CANADA'S PERIODICAL ON REFUGEES

REFUGE

Vol. 10, No. 3 February 1991

EDITORIAL

The Canadian Council for Refugees recently held its semi-annual meeting in Montreal. This issue reprints an edited version of some of the resolutions passed at the meeting. This issue also endorses the call for an immediate reconsideration of the backlog program, though from a slightly different perspective than that of the Interchurch Committee. We have joined the non-government sector on repeated occasions in their critiques of government refugee policy. What we have not done previously is criticize the NGO sector. It is time to remedy that omission.

There is a risk. I find that it is easier to criticize mandarins and politicians than dedicated volunteers and underpaid workers in the NGO sector. The problem is not the status and role of refugee workers in the private sector. It is the proneness among some to brand a critic as an enemy and sellout to the government position. I find government officials and politicians acculturated to receiving criticism as if it is their destiny in life. I find many individuals in the private sector prone to adopting a sense of immunity to criticism because their stance is so morally correct.

The problem is not that the NGO criticisms are not generally valid. They usually are. The problem is the strident, self-righteous tone conveying a sense of permanent moral rectitude and total accuracy whereas the government embodies moral cowardice if not wickedness combined with misrepresentation if not downright deceit.

With all the good will, dedicated work, commitment and conviction, indeed of tremendous sacrifice, of the those in the private sector committed to helping refugees, the tone of the diatribe that has evolved now leaves me with a bad taste. The CCR meeting is the only one that I can remember where an individual actually boasted about being paranoid, as if paranoia were no longer a state of irrationality but had become a revered stance to adopt when dealing with government refugee programs and proposals.

The fact is the NGO sector needs to develop a degree of self criticism and not simply continue to play the role of superego to the government.

As a member of the CCR and active in the NGO community, let me try to initiate some of that self-criticism.

Let us take some of the resolutions passed at the CCR meeting and, ignoring for the moment the verbal excesses, attend to the content and the rationale. Let me start with a tough issue that in itself almost demands that we rally and support it - the grilling of survivors of torture by security and intelligence officials. The resolution calls for an end to such practices. Victims of torture immediately demand genuine sympathy and concern. Representatives of spy agencies invite scorn from humanitarians.

IN THIS ISSUE...

But the problem is far more complex than the simplistic resolution passed at the CCR meeting conveys. The Canadian and Security Intelligence Service is mandated by our parliament, not just our government, to undertake security checks. The Refugee Board is an independent tribunal; it should *not* and must not be concerned with whether a refugee claimant is a security risk. CSIS must have that as its major concern. CSIS cannot be expected to rely on the Refugee Board for such a determination. CSIS must do its own independent checks, including questioning torture victims who might also be security risks, as unpalatable as that may seem. The questioning of torture victims is not intended to test the credibility of those victims - that is a problem for the Refugee Board. The Board is concerned with whether a refugee claim is credible. CSIS has a different concern - to assess whether the individual is a security risk. CSIS may be faulted for insensitivity, for possibly relying on information supplied by the victim's torturer, etc. But to suggest that CSIS simply accept the credibility of someone because their "credibility" in a very different sense and context has been vouched for by the Refugee Board goes too far.

Family reunification is another issue that immediately appeals for our support. But the effect of the resolution passed by the CCR, as I read it, is to request that the Minister of Immigration admit the members of families (wives, children, parents, bothers and sisters, ?) of individuals who are not refugees but are in Canada illegally.

Let me provide one more example. In the resolution concerned with sponsorship models for the 90's, after beginning with an opening that is at best misleading if not just false ("Members of the Canadian Council for Refugees have consistently supported the principle of private sponsorship" when, in fact, some members openly criticized private sponsorship as an attempt by the government to dump its responsibilities for refugees onto the private sector), the resolution goes on to make two contradictory requirements. First, "Selection of refugees for whom private sponsorship applications have been submitted should be accepted," and secondly, "NHQ must ensure an accessible, speedy and credible review process for sponsorship refusals." Quite aside from the very questionable request to make sponsorship requests automatically accepted, if the advice were accepted then there would have been no refusals as a basis for a review process. One can't ask for no refusals and a review of refusals at one and the same time.

These criticisms are not just the meandering of a cantankerous old academic more concerned with sound logic than refugees. It is a concern with the process, care and integrity with which the CCR passes resolutions. The passing of a resolution should not simply be an opportunity for the NGO sector to vent understandable frustrations - a real danger. The CCR meetings should provide an apparatus for more carefully composing, debating and voting on such resolutions. *Howard Adelman, Editor*

CANADA'S PERIODICAL ON REFUGEES

REFUGE

Centre for Refugee Studies, York University,
Suite 104, Administrative Studies Building,
4700 Keele Street, North York, Ontario, Canada M3J 1P3
Telephone (416) 736-5663 Fax (416) 736-5837
Electronic Mail via Bitnet Address:
REFUGE @YORKVMI

Editor: Howard Adelman
Assistant to Editor: Ling Xia
Circulation Manager: Helen Gross
Assistant to the Circulation Manager:
Ching Man (C.M.) Wong

Refuge is dedicated to the encouragement of assistance to refugees by providing a forum for sharing information and opinion on Canadian and international issues pertaining to refugees. It is published four times a year by the Centre for Refugee Studies. It is a non-profit, independant periodical supported by private donations and by subscriptions. It is a forum for discussion, and the views expressed do not necessarily reflect those of its funders or staff.

All material in *Refuge* may be reproduced without permission unless copyrighted or otherwise indicated. Credit should be given to the author or source, if named.

Subscription rates for one year are $25.00 in Canada and US $30.00 overseas (includes postage). Please enclose payment with your order.

Layout and Typesetting:
Alpha Desktop Publishing, (416) 897-5678

Logo Design:
Dreadnought Co-operative Inc., Toronto

Second Class Mail Registration No. 5512 ISSN 0229-5113

Letter to the Editor:

LIMITED FACTS FROM IRB STATISTICS ON REFUGEE CLAIMS?

Just a note to alert you and the editors of "Refuge" to the fact that the statistics from the Refugee Board are limited and can misrepresent the situation.

When the new law came into effect, the Immigration Department began a new recording procedure which registered as claimants those persons who arrived in Canada, were not admitted any other way and who indicated a wish to make a refugee claim. Previously, the Immigration Department had registered everyone who was reported as an irregular arrival as a "potential refugee claimant". Thus between 1988 and 1989 the number of claims fell for this technical reason alone.

Using the new definition, the Immigration Department monitors refugee arrivals. The reports are called "Refugee Determination System-Monthly Report" of which we receive tables 1, 2, and 3. No one knows how accurate their figures are because there is no independent assessment. However, the statistics released are plausible. They tell the story before the Refugee Board becomes involved at the first screening hearing and after the Board has finished.

From this perspective, up to October 31, 1990, over 50,000 asylum seekers arrived. The reports shows that almost half the claimants came via the United States. At some major border points automatic return, refoulement, occurs to the United States. You recall the new law provides for return to the

USA until Canadian officials are available to conduct the first screening hearing. The scale is large - an estimated 500-1000 persons refouled per month. At these major border points the wait in the USA is at least a month. (Of course this refoulement to the USA discriminates against persons coming via the USA. Also, denying rights on the grounds of administrative convenience is counter to the Supreme Court of Canada decision on Singh *et al.*)

A new backlog or 'frontlog' is accumulating. Testimony before the 1987 Senate Hearings on the then proposed new law revealed that backlogs occurred in the part of the procedure controlled by the Immigration Department leading up to the first inquiry. At that time the churches argued that the new law did not deal with this problem because it retained the inquiry, now the screening hearing, controlled by the Immigration Department and presided over by an Immigration Adjudicator. The government statistics reveal that this is once again the case. The 'frontlog' now stands at over 17,000 cases and the average delay before the screening is reported as seven months. As of October 31, 1990, of the over 50,000 arrivals, only some 10,000 cases have been heard to completion and only about 7,000 refugees confirmed. It is hard to see this as success.

The Immigration statistics also show that 850 deportations have taken place. Voluntary sector groups have identified over 100 cases where serious mistakes in screening hearing or full hearing have occurred. These cases have been documented carefully. The inadequate "leave" for judicial review did nothing because it could not deal with the substance of a decision. Refugee serving groups report the lack of meaningful appeal as another major problem. It is true that this Minister has been persuaded to allow almost all of these cases to remain. However, not even those found and determined by voluntary groups to be refugees could be protected.

Continued on page 16

CANADIAN COUNCIL FOR REFUGEES RESOLUTIONS NOVEMBER, 1990

(EDITED)

BE IT RESOLVED THAT THE CCR :

Family Reunification:

1. **demand** the Minister of Employment and Immigration end the separation of families immediately by taking steps to reunite them in Canada;

2. **demand** the Canadian government act on its promise and implement and publish specific effective procedures to reunite children and 'familial' caregivers immediately regardless of the caregiver's status in Canada;

Refugee Claimants:

3. **request** the Government of Canada to end the practice of sending refugee claimants back to the U.S. prior to the hearing of their refugee claims;

4. **denounce** in very clear language subjecting refugee claimants who may have experienced torture to hours of intense, hostile questioning by the Canadian Security and Intelligence Service, to the Prime Minister of Canada, the Solicitor-General of Canada and the Minister of Immigration and seek a response to ensure an end to such practices and that the Human Rights Commission be made aware of such practices;

Backlog:

5. **demand** that the Minister keep her promise that cases in the Backlog be dealt with on a first come, first served basis, and cease the discriminatory practice of expediting cases believed to be manifestly unfounded;

6. **communicate** dissatisfaction to the Minister with the practice of denying landing for claimants in the backlog (for reasons related to their inability to support themselves financially and obliging such persons, many of whom are single mothers, elderly or with medical handicaps, to attend a full refugee hearing) and **demand** that the practice be stopped;

7. **endorse** and support through its members and executive the ICCR brief, "Civil Rights and the Refugee Claimant Backlog" recently submitted to the UN Human Rights Committee by letters to the Ministers of EIC, External Affairs and the Justice Department;

8. **consider** seeking funding to mount an individual legal challenge based on the principles of the delay of justice and the cruel and inhuman treatment inflicted, in violation of the UN covenants and the Canadian charter;

Iranians:

9. **write** to the Minister requesting that she instruct her officials to stop forcing Iranians to make application to the Iranian consulate for travel documents;

Sri Lankans:

10. **call upon** the Minister of Employment and Immigration

- immediately to impose a moratorium on the removal of Sri Lankans from Canada;

- permit Sri Lankan nationals in Canada subject to removal orders to apply for permanent residence;

and **urge** all CCR members to communicate this request to the Minister on their own behalf;

People's Republic of China:

11. **request** that the Minister of Employment and Immigration **administer** the program for nationals from the People's Republic of China (PRC) consistently and fairly;

implement the expectation that candidates would generally be accepted on humanitarian grounds (and not forced to make refugee claims);

allow their families in the meantime to come to Canada on Minister's Permits;

extend work authorizations;

Lebanese:

12. **ask** the Minister of Immigration to extend the moratorium on the removal of Lebanese from Canada;

Funding:

13. **requests** an immediate change in the ISAP eligibility criteria to include services to refugee claimants;

and that

the ISAP budget be increased to represent a minimum of 10% of the Federal Immigration Budget;

and that

the Executive of the CCR communicate this message immediately to the Minister.

