinese waiver of screening continues to operate for Cambodians, for pre-June 16, 1988 arrivals to Hong Kong, and elsewhere in South East Asia for pre-March 14, 1989 arrivals. But for many Indochinese, the Canadian waiver of screening is gone.

So screening, in itself, makes sense, but only if it is Canadian screening. The Government of Canada cannot delegate a foreign government to perform any legal function. Screening that is relevant to Canadian admission has to be subject to the supervision of the Canadian courts. Yet how can the Canadian courts supervise a foreign administrative and legal system?

For someone to qualify for admission to Canada, what should be important is not whether the person passed foreign screening, but whether the person is a refugee. The only way the Government of Canada, and the Canadian legal system can satisfy themselves that the person is a refugee is if the decision is a Canadian decision.

Technically what is happening is that the Hong Kong authorities deny Canadian visa officers access to Vietnamese who have not been screened or who have failed screening. Canadian visa officers are allowed access only to those Vietnamese in Hong Kong who pass screening.

In principle those post-June 16, 1988 arrivals who pass Hong Kong screening must still pass Canadian screening. But Canada has agreed, as part of the Comprehensive Plan of Action, to be involved in a resettlement program to accommodate all those who arrive after 16 June 1988 and pass Hong Kong screening. For Canada to refuse resettlement on the basis of its own screening after a person has passed Hong Kong screening would be a violation of the Comprehensive Plan.

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THE PURPOSE OF

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DISCOURAGE

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LEAVING

VIETNAM

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The abdication of sovereignty does not appear in the regulations. The regulations do not specifically defer to Hong Kong screening. If one were to look at the regulations alone, the ability of Canada to screen refugee applicants would appear intact. It is only the regulations read in conjunction with the Comprehensive Plan of Action that show this abdication.

The denial of access by Hong Kong authorities to those who fail screening or have yet to be screened is not unilateral. It is also inherent in the Comprehensive Plan of Action, which Canada has signed. In effect, Canada has agreed not to seek access to a person unless the person passes screening.

Canadian officials claim they have not abdicated screening to Hong Kong officials. All that has happened, they say, is they cannot get access to Vietnamese in Hong Kong until the Vietnamese pass screening. This claim is a formalism. Canadians cannot get and do not seek access because they have agreed not to seek access.

The Canadian government's justification for this scheme is that it is better than what would exist without the Comprehensive Plan of Action. Without the Comprehensive Plan, they say, Hong Kong would forcibly repatriate all Vietnamese. With the Comprehensive Plan at least some, those who pass screening, avoid forced repatriation.

The value of that argument depends on the value of Hong Kong screening. If Hong Kong screening is leading either to the forced repatriation of real refugees, or to the establishment of deterrence and disincentives that either prevent real refugees from coming or encourage those who have come to return, then the argument has no merit. International law requires protection of all refugees, not just some refugees. A law that protects only some is a bad law. The argument that such a law is better than no law at all is a political argument, not one of principle.

If Hong Kong screening is rejecting and deterring real refugees, and there is every reason to believe that it is, then the Comprehensive Plan of Action trades off the protection of some refugees against others. Those who pass Hong Kong screening are resettled. Those who fail are abandoned. That sort of trade off is legally and morally indefensible.

Canadian abdication of sovereignty might, in certain circumstances, itself be acceptable. The circumstances would be ones where the foreign screening system was fair beyond a shadow of a doubt. Then Canada could accept the results without qualms. Yet the Hong Kong system is anything but fair. The Hong Kong screening system is similar to the old Canadian system. A claimant is interviewed by an immigration officer. The officer either decides, if he or she concludes the case is simple, or recommends, if the case is difficult. Where the officer decides, a Senior Immigration Officer reviews the decision, based on the officer's interview notes. Where the officer recommends, the Senior Immigration Officer decides, again based on the officer's notes. That decision is subject to review by the Chief Immigration Officer.

A negative decision at the first level is subject to review by a second level Refugee Status Review Board. The review is a paper screening, based on the interview notes, a written assessment of the case by the deciding officer, and any representation the claimant may wish to make.

There is no access to the Hong Kong courts to appeal a negative decision of the Review Board. Hong Kong law says a decision of the Board shall not be subject to review or appeal in any court. This process presents a number of problems. One is absence of counsel. Counsel are not allowed to be present either for the initial interview with the investigating officer nor for the deliberations of the Review Board. All that counsel can do, under the current system, is help prepare claimants for their interviews with immigration officers, and help in filing written appeals to the Review Board.

Even those tasks, while in principle permissible, are inordinately difficult. Simply getting access to the claimants, who are kept in closed detention camps, is a problem. Counsel are either denied access to the camps or required to go through an elaborate bureaucratic procedure to gain access.

Claimants are given little, if any, notice of the dates of their immigration interviews. The Immigration Department of Hong Kong will not advise counsel when claimants will be interviewed or even whether they have been interviewed.

At the review stage there is provision for legal representation. Legal representation may be either a lawyer entitled to practice in Hong Kong or an appeals counsellor engaged by the Agency for Voluntary Service. The Agency for Voluntary Service is a body funded by the United Nations High Commission for Refugees.

As of December 1989, the Agency for Voluntary Service had only twelve legal advisers. Yet the Hong Kong system was generating 180 refusals a week. The twelve advisers have been able to take up and act on only eighteen cases a week. The rest, by and large, go unrepresented.

There is an urgent need for lawyers to assist claimants going through Hong Kong screening. There are many Canadian lawyers who go to Hong Kong to assist in the preparation of entrepreneur applications. These lawyers should consider whether they can also assist, while they are there, Vietnamese asylum members.

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REFUGEE  
CRITERIA ARE  
ROUTINELY MISAPPLIED  
OR IGNORED.  
ESTABLISHED REFUGEE  
PROCEDURES ARE  
FLOUTED

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That assistance would be particularly appropriate where there are Canadians seeking to sponsor Vietnamese in Hong Kong. There is an active institutionalized sponsorship system throughout Canada for Vietnamese refugees. The sponsors are being frustrated by the Canadian acceptance of the Comprehensive Plan and Hong Kong screening. I expect Canadian institutional sponsors, who are often intermediaries for Vietnamese in Canada seeking to bring their relatives over, would welcome Canadian legal assistance.

A Canadian lawyer in Hong Kong can be eligible to help a Vietnamese asylum member by qualifying for the Hong Kong bar or by coming under the umbrella of the Agency for Voluntary Service. In practice, neither of these steps may be necessary.

