
The Self-Exiled Class

by *David Matas*

Events in Eastern Europe are forcing the West to rethink a whole range of policies. The Cold War froze into a fixed configuration a wide panorama of Western policies — not just in defense and international affairs, not just in economics, but in immigration as well.

Now that the Cold War has thawed, that Eastern Europe is drawing aside the Iron Curtain, that the Berlin wall has ceased to be a barrier, the West has to re-examine the policies that were generated by the Cold War.

The West has been slow to react to what is going on in Eastern Europe, and, within the West, Canada has been one of the slowest.

Though the underlying facts that led to current policies have changed, the policies continue. Some of this continuation may simply be caution because of uncertainty of the lasting nature of the changes.

However, where caution is the explanation, that caution is misplaced. We in the West cannot remain indifferent to what is happening in Eastern Europe.

The changes are positive changes. The developments are ones we in the West would want to encourage. By remaining fixed in old policy stands waiting to see if the changes will last, we are doing nothing to help the changes last. If we really want to see the East change, the West must change itself.

Another explanation is bureaucratic inertia, the comfort of old ways. Once a policy is in place, laws are passed, officers are appointed to administer it, forms are printed, instructions are issued, the path of least resistance is just to carry on. The people who administer a policy may

have forgotten why it was instituted. They may have never known in the first place.

The options that were canvassed and rejected at the time a policy decision was made drop from sight. Laws and policies do not come with explanations.

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When these policies date from decades past, the reasons for them become matters of historical research, rather than common knowledge.

There are also vested interests. Although the Cold War was not in the public interest, many individuals benefitted from it. Their vested inter-

ests are a political voice, a pressure group to carry on with these out of date policies.

All that is true of the self-exiled class. The self-exiled class is a class within our immigration law that is a carryover from the Cold War. Structurally, it appears ideologically neutral. A person falls within the self-exiled class if he is from a country in a list chosen by Cabinet. He must be outside that country, outside of Canada, and able to demonstrate he can successfully establish in Canada. Successful establishment can be done by sponsorship by a corporation or a group of five or more individuals.

What makes the class ideologically explicit is the countries that have been designated. The countries on the list are Albania, Romania, the GDR, Czechoslovakia, Bulgaria, Hungary, Poland, and the USSR. All the countries behind the disintegrating Iron Curtain are there. And no others are. Since the class was first instituted other countries have shown up on the list briefly, from time to time. Cuba was there for a while. So was Haiti. But only the Soviet-dominated Eastern Europe countries were on the list from the start till the present.

Yugoslavia, which historically has been as Communist and as repressive as the rest of Eastern Europe, but has not been Soviet dominated, is not on the list. A person who is in Yugoslavia cannot apply to come to Canada as part of the self-exiled class. But a person from Yugoslavia, outside of Yugoslavia, also cannot come to Canada as part of the self-exiled class.

The self-exiled class is one group under the designated class category of the Immigration Act which provides for the admission of that designated

class in accordance with Canada's humanitarian tradition with respect to the displaced and persecuted. In other words, people from Eastern European countries in the list to qualify for self-exiled status *and* outside of Eastern Europe are considered displaced and persecuted.

The self-exiled class is not unique. But it is virtually unique. There is one other designated class like it — the Indochinese designated class. This class, like the self-exiled class, is a class of people outside listed countries, outside of Canada and able to demonstrate they can successfully establish in Canada. The countries in this class are Cambodia, Laos and Vietnam, again all Communist countries.

Why does the self-exiled class exist? What was the logic behind its establishment? It cannot be just that Eastern Europeans were displaced and persecuted. Regretfully, displacement and persecution are not unique to Eastern Europe and South East Asia. They exist in many more places besides.

There are two alternative explanations I can suggest for the existence of the self-exiled class. One is policy. The other is politics. The political explanation is anti-Communism. Calling anyone who leaves Eastern Europe persecuted is a form of condemnation of governments of the countries of Eastern Europe. It is an attempt to discredit these governments. It extracts valued manpower from these countries, weakening their economies.

