



CANADA'S NATIONAL NEWSLETTER ON REFUGEES REFUGEE

In November of 1981 Employment and Immigration Minister Lloyd Axworthy released a report by the Task Force on Immigration Practices and Procedures dealing with Canada's refugee status determination process. A summary of the report appeared in the last issue of *Refuge*. In February of 1982 the Minister convened a National Symposium on Refugee Determination in Toronto, to discuss some of the recommendations in the report.

The report and the Symposium drew together a great deal of critical thinking about our legal and humanitarian obligations to persons in Canada requesting protection as refugees. Many countries - in Central America, Southeast Asia, southern Africa - have recently proved unable or unwilling to adequately protect refugees from physical danger. As close to home as in the United States - a country traditionally hospitable to refugees - many Latin American refugees are in danger of being sent back to the countries from which they fled. The Task Force and the Symposium themselves have their origin in shortcomings, or at least perceived shortcomings, in our own fulfillment of our obligations. Yet at the same time, the principle of the responsibility of the international community to protect refugees is being taken more and more seriously. This issue of *Refuge* is devoted to the subject of refugee protection in Canada, and attempts to share some ideas on the subjects discussed at the Symposium.

Franz Krenz of the Office of the United Nations High Commissioner for Refugees noted in his address to the Symposium that the definition of a refugee requires a great deal of interpretation, since it contains such subjective elements as "persecution", "fear", and "well-founded". At the Symposium the Minister issued guidelines for its interpretation. These are printed in this issue for easy reference, together with a commentary by Howard Adelman.

Fulfilling our obligations to refugees in Canada also requires that we have procedures to determine whether a person falls within the definition. Much of the report and the Symposium dealt with these procedures, and especially with the question of whether a refugee claimant

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has a right to an oral hearing to defend his claim, and if so, at which stage in the process. James Hathaway provides one perspective on this question. Other insights are provided by one of the members of the Refugee Status Advisory Committee, Imre Rosenberg, who was once a refugee himself.

Normally a person in Canada who is determined to be a refugee is then admitted to Canada as a landed immigrant. But there are exceptions. The most controversial relate to national security. These are discussed in light of a recent cause-célèbre, the deportation order against Victor Regalado.

This issue also inaugurates a change in *Refuge* to make it possible to discuss refugee policy issues in greater depth. *Refuge* will be published in a longer format but less frequently - in September, November, January, March and May. We look forward to your comments and contributions.

Kristin Hanson

SOMETHING SHORT OF JUSTICE

A Comment on Canada's Refugee Determination Process

By James Hathaway

The right to an oral hearing before a decision-maker is fundamental to our concept of justice. Whether charged with having committed a crime, seeking redress for a consumer fraud or merely contesting the validity of a parking ticket, Canadians expect and receive the opportunity to appear before a court to argue the merits of their case. Our judicial tradition incorporates the notion that the fairest decision is that made after the parties have been seen and heard and such evidence as they present has been examined. To refuse to accord an individual the right to appear before a judge in order to make out his case is, quite simply, wholly foreign to our experience and expectation of fair play.

In stark contrast to our general pattern

of proceeding by way of an oral hearing, claims for refugee status in Canada are determined on the basis of documentary evidence only. While an oral hearing is afforded the applicant in the context of a redetermination before the Immigration Appeal Board, this appeal procedure is only available if the written material filed with the Board in support of the application for a redetermination is sufficiently persuasive to meet the threshold test prescribed by the *Immigration Act*. Thus it is entirely possible for a refugee claimant to be deported to the country in which he alleges to have been persecuted without ever having received a hearing.

The absence of a provision mandating an oral hearing in the context of a refugee application is soundly criticized in the report of the Task Force on Immigration Practices and Procedures issued in November, 1981. In addition to the appearance of unfairness created by the present system, the report cites difficulties in assessing credibility and in resolving evidentiary contradictions as reasons for instituting oral hearings for refugee claimants. This recommendation notwithstanding, the Minister of Employment and Immigration failed to address the question in announcing a series of policy changes at the recent National Symposium on Refugee Determination. Departmental officials subsequently indicated that the reason this key issue was side-stepped was essentially economic. Oral hearings are simply too expensive.

This financial rationale for opposing oral hearings is both inappropriate and of questionable accuracy.

Because the oral hearing is such an integral part of our system of justice, it is inappropriate to retain the present documentary determination system for refugee claims by reason of cost considerations alone. The expense incurred in affording a hearing in the context of many minor criminal cases, the small claims court or highway traffic violations cannot be justified on the basis of a dollar and cent cost-benefit analysis; the right to be heard is nonetheless preserved because of a cherished belief that an oral hearing is the fairest way to decide the issues. Given that an individual's life or liberty is on the line in a refugee case, the importance of being scrupulously fair is all the more evident.

Second, it is anything but apparent that the cost of granting refugee

claimants an oral hearing would exceed that incurred under the present system. An applicant for refugee status currently appears first before an adjudicator; a case presenting officer, a stenographer and an interpreter (if required) are present. The case is then adjourned pursuant to the refugee claim for an examination under oath conducted by a senior immigration officer with a stenographer and an interpreter in attendance. After all the testimony has been transcribed, the evidence is forwarded to the Refugee Status Advisory Committee (RSAC) where it is studied by a staff member to determine whether the claim is "manifestly unfounded". The transcript, or in the case of "manifestly unfounded" claims, a summary of the transcript, then proceeds before three or more members of the RSAC for discussion and the formulation of a recommendation to the Minister. This recommendation is, in turn, reviewed by the Chairman of the RSAC, the Minister's delegate and, in some cases, by the Minister himself. Can it seriously be argued that such a cumbersome procedure, sometimes involving a dozen or more people, is more economical than an oral hearing before a single decision-maker?

As an alternative to the present system, we might consider the creation of a specialized Refugee Status Board which would receive cases either directly pursuant to claims made by individuals upon arrival in Canada or by reference from adjudicators when claims surfaced during inquiries. An oral hearing would be afforded a claimant before a single, local member of the Board, with an appeal on a question of law to a panel of three members of the Board. Judicial review pursuant to section (28) of the *Federal Court Act* would still be available.

