CANADA'S PERIODICAL ON REFUGEES

# REFUGE

Vol. 7, No. 3 March 1988

CRISIS IN NORTH AMERICA: PART III

# Legal Perspectives

## The Need for a Formal Safe Haven Remedy in the United States

*Arthur C. Helton*

Salvadoran President Jose Napoleon Duarte requested recently that the United States refrain from deporting as many as 500,000 undocumented Salvadorans currently living in the United States. Duarte cited the disastrous effect such an action would have on El Salvador's economy, since $350 million to $600 million is remitted home each year by Salvadorans living in the U.S. Duarte's plea, however, is only the first demonstration of the need now for a formal policy on the issue of temporary safe haven in the United States.

The new United States immigration law, the Immigration Reform and Control Act of 1986 (IRCA), has forced a gap in the protection of those foreign nationals who have fled to the United States to escape civil war and natural disaster in their homelands. These individuals are in desperate need of protection because, under current U.S. law, foreign nationals are only entitled to protection and refuge in the United States if they satisfy the statutory definition of "refugee," which required a showing of individualized persecution. This limited definition leaves unprotected aliens who are unable to prove such persecution, and who are thus dependent for protection on the discretion of the Executive.

The vulnerability of this group has been magnified by the employment controls of the law, which place severe sanctions on employers who knowingly hire undocumented workers; IRCA thus substantially narrows the employment options of unauthorized aliens and their ability to subsist and remain in this country. The effects of the law are being felt even before full implementation; for example, undocumented aliens have been fired from their jobs and larger numbers of Salvadorans have moved north to seek refuge in Canada. The passage of IRCA therefore creates a need for greater and more certain protection for aliens who do not qualify as refugees, but who cannot safely return to their country of origin because of civil war, generalized conditions of violence, or natural disaster.

A Temporary Safe Haven Act of 1987, H.R. 2922, has been proposed in the House of Representatives to fill the gap, although it too requires some adjustment if it is to fit it into a comprehensive approach to refugee policy. Certain Salvadorans and Nicaraguans fleeing civil war in their homelands will be covered by the proposed Moakley-DeConcini bills, which if enacted, would provide a good first step toward a comprehensive policy. Ultimately, generic legislation will be needed.

### Current U.S. Law

Current law provides aliens in the United States with three principal mechanisms through which they can avoid deportation and seek to remain in the United States. These mechanisms are asylum, withholding of deportation and the exercise of discretion by the immigration authorities on a case-by-case basis.

An alien must satisfy the statutory

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## Apology

Due to a printing error in Volume 7, No. 2. the footnotes were omitted in the article "Effective Advocacy: A Legacy." We regret any embarrassment this may have caused the authors. In sequence, the references were as follows: (1) Letter from Ray Brubacher, Mennonite Central Committee Canada. Winnipeg, August 14, 1987; (2) Freda Hawkins. *Canada and Immigration: Public Policy and Public Concern*. Montreal: McGill-Queen's University Press. 1972:72-93; (3) Gerald Dirks. "The Canadian Rescue Effort: The Few Who Cared." *The Canadian Jewish Mosaic*. Toronto: John Wiley & Sons, 1981:77,78; Howard Adelman, quoting Fritz Stern, during an address to the Canadian Human Rights Foundation Conference, Montreal, November 1987.

CANADA'S PERIODICAL ON REFUGEES

REFUGE

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*Refuge* is dedicated to the encouragement of assistance to refugees by providing a forum for sharing information and opinion on Canadian and international issues pertaining to refugees. It is published four times a year by the Refugee Documentation Project. It is a non-profit, independent periodical supported by private donations and by subscriptions. It is a forum for discussion, and the views expressed do not necessarily reflect those of its funders or staff.



Subscription rates for one year are $20.00 in Canada and US $25.00 overseas. Please enclose payment with your order.

*Logo design:*
Dreadnaught Co-operative Inc.
Toronto.

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Second Class Mail Registration No. 5512 ISSN 0229-5113

# EDITORIAL:

# Going into Limbo

Hidden somewhere in Calgary, Alberta at the recent Winter Olympics there was a red telephone. If you dialed its number, the keys to the country could have been yours. At least, if you were an Olympic athlete from the East Bloc. And if the immigration official at the other end of the line had been inclined to lend a sympathetic ear.