No qualification is necessary to assist a claimant to prepare for his initial interview, since Hong Kong law does not contemplate legal assistance. The obstacles are one of a practical nature — getting access to the claimant and finding out when the interview is.

Even for the appeal, since there is no oral hearing, being qualified may not be crucial. Representation can go in under the name of the claimant rather than under the name of the lawyer if the lawyer has neither the blessing of the Hong Kong bar nor the Agency for Voluntary Service.

Though appearances at hearings are impossible, lobbying those who decide is possible. Immigration officers who interview, Senior Immigration Officers who review and even Review Board Members who consider appeals will hear representations made on behalf of claimants outside the formal screening.

The Comprehensive Plan provides that the UNHCR shall advise in writing each individual of the nature of the procedure, the implications for rejected cases, and the right of appeal. In fact, that does not happen. Amnesty International reports that claimants know little or nothing about the procedure before they are subjected to interviews. There is no written information circulated to claimants. Claimants go into interviews unprepared, not knowing what to expect.

As I mentioned earlier, the Comprehensive Plan says the status of asylum seekers must be determined by a qualified and competent national authority in accordance with established refugee criteria and procedure. Again that does not happen. Those interviewing and deciding are neither qualified nor competent.

There is no qualification required for an immigration officer to decide refugee claims. There is no test of competency imposed. Refugee criteria are routinely misapplied or ignored. Established refugee procedures are flouted.

Observers note that interviewing officers show little or no knowledge of human rights violations in Vietnam, though that is the only country with which they are dealing. They do not allow claimants to tell their stories, but instead ask leading, hostile questions, and cut claimants off in the midst of their answers. Officers bring a prior skepticism to the hearings, believing claimants are economic migrants rather than refugees. They show little familiarity with the refugee definition. In several cases where claimants told stories that brought them clearly within the refugee definition, the claimants were refused all the same. Claimants are supposed to be given the benefit of the doubt.



But instead they are systematically denied it. Translation is often sloppy, misleading, confusing and inadequate.

When a claimant is refused, he or she is not given reasons, neither at the level of the Immigration Department, nor at the level of the Review Board. Claimants have no opportunity to hear what the possible objections to their claims are, or of contesting those objections.

Only 3 percent of those interviewed by immigration officers are accepted as refugees. A further 7.4 percent of those who appeal are successful. The fact that twice as many succeed on appeal as do at the first interview is itself an indicator that the first hearing is not properly functioning. Normally an appeal court increases the success rate by only a fraction above the rate of increase at the first level.

The negative nature of the first level hearing taints the possibility of later success. A claimant denied at the first level has not only a negative decision to reverse, there is also a negative record. The interviewing officer's notes and assessment, which form part of the record before the Review Board, may be at variance with the claimant's story through his or her own representations to the board. This variance may not be the fault of the claimant, but simply the consequence of a botched hearing conducted by an immigration officer who either cannot or does not want to understand the claimant's story.

The UNHCR offers a safety valve to the system. If someone is rejected at both levels, and the UNHCR nonetheless believes the person is a refugee, the UNHCR can recognize the person as a refugee falling within its mandate. The UNHCR has obtained an agreement from the Hong Kong Government that such mandate refugees will not be forcibly repatriated.

This safety net, while valuable, is not in itself an answer to all the problems of Hong Kong screening. Because the Review Board gives no reasons for its decisions and the UNHCR is not allowed to attend Review Board sessions, it is difficult for the UNHCR

to make refugee determinations aside from setting up its own procedure. Yet virtually all its processing resources are devoted to helping claimants through the Hong Kong system.

The implementation of the Comprehensive Plan, including forced repatriation, was left to a steering committee of which Canada is a member. But that steering committee has not been able to agree on the terms for forced repatriation.

Vietnam decided to accept the fifty-one people the British wished to deport before Christmas 1989. But the international outcry the repatriation aroused led Vietnam to hesitate about accepting others forced to return without international agreement in advance.

An attempt to get international agreement on forced representations to Vietnam has failed. There was a meeting in Geneva of thirty different countries, on January 23 and 24 of this year, to attempt to reach agreement. The U.S. refused to agree to forced repatriation to Vietnam from Hong Kong unless screening procedures were improved.

Hong Kong is a colony of the U.K. Its screening procedures were established by the U.K. Government. The problem in reaching international agreement is a difficulty with the U.K. Government, not with the Hong Kong Government. The UNHCR has told the U.K. it must introduce new safeguards into screening before the U.N. will endorse an international agreement on forced repatriation. The U.K. is attempting to go ahead with forced repatriation without U.N. approval. It is entering into direct negotiations with the Vietnamese Government. The British Government is offering Vietnam an undisclosed sum of money as an incentive to accept those returned unwillingly from Hong Kong.

It is understandable that the Government of England would oppose an improvement in the Hong Kong screening system, seeing it is so similar to its own.

The U.K. system, for asylum seekers who arrive without documentation at a U.K. air or sea port, is cursory.

A person is interviewed by a Home Office official. A transcript is sent to a Refugee Unit in the Department. The unit reads the transcript and decides. If the decision is negative, the person must leave. There is a right of appeal, but only after the claimant has left the country and been forcibly returned to the country of danger fled.

At the interview where the claim is made, counsel may attend, but is not allowed to participate. Counsel can ask the interviewer to put specific questions to the claimant but can ask no questions of the claimant him or herself.

Those who interview are neither specialized, nor qualified for refugee examinations. According to observers and commentators, officials bring a skeptical and enforcement-minded attitude to refugee claims. Some officers make gratuitously offensive or sarcastic remarks. Even the well-intentioned fail to ask appropriate questions because of their lack of experience in refugee matters and lack of information about the country fled. The Refugee Unit that decides, because it is part of the government, is politicized. It relies heavily on Foreign Office information which condemns governments hostile to the U.K. as persecutors and refuses to condemn governments friendly to the U.K.

In addition to the right of appeal after removal, the U.K. system allows for judicial review. But review is only for an arguable error of law. It is not available to correct a negative decision factually mistaken.

When the U.S. objected to the Hong Kong screening procedure, the British accused the U.S. of hypocrisy. Margaret Thatcher, in a meeting with George Bush, pointed to the U.S. policy of intercepting boats filled with Haitian asylum seekers and sending them back to Haiti. The point Margaret Thatcher made is a valid one, and applies to more than just interdiction by the U.S. The U.S. process suffers from many of the same problems as the Hong Kong system. I have already outlined U.S. refugee determination problems in my book *The Sanctuary Trial*, so I hesitate to summarize the

problems here. The grotesque results of the U.S. system, with a 97 percent rejection rate for Salvadoran and Guatemalan refugee claimants, speak for themselves.

