there are some vague areas that could cause problems. What justifies a well-founded fear of persecution? Past persecution does. The possibility of future persecution does as well. But the guidelines are not clear as to whether the possibility of future persecution need be only very slight or whether it must be likely. In his speech Axworthy referred to "reasonable grounds to fear persecution in future," suggesting that he intends the guidelines to mean the latter, which would be consistent with case law.

Guideline (4) indicates that a well-founded fear may be based "on what has happened to others in similar circumstances." Is "similar circumstances" to be interpreted narrowly, which could be unfair to legitimate refugees, or broadly, which could leave the door open for virtually anyone in a country producing refugees to apply for refugee status? This guideline needs further clarification.

That persecution may take economic and institutional forms, such as exclusion from institutions of higher learning, is specified in guideline (5). But a list of such forms of persecution is given. The list is incomplete: What about forcing certain people to live in ghettos? To wear distinctive items of apparel? It would be preferable if the situations cited were explicitly presented as examples, lest the list be interpreted to be exhaustive.

The guidelines are biased toward assuming that the agent of persecution is a government or a vigilante group tolerated by a government. (See, for example, guidelines (8) and (11).) Those who have a well-founded fear of persecution by anti-government forces and whom the government is unable to protect adequately also deserve consideration for refugee status.

Guideline (11) is somewhat paradoxical. If an individual has a well-founded fear of persecution because of his political opinion, he can claim refugee status. According to guideline (11), having a well-founded fear of persecution because of a political opinion does not entail that the individual was politically active, but only that he is regarded by the persecutor as having a political opinion which warrants persecution. But the guideline goes on to say that the individual "may have been totally inactive politically and have no political opinions of his own." To say an individual may be admitted as a refugee because he has a well-founded fear of persecution based on his political opinion when he in fact holds no political opinion at all makes the world of refugee law sound like an *Alice in Wonderland* world. The difficulty stems, of course, from the fact that a persecutor may in fact exhibit about as much logic as the Queen of Hearts in his interpretation of what is political. But we should not commit the same error in our formulation. This guideline warrants more thought.

Finally, a serious ambiguity in the meaning of "persecution" is introduced in guideline (8) which states that "persecution" may take the form of indiscriminate terror . . . Persons with a well-founded fear of becoming victims of governmental terrorist tactics may be refugees." The intention of the guideline is to protect individuals with a well-founded fear of being potential targets of terror. But if terror is indiscriminate, by definition every person in the country involved is a potential target of terror. Hence, any person in a state which practices indiscriminate terror - and there are many of these - could, under the guidelines, be entitled to refugee status. Immediate clarification of this guideline is needed if it is not to be used to launch myriad claims that the guidelines were not intended to encompass.

For such people may be refugees in the ordinary sense of the word. And Canada may feel a humanitarian obligation to extend asylum to them. But we should do so under the designated class rubric. The guidelines, and the refugee determination process in general, are concerned with refugees in the legal sense of the word - Convention refugees. We extend asylum to them not simply in virtue of feelings of humanitarian obligation, but in virtue of a legal obligation as a signatory to the international instruments of refugee protection. With guidelines which can be interpreted to broaden the interpretation of the refugee definition far beyond the existing legislation as interpreted by case law - in this case replacing the notion of persecution based on specific criteria (race, religion, nationality, membership in a particular social group or political opinion) with the notion of indiscriminate persecution - we run the risk of undermining the clarity of the legal definition and with it, the clarity of our legal obligation to protect refugees. Also, with guidelines which are too vague, we run the risk of inviting abuse by encouraging claims for refugee status which, since the guidelines are not law, might eventually be turned down, but could in the meantime create a backlog in the determination system, which would be unfair to legitimate claimants. Inviting either of these risks would not advance the cause of treating refugees fairly in the long run.