The provision of special facilities for "defectors" looks inconsistent with the broadly based crackdown on access to Canadian asylum procedures which the Government is actively pushing through Parliament at the present time. In fact, it is simply the latest manifestation of a long-standing adherence to double standards in the reception given to those seeking protection. Whether in Canada or overseas, our refugee policy has been designed to maximize the scope for discretion.

And what discretion means here is the freedom to interpose political, economic, and other concerns between the refugee and his or her needs. Hot lines for defectors are acceptable because scoring ideological points is still dear to the hearts of those who believe that free-ranging administrative discretions alone will secure our national interests. Spontaneous asylum-seekers, on the other hand, trigger the operation of procedural and substantive rules derived from international and domestic law, which frequently demand that appropriate recognition be given to the needs of the refugee.

Canada is not alone. Virtually every Western nation has adopted or is in the process of adopting legislation or administrative practices which put the emphasis on discretion. Access to asylum procedures is increasingly restricted by the operation of visa controls and the ever-present threat of penalties for airlines that bring "unacceptable" asylum-seekers to their territories. Fewer and fewer refugees are treated in accordance with the guarantees of the Refugee Convention and Protocol. Instead, they are relegated to sub-categories of indeterminate duration with few, if any, rights; they may not be expelled but if they are allowed to remain they have no status, no permission to work, no access to welfare assistance programs, and no prospect for reunification with their families. EVD status in the United States, and institutionalized B-status in the Netherlands, Sweden, and some other European countries are more humane alternatives, but still arguably avoid the necessity to comply with more stringent international guarantees.

Why this resurgence of discretion? Why are states so keen to avoid international scrutiny of their protection decisions?

Because free trade in people is not as popular as free trade in products. Refugee protection is no longer a closed club in which the West can look after its own with little fear of criticism. Developing states which are frequently called upon to afford first asylum are only too well aware of their own disproportionately large contributions to meeting international obligations. While the Refugee Convention may have been conceived to resolve a strictly European problem, the majority of the 104 states which have adhered to the protection scheme may now see that some of their needs are met by promoting the kind of South-North movements of concern to developed states. The existing international refugee protection machinery seems to limit the discretion of the North to deal as it wills with this phenomenon. Hence, the flight away from conformity with commonly agreed international norms.

If the new Canadian refugee laws go through, a recent government memorandum predicted that the majority of applicants for refugee status would never get beyond the first hurdle: the so-called "pre-screening" process. With most of the unsolicited asylum claims thereby disposed of, the Government will be free to focus its "refugee" protection efforts on persons it chooses to admit, largely through selection efforts abroad. We can then rest safely, knowing that only healthy, productive, and politically correct refugees will be allowed in, humanitarian needs, or the lack of them, notwithstanding.

## Safe Haven Remedy ...

*Cont'd from page 1*

definition of "refugee" under the Refugee Act of 1980, with an individual showing of a "well-founded fear of persecution , in order to be eligible for either asylum or withholding of deportation, while the granting of relief by categories is wholly within the discretion of the Attorney General. Aliens who do not satisfy the statutory definition of "refugee" have no right to protection in the United States, but are entirely dependent on the largely unreviewable grace of the Attorney General.

### Extended Voluntary Departure

Extended voluntary departure (EVD) is a status accorded on a group basis to all nationals of a specified country present in the United States. It is the only remedy presently available under U.S. immigration law which is tailored to provide temporary relief from deportation for persons who, while falling short of the individualized "fear of persecution" requirement under the Refugee Act, nonetheless would face hardships or hazards if returned to their homelands.

EVD has been applied by the Attorney General in consultation with the Secretary of State to aliens physically present in the United States pursuant to a determination by State Department officials that conditions in the countries of origin are "unstable" or "unsettled" or show a pattern of "denial of rights." When members of the designated national groups who are subject to deportation express unwillingness to return to their countries of origin, the deportation is not enforced, and they are permitted to depart voluntarily from the United States at their own expense when they so desire.

The Executive, through the office of the Attorney General, has sole discretion to determine which groups will be granted EVD status. There is no provision for Congressional oversight, and the decisions of the Attorney General regarding grants of EVD status are not generally subject to judicial review.

Over the past 25 years, EVD has been granted to 13 nationality groups because of unsettled conditions and presently applies to Ethiopians, Poles and Afghans. Additionally, the Regan administration has granted EVD on a case-by-case basis to Lebanese nationals, with instructions to "view sympathetically" their requests for permission to stay in view of the "continuing civil strife in Lebanon."