No country has a refugee determination process free of all the faults of the Hong Kong system, which may be a caricature of the worst faults of Western screening systems. In another book, co-authored with Ilana Simon, titled *Closing the Doors: The Failure of Refugee Protection*, I wrote,

*If the South East Asian first asylum countries were simply to send refugees back without screening, the West would object and press for change. When countries like Hong Kong reject refugees by mimicking the procedures the West has used, the West is in no position to complain. We are seeing not so much a crude and indiscriminate rejection of all refugees, but rather a sophisticated simulation in first asylum countries of the techniques developed in Western resettlement countries.*

The Canadian system, particularly at the second level, offers a better hearing than is offered in Hong Kong. There are elements of the Canadian system one can point to with pride. But when the system as a whole presents such a mixed bag of elements, the Canadian Government will seem as hypocritical as the American if it presses for an improvement in Hong Kong screening.

In Canada, the burden of proof is on the claimant, as in Hong Kong. There are no standardized requirements for interpreters, as in Hong Kong. At the Canadian entry-level hearing, one of the two people deciding, and the one presiding, is an immigration adjudicator, a person who is neither by function nor training qualified or competent in refugee matters. The adjudicator poses many of the same problems to a refugee claimant that a Hong Kong immigration officer does. There is, on the other hand, a refugee board member present who can decide in favour of the claimant and, in effect, overrule the adjudicator on the decision whether the claimant should pass the first level.

The claimant in Canada has a right to assistance of counsel, which a Hong Kong claimant does not. On the other hand, the Canadian hearing is an adversarial one, with a government representative present to contest, cross examine and contradict. A Hong Kong hearing may be adversarial in fact, depending on the hearing, but it is not structured that way.

There is no meaningful appeal from a negative decision in Canada made at a first level hearing. The Hong Kong appeal is a faulty one, but at least a person stays in the country until his or her appeal is heard, which does not happen in Canada.

Canada has not, like the U.S., proposed an improvement in Hong Kong screening. Instead it proposed a year-long delay in mandatory repatriation of Vietnamese already in Hong Kong, but prompt return for those who arrive now. The British rejected this proposal.

There are two contrasts that must be kept in mind when looking at the plight of Vietnamese refugee claimants in Hong Kong. One is the contrast between the Canadian treatment of Vietnamese refugee claimants in Hong Kong and of entrepreneurial and investor applicants from Hong Kong. The other is the contrast between the treatment Hong Kong gives to the Vietnamese refugees and the treatment Hong Kong residents are asking for themselves as a result of the impending takeover by China.

The recent National Film Board production "Who Gets In" showed graphically the contrast between the treatment the Canadian visa office in Hong Kong gives to entrepreneurial and investor applicants on the one hand and refugee claimants on the other. Entrepreneurial and investor applicants are welcomed with open arms. Refugee claimants are allowed in begrudgingly, if at all.

I do not raise this contrast to question the entrepreneurial and investor programs, which I believe do have their place in Canadian immigration policy. But I point out that in the long run it is impossible to run a generous entrepreneurial program and a restric-

tive refugee program side by side. At some point, the restrictiveness of the refugee program will undercut the support for the entrepreneurial program. To a certain extent, that undercutting of support is already happening. Those who believe in welcoming entrepreneurs, if they want to maintain that welcome, must work to ensure that refugees are equally welcome.

China will assume control of Hong Kong in 1997. Chinese repression and the 1989 Tiananmen Square Massacre have caused people of Hong Kong serious concern about what freedoms they will be allowed after 1997. Indeed, much of the entrepreneurial and investor movement from Hong Kong is an anticipatory refugee movement of people leaving in advance of the impending Chinese takeover.

Yet, the people of Hong Kong will have difficulty generating sympathy from the rest of the world for the impending takeover and repression by China, when the Hong Kong Government is treating Vietnamese refugees in Hong Kong so badly. Again, I do not advocate that we ignore the plight of potential Hong Kong refugees because the Hong Kong government is slighting the tragedy of Vietnamese refugees. But I think it is worth pointing out that Hong Kong is undercutting the support it may hope to fetch for its own potential problems.

For Canada, I suggest the way to reform the Hong Kong system is through improvement in the Canadian refugee determination system. Only when Margaret Thatcher and others cannot accuse Canada of being hypocritical is the Government of Canada going to be credible in arguing against forcible repatriation of refugees from Hong Kong to Vietnam. In the meantime, individuals, lawyers and organizations in Canada must do what they can to assist those caught up in the Hong Kong detention camps.

*David Matas is Chair of the Working Group On Overseas Protection of the Canadian Council for Refugees.*

**Introduction:**

This new quarterly aims to monitor events producing refugees from the republics and emerging states of the Soviet Union.

**Format:** *Soviet Refugee Monitor* will include translations of documentary materials from the USSR, and analytical papers by Western and Soviet authors. As well as monitoring ethnic repression, and external and internal migration flows, this journal will provide early warning information, so that Western countries can better plan, coordinate and respond to migratory movements.

**Audience:** We hope to attract various categories of readers: Western European states, which may be inundated with USSR refugees in the near future; governments of countries resettling refugees (such as the U.S. and Canada); agencies responsible for refugee status determination; organizations providing aid to refugees (including United Nations High Commission for Refugees and numerous non-governmental organizations); academic researchers; and people generally concerned about refugee issues and specifically concerned about Soviet refugees.

**Volume 1, Number 1:** The first issue, to be published this Fall 1991, looks at the antisemitism that has surfaced under Gorbachev. Other forthcoming issues will focus on specific regions and ethnic conflicts arising in the USSR, and the problems of Jews under new conditions of emerging independent states.

**Context:** As the Soviet empire unravels, ethnic conflicts escalate. Decolonization entails redefinition of territorial boundaries. Historically, boundaries between republics were drawn arbitrarily, separating existing ethnic populations and their territories. Today, the formation of sovereign states in the Baltic, Central Asia, Caucasus, Ukraine and other parts of what has been the Soviet Union, will likely be accompanied by border disputes. Autonomous regions within the republics will likely demand their independence also, and it is unlikely the emerging states will be willing to cede it.

