CANADA'S PERIODICAL ON REFUGEES

REFUGE

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Special Issue on New Amendments to the Immigration Act

Processing Bill C-86

Bill C-86, the new proposed Immigration Act, is the first total overhaul of our immigration legislation since our existing Act was tabled in 1976. The Bill became law only in 1978. The new proposed legislation was tabled in the House of Commons in mid-June. The expressed intention is that it become the law of the land before the end of the year.

No decision a country makes, including decisions on our constitution, is more important than who and how new members will be allowed to join. Canada was constituted by immigrants. Eighteen percent of our current population were born elsewhere. Canada is a country of people as well as basic laws, and immigration laws determine who will make up a significant proportion of Canada's body politic in the future.

It is critical that new immigration legislation be given careful consideration. This is particularly important since there is a great deal of evidence that Bill C-86, the most all-encompassing legislation on immigration in Canadian history, was hastily put together. Yet the intention is to give the legislation rapid consideration in committee during the summer months and pass it in the early part of the fall session. Bill C-86 deserves closer scrutiny.

At the time the proposed Bill was made public in mid-June, the government produced a great deal of literature explaining the legislation's intent and analyzing the major changes. Unfortunately, few journalists, concerned citizens or specialists were able to obtain copies of the actual Bill. Twelve scholars in our research centre are working from one copy of the Bill, which I obtained personally in Ottawa. (It was unavailable at the time from the government printing office.)

It would not be so serious if the Bill was to be carefully vetted in due course, but NGOs and academics have been contacted and many were leaving for summer holidays. Some had previous commitments. They were told to send any written submissions to the House Committee by July 15 or, at the latest, by the end of July. A number have told me that they have already been given dates for hearings in July; they will be allowed ten minutes to make a presentation, followed by about ten to twenty minutes of discussion.

Such hasty consideration would not be such a serious matter if the changes were not so important to the future life of this nation. We are a country made by immigrants. The way we deal with immigrants and refugees gives our country its character. At the recent informal consultations of the Western states on immigration held in Toronto in June, my European friends in attendance were impressed at the balance between justice and efficacy that Canada had achieved in its immigrant and refugee legislation. We have developed one of the most just and rational systems for dealing with immigrants and refugees. The present Bill is intended to make significant improvements to that process. I believe that it does. The Bill proposes many excellent changes. It also has serious flaws. Let me cite just one.

The Bill has a provision for bilateral and even multilateral agreements for dealing with refugee claims. Such a legislative provision anticipates the future when refugee claims will be dealt with on a multilateral basis according to

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fair and agreed-upon rules. Refugees will then be allocated to receiving states on a previously agreed-upon burden-sharing formula. This will avoid asylum shopping and at the same time ensure that all states live up to their obligations under the Refugee Convention in a fair and equitable manner.

The Bill also strengthens the provisions for the very opposite beggar-thy-neighbour approach encompassed in the never-implemented safe third country provisions of Bill C-55, which became law in 1990. The safe third country provision asserts that if a refugee claimant traversed or sojourned in another country en route to Canada, Canada could send the claimant back to that country and deny the individual access to the Canadian refugee claims system. The provision is intended to place the total refugee burden on those countries that are most accessible to refugees in flight. Since we are at the end of the refugee pipeline because of our geographic location, this could dramatically cut access to the Canadian system.

Some have tried to justify such drastic measures by pointing to the large number of claimants Canada receives, but the number of claims have fallen, not risen. From a peak of 37,000 claims, the numbers now average 30,000 per year. This is about one claim per 1,000 of population. Germany receives one claim per 250 of population. We receive less than the average of one claim per 840 of population of Western resettlement countries and far fewer than countries of first asylum that border refugee-producing states. We do not carry our fair share of the burden of claimants even now.

The new legislation will allow claimants to be expeditiously and, by and large, fairly dealt with, though there still is no adequate provision for correcting inevitable mistakes. The real danger in the Bill is that we will cut access to the system dramatically and unfairly. In fact, one study of the Bill suggests that provision for accessing the system is being transferred to immigration control officers—a refugee claimant who is determined to have traversed a safe third country will be denied access to the Canadian system at the border.

Such a provision is totally at odds and contradictory to a philosophy of shared responsibility. On this issue, the Bill reads like a scissors-and-paste effort put together by competing factions of mandarins to produce an incoherent and contradictory hybrid.

A recent study by one of my colleagues, to be published in the *Canadian Review of Sociology*, concludes that "immigration policy in Canada rests on a potentially unstable foundation of disparate values and conflicting interests." It would be a pity if those conflicting interests were exacerbated by a legislative process that provided too little time for those who disagree to air their concerns. Not only would the result

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produce flawed legislation, but do so in a way that alienated many Canadians, particularly those who are supporters of a just and expeditious immigration and refugee process, those who are the critical partners in helping to receive and settle immigrants and refugees.

In the face of potential public criticism, the tendency is to manipulate the process to provide as few opportunities as possible for the critics to be heard and to arrange it so that they are heard at the most inopportune times and under the worst circumstances. (Short presentations tend to stimulate shrill rather than well-considered critiques, for the latter require much more time.)

The question is whether we are to have an orchestrated legislative process with inadequate time for hearings and consideration of needed amendments—that is, are we to get legislation based on a government initiative and communications strategy that undermines any critique—or are we to have a deliberative process that will reveal the excellent aspects of the Bill while giving time to correct the flaws? The latter process is much preferred because the natural allies of refugee and immigration issues will not be alienated, and also because such a process is critical to overcoming the public's general cynicism about the political process, in which the public sees itself as merely passive flotsam of a power-driven hegemonic process with only lip service paid to the democratic process. A deliberative process would still give time to pass the Bill during the tenure of the present government. We would obtain better legislation and the support of a democratic public whose views were truly taken into consideration.

Canadians and other leaders must surely learn from such political fiascos as the referendum in Denmark over the Maastricht Agreement. The political process must not only give the *appearance* of deliberate and careful reflection to allow concerned citizens to express their views. It must actually *be* deliberate and careful. ■

Howard Adelman, Editor

News Release From the Office of Blaine Thacker, M.P.
House of Commons — June 26, 1992

Legislative Hearings on Bill C-86

Mr. Blaine Thacker, Member for the constituency of Lethbridge, Alberta, announced today that Public Hearings will commence on Monday, July 27, 1992 with respect to Bill C-86, an Act to amend the Immigration Act and other Acts in consequence thereof.

This Bill was given First Reading by the House on June 16, 1992 and after Second Reading on June 22, 1992, it was referred to a Legislative Committee for detailed study.

The Honourable John Fraser, Speaker of the House of Commons, appointed Mr. Blaine Thacker on June 22, 1992 from the Panel of Chairmen to act as Chairman of the Legislative Committee on Bill C-86.

The Members who will be serving this Committee are:

The Honourable Warren Allmand
(Notre-Dame-de-Grace, Quebec);
Harry Chadwick (Bramalea-Gore-Malton, Ontario);
Joe Comuzzi (Thunder Bay-Nipigon, Ontario);
Doug Fee (Red Deer, Alberta);
Benno Friesen
(Surrey-White Rock-South Langley, British Columbia);
Dan Heap (Trinity-Spadina, Ontario);
Fernand Jourdenais (La Prairie, Quebec)
Ross Reid (St. John's East, Newfoundland).

Mr. Thacker pointed out that Committee has decided to schedule meetings during the month of July 1992, starting with the Officials of the Department of Employment and Immigration on the 27th and 28th and potential witnesses on the 29th and 30th. In addition, during the month of August 1992, potential witnesses will be heard on the 10th, 11th, 12th and 13th.

From September 21st to 24th, 1992 the Committee will proceed to Clause by Clause consideration of the Bill. Therefore, those organizations and individuals who wish to submit a brief or to be heard by the Legislative Committee should communicate with the Clerk of the Committee and submit their brief in writing as soon as possible, no later than September 1, 1992.

Furthermore, Mr. Thacker pointed out that the Committee reserves the right to select witnesses who will be invited to appear before the Committee.

Letters and briefs should be forwarded to:

Ms Santosh Sirpaul
Clerk of the Legislative Committee on Bill C-86
Room 660, 180 Wellington
House of Commons
Ottawa, Ontario
K1A 0A6

Minister of Immigration on Bill C-86

Extracts from an Address by the Honourable Bernard Valcourt, Minister of Employment and Immigration in the House of Commons during the Second Reading of Bill C-86 on June 19, 1992

The changes we have proposed [to the immigration program] involve improvements in three general areas....