### The Problem Created by the Passage of the Immigration Reform and Control Act of 1986

Prior to the passage of IRCA, aliens who did not qualify for refugee status nevertheless enjoyed safe haven in the United States through a policy of "benign neglect." The Immigration and Naturalization Service ( INS ) as a matter of policy may not have pursued individuals of certain nationalities, or may have regarded certain groups as low priority for purposes of apprehension. In addition, the INS has tended to concentrate its resources at the border and ports of entry rather than within the country.

IRCA, which sanctions employers who employ undocumented workers, is likely to affect the extent to which illegal aliens will continue to benefit from benign neglect. The Act makes it illegal to hire, recruit, or continue to employ unauthorized aliens. Duarte's request evidences the need for a temporary refuge mechanism beyond *ad hoc* grants of EVD in order to identify those aliens who should be allowed to stay in the U.S. temporarily. Only in this way can such individuals receive employment authorization, allowing them to subsist for the duration of their stay even if they do not qualify for political asylum under refugee law.

### The Legislative Remedy

The proposed legislation addresses three important concerns. First, it permits aliens who satisfy the carefully delineated requirements to remain in the United States until the conditions of violence or natural disaster in their country of origin have improved sufficiently to allow their safe return. Second, it provides aliens granted temporary refuge permission to work in the United States so that they can support themselves. Third, it ensures that these aliens will not remain in the United States indefinitely by revoking documentation and work authorization when conditions in their home country have improved sufficiently to allow for their safe return.

The one important concern that the proposed legislation fails to address adequately is the narrowing of the Attorney General's unfettered discretion to make independent and unreviewable decisions regarding which countries' nationals are entitled to temporary safe haven in the United States. The Attorney General's discretion in determining which national groups will be accorded temporary safe haven should be narrowed and guided through the requirement of regular consultations with Congress based on specified criteria similar to those already provided for regulating the admission of refugees in the Refugee Act. The provisions for consultation and public hearings under the Refugee Act limit the discretion of the Executive and ensure the valuable input of the Congress in the political process.

*Cont'd on page 6*

### Letters of Appreciation

I would like to place on record my appreciation of your work with *Refuge*. As a UNHCR official, I worked for nine years on behalf of refugees in Southern Africa, Vietnam, Chile, Nicaragua, El Salvador, Guatemala, and at the UN headquarters in Geneva. Recently on sabbatical leave, I am a Fellow and Visiting Researcher at Harvard University. In the field and while researching I found *Refuge* particularly useful. I am delighted about the work you and your colleagues are doing. You help to increase awareness on refugee issues among the public, 'insiders' at the international and national level, and also for academics in the field. This should help to improve prospects for improved protection. Unfortunately, such specialized publications are too few. Keep up the good work.

Luise Druke-Bolewski,
Cambridge,
January 28, 1988.

Thank you for your work in the first two editions of Volume 7. *Refuge* is a valuable addition to the literature on refugees.

Professor Norman L. Zucker,
Dept. of Political Science,
University of Rhode Island.

# The Implications of Interdiction at Sea: for Refugees, Canada and Canadians

*Gail E. Misra*

Clause 8 of Bill C-84 would permit the Minister of Employment and Immigration to make directions with respect to ships entering Canadian waters. This Clause would add new powers to the *Immigration Act, 1976* allowing the Minister to forcibly turn away ships from Canada's internal waters, territorial sea or twelve nautical miles off the outer limit of the territorial sea of Canada if s/he believed on reasonable grounds that the ship was bringing one or more passengers to Canada in contravention of the *Immigration Act*.

There are serious issues that arise out of this Clause. The first issue is whether or not Canada would have jurisdiction in all of the area off the Canadian coast as outlined in the draft legislation. The second issue is whether an act of turning away a ship, thereby potentially returning its passengers to their place of embarkation, would constitute an act of 'refoulement'. The third issue arises out of the silence of this Clause and the Bill, on the question of what information the Minister would use to decide whether s/he had "reasonable grounds" to turn a ship away. This leads to the question of identifying passengers as non-*bona fide* refugees.

