CANADA'S PERIODICAL ON REFUGEES

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CONFLICT, HUMAN RIGHTS, AND INTEGRATION OF REFUGEES

Human and Refugee Rights: New Challenges for Canada

Kohki Abe

When I grabbed a belatedly-issued UN pass and rushed into a conference room in the morning of March 26, 1999, the meeting was already in full swing with a "passionate" intervention by The Hon. Hedy Fry, Secretary of State for Multiculturalism and the Status of Women. Breaking down decades-old conventionalities, Ottawa sensibly sent a female minister to lead its large delegation to the 65th session of the Human Rights Committee, the monitoring body of the International Covenant on Civil and Political Rights. The Hon. Fry introduced Canada's voluminous fourth periodic report to the Committee of 18 experts, and responded to a long list of issues which had been prepared by the Committee working group prior to the meeting. Teaming up with competent federal and provincial officials, she seemed confident and eloquent.

Canada is generally recognized as a leader in human rights. It was, therefore, not surprising that the delegation showed an array of measures adopted to give effect to the rights in the Covenant and the progress made in the enjoyment of those rights in this country. Like many other state representatives, however, the Canadian delegation was not fully aware that the Human Rights Committee is not a fora for officials to only brag about their proud achievements in respective countries. In fact, a primary mandate of the Committee in examining periodic state reports is to identify the factors and difficulties affecting the full implementation of the Covenant and issue relevant recommendations with a view of inducing state parties to comply with the obligations provided therein. Thus, Justice Rosalyn Higgins, a former member of the Committee, points out that

> [w]hile violations are manifestly more severe in certain places than in others, the Committee has yet to find a country fully conforming with its human rights obligations. (Higgins 1996)

She, then, laments the fact that very few countries treat contact with the Committee as "an opportunity to make sure that everything is as it should be, that things

CONTENTS

CANADA'S PERIODICAL ON REFUGEES
REFUGE

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are put right" (ibid.) Canada cannot escape her scathing criticism.

It is NGOs that always liven up the dialogue in the Committee. Despite Hon. Fry's encouraging statement that more than 200 vernacular NGOs were consulted in the report preparation process, one finds little, if any, hint of input from the civil society in the government-compiled bureaucratic documents. That explains why a significant number of Canadian NGOs presented themselves in New York to keep an eye on an otherwise unproductive interaction between their government and the experts. To my pleasant surprise, their effective lobbying found expression in every question raised by expert-members to "probe but not praise" (in the words of Vice Chairperson Elizabeth Evatt) Canadian performance. Firmly backed by NGOs, experts called in from around the world unsparingly chiselled in close to the concealed Achilles heel of the world's humanitarian giant. Members' inquiries were so reflective of NGOs' insight that an indigenous representative, who happened to sit next to me in the conference room, confided at the end of the meetings that he was "120% satisfied" with the outcome of the examination. His position on the issue was endorsed when the Committee adopted its Concluding Observations on April 9, 1999, by noting that the situation of the Aboriginal peoples was "the most pressing human rights issue facing Canadians." It proceeded to recommend specific remedial actions to be taken by the government.

Among NGOs strategically representing their own constituencies, there were two highly-experienced refugee and immigration rights advocates. No doubt their skilful submission and contact with expert members helped promote their key concerns and led to that part of the Concluding Observations which refer to concerns about the removal of aliens to countries where torture may be awaiting and the expulsion of long-term alien residents. To its credit, the Committee urges Canada to revise its current immigration policy which is deemed to be incompatible with the relevant provisions of the Covenant.

There is no assurance that the Committee's thoughtful concerns and recommendations will be taken heed of by the government. They might be simply shelved away until April 2004, when Canada's fifth report is scheduled to be examined. Yet, one cannot deny that the Concluding Observations will be a legitimate, legal yardstick to calibrate government policies. They may also raise public awareness about contemporary human rights issues in Canada. To me, a researcher of international human rights and refugee law, the Committee's observations look like another precedent to integrate refugee issues into human rights regimes. While a welcome instrument for the protection of refugees, one should note that this integration process has been accelerated, at least partly, by sheer lack of measures to monitor the implementation of refugee law, particularly in the 1951 Refugee Convention and its 1967 Protocol.

Media showed incredibly little interest in Canada's performance before the Human Rights Committee. In fact, the human rights agenda was overwhelmingly shadowed by the Kosovo crisis, which pitted powerful NATO forces against the regime in Belgrade. For the first time since the Korean War in the 1950s, Canada has joined the frontline battle by dispatching its highly equipped air fighters. As it is often the case with international lawyers, my first response was, "On what legal basis is the bombing justified?" Some critics say that in the absence of the UN Security Council's authorization, this "war" is illegal. Given the primary role of the Security Council in the maintenance of international peace and security under the UN Charter, their argument appears persuasive enough. Nevertheless, one might present an equally persuasive argument for the military action by carefully formulating a modern form of "humanitarian intervention." My concern here is not to identify which interpretation should be pursued. Rather, it is about a conspicuous lack of in-depth discussion. To my understanding, the Canadian government has yet to demonstrate a *prima facie* case to support its

military action under international law, which does a great disservice to the principle of rule of law in international society. It is all the more so, since the 1990s have been declared as the "UN Decade of International Law" in order to build up trust in international law throughout the world.