Yugoslavia is excluded from the class precisely because it is not now and was not Soviet-dominated. Since Soviet Communism was the enemy, it was only the Soviets and their satellites that Canada wished to condemn as persecutors.

Much the same can be said of the Indochinese designated class. Canada does not even recognize the current government of Cambodia. China, which is every bit as repressive as Indochina, is not on the list because Canada has come, politically, to accept the government in China. The desire

to discredit and condemn is not as deep and fervent.

The policy explanation is a desire to provide relief from severe exit controls. One feature of totalitarian Communist governments is that leaving the country without permission is a crime. The right to leave any country, including one's own, is a fundamental human right. It is a right that has been systematically violated in Eastern Europe. People who may have been in no danger of persecution before departure become subject to persecution simply because they have

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left without permission. A person who has left, without permission, a country with severe exit controls becomes by that very fact a presumptive refugee.

The name of the class suggests this rationale. A person who leaves without permission a country with severe exit controls is self-exiled. He knows that once he has left he cannot return, except to persecution. He has nowhere else to go.

The desire to provide relief from exit controls is not just humanitarian in nature. There is an immigration component built into the policy.

Although refugees and immigrants are conceptually distinct, the Government of Canada jumbles the two together, particularly for refugees seeking resettlement from abroad.

A person from a country with severe exit controls cannot immigrate to Canada in the normal way. The person must first leave his or her country for some other reason than a desire to immigrate to Canada and then seek immigration to Canada from a third country. Once Eastern Europe had severe exit controls, if Canada were to have any immigration at all from Eastern Europe, something like the self-exiled class was necessary. The self-exiled class was there not just to protect those victimized by exit controls, but to allow immigration from Eastern Europe, by circumventing exit controls.

For the purpose of deciding what to do now with the self-exiled class, it does not really matter which of these rationales is the real one, the better one. No matter which purpose is the proper one, the reality is that both are out of date. Because of glasnost and perestroika, the disintegration of the Iron Curtain and the ending of the Cold War, the rationale for the self-exiled class has disappeared. Or, at the very least, the rationale for the inclusion of many of the countries of Eastern Europe in the self-exiled class has disappeared.

There is no reason to suggest that Romania* or Albania should be removed from the self-exiled class. But for every other member of the class, one has to ask why they are still there.

Hungary and Poland have no exit controls. A Hungarian law passed by the legislature on September 26, 1989 to take effect on January 1, 1990, says "It is the fundamental right of Hungarian citizens to choose their place of residence freely, to emigrate

* This article was written before the events that led to the fall of Ceaucescu and the subsequent political opening in Romania took place. (ed. note)

from Hungary" Not free to leave are those in possession of state secrets of special importance to the national defense. They must give up their jobs in which they have learned of the secrets, and wait three years. Also not free to leave are those on trial for serious crimes, or under a suspended sentence, and those who avoid taxes.

The Czech government announced on November 14, 1989 that Czechs would no longer need exit visas to travel to the West. East Germany has relaxed its exit rules. The Supreme Soviet legislature gave preliminary approval to a bill on November 13, 1989, that allows emigration for almost anyone who has entry permission from another country, no outstanding alimony obligations, criminal charges or recent knowledge of state secrets. The law formalizes changes that have been put in practice already.

These changes do not remove all impediments to travel from Eastern Europe. The Czech government has prevented the travel of prominent dissidents by confiscating passports. Eastern Europeans may also have so little foreign currency that leaving is impractical.

However, the danger that used to exist simply from leaving without permission has, by and large, gone. And with it has gone the reason for the existence of the self-exiled class.

Yet, instead of the Government of Canada's decreasing admissions from the class, it is moving in exactly the opposite direction. The Government of Canada is increasing government sponsored admissions to Canada from the self-exiled class.

Admission to Canada of refugees and members of the designated class comes through government sponsorship and private sponsorship.