The first issue raised is one of Canadian jurisdiction over its coastal waters. The U.N. Convention of the Law of the Sea, 1982 (UNCLOS) defines four zones moving outward from land: Internal waters, territorial sea, contiguous zone, and high seas. (A/CONF. 62/122) Internal waters consist of ports, harbours, rivers, lakes and canals. Generally, a coastal state can apply and enforce its laws fully against a foreign ship in these waters. The territorial sea extends twelve miles beyond the internal waters. Article 17 of the UNCLOS says the coastal state exercises sovereignty over its territorial sea, subject only to one important limitation: foreign ships must have a right to innocent passage.[1] Passage is considered 'innocent' so long as it does not prejudice the peace, good order, or security of the coastal State. This means that among other things a coastal State's laws and regulations regarding navigation, health, customs, and immigration must be obeyed by a foreign ship for it to maintain a right to innocent passage. In Article 33 of UNCLOS a third division of the seas proximate to a coastal State is identified. The contiguous zone is an area adjacent to the territorial sea, extending out a further twelve miles from the territorial sea. A coastal State may exercise much the same control over this zone as in its territorial waters.[2]

The high seas are defined by Akehurst as the sea outside a coastal State's jurisdiction. Only international law and the laws of a flag-state (the state whose nationality a ship carries) apply. As Simmonds states, if a ship is attempting, however, to get to the high seas to evade a coastal state "in hot pursuit," the ship is still considered subject to the coastal State's jurisdiction as long as the pursuit began in the coastal State's waters.

The text of Clause 8 of Bill C-84 makes reference to the internal waters, territorial sea, and another twelve miles of sea past the territorial sea. This suggests that Canada has accepted and adopted the concept of a contiguous zone in which it will exercise its jurisdiction. For the purposes of this analysis, this means Canada can oust from its waters any ship that *disembarks* "any commodity or person contrary to the customs, fiscal, immigration or sanitary regulations" of Canada.[3] Such action would not appear to be in and of itself contrary to the principles of international law, as Canada simply would be exercising its sovereignty as authorized by the Law of the Sea. The problems, though, stem from an examination of the requirements of Canadian constitutional law, as well as of international refugee law.

Clause 8 of Bill C-84 is designed to ensure that people who plan to claim refugee status in Canada are not permitted onto Canadian soil if they arrive by ship. If they cannot get to Canada, the Government argues that they will not be in a position to invoke Canadian laws regarding refugee determination, nor protection under the *Charter*. The Hon. Benoit Bouchard, the Minister of Employment and Immigration, said as much: he does not want to bring ships into Canadian waters "because the Charter of Rights would apply" and the government might be forced to give the passengers a hearing.[4]

This position raises several questions. First, how is the Minister to know whether a ship is bringing a person or persons into Canada in contravention of the *Immigration Act* or Regulations without stopping the ship, boarding it, and assessing each person's claim? Second, if Canada claims sovereignty over its internal waters and territorial sea, then would not the *Charter* apply as soon as a government official stops a foreign ship in these waters, boards it, and invokes Canadian law? Third, how can Canadian law differ? There is nothing in the Convention of the Law of the Sea that says a State can simply chase a foreign ship out of its waters. In Articles 19, 25 and 111, UNCLOS authorizes a coastal State to respond to infractions of its laws: it may pursue a foreign ship with the intent of stopping and arresting it; but if the coastal State is found to have acted improperly , it may be liable to pay damages. Nowhere is a state permitted to simply chase out a vessel apparently making innocent passage through Canadian waters. Finally, what will constitute 'contravention' of the *Act* or Regulations such as to bring Clause 8 into operation?

Lack of proper travel documents has been said by the Government to be sufficient. Article 31 (1) of the Convention on the Status of Refugees states, however, that a refugee should not be penalized for illegal entry if s/he came directly from the country of persecution. "Coming directly" has been interpreted as "coming in a direct manner without delay" and does not mean that one could not pass through another country en route.[5] The UNHCR has interpreted the term so as not to impose an obligation solely on countries adjacent to countries of persecution. UNHCR accepts that any person who had not *de facto* residence in an intermediate country should be considered as coming directly from the country of persecution.[6] Thus, persons may not have come with stopover from the country of persecution, but may nonetheless have come "directly." Once in Canadian waters, stopped by a Canadian coast guard or immigration officer, they should therefore be entitled to seek Canada's protection. Michael Schelew, speaking on behalf of Amnesty International-Canadian Section, quoted in the *Globe and Mail* on August 13th, said that Bill C-84 would put "genuine refugees at risk" because their cases would never get heard if the Minister simply turned away ships carrying undocumented refugees.