Another consequence of decolonization is the resurgence of ethnic identities, often carrying nationalist overtones. New democratic forces coming to power are not devoid of nationalist sentiments. As these republics gain independence, nationalism could escalate and repression of ethnic minorities living in the

# Announcing

# Soviet Refugee Monitor

territories result. A backlash against Russian people could result from a history of reverse discrimination. Thousands of Russians have already been returning to

their ancestral lands, and this movement is likely to increase as more republics gain independence.

The arrival of masses of Russians to their federation, forced to flee because of ethnic discrimination against them, will probably reinforce Russian nationalism, which is already strong in the Russian Federation. Under conditions of the growing nationalism, antisemitism and repression of other ethnic minorities are likely to gain strength.

Jews are widely dispersed throughout the USSR. Except for the Jewish Autonomous Republic, they constitute an ethnic minority in every region. They may experience more discrimination as nationalists gain control.

Ethnic clashes within newly established states and territorial disputes between them, may in some cases escalate into full-blown civil war. These conflicts will produce victims. Masses of people will become refugees. Some of them will repatriate to their titular states, but others will move westward. This move will challenge Western countries to prepare for mass movements of people from these territories. In addition to ethnic conflicts, political confrontations between various parties and movements may add to the total number of refugees. These people are the focus of this publication.

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# NGO Visit to Vietnam, 14-21 May 1991

## *Observations and Comments*

### 1. Introduction

A team of six representatives from non-governmental organizations (NGOs) in the United States, Canada and Australia visited Vietnam from 14 to 21 May 1991, to assess the situation of people who have returned under the voluntary repatriation program established by the Comprehensive Plan of Action (CPA) for Indochinese refugees.

The visit took place following the May 1991 meeting of the Steering Committee of the Comprehensive Plan of Action in which governments made a renewed and stronger commitment to the plan.

The team visited Bangkok (Phanat Nikhom), Hanoi, Hai Phong, Hong Gai in the province of Quang Ninh and Ho Chi Minh City, with one representative going to visit Kuala Lumpur and four visiting the refugee camps in Hong Kong.

The team is grateful for the assistance provided by UNHCR for arranging our program; to the various Ministries of the Government of the Socialist Republic of Vietnam (SRV) for their hospitality and briefings; and to the Peoples Committees in Hanoi, Hai Phong, Quang Ninh and Ho Chi Minh City for their hospitality and assistance. In particular, the team thanks all the returnees who spontaneously granted us interviews and answered our questions.

Those among the team who had previously visited Vietnam, remarked how they were surprised and impressed with the considerable progress the country was making toward becoming a more open society.

We sensed a strong desire amongst the people to see further progress towards a free and open society. Private entrepreneurship is vigorous and there is evidence of economic buoy-

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ancy that is nurturing the increase in personal freedom.

We experienced unhindered access to the people with whom we wished to talk and freedom to ask any questions with or without the presence of government representatives. On several occasions we selected returnees and met with them without the presence of either government or UNHCR officials.

### 2. Departures

In our conversations with the returnees we heard that people had left Vietnam for a variety of reasons, none of which were political persecution.

### 3. Screening

Most of the returnees we interviewed said they were not aware of the screening process before their departures. After learning of the screening process and conditions necessary to be granted refugee status, many did not think they had a sufficient claim to be "screened in" and thus chose to return to Vietnam before screening.

### 4. Returning

In our interviews with returnees and discussions with a variety of sources (international NGO staff, diplomats, journalists, European Community (E.C.) and UNHCR officials) we heard no evidence that returnees suffer harassment, maltreatment or discrimination on return.

We have concluded that UNHCR and SRV are complying in good faith with the terms of the Memorandum of Understanding between SRV and UNHCR (13 December 1988) which provides for the voluntary return from countries of first asylum in conditions of safety and dignity.

The departure of several family groups or groups of close friends appear to have been organized by the head of the household or a "leader" within the group. To facilitate further voluntary return, it is important that no action be taken by Vietnamese authorities against such family group organizers of illegal departures who have no previous criminal record.

Similarly, voluntary return will be encouraged by consistent and generous restoration of confiscated property to returning previous owners.

### 5. Monitoring

It is clear that there is an informal and effective network for communication in Vietnam and with the international Vietnamese refugee community. News travels fast and travels with ease to all parts of the world.

Monitoring occurs in this context and must be seen in this context. Not all returnees are visited on a systematic and regular basis but rather on a random basis.

The increasing presence of international NGO staff in both urban and rural areas contributes to the increased

flow of information and thus enhances the confidence in the monitoring process.

Given available resources, we are satisfied that UNHCR is adequately fulfilling its monitoring responsibilities in Vietnam.

## 6. Resources

We regret that CPA donor governments have been slow in making their pledged contributions for 1991. The result is that returnees have had to wait for up to three months for their first quarterly payment of their return assistance. This is an unacceptable delay considering that these people, by-and-large, return with nothing.

Payment to returnees must be made promptly or the process is put at risk. Donor governments must ensure that necessary funds are available as required.

As numbers increase it is incumbent on governments to make available the necessary resources to the UNHCR in a timely manner to ensure payment for all aspects of the plan is forthcoming.

We express appreciation for the U.S. Government's speedy contribution to the CPA, but urge the U.S. to revise its policies to allow its contributions to be spent in Vietnam.

## 7. European Community Program

We were impressed with the sense of urgency the Program Director showed in discussions on progress made in implementing the E.C. program of assistance. We welcome the substantial NGO involvement in the implementation of the program.

We note in particular that 60 percent of available loan funds are for non-returnees thereby indicating that it is not necessary to leave Vietnam and be returned to access these funds.

## 8. Information and Communication

Ready access to accurate information remains the critical need for effective implementation of the CPA. Rumours inspire people to leave, cause people to fear return and in some cases lead

# It is time to allow and encourage Vietnam to participate fully in the international community with all the concomitant rights and responsibilities of states with progressive realization of human rights

people to choose to return. Rumours hinder a speedy and fair process.

All interested parties must ensure that accurate and up-to-date information is more readily available.

The communication procedures must be better organized. More resources and greater attention must be applied to this issue both in the camps in countries of asylum (through counselling and other programs), as well as in Vietnam and internationally.

## 9. Orderly Departure Program (Family Reunion)

We met the U.S. Orderly Departure Program interview team in Ho Chi Minh City. It has begun processing at an increased rate. Persons with close relatives in the U.S. (or in similar programs for Australia, Canada and Europe) can seek to immigrate directly from Vietnam. This program is increasingly becoming a viable alternative for eligible persons wishing to leave.