Effective Selection

I have proposed the introduction of three management streams for selecting immigrants.

Stream One will have no fixed limit on applications for its various categories. The stream could include, for example, spouses and dependent children, Convention refugees and immigrant investors.... Our objective will be to process routine immediate family applicants within six months regardless of whether the application is made in Germany or India.

Stream Two will operate on a "first come, first served" basis. There will be ceilings for applications from each group within this stream. Parents and grandparents, refugees processed abroad and immigrants with arranged employment could be included in Stream Two.

In the third stream, we will select ...only the most highly qualified individuals ... from the independent or entrepreneurs categories or people qualified in designated occupations.

Again, there will be a ceiling for each group within the stream. Only the allotted number of applications will be accepted.... To encourage a better distribution of this pool of talent, some skilled immigrants will be offered a "contract-like" arrangement. As a condition of their acceptance to Canada, they will be required to settle in a community where the number of people having their specific skills would otherwise be insufficient to meet the needs of that region. They would be required to live in the community for a limited period of time.

Individuals who choose to participate in this program will be doing so, fully aware that their application has earned additional consideration as a consequence of their willingness to settle in a designated location. There is nothing coercive about this measure....

Overseas we will provide further training and technological assistance to our own staff and to airline personnel to help them identify fraudulent documents and intercept illegal migrants before they reach Canada.... At our borders, we will give immigration staff the authority to search individuals and to seize documents and vehicles used in smuggling people into Canada.

We will also expand the department's authority to use fingerprints and photographs to establish the identity of people seeking admission to Canada. These procedures will be extended to cover all individuals who make refugee claims....

Streamlining the Refugee Process

We will eliminate the first-level hearing [of the Immigration and Refugee Board]....

New procedures will allow Convention refugees to be landed more quickly and take up employment sooner. The proposals will permit the spouse and dependent children of the applicant to be processed at the same time as the claimant....

We have also proposed a series of additional measures.... For example, ... senior immigration officers will be given the authority to decide whether an individual is eligible to claim refugee status.

The management and resolution of refugee issues requires international cooperation.... We are currently negotiating ... an agreement with the United States ... in order to better share the responsibilities between our two countries in the determining of refugee status. We are also talking to the Europeans. ■

Press Release June 16, 1992

United Nations High Commissioner for Refugees

1. The Branch Office in Canada of the United Nations High Commissioner for Refugees has been consulted about the changes envisaged to the immigration legislation, and particularly about the changes to the existing refugee determination system. Since the legislative changes are aimed at making the existing refugee determination procedure in Canada more efficient and the changes continue to abide by the international standards of asylum law, the Office of the United Nations High Commissioner for Refugees (UNHCR) supports the "fine tuning" of the legislation, insofar as it concerns asylum seekers in Canada.

2. UNHCR has always advocated that each country should have a fair and expeditious refugee determination system that, in turn, reduces human suffering caused by delays in decisions taken with respect to asylum seekers. It is in line with this that the Branch Office has involved itself in the exercise of reviewing/evaluating the changes that will affect the present refugee determination system. We expect that the new legislation will continue to work in the best interest of all those asylum seekers needing protection.

3. The Representative in Canada of the United Nations High Commissioner for Refugees supports the changes proposed and will readily answer any questions that may arise, related to UNHCR's perspective on the changes to the immigration legislation. ■

Press Release
June 16, 1992

Immigration and Refugee Board

Gordon Fairweather, Chairman of the Immigration and Refugee Board (IRB) said today the Board supports the federal government's proposal to abolish the two-stage review process for refugee determination in favour of a single hearing. "Our goal has always been quick determination of refugee status. Dropping the first stage review is another positive step to expedite decision making," Mr. Fairweather declared.

Mr. Fairweather noted that the initial hearing — which is a joint hearing of Immigration Canada and the IRB — has served its purpose. "What Parliament had in mind when it approved the initial hearing in 1988 was to stop large movements of claims that are manifestly unfounded. These kinds of claims have been essentially eliminated and, at the initial hearings, well over 90 percent of today's claims are being approved and referred directly to the IRB for the second stage hearing of the refugee determination process." Mr. Fairweather also stated he was pleased the government had responded to his request for an independent mechanism for dealing with serious complaints against Members.

Mr. Fairweather said the Board also supports changes to legislation governing the IRB that will allow the Board greater management flexibility. For example, members of the Immigration Appeal Division of the IRB will be able to sit on hearings of the Convention Refugee Determination Division when the number of refugee claims so warrants. The IRB Chairman observed the legislative changes will affect persons in many levels of Canadian society and he looks forward to the impending consideration of the measures by Parliament. ■

Press Release/ June 17, 1992

Refugee Issues Misrepresented in Amendments

Canadian Council for Refugees

As predicted, amendments to the Immigration Act tabled by the Minister of Employment and Immigration yesterday cover a wide range of issues. The Canadian Council for Refugees has mixed reactions to the changes affecting refugees.

"Measures to speed up family reunification of young children, husbands and wives are very welcome. We also believe that many of the administrative measures to speed up refugee processing and landing and to improve immigration services are welcome and timely," says Nancy Worsfold, Executive Director of the Canadian Council for Refugees.

The elimination of the "credible basis" stage in the refugee determination process was predictable. As the Canadian Council for Refugees argued when it was first proposed, it has proved impractical. It has been extremely expensive and a waste of time. Ninety-five percent of refugee claimants passed this stage, confirming that abuse of the system is negligible.

The Canadian Council for Refugees applauds the measures to improve training and the new disciplinary procedures for members of the Immigration and Refugee Board. It is disappointing that the government has not addressed the political nature of the appointments to the IRB. Problems with Board decisions can be expected to continue.

The gravest concern raised by the proposed legislation is the distressing possibility that genuine refugees will be declared ineligible and sent away at the border. Much decision making has been taken away from the quasi-independent immigration adjudicators and given to senior immigration officers. Decisions will be made without the claimant having a right to counsel. Genuine refugees may be sent away at the border with absolutely no recourse. The government is clearly committed to sending away genuine refugees without a hearing. There is a serious danger that the human rights of claimants will be violated.

The government's intention is to limit access by entering international agreements assigning the responsibility for hearing refugee claims. "We are deeply concerned that the government has indicated particular interest in entering such an agreement with the United Stages given their recent indifference to the rights of Haitian refugees. We call on the government not to enter into such agreements unless the countries involved are signatory to the Geneva Convention Relating to Refugees and meet Canadian and international standards of fairness, natural justice and due process. At stake is the integrity of Canada's humanitarian tradition."

The government's emphasis on the need for official identification papers is misplaced and will cause serious obstacles for many refugees. The people most in need of protection are often those who have the most difficulty in obtaining ID from their government. Imposing sanctions on them is totally unacceptable.

Another significant area of concern is the lack of a meaningful appeal. Not only does the Bill fail to remedy this problem, the legislation will reduce the already narrow possibility of an appeal on technical points of law by moving it from the Federal Court of Appeal to the Trial Division. The government has signalled its disregard for the integrity of our human rights record by ignoring demands for a more effective appeal mechanism and further weakening the existing limited appeal. "Every system makes mistakes and needs a mechanism to correct them. Mistakes in refugee determination lead to deportation with

(Continued on page 27)

CRS Discussion of Bill C-86

Participants:
Howard Adelman (Director, CRS), Bill Angus (Osgoode Law School), Arul Aruliah (*Refuge*)
Meyer Burstein (Strategic Planning Branch, CEIC)), John Butt (Refugee Affairs, CEIC)
John Dent (Research Assistant, CRS), James Hathaway (Osgoode Law School/Associate Director – Law, CRS)
Greg James (Refugee Lawyers' Association), Larry Lam (Associate Director – Education, CRS)
Michael Lanphier (Associate Director – Research, CRS), Anthony Richmond (CRS)
Eric Vernan (Canadian Jewish Congress)

The Centre for Refugee Studies (CRS) held a discussion of the new amendments to the Immigration Act. A transcript of the discussion is presented.

RETROACTIVITY

[*Anyone whose application is already in progress at the time the legislation is proclaimed could be subject to new rules.*]

MB: The provisions for retroactivity have two parts: dealing with cases in the future and those in process at the time the legislation comes into force. There are moral and practical limits on applying the retroactivity provisions.

If the management of immigration works as intended, we shouldn't need the retroactivity provisions. They are really a backup—for use if things get out of hand—if there are too many cases in the system that we don't want to come forward as subsequent landings.