## Interdiction at Sea ...

*Cont'd from page 4*

He stated further that Amnesty International was concerned that the criteria for determining whether a ship should be interdicted, instead of just being sent away, was the safety of the vehicle and its passengers. There was no allowance in the Clause for determination of whether or not the passengers were genuine refugees. In a letter to Mr. Jack Ellis, Chairman of the Legislative Committee Bill C-84, Michael Schelew on behalf of Amnesty International reminded the Chairman that the Clause does not require the Minister to ensure that there is another country in which the ship can safely disembark the passengers. These concerns were echoed by such groups as the Inter-Church Committee for Refugees (ICCR), the Canadian Ethnocultural Council, the Canadian Bar Association-Ottawa, and the Toronto Mayor's Committee on Community and Race Relations. These groups also identified other issues arising out of Clause 8. The Canadian Bar Association-Ottawa pointed out that Canada has taken a contradictory position to this clause when it sits on the Executive Committee of the United Nations High Commissioner for Refugees. There Canada recommended that ships carrying refugees should not be turned away from a country and in fact Canada encouraged establishment of a refugee protection process in the South Asian seas when countries in that region were turning away Vietnamese refugees.

Legal experts agree that Clause 8 raises a serious issue of constitutionality. In presentations to the government, Professor James Hathaway, an International Law expert at Osgoode Hall Law School, went so far as to say that not one credible legal expert from outside the Immigration Department has come forward to speak for the constitutionality of the Bill. Professor Marc Gold, also of Osgoode Hall Law School, said simply that "Bill C-84 is unconstitutional" in its present form, and if passed will imperil the lives of many persons seeking refugee status. Gold quoted the *Singh* decision when saying that persons claiming refugee status are entitled to *Charter* protections. Madam Justice Wilson, in *Singh*, said that the *Charter* would apply to any human being who was physically present in Canada, and by virtue of such presence was amenable to Canadian law. This would bring ships in Canadian water into the *Charter's* ambit.[7]

Barbara Jackman, a Toronto lawyer and expert on immigration law, said that smugglers will take their chances and will attempt to land clandestine arrivals knowing that at worst the ship may be turned away by Canadian coastal vessels. If they are turned away, there are no penalties for the captain or crew, and the captain may set the passengers adrift at sea to be rid of them.[8] Mr. Bouchard has said that there is no legal obligation for the Canadian government to consider the safety of people who are not in Canadian waters.[9] Jackman says that for those cast adrift outside Canada's territorial waters the possibilities would be grim, as passing ships would not want to pick up undocumented persons for fear that their passage through Canadian waters would no longer be 'innocent.'

As Jackman points out, Canada has been faced with two boat loads of people, the passengers of which numbered less than 400. She suggests that the proposed legislation should impose criminal sanctions instead on ship captains who try to smuggle persons into Canada if the legislation is intended to deter. She also recommends that for reasons of safety, the passengers of such ships should be permitted to disembark at a Canadian port and make their claims.

James Hathaway identified in this Clause a major refutation of Canada's international obligations. By turning away persons seeking protection as refugees, he said Canada would be in direct violation of the 'non-refoulement" requirement of the U.N. Convention. He argues that "non-refoulement" is a fundamental obligation under international refugee law, one that "can never be suspended, can never be watered down, can never be overlooked." That obligation, according to Hathaway, includes the obligation to hear the claims of those who arrive at our shores and profess to have been persecuted. Clause 8, in contrast, would allow the minister, acting alone, to decide that a ship should be forced back into the high seas without anybody on board having an opportunity to be heard. Most experts agree that the best method of dealing with ships clandestinely bringing in persons would be to force the ship into a port, take the passengers off and give them an opportunity to tell their story, and then to charge the captain and crew for violating Canadian laws. This would fulfil all of Canada's obligations, domestic, international, moral, and humanitarian.[10]

*Gail Misra is a law student at Osgoode Hall Law Scool. The above article was extracted from a law course paper written January 22, 1988 while enrolled in the Intensive Programme in Poverty Law at Parkdale Community Legal Services.*

## Appendix I: The Implications of Interdiction at Seas

BILL C-84, An Act to amend the Immigration Act, 1976 and the Criminal Code in consequence thereof

Clause 8

91.1 (1) Where the Minister believes on reasonable grounds that a vehicle within:

(a) the internal waters of Canada,
(b) the territorial sea of Canada, or
(c) twelve nautical miles of the outer limit of the territorial sea of Canada is bringing any person into Canada in contravention of this Act or the regulations, the Minister may, after having due regard to the safety of the vehicle and its passengers, direct the vehicle to leave or not to enter the internal waters of Canada or the territorial sea of Canada, as the case may be, and any such direction may be enforced by such force as is reasonable in the circumstances.