On the whole, then, the guidelines advance considerably the cause of fairness in considering refugee claims; but some corrections and clarifications are necessary to ensure fairness in the future. □

NEW REFUGEE

Preamble

1. It is recognized that no two refugee claims are the same. Each Committee member will use his or her best judgement in arriving at a recommendation in an individual case. Nevertheless, the discretion which is exercised by Committee members is circumscribed in two significant respects. The first involves the legal definition of a "Convention Refugee" as found in the *Immigration Act, 1976*. The second involves the "spirit" of interpretation of which the Minister desires in the application of this definition. In this respect, members should bear in mind that they have been appointed to provide recommendations to the Minister and are not, in law, performing a decision-making function. While the Committee is independent of Employment and Immigration Canada, it is subordinate to the Minister.

2. It is hoped that, together with the explanatory material set forth in the UNHCR's Handbook on Procedures and Critera for Determining Refugee Status, these guidelines will assist Committee members in meeting both the legal requirements of our legislation and the "spirit" of our international commitmemt to refugees.

Guidelines: Refugee Definition

3.When the application of the refugee definition to a claimant is in doubt, the claimant will recive the benefit of the doubt.

4. A person is a refugee if he has a well-founded fear of future persecution based on one of the five criteria in the definition. Past persecution is evidence to substantiate a well-founded fear. However, it is not the only evidence. A person may not have been persecuted in the past, and yet still be a refugee. Looking, as it does, to the future, the refugee definition is concerned with possibilities and probabilities rather than with certainties. A well-founded fear may be based on what has happened to others in similar circumstances. When a person has not been persecuted simply because he has not yet come to the attention of the authorities, he need not wait until he has been detected and persecuted before he can claim refugee status. Nor need he be under the threat of imminent persecution.

5. Interference with personal freedom is not the only form of persecution within the refugee definition. Arbitrary interference with a person's privacy, family, home or correspondence may constitute persecution. Deprivation of all means of earning a livelihood, denial of work commensurate with training and qualifications or unreasonably low pay may constitute persecution. Relegation to substandard dwellings, exclusion from institutions of higher learning, enforced social and civil inactivity, denationalization, passport denial, constant surveillance and pressure to become an informer may all constitute persecution.

STATUS ADVISORY COMMITTEE GUIDELINES ON REFUGEE DEFINITION AND ASSESSMENT OF CREDIBILITY, FEBRUARY 20, 1982.

6. Persecution may include behavior tolerated by government in such a way as to leave the victim virtually unprotected by the agencies of the state. A person is a refugee if he has a well-founded fear of persecution (as a result of one of the five factors in the definition) because he is not adequately protected by his government.

7. Persecution may be periodic. It need not be continuous. A person arrested from time to time, interrogated and then released may be considered to be persecuted. Arrest need not be imminent at the time he leaves his country. He may even return to that country for a short period of time without being arrested. As long as the pattern of periodic arrest can be expected to continue, persecution may be established.

8. Persecution may take the form of indiscriminate terror. Persons may be persecuted for no apparent cause at all, other than for the purpose of instilling fright into the population at large. Persons with a well-founded fear of becoming victims of governmental terrorist tactics may be refugees.

9. A person is a refugee whether he is persecuted alone, or persecuted with others. A person need not be singled out for persecution in order to be a refugee. Each claim must be assessed individually. Once that assessment takes place, a claim cannot be rejected simply because a large number of others could also legitimately fear the same persecution.

10. It is recognized that immigration considerations must not be brought to bear on the application of the refugee definition. The possibility that, if one person is given refugee status, many others might also be entitled to claim refugee status, is not relevant to whether the claimant is a refugee.

11. A person is a political refugee if he has a well-founded fear based on political opinion. He need not have a well-founded fear based on political activity. Political opinion means what is political in the opinion of the government from which the refugee flees, not what is political in the opinion of the refugee, or in the opinion of Canadian officials. A person may have been totally inactive politically and have no political opinions of his own. Yet he may, nonetheless, be a political refugee. The political prominence of the claimant is evidence of the likelihood of persecution but it is not a pre-requisite. A person who is disposed to clash politically with authorities from his country and who will probably or possibly suffer persecution because of that disposition may be a refugee.