Private sponsorship is numerically unlimited. It is limited only by the willingness and capacity of the private sector to sponsor and the willingness of the Government to recognize sponsored candidates as refugees.

Government sponsorship, on the other hand, is strictly limited. Each year the Government sets quotas,

overall around the world, by region, and locally by visa office.

The latest levels report was presented to Parliament by the Minister of Employment and Immigration on October 18, 1989. The report noted an increase in the government-assisted refugee allocation for Eastern Europe to 3,500 from 3,400. Although the levels report calls the allocation a refugee allocation, the allocation includes people from the self-exiled class whether they meet the refugee definition or not.

The reason for the increase? According to the levels report it is that the relaxation of exit countries from

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Eastern Europe has resulted in an increased number of Eastern Europeans seeking third country resettlement. In other words because the reason for the class is disappearing, the Government will increase sponsorship from the class.

The response is not only illogical. It is imposing hardship on real refugees. The overall government-assisted planned refugee allocation remained the same from 1989 to 1990 at 13,000. When one category goes up, another goes down. For 1990, the

categories that went down are refugees from Latin America, from 3,400 to 3,000 and from the Middle East and West Asia, from 1,800 to 1,700. People from Latin America and the Middle East within the government quota are real refugees, who have to meet the refugee definition. There is nothing like the self-exiled class for Latin America or the Middle East. The Government is trading off real refugees for people who may not meet the refugee definition at all.

The ending of exit controls does not mean that there are no longer refugees from Eastern Europe. The Communist party remains in power everywhere. In Poland, Solidarity has the Premier's office and several Cabinet posts. But the police, the military, the presidency are still Communist. In Hungary, the Communist party has changed its name. But many of the people in positions of power remain the same. Repression has lifted. But it has, by no means, disappeared.

The United States, for Eastern Europe, has gone from one extreme to another.

Originally the US had something like the self-exiled class for Soviets alone, presuming them to be refugees once they had left the Soviet Union, and provided for their resettlement in the US. In September, 1988 the US started imposing refugee screening on these Soviet exiles. Those who did not meet the refugee definition were denied entry to the US.

In September of this year, the US announced that Soviet refugees must apply in the American embassy in Moscow. They could no longer apply, as they had in the past, in Rome and Vienna. The change will have the effect of cutting down the numbers of those who can qualify as refugees.

Refugees cannot feel secure in telling their stories in the country of persecution.

As well, refugee assistance groups who have assisted Soviet claimants in Rome and Vienna have not been allowed to do similar work in the Soviet Union. Before the policy

change the denial rate of Soviet claimants in Moscow was 54 per cent, and in Rome, 20 per cent.

The Americans have a government refugee quota, as does Canada. But there is nothing equivalent to Canadian private sponsorship. So, once the US quota is filled, no more refugees can enter. Even for those who have a well founded fear of persecution, if they are beyond US quota numbers, the US will not offer protection.

For Hungarians and Poles seeking US protection the situation is even more difficult. The current US position is that it will not consider Poles or Hungarians for refugee resettlement unless they face immediate threats to their lives, have relatives in the US or have exceptionally strong ties to the US.

Poles and Hungarians are presumed not to be refugees. For Poles and Hungarian that US position was announced on November 21, 1989. That shift, I believe, goes too far. It ignores the reality of repression that continues to exist, albeit not as systematically as before, in Eastern Europe.

Canada's response to the refugee situation in Eastern Europe has been essentially political. The Government has welcomed refugees from Eastern Europe, easily and freely, not just for humanitarian reasons but as well because it was a form of discrediting, of undermining Eastern European regimes.

There is a danger that when the response shifts, the shift will be equally political. I believe the West should do what it can to encourage the changes in Eastern Europe that are occurring. But that should not mean denying protection to real refugees.

Because finding a person to be a refugee means finding that the person has a well-founded fear of persecution, a refugee determination is a persecution determination. Deciding a person is a refugee means deciding his government is persecuting him. A refugee determination is a form of criticism, a discrediting of the government of the country fled.

