CANADA'S PERIODICAL ON REFUGEES

REFUGE

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Burden Sharing or Burden Shifting?

"Irregular " Asylum Seekers: What's All The Fuss?

by James C. Hathaway

In 1985, the Executive Committee of UNHCR noted its concern about "the growing phenomenon of refugees and asylum-seekers who, having found protection in one country, move in an irregular manner to another country ..." (Conclusion No. 36, para. j). At first glance, one might not view this conclusion as objectionable. With all of the millions of refugees in the world, most of who have *no protection*, why should we be concerned about the lot of a bunch of ingrates who, having already found protection, now want to move on in search of greener pastures? Don't we really have better things to do with our time, more important causes to fight for, than the rights of a load of malcontents who are already being adequately protected elsewhere?

In fact, though, there are some very good reasons for us to be concerned about the way that governments have dealt with this issue.

First, the way that the concern is framed is to my mind designed to confuse. "Irregular" asylum-seekers. What's a "regular" asylum seeker? Why is an "irregular" asylum seeker something negative, something to be concerned about?

The Sub-Committee on International Protection (EC/SCR/40, 1985) makes it clear that these dangerous, "irregular" refugees are in fact only persons who have failed to comply with "structured international efforts to provide appropriate solutions ..." They are people who, sensing themselves to be in jeopardy, dare to take their fates into their own hands and move on "without the prior consent of ... national authorities." Not exactly your hoards of marauding villains, nor even your garden variety pests. What we are talking about here are rather people who dare to decide for themselves what their own needs are, whether or not they are being met, and who have the audacity to determine their own destinies. In other contexts, we might call such people responsible, self-reliant, or even courageous, but if they are refugees, they are instead "irregular."

The "offence" of moving without authorization is to my mind fairly trivial, at least if there is a good reason that

Continued on page 2

IN THIS ISSUE:

Politicians Talk: Interviews with Sergio Marchi, Dan Heap and Barbara McDougall *by Alex Zisman* page 3
Called to Respond *by Maureen J. Smith* page 11
Canadian Sanctuary *by David Matas* page 14
CCR Resolutions page 18
Ten Years Later *reviewed by Howard Adelman* page 20
The Guarded Gate *reviewed by Irving Abella* page 21

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prompts the departure. This is where the whole "irregular movement" argument falls apart. Why is it that some refugees who are already protected feel the urge to leave their states of residence? Are they really a bunch of malcontents or greedy opportunists, or is there something more fundamental that underlies their decision to leave?

The answer is simple: "protected" refugees move on because they are not really *protected*. The self-same UNHCR report (EC/SCP/40, 1985) that dares to suggest that "irregular" refugees should become "regular" by staying put, explicitly acknowledges the reasons that some people have the courage to move on:

> Irregular movements of refugees and asylum-seekers who have already found protection in a country are, to a large extent, composed of persons who feel impelled to leave, due to *the absence of educational and employment possibilities and the non-availability of long term durable solutions by way of voluntary repatriation, local integration and resettlement.*

What opportunists! That they should dare to question the adequacy of the protection received just because they cannot study, work, or otherwise settle into some semblance of a normal life. What ingrates! Why can't they just accept their lot, endure their burdens, and thank their lucky stars for the protection they have received?

The point, of course, is that irregular movement is not *substantively* irregular at all. It is rather movement that is involuntary, in that it stems from the denial by so-called law-abiding states of some of the most basic human rights of refugees. Rights like education and work that are guaranteed not only in the International Bill of Rights, but specifically established in the Refugee Convention itself. Unless states are prepared to live up to their obligations under international law, there is absolutely nothing irregular about these refugee movements. They are rational responses to denials of basic aspects of human dignity. The irregularity, if there is one, is in the behavior of those states that refuse to *truly* protect refugees, so that they are forced to move on, yet again, in search of reasonable respect and a humane existence.

For me, the "irregular" movement debate, currently the subject of discussions between UNHCR and interested states, points out yet again the underlying premise of refugee law. Refugee law has long since lost sight of its humanitarian roots, and has become hopelessly entangled in the pursuit by states of their own self-interests. There is nothing whatsoever illegitimate about refugees moving onward from a state that refuses to recognize their basic human rights, including the rights to education, to work, and to a durable solution. The time is coming very close that we will have to actively re-take refugee law, mold it into a human rights-based regime, and truly make the letter of the law conform to the rhetoric of concern. To allow states to continue to shift the blame for destabilizing the protection system to the shoulders of refugees is not, in my view, a morally acceptable option.

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The RDP Becomes the Centre for Refugee Studies

On October 27, 1988 the Refugee Documentation Project was formally transformed by the Senate of York University into a free standing organized research unit to be known as the **Centre for Refugee Studies.**

The Centre will continue to conduct scholarly research, academic programmes, public colloquia, and co-sponsored conferences. It will house Visiting Scholars and Research Fellows. Scholarly research on refugee issues and academic programmes focus on the social, economic and political aspects of the movement and resettlement of refugees.

The Centre publishes scholarly monographs, books and reports. The Resource Centre contains over 11,000 items in its data base; holdings are available to students researchers, visiting scholars, members of government departments, and to community organizations. The Centre is currently developing a film library and promoting the International Refugee Participation Network for the exchange of mutually accessible machine-readable data.

The Centre's mandate also includes public advocacy and sensitization of the general public to refugee and other humanitarian issues. The Centre for Refugee Studies is governed by an Executive Board, an Academic Board of Directors and an Advisory Board.

Among the activities organized to celebrate its inauguration was the Refugee Education Week (December 5-8, 1988) which comprised public lectures by Professors Leon Gordenker, from the Institut Universitaire des Hautes Études Internacionales in Geneva, C. Michael Lanphier, former Director of the RDP, Howard Adelman, Director of the CRS, and Barry Stein, from Michigan State University. A Chinese Banquet is planned for January 19, 1989 (see p. 23).

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Politicians Talk

Weeks before the the federal election was called *Refuge* contacted three political figures who have subsequently been returned to Parliament, Minister of Employment and Immigration Barbara McDougall, Opposition Critic on Immigration and Multiculturalism Sergio Marchi, and NDP Critic on Immigration Dan Heap, to question them about their refugee agendas. Eventually all three found time amid some frantic canvassing to grant us brief but revealing interviews, which are printed below in the order in which they occurred.

Sergio Marchi

Alex Zisman: *What are your reactions to Bills C-84 and C-55?*

Sergio Marchi: We took great objections with both bills on a number of key areas. Firstly we had a lot of concerns with the pre-screening. They set up a Refugee Board and then they put a wall around it. If you are going to have a Refugee Board that is going to give oral hearings, then you don't have to have a barrier to bar access of people getting to that board. So we are saying drop the pre-screening stage, allow people to make one oral effective and fair hearing and then make a determination. You can't ask a person at the border to say, "look, just give a bit of your story so I can figure out if you deserve a second hearing". If you are a legitimate refugee you are not only going to give a bit of your story, you would want to give all of your story, so not only is it unfair if you pre-screen, but it is also going to be ineffective because in large part you are going to have two oral hearings rather than one oral hearing in front of the proper authorities. So we said eliminate the pre-screening, because what the Tories were doing was simply trying to make the system more effective by minimizing the number of people getting into the system.

The second aspect was the "safe country". We feel that the "safe country" was another instrument that complemented the pre-screening so that the government could clean their hands of refugees going into the system. They said that the government is going to get a list of so called "safe countries". They never defined what "safe" means. They never defined what is going to go into that equation of deciding those countries, because you are going to get into much larger geopolitical issues and questions of international politics being played rather that the case of individual refugees. So we said do away with the "safe country" concept.

They set up a Refugee Board and then they put a wall around it.

Third, we felt that the system is as strong as your appeal system. When you are deciding cases of life or death you need a second appeal system that is going to try to catch people who, for whatever reason, have been rejected, who in fact need refuge.

If we can amend the bill in those areas without gutting it, we will do so. If, in fact, by doing that we just tear it all apart, then we will simply re-introduce our own bill very quickly, speed its passage through the House and get the system going.

On Bill C-84 we have objected to the fines and imprisonments of groups and churches and nuns and priests who may help a person come in without a valid visa only to be thrown in prison or face a fine. We find it as repugnant as anything we have ever seen in the last four years of government legislation. Chances are that a legitimate refugee won't have a valid document, because a true refugee doesn't wait to go to an office or an embassy; they run, they catch the first train, plane, bus or ship. The false refugees are counselled, and they probably get forged documents and so on. So, if you understand the true refugee reality, you shouldn't make the operating word the valid document. If a priest or a group counsels fraudulent claims knowingly, then we can stop that and publish that, and the groups told us that they would be prepared to do that. But to have legislation that would fine or imprison people based on helping someone who may not have a valid travelling document is obviously obscene and that would have no place in a Liberal legislation.

The second aspect, of turning back boats, again is a repeat of history, like the 1939 with the St. Louis. We feel in 1988 that that kind of clause has no place in the books and statutes of this country, that when they say that will deter smuggling, we say nonsense to that. We say bring the boat in, if it's a boat – then, they only look at boats, but most people come in by planes – if we look at boats we are saying bring the boat in, you have to see who is on board. Are there children? Women?

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Are they sick? Are they elderly? Do they have food? Do they have water? How can the Tories turn a boat around like that? So we bring it in, we look who is on board, we do processing, if there are illegitimate refugees then they will have to leave, and when we have the boat in harbour, in port, if there was a case were the captain abused, misused, was doing it for human profit, then we would impound that boat, fine and possibly imprison the captain. And we feel that would be a detriment, that would send a message. But, by simply turning the boat around, the worst that could happen is that the captain, with his money in his pocket, will only dump his passengers a bit further out or bring them somewhere else, and that won't discourage another captain, because they have nothing to lose. But if they lose their boat and they lose their freedom behind bars then they might think twice. So we are going to move on those pieces, and C-84 will obviously be gutted once we remove those parts.

AZ: ***If you suddenly allow every refugee claimant to have a hearing, there would be an even larger backlog. How do you plan to cope in a practical way with this problem?***

SM: The pre-screening stage, though, from a practical view point is still time-consuming. I mean the immigration adjudicators, the two officers at the border will still have to schedule an appointment, an interview to go over the pre-screening. So what I am saying is the government is setting up a pre-screening stage which will mean that you will have to talk and see, and those people have to provide some evidence so that you can say no or yes, move to stage two or leave. So that is still going to take time, that is still going to take talking. Then you got the Refugee Board, which is a second hearing all on its own. I say, if we have made a determination that at least we have to give a fair hearing, an ear to these people, then I am saying, "do it once, do it right and do it quickly, and give the message to refugee applicants that this is no monkey business, that we have got competent people who are going to be doing those interviews, and that at the first smell of illegitimacy that's it." And I believe that that would expedite the case, rather than going through a two-pronged approach, pre-screening once and then oral hearing. Applicant has a thing, pum, make an appointment, you make your hearing, quick turn around.

Sergio Marchi: "To ... fine or imprison people based on helping someone who may not have a valid travelling document is obviously obscene ..."

On the backlog situation – in 1984 the backlog was about 9,500 because we were in transition from going to camps and picking people in the sixties and seventies to the reality of the eighties, people coming ashore. We didn't have the mechanisms, so it was growing. That's why we appointed Rabbi Plaut. It went from about 9,500-10,000 in 1984 to 65,000 today. Barbara McDougall has not done a darned thing. First, she kept screaming at us saying, "I need the two bills to cure the problem". Now she's got those two bills and she is sitting on her political behind because she doesn't have the guts to do it during the campaign. And I am saying you are aggravating the problem by doing nothing.