12. A well-founded fear of persecution need not arise before the claimant has left his country. It may be based on what has happened in the country since the claimant has been abroad. A person who was not a refugee at the time he left his country but who becomes a refugee after he leaves, is a refugee "sur place".

13. A person may be a refugee even though he was able to leave his country without difficulty. He may have obtained a passport through official channels. He may not have been stopped by officials at the port of exit. As long as he has a well-founded fear of persecution based on the reasons in the definition should he have stayed, or should he return, he is a Convention refugee.

14. In determining whether there is a well-founded fear of persecution, what is relevant, is the practice in the country the refugee flees. The legal structure in the country is not, in itself, conclusive.

Guidelines: Credibility Assessment

15. When the credibility of the claimant is in doubt, the claimant will receive the benefit of the doubt. An applicant who swears to certain allegations will be presumed to be telling the truth unless there be reason to doubt the truthfulness of those allegations.

16. Inconsistency, misrepresentation, or concealment in a claim should not lead to a finding of incredibility where the inconsistency, misrepresentation or concealment is not material to the claim. If a statement is not believed but if the claim would be well-founded apart from that statement, then refugee status should be granted.

17. The fact that a claim was made only after the claimant received the advice of a lawyer is not relevant to the credibility of the claim. This is not a factor to be taken into account in determining credibility.

18. There are a number of factors which may be indicative of a lack of credibility. However, it is important to bear in mind that they may also be consistent with other rational conclusions. These factors must be assessed in each individual case and in the broader context of the special pressures which refugees frequently face:
(a) A claim may be credible even though the claim was not made at the earliest opportunity. A genuine refugee may well wait until he is safely in the country before making a claim. He cannot, in every case, be expected to claim refugee status at the port of entry. A genuine refugee may not be aware, immediately, of his entitlement to refugee status. He may be in the country for some time before he becomes aware of our refugee claims procedure.
(b) A claim may be credible even though, since leaving home, the claimant has been in another country besides Canada and has not claimed refugee status in that country. The third country may have had a regime similar to the one which the claimant was fleeing. A genuine refugee may have felt it unnecessary to claim refugee status in a third country, because he was able to stay in the third country for the time he wished without claiming refugee status.
(c) A claim may be credible even though the claimant has not approached the Canadian mission in his home country and claimed refugee status. Even for those countries (Chile, Argentina, and Uruguay) where it is possible to claim refugee status at home, a genuine refugee may fear that making such a claim at home would lead to detention and persecution.
(d) Even where a statement is material, and is not believed, a person may, nonetheless, be a refugee. "Lies do not prove the converse." Where a claimant is lying, and the lie is material to his case, the Refugee Status Advisory Committee must, nonetheless, look at all of the evidence and arrive at a conclusion on the entire case. Indeed, an earlier lie which is openly admitted may, in some circumstances, be a factor to consider in *support* of credibility.
(e) A claim may be credible even though the claimant submits information during a second examination (for example, on an out-of-status claim following an in-status claim) which was not submitted during the first examination. The claimant may have been reluctant to speak freely during the first examination but may be prepared to provide a full and accurate account on the second occasion.
(f) A person may be a credible claimant even though he has never been persecuted. The absence of actual detention or detection by the authorites or of wounds should not lead to the assumption of fabrication.
(g) A claim may be credible even though it is similar to other claims. A claimant should not be suspected of fabricating his claim simply because the pattern of his claim is similar to the pattern of other claims before the Refugee Status Advisory Committee.
(h) A claim may be credible even though it is different from other claims. A claimant should not be suspected of fabrication because his statements are different from statements made by other refugee claimants originating from the same country.

THE LEGAL DEFINITION OF A REFUGEE

Canada's Immigration Act takes its definition of a refugee from the 1951 United Nations *Convention Relating to the Status of Refugees*. Section (2) reads in part, "In this Act . . . 'Convention refugee' means any person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(*a*) is outside the country of his nationality and is unable or, by reason of such fear, is unwilling to avail himself of the protection of that country, or

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