There is no good reason to hold to the status quo. Oral hearings are not only likely economically feasible, they are mandated by our sense of legal and moral responsibility. □

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REFUGEE CLAIMS IN EUROPE

A seminar on the problems of asylum seekers in Europe was held in Zeist, Netherlands, January 20, 21 and 22, 1982. It is interesting to compare current Canadian concerns about the treatment of individuals seeking refuge here with the European concerns expressed at the seminar, which included

- the need for asylum seekers to receive a fair and sympathetic hearing at their point of arrival, and to have the chance to contact a lawyer, a representative of UNHCR or a suitable voluntary agency. The seminar recommended that border police, immigration officers and other involved officials receive special training relating to the problems of asylum seekers.
- deportations from certain European countries before the final decision on an asylum request, because the authorities believe the appeal unlikely to succeed;
- the practice in some European countries of not giving consideration to asylum requests of people from certain countries, because people from these countries are presumed not to be subject to persecution;
- increased detention of asylum seekers, including children, in certain European countries. The seminar expressed concern that the concepts of "public order" or "national security" were frequently too loosely interpreted as a pretext for detaining asylum seekers;
- the need for asylum seekers to be able to work and to have access to occupational programs, language training and other educational facilities, and psychological and social assistance while a decision on their asylum request is pending, particularly in light of the trauma they may be undergoing.

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IMRE ROSENBERG

A Portrait of One Member of the Refugee Status Advisory Committee: His Life and His Work on the Committee

By Robert Marshall

The Task Force on Immigration Practices and Procedures finds room for improvement in Canada's procedures for refugee determination. The branch office for Canada of the United Nations High Commissioner for Refugees has reservations about the separation of information gathering from decision making on refugee claims in Canada. Three-quarters of refugee claims here are turned down. What do these things mean? Very little, says Imre Rosenberg, in terms of how well the system actually works.

Rosenberg has packed a lot of experience into his 68 years, including a major role in sorting out the mass relocation of humanity in Eastern Europe at the end of World War II; arrival in post-war Canada as a political refugee; and serving, for the past fifteen months, on the Refugee Status Advisory Committee (RSAC). A life-long concern for the well-being of his fellow man leaves him perfectly confident, at his age, to pass judgement on matters humanitarian. Rosenberg can say of the RSAC without the slightest hint of embarrassment: "We make our decisions in what is as close to a good decision-making system as humans can produce."

Yes, he'll acknowledge, of course the committee is always asking for more people. "But there is a limit to how much can be spent." Yes, the translation service could use improvement. And yes, of course it would be ideal if we could have oral hearings for refugee claimants. "It might be possible for the Immigration Appeal Board to hear more appeals - I wouldn't know about that - but for the RSAC, oral hearings would simply be technically impossible to organize: We can't go to Gander to interview a Czech getting off a plane. People from Manila are landing at Winnipeg; Central Americans generally land at Calgary, Edmonton or Toronto . . ."

But when it comes to the real issue, to the ability of the RSAC to act *fairly* . . . mild-mannered scientist Bruce Banner's transmogrification into the avenging Hulk has nothing on the metamorphosis of this normally affable and dapper man when he reflects on poorly-informed criticism of the RSAC's record. His soft voice becomes a shout and tears well in his eyes. "The claim that the vast majority of refugee applications are turned down is grossly misleading. Thousands of people want to come to Canada, by any means available to them, and when some thousands come from a democratic country - like India - it

Imre Rosenberg sketching an excavation from the 1st century B.C., near Tivon, Israel.

not only distorts the picture, but breaks down the machinery. It really has nothing to do with the RSAC."

Rosenberg's affirmation is heartfelt: "I think we bend over backwards to be fair, to give more than the benefit of the doubt to the claimant, because we always think of the loss to the person forced to leave his home. Perhaps most people don't think that way, but we do."

Dr. Imrich Yitzhak Rosenberg. Born in Nove Mesto, Slovakia; May 22, 1913. Active in national Jewish youth movement. Doctorate in government and law, Bratislava University, 1939, after two interruptions to work underground against Hitler. While attending the Academy for International Law in The Hague, he helped organize the escapes of Jews from Czechoslovakia and Berlin in 1939.

"I landed in England the day before the war broke out, to buy a boat to move refugees," he recalls. Enconced in his comfortable apartment with its superb view of the frozen Ottawa River, he is surrounded by evidence of his wife's impeccable decorative taste and the watercolours he himself has painted. The outbreak of war in Europe seems a long way off, but Rosenberg knows that time intimately and the words come easily.

"Every decent person who was safe in London wanted to join a unit fighting Hitler." He joined the Czech army and helped build the London-based resistance movement, led by Edvard Benes, which was eventually recognized as the legitimate democratic government-in-exile in Czechoslovakia.

In 1944, as the war neared its end, Rosenberg went to Moscow on behalf of the Czechoslovak government and the

World Jewish Congress on a mission which, had it succeeded, could have changed the course of Jewish history since the war. "I was asked to go to Moscow to make arrangements whereby Soviet Jews would take part in the Congress in some form. Believe it or not, you're talking to a man who nearly succeeded. The party - and not just functionaries, but the party itself - agreed that if Soviet Jews could get 50 percent of the seats on the executive of the World Jewish Congress, then Soviet Jews would participate in the Congress. That was long before the Soviets agreed to participate in *anything* internationally. When I heard they were even considering it I could not believe it. Soviet Jews participating in a forum in New York - it would have been like a revolution."

Unfortunately Rosenberg's hopes were dashed. He now feels the agreement was reached during one of the Stalin regime's spells of appeasement toward Jews and was abandoned with the return of the more typical mood of hostility.

He headed for Czechoslovakia as the war ended, travelling with the Soviet Army as it liberated concentration camps in Poland, Germany, Austria and Czechoslovakia. "The world that had been closed in by the Nazis was being opened up. I was one of the first people to visit Theresienstadt camp, north of Prague, and I selected 301 orphaned children for transfer to England. The British Home Office sent 16 planes to pick them up. I also chose adults, most of them already with relatives in England, to accompany the children - about one for every ten children."

There was also a steady stream of Jews arriving in Czechoslovakia from



work camps in Germany's Ruhr valley. "I don't think there is another living person who has seen as much as I in terms of broken people who survived the camps." He says now in a tone of wonder, "I was a young man when I was doing these things - today I think it was impossible. You're dealing with 180,000 people moving across the border. We gave them medical help, money, tickets. I organized whole trainloads of refugees."

