CANADA'S PERIODICAL ON REFUGEES

REFUGE

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Meeting The Refugee Challenge: Perspectives From the 2000 Summer Course

Introduction

Sharryn Aiken

This is the third year we have dedicated a special issue of Refuge for participants and faculty of the Summer Course on Refugee Issues. The Summer Course issue provides a forum for sharing perspectives on the broad themes addressed in the seven day intensive programme. Launched in 1993 with financial assistance from the UNHCR, the Summer Course has hosted remarkably diverse groups of participants and faculty from every corner of the world. This year, in addition to a strong complement of faculty from York University and other Canadian institutions, guest faculty included Carol Bachelor (UNHCR, Geneva), Dr. Paul Spiegel (Centre for Disease Control and Prevention, Atlanta), Prof. Ogenga Otunnu (DePaul University, Chicago), Prof. Barbara Harrell-Bond (American University, Cairo) and Prof. V. Vijayakumar (National Law School of India University, Bangalore). Participants came from South Africa, Ethiopia, Egypt, Bangladesh, Sri Lanka, Australia, the Netherlands, Switzerland, the United States as well as Canada and represented the full spectrum of institutional, academic, legal and non-governmental sectors. As in previous years, the papers included in this special issue reflect the diversity that is intrinsic to the Summer Course itself.

Maki Katoh provides a critical perspective on refugee assistance, highlighting the need to transcend the dualistic "we versus they" mentality that informs so much of refugee work. Prof. V. Vijayakumar traces the historical antecedents and current dimensions of refugee protection in South Asia with particular reference to India, concluding with an interesting comparison of

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Northern and Southern approaches. Jackie King interrogates the concept of temporary protection at the international level as well as its recent application in Australia in response to the 1999 crisis in Kosovo. Citing critical flaws in Australia's new framework legislation, King underscores the tensions inherent in temporary protection schemes that fail to respect basic human rights for refugees. Lina Anani surveys the convergence of disability rights with human rights and the concomitant discrepancies in Canadian refugee resettlement policies with regard to both disability and health impairment. Anani's insightful analysis addresses an issue that has failed to receive much attention in the critical literature and is particularly timely in light of recent signals on the part of the Canadian government to exclude refugee claimants on the basis of positive HIV status. In "Meeting the Refugee Challenge: The Dutch Experience", Loeky Droesen provides an overview of asylum policy in the Netherlands with an emphasis on the evolution of status determination procedures in the last four decades. Elaborating on the experience of governments in both Canada and Italy in addressing the settlement needs of migrants, Grazia Scoppio argues that Canada's multiculturalism policy framework offers the best model for supporting the integration of migrants in their host countries. Finally, with Tomoko Okado's contribution, we return to the question of domestic responses to the Kosovar refugee crisis with an engaging review of the Kosovar Resettlement Assistance Project in Victoria, British Columbia. ■

REPORTS

• Somali Refugees in Toronto: A Profile

By Edward Opoku-Dapaah, 1995
ISBN 1-55014-278-x, 130 pp., $12.95.

This is the first comprehensive study of Somali refugees in Toronto. It examines the social, residential, and linguistic characteristic of Somalis, their participation in the local economy, and the activity of Somali community organizations. The report also contains valuable suggestions and recommendations concerning suitable and more efficient service delivery to this community.

• Cambodian Refugees in Ontario: An Evaluation of Resettlement and Adaptation

By Janet McLellan, 1995
ISBN 1-55014-267-4, 142 pp., $12.95.

This major study of Cambodian refugees in Ontario examines the effects of various forms of sponsorship on Cambodian resettlement. It also focuses and the linguistic, economic, educational, training and social dimensions of the whole process of adaptation. The delivery of services by governmental and NGO agencies as well as the effects of the past traumatic experiences of genocide and mass starvation on Cambodian refugees are fully discussed.

• Refugee Families and Children: A Directory for Service Providers in Metro Toronto

Compiled by
John Morris and Lydia Sawicki, 1995
ISBN 1-55014-285-2, 39 pp., $6.95.

This directory is designed for service providers who work with refugee families and children in Metro Toronto. Its aim is to improve service provision through networking and the sharing of training opportunities.

Available from: **Centre for Refugee Studies**

Advocate or Expert: In Search of an Alternative to "We versus They" Mentality

Maki Katoh

Abstract

In this article, the author interrogates the "we-versus-they mentality" which divides refugee advocates from hosting governments and their representatives. The author demonstrates how this bifurcation operates in the context of the NGO Doctors of the World. Physicians and mental health professionals provide volunteer services, assessing and documenting evidence of torture and maltreatment. The author argues that there is a misconception amongst government representatives that the documentation is not objective, and that the NGO advocates on behalf of its clients irrespective of whether the applicant is a genuine torture survivor. This misperception assumes that experts cannot also be advocates, and denies what is in fact a shared goal between refugee advocates and government representatives, that is, that those who have a well-founded fear of persecution receive adequate protection. Only recognizing this shared goal will break down the "we-versus-they" mentality.

Résumé

Dans cet article, l'auteur remet en question la mentalité « nous-contre-eux » qui sépare, d'une part, les défenseurs des réfugiés, et de l'autre, les gouvernements hôtes et leurs représentants. L'auteur démontre comment cette bifurcation se manifeste dans le cas de l'ONG Médecins du monde. Des médecins et des professionnels de santé mentale fournissent des services volontaires pour évaluer et documenter des signes de torture et de mauvais traitements. L'auteur soutient qu'il existe chez les représentants gouvernementaux une croyance erronée que cette documentation n'est pas objective et que l'ONG se place en position de défenseur de ses clients quel que soit le cas, que le requérant soit réellement un rescapé de la torture ou non. Cette fausse perception suppose que les experts ne peuvent être aussi défenseurs, et refuse d'admettre ce qui est en fait un objectif partagé entre défenseurs des réfugiés et représentants gouvernementaux, c'.à-d. s'assurer que ceux qui craignent avec raison d'être persécutés reçoivent une protection adéquate. Le démantèlement de cette mentalité « nous-contre-eux » passe par la reconnaissance de cet objectif partagé.

Maki Katoh is Programme Coordinator, Human Rights Project Doctors of the World, New York.

July 31, 2000

Nine days of lectures and workshops at York University, Toronto, which took place in June 2000, have conveyed a number of messages to those who work with refugees around the world. One such message, which repeatedly came up throughout the Summer Course, was that people should move away from a "we versus they" pattern of thinking. "We" are the Westerners, the North, the developed, the intellects, and the helpers. "They" are the non-Westerners, the South, the under-developed, the primitive, and the helpless refugees. This fundamental mentality, consciously or not, appears to be still predominant certainly among the general public, and sometimes even among those who work with refugees to this day. The participants in the Summer Course, audience and lecturers alike, had to constantly remind themselves to avoid such a mentality in order to think of the humanity as one, enabling the international community to strive for protection of human rights for all.

However, there was another "we versus they" mentality that existed throughout the Summer Course which was not readily addressed. "We", in this instance, are the aid workers, the NGOs, the advocates, and all those who are supposedly on the "refugees' side." "They", in turn, are the hosting governments and their representatives, especially in the countries by which refugees and refugees-to-be are systematically rejected to resettle and their rights constantly abused. Fortunately the Summer Course took place in Canada, which is often praised for fairer practice in aiding refugees, and thus the governmental representatives who were participating in the Course were spared extreme criticism. Even then, cynical comments, disapproving statements, and encouragement to improve the system were periodically made toward those who work in the government system. "We" are trying to help refugees but "our" work is made difficult because of "their" policies and lack of "their" will to help refugees.

This second sense of "we versus they" mentality is even more amplified in the context of work with asylum applicants, those who arrive at host countries without internationally recognized refugee status. In the work of Doctors of the World's Human Rights Clinic project, which provides medical and psychological evaluation for torture survivors applying for asylum in the United States in order to help them present their cases fully, the staff and the volunteers are quite often lured in to this "we versus they" mentality. "We" are constantly insisting that asylum applicants be treated as human beings and that their basic human rights be respected. On the other side of the struggle, "they" are seemingly and persistently trying to deny basic human rights to asylum applicants by detaining them in prison-like detention centers for an extended period of time or by denying their access to employment, social assistance, or adequate medical care. In order to move away from this "we ver-

sus they" mentality, the volunteer physicians and mental health professionals are constantly reminded that their role is that of experts, not advocates.

In the volunteer work for Doctors of the World, physicians and mental health professionals are requested on a *pro bono* basis to conduct physical or psychological evaluation of torture survivors who come to the United States and apply for asylum. When volunteers find that the asylum applicants' stories regarding their past maltreatment are consistent with the physical or psychological evidence, the volunteers are requested to document such consistencies. The document then becomes objective evidence to support the applicants' claims, and often heightens the chances of the applicants' obtaining asylum. The volunteers are not requested to write any document should they find no medical or psychological evidence in their evaluation.

There are two levels of advocacy activities involved in this project for volunteers. When volunteers participate in the project, it is often because they would like to help those whose basic human rights have been violated. This is a legitimate motivation, and that over 85% of Human Rights Clinic clients who have had their cases adjudicated have been recognized as genuine torture survivors by the United States Government and granted asylum. Volunteers are rightly under the impression that most of the time they are helping those who have survived torture and seeking safe haven. The volunteers' action to take part in this project itself is an act of advocacy for the promotion of universal human rights.

Secondly, it is in support of asylum applications that volunteers write documents. Because the torture survivors seeking asylum in the United States often have little or no evidence but their scarred bodies and broken spirits to prove their stories, the documents volunteers provide may be the only objective evidence applicants can secure to support their cases. The document can be strong or weak depending on the amount of physical evidence, psychological symptoms, and applicants' memories of the past persecution. However, since there is no clinical way to disprove that applicants have been tortured, documents volunteers provide can hardly be detrimental to the asylum application.[1] By providing a clinical affidavit, therefore, volunteers are advocating for applicants' right to seek asylum and lead a safe and productive life. When volunteers do not find any medical or psychological evidence to support asylum applications, they may decline to provide an affidavit, and thus choose not to advocate.

The above two aspects of advocacy are integral parts of the Human Rights Clinic project, and do not distract from the premise that our volunteers are providing objective medical expertise. However, there is a popular misperception on the government side that volunteers have already decided the asylum applicant they are seeing is indeed a torture survivor before they even start gathering clinical evidence. Furthermore, there is a misperception that volunteers will support an applicant's claim at any cost even if they find little clinical evidence. As a result, there are often attempts to dismiss volunteers' affidavits as documents prepared by advocates who are blindly trying to help asylum applicants regardless of the clinical facts. "They" see "us" as blind advocates instead of as professionals with expert knowledge.

There are two fallacies involved in this pattern of thinking. The first fallacy is the notion that advocates cannot be experts and vice versa. The second is that "we" are aiming to do something different from what "they" are aiming to do.

Because volunteers are often considered as human rights advocates in the broad sense as explained above, they are frequently labelled as such. This, however, does not mean that volunteers are advocating for each individual asylum applicant. Those who support abolition of torture worldwide do not necessarily favour all those who claim that they have suffered torture. If volunteers conclude that the applicants exhibit clinical evidence consistent with their stories of past persecution, volunteers usually decide to advocate in the second sense by providing affidavits in support of the asylum application. If they decide to advocate, however, that decision is based on their professional findings and expert opinions. Volunteers are both medical professionals and advocates for universal human rights simultaneously. Their expert opinions are not undermined because of their opposition to human rights violations but rather their support for any specific individual is based on their expert opinions.

The second fallacy is even more critical to overcome in order to manage the "we versus they" mentality. I believe it is useful to return to the spirit of international law regarding refugees and question what "we" and "they" are both trying to accomplish. A series of international treaties and conventions in the past half-century has set an international norm of what a refugee is, and the United States has recognized such standards and incorporated their essence into its immigration laws. The nation has also supported resettlement of internationally recognized refugees to American soil and provided assistance. However, there are those who cannot go through the official refugee recognition system provided by the United Nations High Commission for Refugees before they arrive at the country where they seek asylum. Without the internationally recognized refugee status, the asylum applicants in the Unites States have to navigate the American immigration system and strive for the recognition to have the same type of fear for persecution in their native lands as refugees are acknowledged to have: a "well-founded fear of persecution" on account of "race, religion, nationality, membership in a particular social group or political opinion."

The United States government, like any other refugee hosting country, has a set of rules to screen asylum applicants at its border and to determine which applicants are worthy of recognition as refugees. Unfortunately, this determination process in the United States has

often been criticized as adversarial. Moreover, conditions inside the detention centers in the New York area have been repeatedly documented to be overcrowded, with little medical attention,[2] tight rules for parole, excessive telephone charges, and inadequate quantities of food.[3] These reports have created a general sense of distrust among NGOs working with refugees and asylum applicants in the area as to whether the government is genuinely trying to seek justice or merely attempting to drive as many applicants as possible back to their home countries regardless of the validity of their stories. The set of international norms regarding refugees which the United States has committed itself to or incorporated into its immigration laws, however, give a clear guidance as to what should be the goal both "we" and "they" strive for.

The spirit of the international laws regarding refugees states:

> A person is a refugee within the meaning of the 1951 Convention as soon as he fulfils the criteria contained in the definition. This would necessarily occur prior to the time at which his refugee status is formally determined. Recognition of his refugee status does not therefore make him a refugee but declares him to be one. He does not become a refugee because of recognition, but is recognized because he is a refugee.[4]

Since there will inevitably be people who will try to be recognized as refugees even when they do not meet the internationally accepted criteria, it is certainly important for any countries accepting responsibilities of identifying refugees to have a sound screening system in place.

However, the aim of the process should be designed to ensure that those who have a well-founded fear of persecution receive adequate protection and assistance to lead a safe life, as opposed to testing who may be manipulating the system. If the process is used to identify who are manipulating the system, then "their" aim will be to reveal any holes in the stories of applicants and discredit any organizations or individuals that are trying to support applicants' cases and that are potential collaborators in manipulating the system. Such process is adversarial by nature. "We" may thus become tempted to declare the entire system as malfunctioning or call upon the media to aggressively report on cases where the system has failed, resulting in a hostile environment. If the process is used to distinguish genuine claims of persecution from those that are not, however, "their" aim will be to collect any and all evidence to fairly assess the credibility of each asylum applicant. This will also be "our" aim, and thus the difference between "we" and "they" disappears. Objective medical and psychological evaluation that determines the consistency of physical and psychological evidence and applicants' stories can be respected as an extremely useful piece of the puzzle in understanding a particular applicant's asylum claim.

Recognizing the shared goal in the American asylum process is the first step in overcoming the "we versus they" mentality. Based on this foundation, there will be a mutual respect between "we", the aid workers, the NGOs, the advocates, and all those who are supposedly on "refugees' side"; and "they", the hosting governments and their representatives. The experts' role will be clearly identified and recognized. "They" become a part of "us", and we as a whole can work to advocate for the protection of universal human rights. ■

Notes

1. There may be cases where clinical interviews demonstrate that clients can pose potential dangers to others, and such conclusions may be used against clients' application for asylum. Such cases are extremely rare, however, and do not prevent clinical affidavits from providing credible evidence of past persecutions.
2. Lajoie, R., In the land of the free: After a two-year ordeal, U.S. grants asylum to Yudaya Nanyonga, Amnesty Action, Fall 1999, pp.6-7.
3. Smothers R., Asylum-seekers are confined to dormitories after protest, New York Times, Oct. 1, 1999.
4. UNHCR, Handbook on procedures and criteria for determining refugee status: Under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, UNHCR, Geneva, 1992, p.33. □

A Critical Analysis of Refugee Protection in South Asia

Veerabhadran Vijayakumar

Abstract

Many countries in Asia and all the countries in South Asia have not acceded to the Refugee Convention of 1951 or the Protocol of 1967 in spite of the fact that a large number of refugees come from this region. The reasons for not ratifying them are not clear even though many international human rights instruments have been ratified by many of them. The probable reasons for not ratifying the Refugee Convention or the Protocol, the lack of any regional approach or national legislation to address the problem, the contribution made by the international community to the crises in this region, nature of protection, the extent of rights available to the refugees and a brief comparison between the Northern and Southern perspectives have also been explained. Some of the important judicial decisions from India have been relied upon to appreciate the developments. This article concludes by emphasizing that through a comparative analysis of both the Northern and Southern perspectives relating to the protection of refugees, each can benefit from the experiences of the other, improve and build a scheme to care for the millions of refugees as well as others of concern in the new millennium.

Résumé

Beaucoup de pays d'Asie en générale, et tous les pays de l'Asie du Sud en particulier, n'ont pas adhéré à la Convention de 1951 relative au statut des réfugiés ou au Protocole de 1967, en dépit du fait qu'un gros contingent de réfugiés provient de cette région. Les raisons pour cette non-ratification ne sont pas claires, alors même que beaucoup de ces pays ont ratifié plusieurs instruments internationaux dans le domaine des droits de l'homme. Sont expliquées ici les raisons probables pour la non-ratification de la Convention sur les réfugiés ou le Protocole, l'absence totale d'une approche régionale ou de législation nationale pour régler le problème, la contribution faite par la communauté internationale pour régler les crises de la région, la nature de la protection, l'étendue des droits consentis aux réfugiés, ainsi qu'une brève comparaison entre les perspectives Nord-Sud sur ces questions. Pour faire l'appréciation de ces développements, l'article s'appuie sur certaines décisions juridiques importantes de l'Inde. L'article conclut en soulignant le fait qu'à travers une analyse comparative des perspectives Nord-Sud concernant la protection des réfugiés, chacun peut tirer profit de l'expérience de l'autre, améliorer et bâtir un projet pour s'occuper des millions de réfugiés, aussi bien que d'autres personnes à risque, dans le nouveau millénaire.

Dr. V. Vijayakumar, a Visiting Scholar at the Centre for Refugee Studies during 2000, is a Professor of Law at the National Law School of India University (NLSIU), Bangalore, India and also administers the Chair on Refugee Law endowed by the UNHCR.

Many of the countries in Asia in general have not ratified the 1951 Refugee Convention or the 1967 Protocol due to one reason or the other. Within Asia, the countries in the South Asian region that witnessed the largest of the population movements over the last 50 to 55 years have not become parties to the international instruments relating to refugees. The developments regarding the population movements in this South Asian region, their status, nature of protection and the like are discussed in this paper briefly in an attempt to compare the same with the developments taking place in the West. However, towards the end, frequent reference to the developments in India is made to substantiate the views.

The term 'South Asia' is used in the context of a group of nations consisting of Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka. This group of seven nations also has a regional organization called the South Asian Association for Regional Cooperation (SAARC). None of the seven countries in this region is a party to the 1951 Convention or the 1967 Protocol relating to the Status of Refugees. However, these countries have ratified some of the human rights instruments in the recent past. All these seven countries have ratified the International Convention on the Elimination of All Forms of Racial Discrimination, 1969, the Convention on the Rights of the Child, 1989 and the Convention on the Elimination of All Forms of Discrimination Against Women, 1981. All of them have ratified the four Geneva Conventions as well. In relation to other human rights instruments, some of them have ratified a few more and some are in the process of ratifying them. A large part of this region was under foreign rule for a long time before independence was given to them after the World War II. The reasons for not acceding to the international instruments relating to refugees, the extent of refugee problems in the region, status determination, the nature of protection, refugee rights, the role of western countries to refugee problems in this region, the role of UNHCR and other institutions as well as the prospect for developing a legal regime relating to the refugees in this region are discussed briefly.

Reasons for not Aceding to the Refugee Convention

There seems to be no official document to indicate or explain the reasons for not ratifying the Refugee Convention or the Protocol. However, various writers have indicated the reasons for this behaviour based on their knowledge and expertise in this region. Many other opinions have been expressed by the officials in the respective ministry on this issue and as such cannot be quoted with authority. This has allowed the critics the freedom to infer the reasons for not signing these two international instruments, based on their own under-

standing and circumstances. Apart from the sources that can be quoted authoritatively, the rest of the reasons are at best only inferences that can be drawn from the past behaviours and practices. Some of the reasons would include the following.

The first and the foremost reason that can be given is the non-acceptance of a broader definition of refugees as advanced by India and Pakistan by the international community. In a debate on the successor to the International Refugee Organization (IRO), both India and Pakistan strongly recommended for acceptance, a liberal meaning for the term 'refugees' so as to include the 'internal refugees' as well.[1] However, it was not accepted and a restrictive meaning was accepted. After this, there has been a negative attitude developed towards the Refugee Convention by both countries.

The second reason is based on this continuum. Both India and Pakistan have been advancing the argument that the refugee definition is very narrow as well as Euro-centric and that it would not serve the objectives in the South Asian context.

In the third place, the countries in the South Asian region have placed reliance on a 'bilateral approach' rather than 'multilateral approach' in their policies to resolve their conflicts, including the policies on 'population displacement' and 'refugees'. The line of argument taken by them seems to suggest that by internationalizing the refugee issues, there is more scope for international criticism resulting in unnecessary interference in internal matters of the countries concerned. This phenomenon is also explained in terms of reluctance on the part of the states to cede their policy-making autonomy to an outside authority.[2] The countries in this region have given their highest priority to the concept of national sovereignty and as such they usually frown at any type of intervention in their internal affairs. Explaining the concept of burden sharing, Amitav Acharya and David B. Dewitt have observed that 'the governments in the Third World are extremely sensitive to the fact that humanitarian operations, even by supposedly neutral multilateral organizations, are a violation of sovereignty and constitute an unacceptable interference in their internal affairs.' [3] The solutions taken in the cases of Chakma refugees, Rohinga refugees and the ongoing dialogue between Nepal and Bhutan in resolving the Bhutanese refugee problem indicate unshakable faith the states in this region have in resolving their conflicts through bilateral negotiations of the parties concerned.

In the fourth place, the states in this region allege that even the states that have ratified the Convention or the Protocol are not following the provisions effectively and as such would not be beneficial to the countries in the South Asian region to ratify them now. These countries also fear that they would be obliged to take additional burdens and responsibilities when these two instruments are ratified. While there may be some truth in their analysis, there are states that have taken the Convention and the Protocol seriously and have evolved better norms in the protection of the refugees. However, these developments seem to have no positive impact on the countries in the South Asian region yet.

The next reason advocated by some of the countries in the South Asian region is that the Convention and the Protocol have not addressed the larger issues relating to 'security' and as such the provisions are being invoked by economic migrants, terrorists and other groups of forced migrations.

In the next place, the argument that the office of the United Nations High Commissioner for Refugees is not a permanent one as the life of the organization is periodically being extended from time to time, depending upon the circumstances.[4] That being the case, why should the instruments be acceded to if there is no specific guarantee as to its existence in the future, seems to be the logical conclusion. However, this argument focuses on a technical aspect and skips the substantive part of it.

The seventh reason is based on the sixth one. The states in this region argue that there is going to be no 'material improvement' by signing the Convention or the Protocol relating to refugees. However, what they really mean by material improvement is not clear. The predominant apprehension may be that by acceding to the instruments, the South Asian region would still continue to face all the issues relating to the refugees (probably in terms of finding durable solutions or finding a meaningful international burden sharing).

In the next place, there is bureaucratic insensitivity coupled with the lack of political will that seems to be the dominating practical reason in the South Asian region. Whenever questions relating to the accession of these two instruments are raised, there is astonishingly a uniform response given that it is not in the priority list of the state. Justice V.R.Krishna Iyer, former judge of the Indian Supreme Court, had observed in this regard that 'India should be a member state and play a role by being on the Executive Committee of the High Commissioner's programme. To waver or wobble or vacillate when moral values dictate, is bankruptcy of leadership. Let us not fail humanity, especially that sector which is desparate, driven out and wanders homeless in the world for sheer survival.'[5]

This naturally leads to the next reason that when there are appropriate and suitable statutes to deal with the refugees present in the states, why should they think in terms of enacting a statute afresh to give effect to international obligations to be undertaken? As some of the countries remained the colonies under foreign rule for quite some time, these states would like to have the continued benefit of the existing pre-independent statutes that give them more powers to deal with the situations than passing a statute afresh and to be subjected to the scrutiny of the international community. It becomes convenient for the states to follow the already existing pre-independent statutes like Foreigners Act, the Registration of Foreigners Act and the Passport Act that give them more and more discretionary powers. Vitit Muntarbhorn has effectively advanced the same view with reference to Asia. According to him ' [a]

constant dilemma facing the Asian region is the conflict between international and national perceptions of the refugee problem. The governments confronted with an undesired influx of asylum seekers may choose to ignore international refugee law as a matter of expediency, thereby using local immigration law and terminology to constrain such influx'.[6] The same is true with the countries in the South Asian region as well.

In the next place, the argument targets the nature of 'international burden sharing' stating that it is neither effective nor meaningful. The largest movements of population so far in the world have taken place within this South Asian region that have been met with a very poor response by international community. Timely assistance was also not forthcoming during the crisis in this region.[7] This seems to be the more justifiable reason when compared with the other reasons given above.

In the next place, linking population movements with the concern for the growth of the regional organization have also contributed to ignoring the accession of these two instruments. Myron Weiner has observed that 'porous borders and cross-border population movements in South Asia are regarded as issues that affect internal security, political stability and international relations, not simply the structure and composition of labour market, or the provisions of services to newcomers and advanced the reason for not taking up the issues relating to migration in the region'. He went on to observe that 'in the circumstances the states in the region do not want to deal with the issues concerned through multilateral channels. Indicative of the desire to deal bilaterally with the entire gamut of problems is the fact that the paramount regional organization, the South Asian Association for Regional Cooperation (SAARC), has chosen to exclude the issue of population movement from its purview for fear that it would disrupt the organization.'[8]

Another important argument against the accession to the Refugee Convention and the Protocol is that it would lead to the establishment of a number of administrative and quasi-judicial bodies for status determination and that involves enormous expenditure from the state exchequer. As the states in the region are all developing countries, they cannot afford to spend huge sums of money in the process of status determination as well as other related areas.

Finally, the states in the South Asian region also argue that group or category based determination has not been given importance under the Convention or the Protocol. So far the countries in this region have placed greater reliance on this group or category approach to determine the status of refugees as such, an approach that allows the retention of a final say with the respective governments. The individual status determination is not at all followed as the government in power at the centre would like to have the discretionary power as well as a greater say in either accepting or rejecting the refugees as a single group. The reasons mentioned here are not exhaustive and are based on inferences drawn from various sources.