We might apply the retroactivity criteria to a situation in which a person has submitted an application, but has not yet heard from the government. As long as people understand the system, I would argue that the system is fair and able to withstand challenge. We do need more precise language, for instance, we should limit ourselves by class. We could say that we won't apply retroactivity to immediate families or Convention refugees. Concerning groups already in process, we should say that it shouldn't apply to people past a certain stage in the process.

Concerning the existing case-load, the intent is to permit a policy shift to rebalance the program. Over the past few years there was a huge inflation in the family-based movement that squeezes out other immigration. Broadly, the legislation seeks to increase opportunities for policy redirection. Retroactivity can speed that process. We are not going to disqualify refugees or immediate family. The only group that may be subject to retroactivity is the independent, point-tested group. I'm only referring to those who have not been already encouraged by us. The smaller the group, the less our rationale for applying retroactivity provisions. We have given ourselves broad authority in these amendments. It could be limited in the legislation by class and the stage in the process.

CONTROL/ENFORCEMENT

Detention

[*A senior immigration officer (SIO) may order individuals detained pending execution of a deportation order or exclusion order if it is possible that they might endanger public safety or if they are not likely to appear for removal. Individuals may be detained for failing to comply with a departure order. The weekly review of detainees by an adjudicator has been eliminated. Reviews will now occur only every thirty days. The initial forty-eight-hour review remains unaffected.*]

GJ: The thirty days concerns me as being a particularly long period of time. [What happens if] a lawyer was unable to get to someone in the first seventy-two hours? From a practical perspective, seventy-two hours is not a long time. I wonder if there could be any flexibility?

JB: The flexibility is there—one could request an adjudicator to review detention before the thirty-day time period.

JH: It strikes me that there should be some specified criteria an adjudicator might consider on an earlier review. The legislation could make provision for an earlier review in the event that information of type x, y or z were to be presented, so that it's not a matter of absolute discretion.

JB: I could see that it would be useful to have some criteria, either in the legislation or regulations.

JH: I think the Act should at least make reference to the duty of adjudicators to examine the merits of an application for review over the course of the thirty days.

Medical Inadmissibility

[*The medical criteria would exclude only those whose health condition is a danger to Canadians or who would cause excessive demands on health or social services. Specification of what conditions may cause such dangers/demands (including disabilities) would no longer be included in the Act.*]

AR: I see a general tendency to relegate a number of critical decisions to regulations. Is there any assurance of protection against abuse regarding medical inadmissibility? For example, I'm thinking of the British case where medical examinations have been used to determine whether or not female fiancées are virgins. If they're not, they are excluded on the grounds that they're not genuine fiancées at all, that they are

just people coming in for a pseudomarriage in order to get into the country. That's been a matter for some serious concern. There are other ways that medical exams can be intrusive and abusive, and there are new technologies that open up all kinds of possibilities. I know that the intent is quite benign, but when you're writing legislation, you have to ensure that some person in the future will not abuse it.

I wonder if we could explore the use of regulations a little more. It seems a lot of things are left to discretion. Could you tell us what protections or safeguards there might be?

JB: The reference to the regulations was intended not to relegate from the Act to the regulations, but to [acknowledge in the regulations] what is currently medical examiners' administrative practice. It should provide further protection against not abuse, perhaps, but the possibility of capricious decision making. The purpose of the examination is to identify medical conditions that may endanger society or cause excessive demand [on health or social services].

AR: There is potentially an enormously wide ground on which people could be excluded if it is deemed that they might make excessive demands on a service, and the term "social service" is not even as precise as "health service." I think that whole section is potentially open to all kinds of interpretation and, therefore, of abuse.

JB: Let me give you an example. One case I can think of is of a child who was suffering from a mental disability, who was seeking admission as a visitor. She was initially refused on the basis of demands on social services, without a distinction made between her being a visitor as opposed to an immigrant. In the wording of the amendments, you could prescribe not only which social services are in short supply or expensive, but also distinguish between the type of status a person is seeking, which right now the Act doesn't do.

JH: I have a question about medical inadmissibility as it relates to Convention refugees. There is a clause indicating that a medical exam may be required of everyone who applies as a Convention refugee. Is this simply to identify conditions for the purpose of treatment, or is this linked to the issue of admissibility in a way that I haven't yet divined from the rest of the Bill?

JB: I can assure you it's the former—to identify medical conditions that ought to be treated for the benefit of the claimant and in some cases for the general benefit of society, but not to exclude those determined to be Convention refugees.

"I see a general tendency to relegate a number of critical decisions to regulations."

They do not have to meet the medical inadmissibility requirements.

This provision responds to the concern, especially here in Toronto, of some instances of tuberculosis transmitted among school children who were not medically examined upon arrival. The provision sets a time limit for the examination to be conducted as soon as the person arrived and not, as is currently the case, at the time of referral to the Refugee Division.

Criminal Inadmissibility

[Individuals without criminal records would be barred from Canada if it is determined that there are reasonable grounds to believe they have committed a serious crime outside Canada. People who are or were members of an organization involved in serious crime anywhere in the world would be barred from Canada. Similar provisions would apply to suspected terrorists and terrorist organizations. Those who are believed to be involved in espionage, subversion, terrorism or who are members of an organization that might in the future engage in these activities would be barred from Canada.]

HA: We know there are jurisdictions where this has been abused.

JH: I think this may raise a void for vagueness argument. The courts may find [such a broad] generic description of persons who have associated with criminal organizations to offend the Charter. This language is unusually broad. I think that's the risk—not the concept itself, which makes sense to me, but the language, which is very sweeping.

MB: If you have an idea of how to confine the sweep, while maintaining the ability to deal with gangs and those types of things, we would like to get your advice.

BA: On a separate issue, there appears to be a technical drafting problem on page 21 that crops up two or three times. You're talking about an indictable offence in S.19(2)(a), for which the defendant would be prosecuted by summary conviction. I'm not sure if what is meant here is what's known as a mixed or hybrid offence.

JB: That's what we are referring to.

BA: It could be interpreted ambiguously as either an indictable offence or a summary offence. If it really does refer to summary cases, as is not currently the case, it could have substantial implications for refugees, for instance those convicted of shoplifting offences.

JB: The intent is to cover the hybrid offences, regardless of which process is used. The judicial interpretation right now is that a hybrid offence, if proceeding by summary conviction, is a summary conviction for the purposes of the section.

EV: Particularly with reference to terrorists—do these criteria apply to overseas visa officers as well, or just people coming to Canada?

JB: Yes, they apply to visa officers as well, in that they cannot issue a visa to someone who is inadmissible.

AA: How would this provision have applied to Mugabe, the Prime Minister of Zimbabwe, when he was the leader of the liberation movement in Rhodesia? Would he have been admitted?

JB: There are quite a lot of people who would have been or still are covered by this provision, but for whom admission would be reasonable. That's why there's also a provision for the Minister to authorize a person to come in. That is to cover exceptions. It was suggested that there are a lot of world leaders that would be caught within those provisions because the organizations they once

belonged to still advocate violence in one form or another.

GJ: I cannot think of a terrorist act that is not covered somewhere in the Criminal Code, so why do we need a separate provision? It seems redundant. I believe there's a provision in the Act now that deals with people engaged in organized crime, which I gather is the real purpose of the provision. So what was wrong with the old provisions?

"We are not going to disqualify refugees or immediate family. The only group that may be subject to retroactivity is the independent, point-tested group."

JB: The old provisions required that the person be likely to commit an offence within Canada. There is a concern that we ought to protect the broader community against people who would use Canada as a refuge from legitimate prosecution.

AR: Would we be right in assuming that this clause and others had to be read in the context of those relating to international agreements, which, in turn, we ought to be looking at in the context of modern computerized technologies, databanks, sources of information about organizations and individuals that will in the future enable individuals to be identified almost instantaneously as having at one time belonged to an organization, etc.?

JB: You're referring to Section 108.1, I assume.

AR: Well, individually these clauses can be defended, but when you put them in the broader context, particularly in relation to the international agreement, there are some philosophical questions that this raises, which make some of us feel very uneasy. The present government perhaps doesn't want to pursue McCarthy-like witch-hunts, but we don't know what some future government of Canada or any other country might wish to do. These clauses, combined with the international agreements and the technologies that are now available, have some serious consequences that may not always be benign.