Rosenberg was also dealing with queries from abroad on the whereabouts of missing people. His responses had a depressing similarity. In a letter from Kostice in eastern Slovakia, dated May 3, 1945, Rosenberg wrote to the Jewish Agency for Palestine in Jerusalem: "I have received your letter of 5th March and have sent a message to our representative in Carpathian Ukraine, asking him to ascertain the whereabouts of the persons you mentioned . . . Generally I would say that most of the Jews in Carpathian Ukraine have been killed . . ."

Rosenberg worked at organizing a department of social welfare for the post-war Czechoslovak government, but was not optimistic. "I said to anyone willing to listen that Jews had no future in Central or Eastern Europe, it was a matter of months or years before they would have to leave." They did.

He himself was soon in a dispute with the Czechoslovak government over its refusal to release Jewish manuscripts and the priceless art treasures the Nazis had looted from synagogues and Jewish museums in occupied Europe. Even now he is bitter that, although the Czechoslovak gold has been returned to Prague from London and Washington, the Czech authorities will not let the Jewish treasures go to Israel where he feels strongly they belong.

With the Communist coup of February, 1948, he was forced to flee. "I heard about (Foreign Minister Jan) Masaryk's death from a street cleaner at seven in the morning, though the government didn't announce it until the afternoon. He was pushed from a window; there is proof. I slipped out of the country but my first wife made a mistake and she was caught. She was in jail, terrible jail, for twelve years."

Having learned he'd been sentenced *in absentia* to life imprisonment, Rosenberg spent a year in England waiting for a Canadian visa. ("In those days," he grins, "you didn't get what you are getting today - which is instantaneous help.") When he arrived in Ottawa as a landed immigrant he was turned down by the Civil Service Commission and instead worked as a laborer, carrying vegetables in Byward Market. Eventually he started lecturing at Ottawa University and selling houses, becoming a partner in a successful real

estate company. Along the way he donated \$12,000 to establish a home for international students and public servants ("so others would not be left out in the cold in Ottawa, as I was"); married his present wife, Truda, a psychologist with her own story to tell about life in war-time Poland and Germany; and earned an M.A. in Soviet studies at Carleton. They lived in Israel for seven years while Rosenberg worked first with Haifa University and later with the Prime Minister's office in Jerusalem, but returned to Ottawa in 1978.

One day at the end of 1980, Rosenberg was asked if he would accept a position with the RSAC. And he has had no regrets. "I really took to it," he says. "I was pleasantly surprised at first that all the public servants I dealt with leaned over backwards to help refugees. I always told my wife I had never seen such humanity in other public services as I did here."

The RSAC had been operating since 1978 and, Rosenberg says, "as we went along in our work we tended to improve it, moving from intuition or guesswork to a higher level based more on facts than intuition." He now sits on a panel at least once and usually two days a week, at each meeting considering approximately ten applications. Each case requires extensive reading, starting with a lengthy transcript of the claimant's interview with an immigration officer, accompanied by copies of all relevant documents. Often there is outside research too, from Amnesty International's *Annual Report* for example, and other sources. "After a week of this work you feel you have seen all the troubles of the world in miniscule," he says. "Though I have travelled a great deal, I had always seen Ethiopia, for instance, as one country. Now I recognize it as a complex grouping of nationalities. So each of these cases means good-sized studies."

He is confident that the committee will continue to be motivated by this "steady desire to improve the level of the decision-making process," and he is very supportive of Employment and Immigration Minister Lloyd Axworthy's recent efforts in this regard: "The panels are now often chaired by private members, and new private members were chosen for their fairness; their long involvement in social work, refugee programs and projects; their international experience, etc."

Rosenberg doesn't just think, he knows the system works well. He is not beyond resorting to a little hyperbole to back his insistence that refugee claimants get every possible chance to succeed: "I would say that in Canada if a person tried fifty times to be recognized as a refugee and failed, there would still

be a chance of recourse." And he quotes a UNHCR official from Geneva as saying Canada has "the world's most advanced and most human system of (refugee) determination."

Rosenberg has painted all his life. He worked with artists as a boy and likes to say, "Had it not been for Hitler, I would have been a painter all my life." He sometimes talks in painter's terms, of seeing perspective as well as detail in matters before him. His watercolors of scenes around Ottawa, Israel, Hawaii and Spain adorn his apartment and his wife's clinic.

The painter in Imre Rosenberg must have been pleased then, by a trip he made recently to Montreal to talk to forty "do-gooders" involved with refugee applications. "There was a growing wish to cause embarrassment to the federal government. I said I thought there had simply been a communication gap and that I would not be serving on the committee if I thought it wasn't fair. They felt they were being left out and I said if you have a problem, this is what you do. I do know that after I spoke to them the expected demonstrations did not take place, and the people I met took part in the Toronto meeting." Everything back in perspective, as in a painting properly composed. □

RSAC to be Independent of CEIC

Several administrative changes in the refugee status determination process were announced by Lloyd Axworthy, Minister of Employment and Immigration, at the National Symposium on Refugee Determination. One was the issuance of new guidelines to the Refugee Status Advisory Committee (RSAC), discussed on page 5. The other involved structural changes in the RSAC, making it independent of the Canada Employment and Immigration Commission. It will have its own resources and an increased secretariat with better research capabilities; the number of private members will be increased from seven to ten (in November the number of private members had been increased from four to seven); and the Immigration and External Affairs officers serving on the RSAC will be appointed by the Minister and serve full time. In the context of these changes all existing appointments are being reviewed, and Kenneth Brown has resigned as Chairman.

The Minister has also issued a directive with respect to the screening of "manifestly unfounded claims". The RSAC will henceforth give full attention to every claim, with the exception of claims from countries where every claim from that country has been found to be invalid since the establishment of the RSAC. These the RSAC may continue to deal with through summaries.

These changes are based on recommendations in the report of the Task Force on Immigration Practices and Procedures on the Refugee Status Determination Process.

FROM FAIRNESS IN SPIRIT TO FAIRNESS IN LETTER:

A Comment on the New Guidelines for the Refugee Status Advisory Committee

By Howard Adelman

Following recommendations of the Task Force on Immigration Practices and Procedures published in its report on the refugee status determination process, Lloyd Axworthy, Minister of Employment and Immigration, announced the issuance of new guidelines to govern the Refugee Status Advisory Committee (RSAC) in its consideration of claims for refugee status in Canada. Do the guidelines advance the cause of fairness in considering refugee claims?