There's three options. You do nothing, as they are doing. We are against that. You declare amnesty, and I am against that because that does not distinguish between right or wrong and it hurts the legitimate in favour of the illegitimate. So I am saying amnesty is as unfair as closed doors because there is no order. Then there is the compromise. What is that compromise? It is some sort of an administrative review where you set up a criteria: does he or she have family? Does he or she have job prospects? Does he or she possess language skills? Employment skills? Does he or she have relatives in the country? Some kind of criteria where you would judge the person's ability to integrate into this country and at the same time you would have the ability to reject people based on security, health or other risks for this country. So, it seems to me, that that is the way to go now. Not waiting, but now, so that if you have a new system it's not going to be paralyzed by immediately feeding it 65,000 people, 65,000 claims, because obviously that would paralyze the system. Then you would get Canadians saying, "well what the hell is going on. First you say there is a problem. Then you put up a new system and now it still breaks down." So if we are worried about the confidence of Canadians which will allow governments to be progressive, if you get backlashes,

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governments won't be progressive. If you have confidence, then governments can, in partnership with people, move in a right direction. So I am saying, yes let's get a new system, but this backlog has the potential of eating up that new system. And we've got to deal with both at the same time.

AZ: *Are you categorically rejecting the "safe country" notion or are you also considering a rewording of that?*

SM: I am saying that the Tories haven't produced what they would deem to be a "safe country". At the eleventh hour we even said: look, if you want the "safe country" concept, if you really believe in it, then allow the refugee groups and the immigrant groups, together with others, to define what is safe and not safe. Don't have the highest political body, the Cabinet, deciding that. Or if you really want a "safe country", then at least build in a guarantee that if the person is going back to that country he or she may enjoy status or he or she may have access to the refugee system. Now we have no objections if a person is in a refugee system processing in Germany and then comes here. We'd say, "look, you started in Germany, go back to Germany, finish it there, so we could help someone who doesn't have that."

AZ: *Would you consider a definition of "safe country"?*

SM: I'd like to get away from the whole thing of the "safe country". I think it's got a bad name. The Tories made it a bad name. I'd like to get a system whereby if people enjoy refugee status already once, and they apply here, I'd say no, because there are too many people who don't have a home that we should give rather than spending time finding a second home. People who are going in a refugee system in Europe or somewhere else and then come here at the same time, that is a no-no as well. They go back to their country, they finish their process there. If a person who comes from the States and stops overnight or a couple of days and comes here, then the only way we should send that person back to the United States is if that person has an eligibility to apply there. If he doesn't then we might as well take a look at it here. So those are the concepts that I am talking about and I'd like to get away from the "safe country" concept and define it by another set of words because I think it's got a meaning which I think is doomed in a lot of constituencies.

AZ: *If you win the election, how long do you thing it will take you to put through these refugee bills?*

SM: That's what I am looking at. Is it better to try to amend a law that is already passed or start a new one to go through the second reading, third reading, committee, Senate. I would hope that if it's possible to amend with the sake of time in mind, then we would amend. And I would hope that any Minister of Immigration would make this priority number one. I am hoping that within the first five to six months of a new administration we get that bill and the amendments through the house, through the Senate, and get it working. At the same time in those first six months, action on the refugee backlog, action fast, action quick, so by the time, hopefully, that the new system is in place, we will have begun to get the backlog in order, so it doesn't conflict with the new system.

> ... drop the pre-screening stage, allow people to make one oral effective and fair hearing and then make a determination.

AZ: *What do you think about the appointments to the Immigration and Refugee Board?*

SM: A number of them obviously have Tory connections. I would hope that what we have here on the refugee side, is people who have some expertise in refugee matters because that's important. If a person knows the business, then the business of processing is going to be speedier. You are much more prone to know what is good, bad, what is legitimate, what is illegitimate, and people who can distinguish between what is a refugee and what is an immigrant. So I would be satisfied if the people who have been selected have a solid foundation because that would determine the type and the quality of decisions and the speed of decisions. And those two factors are very crucial.

AZ: *Any final comments?*

SM: My final comment would be to say this. Liberals understand better than the present government the importance of immigration and refugee policy. Liberals, I think, recognize that immigration has to be a building block and a corner stone to nation building. Why do I say that? Because I belive that we recognize that here we have a large country with a relatively small population base. We have a rich country. We have a dwindling birth rate. We have an aging population. We have fifty thousand people leaving this country every single year and not returning. We have needs for professionals that our schools are not putting out quick enough for our economy. Therefore one answer to those problems is immigration. It is not the only answer, but it clearly is one answer, because nation-building doesn't stop in 1990 or in one year or two years. It keeps going. And if we continue at this pace, by the year 2020 experts believe that we are going to be going backwards in population. That's going to have a detrimental effect on the work place, on our pension system, on our social service system and on our lifestyle as Canadians. So, let's not wait until 2020 to jack up the immigration to 600,000 to keep pace. Let's begin to plan now. Let's have some foresight, let's have some vision of where this country has to go and begin to put in place the stages now, and, at the same time, let's keep in mind that we've got to tell Canadians what we are doing in a positive way. Do some educating. Let's get rid of those stereotypes so that Canadians can be allowed, with government's help, to be progressive. The example of the 1980s with the Vietnamese boat people was a clear example that when governments take leadership, when Canadians are told about the problem in an effective way, they will respond, as we did in that clear example, and that should be the example that should lead the way, and that we should have the best intentions to lead rather than following our worst fears. And that's something I think this government cannot be proud of in the way they've handled the immigration and the refugee situation.

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Dan Heap

Alex Zisman: ***What are your views on Bills C-84 and C-55?***

Dan Heap: If we can we will repeal the whole bill and will start with a new bill. However, since that might take time to do, in the short term we would concentrate on two things. If we had control of the Cabinet we would simply remove any countries' names that might be on the list of so called "safe countries", so that there would be no place to which a person could be sent on grounds that he could have made a claim there as a "safe country". We would also ensure that the Cabinet instructed the Immigration Commission not to return people compulsorily to countries that we would list as being in danger, like the old B-1 list, that being places of danger, without having their refugee claim examined. In other words we would administratively cancel the most offensive part of Bill C-55 which is the pre-screening. We would also administratively change the procedures of the Refugee Board so there would be a sort of review panel of the most experienced or senior Board Members who would review negative decisions to make sure both that they are not clearly faulty and that there was a uniformed standard of judgement across the country, since there would be many different locations in which these cases will be judged. Those are the two main changes that we would make administratively and as quickly as possible, very quickly after a new government, if we have the power to do it. Namely we would proceed to write completely new amendments to the Immigration Act to replace Bill C-55 and Bill C-84.

AZ: ***What do you plan to do about the notion of "safe country"?***

DH: According to a study done by a lawyer on staff with the Standing Committee on Labour, Employment and Immigration – she is a library researcher of the House of Commons – there is no agreed concept of "safe country". So far as we can find out, the present government has been completely unable to arrive at an agreement with any other of these so called "safe countries" for sending people back there. Therefore, for both those reasons we simply would abolish the use of those words because there never has been an agreed definition.

Dan Heap: "There is no agreed concept of 'safe country'."

AZ: ***How would you cope with the bureaucratic problem that would entail dealing not only with the new refugee claims but with the backlog that is now well over 60,000?***

DH: We will have to follow Rabbi Plaut's suggestion that he made when it was only a quarter of that, in other words a special procedure for the backlog. That would not be part of the new procedure for new arrivals. It would be something like what has been called the administrative review. It could be more fairly done. For example, the existing administrative review was unfair towards women from Third World countries, who in many cases were supporting their children here, but, because they earned less than $20,000, were judged to be unfit to support their children here, and were refused landed status for that reason. That is quite unreasonable, unnecessary and unfair. But the new procedure would again be much like the one that the Standing Committee recommended three years ago. As soon as a person arrives, make an appointment for him with the Refugee Board, who will then examine his or her claim fully in an oral hearing, as required by the Supreme Court, and decide whether he or she is or is not a refugee, and then and only then would immigration examinations of his or her case begin. In other words the human rights issue of refugee status must come before the administrative issue of immigration. The basic trouble with the present system is that those things are put on the wrong sequence, the wrong order. If that were done, it can be done in about three months normally, and in almost all cases six months maximum. Very few cases would have to go as far as six months. This is what I believe after our discussions with the senior officials of Immigration. And we would thereby make these scams impossible – like the Portuguese scam, the Brazilian scam, the Turkish scam and the Panamanian scam, because there would be no hope for a person staying long enough in Canada to earn enough money to pay back what he paid to the scam operator, let alone anything extra. So that would mean there would be no unreasonable build-up in the future, unless the government made the same mistake as it made during the past ten years of understaffing and underfunding the refugee process.

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AZ: *How would you deal with ships trying to smuggle refugees?*

DH: We would certainly not turn the ship away in those cases because we do not know what would happen to the people in the ship. We would allow the ship to land or we would even send a naval escort to compel the ship to come into port and we would examine the people on it and we would, if necessary, seize the ship and take legal action against the captain of the ship. This is now part of Bill C-84 that we in the opposition recommended. And it was adopted. That they should be compelled to come to port so that they could be examined. There is no value in turning the ship away because that lets the possible offender go free, but it endangers the lives of possibly innocent people.

AZ: *What do you think of the new Immigration and Refugee Board?*

DH: By the Government's statement of the qualifications, many of them appear to have no qualifications whatever in refugee matters. And I know of certain people who are qualified in refugee matters who were not asked to be part of the Board, including, I understand, some people who have been on the present Refugee Status Advisory Committee or the Immigration Appeal Board. Clearly some of these people were personal friends or supporters of the Tory government and the appointment appears to be a financial reward to them for their loyal support. I think that is extremely bad because it means that the job of examining the refugees will not be well done. They have put less competent people in there for the sake of money.

I cannot comment on their claim that 40 percent of their appointees are of visible minorities, I haven't seen the people, but I don't believe that that is the issue. The question is, are they people who have shown some competence and understanding in identifying refugees or in assisting refugees? The question of their colour, or the question of their ethnic origin is by itself irrelevant.

AZ: *Any final comments?*

DH: The Conservative legislation extends a policy that has been developed administratively of favouring the wrong kind of people to bring in on refugee grounds. That is to say they select them primarily for their immigration qualities, their benefit to Canada, rather than for their need as refugees, which is our obligation under the law.

Barbara McDougall

Alex Zisman: *Many refugee advocates have expressed concern about the implications of Bills C-84 and C-55, which are seen as deterrence measures somehow prompted by incidents such as the arrival of Latin American refugee claimants from the U.S. or the boatload of Tamils. What was the real purpose of these bills?*

Barbara McDougall: The bills have three purposes. There were not triggered by a particular group in a particular place. Clearly the current legislation is not working. I am sure that everyone would agree with that. So that we had to look at the situation on our borders around refugee claimants who were arriving in Canada unannounced, wherever they came from. This had nothing to do with Central Americans or South Americans.

The first purpose is to ensure a system where genuine refugees will continue to be welcomed in Canada and where we can move them into a system and get them landed as rapidly as possible.

The second is to ensure that false claimants who arrive are turned around faster and do not establish roots here. There is nothing wrong with people coming from offshore but that is an immigration process and we expect people to go through the same immigration process if they are not genuine.