Now that repression in Eastern Europe is lifting, there is a temptation to avoid criticism.

When matters are getting better, criticism allows Communist reactionaries to argue that no change will satisfy the West. Criticism undercuts the reformers who are the agents for change.

Politically, it may make sense to emphasize the positive in Eastern European developments, rather than focus on negative vestiges of the past that continue.

Refugees should not, however, be held hostage to this sort of politics. Real refugees should be recognized as

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such even if the implications of the recognition is a criticism of a regime that, politically, the Government of Canada wishes to encourage.

Keeping the self-exiled class is not necessary to maintain protection for refugees from Eastern Europe. Protection could continue as long as those leaving Eastern Europe are eligible to apply under the standard Canadian refugee resettlement procedures.

I do not suggest Canada decrease admissions from Eastern Europe.

Indeed there may be justification for increasing admissions.

It is ironic that the greatest recent Eastern European outflow, from East Germany, is not even eligible under the self-exiled class. West Germany considers East Germans in West Germany as West German nationals. Because these East Germans, once they enter West Germany, become West German nationals, they are not eligible to apply under the self-exiled class.

There was a lot of fanfare recently when the German Canadian Congress signed a sponsorship umbrella agreement with the Canadian Government, allowing the Congress to sponsor East Germans within the self-exiled class. That agreement may, however, mean little if the self-exiled class continues in its present form. The bulk of the East Germans who left for West Germany are simply not eligible.

Those leaving Poland, Hungary, the Soviet Union, the GDR, Czechoslovakia and Bulgaria should not be presumed to be refugees simply because they have left their home countries.

These countries should be removed from the self-exiled class. Denying the presumption that those leaving most Eastern European countries should be presumed to be refugees still leaves open the question of how to handle admissions from Eastern Europe. In any case, any increase in the welcome Canada offers to East Europeans should not be at the expense of those fleeing a well founded fear of persecution.

David Matas is chair of the Working Group on Overseas Protection of the Canadian Council for Refugees. The remarks contained in this article were presented to the Canadian Council for Refugees in Montreal on November 25, 1989. David Matas is also the author, together with Ilana Simon, of Closing the Doors: The Failure of Refugee Protection in Canada (Toronto: Summerhill Press, 1990).

A Continuing Growth in Refugee Claims

The Immigration and Refugee Board (IRB) received nearly half as many claims during the first quarter of 1990 as it did during all of 1989.

In its first quarterly report, the IRB revealed that it received 5,987 cases from January 1 to March 31. This compared with 13,537 claims for all of 1989.

Rates of acceptance at the full hearing stage have dropped significantly for a number of countries (particularly Eastern European countries, reflecting the rapidly changing domestic conditions there). But in the case of the six largest source countries (Sri Lanka, Somalia, China, Iran, El Salvador and Lebanon) these rates have remained at over 70 per cent. For three of them (Iran, Somalia and Sri Lanka), they remain at over 90 per cent.

In spite of the Board's increasing productivity (the month of March was the best in IRB history, with 735 full hearings completed) the new backlog or "frontlog" has continued to grow. IRB Chairman Gordon Fairweather anticipates further improvements based on additional streamlining methods in dealing with claims.

The Chairman recalled that the IRB, which began operations on January 1, 1989, was structured to process an expected 18,000 Convention refugee claimants annually. But he noted that a striking increase in claims has taken place since the last quarter of 1989, which could push the 1990 caseload to 40,000 claims.

During the first quarter of 1990, considering both initial and full hearings in the two-stage process, 2,082 (34.8 per cent of claims initiated but a full 81.8 per cent of decisions rendered

at the full hearing stage) of claimants have been granted refugee status, while 655 (10.9 per cent of claims initiated) either were not eligible or lacked credible basis, or were not found to be Convention refugees by the Board. An additional 110 (1.8 per cent of claims initiated) have withdrawn or abandoned their claims.