The Preamble

Under the guidelines the RSAC is to consider each claim individually, subject to two caveats: the legal definition of a refugee and "the 'spirit' of interpretation which the Minister desires in the application of this definition." Presumably the latter is included to clearly tell the RSAC who's boss; but it may set a bad precedent. The present Minister wishes the definition to be interpreted "liberally," which reflects the spirit of the 1951 United Nations Convention Relating to the Status of Refugees as interpreted in case law. The interpretive case law provides an objective basis for determining guidelines. However, with a suggestion in the preamble that the guidelines derive not from this body of law but from Ministerial desire, the guidelines are characterized not as part of administrative law but simply as an expression of Ministerial fiat. This leaves open the possibilities of a subsequent Minister interpreting the definition in a highly restrictive way; of arbitrariness; and of increased inconsistency as Ministers change. Axworthy should correct the formalization of the Minister's role.

Credibility Assessment

The guidelines themselves are of two types: criteria for determining the status of a claimant, and principles for the consideration of evidence in the determination process. In the case of a refugee there is often little independent documentation to prove a claim. But if no proof were needed, anyone could claim to have a well-founded fear of persecution. What then should be the basis for deciding that a claimant is telling the truth?

Under the guidelines, a claimant is to receive the benefit of the doubt. The

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principle of the benefit of the doubt can be interpreted in several ways. The Minister, consistent with case law, interprets it in the direction of the narrowest sense. As he said in his speech when he announced the guidelines, "The applicant is presumed to be telling the truth unless there is clear evidence to the contrary," or, as stated in the guidelines, "unless there be reason to doubt the truthfulness." Not

conclusive contrary evidence, or even an overbalance of contrary evidence, but simply clear evidence or reason to doubt. This reasonably restrictive procedure is a correct one to ensure fairness to refugees without opening the system to abuse.

The Refugee Definition

In the guidelines related to the application of the refugee definition

MEDIA WATCH

By Barrie Zwicker

"OTTAWA TO EASE IMMIGRATION BARRIERS"

— Headline in the Saint John *Telegraph-Journal* over its (CP) story on the National Symposium on Refugee Determination

The majority of daily newspapers in Canada ignored the National Symposium on Refugee Determination. The majority of those that did not ignore it used wire copy. A tiny minority of papers sent staff reporters. Most coverage fell into two archetypes that characterize so much "news" in our papers.

Most of the coverage was based on governmental pronouncements, in this case statements by Employment and Immigration Minister Lloyd Axworthy and External Affairs Minister Mark MacGuigan. Cabinet minister speaks. Notes are taken. Story appears on front page. Appears *because* cabinet minister has spoken. It's a variation of "handout journalism", rooted in an all-too-common journalistic premise that officials make news by pronouncing.

This was aided, in Mr. Axworthy's case, by his use of the magic word "new" in his announcement of the guidelines he issued to the Refugee Status Advisory Committee (RSAC). "New" is one of the seven words found most effective in advertising. "We're breaking new ground here," Mr. Axworthy claimed of his "new guidelines" at a press conference. The quote made nearly every story. Only one paper surveyed, the *Winnipeg Free Press*, ran a subsequent story based on statements by Ken Brown, then Chairman of the RSAC. Mr. Brown was quoted by Canadian Press as claiming the guidelines "are not new at all" and that "no foreigners rejected in the past would have been accepted under the new rules."

The issues that were not addressed by any Minister, including those that were

addressed at some length by the Symposium as a whole such the provision of oral hearings to refugee claimants, were generally not addressed by the press.

The other archetype is the conflict story. "New refugee laws too loose: Professor," read a misleading headline in the *Toronto Star*. The story under that headline was a reasonable attempt by a journeyman reporter to summarize key points in the discussion about the guidelines at the Symposium. The reporter, increasing the chances of his story being used, led off with a criticism of a perceived excessive vagueness in the guidelines, expressed by Professor Howard Adelman. Most of the story, however, reflected general agreement with the guidelines expressed by other Symposium participants. The headline writer - exhibiting one of the common mistakes of headline writers - went further than the story did, by calling the guidelines "law".

The *Globe and Mail's* conflict story, "Two Ministers offer different solutions to refugee problem", was created by an essentially false dichotomy being drawn between remarks of Mr. Axworthy and remarks of Mr. MacGuigan: "Two solutions to the refugee problem were proposed by two federal Cabinet ministers . . . letting more of them into the country and sending them home." Mr. Axworthy had been speaking on refugee protection in Canada and Mr. MacGuigan had been speaking on responses to large-scale refugee movements abroad. □

Barrie Zwicker is a media analyst.

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. □

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 Criteria 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 commitment to refugees.

Guidelines: Refugee Definition

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

REFUGEE 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 authorities 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."

THE REFUGEES WE DON'T WANT TO KEEP

Some Background to the Case of Victor Regalado

By Kristin Hanson

Being recognized as a refugee in Canada does not necessarily entail being granted asylum in Canada. A refugee will generally not be given permission to stay if he is already protected by or returnable to a country other than the one where he fears persecution, except out of special humanitarian considerations. He will also not be given permission to stay if he is found to fall within certain categories related, essentially, to security or criminal conduct. The required security clearance has recently been dramatized in a rather extreme form in the much publicized story - "Expel me and I die, Salvadoran tells immigration hearing" . . . "Une incarcération injustifiée" . . . "Une déportation honteuse" - of Victor Regalado.

Canada's *Immigration Act* designates certain classes of people as inadmissible to Canada. Although most of these exclusions make an exception for refugees, a few do not, including the one specified in section (19) (1) (f):

persons who there are reasonable grounds to believe will, while in Canada, engage in or instigate the subversion by force of any government.

This section has some notoriety in itself. At the time of the drafting of the current *Immigration Act* it was noted that, among other problems, this section technically left the door open, for example, for a refugee from a terrorist regime to be expelled for saying that in

the case of his country armed force was the only recourse possible against governmental terrorism.

Regardless of the merit of this argument, what has excited so much ire in Mr. Regalado's case is that he has been determined to fall within this class, and therefore has been detained and ordered deported, not in virtue of any factual evidence presented to an immigration officer, or adjudicator, or judge, or his lawyer, or himself, but on the basis of the following attestation:

We, the undersigned, hereby certify that it is our opinion based on security and criminal intelligence reports received and considered by us, which cannot be revealed in order to protect information sources, that Victor Manuel Regalado is a person described in paragraph (19)(1)(f) of the Immigration Act, 1976, his presence in Canada being detrimental to the national interest.

Signed: Lloyd Axworthy, Minister of Immigration, and Robert Kaplan, Solicitor General.