The third objective is to try and get rid of the scams, the people who take advantage of economic migrants who are feeling a lack or opportunity, or who are moving around the world for whatever reason, and who give people all their savings in order to come to Canada on a boat or plane to take advantage of the system here. And people who traffic in human flesh that way are going to feel the full weight of the law. Those are the objectives of the two bills.

AZ: *What is the definition of a "safe country" and what procedures will be set up to define protection of genuine refugees?*

BMcD: First of all we will not send people back to any country where they would be put in orbit or where they would automatically be sent back to their country of origin. We would only select safe third countries on the basis of their commitment to the UN Convention and provided they have a refugee process of their own that people can go through and get a hearing in. The point is there are 12 million refugees in the world. It is not up to Canada alone to solve that problem. There are other countries who must be involved and that have to take part in solving these problems. We are consulting with organizations and academics around what those countries should be before we determine the final list. I think that it will probably be a shorter list than people expect and there may be countries where we would send back some people but not others.

... we will not send people back to any country where they would be put in orbit or where they would automatically be sent back to their country of origin.

AZ: *You just mentioned that they would not be sent to countries where they would be put in orbit. I believe the current legislation makes that a real possibility. In view of Amnesty International's proposal to add an amendment to prevent this possibility, how are you going to proceed with that amendment and how is it going to be added to the actual bill?*

BMcD: Well, I have no plans at this moment to amend the bills. I have already amended them to some extent to meet people's concerns, and that's what the legislative process is for – I am quite happy to do that. But I have no intention at this point of amending the bills again. I have a recent letter from Amnesty, which I have not really gone through with in any detail, that touches on this among other things.

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AZ: What refugee advocates find is that Canada traditionally has been concerned with deciding who is going to come to this country, be it immigrants or refugees. They view this bill as a deterrent to refugees who decide on their own to come to Canada.

BMcD: No, refugee claimants; there is a difference, OK? If refugees showup on our shore and they are genuine refugees, they are welcome to stay. And a process has been established in such a way that they will stay. Refugee claimants are different than refugees. Now you know that, and everyone involved in this business knows that.

AZ: Yes, but what I am saying is that the measures contemplated in this legislation are measures which will serve as deterrents not only to fake refugees but to refugees in general...

BMcD: I don't think so ...

AZ: ... because they will create more and more obstacles before their arrival to Canada.

BMcD: No, it won't create any more obstacles for genuine refugees.

AZ: Well, that is open to interpretation. There is another issue. It would appear that all these measures will affect a very small percentage of the refugees that arrive. There is an article in the last issue of Refuge *where Howard Adelman argues that a maximum of 10% of refugee claimants will be refused entry to the refugee determination process. The legislation dedicates a lot of time and effort to implement a procedure that will probably only affect a very small percentage of the people that are coming in. The same results could have been achieved by following the direction of the Plaut Report, for example.*

BMcD: Well, the Plaut Report, contrary to popular opinion, does not call for universal access, and they have some standards in it, too. They are defined a little differently, but on balance they would have accomplished the same thing. And we chose this route, as opposed to that route, but it is not as different as all that.

AZ: The effectiveness of this legislation will depend a great deal on proper documentation. For example, airlines and transport carriers are being penalized for bringing people who haven't got proper documentation. But if this documentation disappears at one stage, the whole process again will be stuck in the middle, because basically what the government has done is tackle a specific problem, a specific series of violations of the arrival procedure to prevent them from being repeated. And the measures that have been taken will stop these specific ways that have been used by fake refugees and other dubious operators, but this in no way prevents these very same people from utilizing other illegal ways to come in that would still circumvent the present legislation. A great deal depends on the specific documentation carried by these people.

Barbara McDougall: "If refugees show up on our shore and they are genuine refugees, they are welcome to stay."

BMcD: Well, it will be harder for them to circumvent the new system than it was for them to circumvent the old system. And everything that we have done we have done with the perspective of continuing to welcome genuine refugees and turning the others around fast, and encouraging them to come as immigrants. If they want to apply as immigrants that's fine, but then they can come as immigrants along with other people who come as immigrants.

AZ: The other concern of the refugee lobby is that there are going to be Charter challenges that are going to bog down the whole process again and make it even more unworkable than the other one.

BMcD: Well, if there are challenges there are challenges. There are Charter challenges every day and sometimes they go one way and sometimes they go another way. The Liberals have said when they brought in the Charter that they would make all legislation consistent with the Charter. Well, they didn't. Unemployment insurance being the perfect example. We have a lot of cases on unemployment insurance. And we do not quarrel with the findings because we know that much of our legislation which we are trying to work through and make consistent isn't. If there is a Charter challenge we will deal with it when it arises and we will see what the courts do. We have made every effort to ensure that the legislation is consistent with the Charter. But that does not mean that it won't be challenged and it also does not mean that the challenge will win. I mean, if it wins, it wins.

AZ: When I interviewed Sergio Marchi and Dan Heap, one of the things about which they showed concern was the way the legislation will deal with refugee smugglers, and particularly with sea captains who avoid facing fines or imprisonment when their ships are turned back, while the fate of the refugee claimants they are bringing remains in limbo.

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BMcD: The provision about the ships is sunsetted, and as soon as the new legislation is operative there is a clock ticking and that will come to an end. Secondly, it also provides for the fact that boats will be escorted in. And there are things having to do with seaworthiness, food supplies and all those things. We are not going to turn boats around into the North Atlantic in January and have people run into an iceberg. There are safeguards in the legislation and also the whole thing about the boats dies once I've got a system that is working. Then people who arrive by boat are going to be treated as anyone else, whether they arrive by plane, on foot, by bus, whatever. What we are trying to do is discourage unscrupulous captains and profiteering refugee entrepreneurs in Europe from sending people off in boats that are unseaworthy and crowded, and in conditions that are bare survival, to arrive in our shores. That is exactly the kind of trading in human flesh that I would not tolerate. So that that provision will be sunsetted, is sunsetted now, and while it is in place, all the provisions around seaworthiness and supplies, and all that, remains.

We are not going to turn boats around into the North Atlantic in January and have people run into an iceberg.

AZ: *You inherited a backlog that kept on growing and growing. How are you going to handle this backlog?*

BMcD: I am going to go to Cabinet with a proposal. We will have some discussion about it. We have not decided yet, except there will be no amnesty. I have said that a number of times. But beyond that there are a couple of ways we could deal with it, one is an administrative review, similar to the last time, with

Continued on page 10

Amnesty International:
A Letter to the Minister

Amnesty International works for the release of prisoners of conscience, being persons who have been arbitrarily detained, tortured or executed for the non-violent expression of their beliefs, and is opposed to torture and the death penalty in all circumstances. Accordingly, Amnesty International is opposed to a country sending a person to another country where that person faces the risk of arbitrary detention, torture or execution.

In the context of asylum and asylum procedures, Amnesty International is of the view that no refugee claimant should be removed from a country before a fair hearing on the merits of his/her claim has taken place unless such claimant has the right to be admitted to a third country and has access to a refugee determination procedure which includes a fair hearing on the merits. As well, the said third country should normally be a party to the 1951 United Nations Convention relating to the Status of Refugees and must respect, in fact, the spirit of the Convention. Furthermore, before a country removes a refugee claimant to a safe third country, Amnesty International is of the view that the claimant should be given the opportunity to explain why the safe third country would not be safe for him or her.

Amnesty International has received continuous reports over the years that people who are perceived to be opponents of the government in countries in Central America, and in particular El Salvador and Guatemala, have "disappeared", been tortured or been executed by "death squads". Amnesty International believes that the "death squads" are comprised of regular police and military agents, operating in plain clothes but under superior orders as an intrinsic part of the security apparatus in these countries. Many of those who have been executed in this way have previously received death threats. Such threats, including threats on the telephone, are quite common. Many people who have received death threats flee to seek asylum in other countries.

Amnesty International's concern for asylum seekers from these countries in the United States is heightened when the State Department and judicial authorities often require written corroboration that asylum seekers have received such death threats in order to be considered credible. Most "death squads" do not leave written documentation to confirm that a threat has been made. In Amnesty International's view, to require refugee claimants to produce written corroboration of death threats in order to be considered credible is a standard of proof that is unrealistic and, therefore, unfair.

There have been numerous cases where it appears that American authorities have regarded asylum seekers from Central America as economic migrants when many of them are *bona fide* asylum seekers, including asylum seekers who are at risk of arbitrary detention, "disappearance", torture or execution in the countries from where they have come. Moreover, this assumption on the part of the authorities has led to instances where Central Americans have been strongly discouraged from applying for asylum, or even coerced into accepting voluntary departure from the United States. Such practices as they affect Salvadoreans in particular were highlighted in the recent U.S. Federal Court decision of *Orantes v. Meese*, which describes how many Salvadoreans who lack documentation are held in detention centres in remote areas without adequate access to telephones, writing materials or other means to retain lawyers who can help them in pursuing their asylum claims.

After consulting the Research Department at the International Secretariat of Amnesty International, in London, England, and after consulting the U.S. Section of Amnesty International, the Canadian Section has concluded the following:

1. there are instances where Central Americans have been strongly discouraged by American authorities from applying for asylum and even coerced into accepting voluntary departure from the United States;
2. many asylum seekers from Central America are detained, which may impede their chances to pursue effectively their claims for asylum by being hindered from contacting lawyers who can assist them; and
3. the high standard of proof often required from asylum seekers from Central America in order to prove their credibility is unreasonable.

Therefore, the Canadian Section of Amnesty International considers that the asylum procedures and practices in the United States as they relate to Central Americans are not sufficient to ensure the protection of *bona fide* asylum seekers from these countries.

Accordingly, it is the view of the Canadian Section that if the Canadian Government were to send Central American asylum seekers to the United States to have their refugee claims determined there, this would increase the risk that Central Americans might be returned against their will to a country where they risk being arbitrarily detained, made to disappear, tortured or executed.

Yours truly,

Michael S. Schelew

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those criteria or different criteria. The other is to add to the resources of the Immigration and Refugee Board on a temporary basis and have a kind of parallel stream dealing with the backlog, and, you know, I would have to go to Cabinet before I am able to say how we are we going to do it.

AZ: *So at this time you don't have a specific time frame to determine how long you will take.*

BMcD: No, I'd hoped to get it in before the election, but there just wasn't time.

AZ: *Some critics have indicated that the patronage appointments at the Immigration and Refugee Board can indeed be seen as a sort of plum ...*

BMcD: Like, this is a whole pile of crap. We have a Refugee and Immigration Board which has on it a woman named Dorothy Davey, who is Keith Davey's wife. When she was appointed to this Board she was the wife of a Liberal senator. She has done a very good job and she is still on the Board. And just because somebody has been a Conservative doesn't mean they don't have a contribution to make. This Board, every single person on this Board, whatever their political background – and many of them don't have a political background at all – either have some experience with refugees, some experience with multiculturalism and the academic field, or something that gives them a contribution to make. They are also going through the best training of any board in the world, and the UN says that, too *[Several lawyers and law professors have indeed praised the training, but when we asked the UNHCR to confirm Barbara McDougall's claim, an official at the UNHCR office in Ottawa said he was not aware of any concrete or specific comments of this nature (editor's note)]* So I think that the quality of the Board is absolutely above reproach. And to suggest that because somebody is related to somebody's father and therefore is no good, is an insult.