14. **communicate** with the federal and provincial governments **requesting** them to establish an efficient funding mechanism that will result in greatly increased funding for the centres working with survivors of torture, and in the provision of funding for services where none are currently available;

request Health and Welfare Canada to evaluate the resources necessary to meet the needs of the survivors as outlined in the report "After the Door is Opened" and to consult groups working with refugees, including settlement agencies in the process, these resources to be available to all survivors immediately on arrival in Canada, regardless of immigration status;

strongly urge the federal government to provide training on the subject of the phenomenon of torture and its sequelae for Immigration officers, members of the Immigration and Refugee Board, Refugee Hearing Officers and adjudicators;

strongly urge that such training be made available to all lawyers dealing with refugees and made obligatory for all designated counsel;

strongly urge that full credence be given to professional evaluations of survivors of torture, including recommendations that questioning regarding the episode(s) of torture may result in retraumatization by those working within the refugee system, including the backlog process;

Appointments to the Refugee Board:

15. **write** to the Minister of justice and the Law Reform Commission and recommend the forming of a task force in consultation with the Canadian Bar association and the CCR and other interested parties to implement a fair and non-political appointment process for the CRDD (because of complaints of insensitivity, lack of an open system to evaluate competency or a procedure to receive complaints, and questionable qualifications of some of the appointees);

express support for the Ratushny report and agreement with its recommendations (to prefer qualifications and experience over political patronage; provision of guarantees of independence in relation to tenure, renumeration and immunity and protection from direct government interference; etc.);

On Sponsorship:

(Currently, there is a review underway on private sponsorship of refugees. The editor was elected Chair of the Steering Committee which is made up 50% of government civil servants and 50% from the NGO sector.)

WITH RESPECT TO SUBSTANCE:

16. **direct** that the following established principles be continuously articulated and upheld throughout the review process

as CCR positions (the first two were stated as fundamental non-negotiable elements of private sponsorship):

a) the naming of refugees in private sponsorship applications;

b) the need for the government to process all private sponsorship applications as swiftly as possible, with no ceiling restrictions;

c) maintaining the ability of private sponsorship to increase the number of refugees brought to Canada over and above the basic government quota as an important and highly valued component of Canadian immigration policy;

d) private sponsorship is complementary and must never replace a generous government sponsorship program;

e) selection of refugees for whom private sponsorship applications have been submitted should be accepted;

f) NHQ must ensure an accessible, speedy and credible review process for sponsorship refusals;

g) Master agreement holders and other sponsoring groups should not solicit or accept government funds for the administration of the private sponsorship program;

h) Private sponsorship applications must be given priority at the posts abroad and this must include swift processing and regular communication with the sponsor including implementing procedures to prevent unreasonable delays;

i) There must be a common agreement and a globally consistent application of assessment criteria;

j) Privately sponsored refugees must have equal access to any government provided settlement process;

WITH RESPECT TO PROCESS

17(a) **extend** a formal invitation to the Steering Committee to have the private sponsorship review national consultation take place in the context of the Spring consultation;

b) **communicate** with the membership on a regular basis on the progress of the private sponsorship review process;

c) **present** an examination and critique of the preliminary findings at the consultation and that there be an examination of and openness to a variety of models for private sponsorship;

d) **plan** jointly the agenda process and appropriate working papers for the consultation;

e) **request** that whatever funds the private sponsorship process has available for consultation be used to facilitate the participation of groups and persons who would be unable to attend the CCR meeting under normal circumstances (e.g., Master Agreement holders not members of CCR, persons who have participated in the review process)

18. **recommend** to the Steering Committee of the review project that the UNHCR be invited to participate in the review project;

SOME RESOLUTIONS WERE DIRECTED TO THE UNHCR

19. **urge** UNHCR to consistently promote the view that it is unsafe to forcibly return Sri Lankans to Sri Lanka at the present time, and **urge** partner organizations in Europe, the Pacific and the USA to adopt and promote a similar position;

20. **invite** the UNHCR to all future consultations and introduce into the program of each meeting a consultation with the UNHCR;

21. **ask** the UNHCR to maintain the positions of legal officers across Canada and to realize its required funding cut by other means. R

POLITICAL PRISONERS AND OPPRESSED PERSONS CLASS AND THE SOVIET UNION

David Matas

The self exiled class has ended. And it is high time it did. While it lasted, it was a form of favouritism to refugee claimants from Eastern Europe. Refugee claimants from Eastern Europe did not have to prove they were refugees. They were presumed to be refugees. As long as they were outside of Canada, outside of Eastern Europe, and sponsored by either the Canadian government or Canadian private sponsors, they could come to Canada as landed immigrants. Claimants from Indochina had the same favoured treatment.

But for everyone else, if they wanted to come to Canada as refugees, they had to prove they were refugees. Everyone else had to prove he/she had a well founded fear of persecution. And, in many cases, even where there were substantial grounds for thinking that there would be persecution, proof was not that easy.

Even at the height of the Cold War, the self exiled class did not seem all that fair. It was not as if Eastern Europeans were the peoples, from the advent of the class in 1974, to its ending in 1990, that were the worst persecuted. El Salvadoreans, Guatemalans, Argentineans, Lebanese, Sri Lankans, Haitians have suffered horrors that made the problems of Eastern Europe pale by comparison. If Canada were to presume people from certain countries to be refugees, a far better choice could have been made than the citizens of Eastern Europe.

The professed aim of the self exiled class was to protect against exit controls. Exit controls, which all Eastern European countries imposed, meant that a person who stayed outside his/her country longer than permitted was subject to punishment on return. Exit controls also meant that emigration was impossible from within Eastern Europe. The self exiled class served a dual purpose - protecting people against persecution from violation of exit controls, and allowing for immigration to Canada for Eastern Europeans once they had left Eastern Europe, because immigration while they still were within Eastern Europe was impossible.

There was a logic to the class, but it was not a logic that was consistently applied. China, North Korea, Mongolia all had exit controls as severe as those in Communist Indochina or Eastern Europe. But none of those countries was ever in a designated class. Citizens of those countries have never been presumed to be refugees. Claimants from the countries had to establish they met the refugee definition.

Although the self exiled class was legislated by cabinet under the authority to protect the displaced and the persecuted, the motivation was not strictly humanitarian. The motivation was a mixture of politics, economics and humanity.

Even while the Cold War was in full force, the logic for the self exiled class was not completely convincing. Once the Cold War ended the logic for the class disappeared. Yet the class carried on.

A refugee is someone who has a well founded fear of persecution. A person found to be a refugee is a person whom his/her government cannot or will not protect. A finding that a person is a refugee is a finding that his/her government is a persecutor.

A presumption that a person is a refugee, which is made with the self exiled class, is a presumption that the government of the country the claimant has fled is a persecutor. The self exiled class presumed, without proof in individual cases, that Eastern European government persecuted their citizens.

It is no coincidence that all the countries in the self exiled class and the Indochinese designated class were countries with Communist governments. The very existence of the self exiled class was a political statement of anti-Communism. It was a statement that Communism is persecution. No proof was necessary. That statement was not strictly humanitarian. It was also political.

Canada, through its history, has been a country of immigration. Canada sought immigrants, initially, to settle the country. Now it needs immigrants simply in order to sustain its economy.

When Canada admitted refugees from Eastern Europe through the self exiled class, the refugees did not come just for temporary protection from persecution. They came as immigrants. Their admission was not just part of refugee policy. It was part of overall immigration policy.

Refugee policy, generally, in the Government of Canada suffers from its coming out of the Immigration Department. No element of refugee admission is examined solely from the angle of protection. Because it is the immigration Department that decides on refugee admission, immigration and refugee policy become inextricably intertwined.

The self exiled class became a handy way to get immigrants from Eastern Europe, when no other obvious route was available. What, in reality, were immigrants from Eastern Europe, were forced into a refugee pigeonhole where many of them did not belong. For the government what was important was that these people be admitted to Canada, rather than the category into which they fell. The presumed refugee category, the

self exiled class, served the purpose of being a vehicle for immigration. So it was used.

Of course, the trouble with presuming Communists in Eastern Europe to be persecutors, the trouble with taking immigrants from Eastern Europe and calling them refugees, when many were not, was that the system was unfair to claimants elsewhere. Claimants not so favoured mights well have had a great deal more grounds for fearing persecution than claimants from Eastern Europe. But many such claimants could not enter as refugees, whereas Eastern Europeans could.

Even while the Cold War was in full force, the logic for the self exiled class was not completely convincing. Once the Cold War ended the logic for the class disappeared. Yet the class carried on. It ended on August 31 of 1990.