The Nature of Refugee Movements in this Region

The following paragraphs focus on the major refugee movements that have occurred since 1947 as well as the contemporary refugee issues in this region. For the purposes of appreciating these issues better, the presence of refugee crisis in the South Asian region is divided into two broad categories. The first category includes the refugee movements within the region, from one country to another in the region. The second category would include those movements of refugees from countries outside the region to the countries within the South Asian region. This region has witnessed a number of refugee movements both from within the region as well as from outside the region. About 12.04% of the global refugee population continue to remain in this region.[9] According to the statistics provided by the U.S Committee for Refugees, 12.02% of the total refugee population lives in Bangladesh, India, Nepal and Pakistan.[10] Some of the refugee movements are mentioned here in brief.

(A) Refugee Movements within South Asia

When the British left India in 1947, they divided the country to establish two independent Dominions, i.e. India and Pakistan. Because of this there was a natural flow of Muslims towards East and West Pakistan and the Hindus towards India. An estimated 15 to 20 million people who were persecuted or had the fear of being persecuted left their properties, trade and business behind in an attempt to cross the newly established borders. In the establishment of two Dominions, Pakistan had two territories, the West and the East that itself had become the reason for further flow of refugees at a latter point of time. However, these people who were called refugees, evacuees, migrants and displaced persons by various orders, rules, regulations and statutes passed in India and Pakistan, quickly got settled with the series of efforts taken by the respective governments.

A large section of people of Indian origin (Tamils) taken to Sri Lanka by the British and employed in tea estates and other agricultural activities for generations were rendered 'stateless' with the introduction of the Citizenship Acts in 1948 and 1949 in Sri Lanka. Various agreements between India and Sri Lanka resulted in India taking about 338,000 stateless persons for settlement and rehabilitation during 1964-1987.[11] Apart from this, there have been three major refugee flows from Sri Lanka into the province of Tamil Nadu, in southern India from 1983. This flow of Sri Lankan refugees continues even today. These refugees are housed in 136 camps established by the state and in 1990 an estimated 120,000 Sri Lankan refugees were present in these camps. Apart from them more than 80,000 'well to do' (rich) refugees were living outside the camps.[12] These refugees were not registered earlier and the number of refugees staying outside the camps is much higher than what is indicated in the reports. According to the U.S Committee for Refugees, there are 110,000 Sri Lankan Tamil refugees in the State of Tamil Nadu.[13] During 1990, a Special

Commissioner was appointed by the Government of Tamil Nadu as the state had an average expenditure of about Rupees 30 crores (approximately 26 million U.S $ per annum).[14] Recent developments in Sri Lanka are likely to lead to further flows of refugees into India.

The Chakma refugees, the tribal groups of Chittagong Hill Tracts (CHT) consisting of Chakmas, Murangs and Tripuras migrated to the territories of Assam, Tripura, Arunachal Pradesh, Mizoram and Meghalaya after the partition in 1947. During 1963, about 45,000 Chakmas fled to India from East Pakistan as victims of the Kaptai Hydro electric project that inundated their homelands. They multiplied and their numbers swelled to 85,000.[15] After the liberation of Bangladesh, erstwhile East Pakistan, about 50,000 refugees have been repatriated back to CHT last year i.e. in 1998.

Between April 1 and mid October 1971, a total of 9,544,012 officially recorded refugees from East Pakistan moved into India. This flow of refugees into India is unparalleled in modern history.[16] These refugees continued to stay in India until 1973 and many refugees have stayed back in India with their friends and relatives. Predominantly, these were from the 2-3 million refugees living with the relatives and friends in the State of West Bengal.[17] The language they speak acted as a facilitator for such local assimilation without being identified as foreigners by any one. The number of people who stayed back without being identified by the authorities for repatriation is very high. The process of repatriation of these refugees back to the newly established state of Bangladesh was in fact very quick and encouraging for the host country. According to the UNHCR, a daily average of 210,000 persons crossed the Bangladesh border from India in the process of repatriation during the months of January and February 1972. All these refugees were returning from India to their native places in East Bengal.[18]

About 125,000 Bhutanese of Nepali origin were forced to leave Bhutan by the actions taken by the Government of Bhutan including the passing of the Citizenship Act. These people are now settled in about 7 camps in Southern Nepal. India also hosts some of them.[19] Apart from these refugees, an estimated 40,000 Chin/Arakanese refugees from Burma and ten million illegal immigrants are also present in India today.[20]

(B)Refugees from Outside the South Asian Region

When Burma (now Myanmar) was granted independence by the British in 1948, a large number of people of Indian origin were pushed out. These people who migrated to Burma under British patronage and settled there had no option but to return to India as refugees. Burma again sent refugees to India after political changes in 1962. An estimated 150,000 refugees came to India during that period. As many as 200,000 Rohingya refugees sought asylum in Bangladesh as a result of the Burmese army's operations in the Arakan region during 1978 in an attempt to check illegal migrants and fight insurgency. There was a second flow of refugees into Bangladesh and by 1992 there were 300,000 refugees. However, an agreement between Bangladesh and Burma resulted in repatriation process for sometime. Yet these refugees continue to stay in Bangladesh[21] as well as in India.

In 1959, the Dalai Lama, a religious and political leader and his followers fled Tibet and came to India seeking asylum. Asylum was granted to them by the then Prime Minister of India, Mr.Jawaharlal Nehru, and these Tibetan refugees continue to stay in India even today. By 1993, there were 133,000 Tibetan refugees in South Asia out of which India alone hosts about 120,000 of them in 42 settlements spread over different provinces in India. Apart from the settlements there are also 88 scattered communities in different parts of India.[22] There has been a steady flow of Tibetan refugees into India through Nepal during the recent past as well. The continued presence of these Tibetan refugees in India over the past forty years seems to be undermining the concept of temporary asylum. In contrast, the concept of temporary protection is understood as a protection for a limited period of time in the developed countries until a durable solution is found.

The existence of the cold war period coupled with the Soviet Union's invasion of Afghanistan in 1979 resulted in a large-scale migration of the Afghans into Pakistan. Prior to this, there were movements of the Afghans into Pakistan after the coup in 1973. The subsequent civil war kept the problem alive and as a net result of these developments, an estimated 6 million Afghans were uprooted. With the withdrawal of Russian forces, the repatriation process took place.[23] However, the continued infighting kept the problem alive and Pakistan has about 1,200,000 Afghan refugees even today. India also hosted about 40,000 Afghan refugees, their status being determined by the UNHCR. However, their number has come down to 18,607 and majority of them live in the New Delhi area. By the end of 1998, there were still 14,500 Afghan refugees living in India.[24]

There are also other refugees from the African countries as well as West Asia, but in small numbers. Many of them are recognized by the UNHCR's office in India as refugees and some of them are living there in the same status for more than 10 years. These refugee movements only indicate the gravity of the problem with very little attention given by the countries in this region.

Refugee Protection in South Asia

Whenever a mass exodus takes place necessitating immediate and elaborate arrangements, the countries in South Asia have responded positively in according refugee status to all and in providing the basic necessities within the economic means of the receiving state concerned. South Asia as a whole has extended protection to refugees for a long period of time and has been extremely tolerant of the incoming population with a different culture, language or race. The protection extended to the hundreds and thousands of Afghan refugees and the continued assistance for the remaining Afghans in Pakistan

is an example of this protection. India's decision to accord refugee status to the Tibetans fleeing China in 1959 and their continued presence even after 40 years is another example for South Asia's contribution to refugee protection. Again the movement of 10 million refugees from erstwhile East Pakistan into India, the largest refugee influx the world has seen so far, met with the same positive approach to the sufferings of the people. The protection extended by Bangladesh to the Rohingya refugees from Myanmar, the protection extended by Nepal to the Lhotsampa refugees (from Bhutan) and the protection extended by India to Sri Lankan Tamils are the other examples of the nature of protection extended to the refugees over a period of time. In doing so, the judiciary as well as the administration in these countries have directly or indirectly recognized the principles of international refugee law and have adhered to them although the states have not become parties to the relevant international instruments. The people in these countries deserve specific appreciation for having been not only tolerant but also contributing to the meaningful protection within their economic means.

These factors have contributed to the presence of at least three members from this region on the Executive Committee of the UNHCR. Pakistan, Bangladesh and India have become active members of the EXCOM of the UNHCR even without being parties to the international instruments. This is indicative of the appreciation by the international community for the nature of initiatives taken by them over a period of time. In the same continuum, all the seven countries in the region have allowed the office of UNHCR to work closely with the respective governments. UNHCR has established its offices in many of the countries in South Asia and in a couple of states it operates from the offices close by. Thus the countries have permitted the UNHCR to exercise its mandate in their respective territories and have tacitly approved the mandate refugees. However, this optimism is to be read and understood with some amount of caution.

In this analysis of the nature of protection extended by the countries in the South Asian region to the refugees, mention must be made to the Tibetan refugees in India. They are treated well, compared to all other refugees in this region. The extent of the rights and freedom extended to them are explained in this article subsequently. A number of human rights instruments ratified by the countries in the South Asian region have also contributed to the positive initiatives taken by them from time to time. The role played by international politics in this region has also contributed to these measures taken by the states in protecting the refugees with in the limited resources they possess.

The Determination of Refugee Status

Countries in the South Asian region have not established any administrative or quasi-judicial bodies to determine the status of refugees. Broadly speaking, there are four types of determination of refugee status that take place in this region. These procedures are explained here briefly.

1. Group Determination

All the refugee-receiving states in this region have resorted to this group determination of the refugee status to a large extent. By and large they have followed the mandate of the UNHCR as provided in the Statute of the UNHCR.[25] In the movement of the Rohingya refugees from Burma, during 1978, an estimated five to ten thousand refugees were crossing the border each day.[26] During another movement of the same refugees in 1992, the UNHCR Technical Mission reported that the refugees were streaming into the country (Bangladesh) at a rate of thousand a day.[27] The movement of large numbers of refugees in to these countries from time to time can not be managed in any other way than by the group determination of their status. In the absence of any mechanism to determine the status of refugees, states have placed greater reliance on this procedure. Almost all the refugee movements in this region required immediate acceptance by the receiving states, giving very little time to think about any other alternative. When the Tibetan refugees sought asylum during 1959 in India, it was a large group. When the East Pakistani refugees started moving into India, it was the largest movement of refugee population that has taken place in the human history so far. At one point of time, there was an average daily influx of about 97,821 refugees moving into India during May 1971.[28] A large number of refugees came to India in 1983 onwards from Sri Lanka. During July 1990, about 2000 to 3000 Sri Lankan refugees arrived per day in Tamil Nadu.[29] Pakistan and Bangladesh also faced similar situations in accepting the Afghan refugees and the Rohingya refugees from Myanmar respectively.

These countries cannot evén think of establishing independent administrative or quasi-judicial bodies to determine the status of each and every refugee like the developed countries. When it is very difficult for them to look after the refugees within their financial resources, the establishment of such authorities to determine the status of refugees cannot be even thought of. The lack of political will to think on these lines in establishing appropriate machinery coupled with 'bureaucratic caution', probably, strengthened the group determination procedure in this region. The determination of the status of refugees in this manner provided the policy makers with the ultimate decision-making power. Moreover, such decisions cannot be questioned in any court of law, in the absence of any refugee specific legislation. As it gave the governments unquestionable and arbitrary decision making power, more reliance was placed on this group determination of refugee status in this region.

2. Determination of Status by the UNHCR

In a few cases where large numbers of people were not involved and at the same time the country concerned is not willing to involve itself politically in the determination of the status of refugees, they have permitted the UNHCR to de-

termine their status individually. However, such decisions gave only limited powers to the UNHCR. For example, the decision of the Government of India in allowing the UNHCR's office in New Delhi to determine the status of the Afghan refugees can be referred to. Once the individual status of the refugees is determined, the UNHCR issues a certificate indicating the 'refugee status' of the individual. Such individuals whose status is determined by the UNHCR in India will have the right to stay in India for a period of one year and receive material assistance from the UNHCR. This certificate is valid for only one year. However, the UNHCR is also permitted to renew the certificates every year if it is necessary to do so. The Government of India retains the power to expel any refugee so determined by the UNHCR in the larger interest of the country. The 16,000 Afghan refugees present in India have the certificates so issued by the UNHCR and continue to receive the renewals as well as material assistance from the office in New Delhi. The UNHCR's office also determines the status of few refugees from West Asia as well as from Africa as their number is very small.

3. Determination by the State with UNHCR's Assistance

The UNHCR is also involved in assisting a particular group of refugees by providing them with financial assistance to enable them to reach their final destination and seek refugee status with the appropriate government. The recent arrivals from Tibet into Nepal are received at the reception centres set up in collaboration between the UNHCR and the Central Tibetan Administration, in Nepal. As the status of the Tibetan refugees cannot be determined by the UNHCR, it provides some material assistance at the reception centres to facilitate the onward travel of these refugees to Dharamsala in India.[30] Thus it is clear that the individual status determination by any body or authority exists only to a very limited extent in this region. This should be taken only as an exception rather than a general rule.

4. Determination of Refugee Status by UNHCR at the Instance of the Courts

This type of determination of refugee status is very limited as it permits only those refugees who take the issues to the court of law challenging their detention under the Foreigner's Act. As there is no legal framework in this region relating to the refugees specifically, all the refugees are at times brought under the Foreigner's Act for taking appropriate actions. This is a statute enacted by the British Parliament but adapted by the states concerned after their independence with necessary modifications. Some of the instances where the courts directed the respondents or appellants to approach the UNHCR in New Delhi to seek refugee status are mentioned here briefly.

In *N.D. Pancholi v. State of Punjab*,[31] the Supreme Court of India stayed the deportation order issued against a refugee from Burma (Myanmar) and allowed time to enable the refugee to seek refugee status from the UNHCR office in New Delhi. In *Zothansanguli v. State of Manipur*[32] and *Bogyi v. Union of India*,[33] the High Court of Gauhati stayed the deportation orders issued against refugees from Burma and allowed them to seek refugee status from the UNHCR office in New Delhi. The court released them from custody to enable them to seek refugee status from the UNHCR's office in New Delhi. The same High Court also gave similar orders in *Khy Htoon v. State of Manipur*.[34] Orders were also issued by the same High Court in U. *Myat Kayew & Another v. State of Manipur* as well.[35] In this case, the petitioners were from Burma and entered into India illegally. They had taken part in the 'movement for democracy' in Burma and had to flee the country to escape persecution. They voluntarily surrendered to the authorities in India. The court did not insist on sureties for their release as they were total strangers and it would be difficult for them to obtain any local surety. The Punjab and Haryana High court also granted similar relief.[36]

The Supreme Court of India in *Dr. Malavika Karlekar v. Union of India*[37] also stayed the deportation order issued against 21 refugees from Burma who were in the Andaman islands and allowed them to seek refugee status with the UNHCR's office in New Delhi. Apart from this, the Supreme Court also directed that these refugees should not be deported until their applications for refugee status is disposed of by the UNHCR. A careful analysis of the determination of refugee status in the developed countries would reveal the distinct features of the scheme followed in the South Asian region.

Rights and Freedoms of the Refugees

In determining refugee status, the states in this region have received refugees from other countries and have not discriminated on the basis of race, religion or country of origin. This in effect is also the nature of the obligation undertaken by the parties under Article 3 of the Refugee Convention. The refugees have the freedom to practice their own religion. They have access to the courts in the respective country of asylum as provided under Article 16, Chapter II of the Refugee Convention. The judicial decisions mentioned above would substantiate this point. Within the existing socio-economic environment, the refugees are permitted to have wage earning employment or self-employment as provided under Articles 17 and 18 (Chapter III) of the Convention. Again within the economic resources available in the state, provisions for rationing of essential commodities and at reduced rates are extended to the refugees. The facilities, though not the same, extended to the Sri Lankan Tamil refugees and the Tibetan refugees in India are good examples.[38] Provision for housing, public education and public relief and assistance as provided under Articles 20, 21, 22, and 23 (Chapter IV- Welfare) respectively are also made available to the refugees, subject of course, to the socio-economic conditions. The refugees are provided with freedom of movement, subject to the provisions of existing rules and regulations (Article 26). In the case of Sri Lankan and Tibetan refugees, they were also provided

with the Identity papers (Article 27). The Sri Lankan refugees who were arriving in 1984 were registered, photographed and issued refugee identity certificates. At the transit camps (Mandapam) refugee families were given cooking and other utensils, clothing, bed sheets and reed mats. After they were transferred to refugee camps, they received a monthly dole of Rupees 110 per head of household and proportionately smaller amounts for each dependant. Essential commodities like rice, sugar and kerosene were available for purchase at subsidised rates.[39] The Tibetan refugees, who would like to travel abroad were also given the travel document (Article 28) under the Passport Act 1967 as well as the rules made thereunder in 1980. These rights fall under Chapter V on Administrative measures of the 1951 Refugee Convention.

In reviewing these rights and freedoms of refugees in the South Asian region, the prevailing socio-economic conditions of the asylum states should be kept in mind and should not be compared with the nature and extent of these rights provided to refugees in the developed countries that are parties to the 1951 Refugee Convention or the 1967 Protocol.

Among the refugees, the Tibetan refugees have been enjoying better facilities when compared with the other groups of refugees. The development of five major agricultural settlements in India and several small ones in Sikkim and Bhutan began immediately after their arrival. These settlements received no outside assistance after 1965 but they became self-supporting and emerged as one of the most successful refugee communities in the world. They are being described as a 'model refugee community.'[40] During the early 1960s, the State of Karnataka came forward to settle 3000 Tibetan refugees on 3000 acres of land and the Government of India extended Rupees 3,784,800 for the purposes of rehabilitation. In 1965, the Tibetan Industrial Rehabilitation Society was formed. The Government of India helped them to establish a home for the aged and the handicapped, Tibetan schools and cultural institutions. The Indian Government still bears 25% of the total rehabilitation expenditure.[41]

Many of the rights provided under the 1951 Refugee Convention have been granted to the Tibetan refugees to the maximum possible extent, subject of course to the restrictions under various statutes. In this sense, Article 42 of the 1951 Convention and Article VII of 1967 Protocol must be kept in mind. According to these two provisions, the state parties may make reservations on many of the provisions of the Convention and Protocol respectively, relating to the rights and freedoms of the refugees. In considering this interpretation and keeping the economic conditions prevailing in the South Asian countries, what they have provided to the refugees so far is indeed remarkable. In few cases, there is continued assistance forthcoming from UNHCR office itself to the refugees in this region.

Whenever there is reluctance on the part of the states in providing the basic necessities, the refugees have been successful in getting them remedied through legal initiatives taken directly by them or through the initiatives taken by the NGOs on their behalf. Some of these developments are briefly explained in this article, relating to the role of the UNHCR and other institutions in this region.

Involvement of Developed Countries in this Region

The international community as a whole and the developed countries in particular have been involved in the refugee crisis of this region in one form or the other. Apart from funding development projects in the countries of the South Asian region, some of the developed countries have also liberally contributed to refugee relief in South Asia, either in the form of financial assistance or in kind. Cholera vaccine, tents, oil, rice, sugar, milk, vitamin tablets, clothing, other medicines and food grains have been contributed by these countries directly. Indirectly, they have also been contributing to the funds of the UNHCR from which the money is also spent on the South Asian countries for various activities related to refugees in the region.

To illustrate the nature of assistance, reference may be made to the 1971 crisis when an estimated 10 million refugees came to India from East Pakistan (now Bangladesh). 48 countries contributed in cash or in kind, by and large for the relief operations in India, to the extent of U.S $ 203,612,281. The contributions made by the countries like Canada, Australia, Belgium, France, GDR, FRG, Netherlands, Norway, Sweden, Switzerland, U.S.S.R, United Kingdom and the U.S.A, including the EEC was totalled U.S $ 193,948,535. The contributions made by the U.S alone stood at U.S.$ 89,257,000, almost 44% of the total refugee aid to India.[42]

Although these figures indicate the nature of international concern and burden sharing, it was far below the requirements of the situation. The total direct cost to India caused by the refugee influx was estimated to be around U.S. $ 800 million up to March 31, 1971 and more than that for the subsequent period of three months i.e. up to June 30, 1971. It was estimated that maintaining the refugees for one year would directly cost India U.S $ 500 million more than the net foreign aid it received from all western nations.[43] Senator Edward M. Kennedy described the nature of the assistance extended by the western countries in his report on '[t]he Crisis in South Asia'. According to him 'The international community's response to the refugees has been unconscionably lethargic and wholly inadequate. It is characterised by little sense of urgency and a low priority of concern for this tide of human misery unequalled in modern times'. In yet another context, he commented that '[w]hen we realise that India faces the prospect of a budget for refugee relief totalling $ 500 million to $1 billion over this coming year alone, we realise how little the outside world is really doing, and how paltry the American contribution is comparatively.'[44]

The international community has been also attempting to find durable solutions to some of the refugee problems in the South Asian region by telling the countries concerned to start a meaningful dialogue to resolve the conflicts relating to the flow of refugees. For ex-

ample, the European Parliament has unanimously adopted a resolution calling on Bhutan to take back the refugees from Nepal and safeguard the rights of the minorities on its territory. The European Parliament had also called on India to release hundreds of Bhutanese refugees who have been arrested while they were trying to reach Bhutan via India to press their demands for human rights and repatriation.[45] The United Kingdom blamed the Sri Lankan Government for the Jaffna exodus.[46] The European Union in its first substantive international reaction to the current crisis in Sri Lanka has called on the Government as well as the Liberation Tigers of Tamil Eelam (LTTE) to stop fighting and start negotiations with a view to securing a peaceful resolution to the Sri Lankan conflict that has displaced a large number of civilians both within Sri Lanka and to other countries.[47]

Many of the developed countries have granted asylum to refugees coming from the countries in South Asia.[48] Canada has accepted the majority of the Tamil refugees from Sri Lanka in the last fifteen years. However, some of the northern states like U.K, have increasingly adopted restrictive measures in the recent past. These developments should be kept in mind in appreciating the contributions made by the developed countries to the refugees coming from the countries in South Asia or remaining within that region. However, when compared to the number of refugees protected within South Asia, the number of refugees coming from South Asian region to these developed countries is relatively less.

Role of UNHCR and Other Institutions

Five counties in this region, *i.e.* Bangladesh, India, Nepal, Pakistan and Sri Lanka, have the UNHCR offices established in their territories. In some of the countries, the UNHCR also has an additional branch to look after a specific function assigned to it. These offices are actively involved in a series of activities, except the determination of the status of refugees.. The UNHCR office is actively involved in the assistance programmes in Bangladesh, Nepal and Sri Lanka. Apart from this, the UNHCR was involved in the repatriation of the Rohingya refugees back to Myanmar. Similarly, the Extension office of UNHCR established in Madras, Tamil Nadu, also monitored the voluntariness in the repatriation of Sri Lankan Tamil refugees. The office of UNHCR provided vocational training to the Tibetan refugees and came to be established in India in 1969 based on a Memorandum of Understanding signed between India and UNHCR. A similar exercise was also carried out in Nepal. In 1971, the UNHCR was designated by the U.N Secretary General as the focal point to co-ordinate the relief operations and assistance coming from various countries and organisations during the largest refugee influx.

In an attempt to resolve the issues relating to the Bhutanese refugees in Nepal, and other related issues, the High Commissioner Mrs. Ogata undertook a nine-day trip to the Indian subcontinent during May 2000. During her first visit to the region, Mrs. Ogata met with the Kings of Bhutan and Nepal and other top leaders of these two countries. Both Nepal and Bhutan have accepted the High Commissioner's proposal to use UNHCR's refugee database as a reference for joint verification. The High Commissioner believes that the visit has been timely and has created a momentum which needs to be maintained. She also met with the external affairs and law ministers of India and obtained the support of India for UNHCR's efforts to resolve the Bhutanese refugee problem.[49]

Thus, the countries in this region, though not parties to the 1951 Refugee Convention or the 1967 Protocol, have permitted the establishment of the offices of the UNHCR and extended full co-operation to those offices. The presence of three members from the South Asian region (Bangladesh, India and Pakistan) on the Executive Committee of the UNHCR indicates the nature of the relationship in working together for the protection of the refugees in this region as well. The reliance on the office of the UNHCR by the judiciary in the recent past, as indicated above, has only strengthened this understanding and relationship. In a different situation, the High Court of Madras allowed the UNHCR office to verify the voluntariness present in the repatriation of Tamil refugees back to Sri Lanka.[50]

Apart from this, the National Human Rights Commission (NHRC) established under the Protection of Human Rights Act, 1993 in India has also contributed significantly to the protection of refugees in India. The NHRC had issued directions to the state governments of Tamil Nadu, Arunachal Pradesh and Mizoram to provide immediate medical treatment to some of the Sri Lankan refugees and to take all possible measures to ensure the safety of lives and properties of the Chakma refugees respectively.[51] The NHRC had also brought a challenge before the Supreme Court of India seeking to protect the Chakma Refugees present in the state of Arunchal Pradesh.[52]

Even with a very limited exposure to the refugee regime, an NGO had come forward to protect the basic rights and needs of the refugee children in the State of Karnataka. In Digvijay Mote v. Government of India and Others,[53] the Petitioner successfully brought a challenge before the High Court of Karnataka to get appropriate relief for the 250 refugee children present in a boarding school. Based on this, immediate humanitarian assistance to the school was provided by the government. This clearly indicates the developments that are taking place in some of the countries in South Asia (India particularly) in protecting the rights of the refugees. In *People's Union for Civil Liberties v. Union of India*,[54] the Supreme Court of India held that the customary principles of international law is a part of the domestic law of the land as long as these principles are not inconsistent with the existing laws in the domestic sphere. The court also observed that '[I]nternational law is now more focused on individuals than ever before'. The High Courts in India have also issued a number of orders in an attempt to protect the rights and freedoms of the refugees.[55] The recently concluded Judicial Colloquium

held in New Delhi during November 1999 brought a number of judges and senior lawyers together for the first time and is likely to contribute to this trend in the future for better protection of refugees, particularly in India.

The Prospects for Refugee Law

The states in this region have adapted the British legislation passed prior to independence, like the Foreigners Act, Registration of Foreigners Act and the Passport Act. These laws provide the required balancing between refugee protection and national interest. These laws are being put to use on a regular basis to remove 'unwanted' people from the territory of the state. Apart from this the non-existence of any specific refugee legislation has also contributed to the differential treatment of refugees from time to time.