AZ: *I didn't finish the question. When Dan Heap was referring to this thing, he said that what mattered was not the origin or background of these people but their qualifications. And he wasn't at all sure that most of these people were adequately qualified. Although many of them had worked in the previous board, they were again appointed to that board without any prior experience, so their experience ...*

BMcD: But they have experience now, don't they?

AZ: *Very limited.*

BMcD: Well, how do you think people got there before? There were people on the board before that had no experience, but they were trained and they developed the experience. It is no different except that the experience now of the new appointments is better. They were also the first ones to say that we should reappoint the people on the existing board. And they said "you cannot fire all these people", which we have no intention of doing. We looked at the quality of the existing board and we added to it.

... the quality of the Board is absolutely above reproach.

AZ: *But for example Joe Stern was left out. And Susan Davis ...*

BMcD: That wasn't the board, they were on RSAC. And many of these people are located in Ottawa. There is no great demand for refugee people in Ottawa. The demand is in Toronto, in Montreal, in Vancouver, in Halifax and other places. So there were some people who were offered an opportunity to move and turned it down. They were not all offered that opportunity, but we did find people in the places were the need is and even then a few who went through the list would tell that it is all right.

... who knows what's going to happen? I don't know.

AZ: *People have different perspectives on the various participants. But in any case Gordon Fairweather expressed concern himself that he will not be able to cope with the issues arising from the backlog.*

BMcD: No, there was never a intention that he should. That's why said if we decide that is the route we wa we go, we will have to set up a paral process. He was saying that in the conte of "what about the backlog?" And said, "well we don't have the resources deal with it", but he was never intende to, which he also said.

AZ: *The whole system was stopped as result until the new board becomes opera tional. Basically things won't start rolling till next year. But even then do you have any specific time frame?*

BMcD: As soon as possible, that's all I can tell you. You know, I mean, who knows what's going to happen? I don't know.

AZ: *Any final comments?*

BMcD: The only thing I would like to say is that I think that there is a lot we could do as a nation in terms of helping refugees and increasing immigration. And one of the things we haven't had in this country for a long time is a review of immigration policy and how that fits into our overall policy and also internationally in terms of refugees. Because whatever the criticisms are of the system – and I would say to those who are critical that it remains one of the best in the world – and if you look at what's happening in other countries, we have not closed our borders to refugees – far from it – and we will continue to welcome refugees to Canada. But I think there is more we should be doing internationally, because other countries are starting to shut down, and I would like to see us take a more, not aggressive, but a stronger role in discussing with other countries what can be done about all the migrants there are in the world, because we cannot morally or in any other way stand back from the fact that there are an awful lot of people in the Third World who are in need of a place to settle and a need of opportunity. Part of the solution to that is to try and build up the Third World countries economically so that people don't have to migrate. And all those are things that I would like to do, but that's a long term objective and it is something I would like to be involved with because this is more than just a day to day problem. It is something that the Western countries are going to have to come to grips with and accept a moral responsibility for.

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Called to Respond

by Maureen J. Smith

The Canadian Jesuit Refugee Programme hosted the conference "Called to Respond: Refugees and the New Canadian Reality" on October 28-30. The objective was to develop a working strategy on options to continue supporting refugees. Given the ambiguity of how the new legislation will be manifest in practice, our "new reality" is currently a largely unknown quantity. Clearly, in these circumstances, the process of developing a strategy is dynamic in nature since strategizing must anticipate the need to respond to reality as it unfolds.

The Participants and the Process

The eighty-five conference participants, assembled from across Canada to face this challenge of strategizing on options to support refugees, were mainly the front-line workers: NGO staff and volunteers, concerned and active individuals, and legal aid lawyers. Within this group there was a continuum of familiarity with refugee issues from the sweeping appreciation of refugee-related affairs of the Director of the Inter-Church Committee on Refugees whose knowledge results from a lengthy and intense involvement in this sphere, to the fledgeling, though equally genuine, acquaintance with the issues of a housewife who, by circumstance of responding to a friend's request to accommodate a newly arrived refugee couple in her home, has become aware of the need to respond to the refugee crisis. It was with this collective wealth of experience, consciousness, commitment and concern that the participants entered into the process of developing strategy.

Strategizing focused on four options which the conference participants acknowledged as being the most crucial components in a comprehensive strategy to continue refugee support work in our current situation. The four strategy options were Civil Disobedience, Monitoring the System, the Court Challenge, and the Overseas Situation.

A thread running through all of the discussions was the issue of mobilizing public opinion as a key element in the effectiveness of strategies to support refugees. This concept provides an essential focus for the comprehensive strategy.

In the development of strategy options, participants identified basic operative needs for initiating and sustaining implementation of these strategies. These basic needs, namely, co-ordination and information, delineated the parameters for a contingency plan, in the sense of making initial preparations required to provide the groundwork on which the overall strategy and its components will be erected and further developed in response to the unfolding of the Canadian reality.

The development of strategy was conducted in workshops corresponding to the four enumerated options. In addition, a working group on Refugee Women's Issues formed to articulate specific concerns which were integrated into the workshops. Summaries of the workshop conclusions follow.

Civil Disobedience and Non-violent Resistance

The dilemma of the uncertainty of the enforcement of the new legislation was nowhere more prevalent than in the Civil Disobedience Workshop. With the Detention and Deterrents Law (Bill C-84) having been enacted as of August 10, 1988, we are now facing a situation where,

"every person who knowingly organizes, induces, aids or abets, or attempts to organize, induce, aid or abet the coming into Canada of a person who is not in possession of a valid and subsisting visa, passport or travel document where one is required by this Act or the regulations, is guilty of an offence and is liable

a) on conviction on indictment, to a fine not exceeding ten thousand dollars or to imprisonment not exceeding five years, or to both," (Section 94.1)

This impacts directly on front-line workers who continue to be involved in assisting refugees to come to Canada to claim status. Where refugee workers have consciously opted to persist in their efforts, despite the new legislation, they are de facto engaged in civil disobedience. Although the law regarding "aiding and abetting" is currently in place, it is unclear how and under what circumstances it will be enforced.

In addition, there was considerable deliberation on the use of non-violent resistance to draw national attention to the refugee crisis at both the global and domestic scale, and, in particular, to protest the new legislation. The objective of a strategy of non-violent resistance is to increase public awareness, consequently mobilizing public opinion and fostering broad-based participation in favour of remedying the existing legislation.

Key considerations for organizing such action include the need for careful, clear action; training to ensure the non-violent nature of action; national co-ordination; and managing the traditionally problematic involvement of the media in publicizing resistance action. Also identified was the necessity of creating support bodies to organize a fund for payment of ensuing legal fees and fines, and to provide moral support to those charged and/or convicted of offences.

The participants of the Civil Disobedience Workshop proposed the formation of a National Network which will:

1) assist refugees,
2) change the laws by co-ordinating non-violent resistance through action by local groups.

Conference participants agreed to submit this proposal to their respective organizations for consideration. Representatives from these organizations will be meeting at the Canadian Council for Refugees conference in November to plan national action.

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Monitoring the System

With the enactment of the amendments to the Immigration Act, as delineated in Bill C-55, officially slated for January 1, 1989, the Monitoring the System Workshop participants identified the need to scrutinize probable problematic practices arising from the new legislation in order to ensure protection of individual refugees and to provide the documentation necessary for a legal challenge to the legislation. Key elements required for an effective monitoring programme were specified.

Monitoring has two objectives. The first objective is to protect refugees on an individual basis by observing the proceedings so as to be aware of, for example, the need to advocate that a claimant who requests legal representation is in fact provided with the same. The second objective of monitoring is to collect documentation of the new practices. This body of documentation will provide the legal community with data, allowing them to discern patterns of practice that indicate defects in the legislation, resulting in systematic discrimination against specific types or groups of refugees.

Requirements for establishing an effective monitoring system revolve around accessing information and compiling documentation. Workshop participants stressed the need to access all available sources of information on the impact of the new legislation on refugee claimants. This includes establishing links with counterpart organizations in the United States and the refugee community to maximize detection of occurrences where new practices jeopardize refugees. Equally important is the need to establish a system of documenting the new practices. The system must ensure easy access by the legal community to the compiled data for use in preparing challenges to the legislation in the courts. In addition, as part of a strategy to provide individual protection, the participants recognized the need to develop and distribute guidelines for prospective claimants advising them of appropriate action when making their claim.

The Court Challenge

Several court challenges to the new legislation are currently being prepared, including one by the Canadian Council of Churches which will challenge "those life-threatening sections" of the new Act on the grounds that they are unconstitutional. Undoubtedly, the legal community will be making many challenges as cases arise. Equally certain is the fact that the process of legal contestation will be protracted.

The objective of the court challenge is to ultimately remedy the legislation so that genuine refugees are guaranteed protection. Workshop participants concurred that it is essential to mobilize public opinion in order to provide momentum to the legal contestation and also, so that when the time comes to reformulate the policy, the demands of the Canadian public, for a just policy, will be heard.

Capturing the support of the public imposes on the front-line workers the formidable task of translating the court challenge, and the reasons for it, into a popular, grass-roots campaign. This involves sensitizing Canadian citizens to the particularly vulnerable and unjust situation experienced by refugees both in terms of the conditions which led to their flight and of their enduring hardship due to the failure of the international community to effectively respond to their plight. The new restrictive refugee policy of the Canadian Government, which perpetuates the injustice suffered by refugees, must be presented to the public as symptomatic of a generally restrictive trend in government policy which impacts on all Canadian citizens.

A well-conceived popular education campaign is needed to arouse the consciousness of the Canadian public. This necessitates the development of popular resources which will explain the issues relevant to the court challenge in a manner comprehensible to the lay person. Organization is required to initiate and coordinate action at the community level and also in order to develop links with progressive sectors of society who can provide support to the popular movement surrounding the court challenge.

The Overseas Situation

The workshop on the overseas situation dealt with strategy on two issues; root causes and sponsorship.

In developing a strategy option to address root causes, workshop participants emphasized the need to investigate Canada's involvement in refugee producing situations both from the point of view of causal factors and that of management possibilities. It is imperative that Canadian links with the Third World, where the vast majority of refugees originate, be examined to determine ways in which we as a nation influence refugee production. This includes an evaluation of trade practices, foreign policy, development initiatives, and involvement in transnational corporations, all of which affect the social, economic, and political stability of potential refugee producing countries.

On the opposite side of the coin, investigation is required on the subject of Canada's potential role in minimizing the production of refugees through positive intervention initiatives. Possibilities for this role include diplomatic initiatives, such as lending legitimacy to regional conflict resolution accords by the granting of official recognition, and perhaps providing human rights observers to monitor volatile situations.

The findings of these investigations must be presented to the public in an effort to raise their awareness and, thereby, mobilize their concern to affect change. The findings must also be addressed to the government to influence policy decisions.

Workshop participants who strategized on sponsorship, proposed the use of private sponsorship as a means of bringing refugees to Canada in an effort to offset the impact of the new legislation in restricting the admittance of claimant refugees and government sponsored refugees. This was proposed as an ameliorating tactic while the court challenge proceeds in its efforts to remedy the legislation. To counter the lengthy wait involved in the security screening process, it was suggested that use of the Minister's permit, which circumvents the screening, be strongly advocated, especially for refugees in particularly risky situations. There is also a need to identify a pattern of which refugees are refused sponsorship, in order to detect defects in the legislation which should be contested in the courts.