If the self exiled class was unfair to non Eastern European refugee claimants before the ending of the Cold War, that unfairness became glaring once the Cold War had ended. Refugee sponsorship in Canada is both private and public. Private sponsorship is unlimited. The ceiling is as high as private sponsors want to go.

Public sponsorship, on the other hand, is strictly limited. For 1990, the ceiling was set at 13,000. 3,500 of these 13,000 places were allocated to Eastern Europeans. From 1989 to 1990 the slots allocated to Eastern Europe actually went up, from 3,400 to 3,500. The overall total from 1989 to 1990 remained the same, at 13,000.

So, Canada saw the perverse result of increasing its government sponsorship of presumed refugees from Eastern Europe, as the Cold War ended, and decreasing, correspondingly, its government sponsorship of real refugees who met the refugee definition. Before the self exiled class ended, on August 31, 1990, it was not phased out. Instead, the programme was accelerated.

The continuation of the self exiled class beyond its real need had an impact on private sponsored refugees as well, because of the programme of travel loans. The Government of Canada offers travel loans to refugees resettling in Canada from abroad. The expenditure is a loan, not a gift. The experience of the Government of Canada is that the loans are invariably repaid, once the refugees come to Canada and start working. Without them, the refugees or their sponsors would be hard pressed to come up with the cash to bring the refugees to Canada.

Recently the statutory ceiling was reached for the total amount of these travel loans. So the loans stopped. Legislation went through Parliament this past spring to raise the ceiling. But, even though the legislation has passed, the loans have still not started up again. The legal limit may have been lifted. But the Government does not have the cash to float the loans.

For all the miseries that the USSR has suffered under Stalin and Brezhnev, no one blames themselves. Everyone blames another ethnic group. The Azeris blame the Armenians. The Kirghiz blame the Uzbeks. The Macedonian Turks blame the Georgians. The Ukrainians blame the Russians. And everyone blames the Jews.

And one significant reason why the loans have dried up is the self exiled class. I mentioned before that private sponsorship was unlimited. For months the self exiled class continued to operate in Eastern Europe even after exit controls had gone.

The continuation of the self exiled class in Canada and the lifting of exit controls in Eastern Europe allowed for the operation of an immigration scam. Would be immigrants from Eastern Europe who could not qualify under any other immigration program simply parked themselves outside of Eastern Europe, awaited private sponsorship, and then arrived.

These people were eligible for travel loans. And their using the time loans dried up the pool that was available and being used for real refugees elsewhere in the world.

Compounding the problem was the priority the government gave to travel loans for government sponsored refugees. Even after travel loans stopped for private sponsored refugees, loans continued for government sponsored refugees, including government sponsored refugees in the self exiled class. Travel loans ceased to be available for real refugees, sponsored by the private sector. They continued to be available to refugees in name only coming from Eastern Europe sponsored by the government.

Travel loans are more than just a government programme. They are a contractual arrangement with the sponsors. Sponsors of real refugees who do not come from Eastern Europe have seen the Government violate its contractual promise to provide loans because Eastern European self exiled immigrants have taken the total travel loan amount up to the ceiling.

The self exiled class, which kept running when the need for it had gone, created yet another problem for refugees generally, a delay in the granting of visas. The Government of Canada decided to delay granting visas for August and September, because its visa numbers had been rising ahead of the numbers targeted for the year. To keep the annual figures at targeted levels the government decided to withhold visas for August and September from all those who qualified in these two months for visas.

This visa withholding does not apply to government sponsored refugees. It does apply to private sponsored refugees, as well as to non refugee immigrants.

To my mind, the main culprit in the visa withholding is the policy of visa delay itself. It is an unnecessary hardship to delay resettlement of refugees or reunion of families for two months once they already qualify to enter. Nonetheless, if we accept this visa delay policy as given, then one element that

caused its introduction was the self exiled class. A self exiled class run wild once exit controls had disappeared from Eastern Europe helped to create a build up of numbers overall larger than anticipated for the granting of visas. The self exiled class helped to generate the visa delay policy.

So the ending of the self exiled class is welcome. But, I believe the Government has gone too far. It has gone from one extreme to another. Before it treated Eastern Europeans as if everyone was a presumed refugee. Now it treats every Eastern European as if he/she were in the same situation as everyone claiming refugee status anywhere else in the world.

However, there is unique situation that the Government policy makers have overlooked, the situation in the Soviet Union. The Soviet Union is in the process of disintegrating through ethnic violence in the republics. Communism repressed national ethnic conflicts, but did not resolve them. Now that the Communist lid had come off, these conflicts have returned, with even greater force than they had before.

For all the miseries that the USSR has suffered under Stalin and Brezhnev, no one blames themselves. Everyone blames another ethnic group. The Azeris blame the Armenians. The Kirghiz blame the Uzbeks. The Macedonian Turks blame the Georgians. The Ukrainians blame the Russians. And everyone blames the Jews.

Inter ethnic violence in the Soviet Union is everywhere. The Soviet authorities oscillate between doing nothing and overreacting in a return to bloody repression.

A huge internal refugee population has been created. When I was in the Soviet Union in June, 1990, there was an estimated 700,000 of these internal refugees, fleeing danger in their home republics and seeking protection in another.

The Soviet Union is ill equipped to deal with this internal refugee population. Restrictions on internal freedom of movement mean that refugees cannot work, cannot get residences, cannot send their children to school in the new locations to which they have fled. Refugees are living on the streets in Moscow, on the floors of buildings without bedding.

These people need the benefit of resettlement outside the Soviet Union. But it is virtually impossible for them to get it. To be within the refugee definition a person must be outside the country of his/her nationality. A person who has not fled is outside the protection of Refugee Convention, outside the mandate of the United Nations High Commission for Refugees.

If these international refugees could leave the Soviet Union, they could qualify as refugees. The UNHCR Handbook on Procedures and Criteria for Determining Refugee Status says:

"The fear of being persecuted need not always extend to the whole territory of the refugee's country of nationality. Thus in ethnic clashes or in cases of grave disturbances involving civil war conditions, persecution of a specific ethnic or national group may occur in only one part of the country.

In such situations, a person will not be excluded from refugee status merely because he could have sought refuge in another part of the same country, if under all the circumstances it would not have been reasonable to expect him to do so."

The Political Prisoners and Oppressed Persons Class was not introduced to deal with a country like the Soviet Union - a vast country with an internal refugee population.

The trouble is that these people cannot leave. As exit controls in Eastern Europe have disappeared, entry controls have arisen. It is no longer possible for Eastern Europeans to go to Italy or Austria the way they used to go to wait for resettlement in Canada or other countries. Italians and Austrians, Europeans generally, are no longer letting such people in. Now that Eastern Europeans can leave, the acquiring of visas from the West becomes more and more difficult.

Israel has become a country of asylum to Soviet Jewish internal refugees. But the desire to flee far exceeds the Israeli generous response. Israel will receive 100,000 Jewish refugees this year from the Soviet Union. But the requests to flee to Israel that have come from within the Jewish community of the Soviet Union are now over one million.

The United States has shut off one avenue of entry from the Soviet Union, but opened up another. The U.S., like Canada, used to allow admission to the U.S. for Soviets as refugees when an application was made in a third country. The U.S. has closed third country processing down and shifted it, instead, to Moscow.

For 1990, the U.S. has said it would admit 50,000 refugees directly from within the Soviet Union. It has categorized four categories of Soviets as presumptive refugees - Jews, Evangelicals, Ukrainian Orthodox Christians and Ukrainian Catholics. These presumptive refugees do not have to meet the full rigours of the refugee definition, but instead only a modified form of it. They have to show they have a credible basis for a refugee claim.

This credible basis test is a test that is familiar to Canadians. It is the test that is used inland in Canada for screening out manifestly unfounded claims. For the inland claims procedure in Canada a person who passes credible basis goes on to a full hearing about whether or not he/she is a refugee. A person who fails credible basis is subject to removal 72 hours after the removal order is made.

There is something else in the American procedure that should also be familiar to Canadians - the guidelines for the refugee definition and credibility assessment. I was part of a Government of Canada task force in 1981 that drafted guidelines on the refugee definition and credibility assessment. The Americans have adopted these guidelines word for word in their entirety and incorporated them in instructions, not just to the Soviet

Union but to all U.S. overseas visa offices processing refugee claims.

Canada, to my knowledge, has done no such thing. I cannot help but wonder why Canadian drafted guidelines should be good enough for the Americans, but not good enough for the Government of Canada.

The U.S. system is, in some ways, more generous, and in other ways, less generous that the Canadian system for Soviet refugees. Canada still allows Soviet refugee admission from third countries, if the Soviet refugees can get to a third country to make their claims. The U.S. does not. Canada does not, however, allow direct refugee admission from within the Soviet Union as the U.S. does.

The notion of direct refugee admission from the country of origin, though not part of the U.N. Refugee Convention,is part of Canadian law in another context. One of the Canadian designated classes, designated to protect the displaced and persecuted, is PPOP - the Political Prisoners and Oppressed Persons Class.

The Political Prisoners and Oppressed Persons Class includes people who otherwise meet the refugee definition except for the fact that they remain in their country of citizenship. Currently there are three countries in the class - Guatemala, El Salvador and Chile.

The Political Prisoners and Oppressed Persons Class was not introduced to deal with a country like the Soviet Union - a vast country with an internal refugee population. Instead the class had an altogether different objective in mind. Its objective was to justify visa imposition.

As repression flourished in Latin America in the seventies and eighties, Canada received, spontaneously, a large number of refugee claimants, from countries for which Canada had imposed no visa requirement. Once a visa requirement is imposed a person will not be allowed on an airplane to come to Canada without a visa. Without a visa requirement, a person can come to Canada with only a passport, and, on arrival, claim refugee status. These spontaneous arrivals from Latin America came in significant enough numbers to worry immigration officials.