Under section (39) of the *Immigration Act*, such a certificate, when it deals with someone other than a Canadian citizen or a permanent resident, is in and of itself proof of the matter stated in the certificate. And under section (19) of the *Act*, the report on which such an attestation is based may not be required to be produced in a court or any other proceeding.

"That such a provision is contrary to the principles of justice normally respected in Canada was no doubt clear

to Parliament when it was enacted, because the following subsection provides for a special annual report to be made to Parliament of any such certificate issued," wrote Judge J.A. Montgomery. Only eleven such certificates have been issued since the *Immigration Act* took effect in 1978. Never before has it been used in the case of a refugee.

Victor Regalado is a 33-year-old journalist from El Salvador. According to his lawyer, he used to be an activist with the Democratic Nationalist Union which today forms part of the Democratic Revolutionary Front (FDR), the political arm of the Salvadoran opposition. He claims that he has never promoted the use of violence to overthrow the junta, nor been part of the guerilla movement.

He first came to Canada in February 1980 as a visitor, and visited Salvadoran groups in Canada and presented information and political analysis on behalf of the FDR. His visa lapsed, and although he applied for permanent residence in Canada, he left in August 1980 for Nicaragua, where he attended a conference of journalism students and Salvadoran journalists, and then went on to Mexico. At the end of December 1981, he left Mexico to come to Canada. After being refused a visa by the Canadian consulate in Mexico City, he crossed the Mexico-United States border on foot and, travelling without stopping, arrived on January 5, 1981, at the Canadian border at Blackpool, south of Montreal, where he requested Canadian protection as a refugee.

He was temporarily returned to the United States. If an immigration officer thinks that it will be contrary to the *Immigration Act* to let someone enter Canada, he reports that to a senior immigration officer, who in turn either lets the person in or holds an inquiry. If no adjudicator is available to preside at the inquiry, if the person concerned was residing or sojourning in the U.S., he may be returned to the U.S. until an adjudicator is available.

To digress for a moment, Mr. Regalado's lawyer, Noël St. Pierre, suggests that "this article [(23)(4)] should not be applied to persons demanding refugee status and who have no legal status in the U.S. Otherwise there is always the danger that the person sent back, even if he has a document telling him to present himself at the Canadian border at a certain time, may be treated as an illegal

A NOTE ON SECURITY CERTIFICATES

Translated and excerpted from a paper by Dominique Boisvert

Of what value are the "secret security or criminal intelligence reports" on which a security certificate is based?

Who furnishes the information? We can't know for sure since it's all state secrets, but we can be pretty certain that the secret reports are prepared by the security services of the RCMP, which are in turn fed, particularly in the case of Latin America, by the American intelligence services such as the CIA and FBI. On July 12, 1977, in front of the Parliamentary Committee of Manpower and Immigration, a former deputy minister of Immigration admitted that it was foreign intelligence services (read: American) that told the Canadian government how it should treat the information communicated to it if it didn't want to see its sources of information dry up.

What credibility do these information sources have? Unfortunately for our "security", the information of intelligence services is often unreliable. The recent examples multiply. It suffices to remember

the Libyan death squad that was supposedly in the United States to assassinate President Reagan. The FBI had to admit later that the death squad was undoubtedly a fabrication, and that they didn't have any proof and had perhaps been deceived by their source. In November a Quebecois leader of a Catholic activist movement was arrested by the American authorities at Dorval before a connecting flight to Miami en route to Latin America. According to the computers of American customs, he had been convicted of fraud here and did not have the right to leave Canadian soil, being under probation until June 1982. Now he had never had the slightest quarrel with the police or the judicial authorities, and the RCMP itself confirmed that they had nothing against him! Evidently it had been an unfortunate computer error.

With a security certificate against him instead of evidence, who can assure us that Victor Regalado is not also a victim of a computer error?

immigrant by the American authorities and eventually sent back to his country of origin."

In the case of Mr. Regalado this almost happened, according to Mr. St. Pierre. "The American immigration service had received the information that he was undesirable in Canada, and that he would be expelled from Canada and possibly returned to the U.S. The American authorities, wanting to finish with the case, transferred him to the prison in Plattsburg, N.Y., and gave him a document beginning the procedures for deportation from the U.S.

"It was only after a series of interventions by Montreal and Toronto lawyers, and with the assurance that he would not be immediately expelled from Canada, that American immigration returned him to Canadian immigration to sit the special inquiry where he officially requested refugee status, January 7, 1981."

At the inquiry Mr. Regalado was acquainted for the first time with the security certificate that Mr. Axworthy and Mr. Kaplan had signed about him in the fall of 1980, after he had first left Canada. Although the certificate entails expulsion, even in the case of a refugee, an expulsion order cannot be carried out while a decision on a refugee claim is pending. Meanwhile Mr. Regalado was detained in the Parthenais prison in Montreal.

Only an adjudicator has the authority to impose detention, if he feels the person in question would not appear for an inquiry or poses a threat to public safety. The grounds for any continued detention must be reviewed every seven days. In Mr. Regalado's case, adjudicator after adjudicator upheld the detention with only the certificate as grounds. After two months - two months of offerings from many people to answer for his conduct and of challenges that instigating the subversion by force of another government, even if true, does not entail being a threat to the public safety - he was released.

During this time he had been accorded refugee status without much ado, and had filed an appeal of the deportation order against him with the Immigration Appeal Board.

APPOINTMENT

Mr. Raymond Terrillon, Representative of the United Nations High Commissioner for Refugees in Canada, takes pleasure in announcing the appointment of Mr. Douglas MacDonald as the new Public Information Officer of the Branch Office in Ottawa as of March 1, 1982. Mr. MacDonald succeeds Mr. Guy Ouellet, now Assistant Representative of the UNHCR in its Branch Office in Hanoi, Vietnam.

What happens to a refugee who is expelled from a country where he has sought asylum, on the grounds that he poses a security threat? Under the *United Nations Convention Relating to the Status of Refugees* a state is to allow such a refugee time in which to seek legal admission into another country. This is possible because one country's security risk may be another country's good citizen. An example was presented at the recent National Symposium on Refugee Determination of a refugee in a Scandinavian country who was a dissident from an African liberation movement the country of asylum was supporting. For another country he posed no problem, and the two governments arranged for him to receive asylum in that country instead.