Towards a Comprehensive Strategy

In the process of developing strategy options, one key concept and two basic operative needs assumed distinction as essential components for the development of a comprehensive strategy.

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The concept of public opinion mobilization was acknowledged by the conference participants to be the principal focus in a comprehensive strategy that will fundamentally transform the situation facing refugees seeking asylum in Canada. The question of working for just treatment of refugees is, and must be seen to be, an issue of fundamental human rights, the restricted protection of which, as is inherent in the new legislation passed by the Canadian Government, has direct and profound implications for the security of rights of Canadian citizens. In order to successfully continue working to support refugees in our present context, while simultaneously campaigning for a refugee policy which reflects the Canadian public's concern for the uncompromised observation of the inalienable rights of refugees, it is necessary to foster broad-based public support. National concern can be rallied if Canadians are prompted to equate the vulnerability of refugees, vis-à-vis the increasingly restrictive policies, with their own vulnerability, in the context of the current trend towards more restrictive government policy in general.

The mobilization of public opinion necessitates a well-administered and well-conceived campaign to educate the Canadian public. As a key focus in the comprehensive strategy to continue supporting refugees, public opinion mobilization requires that there be a solid base in terms of organization and access to information.

The two basic operational needs identified as essential for implementing the strategy options and also for the mobilization of public opinion are co-ordination and information. The conference participants recognized the need to establish a co-ordinating body that will construct the groundwork on which strategy will be erected, as well as to act as an umbrella to existing organizations. This body would co-ordinate action nationally and provide a link between organizations to facilitate the collection and dissemination of resources required by the front-line workers.

Co-ordination could be mandated to an already existing organization or to a new body created specifically for this purpose. The responsibility for instituting this co-ordination function is most appropriately that of the organizations currently involved in front-line work with refugees. Action is urgently needed to affect this.

The second operative need of front-line workers for the implementation of the proposed strategies is information. This includes, among other things, documentation of cases once the new legislation is enacted in 1989, analysis of the conditions in refugee producing countries, and information geared to public education on refugee issues. A system must be established to which the front-line workers can both contribute and have easy access to a collective depository of information. The proposed co-ordinating body appears to be the most apt organizational framework in which the logistics of an information system can be accommodated. The front-line community must take action to develop an information system that will avail them of the tools required to implement strategies.

Sources of Information

While the front-line workers can contribute some of the information needed, such as documentation of cases, links to other sectors will provide other sources of information. For instance, background information on refugee producing countries can be tapped from centres involved in area studies and organizations working in the field. Conference participants identified academics engaged in refugee studies as a source of analysis of the data and as contributors of prediction of probable developments and prescription of appropriate action based on the data.

Academics involved in refugee studies and front-line workers share a common objective of (in the final analysis) assisting refugees. Whether one takes a direct, "hands-on" approach or an indirect, "conceptualization of the issues" approach is inconsequential to one's commitment to work towards that objective. In spite of there being a common objective, there is a very real gap between the work of the academic community and that of the front-liners which can and should be bridged.

The conference participants, representing the interests of the front-line community, expressed a hunger for information, especially for data that has been analyzed and the ensuing prediction and prescription based on the data. This demand for information indicates a practical nexus of the endeavours of the academics and the front-liners.

A large number of the conference participants subscribe to, or belong to organizations which subscribe to, this periodical, *Refuge*. They also attend workshops and conferences on refugee issues to which academics are invited to contribute. Through these fora, the means of supplying the desired information exists. The academic community, on the basis of its common objective with the front-line workers, has a responsibility to respond to this situation in concrete terms.

Herein lies a challenge to academics involved in refugee studies to respond to the needs of their more practically-oriented counterparts in the collective effort to assist refugees. The challenge is this: to contribute to the existing fora the information and analysis resulting from their research which is oriented to the development of the strategies identified by the front-liners; namely, Civil Disobedience, Monitoring the System, the Court Challenge, and the Overseas Situation. They are also invited to give consideration to the weaknesses, and make suggestions for the strengthening, of this framework of strategies.

Conclusions

Conference participants successfully engaged in developing strategy on four options; Civil Disobedience, Monitoring the System, the Court Challenge, and the Overseas Situation. They identified as pivotal in the comprehensive strategy, the mobilization of public opinion in support of a refugee policy which genuinely observes our obligation to protect refugees. They also outlined two basic operative needs required to support strategies designed to assist refugees. These needs are that of national co-ordination and supporting information.

The front-line community needs to take action on these proposals. All organizations and individuals engaged in efforts to assist refugees have a responsibility to act in solidarity by contributing to the process according to their respective expertise. The challenge of devising and instrumenting ways of continuing to support refugees in our new, and yet uncharted, reality is one of urgency and one to which we are indeed "Called to Respond".

Maureen J. Smith, *a graduate student in Interdisciplinary Studies, is the Public Relations Co-ordinator of the Centre for Refugee Studies at York University.*

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Canadian Sanctuary

by David Matas

What is the legal position of Canadians who help refugees come to Canada, enter Canada and stay in Canada? Are Canadians who help refugees breaking the law?

The act of helping refugees arrive, enter and stay may be a violation of the legislation. Whether it is breaking the law is less clear. To determine whether violating the legislation means breaking the law we cannot look only at the legislation in isolation. We must look as well at the Canadian Charter of Rights and Freedoms and international law.

We cannot assume that refusing to comply with the legislation amounts to civil disobedience. If the legislation violates the Charter and international law, then those who comply with the legislation are legally disobedient. Those who do not comply with the legislation and instead follow the requirements of the Charter and international law are legally obedient.

Under the old law there was no need for those who wanted to help refugees to contravene the legislation. Refugees could come to Canada. Canadians could assist them in their coming. Once refugees arrived they could make refugee claims. If they were refugees they could stay.

The new law changes all that. First of all, it becomes more difficult simply to get here. Airlines are put in the role of immigration officers, stopping people from getting on planes if they do not have proper documentation. If they do not stop refugees from flying to Canada, the airlines are heavily penalized. They will be vigilant to prevent refugees from arriving.

The new law also penalizes any Canadian who assists refugees coming to Canada. Technically the penalty is imposed on those who assist people who come to Canada without proper documentation. But, in reality, refugees do not have proper documentation, and will come within this provision.

There are three possibilities. A refugee can come from a country for which there is a visitor's visa requirement, and have a visa. A refugee can come from a country for which there is a visitor's visa requirement and not have a visa. Or a refugee can come from a country for which there is no visitor's requirement. In each, the law will be violated.

If a refugee comes from a country for which there is a visitor's visa requirement, and does not have a visa, the refugee will not have proper documents simply because he or she did not have a visitor's visa.

If the refugee comes from a country for which there is a visitor's visa requirement, and does have a visitor's visa, the law is violated all the same. The refugee has proper documentation, but it has been obtained by misrepresentation or fraud since a refugee is not considered a visitor. In order to get the visa, the refugee must have told the visa office that he was intending to visit, whereas, in fact, he was intending to stay.

Even if a refugee comes from a country for which there is no visa requirement, there will be a problem. For refugees are considered immigrants. Even though visitors from some countries do not need visas, immigrants from all countries need visas to come to Canada. So virtually every refugee either will not have proper documentation or will have committed an offence to get it. Virtually everyone aiding a refugee to come to Canada will be committing an offence.

In addition to the new penalties in Bill C-84, the old penalties in the old law assume added significance because of the change in refugee procedures made through Bill C-55. When a refugee comes from an intermediate country, the new law says he has to be sent back to that intermediate country without there being any individualized determination about the human rights record of that country, the country's respect for the Refugee Convention, whether or not the refugee can return to that country, or whether or not the refugee can make a refugee claim in that country.

A refugee may come to Canada from a country that will not accept him back, or if it does physically allow him to return, will allow a return solely for the purpose of sending him back to the original country of persecution, without the possibility of a refugee claim. Yet, according to the new Canadian law, back he would go all the same.

Those in Canada who want to assist refugees have to ask themselves what they can do to help. They have to ask both what is their moral responsibility and what is their legal duty.

It is a dilemma that was faced by the Sanctuary movement in the U.S. The U.S. has a different legal structure from Canada for refugees. But the practical upshot is the same. Real refugees are returned by the U.S. government through intermediaries to the country of danger.

The Sanctuary movement helps refugees enter the country in a clandestine fashion. It offers them shelter, clothing and food in the United States. It has made public statements about its intentions and encouraged others to join. In March of 1982, Jim Corbett and reverend John Fife, both of Arizona, held a press conference in Tucson where they announced they would publicly violate the provisions of the U.S. Immigration and Nationality Act, provisions that prohibit bringing into the U.S., transporting, concealing, harbouring or shielding any alien.

While Canadian law does not have quite the same offences as U.S. law, either under the old law, or under the new, a refugee who enters Canada without reporting to an immigration officer is committing an offence. So is anyone who aids him.

A person who enters Canada by means of a material representation, for instance a person who obtains a visitor's visa, or authorization, by saying he intends to visit, when he is really a refugee, is guilty of an offence. So is anyone who aids him.

What is more, eligibility screening does not apply to these people. A refugee who reports to an immigration officer at a port of entry may be sent back to the intermediate country from which he came. A person who sneaks across the border, or lies to get entry as a visitor cannot, legally, be sent back to an intermedi-

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ate country from which he came. He may be prosecuted, but he cannot be put into eligibility screening. The law creates an incentive for violation.

Given that the law gives more protection to refugees who enter Canada illegally than those who do not, those concerned with the fate of refugees have to ask themselves whether they want to aid refugees in circumventing the application of eligibility screening.

They have to ask themselves whether they want to do what the Sanctuary movement in the U.S. has done. Do they want to give sanctuary and declare sanctuary? Do they want to set themselves on a course of violation with both the new laws and the old laws in order to protect refugees?

The moral dimension of the answer to that question I will leave for others to answer. I want to focus simply on answering that question from a legal point of view.

A preliminary legal question is, are the provisions that generate the offences themselves constitutional? If the safe third country rule, the requirement of return to intermediate countries, is a violation of the Charter, and held to be so by the courts, the impetus to violate the legislation to circumvent that rule disappears. However, whether that rule is a violation of the Charter is a large and separate question. The same can be said about whether the provision criminalizing aid to refugees is constitutional. For the purpose of what follows, I assume that both provisions are functioning parts of the legislation.

The first question that has to be asked is, if a Canadian helps a refugee enter Canada in violation of the legislation, will he or she be prosecuted? The answer to that is, in principle, that he or she should not be.

The Government of Canada has a dual responsibility. It has a responsibility to administer the laws of Parliament. When there is a violation, there is a duty to prosecute. While there is a prosecutional discretion, that discretion cannot be exercised so as never to prosecute all violations under a law. If that happens, the intent of Parliament is ignored.

The Government of Canada also has, however, a responsibility to comply with its international obligations. And one of those obligations is the Refugee Convention. One of the presumptions that applies, when interpreting legislation, is that legislation must be interpreted, if at all possible, so as to be consistent with international law and Canada's international obligations.

The Government of Canada, when applying its immigration law, must apply it, if at all possible, so as to be consistent with the Refugee Convention. What that means is not prosecuting those who protect refugees.

There is a rule of state responsibility, as drafted by the UN International Law Commission, that is relevant here. It is the rule that the conduct of a person not acting on behalf of the state shall not be considered as an act of the state.

The law creates an incentive for violation.