HA: One of the big issues is human rights in the interstate sphere. If a person is alleged to belong to a terrorist organization or a criminal organization [and enters the country], Interpol informs Canada. People have no way of defending themselves and suddenly they can't move. They get frozen and there's no protection of their rights—a hearing or anything. That's the dilemma for a country that believes in protecting human rights. The question I think Tony is leading to is not the legitimate desire to keep criminals out of the country, but the potential for abuse. I don't think this is dealt with. If it's not, can we do something to improve that?

JB: It is dealt with to the degree that a person cannot be removed from Canada without an opportunity to defend himself against the allegation.

HA: But that's once they're here. What about applicants? What about the case of someone who has no rights to access the information, to appeal the information, to have independent adjudication or any protection while the country is carrying out a very legitimate intention? Some countries, including Canada, can potentially abuse it. Any group could be branded as terrorists at any time. That's a danger, and one of the traditions of human rights is to protect people from the dangers of the excesses of government. Can you put in some protective mechanisms to prevent abuse? Do you have to depend on goodwill and good judgement?

GJ: If membership is enough, there doesn't have to be any nexus between them and the alleged activity. At what point do organizations become contaminated by individual members? At what point is an organization seen to have a common intent? There are all kinds of questions, regardless of the process they are entitled to.

MB: But do you have any specific proposals? There is no intent on behalf of the Department to catch someone who is not likely to cause any sort of threat. The problem is trying to develop the language.

GJ: My first suggestion is that there be some nexus between the actual activity and the individual, rather than the individual and the organization.

MB: Of course, membership is something you can objectively ascertain, whereas activity puts a much greater burden on the person who's looking at the case and on the government.

JB: It's been done to some degree in S. 19(1)(l) provisions, where individuals are identified as senior members or officials of governments engaged in terrorism, etc. We have been able to identify criteria there.

MB: Is there another way of narrowing, [specifying instead] the kinds of people we would not want to apply this to, the kinds of situations that demand a different kind of protection?

JH: I actually have sympathy for using membership as a ground for exclusion because in many instances, such as organized crime, it is virtually impossible to pin a particular deed to a particular individual. I think the problem is the use of the word "terrorism," which is not a precise term. It is not a term of art. I would keep the membership principle, but try to define precisely what we are concerned about in terms of collective behaviour that ought to lead to exclusion. There are other standards whose meanings are clear, as opposed to terrorism. A terrorist, a freedom fighter—how do you tell the difference? It depends on who you are at what point in history. I think that is a point we need to resolve.

"These clauses, combined with the international agreements and the technologies that are now available, have some serious consequences that may not always be benign."

JB: We have a definition of a terrorist that would say that your freedom fighter and my terrorist are the same person. It doesn't make a distinction.
JH: That's my concern.
HA: I think Jim has made a very good suggestion, reconsidering the term "terrorism" and using more standard, internationally accepted terms that are clearer and better defined in law.
JH: Ironically, I think you can actually find some guidance in substantive refugee law, where we have had to [distinguish between] legitimate versus illegitimate use of force in addressing exclusion issues. Some of the substantive standards in Canadian case law would actually lead to a more precise definition.
EV: I'm curious as to the intent behind the new 19(1)(k) regarding persons constituting a danger to the security to Canada. Who are you talking about?
JB: It refers to those who don't fall within one of the other groups, but who would still pose a danger, as assessed by the federal court.
GJ: With respect to the definition of terrorism, you might want to think about whether it is redundant, or whether it could be phrased in terms of the Criminal Code so that specific acts are covered. Secondly, a more narrow definition of the word "organization" or a clarification might be a way of narrowing it, so that we don't capture people on the periphery of an organization. Perhaps some kind of common intent requirement?

Carrier Responsibilities

[*Airlines would be required to pay the removal costs of someone not admitted. They would be required to ensure that their passengers have valid travel documents up to the time they approach an immigration officer. Airlines would be charged administrative fees for transporting individuals with improper documents. They would be required to put up security deposits. Aircraft could be confiscated if fees are not paid. The Act provides for penalties for knowingly or unknowingly abetting in the transport of those with invalid documents.*]

HA: Trying to get the carriers to carry out immigration policy is an old pattern. This is much more drastic—what are our concerns?
ML: I am surprised that the Canadian government would expect and be able to put faith in passenger agents having the ability to screen documents. With the number of airlines there are in the world, this is almost unenforceable. It sounds extraterritorial.
JH: We're dealing with something much bigger than Canada. This is something common to virtually every industrialized state. I've heard someone make the comment that more refugee determination is done by airline officials than by formal determination authorities. That is clearly true. The issue is whether or not Western states are prepared to see territorial claims being made, or do they wish to see all persons stopped abroad?
BA: In the past, the airlines have flouted the old provision. Many have ignored them because they were so awkward and difficult. If we're going to have provisions, one would hope that they would be reasonable. I favour beefing up enforcement provisions, provided that actual provisions are reasonable in terms of expectations of airlines and what they can do.
JB: Certainly the Department has made a great effort to assist in training airline passenger agents with respect to what documents are acceptable in Canada. We are moving towards machine-readable documentation that should make it easier on the airlines. The major change is to move the process of penalties from prosecuting on a case-by-case basis to an administrative policy.
JH: Has there been some thought given to the process of ensuring that passenger agents do not screen out persons who may have legitimate Convention refugee claims, but who don't possess valid travel documents? Does the training emphasize that these are not the people who ought to be screened out? It does sound like a delegation of our Convention responsibilities to airline officials, who are clearly not adequately trained to perform that task. What kind of training is provided vis-à-vis persons without documents who may have a genuine refugee claim?
JB: [The airline's] job is to identify whether the person has the document or not. If not, they are not supposed to let that person on the plane.
JH: That's a really fundamental problem. It's completely illegitimate to engage in this kind of indirect refoulement. There has to be a distinction made between a visitor or immigrant who is undocumented versus people who are legally entitled to make refugee claims.
JB: They are entitled to make a refugee claim where they are, not in Canada, not somewhere they hope to be. Very few people come directly to Canada from their state of origin. The screening we're doing is by and large not anywhere near their state of origin—the screening that's done in Europe and the U.S. I'm not talking about screening done in Sri Lanka or in Kenya or wherever people first start their journey by air to Canada.
JH: I just think it's important that people get the same message in their training that I try to give to the IRB members, which is, in many cases, that the absence of adequate documentation is indicative of a genuine refugee claim, and hence people who are at the front line ought to be taking that into account.
HA: I would argue that you can't put that onus of responsibility onto someone who is doing visas.
JH: That's my point.
HA: Yes, the question becomes not what the carrier should do, but what protection can be afforded and what responsibility Canada has for people who are in other jurisdictions or who may indeed be refugees, but who can't

"A terrorist, a freedom fighter—how do you tell the difference? It depends on who you are at what point in history. I think that is a point we need to resolve."

access our system because they don't have proper documents, etc.

JH: Until we get to the point of a new refugee regime that is premised on genuine burden sharing, each signatory state has an independent responsibility. It may be different in five years or even two, but today each signatory has an independent responsibility, and it is inappropriate for any signatory state to deny entry to a person who may have a genuine claim to Convention refugee status. We may be moving to another position, but we're not there yet. I think that, unfortunately, the harmonization of procedures is preceding the substantive agreement on burden sharing.

Inquiries, Fingerprinting

[*Inquiries are to be public, but, where considered necessary, confidentiality will be assured.*]

HA: I think it's a very good provision to make inquiries public, if nobody objects.

EV: What about the fingerprinting issue? What's the thinking behind that?

JB: Yes, the vast majority are fingerprinted or could be. At a port of entry you can fingerprint those who don't have documentation or those against whom you make removal orders. The claimants who are not fingerprinted today are in-status claimants and those with conditional departure notices. We're making fingerprinting a universal system.

HA: Apparently the Minister will be proposing a change, announced on "Cross-Country Checkup," that fingerprinting records will be destroyed once a refugee is landed. Once they're through the process, they are treated as any other Canadian, which I thought was a very reasonable suggestion.

GJ: Those who work frequently with refugees react to the hype that surrounds [the provision]. We know that 65 percent of claims are accepted. It seems negative and unfortunate. The rationale is misplaced.

MB: It is a big provincial issue, though—the issue of multiple welfare claims. There are indications of duplicate and triplicate claims. There is a broader problem that needs to be addressed.

HA: It's really a marketing problem. In Sweden, businessmen are fingerprinted, allowing them elite processing. If it's thought of as a right, as opposed to a criminal sanction, there would be no problem.