## 10. Development

At the heart of the human tragedy that has seen thousands of Vietnamese leave on unsafe boats in search of a better future is the combination of social, economic and political conditions in Vietnam and the constraints stopping development assistance

from the International Monetary Fund (IMF), World Bank and major Western donor governments. It is deeply regrettable that Vietnam's participation in the global economy continues to be hampered because of difficulties in its bilateral relationship with the United States. Vietnam needs and wants development assistance.

It is time to allow and encourage Vietnam to participate fully in the international community with all the concomitant rights and responsibilities of states with progressive realization of human rights. We urge our NGO colleagues to support and advocate the necessary policy changes.

## 11. Visits

We note the openness of the Government of the Socialist Republic of Vietnam to receive additional delegations and we encourage other concerned individuals and groups to visit Vietnam to experience the situation firsthand.

## 12. Trust

In conclusion, we wish to pay tribute to the UNHCR officials we met who are responsible for the implementation of this program. We were impressed by their dedication and integrity, in spite of the difficult circumstances in which they sometimes work.

We believe that further cooperation between the UNHCR and NGOs will consolidate the trust that the international community has placed in the UNHCR.

*This report was prepared by Le Xuan Khoa, President, Indochina Resource Action Centre, Washington; Burgess Carr, Executive Director, Episcopal Migration Ministries, New York; Dale de Haan, Executive Director, Immigration and Refugee Program, Church World Service, New York; Ralston Deffenbaugh, Lutheran Immigration and Refugee Services, New York; Tom Clark, Coordinator, Interchurch Committee for Refugees, Toronto; and Russell Rollason, Executive Director, Australian Council for Overseas Aid, Canberra.*

# The U.N. Comprehensive Plan of Action

*A Report by Tom Clark, Coordinator, ICCR*

I was the Canadian on a six-member team of U.S., Canadian and Australian non-governmental organizations (NGOs) that visited Vietnam, Thailand and Hong Kong 14-21 May 1991. The team included: **Le Xuan Khoa**, Indochina Resource Action Center, Washington; **Burgess Carr**, Episcopal Migration Ministries, New York; **Dale de Haan**, Immigration Refugee Program, Church World Service, New York; **Ralston Deffenbaugh**, Lutheran Immigration and Refugee Services, New York; **Tom Clark**, Inter-Church Committee for Refugees, Toronto; **Russell Rollason**, Australian Council for Overseas Aid, Canberra.

The trip followed a renewed and stronger commitment issued by the Steering Committee for the U.N. Comprehensive Plan of Action on 30 April 1991. With the team, I was able to examine aspects of the Plan, especially regarding:

- the safety and dignity of voluntary return to Vietnam;
- the discouragement of clandestine departures from Vietnam;
- the conditions of detention in Hong Kong; and
- the fairness of the Screening procedures in Thailand and Hong Kong which decide whether Vietnamese are refugees to be resettled in the West.

In Thailand, the team visited Bangkok airport departures and Phanat Nikhom processing. The planned trip to witness screening at Sikhui was cancelled because UNHCR feared a riot. The team met U.S. and Australian consular officials. I was able to meet UNHCR staff responsible for screening training and review. I also had a breakfast meeting with the Canadian NGO link. In Vietnam, the

team visited Hanoi, Hai Phong, Hong Gai in Quang Ninh and Ho Chi Minh City. We met NGOs, peoples committees, the British first Under-Secretary and Australian Ambassador in Hanoi, and numerous returned Vietnamese in Hai Phong, Hong Gai and Ho Chi Minh city.

I continued with some of the team to Hong Kong where I met an NGO group over breakfast and had an extensive discussion with the UNHCR team. My colleagues continued to visit two detention camps and to meet with the government officials responsible. One member went on to Cambodia. Another went on to Kuala Lumpur.

The Steering Committee report of 30 April 1991 called for an NGO visit. Our visit was coordinated by the UNHCR with cooperation from authorities in Thailand, Vietnam and Hong Kong. My thanks to officials and returnees who gave interviews and answered questions.

## Voluntary Return

Reasons for return were hard to get from interviews, whether at Bangkok airport, in Phanat Nikhom camp Thailand or back in Vietnam. Some had been screened out and some had not yet been screened. Most had not been in camps a long time. Many seemed to have travelled in 1989 and returned during 1990.

It is an observation not a criticism that people returning seemed sad and lethargic in Bangkok airport. UNHCR said there were camp farewell parties. Return from a camp community is not an easy thing. The human aspects of return and all the dynamics of the camp conditions are critical factors. My NGO contact in Thailand said people would go back with "no objec-

tion" if told to, but were unlikely to volunteer to return. It was a kind of face-saving.

The camp conditions contribute to difficulties in voluntary return. There had been protests in Phanat Nikhom with reports of two dead in an incident 3 March 1991. A further death was reported in the press during my return. In the camp, UNHCR had a video about conditions in Vietnam and a room of magazines and newspapers from Vietnam. There was a room for signing up for voluntary return. This is where interviewing began. On one occasion I went outside with my interpreter and was surrounded by a crowd. Almost none had heard of the CPA or had expected screening when they left. Most were apprehensive about screening: "I have a relative — will I go?"; "I was in the army in the South, will I go?" Obviously, reflection and objective decision making are difficult in Phanat Nikhom.

I left for Canada before the visit to the detention camps in Hong Kong. However, they have been described on many occasions and such descriptions were updated at our meeting with UNHCR, Hong Kong. The frenzy of uncertainty seems worse in Hong Kong than in Thailand. The camps in both countries have self-armed vigilante gangs. UNHCR pointed out that in a camp situation police activity, such as arrest of criminal elements and trial with witnesses, becomes a legal nightmare. From both Thailand and Hong Kong I got a sense of camp solidarity behind the fantasy of attaining resettlement in the West — even after screening. UNHCR conceded that flaws in the screening process were an opening for NGOs opposing return to argue against it. Observers felt organized camp oppo-

sition to return developed around the few large scale criminal organizers who would have to face prosecution if returned to Vietnam. Paradoxically, it seems the closed camps are places that block the kind of individual reflection and frank counselling which could lead to voluntary return. A Hong Kong NGO confided that efforts at forced return would lead to riots and bloodshed. The British Under-Secretary in Hanoi said that if people wished to end their self-inflicted misery in Hong Kong they could always leave. In practice this is not so. Not only are the camps a monumental assault on human rights and decency, but they breed conditions that defeat the intended goal of voluntary return.