This rule is subject to an exception. The rule is without prejudice to the attribution to the state of any conduct related to that of the private person and which is to be considered as an act of the state.

The effect of the rule is that a Canadian private citizen acting in his private capacity cannot implicate Canada internationally. What the individual does, does not put Canada internationally at fault.

However, the exception to this rule means a state breaches its international obligations if it has taken a complaisant attitude to the individual's actions and shown complicity with it. A state is internationally responsible where it has not done everything on its power to prevent the wrongful act of the private individual.

If a state does not prevent its citizens from acting in conflict with an international obligation of the state, then the state is in breach not of that obligation, but of a more general obligation to prevent the wrongful act.

The converse of these propositions is also true. Just as a state must prevent its citizens from acting in conflict with an international obligation of the state, so must a state not prevent its citizens from acting in conformity with an international obligation of the state. A state breaches its international obligations if it takes on obstructive attitude to such an individual's action and shows opposition to it. A state is internationally responsible where it has done anything in its power to hinder the rightful act of the private individual.

If we assume that those that a Canadian Sanctuary movement would help are indeed refugees, then the Sanctuary movement, by giving the refugees sanctuary, is helping Canada conform to its international obligations towards refugees. The Canadian Government, by prosecuting the individuals who provide sanctuary, would be in violation of its international obligations. It would be obstructing individual action that would put it in compliance with the Refugee Convention.

However, just because in principle the Government of Canada should not prosecute those helping refugees, it does not mean it will not prosecute. On the contrary, we have to believe it will. The Government, after all, introduced and pushed through Parliament the legislation to give it the power to send back refugees to intermediate countries. It would be foolhardy to think it went to such pains to get this law simply in order to have it sit unused in the stature books. We have to presume that, in a situation where Canadians aid refugees to seek protection, in violation of the legislation, prosecutions will follow.

The question is: What will be the result of that prosecution? The presumption that Canadian law will be interpreted in conformity with international law is relevant on the question of conviction as well. If the person really is a refugee, if the person really would not be protected in the intermediate country, then it is a violation of international law to convict someone who aids the refugee. And Canadian law must, if possible, be interpreted to be consistent with international law.

A person helping a refugee coming directly from a country where his life or freedom would be threatened has an additional defence as well. The Refugee Convention prohibits the imposition of penalties on refugees on account of their illegal entry or presence. The refugees must come directly from a territory where their life or freedom was threatened. They must present themselves without delay to the authorities.

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Because penalties for illegal entry or presence are a violation of the Convention, penalizing those who aid illegal aliens would also violate the Convention. At the time the Refugee Convention was being drafted, the Swiss representative to the Ad Hoc Committee of the Economic and Social Council of the United Nations, established to draft the Convention, drew the attention of the Committee to a provision of Swiss law. That provision stated that a person who aids a refugee enter the country illegally is not subject to punishment if he or she acted our of honourable motives. The Ad Hoc Committee did not include in its draft a provision specifically referring to those who assist to secure the illegal entry or presence of refugees, but several delegates, including the American, Mr. Henkin, expressed the hope that "Governments would take note of the very liberal outlook embodied in the Swiss federal laws and follow that example".

For a Canadian Sanctuary movement to be able to take advantage of this provision of the Convention, the refugee most have presented himself without delay to the authorities. "Without delay" does not necessarily mean immediately. If the time between entry and presentment is reasonable in the circumstances, there is no delay. Presentment need not even be voluntary. A refugee can come within this provision even if he is apprehended before he or she has had a chance to give himself or herself up. It is the time element that is important when invoking this Convention provision.

Because the refugee must have come directly from the country where his or her life or freedom was threatened in order for a Sanctuary defendant to invoke this defence,the defence is of little use to those aiding refuges who have come from an intermediate country. But other defences are open.

There is a defence open to a potential Sanctuary defendant in Canada, a defence that is part of international law and is also part of the ordinary Canadian civil law. Its is the defence of necessity as it exists in international law.

The domestic defence of necessity may be described in this way. A defendant in a criminal case may be acquitted, even if he committed proscribed acts with the requisite state of mind, if he did so in the reasonable belief that his conduct was necessary to prevent some greater harm to himself or others. What a Canadian Sanctuary movement might argue is that what they did was done out of a reasonable belief that their conduct directly prevented bodily harm to refugees.

The prosecution, no doubt, would argue that the accused could not invoke the necessity defence because there exists a detailed administrative and legal process for reviewing a person's claim that he or she is entitled to refuge. The prescribed statutory process can result in claimants obtaining lawful refugee status.

This sort of argument, however, confuses formalism with reality. There is a refugee determination procedure. But the reality is that refugees passing through listed intermediary countries will not be given protection.

> ... the Sanctuary movement, by giving the refugees sanctuary, is helping Canada conform to its international obligations towards refugees.

What a judge has to decide in a Sanctuary case is not whether the accused are exonerated by the necessity defence, but only whether the jury could consider the necessity defence. In a number of U.S. protest cases, where the judge left the necessity defence to the jury, the accused were acquitted. That was true in cases about accused protesting military air to El Salvador, deprivations of human rights in South Africa, Navy participation in nuclear weapons proliferation, CIA recruiting at the University of Massachusetts. The protests themselves involved some form of illegality, typically trespass.

In protest cases, the necessity defence is a good deal more tenuous than it would be in a Sanctuary case. For, in protest cases, the linkage between the protest and the harm to be prevented is a good deal more remote. Protest has only a speculative and uncertain link with ending military aid to El Salvador, human rights deprivations in South Africa and so on. What a Sanctuary movement does to protect refugees is direct and effective. The movement would not just protest the failure of the Canadian Government to provide protection to refugees. The movement would provide the very protection the government failed to give. The movement would not just influence the avoidance of the greater harm. It actually would go about ensuring the avoidance of the greater harm. So the likelihood of the necessity defence being left to a jury is even greater than in the protest cases.

There is a second defence that a Sanctuary movement could raise that is based both on international law and Canadian domestic law, the defence of religion.

Freedom of religion is both an international standard and a domestic Canadian standard. Freedom or religion is guaranteed by the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, which Canada has signed and ratified, the UN Declaration on Religious Intolerance, and the Final Act of the Conference on Security and Cooperation in Europe (the Helsinki Accord). It is also guaranteed by the Canadian Constitution.

Freedom of religion is not just freedom of conscience or belief. It is also freedom to practice one's religion. Religion is not just prayer. It is charity. Religion is not just piety. It is helping people. To the clergy, every human being is made in the image of God. Promoting human rights is doing God's work.

Helping refugees is part of the ministry of a Sanctuary clergy. It has to be considered as part of their religious duties. The Sanctuary concern for refugees is a human rights concern. Sanctuary is offered so that refugees can avoid being forcibly returned and subjected to human rights violations at home. The Sanctuary movement is a movement in defence of human rights. Prosecution of the Sanctuary movement makes the religious work, the practice of the religions of the Sanctuary clergy more difficult.

By prosecuting a Sanctuary movement, the State turns respect for freedom of religion into a formality. A Sanctuary movement is not able, because of the pros-

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ecution, to enjoy fully the freedom of religion supposedly guaranteed to it.

Freedom of religion does not allow for derogation from human rights standards. Like all the freedoms, freedom of religion is not an absolute. Practices such as mutilation, amputations, female circumcision, or stoning are not justifiable simply because they are religious practices. Sexual discrimination, discrimination against women, is not acceptable by international standards because it is condoned by religion.

The situation is altogether different when religion is promoting human rights. The human rights standards and freedom of religion go hand-in-hand. They each reinforce the other. Respect for human rights is a value in itself. When both the human rights of refugees and freedom of religion are thwarted, the violation of international standards is doubly heinous.

There is a second provision of the Charter that is relevant in assessing the legal worth of a Sanctuary defence. That the rights of life, liberty and security of the person not be denied, except in accordance with the principles of fundamental justice. It can be argued that, when a Sanctuary defendant is prosecuted in violation of international law, the fundamental justice is denied.

The Canadian Charter of Rights and Freedoms is subject to the supremacy of God and the rule of law. These are two guiding principles stated at the beginning of the Charter. When the rule of law is violated, then fundamental justice is denied.

The rule of law does not mean that the law is obeyed. The rule of law is a standard or test by which laws themselves can be assessed. Laws can violate the rule of law.

The rule of law means that laws are not applied arbitrarily. Laws are applied equally to all. It is a violation of the rule of law to apply to an individual only the inculpatory provisions, and not also the exculpatory provisions of the law.

For instance, in the law of murder, if the Defender (D) defends the Victim (V) the Perpetrator (P) is trying to murder, and in the process uses force against P, D can claim the right of private defence. It would be absurd to prosecute D for his assault on P without any regard for the fact that P was trying to murder V. Indeed, the law does not allow for it. D is justified in using reasonable force in the defence of V, because there is a general liberty as between strangers to prevent an offence.

This was very much like what would be happening at a Sanctuary trial. The refugees are the victims. The accused are the defenders. The Canadian authorities, by denying protection, are the perpetrators. The accused, in order to protect the victims, would be violating what the perpetrators claim to be their rights.

These principles hold true for international human rights law. If a person commits an act that would otherwise be contrary to domestic law in an attempt to bring his country into compliance with international law, then it is a violation of the rule of law to prosecute the person for his act. It is absurd to look at the alleged domestic offence in abstraction from the requirements of international law. If Sanctuary defendants were to be prosecuted for a domestic offence, in abstraction from an international law stating that refugees must not be returned to a country where their life or freedom would be threatened, then one law would be applied, the domestic law on illegal immigrants. Another law would be ignored, the international law of refugees. In that situation, the rule of law would be mocked and abandoned, and fundamental justice denied.

> The Canadian Government, by prosecuting the individuals who provide sanctuary, would be in violation of its international obligations.

That is all I have to say about Canadian law, but is it not all I have to say about the law. Even if Canadian law could lead to a conviction, there is an additional international law perspective.

International law limits the obligations individuals owe states. International obligations binding upon individuals must be carried out, even if to do so violates a positive law or directive of the state. Once a person is free to choose to violate international law or comply with international law, he is personally responsible for the choice. Anyone with knowledge of illegal activity and an opportunity to do something about it is a potential criminal under international law unless the person takes affirmative action to prevent the commission of the crime. Because individuals are responsible for their nation's conduct at international law, individuals must act to repudiate that conduct, if it is possible for them to do so.

This defence, based on international law, is a second order defence. It requires a prior finding of breach of international law. State illegality justifies individual violations of state directives. But is state activity illegal? In a Sanctuary case, the state activity would be illegal, because of forcible return of refugees to intermediate countries whether they would be protected there or not.

This defence assumes that what the accused did was illegal according to Canadian law. The action becomes illegal only under another different law, put against Canadian law, namely, international law.

There must be some nexus between the local law disobeyed and the local law violating international standards. Disobedience of the law that leads to prosecution must itself manifest a refusal to participate in the conduct that violates international standards.

That would certainly be the situation of a Sanctuary movement. A Sanctuary movement would not simply be violating an extraneous law in order to protest Canadian violation of international refugee law. A Sanctuary movement would violate the very law that in turn violated international standards.

David Matas, *a Winnipeg lawyer, has been acting as Legal Counsel to the League for Human Rights of B'nai Brith Canada and as co-ordinator of the legal network of AI–CS (ES). This article is an edited version of his remarks at the "Called to Respond: Refugees and the New Canadian Reality" conference of the Canadian Jesuit Refugee Programme at Niagara Falls, Ontario, on October 29, 1988.*

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CCR Resolutions

The Canadian Council for Refugees celebrated its annual conference in Toronto on November 24-26. We have selected below some of the resolutions passed during the closing session.