GJ: I agree that criminality ought to be a red herring. The concern is that it's not seen that way in the public eye.

Family Class and Independent Immigrants

AR: I am concerned about the stereotypical definition of a family. As a demographer, I don't think it's one that applies to most people born and raised in Canada and certainly doesn't apply to immigrants and refugees, in terms of generations and other relationships, including plural marriages. I doubt if we can entrench anything that defines the family class unless it recognizes the variety of different arrangements. We seem to be using an anachronistic concept.

> ***"Apparently the Minister will be proposing a change, announced on "Cross-Country Checkup," that fingerprinting records will be destroyed once a refugee is landed."***

MB: The definition of family class appears in the regulations, not the legislation. It's clear that the line will shift over time, but it's a separate question from management of the streams, which is affected by this legislation. There is presently no policy intent to expand the family class.

ML: I understand why you're doing that in terms of encasing the family in regulations, but some advances were made during the 1986 Hawkes Committee concerning the definition of family and dependents. Is there going to be a parallel process where these advances are going to be examined again?

MB: There have been changes. As a result of some of the changes implemented after that committee's report, there was a huge increase in the number of parents coming to Canada. However, we are not proposing to change the definition of family class, only the management of it.

REFUGEES

Inland Refugee Claims

[*Admissibility: Once a claim has been made, a senior immigration officer or adjudicator determines whether the claimant is admissible to Canada. No inquiry will be held in conjunction with the SIO's determination. A senior immigration officer has the authority to decide on "straightforward" issues of admission, while more complex cases will be referred to an immigration inquiry for a decision by an adjudicator. If the claimant is inadmissible due to criminal inadmissibility provisions, a deportation order is issued by an adjudicator. If the claimant is inadmissible due to any other provisions, a conditional deportation order or departure order is made. The federal government will no longer provide designated counsel to claimants and others appearing at an inquiry. Claimants and others whose admissibility is determined by a SIO without an inquiry will not have legal access to a lawyer at all.*

Eligibility: A senior immigration officer will determine whether the claimant is eligible to make a claim. Under the current legislation, eligibility is determined at the preliminary inquiry by an adjudicator and a member of the Refugee Division. Under the proposed amendments, while considering whether claimants are eligible for a hearing in the Refugee Division, the SIO will not assess whether claims have a credible basis. The claimant will no longer have right to counsel at the determination of eligibility, since such determination will not be made at an inquiry. The grounds for ineligibility would include refugee status in another country, arrival from a safe third country, repeat claims, and criminal and security reasons. These criteria are not substantially different from the

current legislation, except as they reflect changes to criminal inadmissibility. Where the claimant is alleged to belong to a criminally inadmissible class, the SIO cannot make the determination until the allegation is confirmed by an adjudicator.]

JB: The criminality provisions are adapted to the eligibility criteria in a way so that you cannot exclude a person from the refugee status determination process because of the possibility that the person has committed an offence. The person has to be convicted in order to be excluded.

GJ: There are provisions for exclusion [with regard to] serious nonpolitical crimes, crimes against humanity and war crimes. There's also a prosecution as opposed to persecution element in the definition itself, so there are safeguards built into the definition that would have the effect of barring the person from having his or her refugee claim determined on its merits.

"It does sound like a delegation of our Convention responsibilities to airline officials, who are clearly not adequately trained to perform that task."

JB: But the eligibility criteria are linked to the requirements of Article 33 of the Convention. Basically, we take the approach that if a person can be removed, notwithstanding the fact that he's determined to be a Convention refugee, then we do not need to make a determination.

JH: A big part of the three years they spent drafting this Refugee Convention was spent dealing with these kinds of problems—the criminality exclusions. The reason that criminality exclusion was built into the definition was to ensure that the authority examining the merits of the claim to protection be the body that determines whether or not the criminality outweighed or failed to outweigh the need for protection. So I think Greg is raising quite an important issue of principle: whether these issues ought to be determined at the outset in the absence of all the facts that may constitute the refugee claim, or whether now that Canada finally has the Convention-derived exclusions built into our domestic definition, it isn't better to simply leave that determination as the Convention proposed: to the determination authority.

HA: That's the key issue.

JB: That's a philosophical question that was answered by Parliament in 1987-88.

JH: It was and it wasn't. At the same time as these exclusionary requirements were established, Parliament gave the Board the jurisdiction to deal with issues of this kind in the context of refugee status determination. I think that is a problem—the Board's role is very unclear, given that the upfront exclusion appears to fall to other parties.

HA: One of the interpretations of the provisions is that it has given immigration officers much more power to deny people access to the refugee determination system. The way the Act is worded appears to affect eligibility and who can get into the system. Tell us what you think it says and what authority the immigration officers do and do not have.

ML: Would you also indicate where your default position is? If in doubt, does it mean the SIO gets the case or the adjudication officer?

JB: The jurisdiction of the senior immigration officer is very precisely defined with respect to admissibility: lack of documentation; persons who return without consent; and persons without status in Canada. All other cases go to inquiry, by default, with no discretion. With respect to the eligibility criteria on criminality, the SIO makes the ultimate determination on whether the person is eligible to make a claim, but it's based on the adjudicator's determination of whether the person is criminally inadmissible to Canada, so there's no discretion on the part of the officer.

GJ: Can I paint a picture of what I extrapolate from the Bill about what will happen at the port of entry when people come in? They will get off the plane and go to first primary immigration. They will then be referred to secondary immigration for inspection and will be examined by an immigration officer who will write a report indicating that they came to Canada for whatever reasons, and that they don't have proper documentation, or whatever. The immigration officer will then refer the case to a SIO who will interview the person further and then conclude with respect to eligibility. Conceivably this could all happen in a couple of hours. It would all take place within the confines of the airport immigration offices, without any right to access counsel, whether a lawyer, a friend or parent.

There are two very substantive issues. The officer makes a determination with respect to the allegation in the report, and also respecting eligibility. What concerns me about this situation is that the allegation might be straightforward, but the factual basis for the allegation may not be. For example, just off the top of my head, if an immigration officer finds in the airport washroom a passport or a travel document issued by the Federal Republic of Germany and that person in that photograph might be the person sitting in front of him, then that senior immigration officer may conclude that this person is not eligible because they have status in a prescribed, safe third country. If the person denies having held the passport, it could be a serious factual dispute over which the SIO has jurisdiction without any input from counsel, any assistance to the person concerned, etc.

"Basically, we take the approach that if a person can be removed, notwithstanding the fact that he's determined to be a Convention refugee, then we do not need to make a determination."

JB: I don't doubt that there may be disputes of fact. But they are still straightforward issues. If you have a passport that appears to have your picture in it and you appear at an airport at the same time, chances are you came together.

HA: I agree with giving the immigration officer the right to make a judgement like that. If they can't make that kind of a judgement, what kind of a judgement are you giving them to make? As a lawyer you could contend that every fact is a disputable thing and as a philosopher I would agree, but that doesn't mean in practice every fact can be disputable. I am interested in situations that are problematic or that would allow an immigration officer to exclude a genuine refugee claimant. These new accessibility and eligibility provisions strengthen the officers' hands, don't they?

JB: It gives jurisdiction to the officer that he doesn't have today to make decisions of whether the person is eligible to make a claim. The questions of eligibility may not be that straightforward.

AR: Your earlier point, Jim, as I understand it, was that the present legislation, by allowing more time to inquire into evidence, do more research and cross-examinations, etc., gives a little bit of breathing space. This is in contrast to the proposed amendments, under which someone can say you're going to get on the next plane to leave, on the basis of potentially incomplete information.

JB: There is only one situation where that can happen with respect to a person claiming refugee status: if the person has come from a country with which we actually do have a burden-sharing agreement.

If a person comes to Canada from a country that is prescribed under S.114(1)(s), that person is ineligible. Concerning removal, a claimant can only be removed immediately if the country through which he travelled is a prescribed country under S.114(1)(s) and Canada has an agreement with that country. Otherwise the removal order cannot be executed for seven days. I think the most likely scenario is that there will be a prescription only where there is an agreement.

JH: I have a couple of queries on aspects of eligibility. The Bill as it is now drafted doesn't appear to take account of the following scenario: a refugee from country A finds protection in country B and at some subsequent stage becomes at risk in country B, and comes to Canada. The way the criteria of S.46.01 are now drafted, this person is returnable to country B, which will still admit him, even though he may have a well-founded fear of persecution there. That's got to be a mistake. I'm sure that could not have been the intent of the draft, assuming that a person cannot safely return to a state in which he formerly found asylum. The easy answer to this problem is the retention of Section 46.01(2) of the Act as it exists today, which makes it clear that a person who claims a fear of persecution in the second state will have his claim determined by Canada. I think we certainly need to reinsert that in this draft.