In Mr. Regalado's case, Mr. Axworthy has indicated that Canada would not send him "back to El Salvador, or even to the U.S., which has a policy of not accepting refugees from that country and of sending them back;" and would instead "give him some time to find an alternative refuge or haven in a third country." Will the third country have to judge whether he is a security threat to it from the attestation? Or, as Toronto lawyer Jeffery House asks, are we prepared to reveal to France or Mexico or wherever Mr. Regalado may seek to go, information that we are not prepared to have presented to our own tribunals and courts, even in closed hearings, or to the person whose life is concerned?

The purpose of the security certificate is to protect information sources. The purpose of refugee status is to protect a refugee. This is the first time that the two have had to be weighed against one another. Even if we take the issue of national security very seriously; even if we take the protection of information sources very seriously; even if we have a tradition of using security certificates with the utmost care and discretion - none of which I intend to evaluate here - what is at stake in the concept of asylum would seem to tip the difficult balance enough that it is wrong to have a law that permits the fate of a refugee to be so arbitrarily decided as by Ministerial fiat.

If a security certificate is issued against a permanent resident it does not stand as irrefutable proof of itself. The *Immigration Act* provides for a Special Advisory Board which can request information from the Minister and the Solicitor General; can consult with government departments to independently assess the extent to which disclosure would be dangerous; must inform the person as fully as possible of the nature of the argument against him; and gives him an oral hearing. Even without addressing the adequacy of this measure, I would be interested to know why this avenue is not open to a refugee. □

Statement by the Honourable Lloyd Axworthy, Minister of Employment and Immigration concerning the case of Victor Manuel Regalado

I would like to clarify some of the issues arising from the case of Victor Manuel Regalado.

As you know, the Solicitor General and I have determined that it would be contrary to Canada's interests to permit Mr. Regalado to remain in Canada. Our decision was based not on what Mr. Regalado has said or written, but rather on the activities in which he was engaged.

Mr. Regalado, while in Canada, participated in activities which were contrary to the laws of Canada and which could result in danger to individual Canadians and to this country's national interest. The information compelling us to reach this conclusion cannot be revealed without damaging our national security. For this reason, the Solicitor General and I signed a Section 39 Certificate which has the effect of protecting the sources of our information.

The organization of public sentiment to pressure undemocratic governments to change their ways is not a prohibited activity in Canada. Mr. Regalado could not be deported for such activity.

Our decision in the Regalado case that this individual should not be allowed to remain in Canada does not diminish or detract from the government's commitment to respond sympathetically to the tragic situation in El Salvador . . .

As a matter of general policy, Canada has not deported Salvadorans to El Salvador since 1980. Mr. Regalado will not be forced to return to El Salvador. If he is ordered deported, I am prepared to allow him sufficient time to locate a third country which will accept him and to which he is prepared to depart on a voluntary basis.

United Nations Convention Relating to the Status of Refugees (1951)

Article 31 EXPULSION

1. The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order.
2. The expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the refugee shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority.
3. The Contracting States shall allow such a refugee a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary.

THE EXPLOITATION OF POTENTIAL IMMIGRANTS BY UNSCRUPULOUS CONSULTANTS

A Task Force Report

By A. Duff Mitchell

In 1981, 1047 claims for refugee status were filed by Indian nationals. Of the 400 that have been considered none have been accepted. "Unscrupulous travel agents", it seems, swindled hundreds of would-be immigrants, sometimes out of everything they owned, for information on how to exploit Canada's refugee policy to move here.

A prayer that a plea for refuge would be heeded has been sold as counsel for a refugee claimant's interview with a senior immigration officer.

For such "services" immigrants and refugees have paid thousands of dollars. The problem of the exploitation of potential immigrants by unscrupulous consultants mostly involves immigrants, but refugees, because they may be in particularly desperate situations, are also very vulnerable. So is our refugee determination system. The findings of an April 1981 report on this problem by the prolific Task Force on Immigration Practices and Procedures are summarized below.

A recent report on the exploitation of potential immigrants by unscrupulous consultants addresses the problem of immigration consultants who sell incompetent, fraudulent or inappropriate advice and other services for unduly large sums of money to gullible immigrants. The report makes a number of observations and recommendations, but it can barely conceal the fact that although the problem is readily identifiable, government responses are greatly constrained.

In the report the term "immigration consultant" is used to describe individuals other than lawyers or immigration officials who "hold themselves out as having expertise in immigration matters which will assist potential immigrants in their applications." "Unscrupulous immigration consultants" are those who make a practice of charging fees for incompetent services or unduly high fees for simple services, or who express misrepresentation and fraud in the extraction of fees. They might offer to facilitate the immigration process, to represent an applicant for refugee status, to bribe Canadian government officials, etc. They are able to operate by manipulating the vulnerability of the immigrant - his ignorance of Canadian laws and customs, his fear of deportation, and sometimes his trust in someone of his own language and culture.

A. Duff Mitchell is engaged in research on public management and policy analysis for completion of an M.P.A. at Carleton University in Ottawa.

The Problem of Control

But the control of unscrupulous immigration consultants may be largely outside the scope of the *Criminal Code* and the *Immigration Act*. Very little, if anything, can be done by the Canadian government about unscrupulous consultants operating abroad, where most abuses occur. Their operations are beyond the surveillance of Canadian government personnel and their victims are largely unknown. They are subject only to the local laws and authorities.

Within Canada, consultants who express misrepresentation and fraud in the extraction of fees, or who provide incompetent services and/or charge unduly high fees for simple services, can in theory be prosecuted under the *Criminal Code*. The fact that sentences can be as severe as ten years' imprisonment can act as a general deterrent. But successful prosecutions are only likely in blatant cases of fraud. It is very hard to prove "incompetent services" and that fees are "unduly high". Moreover, unscrupulous consultants operate largely orally and in private. Their victims are often reluctant to bring charges for fear of deportation. The areas where the consultant's service is visible, such as representation before an adjudicator at an inquiry, are not usually where fraudulent conduct occurs. Thus criminal prosecutions are highly unlikely.

Short-term Efforts

In a discussion paper on the report, Employment and Immigration Minister Lloyd Axworthy identifies some current government efforts to control the activity of unscrupulous consultants.

Immigration officials are distributing a flyer abroad, warning prospective immigrants of the problem. They are examining with the RCMP, local police forces and provincial law and consumer protection societies, what steps might be taken to encourage successful prosecutions in Canada. They are exploring the possibility of developing community resources as alternative sources of advisory services, for example, through providing instruction to local ethnic agencies in immigration law, procedures and practices. And they are trying to collect information about the whole field of immigration consultants, unscrupulous or otherwise.