There seems to be a predominant opinion among the governments in the South Asian region that the Convention of 1951 was drafted in a different political environment and that there is every need to review the Convention. The speech delivered by Ms. Arundathi Ghosh, India's permanent representative to the U.N. at the EXCOM very clearly indicates the same.[56] Although the states have reposed confidence in the UNHCR, they are hesitant, for one reason or the other, to ratify the Convention or the Protocol relating to the Status of Refugees. However, such a review, if and when taken up should concentrate on specific spheres like evolving more meaningful burden sharing, specific durable solutions, more meaningful international obligations, and accountability of refugee producing states if they are primarily responsible for sending the refugees to other states within the existing framework. This review is to be undertaken not for having wider acceptance but for making the instrument as well as institution created thereunder to be more meaningful and effective. Proposals to make UNHCR a permanent specialised agency should also be pursued.

Although the provisions of the respective Constitutions are invoked in an attempt to protect the refugees and their rights, that may not provide a complete framework. Unless there is international pressure coupled with public opinion in these states, getting the necessary legal framework is a difficult proposition. At the same time, it is also not necessary to have a legal framework to extend protection to the refugees. The South Asian countries have proved that by accommodating a large number of refugees. In this context, developing a legal framework for the protection of refugees by the states may have very little effect. Yet, the arbitrariness present in treating different groups differently can be prevented only if a law relating to refugees is present in these countries.

The initiative taken by the Eminent Persons Group from Bangladesh, India, Nepal, Pakistan and Sri Lanka in developing a draft regional declaration as well as a Model National Law relating to the refugees is to be appreciated. The former Chief Justice of India, Justice P.N.Bhagwati, has recently presented the revised draft to the Ministry of Law and Justice in India for consideration.[57] This must be taken to logical conclusions with the efforts taken by UNHCR and other international bodies. The efforts taken by Asian-African legal Consultative Committee (AALCC), both in the areas of human rights and refugees should also be projected effectively to achieve this end. The other existing regional forum, South Asian Association for Regional Co-operation could also be the platform to project this view. In getting the regional declaration accepted by all the states. Already the efforts taken by SAARC LAW in this regard needs to be pursued. Efforts taken by other institutions, NGOs and bodies like LAW ASIA should be relied upon to achieve the desired objective.

The present trend in favour of globalisation and economic liberalisation can be effectively utilised by adopting a two dimensional approach. In the first place, international efforts should be concentrated on genuine development programmes including institutional and human resource capacity building. In the second place, such international efforts should focus on facilitating the legal framework and institutions to be established for the protection of human rights. This could address both the economic policies and social policies of these countries that would go a long way in preventing outward flows as well as tolerance towards inward flows of refugees. This would also facilitate new approaches to refugee protection in the South Asian context. This approach can also contribute both to the regional and global opinion on contentious issues that could be effectively used against the states that violate the internationally accepted norms. Taken together, there is an excellent and conducive atmosphere in the South Asian region more than ever before for evolving a legal framework in the protection of the refugees.

The Comparison

Against this backdrop, comparing two incomparables is a difficult task. However, within the framework provided, a general observation comparing the Northern perspective with that of the Southern perspective can be attempted.

Some of the important distinctions between the Northern approach and Southern approach to the refugee problem would include the following. In the first place, mention must be made to the determination process. While the developed countries engage in individual determination by and large, the countries in South Asia engage in the group determination of refugees. In this process of determination, the developed countries have established a variety of administrative, quasi-judicial and appellate mechanisms while the countries in South Asia have not. The developed countries have enacted appropriate domestic legislation to give effect to the international obligations they have undertaken under the 1951 Refugee Convention and/or the 1967 Protocol, while there is no such legal framework in the South Asian countries. While the South Asian countries rely very heavily on the bilateral approach to resolve refugee crises, there is no such reliance placed on it by the developed countries. Again the South Asian countries have at-

tempted to resolve the problems of 'statelessness' by accommodating large numbers of people of their origin and by providing citizenship to them. The emergence of joint responsibility in this regard can also be seen in that process of resolving the issues arising out of population movements. The willingness on the part of India in according citizenship to 338,000 stateless persons from Sri Lanka and the efforts of the Sri Lankan Government to accommodate the rest of them is to be appreciated. The developed countries in resolving some of the refugee problems have also taken up such joint responsibility. Thousands of refugees from Burma, as indicated earlier, have also been assimilated in India without allowing them to create a refugee problem elsewhere. As far as the rights and liberties of the refugees are concerned, there seems to be a wide gap between these two schemes. The developed countries have provided a number of rights and liberties as well as extended a number of welfare measures when compared to the countries in South Asia.

When the systems present in these two groups of states, one can also identify certain similarities. Both the schemes permit the judiciary to resolve certain specific questions of law arising out of their determination, removal or in safeguarding their rights and liberties. There seems to be an active role placed by the human rights institutions, directly or indirectly, in both groups of countries. An increased number of NGOs are taking keen interest in the protection of refugees. Finally, there is an ever increasing awareness arising out of the 'Human Rights' concept that contribute to better protection of refugees throughout the world today.

To conclude, it may be observed that the purpose or the object of such a comparison is not to find out who is doing the best in protection of refugees. On the contrary, keeping the huge population, conditions of poverty, illiteracy and the like in the developing countries, the developed countries have a definite positive role to play. Apart from the funding for development extended to the developing countries, a constant effort to educate the people as well as training of officials in these countries in the areas of human rights, assisting them in setting up institutions and training of the judges at all levels would go a long way in the protection of human rights of every individual in this world. The primary task for the developed countries would be to assist the developing countries to establish the appropriate legal framework in the protection of the refugees. To sustain this effort, an attempt must also be made to establish the necessary links at two different levels, with the academic institutions of higher learning in these countries for a constant and ongoing interaction with those institutions. Networking of educational institutions within these developing countries in the first place and then linking them with the institutions in the developed countries would certainly enhance the pace of establishing a human rights culture in the developing countries in South Asia. Reliance on a comparative analysis coupled with the perspective on human rights and refugee protection would certainly promote best practices in both the Northern and Southern countries in the years to come. ■

Notes

1. Guy S. Goodwin Gill, The Refugee in International Law, 2nd Edition (Oxford: Clarendon Press, 1996) at 12 note 48. Also see Ivor C. Jackson, The Refugee Concept in Group Situations, (The Hague, Martinus Nijhoff Publishers, 1999) at 62.
2. Pia Oberoi, 'Regional Initiatives on Refugee Protection in South Asia', (1999) 11 I Journal of Refugee Law.1 at 193.
3. Amitav Acharya and David B. Dewitt, Fiscal Burden Sharing, James C. Hathaway, Ed., Reconceiving International Refugee Law, (The Hague: Martinus Nijhoff Publishers, 1997) at 126.
4. G.A Res. 52/104, 12 December 1997. Through this Resolution, the term of office of the UNHCR was extended by another five years with effect from 1 January 1999. Through this Resolution it was also decided to review the arrangements for the Office of UNHCR with a view to determining whether the office should be continued beyond 31 December 2003.
5. Justice V.R. Krishna Iyer, The Legal Saga for Refugees and Humanitarian Odyssey, Bulletin on International Humanitarian Law and Refugee Law, Vol.2, No. 2(A), p.313.
6. Vitit Muntarbhorn, The Status of Refugees in Asia (Oxford: Clarendon Press, 1992) at 52.
7. The developments during the 1947 exodus as a result of the establishment of two independent Dominions of India and Pakistan must be kept in mind. An estimated 15 to 20 million people have crossed the newly drawn international boundaries. During the 1971 war between India and Pakistan, 10 million people have taken refuge in India with delayed assistance from international community. For details on this issue, see Crisis in South Asia, A Report by Senator Edward M.Kennedy, Committee on the Judiciary, United States Senate, November 1, 1971.
8. Myron Weiner, Rejected Peoples and Unwanted Migrants in South Asia, Economic and Political Weekly, Vol.XXVIII, No.34, August 21, 1993, at 1745.
9. The State of World Refugees, 1997-98, UNHCR, Geneva.
10. World Refugee Survey, 2000, U.S. Committee for Refugees, at 3.
11. Lok Raj Baral and S.D.Muni, Eds., Refugees and Regional Security in South Asia, (Delhi: Konark Publishers Private Limited, 1996) at 10.
12. Ibid., at 195.
13. World Refugee Survey, 2000, U.S Committee for Refugees, at 3.
14. The Hindu, dated January 6, 1991.
15. The Statesman, (Calcutta Edition), dated June 2, 1994.
16. Crisis in South Asia, A Report by Senator Edward M.Kennedy, U.S Senate Committee on the Judiciary, November 1, 1971 at 5.
17. Nicole Ball, Regional Conflicts and the International System, (ISIO Monographs, First Series, Number Nine, Institute for the Study of International Organisation, University of Sussex, 1974) at 29.
18. UNHCR, A Story of Anguish and Action, Geneva, 1972 at 79.
19. The World Refugee Survey, 2000, U.S Committee for Refugees at 3 indicates that 110,000 Bhutanese are in Nepal while India hosts 15,000.
20. The Week, Vol.17, No.40, September 19, 1999 at 20.
21. Supra, n.6 at 10 and 23.
22. Ibid., at 18-19.
23. Mahendra P. Lama, Refugee Situation in South Asia: Critical Issues in Perspective, (1999) 3 Bulletin on International

Humanitarian Law and Refugee Law.1, at 95.

24. World Refugee Survey, 2000, U.S Committee for Refugees, at 3.
25. Article 2 of the Statute provides that 'The work of the High Commissioner shall be of an entirely non-political character; it shall be humanitarian and social and shall relate, as a rule, to groups and categories of refugees.'
26. Ivor C.Jackson,The Refugee Concept in Group Situations, (The Hague: Martinus Nijhoff Publishers, 1999) at 314.
27. Asian Recorder, 1992, March 25-31, p.22211.
28. Supra, n.12 at 6.
29. The Hindu, dated July 6, 1990.
30. World Refugee Survey, 1999, U.S. Committee for Refugees at 128. The World Refugee Survey, 2000,at168, relying on the UNHCR report, states that during 1999 a total 2182 Tibetans entered Nepal for onward journey to India.
31. W.P.No. 243/88, Supreme Court of India.
32. C.R.No. 981/89, Guahati High Court.
33.. C.R No.1847/89, Gauhati High Court.
34. W.P No. 515/90, Gauhati High Court.
35. C.R.No. 516/91, Gauhati High Court.
36. W.P.No. 658/97, Punjab & Haryana High Court.
37. W.P(Criminal) No. 583/92, Supreme Court of India.
38. World Refugee Survey, 1999, U.S. Committee for Refugees, at 128-129.
39. B.S.Chimni, The Legal Condition of Refugees in India, (1994) 7 Journal of Refugee Studies 4 at 378-401.
40. Supra, n.8 at 81-84.
41. Tibet in Exile, 1969:3 (c.f Asha Hans and Astri Suhrke, Responsibility Sharing, James C.Hathaway, Ed., 'Reconciling International Refugee Law', (The Hague: Martinus Nijhoff Publishers, 1997) at 83-110.
42. Supra, n.12 at 38-41.
43. Ibid., at 34-35.
44. Ibid., at 34 and 41.
45. Asian Recorder, April 15-21, 1996, p.25560.
46. Asian Recorder, February 5-11, 1996, p.25404.
47. The Hindu, dated May 17, 2000.
48. For details as to the country of origin, country of asylum and the number of refugees admitted, please see the Statistics provided by UNHCR for the year 1998. <http://www.unhcr.ch/statist/98/tab5_10.htm>.
49. <http://www.unhcr.ch/news/media/media.htm>.
50. P.Nedumaran and Dr.Ramdoss v. Government of India and Others, W.P.12343/1992, Madras High Court.
51. Human Rights Newsletter, National Human Rights Commission, Vol.1, No.2, November 1994, at 3-6.
52. National Human Rights Commission v. State of Arunachal Pradesh, (1996) 1 SCC 742.
53. W.A.No. 354/1994, Karnataka High Court.
54. (1997) 3 SCC 301.
55. K.A.Habib v. Union of India, (1998 (2) Gujarat Law Herald 1005). In this case, the Gujarat High Court even went to the extent of reading the principle of non-refoulement as part of Article 21 of the Indian Constitution that guarantees to every person the right to life and personal liberty and held that the two refugees from Iraq could not be sent back to that country because of their fear of persecution.
56. Deccan Herald, dated October 17, 1997.
57. The Deccan Herald, dated May 8, 2000 □

The Temporary Safe Haven- An Australian Perspective

Jackie King

Abstract

Australia's decision to provide temporary safe haven protection to 4000 Kosovars in response to the UNHCR request for assistance in their humanitarian evacuation from refugee camps in surrounding countries, required quick action by the government to provide for an unprecedented legislative and service delivery framework. This paper looks at the notion of temporary protection, both in international and specifically Australian context, before describing and assessing the legislative and service delivery mechanisms that facilitated Australia's response. This paper concludes that the risk of selective intepretation of the legislation and the denial of democratic rights to the subjects of legislation, and the less than adequate service delivery to the Kosovars, and the arguable breach of its international obligations, suggests that Australia will have to think twice before engaging in such a mechanism in the future.

Résumé

La décision de l'Australie d'offrir la protection d'un havre temporaire de sécurité à 4 000 kosovars en réponse à l'appel du HCR d'aider à leur évacuation humanitaire de camps de réfugiés situés dans des pays avoisinants, a requis une réaction rapide de la part du gouvernement pour mettre en place un cadre législatif et de prestation de service sans précédent. Cet article examine la notion de protection temporaire, à la fois dans un contexte international et spécifiquement australien, avant de décrire et d'évaluer les mécanismes législatifs et de prestation de service qui ont facilité la réaction de l'Australie. L'article conclut que le risque d'interprétation sélective de la législation et le déni de droits démocratiques à ceux qui en sont affectés, le niveau inadéquat de prestation de service aux kosovars, ainsi que ce qui pourrait très bien être qualifié de violations de ses obligations internationales, tout cela suggère qu'à l'avenir, l'Australie réfléchira à deux fois avant de s'engager dans un tel mécanisme.

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Introduction

The NATO bombing of Yugoslavia from 24 March 1999 triggered a mass exodus of refugees from Kosovo. In response to a request by the UNHCR, Australia agreed to accept 4000 refugees on a temporary basis. The decision to accept the Kosovars required quick action by the government to provide for a legislative and service delivery framework, unprecedented in Australian history. This paper looks at the notion of temporary protection, both in an international and specifically Australian context, before describing and assessing Australia's response to the Kosovar crisis.

The International Experience Of Temporary Protection

Article 1(A)2 of the 1951 Convention Relating to the Status of Refugees defines a refugee as a person who, owing to a "well founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear is unwilling to avail himself of protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable, or owing to such fear, is unwilling to return to it."

In accordance with this definition, the Convention only provides a right to seek asylum, not a right to be granted asylum. However Article 33(1) of the Convention provides for the right of non-refoulement, which expressly prohibits the receiving state from expelling or returning a refugee to the frontier of territories where his or her life or freedom would be threatened, on the basis of race, religion, nationality, membership of a particular group or political opinion. Thus although a refugee is not guaranteed permanent entry into a country of asylum, that country is prohibited from returning the asylum seeker to a state where his or her life would be in danger.

This principle of non-refoulement is one of the central notions of refugee law, and one that State signatories to the Convention are bound to abide by. However, the practical realities of increased numbers of refugees and the continuing anti-refugee sentiment at a domestic level in many countries, have forced governments to try and compromise between the needs of their constituents and their international obligations. One of these compromises has been the development of the notion of temporary refuge.

Temporary refuge might be summarised as emergency admission on a provisional basis, solely with the aim of providing a safe haven, without commitment concerning permanent or long-term refuge in a country of refuge.[1] In simplest terms, temporary refuge means a prohibition on forced repatriation so long as conditions in the country of origin remain unsafe.

Within this context, protection is linked with the persistence of the causes of protection. The Convention reflects the temporary nature of refugee status in the cessation clauses of article 1C, especially paragraph 5.[2] The concept of temporary refuge, thus stands as the link between the peremptory, normative aspects of non-refoulement and the continuing discretionary aspect of a State's rights in a matter of asylum as a permanent solution, and in the treatment to be accorded to those admitted.[3]

The first granting of temporary refuge was granted in 1936 when France and Britain provided safe haven to persons fleeing the Spanish Civil War, for the duration of the conflict. Further historical examples include the temporary asylum offered for approximately nine months in November 1956 by Austria and Yugoslavia to 200,000 persons fleeing the unsuccessful uprising in Hungary.[4] In 1968 Austria again offered a similar type of temporary asylum to people fleeing the Soviet invasion of Czechoslovakia.

The conceptualisation of the term however, came about only in the 1970s with the Vietnamese Boat People Crisis. The first mention in official documents comes in Conclusion 15 of the UNHCR Executive Committee in 1979, which was concerned with the reception of the Boat People in Coastal States.[5] The Executive Committee stressed the humanitarian obligation of coastal states "to allow vessels in distress to seek haven in their waters and to grant them asylum, or at least temporary refuge", to protect those on board seeking it.[6] Similarly, it noted that in cases of "large scale influx, persons seeking asylum should always receive at least temporary refuge" and that states "faced with a large scale influx should as necessary and at the request of the state concerned, receive immediate assistance from other states in accordance with the principle of equitable burden sharing."[7]

At its 31st session in 1980, the Executive Committee affirmed the need for the "humanitarian legal principle of non-refoulement to be scrupulously observed in all situations of large influx". At this point, the Executive Committee stressed the exceptional character of temporary refuge, and recognised that temporary refuge needed defining and further examining.[8] In 1981 the Committee adopted the substantive contents of temporary refuge, stressing in particular the need for states of first refuge in situations of mass influx to grant admissions to their territory, preferably on a permanent, but at least on a temporary basis.[9] The High Commissioner further noted that there has been a "clear recognition that persons to whom only temporary asylum can be granted should be treated according to basic minimum standards."[10] The High Commissioner in 1985 identified temporary refuge as being encompassed within the "universally recognised" principle of non-refoulement.[11]

The language of temporary protection re-emerged recently in response to the crisis in the former Yugoslavia. As part of the "comprehensive response" temporary refuge was considered a "flexible and pragmatic means of affording needed protection to large numbers of people fleeing human rights abuses and armed conflict... who might have otherwise overwhelmed asylum procedures."[12] A 1992 statement by UNHCR put its position as being that "persons fleeing from the former Yugoslavia who are in need of international protection should be able to receive it on a temporary basis."[13]

Despite this, the Executive Committee of the UNHCR has so far stopped short of expressly endorsing the institution of temporary refuge. This is a result of a mixture of terminological squabbles and concerns that the formalisation of State practice in granting temporary, rather than permanent refuge "might be counter productive in 'legitimising' attitudes of lesser, rather than greater effort on the part of States in the provision of protection to persons in need."[14]

The common practice of temporary refuge, has in fact, led some commentators to call the notion of temporary refuge a customary norm of international law, despite the absence of official endorsement by the UNHCR. Such law commonly fills gaps created where actual situations diverge from what is covered by existing treaties. It has been argued that the development of the notion of temporary refuge typifies this phenomenon of norm creation, and is in fact an acceptable practice.[15]

Temporary protection thus serves three purposes: Firstly, administrative and economic resources are saved through the absence of a full asylum procedure assessing the individual claims, by applying a prima facie group determination. Secondly, politically, it becomes easier to return the refugee if the situation in the country of origin changes. In this way, a signal is sent to the refugee that their stay in the host country is temporary. Lastly, a signal is sent to the public at large that this refugee situation is purely a matter of protection with no element of voluntary migration.[16]

Australia's Experience Of Temporary Refuge

Australia acceded to the Refugee Convention on 22 January 1954 and the 1967 Protocol on 13 December 1973. The terms of the Convention and Protocol are incorporated by reference into Australian law by section 36 of the Migration Act (1958) which provides for a class of protection visas and applies the Convention definition of refugee to such status determination. The Australian government, like many others, has determined that in certain cases, temporary refuge, (usually implemented by the creation of additional classes of temporary visa) is the best means of simultaneously fulfilling its international obligations and appeasing an increasingly disconcerted public.

Over the years, Australia has seen a number of temporary visas granted to people already in Australia who, were unable to return to their home countries, such as Iraq, Lebanon and Sri Lanka. Then, as a result of the tragic events in Tienanmen Square in 1989, four-year temporary visas were granted to the affected Chinese in Australia at the time, with these later being converted to permanent visas. In each of the above cases, the granting of the visas served many practical purposes, including the desire to regularise the status of people whose return would be difficult and to reduce pressure on refugee status determination procedures.[17] However, it was not until the events in the former Yugoslavia and then Kosovo that the notion of temporary refuge gained prominence again, and resulted in the development, implementation and execution of a new legislative framework for temporary protection.

The Legislative Framework

The creation of a temporary protection visa for the Kosovars took the concept of temporary protection to a new Australian league. It differed from all previous applications in many fundamental ways. This was the first time that such visas were granted to people outside Australia; the Australian Government arranged and funded their travel to Australia; and all basic needs were provided for while residing in the Safe Haven sites. This section of the paper seeks to provide an overview of the Australian legislative framework created in response to the Kosovar crisis, while the following section provides an evaluation of the legislation in the context of Australia's international obligations.

The Migration Legislation Amendment (Temporary Safe Visas) Act 1999 (Commonwealth) ("the Act") provided this new legislative framework. The legislation created a new subdivision of the Migration Act 1958 (Commonwealth), introducing into it far reaching provisions which have been criticised for limiting the rights of those granted protection. Notably, the Act was passed unanimously, with the support of the Labor Party, the Democrats and Greens as well as independent Senators Harradine and Coulston. In fact, one of the pre-conditions of entry for the Kosovars was that Parliamentary opposition parties agreed to the passage of retrospective legislation to formalise these limitations.[18] Section 4 of the Act therefore states that an application made before the commencement of the Act "ceases to be valid" on the Act's commencement, "despite any provision of the Migration Act or any other law." In order to "avoid doubt", section 4 states that this rule applies even if the application is the subject of a review or appeal to "a review officer, body, tribunal or court."

Under the Act, the Minister has a wide discretion to, by notice in the Gazette, extend or shorten the period of a safe haven visa. A visa may be shortened if "in the Minister's opinion, temporary safe haven in Australia is no longer necessary for the holder of a visa because of changes of a fundamental, durable and stable nature in the country concerned." However, in this case, the Minister also has a power, which must be exercised personally, to exempt safe haven visa holders from removal, "if the Minister thinks it is in the public interest".

There are also provisions that render invalid any application for a different class of visa after the enactment of the Act. Section 91K provides that if the holder of a safe haven visa applies, or purports to apply for a visa other than a temporary safe haven visa, then "that application is not a valid application". The Australian government claimed that such an approach ensured that Australia could meet its commitment to provide temporary safe haven and also effectively maintain the integrity of Australia's migration and humanitarian programmes.[19] Section 91H that explains that "the Parliament considers that a non-citizen who holds a temporary safe haven visa, or who has not left Australia since ceasing to hold such a visa, should not be allowed to apply for a visa other than a temporary safe haven visa."

Assessment of Australia's Treatment

Australia's treatment of the Kosovar refugees was surrounded by controversy from the outset. The Howard government had initially ruled out taking any Kosovars at all. However, this stance was dramatically reversed when Cabinet met on 6 April and formally decided to admit 4000 refugees in response to a request from the UNHCR. In real terms, the announcement came after the US unveiled plans to place Kosovar refugees on the US naval base in Cuba and urged its NATO partners to make similar provisions. Just four days later, the Howard government froze its offer to take 4000 people, when NATO's European members objected to the US inspired airlift scheme, fearful that it would strengthen the hand of the Milosevic government in Yugoslavia. Finally, three weeks later on 1 May, the Australian government re-activated the offer, again following an overnight request from the UNHCR.[20]

There has been much speculation as to whether Australia properly fulfilled its international obligations with the enactment and implementation of the new Act. Article 34 of the Convention provides that states shall facilitate the naturalisation of refugees. This suggests that states have an obligation to look for a durable solution for refugees, which may include settlement of refugees within their territories.[21] The Australian legislation however, seemed to be motivated by a desire to discourage the Kosovars from seeking to remain in Australia. The inability of people granted temporary protection to apply for permanent protection, and the "invalidation" of any applications made prior to the enactment of the legislation, suggests that the Australian government acted in breach of its international obligations in this respect.

The fact that the legislation prohibited the application by the safe haven visa holders, for a different visa, including a protection visa which would provide them with permanent status, was subject to much criticism. A statement by UNHCR's Director of the Division of International Protection in reference to Australia's Safe Haven legislation, reinforced these criticisms:

> At law, the Convention cannot be made unavailable for persons for whom it was intended, even while its application can be delayed. Put another way, temporary protection arrangements should be applied without prejudice to the grant of refugee status to be entitled, where it is necessary to ensure protection against continued threat.[22]

Further, the addition of section 500A to the Migration Act was seen as undermining Australia's humanitarian commitment. This section empowered the Minister to refuse or cancel a temporary safe haven visa, and to exempt such decisions from the requirements of procedural fairness and other grounds for legal challenge. This arguably breaches Article 16 of the Convention, which states that refugees shall have access to the courts. There are vague and sweep-

ing provisions in the legislation, which entitle the Minister to refuse or cancel visas on grounds such as: bad character, criminal conduct, having an association with other suspected of criminal conduct, harassment, intimidation, molestation or stalking, vilifying others or inciting discord, representing a "danger to the Australian community." Thus, these safe haven visas could be denied or cancelled on grounds of "national security" and "prejudice to Australia's international relations". The Minister only has to be of the opinion that "there is significant risk" of detrimental conduct. That is, no actual misconduct needs to take place. This raises the danger of the refugees' interests being subordinated to the Australian government's relations to the foreign countries.[23]

Moreover, the rules of natural justice are excluded from the Act. In making his decisions, the Minister "does not have a duty to consider" whether to exercise any power, whether requested to do so by the non-citizen or any other person "or in any other circumstances". Although the Minister must notify the applicant of any decision relating to his or her status, failure to do so does not affect the validity of the decision. Refusals and cancellations automatically apply to applicant's immediate family members, even if the latter are not notified of the decision. These measures seem designed to prevent applicant's children, including any children newly born in Australia from acquiring any rights to stay.[24] Further, a decision to refuse to grant, or to cancel a temporary safe haven visa is not a "reviewable decision"- there is no right of appeal to the Refugee Review Tribunal, Migration Review Tribunal or the Federal Court.