So, the Government of Canada imposed visa requirements on the countries to cut off the flow of spontaneous arrivals. However, simply imposing a visa requirement and doing nothing more would have prevented real refugees from escaping the worst forms of persecution. The Government, at the time it imposed a visa requirement on a country, inserted the country into the Political Prisoners and Oppressed Persons Class or its predecessor the Latin American designated class. The idea was that these refugees would have a safety valve. They could not come to Canada to claim protection, but they could claim protection at the Canadian visa office in their home country. If it was granted, then they could come.

The refugee problems of Eastern Europe have not ended with the end of the Cold War. There remains a substantial refugee population in the Soviet Union that needs both protection and resettlement.

There has been a long standing debate between the non governmental community and the government about this trade off between visa imposition and home country refugee processing. The feeling of the non governmental community is that home country refuge processing does not offer the protection that refugee processing in Canada would do.

Claimants remain in danger while the claim is being processed. Due process procedural protections are nowhere near as high at Canadian visa offices abroad as for the inland claims systems. Evidence of sequelae of torture is harder to get from doctors in the home country, who themselves fear persecution if they assist in refugee claims, than in Canada. There are many considerations in this debate. I have just mentioned a few. The whole debate is set out in ***"Closing the Doors; The Failure of Refugee Protection"***, a book I have written with Ilana Simon.

The point I would make here is this debate is not relevant to refugee claims made within the Soviet Union. El Salvador and Guatemala are small countries. Chile, though larger, is concentrated in Santiago. Persecution in these countries has come from government oppression, not from ethnic conflict. A person in danger in one place in each of these countries is in danger everywhere within the country.

Armenians, however, in Moscow claiming refugee status from the Canadian embassy there, if they could, are not in the same danger from Azeris as they would be if the claims were made in Azerbaijan. It is not reasonable to expect Armenians to resettle in Moscow. It is reasonable to allow them to apply for Canadian protection from Moscow. PPOP does not make much sense for Latin America. But is makes a lot of sense for the Soviet Union.

I propose that the Soviet Union be designated as a country coming within the PPOP list. That would give us a system somewhat like the Americans to allow for Soviet refugee admission from within the Soviet Union. It would be responsive to the international refugee problem the Soviet Union faces. And it would be, to use the terms of the Canadian Immigration Act, in accordance with Canada's Humanitarian tradition with respect to the displaced and the persecuted.

The refugee problems of Eastern Europe have not ended with the end of the Cold War. There remains a substantial refugee population in the Soviet Union that needs both protection and resettlement. The end of the self exiled class has turned a blind eye to this problem. Putting the Soviet Union in PPOP would help to address the needs of these internal Soviet refugees. R

(David Matas is chair of the working group on Overseas Protection of the Canadian Council for Refugees.)

THE BACKLOG: BARBARA'S ACHILLES HEEL?

Howard Adelman

Barbara McDougall, our Minister of Employment and Immigration, has managed a brilliant balancing act. She has raised the immigration plan to 250,000 per year without arousing a massive backlash. She has refused to introduce the draconian and unworkable provision for turning back refugee claimants arriving from countries where they sojourned for more than 48 hours and where they theoretically could have made a refugee claim. The new refugee determination system is sputtering along in spite of the slow pace of reform, many inexperienced refugee lawyers and the large number of claimants.

Is Barbara's Achilles heel the backlog, those refugee claims dating back two and more years prior to the introduction of the new system? The Interchurch Committee claimed, in its brief to the United Nations Committee on Human Rights, that there are 101,853 cases in the backlog and 122,223 affected individuals, though the department operates on the assumption, for planning purposes, that there are still only 85,000 cases because that is the number for which the department was funded. The irony may be that, in fact, the latter is close to the correct figure because of poor departmental record keeping - double counting, including old files in the estimates, etc. We will use the estimate of 85,000 cases.

On December 28, 1988, Barbara announced that she was launching a two year plan to clear up the refugee claims backlog through a case-by-case hearing system to determine which claimants were credible or had humanitarian and compassionate grounds to be allowed to remain. **The backlog was supposed to have been cleared up by the end of December 1990. As of the end of October 1990, there are still 58,432 undecided cases. By September of 1991, the revised deadline for clearing up the backlog, will the task be done?**

To the end of October 31, 1990, only 167 individuals have actually been deported. The reason that only 167 of 1,121 cases have been deported is a comment on the complicated bureaucracy needed to remove people from Canada. Only 595 of the 1,121 cases that received negative decisions have received their removal order; 526 are pending. Of the 595, 315 are waiting for a review, and only 280 cases have been ordered deported. Between that order and making the actual arrangements - visas, transport, escorts, etc. - there are additional delays. The costs of deporting each individual is, therefore, very high. The cost of clearing up the backlog in two years was estimated at just over $114,000,000. Add to that the estimated costs of actual deportation not included in this figure of $3,200 per deportee on average. The deportation total is projected to reach 217 by the end of the year. Using the costs for processing only, the expenses for deportation to the end of 1990 will be $114,201,000 + (217 x $3,200) = approx. $115,000,000, over one half million dollars per deportee. Even if the 2,936 confirmed voluntary departures are thrown into the total, an estimated 3,246 by the end of 1990, the cost is about $33,000 per case.

A Parliamentary Committee estimated that the clearance, at the rate then being processed, would take over 6 years at a processing rate of 13,000 cases per year at full strength, and could cost over half a *billion* dollars, **almost as much as the UNHCR receives in a year to support 15 million refugees around the world.**

The speeded up paper processing started in the summer of 1990 will undoubtedly reduce the period to clear the backlog, but will it enable the September 1991 revised target to come close to being met? Before we look at the actual figures processed in the last two months, it is important to understand that the backlog cases are being handled in different streams. The backlog includes those cases which had been opened already under the old system, prior to the new legislation. An estimated 30,000 cases have had an examination under oath and even a hearing. These cases are being reviewed at headquarters. 5,637 to the end of

The new refugee determination system is sputtering along in spite of the slow pace of reform, ...

ESTIMATED COST OF BACKLOG PROCESSING

	Total Program	Processing Only	Per Year
Accommodation	$10,471,000	----------	----------
Language Training	45,900,000	----------	----------
Operations	78,304,000	$78,304,000	$39,152,000
Settlement	11,251,000	----------	----------
Start-up	2,255,000	2,255,000	----------
Subtotal	**148,181,000**	**80,559,000**	**39,152,000**
Immigration	21,435,000	21,435,000	10,718,000
IRB	12,207,000	12,207,000	6,103,000
Total	**181,823,000**	**114,201,000**	**55,973,000**

October have been determined to have passed the credible basis test and have been given landed status. Of the balance that have gone to a hearing and been decided, 1815 have been accepted, 680 have been rejected and the rest are waiting for a determination of their cases. In other words, for 30% of the total case load (30,000 of 85,000 cases), 30% of the cases have been processed to the end of October (8,132 of 26,568) by means of a paper review. This does not auger well for the promise that the cases will all have been processed by September of 1991.

There is another peculiarity when we examine the figures from this oldest set of cases. They constitute 30% of the total case load. But they contain 37.5% of those accepted (5,637 + 1,815 of 19,845) and a startling 60% of those rejected, which initially seems surprising since most of the 30,000 were believed to come from refugee producing countries. But all it means is that of the balance of the other cases, a much higher proportion have agreed to leave Canada voluntarily.

Of the balance of the 55,000 "new" cases, the vast majority of the files have not been opened. Those claimants are being asked to fill out long questionnaires for a paper process. In Montreal, by the end of December, kits will have been sent to every claimant to complete the new forms and all the files are expected to be opened. In Toronto and Mississauga, with well over 50% of the case load, all the files will not be opened by the end of December, but all are expected to receive them by the spring of 1991. The claimants will have 6-8 weeks to complete the questionnaires and department officials estimate that it will take another 2 - 3 months to provide a paper review of the cases. The claimants are subdivided into two streams, those the department intends to concede and those who will be given a hearing - those cases which the department intends to contest. The critical issue is not how many files are opened, but how many will be processed under the speeded up paper review. Since the paper review was only initiated in the summer, we cannot expect any results until the beginning of 1991 so we have no way of knowing whether the speeded up paper process will enable the job to be completed by September.

But the most startling figure is the large numbers going underground. 33% to 50% are not leaving anyway and those proportions are increasing dramatically

Nevertheless, a close examination of the statistics to date are very revealing. The actual number of cases being processed has increased, but not significantly. At the October rate, it will still take almost three more years to clear the backlog. However, if the paper processing works as planned, and one has every reason to be sceptical about this, the real problem in the system may be elsewhere. Of the total number of cases, extrapolating from the present, the whole process will result in at most 3,700 negative decisions. Adding voluntary departures will add at most another 7,700 cases. In other words, to get rid of at most 11,000 cases, 13% of the total, we are going to spend $170,000,000 in processing costs and a further estimated $30,000,000 in direct deportation charges, or about $40,000 per each person deported. If the voluntary departures are factored in, the cost for every individual made to leave is almost $15,000 per case. All this assumes that the program can be completed by the end of 1991 and, if it cannot, the costs go up proportionately.

But the most startling figure is the large numbers going underground. 33% to 50% are not leaving anyway and those proportions are **increasing dramatically**. The explanation for the dramatic rise in this figure may be found by looking more closely at the voluntary

BACKLOG STATISTICS - OCTOBER 1990

TO DATE	Sept. 1990	Oct. 1990	Month Incr.	To End 1990	Total 1991	Balance	*Projected on* Oct. 1990
Opened	42,667	45,516	2,949	51,414	n/a	33,586	33,586
Decided	24,364	26,568	2,204	30,976	26,448	54,024	54,024
Accepted	18,728	19,845	1,117	22,079	13,404	38,507	27,380
Balance	5,536	6,723	1,087	8,897	13,044	15,517	26,644
Non-Accepted							
Negative	969	1,121	152	1,425	1,824	2,485	3,726
Vol. Dep.	3,869	4,066	197	4,460	2,364	7,779	4,829
Warrants/Disapp.	798	1,536	738	3,012	8,856	5,253	18,089
Total	24,364	26,568	2,204	30,976	26,448	54,024	54,024
Deported	142	167	25	217	300		
Departed	2,781	2,936	155	3,246	1,860		

departure figure. Of the 2936 confirmed departures to the end of October, 1750 of them were Portuguese, 60% of the total. There were 4,066 in the backlog and that large a number were unable to obtain bookings back to Portugal in the busy travel period. When the Portuguese who are voluntarily leaving have all returned to Portugal, the proportions of voluntary departures can be expected to drop dramatically and the numbers that will go underground can be expected to increase beyond the proportions and numbers projected. We can anticipate a class of at least 18,000 illegals living underground.