JB: Well, there is no mistake.

JH: You're intending to return that person?

JB: We are intending to return that person.

JH: Well that's breach of international law and you can't do that. If a person has a well-founded fear of persecution, either in a country of nationality or of former habitual residence...

JB: Only if he is no longer a citizen of his country.

JH: No, we are presupposing that he has a well-founded fear of persecution in state A. We are now saying that there is no longer protection in state B. He can safely return neither to A nor to B, but you're suggesting that he is not eligible to have his claim adjudicated in Canada?

JB: Even if he were eligible, the Board could not find him to be a Convention refugee with respect to country B.

JH: If the person finds protection in state B, he is ineligible to come to Canada so long the state B protects him. That's clear and I have no problem—that's the way it should be. But if the person is a national of A, has resided in B, and has a fear of persecution in each, he is absolutely entitled to have his claim determined in Canada or any other state.

JB: I disagree. On the basis of the Convention, it says that not having a country of nationality is outside the country of the person's former habitual residence. If the person is a citizen of country A, then he is not without a country of nationality.

"The whole refugee community is afraid of this. That the government's intention is to send people back, not giving a damn if they are protected or not, to countries where they do have a well-founded fear of persecution."

JH: So what is the solution for the individual that I just put before you? You ship him into orbit, or back to the country where he was persecuted?

HA: It's against the very principle of the Act.

JH: This is not right, John. I mean the drafting is not right.

JB: It is not a mistake. The intent will be to give the person a Minister's permit.

JH: Why are you going to go that route rather than recognizing that this is a person who has a well-founded fear of persecution in state A and can't live in the state where he formerly had protection?

JB: The question is whether the person can make a claim and whether it makes a difference if he can make a claim and the answer is, given the definition of the Convention refugee, it would make no difference. The Board could not find him to be a Convention refugee with respect to country B.

HA: You are just dead wrong on that. I was just reading some decisions sent to me from Australia.

JH: You're saying that giving a person a permit is the legal, factual equivalent of granting that person refugee status, which is just wrong.

JB: I don't suggest that.
JH: Well, you're granting a person a very inferior form of discretionary protection that carries with it none of the rights of the Refugee Convention, nor the rights that accrue to refugees under this Act, which allow access to permanent residence. I won't pursue this, I assumed this was a simple point, that you just left out 46.01(2), which was in the Act—which was there intentionally last time around—to protect against this situation.
HA: The point is, why not do it properly? What you are doing is telling us that the intention is to not enforce the spirit and, I would also argue, the law of the Convention. The whole refugee community is afraid of this. That the government's intention is to send people back, not giving a damn if they are protected or not, to countries where they do have a well-founded fear of persecution.
JB: No, it is not our intent. I am saying that the person cannot be determined to be a Convention refugee with respect to country B if he is a citizen of country A.
HA: Is it possible that your legal interpretation in that regard is wrong? Is that possible?
JB: I suppose it is always possible.
HA: Now if it is possible that it is wrong, would you agree to review it just that much, to say let me raise a reasonable doubt in my mind that I may be wrong and we consider the other possible interpretations of the Act that I just heard and consider whether this section should go back in?
JB: If it went back in, it certainly would not be in the form that it is in right now.
JH: Okay, it only needs a three-word change: "A person is eligible to have claim determined by the Refugee Division if the person claims a well-founded fear of persecution ... in the country that recognized the person as a refugee." Very straightforward—you change three words in the existing provision and it works. Look, the number of people we are talking about is very small in any event. The whole rationale of this Convention is that where the person is formally returnable to some state, you have to assess whether or not there is a good reason to prevent that return; if the person is formally stateless and has no state to which he is returnable, the claim is to be examined under the Statelessness Convention. An individual who is formally returnable both to A and to B, under my scenario, has to have his claim assessed to determine whether or not there is a good reason based on fear of persecution for a Convention reason to grant that person protection. It is logical to protect him, it is humane to protect him and the downside cost is negligible because we are not talking about a big group.
MB: If I am from Sri Lanka and have been living in Germany, I applied for my claim and suddenly I find that there is an outbreak of violence. I acknowledged that Germany has given me protection, but the conditions are no longer safe and some of the regions are not so keen on encouraging the police to protect, so now I would like Canada to accept my claim.

"Concerning the existing case-load, the intent is to permit a policy shift to rebalance the program. Over the past few years there was a huge inflation in the family-based movement that squeezes out other immigration."

Under the scenario that you described, does that mean that the claim would not be adjudicated?
JH: It would be adjudicated. One has to consider the adequacy of protection in terms of Convention standards. These questions have to be looked at, that's all I am suggesting.
HA: But it can't be done by an officer.
JH: This is the kind of situation that ought to be dealt with by the Board.
JB: That would require a lot more amendments to the Act because we have to give the jurisdiction to the Board to make those decisions and they don't have it now.
JH: Well, the Board perceives itself to have that jurisdiction and has exercised it over the last two years. Section 46.01(2) specifically addresses the scenario of a refugee who is at risk in the country in which he has found asylum.
JB: They can only adjudicate the claim with respect to the country of origin. They may find the person to be a refugee in Sri Lanka.
JH: Currently, if an individual applying as a refugee vis-à-vis state A by virtue of 46.01(2), state B is excluded as a site of removal, hence the person would be protected as a refugee from A.
JB: But if they're making an assessment with respect to whether the person has a valid claim with respect to the country of asylum, then they do not have jurisdiction.
JH: If 46.01(2) effectively eliminates B as a site of removal, then assessment of the claim against A is all that is required in order to protect a person. The Board should provide protection for the person who can be returned to no country safely, and that's the bottom line here.
JB: I'm not saying that it is not an issue—but a much greater issue than the one you suggest.
JH: It is and it isn't. I am questioning whether, given that the prescribed list concept is going to be superimposed on the Convention, the Board ought not to retain the residual jurisdiction to entertain the claims of people who cannot be returned to a prescribed country by reason of fear of persecution?
JB: Well, I guess that is the issue here then.
JH: I think the prescribed list concept is highly problematic; that is a much bigger question. But if a person cannot safely be returned to any state—A or B—then the Board not only can, but has a duty to determine that claim.
JB: I think you mixed the two provisions here. Let's talk about the U.S. You have a person who comes up here from the U.S. and who has never made a claim to the U.S. The U.S. is prescribed, so that person is ineligible and that person goes back. This person's brother happens to be a Convention refugee in the U.S. He comes up and is ineligible because he has protection in the U.S. But say he fears persecution in the U.S. and in your scenario he goes on to the Board.

JH: He should be heard by the Board, but that doesn't guarantee he will be recognized as a refugee. It depends on whether he is adequately protected in the U.S.

JB: Well, under the wording of the Act as it stands right now, if he went on to the Board, the Board could only make a decision with respect to his country of origin and that's all they do now. No dispute on that.

JH: I am not disagreeing. You determine a claim of a person who has a country of nationality with regard to that country. Then one comes to the issue of whether or not there is a second state to which the person is returnable. Section 46.01(2) effectively prohibits consideration of the U.S. as such a country in the event the Board is convinced the person has a well-founded fear of persecution in country B.

JB: That is not what the Act says.

JH: Rather then being technocratic and legalistic, all I want you to do is to think about my scenario of a person who has a well-founded fear of persecution in A and who had protection in B, but now has become at risk in B. Is it logical to say that such person may not be protected? That is my only question.

MB: That person could be dealt with under a Minister's permit or it could be some kind of public policy provision. So in those instances the real issue is should you apply a lesser kind of test, and what are the policy issues that are at stake?

HA: You translated it back to a political and administrative problem! It is an issue of human rights and an international Convention to which we are subject. We are obligated as a country to provide protection if returning that person to country A or B would endanger that person. Further, the determination of that situation should not be at the discretion of an immigration officer or even the Minister. Does this give an opening to serious abuse? My sense is that the number of people who might abuse it could not be that large, and that the judgement should be made by a Refugee Board.

JH: Even if John's interpretation were right, we come to the second question: does it make any sense not to retain S.46.01(2), given that it provides an easy safeguard?

JB: I think it is too easy a safeguard, that is my concern.

JH: I don't think that a safeguard can be too easy.