In fact, Ms Graydon a member of the Legal and Constitutional References Committee that considered the legislation, expressed her doubts about these provisions:

> We are concerned at the notion of temporary asylum here in Australia. We are concerned that to accept a safe haven visa people forfeit in the process many of their rights in terms of that visa being covered by rule of law. We are concerned that it may be a precedent that leads to changes in the way asylum processes happen here in Australia. We are concerned that it may well constitute a breach of international obligations under the Refugee Convention and the Universal Declaration of Human Rights. All of those concerns remain well intact.[25]

However, it was not just the government's legislative framework that was subject to criticism. The treatment of the Kosovars, during the period of their stay, in terms of the standard of accommodation provided, the quality of service delivery, as well the various prohibitions on work rights and medical attention has also been criticised as breaching the spirit (if not the word) of the Convention.

Article 7 of the Convention states that refugees should be accorded at least the same treatment as is accorded aliens generally. Article 17 of the Convention provides that states shall accord to refugees lawfully within their country the most favourable treatment accorded to nationals of the country in relation to the right to work. Chapter IV makes similar provisions regarding housing[26], public education[27] and social security[28].

The "safe haven" sites chosen for the refugees – disused and semi-used military barracks, usually in remote locations, was insensitive and clearly did not constitute the same treatment as is accorded aliens generally. Sending traumatised victims of war to military bases, isolated from the Albanian communities provoked criticism from the Ethnic Community Council of NSW and the Australian-Albanian Association.[29] The poor conditions at one site - the Singleton military base, 230 kilometres north of Sydney, led three busloads of refugees to refuse to disembark on 14 June. They objected to the lack of toilet and bathroom facilities, inadequate heating and protection from the weather, and the absence of privacy for family groups.[30]

Further, none of the Kosovars was entitled to Medicare benefits, or any social security. The government emphasised that the provision of clothes, meals, health care, counselling and schooling was confined to the barracks. Those who wanted to live independently only received $20 per week for living expenses per adult, plus $5 a child (this was increased to $27 and $10 respectively on 1 June 1999). On 30 June, the Minister announced that the refugees could only work a maximum of 20 hours per week, but would then lose their allowances.

Moreover, the manner in which the Kosovars were returned to Kosovo constituted a failure by the Australian government to abide by its international obligations. In July 1999, the UNHCR assessed the situation in Kosovo as being secure enough for most of the Kosovar evacuees to return home. Having regard for the extra difficulties likely to be encountered by people returning to the Kosovar winter, the Government made available a winter reconstruction allowance of $3000 per adult and $500 for each child under 18 for those who returned to Kosovo between 31 August and 30 October 1999.[31] On 18 October 1999, the Minister told the House of Representatives that he would extend the deadline to November 30, but "if people remain in Australia after their visas have expired, there is an obligation upon my Department to detain them and to remove them from Australia."[32]

This policy breaches the refoulement principle enshrined in Article 33 of the Convention. Despite the government's rhetoric and purported evidence to support the return of the Kosovars, welfare groups and non-government organisations claimed that many Kosovars would be placed at risk if returned. Those at risk included: ethnic minorities and people from mixed marriages; draft age males who could have been considered to have evaded KLA conscription; people who could be perceived as having supported the Serb regime; female headed households without male support; people from areas in which ethnic Albanians are a minority, including southern Serbia; and victims of extreme violence.[33]

Despite this, return was justified by the Minister on the basis of the undertakings of the Kosovars who said they would return. However, these undertakings were signed at a time that the NATO offensive was still underway and there was no clarity about the future shape of Kosovo nor about any potential risks upon return. Irrespective of this, the Minister and Department insisted on the Kosovars return. By the beginning of April, there were 498 Kosovars left in Australia. Immigration Minister Ruddcok extended further protection to 130 Kosovars, mainly for medical reasons. He also found that 110 could apply for protection visas and two for partner visas on the basis of having a partner in Australia.[34] The remaining 259 were returned to Kosovo in mid April.[35]

International Comparison

UNHCR made its request for assistance to 30 countries around the world, each with various ties to the Kosovar refugees. It is interesting to compare the experience of the Kosovars in Australia with other Western countries. Of the 7300 Kosovars evacuated to Canada, either under the Humanitarian Evacuation Program or the Family Reunification Program, over 5000 remained and became eligible for residency status.[36] Approximately one in three of the 14,300 Kosovars who came to the United States returned home under the US government's funded return program, while the rest remain.[37] In contrast to the generous US and Canadian experience, Germany's treatment of the Kosovars has been less than favourable. Most of the 170,000 Kosovar refugees remaining in Germany and who refused a US$1000 incentive to return, have appealed against the expulsion decision made against them.[38] However, the German government still insists on having them all returned by the end of the year. In Switzerland, around 30,000 Kosovar refugees were affected by the deadline of 31 May 2000 to leave. Nearly 19,000 accepted financial incentives to return home by the end of last year. Of the more than 4,000 refugees who signed up for a second phase of the voluntary program, around 1, 600 have so far gone back as of April this year. [39] Some 10,500 remaining in Switzerland will be forced to return in the latter half of 2000.

The various responses to the Kosovar crisis indicates the extent to which international burden sharing and co-ordination is limited by domestic requirements and public opinion. The European Council on Refugee and Exiles, the peak non-government organisation in Europe, has recently developed a complimentary policy in temporary protection. The main points of their policy include the notion that temporary protection represents a reasonable administrative policy only in an emergency situation where individual refugee status is not immediately practicable and where temporary protection will ensure admission to the territory. Further, it should not be applied in any way that erodes existing forms of protection, such as the Convention. The rights afforded should include, as a minimum, the right to family unity, education, social assistance to cover basic needs health care, engagement in gainful employment, identity documents as well as explanation to both refugees and citizens of the host state of how these rights might be exercised. [40]

Conclusion

There is no question that it is difficult to create a policy which simultaneously allows those granted temporary protection to live a fruitful life in the country of asylum, and which keeps the individual asylum seeker's mind open to the possibility of returning home. Australia's experience with the Kosovar refugees was problematic in a number of regards and arguably breached its international obligations. The questionable nature of Australia's actions potentially places the concept of temporary protection in international disrepute. There is now a question of whether Australians would be willing to act in this manner upon UNHCR's request in the future, and whether the Australian public would support temporary protection as enshrined in the Act, given the scope for selective interpretation and the denial of democratic rights that it provides for. ■

Notes

1. J.P. Fonteyne, "Burden Sharing: An Analysis of the Nature and Function of International Solidarity in Cases of Mass Influx of Refugees" Australian YearBook of International Law Vol. 8, No. 1, 1978-80, p. 174.
2. Which states that the Convention shall cease to apply to a person if: (5) He can no longer, because the circumstances in connection with which he has been recognised as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality.
3. Goodwin-Gill, G. The Refugee in International Law., Oxford: Clarendon Press, 1996, p.202.
4. J. Thorburn, "Transcending Boundaries: Temporary Protection and burden Sharing in Europe" International Journal of Refugee Law, Vol. 7, No. 3, 1995, p.464.
5. Executive Committee of the High Commissioner's Program, Conclusion No 15 (xxx) Refugee Without an Asylum Country, 1979; Ibid., n. 25, p.467.
6. Goodwin-Gill, op. cit., p. 198.
7. UNHCR, Report of the 30th Session, UN Doc A/AC.96.559 para 88.1(d), 1979; Ibid., n 140, p.198.
8. Thorburn, op. cit., n.25, p. 467.
9. Fonteyne, op. cit., p.174.
10. UNHCR, Note on International Protection,UN Document. A/AC.96/592, 1981; D. Perluss. and J. Hartman, "Temporary Refuge: Emergence of a Customary Norm", Virginia Law Journal, Vol. 26, No. 3, 1986, pp.571-2.
11. Ibid., p572.
12. UNHCR, Note on International Protection, UN Doc A/AC.96/815, para.25; 1993; Note on International Protection A/AC.96/830, paras. 45-51, 1994; Goodwin-Gill, op. cit., p. 200;
13. UNHCR Background Note: Comprehensive Response to the Humanitarian Crisis on the Former Yugoslavia, Informal Meeting on Temporary Protection Geneva, 21 Jan 1993; Thorburn, op. cit., n. 26, p.467.
14. Fonteyene, op. cit., p.174.
15. D. Perluss and J. Hartman, op. cit., "Temporary Refuge: Emergence of a Customary Norm", Virginia Law Journal, Vol. 26, No. 3, 1986, p.557.
16. M. Kjaerum, M. "Temporary Protection in Europe in the 1990s" International Journal of Refugee Law, Vol. 6, No. 3, 1994, p.449.
17. Refugee Council of Australia, Newsletter, Spring 1999, p.4.

18. M. Head, "The Kosovar and Timorese 'Safe Haven' Refugees: A Test Case For Democratic Rights" Alternative Law Journal Vol. 24, No. 6. December 1999, p.280.
19. Sen. I Campbell, Migration Legislation Amendment (Temporary Safe Haven Visas) Bill 1999: Second Reading, 21 April 1999, p.3975 at http://www.aph.government.au/hansard/index/htm.
20. Head, op. cit., p.281.
21. P. Mathew and R. Zalewski, "Refugee Law Policies and Procedures" Law Institute Journal, April 1992, p.297.
22. Refugee Council of Australia, Newsletter, March 2000, p.8.
23. Head, op. cit., p.281.
24. Ibid., p.283.
25. Legal and Constitutional References Committee Operation of Australia's Refugee and Humanitarian program, 29 July 1999 at http://www.aph.government.au/hansard/index/htm.
26. UN, Convention Relating to the Status of Refugees, 1951, Article 21.
27. UN, Convention Relating to the Status of Refugees, 1951, Article 22.
28. UN, Convention Relating to the Status of Refugees, 1951, Article 23.
29. Head, op. cit., p.281.
30. Ibid., p.281.
31. <http://www.immi.gov.au/immigfactsheet62>.
32. Head, op. cit., p.281.
33. Refugee Council of Australia "Return of Kosovars" Media Release 13 April 1999.
34. "Kosovars to Return Home This Week" Ministerial Press Release PS 033/2000 at http://www.immig.gov.au.
35. Ibid.
36. "Australia: Kosovars Agree To Go" Refugees Daily, 13 April 2000 at http://unhcr.ch/refoworld.
37. "USA: Kosovars Choose To Stay" Refugees Daily 20 April 2000 at http://unhcr.ch/refworld.
38. "North America: Kosovars enjoy longer welcome" Refugees Daily 16 May at http://www.unhcr.ch/refworld.
39. "Switzerland: Deadline Looms for Kosovars' Repatriation" Refugees Daily 24 April 2000 at http://unhcr.ch/refworld.
40. Refugee Council of Australia, The Size and Composition of the 2000-2001 Humanitarian Program: Views from the Community Sector, February 2000, p.28.

References

"Australia: Kosovars Agree To Go" Refugees Daily, 13 April 2000 at http://unhcr.ch/refoworld.

Campbell, Sen. I. Migration Legislation Amendment (Temporary Safe Haven Visas) Bill 1999: Second Reading, 21 April 1999, p.3975 at http://www.aph.government.au/hansard/index/htm.

Fonteyne, J.P. "Burden Sharing: An Analysis of the Nature and Function of International Solidarity in Cases of Mass Influx of Refugees" Australian YearBook of International Law Vol. 8, No. 1, 1978-80, pp. 162-188.

Goodwin-Gill, G. The Refugee in International Law Oxford:Clarendon Press, 1996.

Head, M. "The Kosovar and Timorese 'Safe Haven' Refugees: A Test Case For Democratic Rights" Alternative Law Journal Vol. 24, No. 6. December 1999, pp. 270-283.

http://www.immi.gov.au/immigfactsheet 62.

Kjaerum, M. "Temporary Protection in Europe in the 1990s" International Journal of Refugee Law, Vol. 6, No. 3, 1994, pp.443-456.

"Kosovars to Return Home This Week" Ministerial Press Release MPS 033/2000 3 April 2000 at http://www.immi.gov.au.

Legal and Constitutional References Committee Operation of Australia's Refugee and Humanitarian program, 29 July 1999 at http://www.aph.government.au/hansard/index/htm.

Mathew, P. and Zalewski, R. "Refugee Law Policies and Procedures" Law Institute Journal, April 1992, pp297-301.

Migration Act 1958 (Commonwealth).

Migration Legislation Amendment (Temporary Safe Visas) Act 1999 (Commonwealth).

"North America: Kosovars enjoy longer welcome" Refugees Daily 16 May at http://www.unhcr.ch/refworld.

Perluss, D. and Hartman, J. "Temporary Refuge: Emergence of a Customary Norm", Virginia Law Journal, Vol. 26, No. 3, 1986, pp.551-626.

Refugee Council Of Australia "Return of Kosovars" Media Release 13 April 1999.

Refugee Council of Australia, Newsletter, March 2000.

Refugee Council of Australia, Newsletter, Spring 1999.

Refugee Council of Australia, The Size and Composition of the 2000-2001 Humanitarian.

Program: Views from the Community Sector, February 2000.

"Switzerland: Deadline Looms for Kosovars' repatriation" Refugees Daily 24 April 2000 at http://unhcr.ch/refworld.

Thorburn, J. "Transcending Boundaries: Temporary Protection and Burden Sharing in Europe" International Journal of Refugee Law, Vol. 7, No. 3, 1995, pp. 459-479.

United Nations, Convention Relating to the Status of Refugees, 1951.

United Nations, Protocol Relating to the Status of Refugees, 1967.

"USA: Kosovars Choose To Stay" Refugees Daily 20 April 2000 at http://unhcr.ch/refworld. □

Refugees with Disabilities: A Human Rights Perspective

Lina Anani

Abstract

This paper will provide a preliminary survey of the evolution and positioning of disability rights as human rights and the discrepancy between Canadian resettlement policies with regard to refugees and Canada's rhetoric with regard to persons with disabilities. Some of the activities of the disability rights movements are outlined and significant achievements at the international level through the United Nations are examined. Similar to the women's human rights movement, disability rights are also emerging from the margins towards the mainstream of human rights discourse. Canada's legislation and policies towards persons with disabilities have mirrored these developments in providing protection. However, for refugees with disabilities the benefits seem minimal. In fact, while proclaiming the rhetoric of disability rights to its own citizens, Canada has implemented policies which are discriminatory towards refugees with disabilities. Canada's overseas resettlement selection criteria is at odds with its domestic and international positions regarding the human rights of persons with disabilities.

Résumé

Cet article donnera un aperçu préliminaire des divers mouvements qui militent pour les droits des handicapés, l'évolution des droits des handicapés comme droits de l'homme et la divergence qui existe entre la politique canadienne en matière d'établissement des réfugiés et la rhétorique du Canada en ce qui concerne les personnes handicapées. Quelques-unes des activités du mouvement pour les droits des handicapés sont mises en exergue et des réalisations importantes au niveau international à travers les Nations Unies sont examinées. Tout comme le mouvement des femmes pour les droits humains, la question des droits des handicapés émerge aussi de la périphérie pour être intégrée au discours dominant des droits de l'homme. En matière de protection, la législation et la politique canadiennes envers les personnes handicapées ont reflété ces développements. Cependant, pour les réfugiés handicapés, les gains semblent infimes. En fait, tout en proclamant bien haut pour le bénéfice de ses propres citoyens la rhétorique sur les droits des handicapés, le Canada a mis en oeuvre des politiques qui sont discriminatoires envers les réfugiés handicapés. Les critères utilisés outremer par le Canada pour la sélection de candidats à l'établissement sont en contradiction avec ses positions domestiques et internationales sur les droits de l'homme des personnes handicapées.

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Introduction

There is a new group on the rights horizon, the disability rights movement. The disability rights movement has been active at both the domestic and international levels, culminating in significant achievements at the international level through the United Nations (UN). In much the same way that women's human rights emerged from the margins and moved into the mainstream of human rights discourse, so too are the rights of persons with disabilities. National legislation and international instruments, principles and declarations are first steps towards the removal of attitudinal, physical, social and economic barriers which have historically excluded disabled persons from mainstream society. Canada's legislation and policies towards persons with disabilities have mirrored these developments in providing protection.

However, for refugees with disabilities the protection is not so clear. For them, the benefits seem minimal. In fact, while proclaiming the rhetoric of disability rights to its own citizens, Canada has implemented policies which are discriminatory towards refugees with disabilities. This paper will provide a preliminary survey of the evolution and positioning of disability rights as human rights and the discrepancy between Canadian resettlement policies with regard to refugees and Canada's rhetoric with regard to persons with disabilities.

Disabled people are invisible and suffer from "apartheid" (Frankel 1998:3). They are a challenge to the overriding ableism of the dominant group, whether in the North or in the South. According to the UN, there are over 500 million persons with disabilities worldwide (10% of the population). Approximately 66% of them live in the developing world. For those countries affected by landmines, this number can increase exponentially. Approximately 80% of the disabled live in isolated rural areas where services are unavailable. In addition, attitudinal, social, physical and economic barriers result in the de facto segregation of much of this population. Many will live out their lives in isolation and poverty (United Nations 2000b).

Disability Rights Are Human Rights: Domestic Framework

A very brief survey of some of the disability rights organizations and their achievements in the U.S. and Canada reveal that significant changes have occurred. However, the survey also reveals that these changes are the result of sustained lobbying by disability rights organizations. Achievements are wrested from often reluctant governments who view accessibility for disabled persons from a cost-benefit analysis. The result is a neurotic dichotomy from governments with, on

the one hand, rhetoric and promises regarding disability rights and, on the other hand, reluctant action. What clearly emerges is that disability rights activists explicitly view their struggle as a human rights issue.

In the U.S., the first federal disability rights legislation was passed in 1968, mandating that all federal buildings and facilities be accessible to the disabled. During the 1970s, the first legal advocacy centre was formed at the University of Notre Dame and the first legislation confronting discrimination against persons with disabilities was passed. Other victories in areas such as access to transportation, deinstitutionalization, education and employment soon followed. However, the most significant legislation is the Americans with Disabilities Act of 1990, containing the most comprehensive disability legislation in history (Pelka 1997:348-359).

In Canada, specifically Ontario, the Ontarians with Disabilities Act (ODA) Committee was formed to lobby for the passage of laws which would achieve a barrier-free society for persons with disabilities. Voluntary in nature, the ODA Committee is a broad-based coalition of disability rights organizations and individuals who have been instrumental in focusing attention on the lack of such legislation in Ontario and in lobbying the government to remedy the situation.

In 1995, during the provincial election campaign, Conservative leader Mike Harris promised in writing to enact an Ontarians with Disabilities Act (ODA) in his government's first term of office (Harris 1995:1). In 1996 and 1998, the Ontario Legislature unanimously passed two resolutions calling on the Harris government to enact an ODA and to work with the ODA Committee in the formulation of such legislation (Ontario Legislature 1996 and 1998a). The ODA, Bill 83, was finally introduced in the Ontario Legislature in 1998.

Despite its purported intent to "improve the identification, removal and prevention of barriers faced by persons with disabilities" (Ontario Legislature 1998b), the Act was severely criticized by the ODA Committee. One of the shortest bills in the Legislature's history (only three pages), the ODA's provisions applied only to the Ontario Government, guaranteed no rights, provided no penalties and contained no time lines for the removal or prevention of barriers. In addition, it forbade the use of court proceedings to enforce its provisions. Finally, the ODA did not require governmental ministries to consult with disability rights groups, or anyone else, in the development of their respective plans of action (ODA Committee 1998). Three and a half weeks after its introduction the bill was left to die on the table when the Ontario Legislature rose for the holidays (ODA Committee 1999), leaving a gap in legislation which is still present. Since then, the Ontario Legislature, through a third unanimous resolution, has once more called upon the government to enact an ODA, to no avail (Ontario Legislature 1999).

At the national level, the DisAbled Women's Network (DAWN) was founded in Winnipeg, Manitoba in 1987. Featuring chapters in most of the provinces and in other countries as well, DAWN is the largest feminist cross-disability rights group in North America. DAWN has contributed to research into the areas of sexual and physical violence against women with disabilities. One of its most significant accomplishments was the publication of a manual on how to make women's shelters and rape crisis centers accessible, one which has become an industry standard in both Canada and the U.S. (Pelka 1997:105).

Other disability rights organizations include the Canadian Disability Rights Council (CDRC), also based in Winnipeg. A national advocacy organization for the advancement of Canadians with disabilities, CDRC's work focused on disability rights and the law. It called for amendments to Canada's Immigration Act which would end discriminatory policies and practices towards disabled persons seeking to come to Canada. The CDRC also undertook research and intervened in legal challenges (CDRC 1982:12-16, i). However, having contributed significantly to these issues in the 1980s and early 1990s, the CDRC has since dissolved.

But other disability rights organizations continue to advocate for the full participation in society of disabled persons. Formed in 1976, the Council of Canadians with Disabilities (CCD) is a national cross-disability advocacy organization with many member groups. The CCD has been active in Constitutional debates, employment equity, transportation and education (CCD 2000). Clearly viewing its mission within a human rights framework, the CCD has a Human Rights Committee which recently submitted a brief to amend the Canadian Human Rights Act to the Human Rights Act Review Panel. For more than 20 years the Canadian Human Rights Act has included disability yet CCD's analysis of the legislation concludes that the Act has failed to accomplish its goals since barriers continue to exist while new ones are created (CCD 1999).

During this time period, a landmark development for disability rights occurred in Canada. In 1982, the Constitution Act was passed, containing a package of reforms which included the Canadian Charter of Rights and Freedoms (the Charter). Initially, the disabled were not included in the draft version of the legislation and this exclusion was highlighted by the CCD. The inclusion of disability within the equality provisions of the Charter was achieved through intense lobbying by disability rights organizations. Entering into force three years later in order to allow governments to align existing laws with its equality provisions, Section 15 of the Charter states:

> Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability [emphasis added].

Section 15 has engendered a whole host of legal challenges from equality seeking groups, including the disabled community. Currently, in the absence of

the CDRC, Charter litigation is being carried out by the CCD. Interventions at the Supreme Court level have been initiated regarding issues such as assisted suicide (Rodriguez case), privacy (Conway case), accommodation (Bhinder case) and murder (the controversial Latimer case) (CCD 2000). Currently, and sadly, the CCD is not undertaking research or advocacy in connection with refugee or immigration issues.

International Framework

At the international level, Disabled Peoples International (DPI), founded in 1981 in Winnipeg, is a global network of approximately 110 cross-disability organizations. Members of DPI include DAWN and CCD, with the latter participating in the founding of the organization (CCD 2000). The network provides a disability rights perspective and has advisory status with the International Labor Organization (Pelka 1997:102-103; Driedger 1989:94). In addition, DPI has consultative status with UNESCO, the UN Human Rights Sub-Commission, and ECOSOC, with the latter encompassing UN agencies such as UNICEF and UNHCR. Since 1981 DPI has made strong representations at the UN. A key issue which the network has promoted is disability definitions, specifically the rejection of the medical definition of disability and the promotion of the notion that physical and social barriers are the true disabling factors in the lives of disabled persons (Driedger 1989:94-95). In close cooperation with the UN, they have achieved stunning success, despite occasional setbacks.

The UN has clearly and squarely positioned disability rights within a human rights framework. Citing the UN Charter and the Universal Declaration of Human Rights as the fundamental and normative basis for the evolution of international norms and standards pertaining to persons with disabilities. In fact, the organization states that "in light of other relevant international norms, promotion of the human rights of persons with disabilities represents an integral part of the purposes of the Organisation" (United Nations 1999b). However, it is important to note that protection without enforcement is not enough. Reporting to the UN Human Rights Commission in 1998, the UN Special Rapporteur on Disability stated that "when viewed through a disability perspective, there is little compliance with the Universal Declaration of Human Rights" (Lindqvist 1998:3).

Over 25 years ago, the General Assembly adopted two international instruments which specifically addressed persons with disabilities. The Declaration on the Rights of Mentally Retarded Persons was adopted by the General Assembly in 1971 and the Declaration on the Rights of Disabled Persons was similarly adopted in 1974 (United Nations 1999b). Both instruments were acceded to by Canada (CCD et al 1994). The Convention of the Rights of the Child is the first international treaty which specifically recognizes the rights of disabled children and enshrines those rights within international law (United Nations 1999b).

In 1976, the UN General Assembly proclaimed 1981 as the International Year of Disabled Persons, with the theme "Full Participation and Equality". Mirroring the theme, a plan of action was called for which emphasized the equalization of opportunities, rehabilitation and prevention. What emerged was the realization that social attitudes frame the image of persons with disabilities. Attitudinal barriers bar the realization of full participation in and equality within society for the disabled (United Nations 1999b).

Originally intended for adoption in 1981 during the International Year, the World Programme of Action Concerning Disabled Persons (WPA) faced its own challenges. The first draft of the WPA was prepared in 1980 and emphasized medical rehabilitation, reinforcing the medical model of disability which views the disabled as passive recipients of care. The document was criticized by the individuals and organizations who would form DPI one year later. The Canadian chairperson of the newly formed DPI represented the infant organization as a member of the Canadian delegation on the WPA drafting committee, and was instrumental in convincing the committee to discard the draft WPA. The twenty-three country committee decided to re-draft the WPA, which was adopted by the UN General Assembly in 1982, one year behind schedule.

The new document was based on the model of full participation of disabled persons and emphasized consultation with disability organizations (Driedger 1989:98). It was also the first international instrument to address the advancement of persons with disabilities within a development framework, with equality as a main goal (United Nations 1999b). Paragraph 18 states that "the WPA is based on the principles of human rights, full participation, self-determination, integration into society and equalization of opportunity, while the traditional model was based on segregation, institutionalization, and professional control" (cited in Driedger 1989:98). Initially established to commemorate the adoption of the WPA, December 3 is now observed annually by the UN as the International Day of Disabled Persons (United Nations 1999a; 2000). Clearly, DPI influenced both the re-drafting and the acceptance of the WPA at the UN.