Is the process worth it? I originally supported Barbara's attempt to balance humanitarian concerns, authentic refugee determination and deterrence for clearly abusive cases. I thought a liberal and speedy process for adjudicating the refugee claims in the backlog tempered by a humanitarian concern for some of the others and deportation for abusers without humanitarian mitigating factors would set a proper balance. Whether or not I was wrong at the time, is it correct to continue such support under the present circumstances?

There is a campaign being organized at the present time by the refugee support community for an amnesty. Clearly, these groups are not supporters of those who abuse the refugee system to jump from the immigration queue. It jeopardizes the refugee system and creates extra work for them. Is the call for an amnesty warranted?

Why have they urged an amnesty? Because the system is inhumane. Because in the defense of the rule of law, the law is being abused. Because rather than deterring future abusers, the method of dealing with the backlog is setting the stage for future abuse.

It is not necessary to go into the history of the backlog, but it does help to know that the amnesty introduced to be the last one ever was done so **before** a new system was in place to deter new abusers. In fact Bill C-55 was not even tabled until **8 months** after the amnesty. At the time there was widespread suspicion that the flood of abusers who took advantage of the window of opportunity were part of the dramatic scare tactics to drum up public support for Bill C-55, particularly the draconian measure of the safe third country option which would have prevented most legitimate refugee claimants from ever having the opportunity to make a refugee claim in Canada. In any case, the situation is dramatically different at the present time. A new system is in place. It is not being abused by a flood of manifestly unfounded claims. The suffering the individuals have endured in the backlog is more than enough to have deterred abusers in the future.

The arguments for those urging amnesty can be summarized easily.

If, in order to deal with abusers, genuine refugees are made to suffer further misery by being pushed to the back of the line, the cost is much too high. If, in order to uphold the abstract rule of law, we break our own laws in the process, the cost is much too high. If we rewrite history and blame the previous amnesty for the subsequent abuse, the cost is much too high. If after years and years in the backlog, it takes another year for a claimant to get landed and at least a further year to be reunited with their immediate families, disregarding for the moment the risk to torture and abuse of the relatives of genuine refugee claimants in the backlog, the cost to that family is much too high. When the dedicated and underpaid workers in our ISAP agencies who deliver immigrant aid services to immigrants and refugees have their work loads clogged up with those in the backlog, the costs are much too high.

An Ontario court has ruled that justice delayed more than 18 months is unjust. In the case of the backlog, the justice delayed for many in the system has been three, four and five years.

Are these arguments convincing?

It is fair to say that Barbara is, I believe, genuinely concerned with separating out fair treatment for genuine refugee claimants while providing strong deterrence for abusers. Barbara is certainly concerned with upholding the rule of law and seeing that abusers are not rewarded for jumping the queue. Barbara does not want to set a precedent with another amnesty which might encourage future abuse.

But is this the way to go about it? Judge Jerome had to rule that the system violated our own law demanding humanitarian treatment. The system has not developed a common standard of treatment. It is beset by arbitrariness and the requirement that humanitarian considerations govern the process. No one who is at all acquainted with the degree of suffering of those in the backlog can make any claim for humanitarian consideration. The suffering has now been documented, not only by the Interchurch Committee in Toronto, which can be accused of having its own bleeding heart to mollify, but by an independent research institute at the Université de Quebec, Le Laboratoire de Recherche en Ecologie Humaine et Sociale (Le LAREHS). The depression, anxiety, loneliness, sleeplessness, nightmares and psychosomatic symptoms that pervade not only the abusers but the genuine refugee claimants waiting years in the backlog stream can justly be labelled cruel and inhuman punishment for those who abused the system and totally unwarranted for those trapped by our own mistakes.

An Ontario court has ruled that justice delayed more than 18 months is unjust. In the case of the backlog, the justice delayed for many in the system has been three, four and five years. The United Nations Committee for Human Rights could rule that Canada, a leader in the defence of human rights, has indeed abused the rights of those in the backlog according to Article 2 requiring effective remedies for abuse, Article 7 which prohibits cruel and inhuman treatment, Article 23 demanding protection of the family and Article 26 demanding equal

treatment before the law in accordance with the International Covenant on Civil and Political Rights.

The government held its nose when 13,000 Poles used the opportunity of the self-exiled class provisions (before that class was eliminated) to enter Canada as refugees when Poland was no longer, and had not been for some time, a refugee producing country. We allowed them to "abuse" the principle of the system if not

Now is the time to reverse ourselves before we dig ourselves in deeper.

the law. We cannot claim purity in either our motives, procedures or conduct to justify standing on the high horse of principle and, at the same time, perpetuating unnecessary suffering. And the costs of upholding principles which are already seriously compromised are enormous. If we add to these factors the very high cost for each case actually deported, the very high numbers that will enter the illegal underground in Canada and the very doubtful projection that the process can ever be completed by the end of 1991, it is very difficult to continue supporting the present system. However, if an amnesty is offered now, there is a further complication. Some will have been deported while if you got into the stream much later, you will have earned an amnesty. It just would not be fair.

But only 167 have been deported to the end of October and about 200 cases will only have been deported by the end of 1990. Now is the time to reverse ourselves before we dig ourselves in deeper. I now urge the Tory government and Barbara to change the stubborn defence of the present method of dealing with the backlog. R

(Howard Adelman is a Professor of Philosophy at York University and directs the Centre for Refugee Studies, a research centre focused on refugees which was recently recognized by the Government of Canada as a Centre of Excellence.)

IF YOU LOVE, THEN HAVE COMPASSION...

Fr. Olivier Morin SJ,
Jesuit Refugee Service, Toronto

For four and a half years I have been serving Vietnamese refugees in the camp in Southeast Asia: a year on Pulau Bidong, in Malaysia, and three and a half years at Phanat Nikhom in Thailand. During this period, the situation has changed in the camps, principally because of the decision taken that Vietnamese who have arrived after 14th March, 1989, will not be recognized as "refugees", but will only be known as "asylum seekers".

Whatever my own opinion about the moral and humanitarian value of such a decision, I am forced to accept it as a fact and to assess the consequences. Nothing can allow us to think seriously that this decision will be reconsidered. On the contrary new events, such as the significant migration from East Europe, for example, can but reinforce it.

From this decision several consequences have followed:

1. A very small number of asylum seekers (between 10% and 16%), who have documentation proving they have suffered persecution or that their lives were threatened, have been recognized by the ad hoc commission (they are 'screened in') and can seek to be accepted in a third country. Minors who have their father or mother in a third country may be screened in, but a sponsorship by a brother, uncle or friend helps no one.

2. The great majority do not possess such documents or cannot substantiate their claims and so are rejected ('screened out').

a) From the moment of arrival in the camp, some know very well that they have no chance, and rather than wait long months in difficult conditions they prefer to accept the evidence and request 'voluntary repatriation'. But they must present themselves to a Vietnamese government delegation, and this is an obstacle that diminishes their desire to return to Vietnam. What are the guarantees? Even the UNHCR is vague on this point.

b) Some, hoping against all hope, want to try their luck and wait their turn to be screened. This is a very slowprocess. The recent arrivals will wait one or even two years if nothing is done to speed up the pace. They can also appeal against an unfavourable decision, but the results are negligible. After all this they will still be in a hopeless situation and caught in the severity of camp life.

c) Finally, there is a group who do not actually request voluntary repatriation, but who have not formally opposed a return, so the first asylum country decides to send them back. This group is not normally required to go before the Vietnamese delegation. They may feel unlucky, but they do not lose face. They are something like those who missed the boat before it left the beach.

Having lived at Phanat Nikhom and followed this matter quite closely my personal convictions are as follows:

- Nothing, absolutely nothing can persuade me that the date limit of 14 March, 1989, will be lifted. So our responsibility is considerable, and what possible considerations are there that can allow us to say: "maintain your refusal". We are playing with human lives if we insist on such a position. It would be wrong for us to propose our wishes (which are easy to voice from the freedom of our new countries), if they conflict with the reality.
- In such a situation we have no right to encourage false hopes. The truth, however painful it may be, must be spoken, otherwise we are responsible for the (possible) desperate actions that asylum seekers take when they have been misled even by those who wish to help them.
- The approach mentioned in (c), above, may offer one possible way forward, particularly if we can offer some solidarity to those sent back. It avoids the humiliation of having to publicly admit to failure. Another problem is that in order to leave, the Vietnamese have sold everything, thus their return is made even more difficult

treatment before the law in accordance with the International Covenant on Civil and Political Rights.

The government held its nose when 13,000 Poles used the opportunity of the self-exiled class provisions (before that class was eliminated) to enter Canada as refugees when Poland was no longer, and had not been for some time, a refugee producing country. We allowed them to "abuse" the principle of the system if not

Now is the time to reverse ourselves before we dig ourselves in deeper.

the law. We cannot claim purity in either our motives, procedures or conduct to justify standing on the high horse of principle and, at the same time, perpetuating unnecessary suffering. And the costs of upholding principles which are already seriously compromised are enormous. If we add to these factors the very high cost for each case actually deported, the very high numbers that will enter the illegal underground in Canada and the very doubtful projection that the process can ever be completed by the end of 1991, it is very difficult to continue supporting the present system. However, if an amnesty is offered now, there is a further complication. Some will have been deported while if you got into the stream much later, you will have earned an amnesty. It just would not be fair.