Somali Refugees

Be it resolved that:

The Canadian Council for Refugees shall strongly urge the Government of Canada to render immediate assistance in the following ways:

1. To take immediate steps to resettle Somali refugees in Canada so that families can be reunited;
2. To extend speedy processing to Somali refugees now in Canada to enable them to sponsor their families;
3. To increase direct aid in the form of food and medical supplies to the growing numbers of Somali refugees in Ethiopia; and
4. To use all available diplomatic means to ensure the safety fo those fleeing and to prevent forced repatriation of Somali refugees to a situation in which the most basic of human rights will clearly not be extended for as long as the present regime or its chosen successors remain in power in Somalia.

New Determination System

Be it resolved:

1. That a special programme be instituted immediately, given the January 1, 1989 implementation date of the new determination system, to resolve the future of the claimant backlog;
2. That such programme accept for landing all claimants in the backlog for whom there is no alleged security/criminality issue, under relaxed and specially targeted criteria;
3. That claimants involved in alleged security/criminality issues be given a detailed review hearing on these issues as part of the special programme;
4. That all claimants in the backlog in Canada on or before the programme announcement date be eligible for the special programme;
5. That any person already in Canada who has indicated or in future, prior to the date announcement of the programme, indicates to the Immigration Commission their intention to make a claim at inquiry, will be considered included in the claimant backlog;
6. That persons awaiting an inquiry in the USA who indicated to the Commission prior to the announcement of the programme their intention to make a claim at the "in Canada" inquiry when held, will be considered part of the backlog;
7. That claimants already rejected by the Minister of Immigration or by the Immigration Appeal Board, whether under removal order or not, be considered part of the backlog;
8. That claimants in the backlog not accepted under the special programme be allowed to have their refugee claim determined on its merits either under the old or new determination system.

Protection

Be it resolved that the Canadian Council for Refugees:

1. Reaffirm its opposition to the system contained in the *Immigration Act*, S.C., 1988, Chapter 35, which does not guarantee protection for refugees in Canada for procedures which conform with fundamental principles of natural justice;
2. Press its members to participate in the Canadian Council of Churches' educational and fundraising activities with regard to the court challenge.

Safe Country

Be it resolved:

1. That the Canadian Council for Refugees respond to the Minister of Immigration by declaring that no country can be inherently

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"safe" to all refugees of a given nationality or class and that therefore all claimants must have a determination on the merits in Canada of their case, in order to ensure that proper protection to the refugee can be assured;

2. That the members of the Canadian Council for Refugees be encouraged to adopt this position in their own organizations, communicate it to the Minister with a copy to the Canadian Council for Refugees, the Toronto Refugee Affairs Council, Toronto, and La Table de concertation de Montréal;
3. That the Canadian Council for Refugees request the Minister to repeal immediately the sections of the Immigration Act concerning intermediate country ineligibility.

Legal Aid

Be it resolved that:

1. All provinces provide legal aid for refugee claimants;
2. The legal aid be available both at the inquiry and the refugee claim;
3. The federal government contribute to the provincial cost of provision of legal aid for refugee claimants.

U.S. Arrivals

Be it resolved that:

1. All refugee claimants from the U.S., and elsewhere, be allowed entry to Canada pending the scheduling of their inquiries;
2. Refugee claimants be given the benefit of a speedy inquiry and refugee claims procedure;
3. Refugee claimants residing or sojourning in the U.S. who wish to remain in the U.S. pending their inquiries be allowed to do so;
4. Entry of refugee claimants from the U.S. be allowed pending the scheduling of their inquiries both under the present law and under the new law;
5. The law be amended to provide for entry from the U.SD. pending the scheduling of inquiries for all those who wish to avail themselves of this provision;
6. Before any such amendment, the discretion of immigration officers to allow entry from the U.S. prior to the scheduling of refugee claims be exercised in favour of refugee claimants who wish to enter Canada.

Recommendations from CCR's Workshop on "Women at Risk" Programme

1. That the Executive of the CCR communicate to the Government of Canada:
   a) support for the continued selection of women under the "Women at Risk" programme and regular refugee programmes – government assistance, joint assistance and private sponsorship of women and their children who are heads of household.
   b) a recommendation to increase the total intake of refugee women to more adequately reflect the resettlement needs of the global female refugee population.
   c) that increased resources be allocated to ensure the in-volvement of women refugees in the design and development of creative and innovat-ive resettlement programmes.
2. That the Working Group on Refugee Women:
   a) in co-operation with the UHCR and the federal government develop and implement a monitoring system which will:
      i) identify the particular needs and problems of women refugees with particular concern for regional differences;
      ii) identify the resources utilized by the refugee women and their support groups to access effective and culturally sensitive services.
   b) continue to develop strategies which will identify needs and appropriate solutions with respect to the adjustment of refugee women.
   c) promote at all levels, government, NGO and UNHCR, the development of strategies and resources to ensure a humane and equitable adaptation process for all women refugees in Canada. Special emphasis should be placed on issues of language training, health services, family counselling, support networks, employment and daycare.

Overseas Protection

Be it resolved that:

1. The CCR create a task force on overseas protection to report on the refugee claim procedure and selection at Canadian visa offices abroad.

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Book Reviews

Louis-Jacques Dorais, Kwok B. Chan and Doreen M. Indra, editors *Ten Years Later: Indochinese Communities in Canada*

Montreal: Canadian Asian Studies Association, 1988

Reviewed by Howard Adelman

Ten Years Later is a successor to Chan and Indra's edited volume entitled *Uprooting, Loss and Adaptation* published by the Canadian Mental Health Association (reviewed in *Refuge*, Vol. 7, No. 4); the latter dealt with adaptation from an individual perspective. The articles in *Ten Years Later* are organized geographically and deal with the collective life of the Southeast Asian communities of Victoria, Lethbridge, Winnipeg, Toronto, the National Capital Region, Montreal, Quebec City and Southeast New Brunswick. They are intended to serve a practical role in guiding government policy as well as to assist the various Indochinese communities to preserve and reinforce their cultural identities.

As Jean Burnet noted in her Preface, the Southeast Asian refugees provide a fascinating case study of immigrant, more particularly, refugee adaptation, not simply because of the drama and trauma of their exodus, but because of the diversity within the group, their widespread dispersion and the unique policies then in place in Canada which played a role in their adaptation – namely the private sponsorship programme for refugees and the new multicultural policies of Canada.

The first chapter by Buchignani diverges from the others. It is not itself a community study but an attempt to synthesize data in order to develop a model of both contemporary Southeast Asian family and community organization. More than that, it is a plea for less ad hoc research and for more systematic and focused studies to test theoretical models.

Buchignani divides the problem into three areas: the study of families, informal community organizations and institutional community organizations. In each case he uses a structural-functional methodology to examine the research data available. The structural studies reinforce the impression that Indochinese families are extended, patrilineal, patriarchal and patrilocal; they are not typical nuclear Western families. However, like all other immigrant groups who have come to Canada, the family structure is in transition. While still patriarchal and patrilineal, it is developing into a nuclear or only partially extended model. Men are becoming more marginalized in the family than women. In part, this transition is a result of the normal economic ans social forces in Canada. The transition, however, has been affected by the degree to which Southeast Asian refugees were able to leave Southeast Asia with other family members and remain together where they resettled, or were able to assist other members to leave Southeast Asia subsequently.

Buchignani does not disagree with the universal assumption that the family is critical in providing socio-psychological support. However, the studies provide little in the way of hard data to support viewing the family as an emotional support system nor is there any programmatic benefit. He favours an empirical study based on considering the family as an economic unit. Operating from a position of relative deprivation, family members pool their resources to survive in a highly competitive situation. This, he argues, would yield better results in understanding the dynamic of the transition of a family towards a nuclear character. Further, the social function of the family in the interface with the host society needs further study.

Patters of strong ethnic-exclusive identity give rise to questions about the mixture of factors reinforcing such relationships – Canadian multicultural policies, societal racism, defence against downward economic mobility, cultural linguistic and social barriers against integration into the host community, cultural values (taboos against extra-ethnic marriages). Further, what are the functions of such strong ethnic identities with respect to entrée to the economic sector, the government bureaucracy, education, in addition to the assumed functions of providing a sense of place, stability and order, a social milieu, a source of recognition and value reinforcement? What structural patterns predominate? Are they most influenced by place of origin, religion or current functional roles?

Finally, Buchignani explores the role of formal community organizations and institutions – religious, cultural, social as well as business institutions providing goods and services. He concurs with the conclusions of others that their role, while not unimportant, is much less significant than the informal links. What Buchignani does not do is question the dominant methodological framework of such studies – structural-functionalism – and explore its limitations, and the alternative supplementary methodologies available.

One of the results of the lack of a methodological critical self-consciousness is the inattention to the built-in biases. These biases are reflected in the various correlates used as the norms to measure performance in the Indochinese communities under study.

For example, the Woon, Wong and Woo study of the Ethnic Vietnamese in Greater Victoria is a lament in the guise of a sociological study. The Indochinese are likened to loose sand – the title of the piece – separated and scattered when they left Vietnam and easily separated and scattered as a result of internal and external forces in Canada. The issue is not whether the Indochinese are "increasingly experiencing psychological, social and economic stresses" – a totally expected outcome after the initial survival period – but the degree of such stresses, the coping mechanisms in place and the degree and rate of comparative societal breakdown in relation to other social groups as well as in relation to the creative social dynamic of the group.

Thus, the authors predict that "the younger generation will be more and more Canadianized". Not surprising. They lament that the ethnic Vietnamese and Sino-Vietnamese "have not succeeded in maintaining a genuine community-wide association" which "might have resulted in a collective effort to improve their general economic condition and ensured the effective maintenance of culture and language to the next generation." But why would the Sino-Vietnamese not

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melt into the local Chinese culture as they have virtually everywhere else? Would one have expected Jews from Poland to form common cultural and language associations with Poles from Poland?

Indra's study of self-concept and ethnicity in Lethbridge is more interesting both in the correlates chosen and in the implications. She concludes that self-concept is a strong function of ethnicity, with the Sino-Vietnamese having both higher self-concepts as well as a stronger family life, with gender indicated as the key variable. While women in both the Vietnamese and the Sino-Vietnamese communities have higher self-concepts than men, the Vietnamese men's self-esteem is directly correlated with the status and remuneration of their jobs. This is not the case with the Sino-Vietnamese. Indra also draws at least one implication of the study – the psychological value of efforts aimed at consolidating the family and the informal community network system.

Copeland's study of the Southeast Asian communities of Winnipeg provides a thumbnail sketch of informal networks and more formal institutional organizations created by these communities in Winnipeg. The membership of the communities is not large enough to have developed institutional links, such as a newspaper. Though Copeland does not study the role of the host society, she does suggest that the cessation of funding for newcomer services in the critical third phase of resettlement, when social and psychological problems surface, may seriously handicap the community and, hence, its individual members. Further, the continuing widespread racism fo the members of the host society also inhibit the rate of integration.

The sketch of the position of the Indochinese refugees in Toronto by the Van Esteriks suggests that the community responds to the endemic racism of the host society by turning inward and relying on their own communities for support while continuing to value the material security provided by the society at large and the educational opportunities for their children.