As a means to further implement the WPA, the period 1983 to 1992 was declared by the General Assembly as the UN Decade of Disabled Persons. During the midpoint of the Decade, in 1987, DPI representatives, disenchanted with the low implementation rate of the WPA by many countries (many of whom had not even recognized the Decade of Disabled Persons), stormed the Third Committee of the UN General Assembly. As the visitors gallery was physically inaccessible, DPI members proceeded onto the floor of the meeting and, over a three day period, lobbied government representatives to adopt a resolution calling for greater recognition of the Decade. Such a resolution was adopted (Driedger 1989:101-102).

Outcomes of the Decade included the Tallinn Guidelines for Action on Human Resources Development in the Field of Disability, which were adopted by the General Assembly in 1989. Pro-

duced by an interregional expert group, the Guidelines "provide a strategic framework for promoting participation, training and employment of persons with disabilities" (United Nations 1999b). The Principles for the Protection of Persons with Mental Illness for the Improvement of Mental Health Care were adopted by the General Assembly in 1991. The Principles outline and define the basic rights and freedoms of persons with mental disabilities at an international level (United Nations 1999b).

As an outcome of the Decade, the Standard Rules on the Equalization of Opportunities for Persons with Disabilities were adopted by the General Assembly in 1993. Containing twenty-two rules, they are intended to further equalization of opportunities by, for and with persons with disabilities. Although not legally binding, the Standard Rules include targets, implementation measures and monitoring mechanisms (United Nations 1999b). Again demonstrating leadership, Canada played a key role in the adoption of the Standard Rules (CCD et al 1994).

Through resolution 48/99, which calls for a "society for all by the year 2010," the General Assembly has created a time limit for the achievement of its goals with respect to persons with disabilities. To assist in the creation of an inclusive global society, the General Assembly endorsed in 1994 the Long term Strategy to Implement the World Programme of Action concerning Disabled Persons to the Year 2000 and Beyond. Outlining actions, targets, timeframes and support measures for governments, the Strategy covers a fifteen year period, 1995-2010 (United Nations 1999b).

Other formats used to address the situation of persons with disabilities are international conferences organized by the UN. In 1993, the World Conference on Human Rights adopted the Vienna Declaration and Programme of Action which contained a specific section on the rights of persons with disabilities. Similarly, the International Conference on Population and Development, through it Programme of Action, addressed disability issues in its chapter on the family. The Copenhagen Declaration on Social Development and Programme of Action of the World Summit for Social Development recognized and addressed the social isolation and economic marginalization of persons with disabilities in each of its three main chapters.

Addressing physical barriers, the Conference on Human Settlements (Habitat II), through the Istanbul Declaration on Human Settlements and the Habitat Agenda, cited as an objective the design and implementation of accessible standards for persons with disabilities. In 1995, the Fourth World Conference on Women, through the Beijing Declaration and Platform for Action, recognized the multiple barriers faced by women with disabilities within the areas of advancement and empowerment (United Nations 1999b). Ironically, the site of the NGO Forum of the latter conference was inaccessible to persons with disabilities, the program was not available in alternative format, and no sign language interpretation was provided (Boldt 1996).

The WPA included a section on the human rights of disabled people. This stimulated the appointment of Mr. Leandro Despouy as the first UN Special Rapporteur on Disability. His study on human rights and disability sparked further activities including: a General Comment in 1994 by the Committee on Economic, Social and Cultural Rights; increased attention to disabled children from the Committee on the Rights of the Child; attention to disabled women by the Commission on the Status of Women; and resolutions passed by the UN Human Rights Committee on disability and human rights (Lindqvist 1998:4). In 1994, Mr. Bengt Lindqvist, who is blind (and the former vice-chairperson of DPI), was designated by the Secretary-General as UN Special Rapporteur on Disability of the Commission for Social Development. His duties include monitoring the implementation of the Standard Rules, maintaining a dialogue with States and NGOs and working closely with a Panel of Experts composed of representatives from international disability NGOs (United Nations 2000a).

As early as 1982, and as a result of the WPA, the UN Human Rights Commission was encouraged to consider violations of human rights which caused mental and physical disabilities, with a view to "taking appropriate ameliorative action" (United Nations 1982:9). Since 1993, the UN Human Rights Commission has adopted over ten resolutions dealing with human rights and disability, some focusing specifically on children with disabilities. The Commission has also received the annual reports of the Special Rapporteur on Disability and considered his recommendations for the improvement of the human rights situation of persons with disabilities (please refer to website for individual resolutions and reports).

Past and future initiatives clearly indicate that disability rights are firmly positioned within the human rights framework. For example, with regard to the continued monitoring of the Standard Rules, suggestions have been made that a joint monitoring mechanism be established between the UN Commission for Social Development (which currently houses the Special Rapporteur on Disability) and the UN Human Rights Committee. In an attempt to reinforce the human rights of persons with disabilities, in 1988 and 1989, the Italian and Swedish governments proposed to the General Assembly a Convention on the Rights of Persons with Disabilities. While both proposals were rejected, there is current discussion on the elaboration of special disability protocols to be attached to the two main human rights conventions as an alternative to the adoption of a special convention. Adopting the latter plan would reinforce the mainstreaming of disability rights within the larger framework of human rights, thereby reinforcing integration versus segregation (Lindqvist 1999:4-5).

The developments at the UN level provide moral and political imperatives for governments to accede to principles of accommodation and integration of persons with disabilities. While not

well resourced and without enforcement mechanisms, the UN's initiatives, in partnership with international disability NGOs such as DPI, provide disability rights activists with the tools to ensure the removal of systemic and attitudinal barriers towards persons with disabilities. Those same tools have been used successfully by human rights activists for decades in what is known as the "shame game," highlighting the discrepancies between a government's practices and rhetoric.

Refugees With Disabilities

Issuing its ultimatum by dropping leaflets over the city of Grozny in Chechnya late last year, the Russian government instructed all inhabitants to leave the city by December 1999 in order to avoid being killed by the forthcoming bombardment (Amnesty International 1999:2). While many civilians fled, the most vulnerable could not: the elderly, the disabled and many of their caregivers, who are historically women. They had to endure a bombardment which would level the city.

For the over 500 million persons with disabilities worldwide (10% of the population) (United Nations 2000b), fleeing armed conflict or persecution can become almost impossible. Many children and adults with mobility impairments are simply left behind by families who are forced to make terrible choices. Consequently, the number of persons with physical disabilities or serious medical conditions who are able to flee and reach refugee camps or countries of asylum will be less.

For refugee women with disabilities, the dual vulnerabilities of gender and disability can become a nightmare of exploitation and neglect. In the developing world, access to resources by women with disabilities are further limited. In societies in which a woman's power is often derived from her status as mother and wife, the social position of disabled women becomes more precarious due to the perception that they are unmarriageable. Moreover, with the majority of the world's disabled living in rural areas in which physical labour, often performed by women in the home and in the field, a disabled women is seen as inefficient and, therefore, of inferior value. Consequently, her status is diminished, leaving her even more vulnerable and stigmatized (CCD et al 1994).

For refugees with disabilities, resettlement to a country such as Canada can be the difference between life and death. Overseas resettlement is used as a vehicle to provide protection for the most vulnerable of refugees. Once identified by UNHCR, referrals are made to resettlement countries such as Canada. Referrals are accepted on the basis of their ability to pass Canada's selection criteria, at which point the refugees are transported to Canada as de facto refugees who are not required to go through the in-land determination process.

In determining the appropriateness of resettlement, UNHCR uses criteria to identify refugees in need of protection. However, prior to the promotion of resettlement, protection officers are instructed to explore local solutions while simultaneously assessing the feasibility of voluntary repatriation (UNHCR 1998a:1,3). UNHCR can refer refugees for resettlement on the basis of medical needs, which are assessed on a case-by-case basis. The agency has found that "the resettlement of persons with medical needs is challenging, and resettlement opportunities are limited" (UNHCR 1998a:8). Therefore, only cases with the most serious problems are addressed through resettlement. In selecting cases, a complex web of specific determination criteria are used, including barriers to well adjustment and satisfactory functioning presented by the country of asylum (UNHCR 1998a:8). In very rare cases, and only on a temporary basis, UNHCR may refer a refugee with a disability and/or medical needs for medical evacuation. However, once treatment is received or the medical crisis is over, the refugee is returned to the country of first asylum.

For UNHCR, those disabled refugees who are well-adjusted to their disability and are able to function at a satisfactory level within the country of asylum are not to be promoted for resettlement. This includes, for example, a refugee with a hearing impairment who has learned sign language and is able to work or benefit from training. Remedies for other forms of disabilities include the provision of prosthetics or hearing aids. "Only when such disabilities are untreatable locally, and when they seriously threaten the persons safety or quality of life, should resettlement be explored" (UNHCR 1998a:9).

Clearly following the medical model approach to disability, UNHCR's search for treatment reveals the erroneous belief that disability equals chronic illness. Moreover, the provision of prosthetics or hearing aids does not automatically ensure that the individual will be able to overcome cultural stigmatization related to disability and thereby survive economically or socially. Clearly, the use of the UN Standard Rules for the Equalization of Opportunities for Person with Disabilities are not being used in these assessments for referral probably because of the reluctance of resettlement countries to accept refugees with disabilities. For example, the UNHCR's projected resettlement needs in 1995 numbered 2,360 persons who were medically at risk/physically disabled, and noted that few countries were responsive to such emergency cases (UNHCR 1994: 30,27).

With regard to overseas resettlement, Canada applies its own selection criteria. Approximately 10,000 refugees are resettled each year in Canada (Herringer 2000a:1), of whom 30-35% are referred by UNHCR (Herringer 2000b:1). To be eligible for resettlement, individuals must be Convention Refugees seeking resettlement or be members of the Country of Asylum or Source Country class (called Humanitarian Designated Classes) (UNHCR 1998b:1).

However, the designated classes have proved to be cumbersome in nature. For example, flexibility in designating a geographical region as a Source Country Class is limited due to the presence of the Source Country Schedule, which requires a 4-6 months process to add a country to the Schedule. In the case of the Country of Asylum Class, all individuals selected under this designation must have a private

sponsor (CIC 1999a:1-2). Increasingly, Canada has been criticized by both UNHCR and other resettlement countries for gaps in its resettlement programs, including: long processing times, too much selectivity and high refusal rates (Herringer 2000b:3).

To be accepted by Canada for overseas resettlement, refugees must pass a medical exam and criminal and security screenings. They must also have the potential to establish in Canada within one year, although future regulations will likely extend this period to 3 to 5 years (Cassasola 2000:8; CIC 1999b:1). In assessing the latter, visa officers consider language ability, age, education, work experience, family size and adaptability (CIC 1999b:1). For refugees with disabilities, the perceptions, and misperceptions, regarding their ability to establish, particularly in connection with employment, can simply eliminate them from consideration. In an industrialized country such as Canada, one who played a key role in the passage of the UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities, the Canadian Human Rights Commission has found that "in no sector have employers fully met their commitments on increasing employment opportunities for people with disabilities" (CHRC 1998). Clearly, the focus of attention should be the barriers within society rather than the disabled individual.

With regard to the medical in/admissibility criteria, these are divided into two main classifications: a) contagious diseases and b) disorders, disability or other health impairments. Conditional acceptance is offered to those whose disability or health impairment will pose minimal demands upon health care or social services. Moreover, medical admissibility on this basis is only valid for twelve months, then the medical examination must be repeated. Refugees with a disability or health impairment which is likely to cause demands on the health care or social services system are deemed medically inadmissible. However, should their condition respond to treatment they will be considered for future admission (at which time they must be medically examined again). Refugees with a disability or health impairment which causes demands to be placed on the health care or social services system and whose condition in unlikely to respond to treatment are deemed medically inadmissible (RSTP 2000:31).

In 1997 and 1998, the total number of refugees found to be medically inadmissible for overseas resettlement were less than 1% (85 and 68 were rejected in 1997 and 1998, respectively). In 1999, that figure climbed to just over 1%, with 99 rejected applicants (including principal applicant and dependents). These statistics do not differentiate on the basis of inadmissibility, that is those deemed inadmissible on the basis of excessive demand and on the basis of a danger to public health (Herringer 2000a:1).

However, the expanded category of special needs constituted approximately 10% of the total number of refugees accepted for resettlement. These include women at risk, urgent protection cases, unaccompanied minors, elderly refugees and relatives, victims of trauma and torture and other vulnerable cases (Herringer 2000a:2). With a figure of approximately 10,000 refugees resettled from overseas, those with special needs, as outlined above, constitute approximately 1000 individuals. What is not clear is what component of these acceptance figures are refugees with disabilities and/or medical needs.

Data regarding the number of applicants with disabilities that are accepted into Canada are not readily available. As well, statistics regarding those referred by UNHCR to Canada are also not available. However, one factor which clearly needs to be considered is self-censorship on the part of UNHCR. Being fully aware of Canada's selection criteria in connection with overseas resettlement, UNHCR referrals to Canada of refugees with medical needs or with disabilities will likely be curtailed, thereby reducing the number of rejections issued by Canada by virtue of declining medical referrals from UNHCR. Moreover, UNHCR's self-censorship can result in two outcomes: such cases will be referred to other resettlement countries without stringent medical inadmissibility criteria or they will not be referred at all. Without the statistics, measuring the impact at this level is next to impossible.

However, there are alternative ways for refugees with disabilities to be considered. Two vehicles which can be used to resettle refugees with disabilities are the private sponsorship and the Joint Assistance Sponsorship (JAS) programs. With JAS the responsibilities of sponsorship are shared by the government and the private sponsors for up to two years. The government assumes the financial aspects of responsibility while the private sponsors provide assistance to ensure integration of the refugee (UNHCR 1998b:9; CIC 2000:54, 56-57). However, provincial approval must still be sought even when using the sponsorship vehicles. In the case of Quebec, the JAS program is exclusively for refugees who have special needs, including those with a physical disability or who require medical care (CIC 2000a:62). However, lack of data disallows an analysis of these systems at the present time.

In very limited cases, whereby a refugee fails to pass the medical exam, a Minister's Permit may be issued on humanitarian and compassionate grounds. This would allow entry into Canada despite the medical inadmissibility of the refugee. However, since health and social services are the responsibility of the provincial governments, the concurrence of the province in question is required before admission can be granted. This is seen as essential because "refugees who are medically inadmissible to Canada may need costly treatment". Canada therefore "recommend[s] that only serious medical cases with close family ties to Canada be referred" (UNHCR 1998b:4). Most provinces have medical review committees which meet periodically to render decisions regarding the acceptance of a medically inadmissible refugee on a Minister's Permit. The decision-making process is complex and can at times be lengthy (CIC 2000a:43). However, Ontario and Brit-

ish Columbia do not have review boards but consider such cases on an ad hoc basis.

In 1999, 195 Minister's Permits were issued to persons overseas who were deemed to be medically inadmissible. The figures make no distinction between those who were initially rejected on the basis of their posing a threat to public health and those who may incur excessive cost to the health and social services systems on the basis of disability. In contrast, over 1300 Minister's Permits were issued to persons overseas who had been convicted either in or out of Canada of a punishable offence. Clearly, the government views this category as having more potential than individuals with disabilities. Moreover, over 8500 permits were granted to persons under what appears to be a "catch-all" category (persons who do not comply with any of the conditions of the Act), yet it is impossible to assess whether any of these consisted of refugees with disabilities (CIC 2000b).

In applying these medical in/admissibility tests, Canada is subscribing to the notion that persons with disabilities are a burden to both the health care and social service systems. The excessive demands anticipated on these services by persons with disabilities reinforce negative stereotypes of the disabled as a drain on resources, resources which are principally intended for the able bodied. Instead of viewing persons with disabilities as an investment and not as an expense, Canada is assessing their value in terms of costs which is only one half of a cost/benefit analysis at that (CDRC 1982:18).

By applying a medical model approach, Canada, like UNHCR, attempts to diagnose the disability and then apply a prognosis, which for many is inapplicable. For example, many disabilities are not amenable to "treatment" such as developmental disabilities, blindness, deafness or mobility impairments (CDRC 1982:17). However, with the removal of barriers many individuals have been able to achieve self-sufficiency and political power as exemplified by the rise of disability rights organizations in Canada. This examination reveals that two systems exist for the processing of refugees with disabilities - formal (overseas selection criteria) and informal (Minister's Permits) - with the latter designed to circumvent the former in an attempt to assist those refugees who are deemed medically inadmissible.

The lack of research into the area of refugees, disability and human rights is palpable and mirrors the historical invisibility of the disabled. When one considers the ability of refugees with disabilities to flee, their likelihood of surviving the flight and the decreasing chances of their being resettled, one can clearly see the outline of a bottleneck.

Conclusion

This article constitutes a preliminary survey of the convergence of disability rights with human rights and Canada's selection criteria for overseas resettlement. What is clear is that the deep-rooted misperceptions and assumptions regarding the lack of potential surrounding persons with disabilities survives despite the rhetoric of a developed country such as Canada. While recent significant achievements are attempting to promote the view that persons with disabilities are assets rather than liabilities, continued discriminatory policies and practices, such as Canada's resettlement selection criteria, simply reinforce old prejudices. Clearly, Canada's selection criteria is at odds with its domestic and international positions regarding the human rights of persons with disabilities. In fact, it is questionable whether the Immigration Act meets the equality provisions within the Charter or international standards as outlined by the UN.

While Bill C-31[1] promises regulations which will remove medical inadmissibility "on the basis of excessive medical demand" (Cassasola 2000:8), the new regulations will have to be carefully analyzed prior to declaring a victory for disability rights. The production of data relating to the acceptance of refugees with disabilities will be the final arbiter on whether Canada is aligning its practices with its rhetoric. ■

Note

1. Consultation processes in support of current government reform initiatives have resulted in the issuance of key documents: Not Just Numbers: A Canadian Framework for Future Immigration and Building on a Strong Foundation for the 21st Century: New Directions for Immigration and Refugee Policy and Legislation. While the latter report promotes a more responsive overseas resettlement program, it did not recommend the relaxation of the medical in/admissibility criteria. In contrast, the former report calls for clearer definitions regarding the concept of "excessive costs" as an assessment criteria in medical in/admissibility cases (Legislative Review Advisory Group 1997).

References

Amnesty International. (1999). "Chechen Republic: Amnesty International Sends Human Rights Day Appeal to the UN Security Council", News Service 233/99, AI INDEX: EUR 46/44/99, 10 December 1999.

Boldt, Catherine. (1996). International Women's Conference, Report to the International Development Committee of the Council for Canadians with Disabilities, January 1996, URL:http://www.pcs.mb.ca/ ~ccd/devjan96.html, viewed August 9, 2000.

Canadian Disability Rights Council (CDRC). (1982). Final Brief on the Proposed Amendments in Bill C-86 to Sections 19(1)(a) and (b) of the Immigration Act, prepared by Sandra A. Goundry, September 19, 1982, Winnipeg, Manitoba.

Canadian Human Rights Commission (CHRC). (1998). "Disability" in ANNUAL REPORT 1998, House of Commons, URL: http://www.chrc-ccdp.ca/ar-ra/ar98-ra98/table.aspl=e, August 2, 2000.

Cassasola, Michael. (2000). "Resettlement in Bill C-31" in Refugee Update, Issue No. 40, Toronto, Summer 2000.

Citizenship and Immigration Canada (CIC). (2000a). "Chapter 4: Overseas Selection and Processing of Convention Refugees Seeking Resettlement and Members of the Humanitarian Designated Classes" in Overseas Processing Manual, URL: http://www.cic.gc.ca/manuals/english/OP-e/index.html, viewed August 2, 2000.

Citizenship and Immigration Canada (CIC). (2000b). "Annual Report to Parliament on Minister's Permits Issued in 1999", URL:

http://www.cic.gc.ca/english/pub/permits99e.html, viewed September 15, 2000.

Citizenship and Immigration Canada (CIC). (1999a). "Selection Criteria", Refugee Resettlement Model Project Profile, File No. 4665-5-9/SEL, October 20, 1999, URL: http://www.cic.gc.ca/ref-protection/infoc. RM/proj-profiles_e/SELECTION-CRITERIA.htm, printed August 2, 2000.

Citizenship and Immigration Canada (CIC). (1999b). "Eligibility Criteria", Refugee Resettlement Model Project Profile, File No. 4668-5-9/ELI, September 21, 1999, URL: http://www.cic.gc.ca/ref-protection/infoc../proj-profiles_e/ELIGIBILITY-CRITERIA.htm, printed August 2, 2000.

Council of Canadians with Disabilities (CCD). (2000). Examples of CCD Actions, URL: http://www.pcs.mb.ca/ ~ccd/, viewed August 9, 2000.

Council of Canadians with Disabilities (CCD). (1999). Taking the Lead: Council of Canadians with Disabilities Proposals for Amending the Canadian Human Rights Act, Submission to Canadian Human Rights Act Review Panel, October, 1999, URL: http://www.pcs.mb.ca/~ccd/archcc~5.html, viewed August 9, 2000.

Council of Canadians with Disabilities (CCD), Manitoba League of the Physically Handicapped and Disabled Peoples' International. (1994). Disabled People & Foreign Policy:a Call For Inclusion Brief to The Special Joint Committee Reviewing Canadian Foreign Policy, May 1994, URL: http://www.pcs. mb.ca/~ccd/forpol.html, viewed August 9, 2000.

Driedger, Diane. (1989). "The Last Civil Rights Movement: Disabled Peoples" International, New York: St. Martin's Press.

Frankel, Susannah. (1998). "Able to be Beautiful", Fashion, The Daily Mail and Guardian (South Africa), September 10, 1998, URL: http://www.mg.co.za/mg/art/the_rest/9809/980910-fashion.html, printed August 6, 2000.

Harris, Mike (1995). Letter dated to Mr. David Baker, Executive Director, Advocacy Resource Centre for the Handicapped and the Ontarians with Disabilities Act Committee, May 24, 1995, URL:http://www.indie.ca/oda/letters/scan.html, viewed September 10, 2000.

Herringer, Rick. (2000a). Director, Resettlement, Refugees Branch, Citizenship and Immigration Canada, August 22, 2000, correspondence with the author.

Herringer, Rick. (2000b). "Opening Remarks, Tripartite Consultations", Geneva, July 2000, delivered by Rick Herringer, Director, Resettlement Division, Citizenship and Immigration Canada, URL: http://www.cic. Gc.ca/ref-protection/Infocentre/RRM/tripartite/Tripartite_e.htm, viewed August 2, 2000.

Legislative Review Advisory Group. (1997). Not Just Numbers: A Canadian Framework Future Immigration, Minister of Public Works and Government Services Canada 1997, Cat. No.: Ci63-21/1998E, URL: http://www.cic.gc.ca/english/about/policy/lrag/emain.html

Lindqvist, Bengt. (1999). Promotion of Disability Policy Within the UN System After the Year 2000, Discussion Paper, UN Special Rapporteur on Disability, March 28, 1999, URL: http://www.gladnet.org/gladmail/1999/30-special-rapporteur.htm, printed June 19, 2000.

Lindqvist, Bengt. (1998). Statement by Mr. Bengt Lindqvist, Special Rapporteur of the UN Commission for Social Development, March/April 1998, UN Commission on Human Rights, 54th Session, Agenda Item 15, URL: http://www.independentliving.org/STANDARDRULES/Lindqvist804.html, printed June 19, 2000.

Ontarians with Disabilities Act (ODA) Committee (1999). Press Release, Harris Government's Disability Bill Dies - 1.5 Million Ontarians with Disabilities More Frustrated than Ever, January 6, 1999, URL: http://www.indie.ca/oda/press22.html, viewed September 10, 2000.

Ontarians with Disabilities Act (ODA) Committee (1998). ODA Committee Quick Analysis of Ontario Government Bill 83 which received First Reading in the Ontario Legislature on Monday, November 23, 1998, URL: http://www.indie.ca/oda/do-nothing.html, viewed September 10, 2000.

Ontario Legislature (1999). ODA Resolution Unanimously Passed, November 23, 1999, URL: http:// www.indie.ca/oda/hansard39.html, viewed September 10, 2000.

Ontario Legislature (1998a). ODA Resolution Unanimously Passed, October 29, 1998, URL: http://www.indie.ca/ oda/oct-resolution.html, viewed September 10, 2000.

Ontario Legislature (1998b). Ontarians with Disabilities Act, Bill 83. An Act to Improve the Identification,

Removal and Prevention of Barriers Faced by Persons with Disabilities. Introduced November 23, 1998, URL: http://www.indie.ca/oda/bill83.html, viewed September 10, 2000.

Ontario Legislature (1996). ODA Resolution Unanimously Passed, May 16, 1996, URL: http://www.indie.ca/ oda/2.html, viewed September 10, 2000.

Pelka, Fred. (1997). The ABC-CLIO Companion to The Disability Rights Movement, Santa Barbara, California: ABC-CLIO, Inc, 1997.

Refugee Sponsorship Training Program (RSTP). (2000). Sponsorship Agreement Holder's Manual,2000, Toronto (unpublished).

Stubbs, Sue. (1995). Disabled Refugees, Draft Notes, Save the Children, 1995, URL: http://www.eenet.org.uk.scf / disrefuge.htm, viewed June 19, 2000.

United Nations. (2000a). The UN and Persons with Disabilities: United Nations Commitment to Advancement of the Status of Persons with Disabilities, URL: http://www.un.org/esa/socdev/enable/disun.htm, viewed August 13, 2000.

United Nations. (2000b). The United Nations and Disabled Persons: The First 50 Years, URL:http://www.un.org/ esa/socdev/enable/dis50y00.htm, viewed August 9, 2000.

United Nations. (1999a). International Day of Disabled Persons: 3 December 1999, URL: http://www.un.org/ esa/socdev/enable/disid99.htm, viewed August 9, 2000.

United Nations. (1999b). Compilation of International Norms and Standards Relating to Disability, Draft Release 21 May 1999, URL: http://www.un.org/esa/socdev/enable/discom02.htm, viewed August 9, 2000.

United Nations. (1982). World Programme of Action Concerning Disabled Persons, URL:http://www.un.org/ esa/socdev/enable/diswpa09.htm#Human rights, viewed August 9, 2000.

United Nations. (undated). The International Year of Disabled Persons 1981, URL: http://www.un.org/ esa/socdev/enable/disiydp.htm, viewed August 9, 2000.

UNHCR. (1998a). "UNHCR Criteria for Determining Resettlement as the Appropriate Solution" in The UNHCR Resettlement Handbook, April 1998.