But these initiatives are not put forward as means by which the problem is going to be significantly reduced, because in the areas where exploitation is most extensive, i.e., abroad and in private, the instruments of government control continue to be weakest.

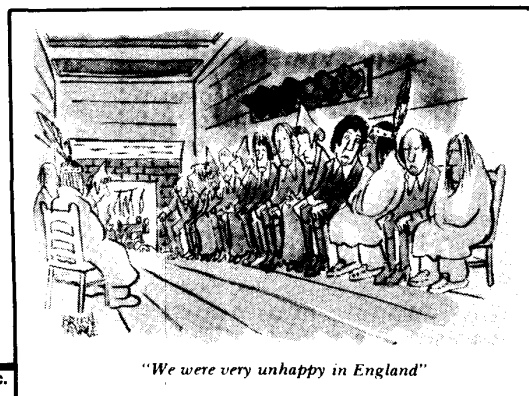
Long-term Possibilities

The report also examines several possible courses of long-term action. However, it becomes apparent that the more the government tries to control activities of unscrupulous immigration consultants, the more other problems arise. It would appear from a thorough reading of the report that the government recognizes that the cost of government action far outweighs any benefits that would be achieved.

For example, of the possible long-term solutions discussed, the one with the greatest potential for effectiveness would be setting up comprehensive licensing of immigration consultants. But to require all immigration consultants to meet standards of proficiency in order to obtain a license or else be subject to the *Immigration Act*. This would raise difficulties with respect to the constitutional power of the federal government, federal-provincial relations and obtaining House of Commons priority for such legislation. It would present the thorny problem of devising standards, especially since there is some question as to the appropriateness of the Canada Employment and Immigration Commission certifying the competence of individuals who could be acting as opponents of the Commission in adversary proceedings of a judicial nature. In addition, licensing would involve substantial cost. Even if these problems could be solved licensing would not address the problem of unduly high fees.

The report invites suggestions for other approaches. Copies of the full report are available from:

Distribution Unit
Public Affairs Division
Employment and Immigration Canada
12th Floor, Phase IV
Place du Portage
Hull, Quebec K1A 0J9



Drawing by Brian Savage; © 1981 The New Yorker Magazine, Inc.

NEWS IN BRIEF

CIDA GRANTS FOR REFUGEES IN PAKISTAN, SUDAN, CHAD

In recent months the Canadian International Development Agency (CIDA) has made the following allocations to assist refugees:

- \$3,000,000 to the United Nations High Commissioner for Refugees (UNHCR) for assistance to the more than 2,000,000 Afghan refugees in Pakistan, and \$5,000,000 worth of wheat to Pakistan to help feed the refugees;
- \$1,600,000 to the UNHCR to provide food, shelter, clothing and support for resettlement activities for refugees from Ethiopia, Uganda, Chad and Zaire in Sudan, and \$3,000,000 to Sudan for the purchase and transportation of Canadian wheat flour to aid refugees in Sudan; and
- \$80,000 to the Canadian Red Cross Society to support a Canadian medical team as part of a Red Cross relief program which is, among other things, providing shelter and water to returning Chadian refugees suffering from leprosy. Many of the hundreds of thousands of Chadians who had fled the recent civil war and the devastation it caused are currently being repatriated under a UNHCR program.

CANADIAN FOUNDATION FOR REFUGEES

At their annual meeting held December 7, 1981, the members of the Canadian Foundation for Refugees resolved that the Foundation would stop operations as of December 31, 1981, and created an ad hoc Trust Committee to study the future of the Foundation and to recommend, if possible, an operational plan for the future. The committee consists of Dr. Joseph Kage, Chairman, Dr. Joseph Du, and Father Mario Paquette. If a solution acceptable to the Board of Directors is not developed by May 1, 1982, the Foundation's funds on hand will be distributed to other refugee-supporting charities and the charter will be surrendered.

The resolution followed the refusal of Employment and Immigration Canada to provide the Foundation with the resources it felt were required to meet its objectives.

ANTI-PIRACY TASK FORCE

The government of Canada has contributed \$150,000 to the United Nations High Commissioner for Refugees (UNHCR)'s efforts to raise U.S.\$3.6 million to fund a Thai government program to combat piracy in the Gulf of Thailand.

In February of 1981 the United States had contributed a coast guard cutter,

two aircraft, a Q-boat to serve as a decoy refugee boat and \$2 million for six months' operating costs to the Thai government for the establishment of a Thai navy task force to suppress pirates preying on refugees and on local fishermen. Several pirates were apprehended and convicted.

But the program was terminated in September, 1982, when the Thai government requested U.S.\$1.4 million to continue the program but the U.S. offered only \$600,000. Following negotiations among international aid agencies in Geneva in October, 1981, the UNHCR agreed to fund a new \$3.6 million program.

Piracy statistics for one refugee camp alone, the one at Songkhla where the task force is based, are shown below:

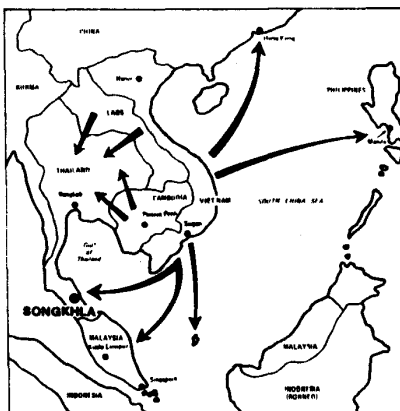
THAILAND PIRACY STATISTICS: SONGKHLA

January - December, 1981

(Based on Reports by Refugees only)

Persons Known to Depart Vietnam	14684
Deaths	568
Abductions	211
Missing	716
Arrivals	13191
Abductees Found	78
Missing Found	436
Total Arrivals	13705
No. of Boats	389
No. of Boats Attacked	310 (78%)
No. of Attacks	1087
Average No. of Attacks per Attacked Boat	3.5
No. of Boats Encountering:	
Murder	29 (7%)
Abduction	72 (19%)
Rape	139 (36%)
Assault	18 (5%)
Robbery	298 (77%)
Percent of Attacked Boats:	
Robbed	96%
With Females Raped	45%
With Persons Assaulted	6%
With Persons Abducted	23%
With Persons Killed	9%
No. of Rape Victims	560
No. of Assault Victims	26
Cause of Death:	
Shot, Knifed	11
Drowned (Thrown)	25
Drowned (Rammed)	317
Suicide	11
Sickness, Starvation	49
Other	155
Total Deaths	588

Source: UNHCR



Refugee routes, by land and sea.