If the Woon, Wong and Woo study of Victoria was a lament, the Le/Nguyen study of Southeast Asian refugees in the National Capital Region is a celebration of success in the face of adversity. And the Chan study of the Sino-Indochinese communities of Montreal reinforces Buchignani's call for more systematic, focused and comparative studies. For those communities have *not* integrated into the local Chinese communities as they have in the rest of Canada. Chan suggests that they have not developed the financial security to spare time to devote to their ethnic group development either. But the Vietnamese in Quebec City (about 770 in comparison to the 800 Sino-Indochinese in Montreal) have developed *three* associations, the cleavages based on social class, political and religious lines, which suggests to Dorais, the author, that such a development is not a correlate of individual prosperity but of collective organization *and* internal rivalries. Tran Quang Ba's study of the Indochinese of Southeast New Brunswick suggests that a minimum critical mass and concentration of population are the most significant factors.

After completing the book, one cannot help concluding that Buchignani's call for systematic and less ad hoc studies must constitute the research agenda for the next ten years.

Howard Adelman, *Professor of Philosophy at Atkinson College, York University, is the Director of the Centre for Refugee Studies and Editor of* Refuge.

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Norman L. Zucker and Naomi Flink Zucker

The Guarded Gate: The Reality of American Refugee Policy

New York: Harcourt Brace Jovanovich, 1987

Reviewed by Irving Abella

Missing from all the debates and rhetoric of the recent American presidential campaign was any reference to one of the most serious problems, confronting the United States, refugees. And little wonder no one talked about it; neither candidate knew what to do about it. Neither had a policy he felt comfortable defending in front of the American public. Both understood the reality of American politics: refugees are not a popular political issue.

Of course this was not always the case. In the 1950s America welcomed with open arms hundreds of thousands of European refugees fleeing Communist states. But at the present time when the world is flooded with refugees, few of whom are European, America's proverbial welcome mat has been pulled in.

Today's headlines say it all. Millions of men women and children are being uprooted against their will and forced to move – either through deliberate government policy, or war, or hunger, or a combination of all three. Yet slowly but inexorably the countries of the world most able to provide succour are clanging shut their gates. And so most of the refugees sit and fester in a myriad of disease-ridden camps and pest-holes throughout Africa and Asia. Others – particularly those from Central America and the Caribbean – escape their unpalatable lot and arrive unannounced by boat, plane or bus at various border points in the United States and Canada. It is these latter who have caused the most consternation in North America. Canadian and American Immigration officials like to choose their immigrants; they do not appreciate being chosen by these asylum-seekers.

Traditionally, the United States has responded to the plight of refugees with a special rhetoric of welcome. After all, as every schoolchild knows, America has

Continued on page 22

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always been open and available to refugees and dissidents, to "the tired ... poor ... huddled masses yearning to breathe free". At least that's what the inscription on the Statue of Liberty says. Yet, as the Zuckers point out in this important book, the harsh reality is very different than the noble image.

Every American knows, almost mythically, of the famous Statue on Liberty Island and what it represents. But a continent away, in San Francisco Bay stands another, less well-known but equally representative structure. There, on Angel Island, one can still find a nondescript building where Chinese immigrants attempting to get into America were incarcerated. The two islands, Liberty and Angel symbolize America's refugee policy, and as the Zuckers persuasively argue, the latter is a far more accurate historical representation.

The historic policy of the United States, according to this book, has been to "guard the gate of entrance", rather than to allow relatively free access. As the Zuckers succinctly describe it: "Refugees who would begin their lives anew in the United States still must scale a wall of rejection, a wall built from the bricks of foreign policy and mortar of budgets".

Indeed prior to the passage of the Refugee Act of 1980, the United States recognized as refugees only those who came from Communist countries or the Middle East. Even though the definition is now far broader, it is still extra-ordinarily difficult for anyone seeking asylum to break through America's guarded gate. The Zuckers make it very clear that Washington links its refugee admissions to both foreign policy objectives and domestic public opinion. There is scarcely any room, they lament, for humanitarian principles in America's policy.

But this book is not only an indictment of America's record on refugees. The Zuckers also outline a programme of reform for the future selection, protection and resettlement fo refugees, which should act as a model for all Western countries. Sadly, those people who most need to read this book – the members of the new Bush administration – will likely never do so. Thus America's refugee policy will continue to be closer to the reality of Angel Island that the idealism of Liberty Island.

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New Publications

- Yéfime Zarjevski, *A Future Preserved: International Assistance to Refugees* (Oxford: Pergamon Press, 1988). Describes the background to the creation of UNHCR and its efforts to secure international recognition of the status of refugees, and details its past and continuing work in Europe, Africa, Asia and Latin America. It also presents a photographic record of the lives of refugees and includes excerpts from reports and personal accounts written by individuals directly involved in the administration of humanitarian aid.
- Supang Chantavanich and E. Bruce Reynolds, editors, *Indochinese Refugees: Asylum and Resettlement* (Bangkok: Institute of Asian Studies, Chulalongkorn University, 1988). This collection of papers is divided in three sections. Part I reviews refugee resettlement in Thailand, Indonesia and the Philippines. Part II looks at Indochinese refugees in China, Japan, Hong Kong, Australia and New Zealand. Part III focuses on resettlement in the U.S., Canada, France, Great Britain, Germany and Switzerland.
- Richard Lawless and Laila Monahan, editors, *War and Refugees: The Western Sahara Conflict* (London: Pinter Publishers, 1988). This book resulted from an international symposium organized by the Refugee Studies Programme at Oxford University and attended by both Saharawis and Moroccans. It provides a history of the Saharawi peoples, their colonial experience, their emergent identity as a nation, the development of their incipient nationhood in exile, and the devastating conflict that has engulfed them. Contributors include Thomas Franck, George Joffé, Tony Hodges, Werner Ruf, David Seddon, Teresa Smith, Anne Lippert, James Firebrace and Biancamaria Scarcia Amoretti.
- Anna C. Bramwell, editor, introduction by Michael R. Marrus, *Refugee in the Age of Total War* (London: Unwin Hyman, 1988). This volume emanates from the Refugee Studies Programme at Oxford University. Written by historians, lawyers, political scientists and sociologists, and based on primary research, it charts society's responses to refugee waves in the course of this century. Although the origins of the major forced movements of people have now shifted from Europe and the Middle East, the contributors to this book show that much can be learned from the past which is applicable to Asia, Africa and America today. This book points the way to more co-ordinated studies in this inter-disciplinary field.
- Barbara Roberts, foreword by Irving Abella, *Whence They Came: Deportation from Canada, 199-1935* (Ottawa: University of Ottawa Press, 1988). Examines the deportation practices of Canadian immigration officials between 1900 and 1935. It uncovers a great deal of evidence to indicate a deliberate, but unofficial, policy on the part of the Department of Immigration to exclude from Canada, often arbitrarily and through illegal means, persons disapproved of or considered undesirable by its bureaucrats. She makes the case that Canada's record in this regard was the worst in the Commonwealth.

Videos

- The U.S Committee for Refugees has released a video tape by USCR director Roger Winter documenting the situation of civilians displaced by the fighting in Southern Sudan. The five-year conflict pits animist and Christian rebels under the banner of the Sudan People's Liberation Army against the Moslem-dominated government. Up to 85 percent of the civilian population in southern Sudan has been displaced by violence and by the effects of that violence on food production and distribution. Copies of the 12-minute VHS video tape are available from the U.S. Committee for Refugees, 1025 Vermont Avenue, NW, Washington, DC 20005, USA. Tel: (202) 347-3507, Fax: (202) 347-3418.

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Notices

- The federal government announced on October 27 through Employment and Immigration Minister Barbara McDougall that it will commit $25 million to an initiative aimed at assisting immigrant women. The three-part initiative will support settlement orientation and language and skills training to help immigrant women adapt to Canadian life and enhance their employment opportunities. It included funds to allow the overseas delivery of basic language skills training in refugee camps and to improve general orientation programmes; expansion of orientation and language assistance programmes in Canada; and increased workplace training for immigrant women. The intended target population for basic language skills and orientation to refugees in camps abroad is 4,200, while over 60,000 Family Class immigrants and others should be reached with an orientation package on Canada.
- World Vision Canada, a Christian humanitarian organization, is seeking a Director for its new Immigrant Reception Centre, located in downtown Toronto. The Centre is designed to house and assist up to 75 refugees, and is scheduled to commence operation early in 1989. The Director will be responsible for staff and all on-site operational functions, as well as developing and implementing new programmes designed to support residents and enhance their successful integration into Canadian society. Applicants should possess a university degree in Social Sciences, Education or a related discipline, plus five years related experience, including three years in a management capacity. Strong organizational and inter-personal skills are required. A second language would be considered an asset. Attractive remuneration, full benefits and the possibility of a negotiable housing subsidy are part of the compensation package. Send resumés to: Norm Dueck, Domestic Programmes, World Vision Canada, 6630 Turner Valley Road, Mississauga, Ontario L5N 2S4. Tel.: (416) 821-3030.
- The Association of Social Anthropologists of the Commonwealth and the Refugee Studies Programme of the University of Oxford are offering a prize of two hundred pounds for the best essay on the subject of "Social Anthropology and the Study of Involuntary Migration". The closing date is June 1st, 1989 and submissions (four copies) should be sent to The Director, Refugee Studies Programme, Queen Elizabeth House, 21 St Giles, Oxford OX1 3LA. The prize is given to stimulate discussion among anthropologists on issues of concern to those who have been or are in the process of being uprooted and all those who are involved with trying to assist them. The many studies undertaken by anthropologists of the strategies people use to handle radical changes in their social and cultural environment and restructure their mapping of the intermesh between action and values are relevant to what happens when refugees flee and find themselves in a new world where the old rules no longer operate. The winning essay will eh published in the *Journal of Refugee Studies*.

Chinese Banquet to Inaugurate the Centre for Refugee Studies

Friends and patrons of the **Centre for Refugee Studies** at York University are cordially invited to attend a ten course Chinese banquet to celebrate the inauguration of the Centre. The banquet will take place on Thursday, January 19th 1989, starting at 6:30 pm, at the Pacific Restaurant, 421-429 Dundas Street West, 2nd floor, Toronto.

Though the mood will be lighthearted, the food will not be a lightweight affair, as the menu shows:

Suckling Pig Combination, Stuffed Crab Claws, Chicken and Vegetables in Bird's Nest, Mixed Meat and Seafood with Winter Melon Soup, Crispy Fried Chicken "Chinese Style", Fried Scallop with Chinese Vegetables, Lobster with Ginger and Onion, Sweet and Sour Pickerel, Yeng Chow Fried Rice, Yee Foo Noodle, Almond Jelly and Chinese Cookies.

For details about how to become a Friend or Patron of the Centre, see next page.

Toronto Mosaic '88

On November 22, 1988, the Toronto Mayor's Committee on Community and Race Relations organized *Toronto Mosaic '88*, a one-day conference on the contributions of immigrants and refugees. The speakers were Susan Davis, Howard Adelman, Victor Malarek, John Samuel, Don Miller, Mendel Green and the Honourable Gerry Phillips. The morning session was chaired by Trevor Hitner and the afternoon one by Carol Newland. Mayor Art Eaggleton welcomed participants and hosted a closing reception, while Yury Boshyk did a masterful job with the wrap up. A published volume of the proceedings will be forthcoming.

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