UNHCR. (1998b). "Canada: by the Government of Canada" in The UNHCR Resettlement Handbook, April 1998.

UNHCR. (1994). Assessment of Global Resettlement Needs for Refugees in 1995, UNHCR Resettlement Section, Geneva, December 1994. ❐

Feedback? Questions? Remarks?

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Meeting the Refugee Challenge: The Dutch Experience

Loeky Droesen

Abstract

The Dutch asylum policy has been one of trial and error over the past four decades. This article will chronicle its most important twist and turns. It will do so by looking at the general premise of Dutch Alien law and by exploring the different residence statutes available to asylum seekers. Attention will be paid to the possibilities to appeal a decision, the investigation procedure and the Dutch reception model. Where relevant the upcoming amendments to the Dutch Alien Act are addressed as well.

Résumé

Au cours des quarante dernières années, la politique des Pays Bas sur le droit d'asile a été caractérisée par des tâtonnements. Cet article s'attache à raconter les plus importantes étapes de ce parcours tout en virages et en retours en arrière. Pour ce faire, il examinera les prémisses de la loi néerlandaise sur les Étrangers et explorera les diverses lois sur la résidence auxquelles les demandeurs d'asile peuvent avoir recours. Une attention particulière sera portée aux possibilités de faire appel contre une décision, la procédure d'enquête et le modèle néerlandais en matière d'accueil. Là où c'est applicable, les amendements annoncés pour bientôt à la loi néerlandaise sur les Étrangers (Dutch Alien Act), sont aussi examinés.

Introduction

Attending the Summer Course on Refugee Issues caused me to step back and re-examine my national system of refugee protection. One of the common threads running through the presentations was that everyone, confronted with the refugee problem, attempts to come up with some kind of solution. Often we had to conclude that no perfect solution was in sight. In this paper I want to demonstrate that the Netherlands has also been on a continuing quest for the "perfect" solution of its refugee "problem" and has been unable to find it.

The Dutch quest for solutions has been a process of trial and error, with a few striking characteristics. First of all, new laws, regulations and policies are introduced at a staggering speed. Secondly each new rule seems to be accompanied by its own set of exceptions. Moreover these rules and exceptions are often, on the one hand, based on, and on the other hand, fine tuned in policy decisions by the Dutch Immigration and Naturalisation Service, IND[1] and by the judgements of the Dutch Aliens Chambers. In this paper I will only be able to point out some of the basic rules of the Dutch system and will therefore need to make simplifications. I will chronicle some of the more striking twists and turns of the Dutch refugee law and policy of the past four decades.

(1) Dutch Migration Law; The Basic Premise

The Netherlands is a small[2] country on the North sea coast of west Europe. It is one of the most densely populated[3] countries in the world; This fact is reflected in a standard phrase used in residence determination decisions. "The Netherlands is a densely populated country, because of the resulting problems in the population and employment situation, a restrictive migration policy is in place."[4] The basic premise of the present Dutch migration policy is restrictive indeed. It states that no alien is allowed to reside in the Netherlands, unless an exception applies. The Aliens Act Implementation Guidelines[5] formulates the three exceptions. Aliens are allowed residence in the Netherlands if; "their presence in the country serves an essential Dutch interest"[6] (e.g. exchange students, au pairs, and athletes, e.g. exceptional soccer players). Furthermore aliens are allowed to stay if "there are reasons of a compelling humanitarian nature"[7] to allow residence (e.g. family reunification cases, people traumatised by experiences in their country of origin or people who do not meet the refugee definition but are deemed in need of protection none the less. (I will come back to these last two situations in paragraph 3) And the last exception to the non admittance rule is based on the Netherlands' international treaty obligations, (e.g. the European Union Treaties). An important Dutch international obligation was created by the signing and ratification of the 51 Geneva convention.[8] It forms the basis of Dutch Refugee Law and Policy.

(2) Dutch Refugee Law and Policy; An Introduction

The Netherlands ratified the Geneva Convention on the third of May 1956. The Country was recovering from the post second war economic slump and immigration to the Netherlands was limited. In fact a considerable number of Dutch emigrated, many of them to Canada. In the first years after the ratification, the determination whether a person qualified as a convention refugee was left to the UNHCR. If the UNHCR representative declared a person a refugee under its mandate, the Dutch authorities would start the procedure to grant a residence permit.[9] Many of the refugees who were accepted into the country came from behind the Iron curtain (the communist countries) and received a warm welcome.

In 1965 a new Dutch Aliens Act was drafted. In Article 15.1, the main part of the Geneva Convention Refugee Definition was incorporated. Article 15.1 stated: "Aliens coming from a country where they have a well founded reason to fear persecution based on their religious or political opinion or nationality or based on their belonging to a certain

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race, or particular social group, can be granted admittance by the Minister.". A person accepted as a refugee under article 15.1 was granted the so-called A-status, or admittance as a convention refugee.[10]

In practise not much chanced. The Dutch authorities would not start an admittance procedure until the UNHCR had declared a person a refugee. The Netherlands was going through an economic boom and was actively seeking labour migrants in Italy, Spain, Portugal, Marocco and Turkey. The number of asylum seekers was low. In fact the State Secretary H. Grosheide, responsible for the Dutch Aliens Policy between 1970 and 1973 can only recall one asylum case which went to court, the case of an American Vietnam deserter[11] Despite the low numbers (386 in 1975)[12] in the middle seventies refugees and asylum seekers first became a political issue in the Netherlands. The Dutch government was confronted with a number of asylum requests from young Portuguese men, refusing to be drafted into the military as a protest against their country's colonial war. Because it was politically inconvenient to accept draft dodgers from a friendly State, the Dutch government was reluctant to accept these people as convention refugees.[13] The situation caused a strain in the relationship with the UNHCR, because the Netherlands was no longer willing to accept the UNHCR refugee determinations. In august 1975 the UNHCR decided to end refugee determinations in the Netherlands.[14] The Dutch Ministry of Justice became the official body responsible for determining the refugee claims of asylum seekers. The situation of the Portuguese draft dodgers also led to the first introduction of, what became a recurring theme in the next three decades, a new protection status for people seeking asylum in the Netherlands.

(3) Receiving Asylum in the Netherlands

A number of the Portuguese cases were not accepted as convention refugees under article 15.1 of the Dutch Aliens Act, but were given the right to reside based on the fact that they were "asylum justified" [15] cases. This right to reside was commonly known as the B-status. The policy decision to create the new status, was in line with the general reluctance of the Dutch government to grant people the convention (A) status. [16] The B status was given from 1974 onwards to people "who could not be expected to return to their country of origin due to the political situation." The determination to grant a B status was policy based and most Dutch writers agree that it never became altogether clear where the line was drawn between the A (Convention) status and the B status.[17] Many asylum seekers appealed against the granting of a B status because they felt their experiences justified receiving the A status. This development resulted in an increase in asylum cases being brought before the Council of State . [18] In 1988 the Council of State decided the B status would have to be abolished, because the Council could no longer distinguish between the requirements to receive the A status or the B status.

In the same time frame, the Dutch economy had taken a turn for the worst and unemployment was rising quite rapidly. The numbers of asylum seekers was increasing as well. By 1985, 5865 [19] people asked for asylum. Increasingly asylum seekers came to the Netherlands in larger groups. (eg Vietnamese boat people and Turkish Christians.)

In 1985 a large number of Tamil asylum seekers reached the Netherlands. The arrival of the Tamils is generally seen as a watershed in the Dutch public acceptance of asylum seekers. The conflict in Sri Lanka was unknown to the general public. The arrival of large groups of Tamils in chartered planes, led to a shift in the public debate. For the first time a group of asylum seekers was identified as "economic fortune seekers", people who should not receive protection.

The eighties also saw the emergence of yet another status. This option became known as the C status and was awarded by the Ministry of Justice based on it's powers to grant residence because of reasons of a compelling humanitarian nature. The criteria to be awarded a C status have to be distilled from the various existing policies. A few groups can be identified; People who are traumatised by their experiences in the country of origin, people who because of ill health cannot return to their country of origin and those people who have been waiting for a decision on their request to be granted residence for over 3 years, have all be awarded the C status.[20] In comparison to the A status, C status holders have less rights to eg family reunification and work. In part because of this difference, many people who received a C status continued their legal battle to receive the A status. This and the growing number of asylum seekers led to increasing pressure on the capabilities of the IND and the Dutch Courts.

In the beginning of the nineties, two more policy based, residence possibilities were created to be awarded to people asking for asylum: the gedoogden Status and the ontheemden status. The gedoogden status was awarded to asylum seekers from Somalia, Ethiopia, Iran, and Iraq [21] The ontheemden [22] status was designed in 1992 to deal with the influx of people escaping the violence in the former Yugoslavia. All former Yugoslavs received the right to accommodation and some money but no option to receive a stronger residence status regardless of their personal circumstances.

The common link between these two options was that they were created to deal with specific influxes of asylum seekers. The Dutch policy makers created these possibilities because, they felt it would be inhumane to send these groups back to their country of origin. But policy makers also expressed great concern about the "magnetic appeal" [23], that granting these groups strong residence rights, might have on the people remaining in their countries of origin. Therefore, the recipients of these residence permits received very limited rights. Policy makers and politicians also started to stress their desire to stem the "stream" of asylum seekers coming to the Netherlands. Granting limited residence rights was seen as a useful

tool to deter "economic" refugees from trying to seek asylum in the Netherlands.

In order to avoid having to create additional incidental solutions for new influxes of asylum seekers, in 1994 the Dutch Aliens Act was amended (article 12a and 12b) to include a new residence status, the provisional residence permit (VVTV).[24] The VVTV can be awarded by the Ministry of Justice in cases where "forced expulsion to the country of origin would result in exceptional hardship for the alien, given the overall situation there."[25] The Dutch government wanted to create the possibility to offer temporary protection to people fleeing eg civil war by granting them a VVTV status. To put a VVTV policy in place, the Dutch authorities assess the situation in a country in turmoil and all asylum seekers originating from this country will be awarded a VVTV. (VVTV policies have been in place for eg people coming from Angola, Iraq, the great lakes area in Africa and Bosnia) As soon as the situation in the country of origin improves, the recipients of the VVTV status are expected to return. The VVTV status has very limited rights attached to it. Because it was deemed inhumane to keep people in limbo about their future indefinitely, the VVTV status holder is allowed to apply for the stronger C status after three years.[26] The high influx of asylum seekers,[27] the increasingly complex system of status determinations, and the myriad of possibilities to appeal on aspects of the case led to long delays and backlogs in the determination system. Increasingly government communications about the asylum policy stressed the fact that there were limitations to Dutch hospitality. A brochure entitled "the Aliens policy knows its limits" [28] describes the basis of the Dutch policy as follows: "The alien's policy is just but severe and the reception facilities are humane but sober."... "Real refugees have to be able to find shelter in the Netherlands. To be able to offer these people protection it is necessary to make a strict selection."

Many of the Dutch policy measures in the nineties were geared at trying to diminish the influx of people, to relief the pressure on the determination system. Examples of measures include: excluding manifestly ill-founded and inadmissible [29] cases within 24 hours (now expanded to 48 hours), introducing carriers sanctions, making Dublin claims[30] and the adoption of a bill on undocumented asylum seekers. An asylum seeker entering the Netherlands without documents is presumed to have an ill-founded claim, unless he/she can produce a strong reason explaining the lack of documentation. The UNHCR has expressed its concern about this measure[31] which does not take into account the reality of people in flight.

But these measures were not sufficient to end the above mentioned problems, so in the new millennium the Netherlands started a far reaching overhaul of its asylum determination system. A Dutch Aliens Act has been accepted by the Dutch parliament on 14 June 2000 and the Dutch government is aiming to have the new system in place by the first of July 2001.[32] (This despite concerns expressed by the Courts, IND and the reception agency, that they may not be ready to implement the new law on time).

Under the New rules, asylum seekers are still eligible for a residence permit on the basis of the three possiblities explained above. (The Netherlands' International obligations including the Geneva Convention; for urgent reasons of a humanitarian nature or on the grounds that return to the country of origin would involve exceptional hardship). Once accepted however, each asylum seeker will receive the same temporary residence permit. The temporary permit will confer a given set of rights and benefits. After three years the recipients of the temporary permit will be eligible to receive a residence permit for an indefinite term.[33]

Whereas before the uncertainty of living with a temporary status for three years was only part of the life of the VVTV status holders, it will now become the fate of all accepted asylum seekers in the Netherlands. It is interesting to note that the term of three years was first introduced in policy and jurisprudence to end the uncertainty of a specific group of asylum seekers. Those asylum seekers who had been waiting for three years, and had not received a decision on their request for admission, where given a residence status on humanitarian grounds. It was deemed inhumane to keep them waiting any longer.[34]

The present system with three statuses conferring entitlement to different sets of rights and benefits often led to litigation, because recipients of the weaker entitlements attempted to obtain a stronger set of entitlements. One of the goals of the new system is to limit litigation in asylum cases. Limiting appeal possibilities has been a recurring theme in Dutch asylum policy as the next paragraph will show.

(4) Appeals in the Dutch Asylum Policy

Because the decision to grant a residence permit was part of the powers of the state, the judicial possibilities of an asylum seeker to appeal against a decision, were governed by the rules of Dutch Administrative law. If the Ministry of Justice took a negative decision on an asylum application, the asylum seeker could file an objection with the administrative authority. The executive would have to review the case and take a new decision. If this second decision was negative again, the asylum seeker could file an appeal with the Council of State.

In the beginning of the nineties the number of appeals had grown to a level which the Council of State was ill-equipped to deal with. A major overhaul of the general Dutch Administrative law was taking place, which led to a change in the Dutch Aliens Act on the first of January 1994. But instead of bringing the Aliens Act in line with the general principles of Dutch administrative Law [35], the changes in the Dutch Aliens Act created exceptions to these general principles.

One implemented difference was the shorting of the term within which the asylum seeker can file an objection. Whereas under general Dutch Administrative law a person has 6 weeks to file an objection, the alien has 4 weeks. And although the executive has eight weeks

to decide on an objection in all non Alien Law cases, this period was extended to 6 months in the Aliens Act (art 15 e) for all Alien cases. The new Aliens Act, to be implemented in July 2001, take this difference one step further. The six month period can be extended by ministerial order with a year (i.e. a total of 1.5 years) for certain categories of aliens. The Minister can decide to use this option if the situation in the country of origin is expected to remain uncertain for a short period, is expected to improve in the near future or if the number of applications is so large that the IND cannot process them within the six month period. Considering that the IND has been having considerable problems to meet the 6 month deadline, it is quite likely that under the new system, a considerable number of asylum seekers will not be able to obtain a permanent residence permit until they have remained in the Netherlands for 5.5 years (1.5 plus 3 years temporary permit).

But the most important difference implemented in January 1994 created a real uproar among legal scholars and refugee advocates in the Netherlands.[36] The government decided to abolish the right to appeal to the Council of State in all alien cases, thereby creating an inequality in the legal protection offered to Dutch national and non-Dutch nationals, in the name of expediency.

A special Court was installed to deal with all Alien Law cases, the Alien Court in The Hague, which has mandated sessions to other courts in the country.[37] The The Hague Court realised early on that without an Appeal Court and with 5 Aliens Courts deciding cases, it was necessary to create a way to maintain legal unity. The judges working in the different Aliens Courts, convened the so called Chamber of Standardisation.[38] In this Chamber several of the Alien Law judges come together to take decisions in cases which deal with the more complicated or contentious legal or policy questions. (For instance on 27 August 1998 the Chamber ruled that persons persecuted by non-State agents may fall within the ambit of the Geneva Convention.[39] The Chamber has no official standing under the Law and the value of its judgements is based on the agreement among the Alien judges that they will follow the jurisprudence of the Chamber.

Almost as soon as they were established the Aliens Courts were hard pressed to deal with all the cases that were brought before them. Besides cases about the validity of the asylum claim, a number of other issues were dealt with by the Courts. An asylum seeker whose first application had been denied, was in most cases, not allowed to remain in the Netherlands to await the outcome of the objection phase. Many asylum seekers would file a motion to be granted leave to stay, pending the decision to the objection. Moreover the IND was increasingly having trouble meeting the six month deadline, leading to the legal assumption that the executive had refused to take a decision and opening the possibility to appeal to the Court. Court cases also dealt with questions of termination of reception facilities, eviction from accommodation and expulsion orders.

In 2001, seven years after its abolition, the Council of State will now be reintroduced as an Appeal Court in Dutch Alien Law cases. In hopes of diminishing the time involved in the decision making process, the Dutch authorities have now decided to abolish another part of the appeals phase. Asylum seekers will no longer be able to lodge an objection to the executive who has rendered a negative decision on their application. The objection procedure will be abolished in Alien cases. Instead the asylum seeker will make an appeal to the Court.

To decrease the volume of cases, it has been decided that all asylum seekers are allowed to remain in the Netherlands pending their appeal to the Court. It will no longer be necessary to file a separate case to ask for a leave to stay. Moreover, the rejection of the application by the Court will automatically lead to the obligation to leave the Netherlands and will terminate the right to reception facilities. The asylum seeker will no longer be able to file separate appeals related to these issues.

Despite expectations that these new rules will diminish some of the case load, the new role of the Courts will undoubtedly lead to more work. Therefore the Dutch authorities have decided to greatly expand the number (from 6 to 21) of Alien Courts.[40]

Although the IND should have a diminishing case load with the disappearance of the objection phase, the Dutch government has chosen to expand its workforce. This is necessary to try to process all of the currently pending cases as soon as possible. But it is also part of the continuing attempts to improve the quality of the work of the IND. "The abolition of the objection phase means that the quality of the initial decision of the IND has to be improved. The Dutch authorities hope to achieve this by enabling the asylum seeker to explain clearly their motives for requesting asylum and, where it is proposed to refuse their application, by asking them for their reaction to such a decision. In its final decision on the request for admission the IND is to take account of how both the IND and the alien view the application. This will provide a sufficient basis for a review by the Courts of whether the decision has been taken legally." [41]

(5) Establishing Asylum Motives The Dutch Way

How do the Dutch authorities enable an asylum seeker to explain clearly their motives for requesting asylum? In the system in place today a person who asks for asylum is brought to one of three Application centres.[42] Within 48 hours the authorities will determine, on the basis of a short interview, whether a person's claim is valid. Those cases which are deemed manifestly ill-founded or inadmissible, will not be allowed to continue. About three quarters of the people asking for asylum go to go the next phase and are transferred to an Investigation and Reception centre.[43]

In the Investigation and Reception centre, the asylum seeker will be interviewed about the asylum motives by a contact officer.[44] One can detect many imperfections in this system. Often the

asylum seeker is tired, traumatised, distrustful of authorities and not aware of the extreme importance of this one interview in the determination of the asylum claim. The contact officer has limited time to find out relevant information with the aid of an interpreter, which makes communication difficult. The contact officer has to try to be compassionate but at the same time has to establish the trustworthiness of a claim and the claimant. Especially in the beginning of the nineties, the quality of the contact officers skills left much to be desired. At the time it was not uncommon for people to be hired as contact officers' by temporary work agencies. In the past several years training in multicultural communication and the specific problems of torture and rape victims has been introduced.

The contact officer will write a report on the basis of the interview. This is in no way a verbatim report of the interview, but a summary of the questions and answers. The quality and thoroughness of the contact officer's report are essential in a person's asylum claim. The Report is in general seen as the gospel truth. Any additions, improvements or changes to the story made by the claimant after the interview are treated at best as less relevant and at worst as proof of the person's unreliability by the IND and the Courts.[45]

The Report is send on to the determination officer .[46] Based on the content of the report and the available information about the country of origin, the determination officer will decide if a person will receive a residence status or not. The determination officer does not meet the asylum seeker, unless a second hearing is called for in the objection phase.

The Dutch asylum procedure has increasingly become adversarial. On the one side you find the asylum seeker and their lawyer trying to prove the validity of the claim and on the other side the IND trying to discredit the claim. One writer has even gone so far as to characterise the relation as a guerrilla warfare.[47] In 1990 Amnesty International published a book called the drawback of the doubt [48], highlighting the many instances in the Dutch procedure in which the asylum seeker was not given the benefit of the doubt but rather the reverse. In case of doubt the person is not deemed to be credible. In one case, I saw the life experience of a man from Zaire (who had been imprisoned, tortured and whose wife had been raped in front of him) narrowed down to a question about one of the 10 documents he brought to prove his identity. Because one number in a date on a driver license had been changed from a one to a two, the IND ruled his whole story was not credible. In the last years a few experiments have started to attempt to return to a more cooperative, inclusive, and less adversarial approach.

(6) The Reception of Asylum Seekers[49]

Over the last few decades the Netherlands has developed an extensive reception programme. Until the beginning of the eighties the Dutch government was not involved in the reception of asylum seekers. Asylum seekers who arrived in the Netherlands received a payment based on the Law [50] which grants financial assistance to inhabitants of the Netherlands who have an income below the statutory minimum. The asylum seeker could find their own accommodation or ask the municipality to assist them in finding a place. It is important to note that in the densely populated Netherlands, there is a consistent shortage of housing available, in particular in the low rent categories.

When the large groups of Tamils arrived in 1985, the Netherlands faced its first reception crisis. (see also paragraph 3) . The Municipalities where most of these Tamils tried to find accommodation, found themselves unable to help. The national government stepped in and set up reception centres for the first time. ■

Endnotes

1. Immigratie en Naturalisatie Dienst. The IND is a part of the Dutch Department of Justice and responsible for the determination of asylum claims in the Netherlands. I have chosen to use the English translation for specific Dutch terms in the text. The footnote will give the original Dutch term. The translations were taken from Begrippenlijst Vreemdelingenrecht, IND, maart 1996. 2. Total area of the Netherlands 41,000 sq km or 16,000 sq mi. To contrast Canada's area is 9,970,000 sq km or 3,849,000 sq mi.
3. Population of the Netherlands is approximately 16 million. To contrast Canada's population is approximately 30 million.
4. A liberal translation of "Nederland is een dichtbevolkt land en in verband met de daaruit voortvloeiende problemen, zoals gelegen in de bevolkings- en werkgelegenheidssituatie, wordt een restrictief toelating beleid gevoerd."
5. Vreemdelingencirculaire.
6. liberal translation of "indien met hun aanwezigheid een wezenlijk Nederlands belang wordt gediend."7. liberal translation of "indien er sprake is van klemmende redenen van humanitaire aard."8. Convention relating to the status of refugees of 28 July 1951.
9. "Door het oog van de naald, een commentaar op de praktijk van de asiel procedure", .Domenica Ghidei Biidu, ISIS, Utrecht, 1995, pg 43-45.
10. It is impossible to address in this paper the legal consequences of the differences between the Dutch and Geneva Convention definition; see e.g. "Vluchtelingenrecht", T.P. Spijkerboer en B.P. Vermeulen, Amsterdam, 1995, p. 212 - 218.
11. "Van een Vietnam-deserteur tot duizenden Kosovaren", Micha Kat in Intermediair, 13 mei 1999, 35 jaargang, nummer 19.
12. number given by the State Secretary of Justice Cohen in a speech on 6 april 2000, http://www.minjust.nl/c actual/ speeches/sp0078.htm.
13. "Vreemdelingenrecht; toelating en verblijf van vreemdelingen in Nederland", Th. Holterman, W.E.J Tjeenk Willink, Deventer, 1999, pg198 - 201.
14. Biidu, Supra note IX, p. 43-45.
15. asielgerechtigd.
16. "Inleiding in het Migratierecht", P. Boeles, Amsterdam, 1992, pg 104 - 107.
17. Ibid p. 104 - 107 and Spijkerboer, Supra note XI, p. 310 - 313.
18. Raad van State, the Dutch Administrative High Court.

19. number given by the State Secretary of Justice Cohen in a speech on 6 April 2000, http://www.minjust.nl/c actual/ speeches/sp0078.htm.

20. Spijkerboer, Supra note XI, p. 313 - 322.

21. gedoogden is a typically Dutch term which is very hard to translate. It means that the people were not residing in the Netherlands legally, but were allowed to remain under certain conditions laid down in policy regulations. (The famous Dutch drugs policy is based on the same principle, selling marihuana is not legal in the Netherlands but it is gedoogd/allowed, if the shop complies with certain policy regulations.).

22. ontheemden (another hard to translate term) This status was designed in 1992 to deal with the influx of people escaping the violence in the former Yugoslavia. All former Yugoslavs received the right to accommodation and some money but no option to receive a stronger residence status regardless of their personal circumstances.

23. Aanzuigende werking, literal translation suction working.

24. Voorwaardelijke Vergunning tot Verblijf

25. liberal translation of "gedwongen verwijdering naar het land van herkomst van bijzondere hardheid voor de vreemdeling zou zijn in verband met de algehele situatie aldaar."

26. Spijkerboer, Supra note XI, p. 327-330 and Holterman, Supra note XIV, p. 180 - 181.

27. some numbers influx in 1992; 20,346, in 1996; 22,857, in 1998; 45,217 and in 1999 (numbers till September 1999) 27,598. Canada's influx in 1992; 37.748, in 1996 25.633, in 1998; 24.937, and in 1999 (numbers till august 1999) 17.393, Http:// www.igc.ch/1999.htm.

28. a brochure published by Dutch Immigration and Naturalisation service in 1996 in inform the general public about the aliens policy.

29. kenelijk ongegrond en niet ontvankelijk.

30. The Dublin convention sets up a system among its signatories to determine which country is responsible to determine an asylum seekers claim. A Dublin claim is made to the Dublin convention signatory state which the Netherlands deems responsible to hear a person asylum claim because the person travelled through this country to enter the Netherlands.

31. http://www.unhcr.ch/world/euro/ nthrlnds.htm.

32. "geen uitstel Vreemdelingenwet 2001"; gids vreemdelingenrecht, nieuws, april 2000, Kluwer afl.

33. http://www.minjust.nl:8080/a_beleid/ fact/aliens.htm.

34. Spijkerboer, Supra note XI, p. 316 - 317.

35. laid down in the General Law Administrative law (Algemene Wet Bestuursrecht) of 1 January 1994.

36. see e.g. Spijkerboer, Supra note XI, p. 335 - 341 and 379 - 387.

37. The Courts in Amsterdam, Haarlem, Haarlemmermeer, Den Bosch and Zwolle were called upon to act as so called additional session courts (nevezitting-splaatsen).