Source: United States Committee for Refugees, 1981 World Refugee Survey.

RESOURCE EXCHANGE

TAX FORM IN VIETNAMESE

A Vietnamese translation of Revenue Canada's T1 short form (1981 General Income Tax Return) has been prepared by the Immigrant Services program of the Inter-Cultural Association of Greater Victoria. If your local Vietnamese or immigrant aid association has not received a copy and would find one helpful you might request one from:

Refugee Aid Centre
Inter-Cultural Association of
Greater Victoria
#417 - 620 View St.
Victoria, B.C. V8W 1J6
(604) 388-5580

INDOCHINESE REFUGEES:

The Canadian Response, 1979 & 1980

Employment and Immigration Canada has published a summary of the Indochinese refugee resettlement movement in Canada, focussing on the federal government's involvement. The report is most valuable for its statistical summary of the movement from January 1, 1979 to December 31, 1980, with breakdowns by age, sex, area of settlement, educational level, occupation, government expenditures, etc. Available from:

Distribution Unit
Public Affairs Division
Employment & Immigration
Canada
12th Floor, Phase IV
Place du Portage
Hull, Quebec L1A 0J9

AFGHANISTAN: A PORTRAIT

A Guide for Resettling Afghan Refugees

Of the 2,387,000 Afghan refugees in Pakistan alone, a few educated, urban or politically high-profile refugees with ties to the West have settled in the United States. A few have come to Canada as well: six have settled in British Columbia, five in Alberta, five in Saskatchewan, and nine in Ontario. For a guide to the history and culture of Afghanistan, designed to assist sponsors or other individuals involved with the resettlement of Afghan refugees, contact:

Refugee Information Office
Church World Service
Room 5281, 475 Riverside Drive
New York, N.Y. 10115
U.S.A.

A donation of \$2.50 is requested.

STATISTICAL SURVEY

APPLICATIONS FOR REFUGEE STATUS IN CANADA

Refugee Status Advisory Committee: Refugee Determinations

	Claims Received	Claims Completed	Claimants Determined to be Refugees	Backlog
1978*	685	639	235	79
1979	1165	1082	362	213
1980	1505	1003	263	619
1981	2592	2080	407	1434

Immigration Appeal Board: Refugee Redeterminations

Applications for Redetermination				Redeterminations		
Applications Received	Applications Considered	Applications Allowed to Proceed to Hearing	Backlog	Applications Heard	Applicants Determined to be Refugees	Backlog
99	94	37	5	37	20**	0
458	423	157	40	36	18	81
383	379	114	44	96	38	96

Refugee Status Advisory Committee:

Refugee Determinations, Breakdown by Country

	1980 Claims Completed	1980 Claimants Determined to be Refugees		1981 Claims Received	1981 Claimants Determined to be Refugees
Chile	357	143	India	1047	409
Poland	72	7	Poland	172	274
Czechoslovakia	41	7	El Salvador	129	174
Iran	41	8	Guyana	98	141
Cuba	35	15	Chile	95	126
Haiti	32	5	Iran	95	71
Guyana	31	0	Turkey	69	71
Argentina	28	17	Peru	66	60
India	25	0	Ethiopia	57	58
Yugoslavia	25	0	Lebanon	56	55
Iraq	20	2	Guatemala	56	54
Turkey	19	0	Czechoslovakia	56	51
El Salvador	19	4	Jamaica	55	49
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* Statistics for 1978 include April - December only; i.e., the period following the proclamation of the *Immigration Act, 1976*.
 ** Five cases heard in 1978 had not been decided at the time of the compilation of the report on that year, so if they were positive they are not included in this statistic.

Source: Refugee Status Advisory Committee and Immigration Appeal Board.

CONFERENCE

NATIONAL CONFERENCE ON THE RESETTLEMENT AND ADAPTATION OF VIETNAMESE REFUGEES IN CANADA

The Canadian Federation of
Vietnamese Associations

April 9 - 11, 1982

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REFUGEE

In November of 1981 Employment and Immigration Minister Lloyd Axworthy released a report by the Task Force on Immigration Practices and Procedures dealing with Canada's refugee status determination process. A summary of the report appeared in the last issue of *Refuge*. In February of 1982 the Minister convened a National Symposium on Refugee Determination in Toronto, to discuss some of the recommendations in the report.

The report and the Symposium drew together a great deal of critical thinking about our legal and humanitarian obligations to persons in Canada requesting protection as refugees. Many countries - in Central America, Southeast Asia, southern Africa - have recently proved unable or unwilling to adequately protect refugees from physical danger. As close to home as in the United States - a country traditionally hospitable to refugees - many Latin American refugees are in danger of being sent back to the countries from which they fled. The Task Force and the Symposium themselves have their origin in shortcomings, or at least perceived shortcomings, in our own fulfillment of our obligations. Yet at the same time, the principle of the responsibility of the international community to protect refugees is being taken more and more seriously. This issue of *Refuge* is devoted to the subject of refugee protection in Canada, and attempts to share some ideas on the subjects discussed at the Symposium.

Franz Krenz of the Office of the United Nations High Commissioner for Refugees noted in his address to the Symposium that the definition of a refugee requires a great deal of interpretation, since it contains such subjective elements as "persecution", "fear", and "well-founded". At the Symposium the Minister issued guidelines for its interpretation. These are printed in this issue for easy reference, together with a commentary by Howard Adelman.

Fulfilling our obligations to refugees in Canada also requires that we have procedures to determine whether a person falls within the definition. Much of the report and the Symposium dealt with these procedures, and especially with the question of whether a refugee claimant

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has a right to an oral hearing to defend his claim, and if so, at which stage in the process. James Hathaway provides one perspective on this question. Other insights are provided by one of the members of the Refugee Status Advisory Committee, Imre Rosenberg, who was once a refugee himself.

Normally a person in Canada who is determined to be a refugee is then admitted to Canada as a landed immigrant. But there are exceptions. The most controversial relate to national security. These are discussed in light of a recent cause-célèbre, the deportation order against Victor Regalado.

This issue also inaugurates a change in *Refuge* to make it possible to discuss refugee policy issues in greater depth. *Refuge* will be published in a longer format but less frequently - in September, November, January, March and May. We look forward to your comments and contributions.

Kristin Hanson