## Appendix II: Convention Relating to the Status of Refugees.

Signed at Geneva on July 1951

Article 1, A, (2)

For the purposes of the present Convention, the term "refugee" shall apply to any person who:

Owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.
IMMIGRATION ACT, 1976

2.(1)

"Convention refugee" means any person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

***Cont'd on page 8***

## Safe Haven Remedy ...

*Cont'd from page 3*

### Precedents for Temporary Refuge in International Law and the Practices of Other Countries

The proposal to provide temporary refuge to aliens in the United States who cannot safely return to their homelands is supported by principles and norms of international law arising from international agreements and by the practices of other nations.

The United Nations High Commissioner for Refugees has recently declared that individuals fleeing serious danger resulting from conditions of civil strife are protected from forced repatriation by a customary norm of international law that has achieved the status of *jus cogens*. Furthermore, the High Commissioner identified temporary refuge as being encompassed within the "universally recognized" principle of *non-refoulement*, which "requires that no person shall be subjected to such measures as rejection at the frontier, or, if he has already entered the territory, expulsion or compulsory return to any country where he might have reason to fear persecution or serious danger resulting from unsettled conditions or civil strife."

Principles of humanitarian law, including the Geneva Convention standards relating to war, argue further in favor of providing temporary protection for foreigners who have fled civil unrest until the danger in their home countries has subsided. Many states have maintained policies of temporary refuge to aliens fleeing internal armed conflict. In 1936, France and Britain provided safe haven to individuals fleeing the Spanish Civil War. In 1956, Austria provided temporary safe haven to over 100,000 individuals who had fled hungary after the unsuccessful October uprising, and again in 1968 to Czechoslovakians fleeing the Soviet invasion and the expected subsequent political oppression. During the Algerian war of independence, several hundred thousand individuals fleeing random violence were granted temporary refuge in Morocco and Tunisia. More recently, Somalia has granted temporary refuge to Ethiopians; the Sudan has provided shelter to both Ethiopians and Chadians; and Pakistan has provided temporary refuge to approximately three million Afghans.

In Canada, a Special Review Committee (SRC), after receiving the applications of refused refugee claimants, may then recommend that an individual who is otherwise deportable be allowed to remain in Canada because of special humanitarian circumstances. SRC guidelines permit consideration of such humanitarian factors as severe oppression in the country of origin, the likelihood that an alien would be severely punished for overstaying his or her visa, and an alien's demonstrated need to live in a democratic system. How this practice will fit into the new procedure (Bill C-55), is not clear.

In Sweden, Denmark and the Netherlands, an alien who is unable to produce sufficient evidence of a well-founded fear of persecution or who has fled conditions of generalized danger is eligible to be a "B" status refugee. Although class B refugees are not refugees under the Convention, they are allowed to remain "on humanitarian grounds because of the political situation in their country of origin, to which (they) could reasonably be expected to return".

The Dutch government has been reluctant to grant class B status to the growing number of Tamils in the Netherlands. However, Tamils who apply for asylum are often allowed to remain in Holland on humanitarian grounds as class "C" refugees. Class C status permits the Tamils to work and obtain many benefits. Tamils may be deported however, if another country can be found to accept them, or if it is established that conditions in Sri Lanka have substantially improved.

Germany presently has a policy against returning Afghans, Ethiopians, Iranians, Palestinians from Lebanon and Christian Turks. Germany also gives rejected asylum seekers from Eastern Europe residence permits and work authorizations after one year, but they cannot receive refugee benefits. Non-Eastern European rejected asylum applicants may receive "Duldung" (toleration) permits that allow them to reside in Germany and to work after five years in jobs for which Germans are unavailable.

Spain has allowed asylum status for non-refugee aliens under a broad category which encompasses those deemed deserving of asylum for humanitarian reasons; in practice, however, asylum for humanitarian reasons has been granted in few cases. More commonly, the reviewing Interministrial Commission recommends that the person be allowed to remain in the country as an alien. This has occurred in the cases of Lebanese, Palestinians from Lebanon, Tamils, Iranians, Iraqans, and Salvadorans. These foreign nationals are entitled only to residence permits and are often unable to obtain work permits.