But only 167 have been deported to the end of October and about 200 cases will only have been deported by the end of 1990. Now is the time to reverse ourselves before we dig ourselves in deeper. I now urge the Tory government and Barbara to change the stubborn defence of the present method of dealing with the backlog. R

(Howard Adelman is a Professor of Philosophy at York University and directs the Centre for Refugee Studies, a research centre focused on refugees which was recently recognized by the Government of Canada as a Centre of Excellence.)

IF YOU LOVE, THEN HAVE COMPASSION...

Fr. Olivier Morin SJ,
Jesuit Refugee Service, Toronto

For four and a half years I have been serving Vietnamese refugees in the camp in Southeast Asia: a year on Pulau Bidong, in Malaysia, and three and a half years at Phanat Nikhom in Thailand. During this period, the situation has changed in the camps, principally because of the decision taken that Vietnamese who have arrived after 14th March, 1989, will not be recognized as "refugees", but will only be known as "asylum seekers".

Whatever my own opinion about the moral and humanitarian value of such a decision, I am forced to accept it as a fact and to assess the consequences. Nothing can allow us to think seriously that this decision will be reconsidered. On the contrary new events, such as the significant migration from East Europe, for example, can but reinforce it.

From this decision several consequences have followed:

1. A very small number of asylum seekers (between 10% and 16%), who have documentation proving they have suffered persecution or that their lives were threatened, have been recognized by the ad hoc commission (they are 'screened in') and can seek to be accepted in a third country. Minors who have their father or mother in a third country may be screened in, but a sponsorship by a brother, uncle or friend helps no one.

2. The great majority do not possess such documents or cannot substantiate their claims and so are rejected ('screened out').

a) From the moment of arrival in the camp, some know very well that they have no chance, and rather than wait long months in difficult conditions they prefer to accept the evidence and request 'voluntary repatriation'. But they must present themselves to a Vietnamese government delegation, and this is an obstacle that diminishes their desire to return to Vietnam. What are the guarantees? Even the UNHCR is vague on this point.

b) Some, hoping against all hope, want to try their luck and wait their turn to be screened. This is a very slowprocess. The recent arrivals will wait one or even two years if nothing is done to speed up the pace. They can also appeal against an unfavourable decision, but the results are negligible. After all this they will still be in a hopeless situation and caught in the severity of camp life.

c) Finally, there is a group who do not actually request voluntary repatriation, but who have not formally opposed a return, so the first asylum country decides to send them back. This group is not normally required to go before the Vietnamese delegation. They may feel unlucky, but they do not lose face. They are something like those who missed the boat before it left the beach.

Having lived at Phanat Nikhom and followed this matter quite closely my personal convictions are as follows:

- Nothing, absolutely nothing can persuade me that the date limit of 14 March, 1989, will be lifted. So our responsibility is considerable, and what possible considerations are there that can allow us to say: "maintain your refusal". We are playing with human lives if we insist on such a position. It would be wrong for us to propose our wishes (which are easy to voice from the freedom of our new countries), if they conflict with the reality.
- In such a situation we have no right to encourage false hopes. The truth, however painful it may be, must be spoken, otherwise we are responsible for the (possible) desperate actions that asylum seekers take when they have been misled even by those who wish to help them.
- The approach mentioned in (c), above, may offer one possible way forward, particularly if we can offer some solidarity to those sent back. It avoids the humiliation of having to publicly admit to failure. Another problem is that in order to leave, the Vietnamese have sold everything, thus their return is made even more difficult

by the fact of their responsibilities for their families. Why not organize a program for financial help? If these returnees could count on say, even $50 or $100 a month, for one or two years, in order to help them start up again in Vietnam, then they would not be going back completely empty-handed. A sponsorship program of this type will help them avoid the distress of the camps

... the situation has changed in the camps, principally because of the decision taken that Vietnamese who have arrived after 14th March, 1989, will not be recognized as "refugees"

where their future is blocked and also avoid the bitterness of being deceived by everyone.

I have just come from the camps, I know what I am saying, I have been living there, not for just a week but for three and a half years at Phanat Nikhom. The situation is even worse in Hong Kong. I know that many Vietnamese people, both in the camps and in the resettlement countries, insist that by adamantly refusing, the asylum seekers will finally win out. But the discussions that I have had with the UNHCR and also with the third country delegations convince me that this is false.

I have worked very hard in the resettlement countries to find sponsorships. My Vietnamese friends can witness that whenever the slightest opportunity was offered, I have grabbed it . I understand very well all that the notion of return implies, by way of suffering and renunciation. But how will it be when this return takes place after an even longer wait and after so many promises have been rendered empty?

At this moment when I leave Asia in order to work with refugees in Africa, I wish to speak what is true for the refugees in Asia, so that you too will have the courage to recognize your responsibility. To offer illusions to them can be fatal. R

CONFERENCE OF THE CANADIAN ASSOCIATION OF AFRICAN STUDIES

YORK UNIVERSITY
MAY 16 - 18, 1991

THE MAIN THEME - AFRICA IN THE 1990s:
DEVELOPMENT WITH DEMOCRACY

There will be a stream of consecutive sessions on refugee related issues. The suggested topics include:

- Root Causes : Human Rights in Africa
- Conflicts between Asylum and Majoritarian Democracy
- Development Assistance Related to National and Refugee Self - Determination
- Neo-Colonialism: International Agencies and NGOs working with Refugees
- Repatriation of Refugees and its effects on Democracy.

Please send your enquiries to:
Mr. Ogenga Otunnu or Prof. Howard Adelman
Centre for Refugee Studies, York University
4700 Keele St., North York, Ontario
Canada M3J 1P3
Tel: (416) 736-5663 • Fax: (416) 736-5837

SIETAR INTERNATIONAL XVII ANNUAL CONGRESS

XVII ANNUAL INTERNATIONAL CONGRESS
MAY 1 - 16, 1991 IN BANFF SPRINGS, ALBERTA, CANADA

The main theme -
"Creating Global Synergy: The Intercultural Perspective"
will be examined in relation to four major areas:
Global Communication: Languages, Human and Electronic;
Globalization, Visions and Realities;
Global Creativity and Synergy; and Global Ethics.

For more information and registration materials, please contact:

SIETAR International Secretariat
733 15th St., NW, Suite 900
Washington, DC 20005, U.S.A.
Tel.: (202) 737-5000
Fax: (202) 737-5553

1990 IRB STATISTICS DIGEST:

THE SAME OLD STORY? ANOTHER BACKLOG OF CLAIMS?

What does the summary tells us?

Quite a lot, in fact. When the IRB data is read in conjunction with the total system intake of refugee claims, an alarming picture is developing on the ability of the system to cope with the claims. It is quite clear that another potentially unmanageable level of backlog of claims is in the making.

Our Immigration and Refugee Board determination system is probably one of the best models to afford protection to a person with well-founded fear of persecution for reasons of race, religion, nationality, political opinion and membership in a particular social group. However, the statistics tell us that by the end of the second year of its operation the system was able to clear out roughly its first year intake only. The Board began its third year of operation in January 1991 with more than 30,000 claims awaiting completion.

IRB Chairman Gordon Fairweather, justifiably delighted with the increased productivity in the IRB in the fourth quarter of 1990, stated in his news release on February 1, 1991 that "Our major concern now, as the CRDD begins its third year of operation, is that claims will not be referred from initial to full hearing in numbers sufficient to exploit the Division's enhanced productivity." The Board also noted that "the Quebec/Atlantic and Ontario regions, which between them accounted for 90% of all claims heard across the country, have decreased the average waiting time (for referral from initial to full hearing) by half, from seven months to three and fifteen months to seven respectively."

Introduction of a simplified inquiry procedure and the expedited hearing process have indeed introduced a greater degree of productivity to the IRB process. This level of increased productivity notwithstanding, it must be recognized that there is a very significant number of claims awaiting at the pre-inquiry stage.

It is imperative that an improved mechanism within the system must be devised to clear up this fast developing backlog in the new system. It appears that two levels of hearing to determine patently credible claims are quite luxurious and unnecessary. There is an absolute need to designate certain nationalities to ease the burden at the full hearing level. An analysis of the acceptance rate of ten leading source countries indicates that a possible solution could be found in implementing a process somewhat analogous to a system now in employ in the current backlog clearance process.

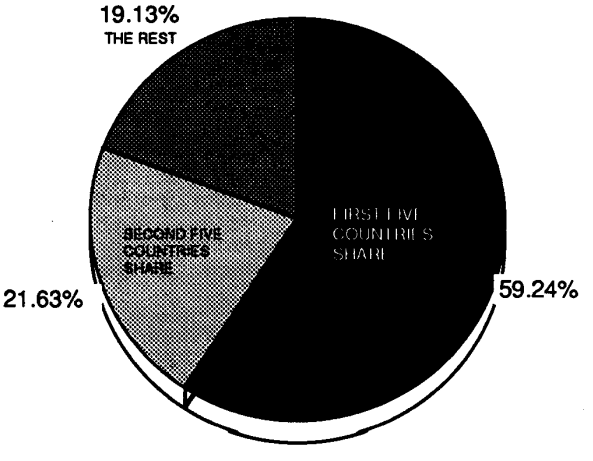
Otherwise it will be a Herculean task to catch up with the claims in the system. The process must be improved further to minimize the public disenchantment with refugees who are seeking Canadian protection.