38. Rechtseenheidkamer.

39. Holterman, Supra note XIV, p. 190.

40. "Tweede kamer akkoord met uitbreiding aantal nevenzittingsplaatsen", gids vreemdelingenrecht, nieuws, mei 2000, Kluwer afl.11.

41. http://www.minjust.nl:8080/a_beleid/ fact/aliens.htm.

42. Aanmeld centrum. There are application centres in Rijsbergen, Zevenaar and Schiphol.

43. Onderzoeks en opvangcentrum.

44. contact ambtenaar.

45. Spijkerboer, Supra note XI, p. 350 - 354.

46. beslis ambtenaar.

47. Holterman, Supra note XIV, p. 78 - 81.48. "Het nadeel van de twijfel, de rol van informatie in de Nederlandse asiel procedure" Amnesty International, 1990, Amsterdam.

49. Most of the information used in this paragraph is drawn from the excellent student paper "The reception of asylum seekers in the Netherlands", Astrid Arends, Institute of Higher European Studies, May 2000. (copy available in Haagse Hogeschool library or from writer of this article).

50. Algemene Bijstandswet, the General Assistance Law.□

The New Role of 'Host Countries' Played by Traditional Countries of Emigration: The Experience of Italy

Grazia Scoppio

Abstract

The objective of this article is to argue that in order to successfully address the issue of integration of migrants, both voluntary and involuntary, countries need to abandon concepts of nation-state and nationalism and embrace policies of multiculturalism and active citizenship. The article specifically deals with new immigrant-receiving countries and provides the example of Italy where new policies have been adopted to deal with the integration of newcomers. Despite these efforts, hurdles are still present in the Italian immigration system. Nonetheless, it must be acknowledged that the approach espoused by Italy towards immigration is positive in that it favours integration without total assimilation. The Italian approach reflects the multiculturalism policy framework adopted by Canada, which in the opinion of this author is still the most successful policy model in addressing issues of integration and diversity.

Résumé

Le but de cet article est de proposer que si les états veulent pouvoir gérer avec succès la question de l'intégration d'immigrants, volontaires et non-volontaires, ils doivent abandonner les concepts d'état nation et de nationalisme et adopter résolument des politiques de multiculturalisme et de citoyenneté active. L'article traite spécifiquement du cas de nouveaux pays d'accueil des immigrants, et fournit l'exemple de l'Italie où de nouvelles politiques ont été adoptées pours'occuper de l'intégration de nouveaux arrivés. En dépit de ces efforts, il reste encore des obstacles dans le système italien d'immigration. On doit cependant reconnaître que l'approche adoptée par l'Italie vis-à-vis de la question de l'immigration est positive en ce qu'elle favorise l'intégration sans toutefois aller jusqu'à l'assimilation totale. L'approche italienne reflète la politique-cadre multiculturelle adoptée par le Canada, qui reste toujours, selon l'auteur, le modèle de politique ayant le plus de succès pour s'adresser aux questions d'intégration et de diversité.

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Introduction

Over the last years, migration has become a global issue. In fact, there are several trends that can be detected worldwide. We are witnessing increasing global movements, favoured by faster communications, due to greater work mobility, rising poverty, ethnic conflicts, political upheavals, persecutions and wars. Population movements are not just from developing countries of the south toward developed countries of the north. On the contrary, World Bank data show that 85% of the world's population is in developing countries and uses just over of one fifth of the world's wealth/resources (quoted in Caritas, 1999). Thus, the 'gap' between north and south is widening. Most developed countries are also experiencing a demographic decline due to lower birth rates. Northern countries have responded in two different and contradictory ways to these global trends. On the one hand, many developed countries are adopting active immigration policies to recruit the human capital necessary for the survival of their nation. At the same time, some of these countries such as Northern and Western European states - also known as 'Fortress Europe'-, are enforcing tough measures in the hope of controlling migration flows and detecting 'illegal' immigrants, 'bogus' refugees, human smuggling, terrorists and criminals. Southern European countries, such as Italy, are also experiencing increasing migration although not at the same levels as the rest of the European Union. Another difference lies in the fact that the Italian response to immigration has not been as harsh as some other member states of the EU. Historically a country of great emigration, Italy finds itself for the first time playing the role of the host nation and having to address issues of settlement and integration of newcomers.

In this article, I maintain that in order to properly address the issues of migration and integration there is a need to abandon the concept of nation state and embrace a view of a multicultural state, as adopted by Canada. I also attempt to define the dimension of immigration in Italy, describe the way the government is responding, and identify some of the issues that still need to be addressed, as well as some of the barriers to integration that still need to be removed. I conclude that Italy's approach is positive, in that its public policies acknowledge the need for greater integration and for a multicultural and intercultural vision. Nonetheless, I argue that in order for immigration policies to achieve true integration, Italy and all EU states have to envision a more inclusive concept of citizenship.

Framework

Migration

According to the International Organization of Migration, there are 130 million people on the move today, of which 21.5 million are refugees and internally displaced people that concern the United Nations High Commissioner for Refugees (UNHCR) (quoted by Van Kessel, G. , 2000). There are several 'push' factors forcing these populations out of their home countries. Some of these factors are economic, i.e. hunger, poverty, unemployment and economic hardship in general. Some are

human and political, i.e. violation of human rights, ethnic and political oppression, persecution and war. Some are environmental, i.e. degradation of the environment and natural disasters such as earthquakes, droughts and floods. Often times these factors are correlated. In fact, poverty and economic uncertainty can foster climates of political instability that may lead to conflicts and repression. At the same time, conflicts and wars lead to poverty, hunger and degradation of the environment. Post-war and post-conflict situations often find countries unable to cope with reconstructing cities and piecing together the economy. The main 'pull' factors that attract both voluntary and involuntary migrants towards developed countries of the north are economic opportunity, political and social stability and family reunification (for an overview of root causes of migration see International Organization for Migration and InterWorks, 1995). Through legal or illegal means, every year, millions of people from southern countries seek a better life or refuge in countries of the north.

Nationalism vs. Multiculturalism

In view of the fact that greater migration results in increasingly diverse populations, countries need to abandon the concept of 'nation' as traditionally linked to common language, ethnicity, culture, religion and historical background. Hobsbawm (1990) writes that very few nations fit into this narrow definition, since the populations of most nation-states are too heterogeneous. The concepts of 'nation' and 'nationalism' previously defined are exclusionary in nature and historically have led to conflicts as we witnessed in Sri Lanka, Northern Ireland, Albania and the former Yugoslavia, just to cite a few examples.

Smolicz (1998) differentiates between the concept of nation and that of state. He defines a nation as a "collectivity with a range of cultural values that are perceived as reflective of its past and an influence on both its present existence and future development" (p.61). The state, on the other hand, is a political and legal entity managing the resources of a country including issues of citizenship and political governance. According to this theory, the bond between the nation and the state is not essential for the nation to continue to exist, and the existing nation-states cannot claim, aside from a few exceptions, that there is a perfect fit between the nation and the state. That is to say, that only in a few cases, such as Japan, Iceland, Korea and Portugal, do the borders of an ethno-national group closely coincide with the borders of the state (Connor, W. 1994, p.375, quoted in Somlicz, J. 1998).

If trying to assimilate people from different ethno-cultural backgrounds into one mandated 'model' of national identity can lead to conflict, how can host countries successfully achieve 'unity within diversity'? The concept of 'national identity' should be changed to 'civic identity' within a framework of shared values in a multicultural vision. Advocates of multiculturalism such as Banks (1997), believe that the way to achieve a balance between concepts of 'national unity' and 'ethnic diversity', is to mix and blend citizenship and multicultural education.

Canada: Immigration, Citizenship and Multiculturalism

The Canadian model of state is that of a nation of settlers and immigrants, and the population is made up of people of different cultures, races, languages, and religions. Canada has a long history as an immigrant receiving country and a long tradition of immigration policies and programs. Immigrants and refugees have played a crucial role in building our nation.

> Since the Second World War, Canada has accepted close to 7.8 million immigrants or almost 150,000 annually. Since 1990 our annual intake has been just under 230,000 or about 0.7% of our population. At this rate, Canada accepts more immigrants and refugees than any other country (Van Kessel, G.C.J., 1998, p.1).

Canada is one of the few countries in the world with an active program for permanent immigration. The approach towards immigrants and refugees is that "in selecting immigrants and refugees we are selecting future Canadian citizens" (Van Kessel, G.C.J., 1998, p.2).

Throughout the 20th century the Canadian immigration system and regulations have been revised and improved. In 1965, new immigration regulations were designed to eliminate all discrimination based on race, religion and national origin. The point system for immigration selection was introduced to evaluate, in a non-discriminatory way, independent immigrants on the basis of their ability to contribute to the Canadian economy. Currently, the Canadian immigration system is based on the 1976 Immigration Act and Regulation, which determined the following:

- The principles of Canadian immigration policy;
- The government's responsibility to plan future immigration fluxes;
- The distinction between refugees and immigrants;
- Canada's first refugee determination system.

In 1989 the Immigration and Refugee Board was also established. (For an overview of the Canadian immigration system see Citizenship and Immigration Canada, 2000).

The 1976 Act has been reviewed and amended several times to respond to Canada's changing policy objectives. In April 2000, Bill C-31 the Immigration and Refugee Protection Act was presented as a proposal to replace the current Act. The proposed Bill has several objectives. Among the objectives related to immigration, the principal ones are:

- "To permit Canada to pursue the maximum social, cultural and economic benefits of immigration;
- To enrich and strengthen the social and cultural fabric of Canadian society, while respecting the federal and bilingual character of Canada;
- To see that all families are reunited;
- To promote successful integration of permanent residents into Canada, while recognizing that integration involves mutual obligations for new immigrants and Canadian society" (The

House of Commons of Canada, 6 April 2000, p.2).

With respect to refugees, the Bill makes specific reference to international conventions and proposes several objectives to recognize Canada's commitment and legal obligations to provide assistance to those in need of protection and resettlement (The House of Commons of Canada, 6 April 2000, p.3).

The social outlook towards immigrants and refugees in Canada was, in the past, one of amalgamation within main-stream society but, more recently, policies have moved toward a focus on integration while acknowledging diversity (see Burnaby, B. et al., 2000). The multiculturalism policy within a bilingual framework was established at the federal level in 1971 and for three decades this multicultural vision has been clearly reflected by active immigration policies and by the creation of programs aimed at the settlement and integration of immigrants and refugees. The Government of Canada has reinforced these concepts through the 1988 Canadian Multiculturalism Act, thereby declaring that the policy of Canada is:

- To recognize that multiculturalism is a fundamental characteristic of Canadian heritage and identity;
- To promote participation and equal treatment of individuals of all origins;
- To foster the recognition of diverse cultures of Canadian society;
- To preserve the use of other languages while strengthening the official languages of Canada;
- To ensure that all Canadians have an equal opportunity to obtain employment;
- To promote policies and programs that enhance the understanding of and respect for the diversity of the members of Canadian society (Minister of Public Works and Government Services Canada, 1999).

Canada has an open citizenship policy: that anyone born in Canada is automatically a Canadian citizen, and a Canadian resident who is 18 years of age and older has the right to apply for citizenship after three years of living legally and permanently in Canada. In order to become a citizen, there are some criteria to be met, such as knowledge of either English or French, and there are some exceptions that apply to people who have committed a crime and so on. Revisions to the 1977 Citizenship Act have been presented under Bill C-16 the Citizenship of Canada Act. The proposed legislation establishes clear, fair and objective criteria for Canadian citizenship, ensures that future Canadians have a link to Canada, and provides measures to protect the integrity of Canadian citizenship (Citizenship and Immigration Canada, 25 Nov. 1999).

The Canadian model of the multicultural state contrasts with the traditional Italian model of nation, which was mono-cultural, mono-religious, and mono-linguistic. In Italy, migrants have been, until recently, regarded only as temporary foreign workers, often illegally employed, who were separate and distinct from mainstream society.

The Dimension of Migration in Italy

Overview

Historically, Italy has been a great exporter of what in recent times has been referred to as 'manpower' or 'human resources', and is now labeled 'human capital'. These great waves of emigration ended around the mid-70s when the country's economy gained stability. Today, Italy finds itself on the 'receiving end' of migration movements, whereby increasing numbers of legal and illegal immigrants, political refugees and nomadic populations have settled in its territory.

According to the latest report on immigration published by Caritas (1999) the major Italian volunteer organization, in 1998 there were 1,250,214 immigrants in Italy including 1,009 stateless persons. The four main continental regions of origin are Eastern Europe, North Africa, the European Union (EU) and East Asia. These figures refer only to migrants that have been 'registered' as temporary residents/workers and do not include the thousands of illegal immigrants crossing Italian borders every month. In 1998, in the region of Puglia alone, police forces detected 39,065 "clandestini" [clandestine or illegal migrants] mainly from Albania and in the same year the Department of Public Security 'expelled' 47,861 illegal immigrants (pp. 94-97).

Challenges: Immigrants and Nomads

Many newcomers are working at jobs that Italians are no longer willing to perform, such as agriculture, assembly lines of factories, or house cleaning. Some are working illegally as 'lavoro nero' [literally: black market work]. There are also several thousands nomads living in 'nomad camps', under poor health and social conditions. The phenomenon of migration has reached considerable proportions especially in large urban areas. Unplanned urban growth has been traditionally a 'Third World' problem, but these recent waves of immigrants and refugees have caused similar effects in large cities of developed countries, such as Rome. This unplanned migration brings about issues of access to social services such as health and education and further enhances existing problems of shelter, unemployment and crime, as evidenced in the 1st Report on the Integration of Immigrants in Italy (Commissione per le Politiche di Integrazione degli Immigrati, 1999).

Challenges: Refugees

Two different sets of data on refugees appear within the Caritas (1999) report. According to data of the Ministry of the Interior there were 40,592 asylum claims presented in 1998, whereas data of the 'Commissione Centrale per il Riconoscimento dello Status di Rifugiato' [Central Committee for Refugee Status Recognition] show only 7,674 claims (Caritas, 1999, p.97 and p. IX). It is recognized in the Caritas report that figures from the Ministry of the Interior might not coincide with those of the Central Committee which are provisional data as a few thousands claims had not yet been included. However, no

explanation is provided to clarify the reason for the contradiction in the figures.

In 1998, the rejection rate of refugee claims was 32.3% and the acceptance rate was 13.4%, while over 45% of claims were still unprocessed (Caritas, 1999, p. IX) The acceptance rate is in line with most EU countries but definitely below Canada's which is around 50% or above. Assistance to refugee claimants is limited to 45,000 Italian Lira per day (about $35.00 CAD) for 45 days. Although a temporary residency permit is issued, no work permit is granted to refugees awaiting their claims to be heard, a process that can take longer than a year (Caritas, 1999, p. III). Whereas in Canada claims can also be processed abroad through resettlement programs and refugees can be 'sponsored' by the government or through private sponsorship, in Italy 'documented' claims are to be made to the border police prior to crossing the Italian border (Parlamento Italiano, 1990).

The 1998 Immigration Act

Due to these growing challenges, in 1998 new legislation regulating immigration was approved by the Italian parliament, namely the "Legge n. 40: Disciplina dell'immigrazione e norme sulla condizione dello straniero" [Act no. 40: Regulations on Immigration and Norms on the Condition of Foreigners] (Parlamento Italiano, 1998). The main aim of the Act was to 'regularize' the status of non-EU citizens and stateless persons referred in the act as "stranieri" [foreigners], and 'exclude' illegal immigrants who do no meet the established criteria. The act regulates the issues of short-term residency permits, residency cards with indefinite validity, expulsions, illegal immigration, discrimination, family reunification, social assistance, social integration and access to education.

With respect to the education of 'foreigners', the new Immigration Act (Parlamento Italiano, 1998) has provided guidelines for regions and boards, but no national program has yet been implemented. Article 36 of the act deals specifically with 'instruction of foreigners' as well as 'intercultural education'. It specifies that compulsory education (elementary and middle school) applies to foreign children in the same way as it applies to Italian children and that the right to compulsory education is guaranteed by the state, regional authorities and local agencies, "also through courses of Italian as a second language" (Art.36). With regards to intercultural education, the guidelines indicate that intercultural activities are to be promoted by the school community. Through agreements with the Regions and with local authorities, elementary and middle schools are also to hold literacy, Italian as a second language and training programs to promote access for immigrant adults.

There is no specific mention of refugee issues, as refugees are generally regarded as ordinary migrants, although literature on refugees shows that the needs of a refugee are not always the same as those of an immigrant. With respect to youth refugees, for example, Kaprielian-Churchill and Churchill (1994) point out that "to the extent that refugee youngsters must cope with phenomena which other immigrant students do not face, their problems and requirements are different from those of voluntary immigrants" (p.2).

Few educational provisions for immigrants have been implemented at the national level. The most important one is to allow school registration for immigrant students regardless of the status of the parents. However, it should be mentioned that some successful local programs are in place, mostly in northern cities, such as the intercultural centres of Bologna (CDLEI) and Turin (CIDISS) (Commissione per le Politiche di Integrazione degli Immigrati, 1999). What seem to be lacking are national policies and programs targeting the issue of integration of immigrants and refugees within the societal pattern of the host country: In the school, in the work-place and in the community.

The Immigration Act also establishes provisions for the establishment of the 'Commissione per le Politiche di Integrazione' [Committee for Integration Policies], with the objective to report yearly on the implementation status of integration policies for immigrants. The first such report was released in November 1999 (Commissione per le Politiche di Integrazione degli Immigrati, 1999). The most worrying findings of the report are the data on immigrant criminality: immigrants represent about 25% of adult inmates and over 50% of juvenile inmates. Other problems identified range from lack of cultural and linguistic integration, to unemployment and poor social conditions. The primary educational problem identified in the report is that immigrant children are being held back due to the lack of/inadequate knowledge of the Italian language. More recently, the media have reported that the highest rate of drop-outs is found among immigrant youth (Editorial, Il Tempo, 2000, Jan. 25; Editorial, Il Giornale, 2000, Jan 25).

Citizenship

In Italy, citizenship status is only granted under certain circumstances. It is not acquired through birth within Italian borders but through blood link (jus sanguinus), marriage (after three years), or after many years (more than 10) of permanent residency (Parlamento Italiano, 1992). This provision also causes problems of statelessness especially among the nomadic populations.

Hence, to the extent that citizenship implies active participation of the people/citizens in the life of their country and their community, immigrants and refugees in Italy still encounter institutional barriers to access civic and citizenship rights. In fact, immigrants and refugees cannot fully participate in the political life of the country as they have not yet been granted voting rights. It is worth noting, however, that there is lobbying to change current legislation on that regard.

Summary and Conclusion

Migration, both voluntary and involuntary, is a global phenomenon and is causing changes to the social patterns of many countries. In order to success-

fully approach the issue of integration of newcomers into the host society, countries need to abandon the concepts of nation and nationalism and embrace policies of multiculturalism and active citizenship. Traditional emigration countries, such as Italy, now face a new role as immigration countries. It must be acknowledged that the approach adopted by Italy is positive in that its policies are not as harsh as other EU states and it favors integration without total assimilation. This approach reflects the multiculturalism policy framework adopted by Canada, which remains the most successful one in addressing the issue of integration of diverse populations. Despite these efforts, barriers are still present in the Italian system and they need to be addressed. The greatest challenges are to improve the refugee determination system, eliminate educational and linguistic barriers, improve social conditions, achieve equal opportunity in the workforce, and remove barriers to citizenship rights.

Critics of multiculturalism argue that gaps are still present in the Canadian system and that some newcomers 'fall between the cracks'. They may also argue that, due to these shortcomings, multiculturalism has failed in its scope. Nationalists maintain that multiculturalism results in lack of assimilation and lack of national identity.

As already stated, the response to these criticism is twofold. Firstly, the whole notion of national identity is challenged by growing migration resulting in increasingly diverse populations. Secondly, although there are still challenges in the Canadian system that definitely need to be addressed, multiculturalism has been by far more successful than assimilation policies in allowing people from different cultural, linguistic, religious and ethnic backgrounds to coexist in an atmosphere of mutual respect. As observed by the International Organization for Migration, (1995, p. 86) "The multicultural approach makes it possible for migrants to become citizens while maintaining distinct cultural differences".

Canada may be criticized for not having a strong national identity, but it has acknowledged and built upon the notion of the coexistence of diversity and the acceptance of the 'other'. Although its policies and programs may not be perfect, they deserve the attention of countries such as Italy where such policies and programs have only recently been brought to the forefront in the policy arena. So far no government has achieved the perfect social system where everyone starts the race equally and where all systemic barriers such as racism and xenophobia are removed. Nonetheless, in the past thirty years, policy-makers in Canada have made the best attempt to accept and accommodate immigrants and refugees through active immigration policies, settlement programs, equal opportunity programs, anti-racism policies, and so forth.

Although the Italian immigration policy is based on a multicultural (and intercultural) approach, there is a fundamental difference between Italian and Canadian policy. The most significant difference is that in Canada landed immigrants and recognized refugees are not regarded as temporary foreign workers but they are considered the citizens of tomorrow. In an editorial of The Globe and Mail (March 14, 2000, p.A14), the Canadian policy of integration of immigrants is compared with the policies of several European countries and Japan where they "clearly have trouble accepting the change from an ethnic definition of nationality to a volitional one". According to The Globe and Mail those countries should make integration policies a priority, they should look at how we do things in Canada ".... A policy of exuberant integration has worked for us and, in one way or another, it can work for countries where the old blood-based definition of nation clashes daily with the future of collective prosperity."■

References

Banks, J.A. (1998). An Introduction to Multicultural Education. Boston, MA; Toronto: Allyn and Bacon.

Banks, J. A. (1997). Educating Citizens in a Multicultural Society. New York: Teachers College Press.

Burnaby, B., James, C. and Regier, S. (2000, March). Working Paper Series: The Role of Education in Integrating Diversity in the Greater Toronto Area. Toronto, On.: Joint Centre of Excellence for Research on Immigration and Settlement.

Canadian Council for Refugees. (1998). Best Settlement Practices: Settlement Services for Refugees and Immigrants in Canada. Montreal, Quebec: Canadian Council for Refugees.

Caritas di Roma. (1999). Immigrazione: Dossier Statistico '99. Roma, Italy: Edizioni Anterem.

Churchill, S. (1996). The Decline of the Nation-State and the Education of National Minorities. International Review of Education. Vol. 42 (4), pp. 265-290.

Citizenship and Immigration Canada. (July 2000) Milestones of the 20th Century Minister of Public Works and Government Services Canada. Available on-line: http://www.cic.gc.ca/english/about/milestones/index.html.

Citizenship and Immigration Canada. (25 Nov. 1999) News Release: A Citizenship of Canada Act Proposed in Parliament. Available on-line: http://www.cic.gc.ca/english/press/99/9937-pre.html.

Citizenship and Immigration Canada. (1999). Canada...The Place to Be: Annual Immigration Plan for the year 2000. Available on line: http://www.ci.gc.ca/english/pub/anrep00e.html [04/04/00].

Citizenship and Immigration Canada. (1998). Immigrant Services. Available on-line: http://www.cic.gc.ca/english/newcomer/ [04/04/00].

Citizenship and Immigration Canada. (1976). Immigration Act and Regulations. Available on-line: http://www.cic.gc.ca/

Commissione per le Politiche di Integrazione degli Immigrati. (30 Nov. 1999) Primo Rapporto sull'Integrazione degli Immigrazti in Italia. Roma: Presidenza del Consiglio dei Ministri. Available on-line: http://www.affarisociali.it/servizi/rapporto1999.htm.

Connor, W. (1993). Beyond reason: The nature of the ethnonational bond. In Ethnic and Racial Studies. Vol. 16-3, pp. 373-389.

Consultorio Familiare di Azignano (1997). Il Bambino e la Famiglia nella Societa' Multietnica. Ovest Vicentino (VI): ULSS n. 5, Regione Veneto.

Editorial. (March 14, 2000). The Canadian Way to Redefine Nationality. The Globe and Mail. (p. A14).

Editorial. (25 Jan. 2000). Scuola, ogni anno tremila abbandoni. Il Tempo. Roma, Italy.

Editorial. (25 Jan. 2000). Oltre tremila ragazzi abbandonano la scuola ogni anno. Il Giornale. Milano, Italy.

Hobsbawm, E.J. (1990). Nations and Nationalism since 1780: Programme, Myth, Real-

ity. Cambridge, UK: Cambridge University Press.

International Organization for Migration and InterWorks. (Sept. 1995). Overview of International Migration. Geneva, Switzerland: International Organization for Migration. Available on-line: http://www.iom.int/.

Kaprielian-Churchill, I. and Churchill, S. (1994). The Pulse of the World: Refugees in Our Schools. Toronto, On.: OISE Press, The Ontario Institute for Studies in Education.

Knowles, V. (1997). Strangers at Our Gates: Canadian Immigration and Immigration Policy, 1540-1997. Toronto, Ontario: Dundurn Press.

Minister of Public Works and Government Services Canada. (1999). Canadian Multiculturalism Act. R.S. 1985, c.24. Toronto, Ontario: Federal Publications Inc.

Parlamento Italiano (1998). Legge 6 marzo 1998, n. 40: "Disciplina dell'immigrazione e norme sulla condizione dello straniero". Gazzetta Ufficiale, n. 59 del 12 marzo 1998. Roma, Italy: Istituto Poligrafico e Zecca dello Stato. Available on-line: http://www.senato.it/parlam/leggi/, or http://www.stranieriinitalia.com/leggi

Parlamento Italiano. (1992). Legge 5 febbraio 1992, n. 91: "Nuove norme sulla cittadinanza". Gazetta Ufficiale, n.38 del 15 febbraio 1992. Roma, Italy: Istituto Poligrafico e Zecca dello Stato. Available on line: http://www.senato.it/parlam/leggi/, or http://www.stranieriinitalia.com/leggi.

Parlamento Italiano. (1990). Legge 28 feggraio 1990, n. 39: "Rifugiati". Gazzetta Ufficiale, no. 49 del 28 febbraio 1990. Roma, Italy: Istituto Poligrafico e Zecca dello Stato. Available on line: http://www.senato.it/parlam/leggi/, or http://www.stranieriinitalia.com/leggi.