### Conclusion

A formal temporary safe haven program in the United States would recognize both the humanitarian necessity of protecting those displaced by war and the strictures of the new immigration law. Such a mechanism would have no effect on the protection available under law to refugees, who must prove a well-founded fear of persecution on an individual basis, and who can ultimately become U.S. citizens. Rather, as in other countries, temporary protection and authority to work would be granted to innocent civilians victimized by war or national disaster.

*Arthur C. Helton, lawyer, directs the Political Asylum Project of the Lawyers Committee for Human Rights, New York City.*

### Seminar Series

"REFUGEES in POLICY and PRACTICE" is drawing to a close. We wish to thank the Dean of Graduate Studies for co-sponsoring the series again this academic year and for assigning Robert Kreklewich, Doctoral Candidate in Social and Political Thought to assist in the organization of the series during this academic year. We are very grateful to the Masters of several colleges at York University whose donations assisted with the printing of posters and we thank Bobbi Greenberg-Shaefer and staff at York's Communications Department for publicizing the series. We invite the public to the final seminar in the series:

DATE: March 31, 1988:
"Toward a Theory of Refugees and Forced Migration." Professor Anthony H. Richmond and Professor Howard Adelman will present their work on this subject. The seminar will be moderated by Professor Michael Lanphier.

PLACE:
Junior Common Room McLaughlin College (Room 014)

TIME: 2 - 4 p.m.

# Book Review

*Gerald Dirks*

## Reg. Whitaker
### *Double Standard: The Secret History of Canadian Immigration*
**(Toronto: Lester and Orpen Denys Ltd., 1987. 348p.)**

The implementation and administration of Canada's immigration policy has in recent years become the focus of public, journalistic and academic attention. Mounting critical scrutiny has been sparked in large part by a widespread feeling within Canada that the prevailing policy does not reflect our national interest as the influx of foreigners appears to be unmanaged and out of control. The arrival on our shores and at our ports of entry of thousands of persons who have not been properly documented or processed, the acrimonious debate inside and outside parliament regarding the passage of appropriate legislation for refugee status determination combined with the recent discovery in our midst of a convicted Palestinian terrorist have significantly contributed to an overall sense of immigration mismanagement of a least ineptness. The book under review, which comprehensively examines Canada's security screening practices as applied to prospective immigrants and visitors, does little to diminish our misgivings.

The thesis of Professor Whitaker's well-written volume asserts that for most of this century, and especially in the years since World War II, the Canadian security establishment headed by the RCMP has been far more concerned about preventing leftists than rightists from gaining entry in Canada. In eleven chapters requiring more than three hundred pages, the author proves this contention with uncontrovertible evidence drawn from public archival holdings, federal department documents and a few secondary publications. Whitaker has also skillfully acquired other important data through the use of Canada's "access to information" legislation. The book examines and critically comments upon a wide range of administrative practices, public policy content and political expediency all relating to security screening of potential newcomers. Time and time again, Whitaker describes the extreme measures the security establishment adopted to achieve what it perceived to be a patriotic duty, namely the exclusion from Canada of suspected communists, Marxists, leftist activists, radical academics and their fellow travellers. While zealous investigation frequently typified the approach officials used when screening suspected leftists, much less energy was expended when delving into the past activities and philosophical views of Nazis and Nazi collaborators, fascists and possible war criminals.

Whitaker's examination of the world of immigration security screening embraces an impressive range of themes and subject areas. To this reviewer, some of the more interesting include the provision of a profile of the Canadian security community, an exhaustive examination of the close cooperation prevailing between American and Canadian security personnel, the demonstration of how ethnic discrimination mascaraded as a national security issue, and the exposure of how security officials confused subversives with simple dissidents. Throughout the book, which contains numerous case studies of specific security incidents, the author provides exceptionally detailed accounts of administrative injustices and arbitrariness. Chapter ten in particular is illustrative of these problems as it contains a carefully constructed picture of the treatment to which refugees, academic scholars and suspected terrorists were subjected by Canadian authorities.

In his final chapter, Whitaker shifts gears to some extent, stepping away from his analysis of Canada's security community and moving instead to a discussion of the issues that today surround the debate over legislation for determining refugee status in Canada. Even here, the author convincingly demonstrates that persons seeking to enter Canada from Eastern Europe and Indochina persistently are favoured by Canadian immigration regulations and officials over possibly more desperate individuals originating in non-communist countries where oppression and human rights infractions are prevalent. While this assertion has been made on other occasions by informed observers of the Canadian immigration field, no other scholarly work has offered as much unequivocal proof.