"I see a fundamental contradiction in this Act between shared responsibility and safe third countries. Safe third country is a beggar-thy-neighbour ideology. It's a way of unilaterally saying that the problem is not ours."

JB: You can look at it again, but I just think that the solution is a much more complex one than is suggested.

HA: Let's get into the safe third country provision. We clearly have a very profound difference on this.

GJ: There is one difference from the current Act—the safe third country will not have to be a country that has a refugee determination system.

HA: What was the intent behind that? I object to the whole side.

JB: That the country has to respect its obligations under Article 33 in the Convention. That's the key, isn't it?

JH: No, it's not. That's my first point. A country can be prescribed if it complies with Article 33, and then you define compliance with Article 33 by means of four other things. This is a very poorly drafted section because complying with Article 33 doesn't require the four other things you're told to look at. Article 33 is only one article in the Refugee Convention. It is not the Refugee Convention. A state that fails to comply with *any* of its obligations under the Convention is an inappropriate site for return. In other words, you can have a state that doesn't "refoule" people, but which starves them to death, tortures them, or denies refugee children access to schooling. Article 33 is the wrong standard. The intent expressed in Section 114 (8) is more appropriate. You really want to know whether this a state that complies with its obligations under the Convention. There are a lot of countries in the world that don't send people back, but they do very brutal things to them. Technically, these states meet the test of Article 33 compliance, the broader concern of S. 114 (8) notwithstanding.

JB: But when you're deciding to prescribe, you're looking at other things.

HA: Then why make the reference to 33? What he is saying is that there is no congruence in the Act. It is bad drafting. You don't say Article 33, which is just a nonrefoulement clause, and then say in another section that you have to comply with Article 33 and refer to all kinds of other factors that aren't part of Article 33. That's just bad drafting, it's bad legislation.

JH: It seems to me that we should be looking, first, at whether they respect the human rights of refugees and refugee claimants; secondly, do they have a procedure to look at refugee claims that meets basic international standards; third, will they in fact admit the person and let him into their process? Those are the three questions. That's what you need to say, and you can say it in a straightforward fashion and achieve your intent without this incongruent reference to Article 33.

MB: You have lots of suggestions and some of them I gather you are going to use as testimony when you go to legislative committee. We have our own ideas about some things that need to be modified. It would be very helpful if you gave us whatever ideas you have before you present them.

JH: I think that's fair, but I think we should have a two-way exchange, with you explaining the thinking behind certain provisions. Obviously the best route is to have you guys walk in with changes.

AR: I may be way off base, but it is still my opinion at this stage that when you combine the delegation of certain powers to officials through regulations, international agreements and provincial agreements, with changes in the

Constitution regarding powers of provinces, we are going to end up within the next decade losing central federal control of immigration. The federal Parliament will have very little effective power—it will be in somebody else's hands.

JB: The provinces have expressed an interest in immigration and there's no question that they will play a greater role in the future. We have made provisions for that; it is part of the Constitution.

HA: I see a fundamental contradiction in this Act between shared responsibility and safe third countries. Safe third country is a beggar-thy-neighbour ideology. It's a way of unilaterally saying that the problem is not ours. Shared responsibility says that decisions about how we adjudicate such things are done by open agreements. This Act tries to wed the two—and it does so poorly. Technically and philosophically, they are two separate ideologies. I'd like to have some rationale for that kind of marriage. If you have shared agreements, why do you need safe third country? And if safe third country can only be implemented in real terms with shared agreements, why not delete the whole section on safe third countries? My final argument is that it is the worst public relation vis-à-vis the refugee support community. It is waving the red flag. Why not get rid of it?

JB: As I suggested before, I don't think that we will see a prescribed country list that does not parallel a list with which we have agreements.

HA: So why have it? It reads like scissors-and-paste legislation. It stands out as if somebody has said, "Put this in the Act. I need it for the Reform Party" or something like that. It's totally unnecessary and not a good thing at all.

JH: Take one step backwards. You're saying shared responsibility may be a good thing, but safe third country is definitely the wrong approach. I think shared responsibility, as it is currently being conceived, is an equally bad idea.

HA: It may be.

JH: Of everything I object to in this Bill, my concerns are greatest in regard to S. 108.1 The generic idea of everybody collaborating is one thing, but the particular forms that exist in Europe, and that we are talking about joining, are extremely dangerous and should never be adopted by Cabinet acting alone. Any treaty of this importance should be presented to Parliament.

ML: It seems to me that the specifications of safe third country and shared responsibility have a gap concerning Canada's geographic position and our position re refugee flows. We do not have many people migrating from Canada to elsewhere. This is nothing new. But shared responsibility agreements have to look at the size of refugee flows. If there is a huge refugee flow coming from country X and two countries would agree to share that flow—how would that be divided up? You would have to be concerned about not breaking up families, etc. That is what I would call shared responsibility: taking a refugee flow and making some sense of how that can be divided. I don't see anything in here that addresses these questions. The fact is that Canada is the end point, so the question is only one of turning people back, not sharing. That means that the language we have is really not fitting with the kind immigration and refugee flow problem that we seem to have.

JB: There's a different question being asked by Michael here and that is what is the objective of Canada and the objectives of most European countries with respect to worldwide migration pressures. The proposal here, in the Dublin Convention, and everything else that has been raised in recent years with respect to questions of countries of first asylum have not been addressing the type of problem that Michael is talking about, which is how do you deal with particular flows from particular places. The question the legislation is addressing is how do you deal with the overall growing flow of asylum seekers into the countries of Europe and North America—in terms of how do those countries as a group and individually deal with the phenomena in order to protect themselves and meet their obligations. That is a different problem with quite a different set of solutions. What Section 108.1 does is give legislative authority for Canada to participate in agreements designed to deal with that problem, certainly to Canada's benefit, and obviously also to the benefit of the countries with which we reach agreements, but not to the detriment of migrants.

"The provinces have expressed an interest in immigration and there's no question that they will play a greater role in the future. We have made provisions for that; it is part of the Constitution."

HA: Shared responsibility is lifted out of some of our writing, along the lines that Michael talked about and what Jim was referring to, as a vision of the receiving countries assuming a collective responsibility and allocating responsibilities by mutual agreement among themselves. In order to get rid of beggar-thy-neighbour, we started to talk the language of shared responsibility, etc. The language is now incorporated into the legislation. Jim's point is that the phrase is being used not to mean shared responsibility but to mean another form of beggar-thy-neighbour. It's particularly important for Canada for two reasons. First, we are a leading country setting the standards. On the other hand, we're still a country that gets less than our burden share. We are the last country that needs to do this stuff—we are geographically at the end of the pipeline. We're the last one in that section and we're the bearer of refugee standards. To start doing this kind of thing is horrible and bad.

JH: There is even a more fundamental assumption underlying Michael's question. As the Dublin Convention is drafted, if Italy or Germany or some other participating state takes a disproportionate share of the overall

refugee flow into the contracting states' territory viewed as a whole, then that state will be compensated by the other contracting states. Now if you factor in our geographical position at the end of the long route to asylum, it could effectively mean that burden-shared responsibility in an agreement like Dublin means both fewer people coming as refugees to Canada, and potentially hundreds of million of dollars in payments to our partners who receive those people. It will be the Italians in the case of the Africans, the Americans in the case of the Central Americans etc., who ultimately run the determination procedures and either receive or reject the claimants. This scenario is very different from the idea of looking at relative resources, looking at the extent of cultural homogeneity, etc., and coming up with a formula that shares the responsibility broadly. It's saying, "How do we limit the options of claimants to site A as the one and only place where they can make a claim?" and the rest of us pay a price to those states that carry the burden. The end point of this is that Canada might not receive many claims at all.

The Hearings

[*The preliminary inquiry would be eliminated. A unanimous positive decision on the part of the Refugee Division members is required to accept claimants who have without valid reason destroyed identification papers, those from a nonrefugee-producing country, and those who have returned to the country of alleged persecution during the processing of their claim. Most hearings will be open, but the panel may decide to close a hearing or restrict publicity about the case. If the Minister chooses not to participate, the Refugee Division may decide in the claimants favour without a hearing.*]

GJ: I have a couple of problems with this provision. In more than one place in the Act there seem to be penalties or a higher burden placed on refugee claimants that arrive without documents. It's part of the section on carrier responsibilities, and it even affects landing. And yet as Jim has already said, in many ways the hallmark of valid refugees is the inability to get valid documentation from the country where they fear persecution.

JB: I don't buy the myth, but go on.