Compiled by Arul S. Aruliah

ACCEPTANCE RATE OF TEN LEADING SOURCE COUNTRIES - YEAR 1990

Source	ACCEPTANCE RATE CB	FH	Overall
1. Sri Lanka	99.8	89.5	89.4
2. Somalia	99.8	92.9	92.8
3. China	99.5	44.7	44.5
4. Lebanon	98.3	80.4	79.0
5. El Salvador	98.9	79.5	78.6
6. Bulgaria	98.1	48.9	47.9
7. Iran	99.8	91.1	90.9
8. Pakistan	97.7	88.4	86.3
9. Guatemala	96.4	79.8	77.0
10. Poland	60.0	23.7	14.2

REFUGEE CLAIMS BEFORE IRB - YEAR 1990 SUBGROUPS SHARE



REFUGEE DETERMINATION SYSTEM DATA - OCT. 1990

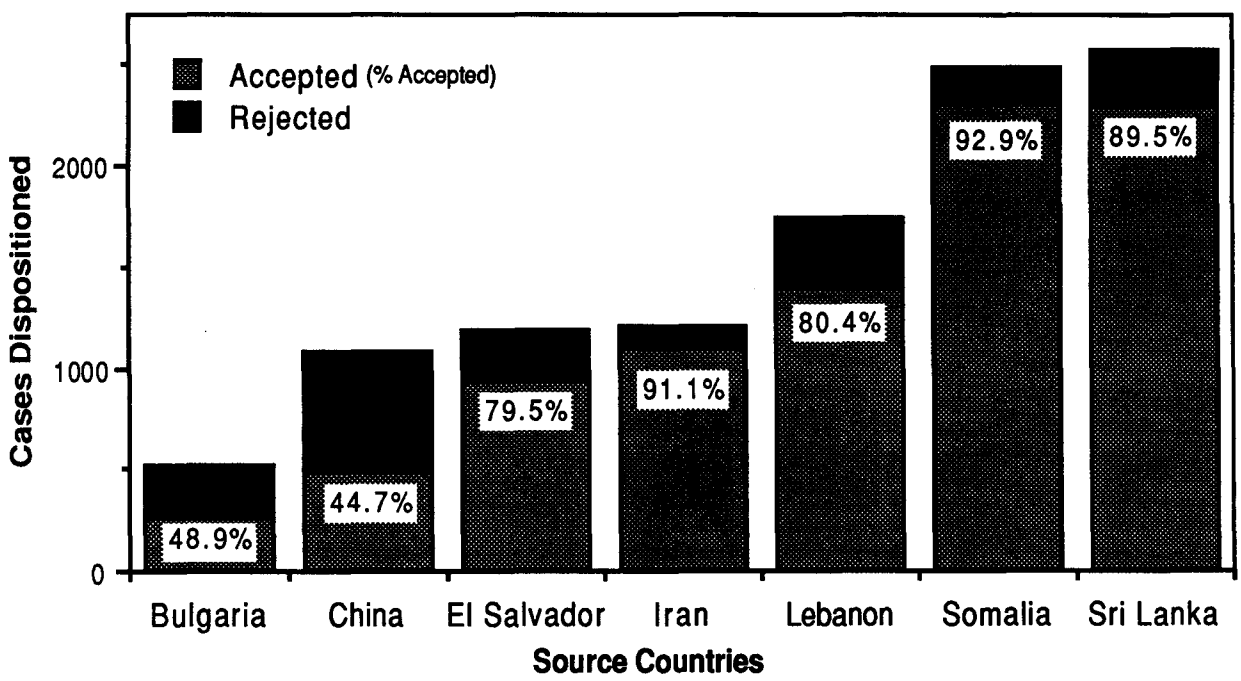
	Oct.1990 Year-to-date	Dec. 1989 Year-to-date	Total 1989-Oct.90 System-to-date
1. Total System Intake	30,328	20,758	51,086
2. Cases Awaiting Opening			
YTD	**10,089**	**6,730**	16819
STD (Corrected for withdrawals etc.)			**16805**
3. Hearings Opened	20,239	14,028	34,267
4. Cases Dispositioned (CB)	17,058	12,570	29,628
5. Cases Awaiting Disposition (CB)	3,181	1,458	4,639

IMMIGRATION AND REFUGEE BOARD DATA - DECEMBER 1990

	Dec. 1990 Year-to-date	Dec.1989 Year-to-date	Two Year Total 1989 & 90
1. Initial Claims(CB) Concluded	21,469	12,690	34,159
2. Referred to Full Hearing	20,240	11,798	32,038
3. Claims Heard to Completion	15,126	6,475	21,601
4. Decisions rendered*	13,623	5,306	18,929
5. Claims Abandoned/withdrawn	374	70	144
6. Decisions Pending	1,129	**1,099	1,539

* Includes decisions pending (**) from 1989

ACCEPTANCE LEVEL FOR SEVEN LEADING SOURCE COUNTRIES AT THE FULL HEARING - YEAR 1990



IMMIGRATION AND REFUGEE BOARD - 1990 STATISTICS

Period: January 1 - December 31, 1990

INITIAL HEARING STAGE

	ATLANTIC	QUEBEC	ONTARIO	PRAIRIES	B.C.	NATIONAL
Claims Concluded	824	6,586	11,854	552	1,653	21,469
Withdrawn/Abandoned	0	48	150	19	46	263
Decisions Rendered	824	6,538	11,704	533	1,607	21,206
Claims rejected						
- Eligibility	1	9	19	4	4	37
- Credible basis	68	219	464	93	85	929
To Full Hearing	755	6,310	11,221	436	1,518	20,240

FULL HEARING STAGE

	ATLANTIC	QUEBEC	ONTARIO	PRAIRIES	B.C.	NATIONAL
Claims heard to completion	411	6,057	7,205	408	1,045	15,126
Decisions rendered	356	5,456	6,572	347	892	13,623
Claims rejected	154	1,247	1,114	35	363	2,913
Claims upheld	202	4,209	5,458	312	529	10,710
Withdrawn/abandoned	18	116	159	17	64	374
Decisions pending *	55	617	652	61	154	1,539
Claims pending **	217	3,194	8,828	250	1,023	13,512

* Decisions pending include all claims heard to completion since January 1, 1989, for which no decision had been rendered by the end of the reporting period.

** Claims pending include all claims referred to the CRDD full hearing stage, that have not been finalized (i.e. by a positive or negative decision or by withdrawal or abandonment) as of the end of the reporting period.

Continued from page 3

LIMITED FACTS ...

A serious aspect of any procedure is how it treats people. Analysis of the new law must give weight to the July 1990 Discussion Paper of the Canadian Council for Refugees "Problems on the Path to a Just Society: A Human Rights Analysis of Canadian Immigration Law and Practice". It reports persistent instances of harassment in immigration interviews, detention with insufficient evidence, unjust and ineffective detention review and release practices, lack of safeguards to limit inappropriate restraint practices - chains, strapping to beds, drugging for deportation and a lack of independent investigation. To this evidence must be added the two surveys which indicate that a majority in the refugee backlog may face serious re-traumatization. The Inter-Church Committee for Refugees issued a report "Civil Rights and the Refugee Claimant Backlog". A group of five Montreal agencies prepared a report "The Psychological Consequences of Waiting for Refugee Status in Metropolitan Montreal". A member of the UN Human Rights Committee confirmed during the October 1990 examination of Canada that long delays for traumatized people can be a form of cruel treatment.

From the perspective of the Immigration Statistics and our evidence, the procedure is poor. There is no protection in law. There are mistakes in practice. Degrading treatment abounds. There is likely cruel treatment of about 100,000 people.

Yours sincerely,
Tom Clark, Co-ordinator
Inter-Church Committee for Refugees
Toronto

BOOKS RECEIVED

• Carliner, David, Lucas Guttentag, Arthur C. Helton and Wade J. Henderson, ***The Rights of Aliens and Refugees: The Basic ACLU Guide to Alien and Refugee Rights,*** 2nd. ed., The American Civil Liberties Foundation, Carbondale, Ill.: Southern Illinois University Press.

Using a question and answer format, this small paperback written by four eminent authorities on American refugee law, attempts to define the rights of aliens in the United States, rights not based on universal human rights principles but on the absolute sovereign right of the USA to exclude (or include) aliens in the rights and privileges granted to Americans. Though advertised as completely revised and up-to-date, no book on refugees can be and it does not cover the November reforms to American refugee law. It begins with the 1986 Immigration Reform and Control Act and deals not only with protection and rights to remain in the USA as well as with entry rights and exclusion and deportation proceedings, but also with social rights (to work, own property, and receive benefits) and duties (military service and taxes).

• An-Na'im, Abdullah Ahmed and Francis M. Deng, eds. ***Human Rights in Africa: Cross-Cultural Perspectives,*** Washington, The Brookings Institution.

The title of this book is somewhat misleading, though not intentionally. It does not deal with the human rights practices in various African countries but provides a theoretical perspective on human rights from the western and liberal traditions, Christian and Muslim perspectives and most interestingly from the point of view of a number of African cultures.

With essays by such well known human rights theorists as Jack Donnelly and Rhoda Howard who are also specialists on Africa, this is a critical volume for human rights theorists.

(A full review has been commissioned for a later issue.)

• ***Excom in Abstracts,*** Geneva: Centre for Documentation on Refugees.

Issued on the occasion of the 40th anniversary of UNHCR, this bibliography describes in abstract form the variety of documents issued in the context of UNHCR's governing bodies (the High Commissioner's Advisory Committee on Refugees from 1951 to 1954, the United Nations Refugee Fund Executive Committee from 1955 to 1958 and the Executive Committee of the High Commissioner's Programme since 1959) and at major international UNHCR sponsored refugee conferences from 1951 to 1990. The documents provide a succinct history of refugee issues in the postwar world including specific problems such as assistance, economic integration, legal interpretation, permanent solutions, resettlement, housing, travel, mental health, physically handicapped, education and in the later period, aid and development and women, as well as on specific groups of refugees from China, Bulgaria, Hungary, Algeria and those in Austria, Germany, Hong Kong and the Middle East excluding Palestinians. The shift of reports to other geographical regions in the sixties - refugee from Rwanda, the Congo, Burundi and then later to Indochina and Latin America - was a portent of the changing refugee situation in the last third of this century.

• ***Southeast Asian Journal of Social Science,*** Vol. 18, No. 1 (1990), Special Focus on Indochinese Refugees 15 Years Later.

Chan Kwok Bun edited this volume and contributed to two of the essays dealing with Indochinese refugees left in limbo fifteen years after the crisis began and with the conceptual and definitional issues brought to the fore by the crisis. Most of the other papers deal with the responses of various Asian countries - collectively through ASEAN and individually - Thailand, Singapore, Hong Kong, Japan and Australia. Two papers deal with the camp life of the refugees and their mental health and coping strategies.