There is a logistical side to return. The Vietnamese department of immigration, which we met in Hanoi, sends immigration officers to the camps to interview volunteers for return. They prepare the dossier for the return to their point of departure. There are also medical checks. It struck me how similar the process was to interviews by Canadian officials for immigration to Canada.

### Safety in Return

In our interview with returnees, international NGO staff, diplomats, foreign journalists, European Community (E.C.) and UNHCR staff, we heard no evidence to indicate returnees suffer harassment, maltreatment or discrimination. The Vietnamese Government at national and peoples committee levels supports return with safety and dignity. To my surprise, there was no visible signs of resentment from family or friends towards the returnees. Perhaps because the pattern of seeking opportunity elsewhere is taken for granted. Vietnam is willing and able to assure returnees' basic rights.

Those who had visited Vietnam before were surprised by the considerable progress made towards a more open society. People bustled around, freely moving around the country and

visiting friends. Small retail businesses abound. Around Hanoi there were houses being built along the roadside in what appeared to be small private farms. We sensed a desire for further progress towards a free and open society. I heard reports of odd human rights violations — a writer had been detained and a Baptist clergyman harassed for trying to start social programs. The courts are not developed, there is no independent judiciary, there is no recourse for rights violations. However, there is now a criminal code. There was less visible sign of police than I have seen in Mexico. There was no sense of fear such as I have felt in El Salvador. I had written letters of concern to the Canadian Government about return to Somalia and Sri Lanka before leaving on this trip. Vietnam is in a different league. Not everyone, however, returns to Vietnam without penalty. The Vice-Chair of Hai Phong refugee committee told us that those associated with large scale clandestine departures had been prosecuted. Those who were involved returned knowing they faced prosecution. The penalties seem to be up to three years in prison. There was one death penalty of a person whom UNHCR said was associated with seven deaths.

My confidence in safe return was enhanced by the monitoring of those returned. True, UNHCR cannot forever ensure the safety of all returnees. UNHCR tries to do checks on a random basis. Almost all returnees knew how to get hold of UNHCR. Some had done so on financial matters. The random checking can be impressive — in one area 80 percent had been visited. However, there is more protection than UNHCR's. There is an informal network, which ensures word gets out internationally. Indeed, the danger in ensuring information about an event is accurate. The increasing presence of international NGO staff in both urban and rural areas contributes to the flow of information and enhances confidence in the formal monitoring process.

There was not a sense that visits were orchestrated. Rather, we were

making calls on our own selection of cases. True, a check to ensure people would be at home had been made in some cases. We were able to visit and talk freely with returnees with or without government or UNHCR staff present. A visit the last day in Ho Chi Minh city impressed me. Our member of the U.S. Vietnamese community, Le Quam Khoa, took us to the Ministry of Labour, asked for and was given the file of cases pending, and selected an important profile. We set off for an impromptu visit with two Ministry of Labour counsellors. The address was a cousin's house — the person had moved. The cousin, however, offered to take us to the new address nearby. After a few friendly tips from neighbours, we arrived. The man was sick — medical assistance from UNHCR was pending. Donor governments had been slow to give funds to UNHCR we told him. He was an officer from the Cambodian campaign who had deserted the army. He had left for Thailand with his wife and child. He had been screened out. Perhaps he should have been screened in. What happened when he got back? He had to go to the police station the next day. There he received amnesty. Lacking the promised UNHCR monthly payments of \$30 U.S., he went to protest at the Ministry of Labour. The Ministry phoned UNHCR for a letter promising the funds and then advanced them. We told the returnee of the E.C. Assistance Program and vocational training opportunities. In impromptu encounters of this sort, there was no sense of fear or resentment of us or the Ministry of Labour staff who were with us. The relatives, neighbours and family seemed friendly and relaxed.

Payments to the returnees go from UNHCR to the Ministry of Labour, which distributes it to the provinces. By-and-large this internal distribution seems to work. Most people we interviewed had received their money. Some had had to pay back loans or debts. Some had invested the money in things like a new fishing boat — Hong Kong had burned the old ones in its routine boat burning. There are

one time payments for medical and establishment costs, and a monthly \$30 payment for the first year. This reminded me of refugee resettlement in Canada. The main problem has been getting money from donor governments to UNHCR, which had been late with payments to the Ministry of Labour between November 1990 and May 1991. Such a delay leads to rumours of broken promises, which can hurt the return process.

If departure is from lack of opportunity, the E.C. program is one small measure to help deal with that while facilitating return with dignity. The program will build up infrastructure in vocational training for such skills as hairdressing, motor cycle repair, computer and English and French language. It will provide loans for a range of new business formations. Sixty percent of the loan funds are for non-returnees. We were impressed by the scope of the program and by the sense of urgency the Program Director in Hanoi showed in discussions on progress. We welcomed the substantial NGO involvement in the implementation of the program.

### Clandestine Departures

Departures for Hong Kong began increasing again in early 1991 while departures for Thailand and elsewhere have fallen. Several officials, the Vice Chair of the Peoples Committee of Hang Ninh Province told us Vietnam had a responsibility for these people. The prosecution of some criminal elements associated with organized departures was a sign of this. Also, the government, with UNHCR, has used radio and TV to discourage departure. Members of our team appeared on TV to explain the CPA in Hong Gai. However, NGOs did not think the UNHCR media efforts had reached many people to date. Certainly, those in Phanat Nikhom, Thailand, were unaware of screening and the CPA when they left Vietnam. However, departure seems to be caused by several factors mainly outside the control of Vietnam.

The local Vietnamese officials mentioned these factors affecting departure: the economy is undergoing transformation; the beginnings of market economy have caused job dislocations; the country is poor as a result of economic isolation from the West and the collapse of the economy of the East; and troops have been brought back from Cambodia. Some energy and small scale construction had been visibly released in the North by the agricultural reforms. We could see coal export in the North and signs of manufacturing in the South. However, officials reported a poor harvest. The E.C. and other development and trade programs are therefore critical to facilitate successful return into this uncertain economic climate. However, poverty alone was not the single answer to clandestine departure.

We were able to visit the U.S. orderly departure program in Ho Chi Minh city. NGOs reported a history of harmful shifting definitions of eligibility. It seems that this program and the family reunification programs of Australia and Canada are now working more effectively to allow eligible family members to immigrate directly from Vietnam. The U.S. anticipates 10,000 per month for at least two years. There is less need for these persons to flee the country to seek resettlement. However, in Phanat Nikhom, several Vietnamese asked me about joining their relatives. They are not being screened in from the camps in Thailand unless they are a spouse or child of a resettled refugee. They would have to return to Vietnam before they could be processed.