The sidestepping of the Security Council may create haunting ripples in the years to come. When Canada was elected to the Security Council last October, the Canadian government, acknowledging that it was a recognition of Canada's long-standing commitment to the UN, loudly pledged to strengthen the mandate of the Security Council. One could say that the path Canada has taken in the past month with its like-minded NATO allies is a negation of this pledge and is tantamount to admission that the Security Council is redundant at a time when its action is most called for. Thus, the credibility of the UN system, a fulcrum of Canadian foreign policy, is at risk.

As the crisis intensified, tens of thousands of refugees and displaced persons were plucked out of their homes. In response to a request from the UNHCR, Ottawa was quick in announcing its offer to accept 5,000 refugees. What impressed me enormously, was the exceptional generosity extended by the Canadian public from all walks of life. For example, The Hon. Lucienne Robillard, Minister of Citizenship and Immigration, noted in an address to the House of Commons on April 12 that

> The outpouring of offers of all kinds of assistance that we received at the 1–800 number since last Wednesday is truly astonishing. We have received over 7,000 calls and 1,000 faxes ... It reaffirms my belief that Canadians are a compassionate people who want to help those in need.

On the other hand, as Francisco Rico-Martinez of Canadian Council for Refugees stated at the opening of this year's Refugee Rights Awareness Week (April 9, 1999), Canada's offer to host 5,000 Kosovo refugees exposed its double standard in the treatment of refugees. For one thing, "If Kosovars, why not Sudanese, why not East Timorese?" Surely, this question may not be answered without hitting a chord of institutional racism or Eurocentrism. More noteworthy is a procedural arrangement instantly devised for newly-coming Kosovars. It was announced that Canada would receive 5,000 within days of the crisis. Then why, according to the 1999 annual plan, does Canada accept only 7,300 government-assisted refugees in a year?

It was reported that Kosovars would be considered Convention refugees if they so wish and be duly granted landed immigrant status. This would happen without the presentation of satisfactory identity documents. Andrew Brouwer (1999, 1) revealed that there are as many as 13,000 Convention refugees living in legal limbo in Canada today because they are unable to satisfy a requirement introduced into the Immigration Act in 1992 that Convention refugees present satisfactory identity documents to be granted permanent status. If yet-unknown Kosovars were promised permanent status off-hand, why not Somalis, why not Afghans, who are already recognized by the world-renowned Immigration and Refugee Board (IRB) as Convention refugees?

The Canadian Human Rights Commission has repeatedly expressed concern about the application of the Right-of-Landing Fee to refugees. In order to become permanent residents, refugees must pay the Right-of-Landing Fee of $975 in addition to $500 processing fees per adult. The Commission's *Annual Report 1998*, reiterates its concern:

> Beginning life in Canada with a large debt load can make integration difficult for any newcomer. This is particularly true for refugees, who have often fled from traumatic human rights situations. Exempting refugees from payment of this fee, and from other expenses that serve to impede their speedy integration, would be in keeping with Canada's humanitarian tradition.

This tradition will be observed if Kosovars come to Canada. Then, why not in relation to refugees already in Canada?

The plan to bring in 5,000 Kosovo refugees ironically sheds light on Canada's potential to accommodate more refugees without the onerous hindrances that are applied today. It is unfortunate that full manifestation of this uniquely vast potential has been forcefully blocked by lack of political will. It is worth recalling that determination and sensitivity on the receiving end, may help facilitate social awareness of human and refugee rights as well as successful integration of refugees into a new society, as it is implied by Kohki Abe and Maria Vargas in this issue of *Refuge*.

Like in Kosovo, ethnic conflicts inevitably displace a huge number of people. As conflicts drag on due to political manoeuvring, their hardships deepen. Articles on Sri Lanka, Chittagong Hill Tracts, and North Korea, included in this issue of *Refuge*, make us aware of refugee martyrs tossed about in the storms of politics. Resolution (or prevention for that matter) of conflicts is always hard won, if ever won. But it has to be won to begin a process of reconciliation and reconstruction. The need to achieve effective resolution is soundly underlined in papers of this issue. ■

References

Brouwer, Andrew. 1999. "What's In A Name?: Identity Documents and Convention Refugees." Ottawa: The Caledon Institute of Social Policy.

Canadian Human Rights Commission. 1998. *Annual Report 1998*. <http://www.chrc-ccdp.ca/ar-ra/ar98-ra98/table.asp?l=e>

Higgins, Rosalyn. 1996. "Opinion: Ten Years on the UN Human Rights Committee: Some Thoughts upon Parting." *6 Eur. Hum. Rts. L. Rev.* 570, 581.

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Correction

In *Refuge* vol. 17, no. 5 (November 1998), the opening paragraph in the article "Licensed to Traffic: The Sex Trade in Bangladesh" on page 24 mentions 1991 as the year in which Bangladesh "was born." It should have read 1971. *Refuge* apologizes for the error.