• Kuhlman, Tom, ***Burden or boon? A Study of Eritrean Refugees in the Sudan,*** Amsterdam, VU University Press.

This volume begins with a brief depiction of the region, its demography, economy, politics and history as background to the Eritrean war and the flow of urban and rural refugees and their impact on the labour market and such services as housing, water, health and education. *(A full review has been commissioned for a later issue.)*

• William Rogers Brubaker, ***Immigration and the Politics of Citizenship in Europe and North America,*** New York, University Press of America, Inc.

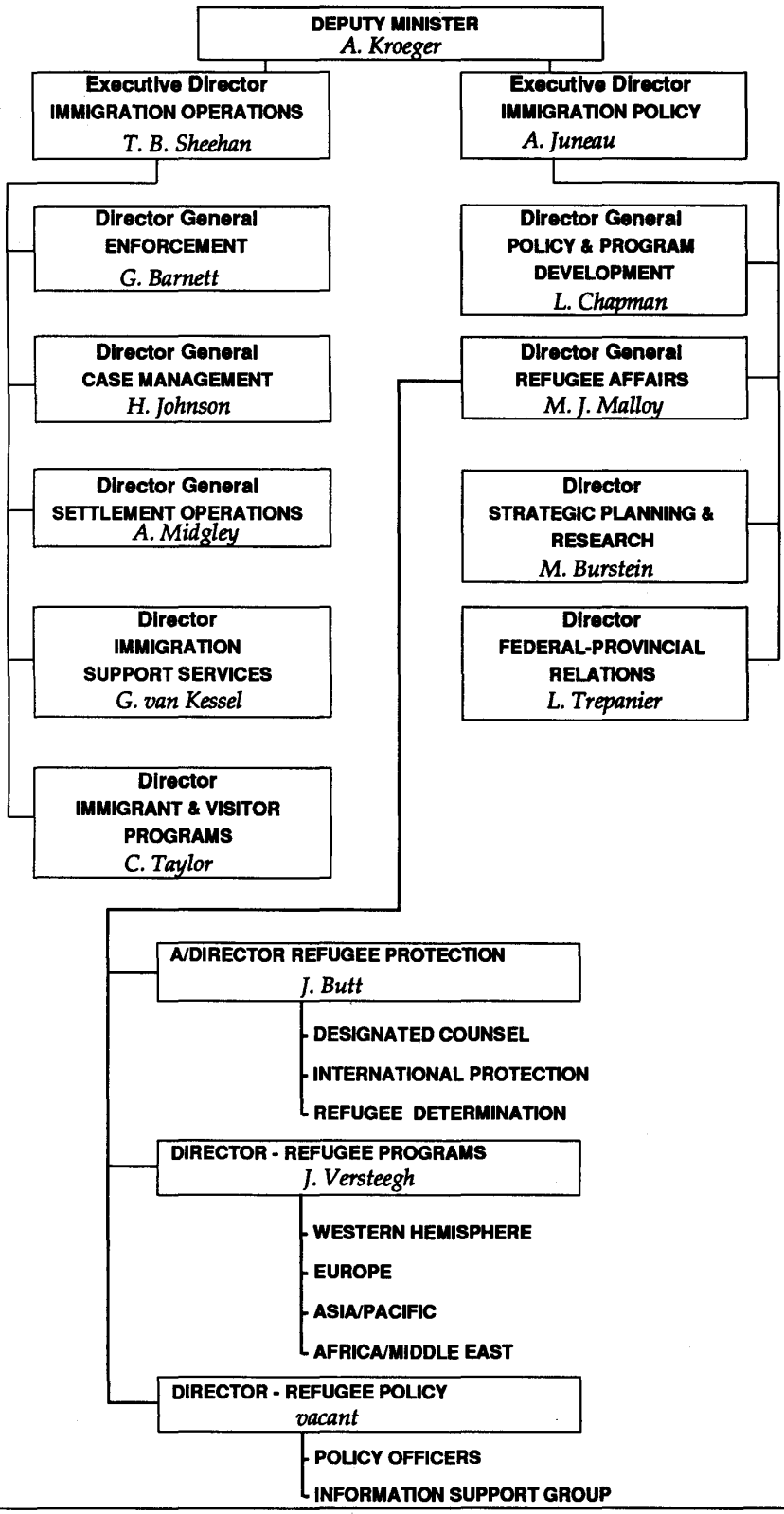
This book provides a collection of essays on the ethical and political theories and practices of granting membership or citizenship in the state and approaches the core issue behind solutions rather than the cause of the refugee problem.

• Aboum, Chole, Minear, Mohammed, Sebstad and Weiss, October 1990. ***A critical Review of Operation Lifeline Sudan - A Report to the Aid Agencies.***

• Bulcha, Mekuria, 1988. ***Flight and Integration - Causes of Mass Exodus from Ethiopia and Problems of Integration in Sudan,*** Scandinavian Institute of African Studies.

• Christensen, Hanne, 1990. ***The Reconstruction of Afghanistan: A Chance for Rural Afghan Women.*** United Nations Research Institute for Social Development.

IMMIGRATION DEPARTMENT ORGANIZATIONAL CHART



VINCENT KELLY AWARD

The Vincent Kelly Award is presented each year by the Centre for Refugee Studies of York University to **Canadians for outstanding work on behalf of refugees.**

The captain, officers and crew of the HMCS Provider not only rescued Vietnamese boat people, not only reminded all Canadians of over a decade of commitment to resettling the Boat People in Canada (which helped the Canadian people win the Nansen Medal), but they performed their humanitarian rescue with grace, hospitality and a true generosity of spirit.

The Centre of Refugee Studies of York University, on behalf of all Canadians, wishes to announce at this time that at its annual dinner this Winter, the Vincent Kelly Award will be presented to **Captain Kenneth Scotten** on behalf of the officers and crew of the HMCS Provider.

ANNOUNCEMENT

ANNUAL DINNER

The Centre for Refugee Studies' annual dinner will be held on **March 7, 1991 at 7:00 p.m. at the International Restaurant,** 421-429 Dundas St. West, 3rd Floor and will feature a 10-course menu.

Premier Bob Rae has been invited to present **the Vincent Kelly Award to Captain Kenneth Scotten** on behalf of the officers and crew of the HMCS Provider.

The captain, officers and crew of the HMCS Provider rescued Vietnamese boat people in the Spring of 1990.

Tickets: $60.

Please see page 19 for more information.

DONORS TO
THE CENTER FOR REFUGEE STUDIES, YORK UNIVERSITY

CATEGORY	BENEFITS	DONATION
SUPPORTER	Subscription to *Refuge*	$25
FRIEND	Invitation to events sponsored by the Centre including annual meeting and dinner	$60
	Special Student Rate	$30
SUPPORTING FRIEND	Both of the above	$85
PATRON	All of the above plus turtles from the Director	$150
CORPORATE PATRON	All of the above plus more turtles from the Director	$700

REGISTRATION FORM

Please fill in your registration form (photocopy may be used) and return it to:
The Centre for Refugee Studies, York University, 4700 Keele Street, North York, Ontario, M3J 1P3
Fax: (416) 736-5837

I wish to renew my support to the Centre for Refugee Studies. Enclosed is my cheque in the amount of:
❑ $25 ❑ $30 ❑ $60 ❑ $85 ❑ $150 ❑ $700 ❑ $_____

Method of Payment:
❑ Cheque payable to: Centre for Refugee Studies, or
❑ Charge to my: ❑ Visa ❑ Master Card ❑ AMEX
Card number:..... Expiry Date:.....
Name & Signature:.....

❑ **I will attend the Annual Dinner on March 7th, 1991** ❑ **I will not attend**

China Town International Restaurant
421-429 Dundas St. West, Toronto

Cocktails 6:30 p.m. Dinner 7:00 p.m.
A vegetarian menu will be served at selected tables. Please indicate your preference:
❑ **REGULAR MENU TABLE** ❑ **VEGETARIAN MENU TABLE**

Please send official tax receipts, correspondence, publications and dinner tickets to:

Name .....
Organization.....
Address .....
City ..... Postal Code .....
Tel.: ..... Fax: .....

CANADA'S PERIODICAL ON REFUGEES
REFUGE

Centre for Refugee Studies, York University,
Suite 234, Administrative Studies Building,
4700 Keele Street, North York, Ontario,
Canada M3J 1P3
Telephone: (416) 736-5663 • Fax: (416) 736-5837
Electronic Mail via Bitnet Address:
REFUGE @YORKVMI

Postage Paid in Toronto
Second Class Mail
Registration No. 5512
Return Postage Guaranteed

OBLIGATIONS AND THEIR LIMITS : REFUGEES AT HOME AND ABROAD

AN INTERNATIONAL SYMPOSIUM MARKING THE FORTIETH ANNIVERSARY OF THE GENEVA CONVENTION FOR REFUGEES

MAY 25 - 28, 1991 • YORK UNIVERSITY, TORONTO

TOPICS

1. **Theoretical Perspectives on the Limits to Obligation**
   - Philoshophical Theory • Political Theory • Sociological Theory
2. **Legal Perspectives on the Limits to Obligation**
   - Legal Theory • New Trends in Refugee Law
   - Membership in a Particular Social Group and Rights to Refugee Status
3. **Historical and Comparative Perspectives on Refugee Policies**
   - First World Cases • Second World Cases • Third World Cases
4. **Issues of Forces: Violence and Coercion**
   - Innocent Victims of Civil War as Refugees
   - Voluntary Repatriation by Force
5. **Refugees and Development Assistance**
   - The NGO Perspective • Research and Evaluation Needs
   - The Role of Refugee Women • Ethics and Development

Registration fee: $250. (Accommodation available)
For further Information and Registration, please contact:

The Centre for Refugee Studies
York University
4700 Keele Street
North York, Ontario
Canada M3J 1P3

Tel.: (416) 736-5663
Fax: (416) 736-5837
E-mail CRS@YORKVM1
(or) REFUGE@YORKVM1