Professor Whitaker leaves no doubt in the reader's mind of his own ideological or philosophical perspective. His inclination is to be sympathetic to social democratic concepts and principles, critical of many aspects of contemporary American foreign policy, and suspicious of hard-line security personnel whether attached to the RCMP or the recently established civilian run security service. Yet, this volume is anything but a contrived attack upon Canada's security practitioners. What criticisms the book contains reflect high standards of academic research, as well as rationally derived interpretations of the available data.

Now that we have this well documented scholarly analysis of the operations of the Canadian security establishment in the realm of immigration, we can hope that an equally definitive study of the enforcement operations within Employment and Immigration Canada will be soon forthcoming. It is, after all, the enforcement personnel within the Immigration Branch who, when combined with the security screening officials elsewhere, continue to ensure that Canadian immigration policy emphasizes management and control at the cost of facilitation and fairness. Possibly Professor Whitaker could be convinced to embark upon this next examination of the immigration process.

*Gerald Dirks, himself the esteemed author of scholarly works related to Canadian immigration policy and practice, is a professor in the Department of Politics, Brock University.*

## New Publications

*REFUGEES: AN ANTHOLOGY OF POEMS AND SONGS.* Eds. Brian Coleman. 'From the Rivers of Babylon' to refugee movements of the twentieth century. Prepaid $12.00 includes postage. Orders through: The Editor, 44 Caroline Avenue, Ottawa, Canada, K1Y 0S7

*RACIAL ATTITUDES IN ENGLISH-CANADIAN FICTION: 1905-1980.* Terence Craig. 1987/xii + 163 pp. $23.95 (cloth) $28.50 in U.S.A. WLU Press, Wilfred Laurier University, Waterloo, Canada, N2L 3C5.

*"LISTEN WHILE I TELL YOU": A STORY OF THE JEWS OF ST. JOHN'S, NEWFOUNDLAND.* Alison Kahn. 1987 248 pp b & w photos, $23.96 (cloth) ISER, Memorial University of Newfoundland, St. John's, Newfoundland, A1C 5S7.

CANADA'S PERIODICAL ON REFUGEES
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## Interdiction at Sea ...

*Cont'd from page 5*

(a) is outside the country of his nationality and is unable or, by reason of such fear, is unwilling to avail himself of the protection of that country, or
(b) not having a country of nationality, is outside the country of his former habitual residence and is unable or, by reason of such fear, is unwilling to return to that country;

## Legislative Instruments

Bill C-84
An Act to amend the Immigration Act, 1976 and the Criminal Code in consequence thereof
Introduced August, 1987

The Constitution Act, 1982, Part 1, The Canadian Charter of Rights and Freedoms

The Convention Relating to the Status of Refugees. Signed at Geneva, on July 28, 1951, 189 U.N.T.S. 137

The Immigration Act, 1976 and Immigration Regulations, 1978

The International Covenant on Civil and Political Rights, 1966 U.N. Coc.A/6316

The Protocol Relating to the Status of Refugees. Signed at New York, on January 31, 1967, 606 U.N.T.S. 267

The Convention on the Law of the Sea, 1982, A/CONF. 62/122

The Universal Declaration of Human Rights, 1948, U.N. Doc. A/810

Footnotes

[1]Michael Akehurst. *A Modern Introduction to International Law*. London: George Allen and Unwin, 1977:162-164.

[2]G.W. Alexandrowicz, et. al. *International Law Coursebook*. Kingston: Queen's University Faculty of Law. 1980:14-172. See also K.R. Simmonds. *UN Convention on the Law of the Sea*. Dobbs Ferry, N.Y.: Oceana Publications, 1983:B37.

[3]Simmonds, op. cit., B69, Article 19.

[4]R. Cleroux. "Tories offer senators deal to speed refugee bill." *The Globe and Mail*, Dec. 9, 1987:A10.

[5]A. Grahl-Madsen. *The Status of Refugees in International Law: Volume II, Asylum, Entry and The Netherlands:* A.J. Sijthoff-Leiden, 1972:201-207.

[6]Simmonds, op. cit. (p. 207).

[7]*Singh* v. *Minister of Employment and Immigration* (1985) [1985] 1 S.C.R. 177.

[8]B. Jackman. "Critique and Suggested Amendments." 1987:para.31.

[9]Cleroux, op. cit.

[10]James C. Hathaway. "Speaking Notes for Press Conference, Bill C-84" Toronto: August 17, 1987.