The arrivals in Hong Kong are the object of newspaper articles and editorials. UNHCR said Hong Kong has set limits on the numbers it can take in detention centers. They had about 53,000 people when I was there. The capacity was said to be 58,000. UNHCR gave the impression of siege with prospects of public protest around the upcoming Hong Kong elections. I pointed out that Hong Kong had agreed to a treaty, the CPA, and how it handled its internal political matters was its responsibility. I

understand the U.N. Human Rights Committee recently examined the U.K. under article 40 of the Covenant on Civil and Political Rights. The treatment of aliens in Hong Kong featured prominently. From my fleeting encounter with a local NGO group, the appalling conditions of detention seemed to be the key issue. They want a way of getting these human beings out of counter-productive detention. The situation for children is especially cruel. In any event, new arrivals are presented as a massive problem for Hong Kong.

NGOs, Vietnamese officials, foreign diplomats in Vietnam and Thailand, and UNHCR officials all reported the dramatic effect on departures because of rumours from outside Vietnam. In particular, they almost all reported how a U.S. Congressman's suggestion of using Vietnamese labour in Kuwait correlated with a surge in arrivals in Hong Kong. In our interviews we asked if people would depart again and if they knew of people who would take them. On several occasions neighbours nodded when we asked if they knew of people who would take them. I got the impression of a pattern of departure. The rumor is the trigger. Paradoxically, Canada, Australia, France, Hong Kong and Thailand have a big say in clandestine departures and these governments must assume responsibility for the rumours and the departures they cause. In this respect, Canadian Prime Minister Brian Mulroney's comments of the week beginning 20 May 1991 in favour of increased resettlement from Hong Kong could have led to increased departures from Vietnam undermining the CPA agreement.

### Screening Procedures

The NGOs consulted in Hong Kong and in Thailand did not feel that screening was the most pressing issue. The UNHCR team in Hong Kong agreed with my proposition that flaws in the screening had added to the uncertainties of persons screened out and made voluntary return more dif-



difficult. The Steering Committee meeting of April 30 1991 had decided to try to improve the screening procedures. I did talk to the UNHCR officials in Thailand. I was assigned a UNHCR interpreter in Phanat Nikhom camp. I spoke to NGOs in Thailand. I was aware of court cases in Hong Kong.

When a human right such as the right to asylum is at issue, a fair and public hearing before independent decision makers is required. In Thailand, a cohort of government officials with graduate educational levels are trained according to the UNHCR Handbook to apply the Convention. This is not consistent with the concept of independent decision making. UNHCR has the job of acting as a kind of appeal body, reading the transcripts in Thai. However, the UNHCR staff person is not technically an independent decision maker either. From my cursory discussions, it seems the Convention Refugee definition is being applied in accordance with the Universal Declaration and regional

instruments as the CPA requires. No one denied the possibility of bribery, as a magazine reporter had alleged, but UNHCR argued it could not be widespread or the success rate would be much higher! The sort of cases protected are those who have been in re-education or with links to the military. The definition is applied as of the time of departure from Vietnam. I was told Thai interpreters have a bias against Vietnamese and I was not happy with the approach my interpreter in the camp took. UNHCR told me somewhat coolly that court action like that which took place in Hong Kong was unlikely in Thailand. I wonder why?

Clearly the screening is erratic. As a tool for voluntary return or even "no objection" return, the asylum granting approach is acceptable given the consequence of error. After all, this is not return to the conflict of Sri Lanka, the death squads of Guatemala, or the military chaos of Somalia. The army deserter we interviewed in Ho Chi

Minh city was likely screened out in error, yet the consequence was not life threatening. However, the screening would have to be much improved when the prospect of the forcible return of a mistakenly screened out refugee could be at issue.

### Conclusion

The CPA must not be forgotten. Here is a potential solution to a problem for many refugees in this region. I was satisfied Vietnam was complying in good faith with the CPA agreements. I was uneasy about the compliance of other parties. Alternatives to the closed camp deterrence approach must be found if voluntary return is to be significantly increased. Vietnam must be included in the international instruments for human rights development and trade to turn around the present routine adventure of clandestine departure.

*Tom Clark is Coordinator of the Inter-church Committee for Refugees in Toronto, Ontario.*

## Invitational Workshops\*

### HUMANITARIAN INTERVENTION

The emergence of a novel international practice for securing the safety of persons within a particular state or region (eg., the case of the Kurds) has motivated the need for a new framework of analysis, where state self-interests are not the ultimate rationale.

**Partners:** CRS and YCISS

**Place:** York University

**Date:** 5 November 1991

**Contact:** Farhana Mather (416) 736-5663

### PHASE II:

### TOWARDS A PRACTICAL EARLY WARNING SYSTEM: REFUGEES AND DISPLACED PERSONS

The ability to anticipate refugee flows and develop practical implementation plans for early warning systems is the subject of this workshop, now in its second phase of discussions.

**Place:** King City, Ontario

**Date:** 5, 6, 7, 8 November 1991

**Contact:** Farhana Mather (416) 736-5663

\* Attendance at the above workshops is by invitation only.

## Forthcoming Seminar\*

### MORAL HEROISM

Harry Crowe Memorial Lecture Series

Guest Lecturer – Professor Stephen Katz, Cornell University

The 1991 Lecture Series, "On Moral Heroism," takes as its theme the example of non-Jews helping Jews at the risk of endangering their own lives. Lecture topics include the Holocaust, and case studies of individual acts of moral heroism.

**Place:** Osgoode Hall, York University

**Date:** 27, 28, 29 October 1991

**Contact:** Farhana Mather (416) 736-5663

\*The Lecture Series is open to the public.

**The International Law and Practice of Early-Warning and Preventive Diplomacy: The Emerging Global Watch**

B.G. Ramcharan. Dordrecht, The Netherlands: Martinus Nijhoff Publishers, 1991

*Reviewed by Howard Adelman*

Terrorists, drug traffickers, environmental abusers, violators of human rights — beware! Now that the Cold War is over, the CIA, MI5 and KGB won't be competing with one another. Instead, they are going to delegate their major responsibilities for security to the United Nations. Henceforth, the U.N. will be invested with the responsibility of preventing political conflict as well as dealing with humanitarian emergencies. Partnership and cooperation are to replace Cold War posturing and competition. What billions — nay, trillions — spent on weapons and armies could not accomplish, millions spent on preventive diplomacy will.