Of the 5,987 claims for refugee status in this quarter there were 5,820 decisions rendered. Significantly enough, only 193 claims (3.3 per cent of decisions rendered) were rejected at the initial stage (10 were deemed ineligible and 183 lacked a credible basis). Fifty-nine others were withdrawn by claimants while another 108 cases are under short adjournments or postponements.

Of the 5,627 claims moving forward to full hearings 51 were subsequently abandoned or withdrawn. Decisions are pending in 1,828 cases, 677 are under short adjournments or postponements, and 527 are scheduled for the coming weeks.

The 10 claimants who were found to be ineligible at the initial hearing were from Afghanistan 4, Bangladesh 1, Malaysia 1, Peru 1, Poland 1, Switzerland 1 and Thailand 1.

The 183 claimants who were found not to have credible basis at the initial hearing were from Algeria 2, Angola 1, Argentina 14, Bangladesh 1, Bulgaria 3, Chile 1, China 1, Colombia 1, Congo 1, Costa Rica 1, Czechoslovakia 9, Dominica 5, Ecuador 2, Egypt 1, El Salvador 3, Fiji 1, France 2, Ghana 6, Greece 1, Grenada 7, Guatemala 3, Guinea 1, Guyana 3, Hong Kong 1, India 5, Israel 1, Jamaica 7, Kenya 6, Lebanon 3, Malaysia 1, Mexico 4, Nigeria 2, Pakistan 3, Panama 2,

Poland 29, Portugal 1, Romania 2, Seychelles 1, Sri Lanka 2, St. Vincent 1, Sudan 2, Syria 2, Trinidad & Tobago 11, Uganda 1, Uruguay 2, USA 6, USSR 2, Venezuela 5, Yugoslavia 8 and not stated 3.

The 2,082 claimants who were confirmed at the full hearing level were from Afghanistan 5, Albania 1, Algeria 2, Argentina 3, Bangladesh 8, Benin 1, Bulgaria 1, Chile 6, China 88, Comoros 1, Cuba 3, Czechoslovakia 12, El Salvador 145, Ethiopia 46, Ghana 4, Guatemala 41, Guyana 1, Haiti 3, Honduras 10, Hungary 1, Iran 221, Iraq 17, Israel 1, Jordan 3, Kenya 11, Kuwait 1, Lebanon 296, Liberia 1, Libya 3, Mali 2, Mexico 1, Nicaragua 24, Pakistan 40, Panama 2, Peru 15, Philippines 2, Poland 14, Portugal 1, Romania 10, Saudi Arabia 1, Senegal 1, Seychelles 6, Somalia 587, South Africa 6, Sri Lanka 380, Sudan 26, Syria 7, Uganda 3, Uruguay 3, USSR 1, Venezuela 2, Yugoslavia 4 and Zaire 8.

The 462 claimants who were denied at the full hearing level were from Afghanistan 1, Algeria 1, Argentina 2, Bangladesh 4, Bulgaria 1, Chile 2, China 31, Costa Rica 1, Cuba 2, Czechoslovakia 61, Ecuador 2, El Salvador 48, Ethiopia 2, Ghana 9, Guatemala 5, Haiti 3, Honduras 2, Hungary 2, India 4, Iran 18, Iraq 1, Jordan 2, Kenya 5, Lebanon 94, Liberia 1, Mexico 1, Nicaragua 13, Nigeria 2, Pakistan 3, Panama 4, Paraguay 1, Peru 7, Poland 20, Romania 2, Sierra Leone 1, Somalia 33, South Africa 1, Sri Lanka 42, Sudan 5, Syria 5, Uganda 2, Uruguay 1, USSR 1, Vietnam 1, Yemen South 1, Yugoslavia 8, Zaire 3 and Zambia 1.

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Those participating in the conference include academics, policy makers and representatives from non-governmental organizations in both the United States and Canada. Topics to be discussed will include:

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- Session V: US and Canadian Admissions Policy

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