Roncati, R. and Cicchetti, G. (Eds.) (1999). Italy in Figures. Rome, Italy: Istituto Nazionale di Statistica. Available on-line: http://istat.it

Smolicz, J. J. (1998). In search of a multicultural nation: The case of Australia from an international perspective. In Richard J. Watts and Jerzy J. Smolicz (Eds). Cultural Democracy and Ethnic Pluralism: Multicultural and Multilingual Policies in Education. Frankfurt am Main, Germany: Peter Lang.

Smolicz, J. (1997). Cultural Democracy and Ethnic Pluralism: Multicultural and Multilingual Policies. Frankfurt am Main, Germany; New York: P.Lang.

The House of Commons of Canada. (6 April 2000) Bill C-31: An Act respecting immigration to Canada and the granting of refugee protection to persons who are displaced, persecuted or in danger. The Minister of Citizenship and Immigration. Available on-line: http://www.cic.gc.ca/english/about/policy/legrev_e.html

Van Kessel, G. (2000). 'Current Issues in Refugee Policy: Northern and Southern Perspectives'. Summer Course on Refugee Issues 2000. Centre for Refugee Studies, York University, Toronto, Ontario.

Van Kessel, G.C.J. (1998). The Canadian Immigration System. Ottawa, Ontario: Citizenship and Immigration Canada. Available on-line: http://www.cic.gc.ca/english/refugee/kessel-e.html. □

January 2001

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Yours sincerely,

Sharryn J. Aiken
Editor-in-Chief, Refuge

Kosovar Resettlement Assistance Project in Greater Victoria

Tomoko Okada

Abstract

This paper describes a practical service model based on my field experience and outlines the process of Kosovar refugees' initial resettlement in Greater Victoria. Although an individual's age, social, educational, economic, and health conditions are some factors to influence refugee psycho-social adjustment, the continuum of resettlement is explained as dynamic, two-way, multifaceted, and long term. Resettlement does not end within one's lifetime, but it is rather an inter-generational evolution. This paper, however, only focuses on the first initial resettlement stage, which is critical to influence the whole continuum of inter-generational adjustment.

Résumé

Cet article décrit un modèle pratiqu ? de prestations basé sur mon expérience s ur le terrain et donne les grandes lignes du p ocessus initial d'établissement de réfu giés kosovars dans la grande région m(tropolitaine de Victoria. Malgré le fait que l'âge d'un individu, sa condition sociale, son niveau d'éducation et sa situation économique sont quelques-uns des facteurs qui influencent l'intégration socio-psychologique du réfugié, le continuum du processus d'établissement est présenté comme étant dynamique, opérant dans les deux sens, ayant des facettes multiples et s'étendant sur le long terme. Le processus d'établissement ne s'arrête pas avec la mort, mais est plutôt une évolution de génération en génération. Toutefois, cet article n'examine que le stade initial d'établissement, période critique pour influencer tout le continuum d'ajustements entre générations.

L'article met en valeur la source gouvernementale de financement et de soutien, ainsi que les réactions positives de la communauté envers le projet, les tensions entre parties.

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This project posed many challenges to my role as an "immigrant settlement worker" with reference to my reflection on the process; notion of differences, "otherness", assimilation, integration, and refugee and immigrant stereotyping. Resources written from the settlement worker's perspectives are extremely limited due to settlement workers' English as their additional language background and their marginalized status.

This paper highlights the governmental sources of support and funding, as well as positive community responses towards the project, tensions among each stakeholder, bureaucratic paperwork, and possible backlash from other group members. This project is an example of how the traditional conventional social work practice cannot be a good tool to understand the whole problem situation of Kosovars. Structural social work, however, is an instrumental guideline for the broader perspective of assessing the needs of Kosovars towards better lives. In this paper, I use an Albanian word "Kosova" instead of the Serb word "Kosovo" which mostly used by the media.

Introduction

This paper analyzes and critiques the process of Kosovar Resettlement Assistance Project in Greater Victoria, which was undertaken by the Intercultural Association of Greater Victoria (ICA). I have been working for ICA for over ten years, where one of the major mandates is to assist immigrant and refugee settlement in Greater Victoria. Through my position at ICA, I had an opportunity to coordinate the Kosovar Project.

The primary purpose of this paper is to report how the project assisted Kosovar refugees in Greater Victoria. I will explore this project through the feminist, anti-racist, and structural social work practice to understand the human tragedy of ethnic cleansing. The major goal of this project is to assist the ethnic Albanian refugees, who were the targets of organized violence in the province of Kosova in Yugoslavia, through an easier transition of resettlement in Greater Victoria. Therefore, this paper will discuss the background of Canada's humanitarian evacuation policy, refugee push and pull factors, the situation of Canada as the host country, and the cross-cultural problem solving efforts to better the services in Greater Victoria.

For the scope of this paper, I will examine the cause of the mass exodus of Albanian Kosovar refugees: How the minority Serb government oppressed, marginalized, and alienated the majority Albanians. The second section of my paper describes the problem statement that has led me to develop the project. I will state the nature of the problem in order to provide better resettlement services in Greater Victoria, including a statement of my perspective (values, beliefs, assumptions, personal and professional interest, and experiences about this project). I will also present the possible causes contributing factors for the problem identified in the problem statement.

In the third section, I will focus on the specific objectives of this project and identify internal and external drivers, which supported the project, and the barriers that stood in the way of implementing better services. I will describe my action plan and the steps I took in my planned effort, including a time-line and the specific activities involved in each stage. I will discuss possible political and ethical considerations and their implications for my planned project.

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The last component of this paper will be my critical analysis of the project results, including the expected and unexpected outcomes. I will discuss my personal insights, the general learning process throughout this project. I will identify how my values, beliefs, and assumptions were challenged, and how these challenges affected my personal life and professional practice.

Literature Review

The preliminary literature was searched within a structural, feminist, and anti-racist social work reference. I examined publications such as Robert Mullaly's Structural Social Work: Ideology, Theory, and Practice (1993), Paulo Freire's Pedagogy of the Oppression (1994), Katrina Shields In the Tiger's Mouth: An Empowerment Guide for Social Action (1994), and Elaine Penderhughes' Understanding Race, Ethnicity, and Power (1989). Although these sources were backbone of the generalist, structuralist, and feminist practices, I realized how difficult it was to practice a realistic, attainable, and measurable outcomes within the present capitalist and liberal valued society. Mullaly (1993) asserts that the fundamental social work values of humanism are congruent with socialist paradigms, however, state power maintains the present status quo and restricts the eligibility of funding criteria. Shield (1994) claims the feminist principle of empowering unprivileged, vulnerable, and marginalized people, and validates my belief of the importance of immigrant settlement work. Nonetheless, I found that there were not enough resources available regarding the overall social welfare for immigrants and refugees. Armitage (1996) states in Social Welfare in Canada Revisited: Facing up the future that "Canada has undergone enormous economic, political, and cultural change [for twenty years]", yet the content does not include the welfare policy for immigrants and refugees.

The other initial resources provided up-to-date information and publications through Citizenship and Immigration Canada, and print material which described the situation in Kosova and the practical suggestions for working with refugees: Sponsoring Kosovars to Vancouver Island (Miller: 1999) and a Subcontract manual for Kosovar Resettlement Assistance Program. The publications from the United Nations High Commissioner for Refugees (UNHCR) also presented a useful guideline for settlement work: "A framework for People Oriented Planning: Taking Account of Women, Men, and Children Newcomers in Canada," and a quarterly magazine called "Refugees."

For the other resources, my major contact on understanding Kosovar culture and way of life was from five members of the Kosovar community, who helped me set up orientation for volunteers and joint-sponsors on Vancouver Island. Although psychosocial trauma and destruction is not a focus on this stage of resettlement, Martin-Baro (1994) claims three components of psychosocial trauma of survivors of organized violence: 1. Social polarization and inequality exist. 2. Institutional lies and circles of silence obscure social reality. 3. Survivors and their families, personal networks, and the societies of which they are members. Locally, three professionals (a female clinical counsellor and two male psychologists showed a strong interest in working on the issue of trauma.

Background on Kosovar Refugees

The Amnesty International reported on the decade of human rights crimes and prolonged organized violence in Kosova (1998) and that led to the NATO and the United Nations High Commissioner for Refugees' (UNHCR) involvement. The population of Kosova in 1998 was 1.5 million people, of which 1.3 million were ethnic Albanians (Malcolm, 1999). The dispute in the Balkans has been a major problem after years of conflict and increasing tension with Russia, and the nations were divided in Serbia, Montenegro and Romania without the consideration of ethnic composition in 1878. In 1918, Yugoslavia was created from the formerly occupied Ottoman and Austrian empires, and followed by Josip Tito's communist regime in Yugoslavia in 1944 (Kaplan, 1996). Kosova, has been an unrest region in the former Yugoslavia between majority Albanians (90%) and Serbs (10%) after the end of World War II.

In 1989, the Slobodan Milosevic government stripped away Albanian Kosova autonomous status. For example, approximately, 350,000 ethnic Albanians sought asylum in Europe in the following decade. Albanians were not allowed to speak Albanian in public, the children were not allowed to attend schools, and there were massive dismissals from the government and professional jobs. The elected parliament was declared illegal and many were arrested and tortured under the brutal Milosevic regime (Miller, 1999). The oppression, discrimination, violence, and atrocities of ethnic cleansing resulted in an exodus of over a quarter of a million refugees from Kosova in 1999.

On March 24, 1999 NATO launched its 78-day air war. Within three days, ethnic Albanians began to arrive in neighboring countries in huge numbers: 444,600 refugees in Albania, 244,500 to Macedonia, and 69,900 in Montenegro. Due to the limited capacities in the receiving countries, more than 90,000 Albanians were transferred to 29 countries for temporary evacuation (Willkinson ed, 1999). Canada responded by taking 5,000 refugees under the humanitarian evacuation program.

Kosovar Refugees in Victoria

The Kosovar refugees have started to resettle in Greater Victoria under three different categories since April, 1999. The Fast Track program was the part of Family Reunification for refugees who have relatives in Victoria. Under this emergency evacuation, Citizenship and Immigration Canada extended family reunification for not only nuclear family members but also any relatives such as cousins, uncles, and nieces. Furthermore, family sponsors did not have to demonstrate their financial responsibilities for ten year sponsorships. Special Needs cases required serious physical or mental attention at oversea

refugee camps, and the UNHCR prioritized to assist these people first.

Operational Parasol was for those individuals or families who had no relatives in Canada, and for those who stayed in Canadian sustaining camps for up to six weeks. Differently from the refugees, those who arrived directly from oversea camps in Macedonia and Albania under Fast Track and Special Needs, the people under Operational Parasol came through the Canadian Army Base Camps: CFB Trenton, Greenwood, Aldershot, Kingston, and Halifax, where they spent four to six weeks receiving basic orientation for Canadian lifestyles.

Originally, in total, 120-150 people were expected to resettle in Greater Victoria by the end of July, 1999, however, the actual total number of Kosovars was one hundred-one after the closure of the humanitarian evacuation program in September, 1999. While forty-six people under Fast Track and Special Needs programs were in the process of adjusting to their lives in their new environments, forty-five Kosovars arrived in Victoria under Operational Parasol assisted by the community joint-sponsors. The role of the community sponsors was equivalent to Fast Track relative sponsors who assisted in the social and emotional needs of the Kosovars.

ICA provided orientation for the Kosovars under Fast Track and Special Needs, while the refugees under the Operational Parasol program were supposed to receive full orientation programs in sustaining camps in the Eastern provinces before they settled in Victoria. Financially, the refugees received monthly cheques equivalent to the amount of provincial income assistance for food, clothing, accommodation, and transportation, in addition to the first initial starting cheque covering furniture and staples from the federal Citizenship and Immigration Canada (CIC).

Problem Statement

The "Kosovar Resettlement Assistance Project in Greater Victoria" brought together a wide range of individuals from a variety of community and institutional settings. As the Coordinator of Immigrant/Refugee Settlement and Integration Services, I received Kosovar refugees and assisted them in settlement orientation, and coordinated with other community services. This collaborative work posed many challenges due to the federal policy regarding government sponsored refugees, the funding requirements, and differing perspectives, beliefs, and positions taken by each stakeholder; CIC, NGO service providers, volunteers, and community joint-sponsors. The community politics was more problematic rather than a source to build alliances for coalition.

The local CIC selected the community sponsors whose services focus on social and emotional support to Kosovars under Operational Parasol. Sponsors who responded immediately to CIC's request were predominately from Christian church denominations. Volunteers also stepped forward to assist the Kosovars under Fast Track and Special Needs in their resettlement process.

What was missing at Kosovar arrivals were local resources and community collaboration, coordination, and communication between inter-governmental agencies such as CIC, Revenue Canada, the Ministry of Human Resources, NGO service providers, and community agencies. I, as a visible minority immigrant woman who had experienced settlement/adjustment difficulties in Canadian society, took this as a great opportunity not only to provide settlement services, but also to broaden my perspective by attempting to understand each Kosovar's individual experience. This enhanced my experiences and knowledge of the settlement and adjustment process in my profession.

Causal Analysis

I learned of the cause of Albanian Kosovars' mass exodus as deeply embedded in a long history of ethnic conflict in the Balkan region for over five hundred years (Kaplan, 1996). Pinderhughes claims:

> The sense of commonality with others and the individual ethnic meaning that people develop as a result of their experiences have implications far beyond those of shared religion, national origin, geography, or race (1989:39).

A socio-economic and demographic analysis was a critical component of this project. There was an obvious lack of community resources. Furthermore, a local Albanian community was not well established. Only five families were identified and became the sponsors for Fast Track members, however, they were relatively new and many were still in the process of their settlement in Victoria.

I identified specific problems and barriers, that existed in this whole process. While considering differing points of view and governmental policies, these factors would have had a significant influence in providing better orientation services to Kosovars and training to sponsors and volunteers. The factors are:

- my lack of knowledge concerning Kosovar culture, language, and issues;
- lack of coordination among government bodies, local agencies, sponsors, and relatives;
- differing beliefs/viewpoints regarding settlement among sponsors and volunteers;
- lack of resources in the community such as Albanian-speaking professionals such as doctors and counselors;
- competition for funding among various agencies;
- stereotypes about Muslim people which community joint-sponsors and volunteers might have held. Their potential motivations to convert Kosovars to Christians.

My intentions to provide better services was influenced by the above factors, which also reflected to each stakeholder's personal conceptual baggage. I identified my level of knowledge concerning Kosovar people and their culture, the bureaucracy that seemed to be developing among government agencies, the diverse views on settlement that may be provided, and the limited avail-

able resources as major elements of the problem. As ICA had been selected and contracted to provide Kosovar orientation, coordination among community agencies caused some tensions even at the early stage. I believed that through education and interaction with the Kosovars, the conceptual baggage each stakeholder carried was dealt with explicitly and implicitly and led to the elimination of stereotypes.

For analyzing some of the causes of the problem, I will focus on First Nations and the Feminist perspectives. As both perspectives emphasize the importance of working relationships with respect, I endeavored to respect not only Kosovars, but also volunteers, sponsors, and the other representatives. Also, my planned activities required Kosovars' active participation in the process of implementing the project. I started to compile interpreters' list from Albanians who have been here and newly arrived.

Through the lens of First Nations perspective, I learned the importance of distinctive cultural values, language, as well as self determination of the community. In fact, these theories affect me as a visible minority immigrant woman. Since I value my own heritage, I would not attempt to change or ignore the importance of Kosovar culture. In addition, gender analysis ensured that the project did not disadvantage women, elders, and children to address the needs and resources of the people holistically by respecting gender and the specific roles of women, men, the elderly and children.

Goals and Objectives

The major goal of this project was to assist Kosovar refugees in an easier transition of resettlement in Greater Victoria and becoming active and independent members of Canadian society. The time frame for this project began from the arrival of refugees to the initial phase of resettlement in the first three months depending the arrival date of each case (May–September, 1999). The specific objectives were:

- to compile a list of local resources, such as doctors, dentists, optical services, and the other professionals;
- to utilize interpreters who speak Albanian and to provide training for interpreters regarding ethical issues and self-care such as confidentiality, boundaries and power differences;
- to translate essential materials into Albanian;
- to provide support and training to joint-sponsors and volunteers regarding how to work with refugees;
- to organize basic community orientations covering the topics of education, law, health, community resources, finance, rental agreement, public transportation, and immigrant settlement process;
- to monitor carefully the symptoms of post-traumatic disorder and appropriately to refer and work with counselors;
- to advocate for the needs of Kosovar refugees in Greater Victoria
- to assist Kosovar refugees in establishing a local community development program.

Drivers and Barriers

Many intertwined layers of international, Canadian government, community, and individual levels of commitment, energy, values, and beliefs were identified as strong drivers for the Kosovar evacuation and resettlement effort. Also, as the external driver, the media played a key role to influence the decision making process. It is interesting to note that drivers can become a potential barrier as well, depending on the experiences and perception of the media, general public, government, and stakeholders with Kosovars.

The government's commitment to provide services and financial assistance was a driver. Certain policies have been generously changed such as waiving processing fees ($500) for the landing application, the airplane transportation fees, and increasing the benefit of Federal Interim Health Plan. In addition, the Federal financial assistance was extended to two years from general one year benefit, which would make the refugee transition easier than the other refugee groups.

Prior to the first arrivals of Kosovars, the project had been responded to with enthusiasm from various local community groups and individuals. Sponsor groups and volunteers were quick to respond to the call from CIC in overwhelming number; in fact, according to CIC, some sponsor groups had to be turned down. In general, the Canadian public has been receptive to Kosovar newcomers, as proved by their numerous charitable contributions. However, the underlying community politics were problematic in the initial meetings: Tension surfaced among the participants and conflicts arose. Eventually, ongoing open dialogue, consultation, and training for the community stakeholders eased some tensions and resolved conflicts.

The government served as a barrier. There was an enormous amount of paperwork required for each refugee since the initial contact with the earliest arrivals. Yet, I found that some of the essential information was often incomplete or incorrect. For example, some paper work was completed in overseas refugee camps, but this information was not relayed to the front-line level. Furthermore, correcting the official documents and information took several weeks, which caused delays in initial assistance funds. Due to the enormous amount of paperwork and the overwhelming stress levels of the refugees, very few people could recall much about the documentation. Therefore, unfortunately, a huge amount of paperwork was duplicated. Through some contacts with Albanians in Victoria, I learned that there was often a lack of trust between non-clan members. My initial consultations with Kosovar refugees through workshops and orientation helped me understand Kosovar cultural backgrounds. Personally reflecting on my experience as a visible minority immigrant woman, generated an even stronger commitment and interest to work this project.

Strategy for Change

Those facilitating the refugee empowerment process must understand not only refugees' new cultural context and

codes but also the means by which they retain and value "old" cultural tradition and norms. Multiculturalism depends on this systemic interplay of forces (Howarth 1998).

The gender analysis and the people-oriented planning was the base of my framework to achieve the goals. Therefore, it was an important strategy to ensure that this project did not disadvantage women, elders, and children, and to ensure that the project holistically address the needs and resources of Kosovar family by respecting gender and specific roles of women, men, the elderly and children. It reminded me that the refugees are active, productive, and resourceful people rather than passive victims awaiting support and assistance. In addition, a gender analysis and people oriented planning are tools, which facilitate project planning, implementation and evaluation.

Volunteer and sponsor training workshops were organized for a total of six sessions (each two hours), and covered topics such as understanding the Resettlement finance, Kosovar culture, ethical issues, and how to work with people experiencing with post traumatic stress. The regular meetings allowed me to develop trust and good working relationships with one another. Settlement is long-term, dynamic, multifaceted, and a two-way process. This kind of training for the host community was essential. As a result, I organized additional one-day workshops in Nanaimo and Courtney on Vancouver Island, while the monthly sponsors' support meetings continued in Greater Victoria.

An ethical consideration of this project was the social and financial power differences between Kosovar refugees and service providers including volunteers and joint-sponsors. Another ethical dilemma involved selecting appropriate interpreters as issues such as female/male, urban/rural, and clan/non-clan in order to provide more sensitive services. A potential issue I was concerned with was anti-Kosovar backlash in Victoria, because in spring, 1999 in the middle of arrival of Albanian Kosovars, Victoria Serb community was established.

Conclusion

Structural social work was an instrumental guideline as a broader perspective of assessing the needs of Kosovars and in changing to better resettlement situations. In general, the condition existed to provide the necessary assistance for the Kosovar refugees was much more flexible with timely positive community response. As a result, many refugee advocates question why such a strong dedication as opposed to other ethnic groups settling into Canada.

Traditionally each stakeholder in the project had worked separately and isolated from one another because of the perceived irrelevance of perspectives, beliefs, and values. Community coalition work could be challenging due to the reflection of the organizations' different history and experiences in the community. Obviously, there was no cohesive community to share the same vision with one another, however, this project brought an opportunity to break traditional barriers and division among the key stakeholders such as the CIC, NGO service providers, and church institutions. Therefore, the success of the project depended on each stakeholder's effort to work towards strong community collaboration. Through this project some consensus among the community members was expected by promoting greater exchange and networking. My personal strategy was to direct the discussion the way in which community organizations can work together to advocate on behalf of refugees and to influence the decision making process regarding immigration and citizenship issues.

Through this project, my interest was to pursue the feminist approach working with people from the margins, and I kept my journals, where it occurred to me new learning and the measure of psycho-social adjustments of the refugees. To monitor progress towards the goal, feedback from Kosovars and assisting volunteers and joint-sponsors was necessary. Once trust was developed, I was able to seek feedback from the people.

This project made me question: What does the goal of settlement services mean to be? When does the settlement process end? What is the role of the settlement worker in this process? Although my experience with Kosovars was only short period of settlement continuum, Counseling across cultures (Pederson: 1996) describes the settlement and integration theory from a holistic view. As Cheboud claims that "the goal of the [structural] theory is to create change, that is progressive, holistic, social, and environmental, it provides key ingredients to understand the needs and the effects of change" (1998:33). Kosovar's personal experience can influence political decision. I feel responsible as an Immigrant settlement worker not only to empower refugee individuals but also to influence the structural level in the issue of overall refugees' resettlement. ■

References

Amnesty International. (1998). "Kosovo: The evdence". London: AI Publishing.

Armitage, Andrew. (1996). Social Welfare in Canada Revisited. Toronto: Oxford University Press.

Bishop, Anne. (1994). Becoming an Ally: Breaking the cycle of oppression. Halifax: Fernwood Publishing.

Cheboud, Elias. (1998). The African Immigrants Use of Traditional Healing Practices as Part of Their Process of Resettlement into Canadian Society. Vancouver, B.C.: University of British Columbia.

Freire, Paulo. (1970). Pedagogy of the Oppressed. New York: Seabury.Friedrich, M. J. (1999). "Addressing Mental Health Needs of Balkan Refugees: Journal of American Medical Association, August 1999, pp. 422-423.

Howarth, Ann. (1998). "A framework for people for people oriented planning: taking account on women, men, and children newcomers in Canada". Ottawa, Ontario: United Nations High Commissioner for Refugees.

Kaplan, Robert. (1996). Balkan Ghosts: A journey through history. New York: Vintage Books.

Malcolm, Noel. (1999). Kosovo: A Short History. New York: Harper Collins.

Martin-Balo, Ignacio. (1994). "Psycho-social tauma and trauma culture resulting from prolonged periods of war and organized violence" in Liberation Psychology. A. Aron & S. Caron (edts). Cambridge, Ma: Harvard University Press.

Miller, Betty. (1999). "Guide for sponsoring Kosovars to Vancouver Island". Victoria, B.C.

Mullaly, Robert. (1993). "Structural Social Work: Ideological Basis and Conceptual Overview" in Structural Social Work: ideology, theory, and practice. Toronto, Ontario: McClelland & Stewart Inc., pp.117-128.

Ng, Roxanna. (1996). The Politics of Community Services. Halifax: Fernwood Publishing.

Pederson, B.P. (1996). Counseling across Cultures (4th ed.) Thousand Oaks, California: Sage Publications.Pinderhughes, Elaine. (1993). "Understanding Ethnicity" in Understanding Race, Ethnicity, and Power. New York: The Free Press. pp39-69.

Shield, Katrina. (1994). In the Tiger's Mouth: an empowerment guide for social action. Gabriola Island, B.C: New Society Publishers.

Stephenson, Peter. (1991). The Victoria Multicultural Health Care Research Project. Victoria, B.C.: Trans Cultural Consulting Service.

Wharf, Brian. (1990). Social Work and Social Change in Canada. Toronto: McClelland & Stewart Inc.

Ray Wilkinson (ed). (1999). "Cover Story: Kosovo's race against winter" in N116, 1999 Refugees. Geneva, Switzerland: UNHCR. □

Background Information on the Centre for Refugee Studies

The Centre for Refugee Studies (CRS) is an organized research unit of York University. Founded in 1988, the Centre for Refugee Studies is successor to the Refugee Documentation Project created in 1981 for the conservation and analysis of research documents and data collected by Operation Lifeline during the crisis of Indochinese Boat People. In 1991, CRS was designated as a Centre of Excellence by the Canadian International Development Agency (CIDA).

The Centre for Refugee Studies fosters interdisciplinary and collaborative research in all of its undertakings. The efforts of CRS are focused in areas related to a comprehensive research programme expanding from theoretical to institutional research. In carrying out this research, CRS networks with Canadian and international development agencies and academic institutes. CRS invites scholars from abroad to participate in the research. Canadian and international students are supported by CRS to undertake field studies and conduct related research. Joint research activities with institutions in the developing counties are underway. CRS plays a significant role in an advisory capacity with Canadian government and other agencies.

In our education initiatives, the general Certificate programme allows students in the undergraduate programmes (Faculty of Arts of Environmental Studies, Atkinson College and Glendon College) to register specifically for the Certificate and to specialize formally in the area of Refugee and Migration Studies and to be awarded the Certificate concurrently with the BA or BES. Students who already have an undergraduate degree can be admitted as special students by the relevant faculties and complete the requirements to receive a Certificate in Refugee and Migration STudies. The Graduate Diploma programs offers incentives and recognition to students whose academic focus is refugee related issues. The Graduate Diploma programme was developed and passed by the Graduate Faculty Council and subsequently by the York Senate in April 1991. The Diploma is awareded concurrently to the graduate student who complete the diploma and the degree requirements.

Our communications initiatives involve acquisition efforts through data collection in our Andrew Forbes Resource Centre, a comprehensive publications programme including the periodical REFUGE, and a full programme of seminars, workshops, and conferences.