There has always been a dream that if we have sufficient knowledge and foresight and marry that knowledge to the proper political weapons, the evil dragons that threaten our civilized system can be destroyed. Now that the evil dragon of communism has vanished into a puff of smoke in Eastern Europe, and transmogrified into a toothy but increasingly decrepit dragon trotted out to puff smoke and fire on its own people at Chinese demonstrations, we can go back to our older mythological dragons as the sources of villainy and the targets of our intelligence services — aliens who take on the shape and form of our friends and neighbours but are out to terrorize us, witches in disguise offering drugs from their cauldrons as if they were sweet apples, giants who trample our forests, empty our streams and pollute the environs, and monsters who tie us up and torture and dismember our bodies.

Though this book on early warning systems (EWS) strikes a pose as a method of tracing dragons to their lairs, it is really about humans. Its aim is to develop an early warning system to detect a totally different “menace” — the immanent mass flow of refugees as a result of natural, but primarily, human-made disasters.

There is one key that prevents this from happening. When the major threats to international peace and order come not from the rivalry between different materialist religions, but from the tensions and stresses within autonomous states, the goal of the intelligence has to involve knowledge leading to action, which will intervene in the rights of such states to determine their own destinies, for evil or good. The question is whether the development of such an international intelligence system, and its corollary interventionist political instruments, will pose the same dangers to states' rights to self-determination as the development of the state intelligence systems posed to individual rights. Or is the sacrifice of state autonomy really the final step in preserving and enhancing the protection of fundamental freedoms?

This, and many other issues, are *not* addressed in Ramcharan's book. He has written a recipe for expanding the U.N. intelligence gathering and early warning system without exploring whether the cake to be baked is good for our health or whether alternative recipes for other cakes might be tastier or healthier, or whether the ingredients are available to bake the cake he has proposed. Ramcharan has written a self-advertisement for the Office for Research and Collection of Information of the United Nations (ORCI). As advertisement copy it lacks pizzazz. As program notes, the recipe is iffy. Its great benefit is that we at least have a proposal on the table for debate.

Ramcharan begins by explaining that the conditions are ripe for cake baking. International law has been codified and vastly expanded into a universal system to advance the new world order of values dedicated to

protecting individual rights and improving the human condition, instead of remaining a merely regulatory system of rules mutually agreed to by consenting states. Security threats have become both more localized and global. The Colombian drug cartels, the Burmese opium farmers, those who destroy the forests of Brazil and follow the Western path of industrialization by dumping even more toxins into the environment — these are the new threats to our security. Iraq's suppression of the Kurds cannot and did not remain a local problem. The modern media allow the world to see a crisis as it develops. Contemporary modes of transportation permit a crisis to spill across the world in mass migration flows. Like an erupting volcano spewing fire and ash, the immediate environment may be turned into a moonscape, but the weather system of the entire earth is affected.

In addition to the internationalization of both threats and the systems of law to counter those threats, the new religious order has invested in its pope, modestly still called a Secretary-General, the military forces to enforce the peace, the task of keeping the peace and settling disputes. More recently, the U.N. General Assembly has given their Pontiff a mechanism for intelligence gathering to serve those tasks. Since he has already developed a plethora of instruments — fact-finding, observing elections, the use of good offices to settle disputes through diplomacy and a posture as an international leader — the only issue that remains is the recipe's improvement, required to bake a better cake for international order. The system must be strengthened and improved by developing an intelligence gathering system as the key to preventing disputes from blowing up into full-blown crises and to handle any humanitarian emergencies that result.

On what policies and principles does this expansion of early warning depend? First, on the presumption that an EWS is needed. But is there any such agreement? It depends on the purpose for which it is designed. Be-

CANADA'S PERIODICAL ON REFUGEES  
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fore we develop an early warning system, we must be clear about whether it is intended to create and enhance a new world order with common universal values or whether its goals are much more modest — to prevent, where possible, and limit the damage when crises occur. Though there may be agreement about an EWS for the latter, and Ramcharan frequently posits this modest goal as the function of an EWS — to prevent and mitigate problems — he also implies that an EWS will serve a positive role in creating a system in which the protection of individual rights will be guaranteed.

This ambiguity about the function of an EWS and the presumption of its possible service in creating a new moral order is complemented by the institutional role of the U.N. envisioned as the harmonizer of activities “for the attainment of common ends.” The fact that the book lacks any exposition of the well-known inability of the U.N. to even bring some coherence to the many fiefdoms that constitute its organization or create common standards for reporting or sharing information within its own institutional labyrinth, makes any proposal that the U.N. will harmonize the actions of nations seem presumptuous to say the least.

The third policy proposition is the most disingenuous of all. What seems rhetorically winning — avoid cloak

and dagger intelligence gathering in favour of sources and methods that are matters of public knowledge — is not only undercut by the suggestion that the results and operations they lead to may be kept from public view, but would also be the basis for limiting involvement of any state, international organization or even the various U.N. agencies themselves. Will the UNHCR share information with a central authority if its sources and analysis are to be made public? Will the International Red Cross? Of course not. They have enough questions about the ethics of sharing with overtly political institutions the information they necessarily gather and the analysis they must make to fulfill their own humanitarian functions, without the threat that their sources and methods will be made public in the naive faith that openness is the best policy. Yet ORCI has no other means of gathering intelligence. These organizations are in the field. They already have extensive sources of information. But if it is to be used not just to put out fires but possibly to create a “higher” value system, and if the sources and methods are to be made public, why would these humanitarian organizations include their reports in an EWS, let alone harmonize their techniques of reporting, measurement and evaluation? And if these U.N. and other international organizations fail to cooperate, why would nations? The

result will follow the pattern of state intelligence networks, which begin with high-born goals about centralization and harmonization of information from existing intelligence organizations (the roots of the CIA after the war) and then “discover” that to be effective their own specialized intelligence network is required.

The book does not live up to its own strictures about realism, pragmatism and modesty. It is too U.N.- and Secretary-General-centred a treatise for most of us engaged in the enormously difficult task of sharing information and creating a common signal system, the essential ingredients for an EWS with the most modest of goals. But at least someone has offered a formula for beginning the task of baking.

The first thing that must be recognized is that there will be many recipes, many cooks and many consumers. What we need at this stage is far more modest than anything Ramcharan describes — a common reference system of measurement and taste and a willingness to tell each other what we know in the manner most appropriate to those who have the knowledge. ORCI should envision itself as a contributing cook rather than the master baker.

*Howard Adelman is the Director of the Centre for Refugee Studies and Professor of Philosophy at York University.*