GJ: From my experience with clients, it does not seem to be a myth. The fact is that the Refugee Board refuses refugee claimants if they applied for and obtained travel documents from their own government. So you might not buy the myth, but the Refugee Board buys the myth. Already identification is an issue, so I don't understand the rationale for the new standard. It seems as if the public is angry at people who come without documents because they think that they are abusing the system, so the politicians have put it into the Bill.

HA: For someone who arrives without documents, the question is should Canada put all kinds of incentives and penalties for producing whatever documents they have? Leave aside for now whether they are proper documents because that is a source of confusion. People often have to use all kinds of purchased and forged documents to get out of a country—I don't have any problem with that. If you come on with a forged document, get off with a forged document, show it so they can say you're a refugee. I have no problem with the government demanding that that be done and putting all kinds of inducements and penalties in the Act to ensure that it is done. I don't think we should condone the destruction of documents.

JH: In theory you are absolutely right. But we know that we have visa controls on the majority of the world's refugee-producing countries, so if you're carrying the passport of such a state, you are not going to be able to get on a plane to come to Canada.

HA: That's a separate issue. I could understand it.

JH: The problem is that we're creating disincentives for people to be honest, either because their credibility is questioned at the hearing on the ground of false documents, or because they may be found ineligible upfront before they even get to the refugee hearing because they are carrying a passport of a prescribed country. Refugee claimants do dumb things because we've created such a maze of obstacles that ultimately the claimant doesn't know the right way to go about getting to Canada.

GJ: I don't understand the connection between the control problem mechanism and the destruction of the documents. If the person has a well-founded fear of persecution in his country of origin, the fact that he destroyed his documents on the airplane does not change that fact.

"My concern is with the method. I'm concerned that there are some people who come to this country who destroy their documents but who are genuine refugees, who are in need of assistance or protection, who are going to run into a system where they are put to a much higher standard of proof."

HA: Well, I will tell you why it affects it. There is a problem of identification. If you're having refugee hearings, you don't want an unidentified guy coming up—he could be a criminal—making a refugee claim. You have no way of tracing him, you have all the mechanisms available to find out who he really is and where he comes from. I think the Canadian government should have the extra leverage to find out who that person is. I think Jim's critique is right—that we now send the message out that encourages people to disguise their documents. On the other hand, the government should be able to find out who in fact is sitting in front of them.

GJ: I'll tell you something else. In the last week I've had two people tell me that your officers at the appeal office are alleging people committed serious nonpolitical crimes for having forged documents. Those people got off the airplane and handed their false

documents over to the immigration officers.

JH: If you really want to deal with this, first, you reassess the visa policy on all refugee-producing states. Number two, it should be clearly understood that false documents do not negatively impact the credibility of the claimant.

JB: That's not a reason for having to destroy them.

JH: The process creates so much confusion that you do whatever you need to get on the plane and then get rid of whatever it was that let you get on board.

HA: I think it should be the reverse. The idea is to get people to keep the documents, not destroy them.

JH: If you want to eliminate that industry, eliminate the visa requirements on known refugee-producing states.

HA: Well, there are other kinds of factors. I would argue that documents should not influence eligibility or accessibility to a refugee claim. This should be spelled out in the Act so that everyone will know it. It would alleviate the fear that people will be guilty of a criminal offence for holding false documents. Does that make sense to you?

JB: It certainly does. The principle behind all the references to keeping documentation is designed to get people to produce their documents, not to their detriment but to the benefit of the system.

JH: My concern is not with the intent. I think that the intent in trying to identify people who are otherwise undocumented is valid. My concern is with the method. I'm concerned that there are some people who come to this country who destroy their documents but who are genuine refugees, who are in need of assistance or protection, who are going to run into a system where they are put to a much higher standard of proof.

HA: It didn't say they can't be, it says they may not be. The Bill says there will be higher hurdles unless you produce your documents. There has to be a clear message to the immigration officer that you cannot use false documents to deny accessibility or eligibility to enter the refugee system. It has to be explicit in the law.

JH: The bottom line is that everyone in these countries of origin know that with their genuine documents they don't have a hope in hell of getting on an airline.

HA: I believe that the inducement system will work. I don't think carriers should be penalized for transporting genuine refugees—if you could put that in, it changes the whole picture. It would say that we're open to genuine refugees, but we're not open to the others.

"It seems to me that the specifications of safe third country and shared responsibility have a gap concerning Canada's geographic position and our position re refugee flows. ... The fact is that Canada is the end point, so the question is only one of turning people back, not sharing."

JB: The standard is there, quite frankly, because, as you just said, you don't want airline check-in clerks assessing Convention refugee claims.

JH: If you tie Howard's idea with Section 45, I think you would have a workable piece of legislation. Part (b) is also a problem: persons having returned to their state of origin. In principle, everyone understands that you may undermine a well-founded fear by going back to the place where you came from. I think all you need here is the exact language that you have in (a), referring to those cases without a valid reason. If you go back to visit your dying mother, or to rescue your children, the international law criteria for cessation have not been met.

Part (c) is also problematic: requiring a unanimous decision for persons coming from states declared by Cabinet to respect human rights. It codifies a skepticism towards claims that come from states that have not traditionally produced large numbers of people by imposing a higher adjudicative threshold. Why would we want to make the change just for refugees who are exceptions to the rule? Why impose a higher adjudicative threshold? If you look at the IRB's record, I don't think we've accepted a single American refugee claimant. There is no real evidence that the system is at risk of abuse. Why don't we leave it the way it is and treat all refugees similarly whether they are the exception or the rule?

GJ: I have found from my practical experience that the unanimity requirement is redundant. A client who breaks any of these three requirements is probably going to lose. If they come from one of those obvious countries like the United States or West Germany, they're going to lose. And if they return to their country of origin for any reason, including to see their sick mother before she dies, there's a very good chance they're going to lose. I think it's redundant, from my practical experience.

HA: The amendments Jim suggested are quite reasonable.

JB: Certainly adding the valid reason is a legitimate point to raise, and the lack of criteria certainly ought to be reviewed.

JH: I think you have to look to see if there really is a problem. If there were 1,000 claims accepted from the U.S. that appeared to be bogus, I might understand your preoccupation, but I've looked at the IRB stats, and there hasn't been a refugee from the U.S., or Great Britain or France, none of the obvious countries.

GJ: And I think it shows a real lack of faith in the Board members.

JB: I think the original intent was to try some form of exclusion for those types of people, but we moved away from it, maybe to the point where it becomes of questionable value.

HA: Maybe rather than trying to spell it out, it's better to drop it. It's unnecessary overkill.

JB: You're right. Ultimately when you get into a hearing, you won't save any time with this unanimity provision.

GJ: It seems a considerable amount of discretion has been introduced in this Bill—regulatory powers and discretionary powers that weren't there before. That concerns me because I don't understand why, and it strikes me as being potentially open to abuse.

JB: Most of it pertains to the management of immigration. Some of it highlights the realities, things that happened administratively anyway and that are now in the regulations—for example, private sponsorship. The theory is that we can handle as many as there are sponsors, but the reality is that we can only handle as many as there are people

"I think it shows a real lack of faith in the Board members."

available in the posts abroad to process them. Clearly, the level of resources for the posts abroad are linked to the proposed level of immigration for the year. There is a de facto limit, and the regulations simply acknowledge it.

GJ: What concerns me is when a safeguard has been removed and been replaced by discretion. The answer to the concern is that the Minister can issue a permit, or we will allow the person in anyway? There's an awful lot of that kind of discretion where the safeguard has been removed and the safety net is administrative or ministerial discretion.

AA: If the safe third country provisions are implemented, what is the projected number of refugees that will be affected?

JB: I guess press materials say 40 percent, don't they? It's hard to predict. As the world changes, the number of refugees to Europe will rise, yet last year, the number to Canada went down. One of the goals in streamlining the process is to maintain the current level, rather than deal with growth. It depends on what countries are prescribed. The obvious one is the U.S. because more than a third of the total flow is through the U.S. Obviously, there would be ways of getting around the port of entry coming from the U.S. It's hard to predict, but for administrative purposes, we figure we can cut the number from the U.S. in half. Europe is hard to predict. ■

No Integrity Without An Appeal

Esther Ishimura, Vigil Toronto

I waited with great anticipation for the new amendments to the Immigration Act. I had hoped that it would make provision for a new appeal mechanism to review failed refugee claims. With great dismay and frustration, I note that there is no such provision.

I work with Vigil Toronto, a volunteer nongovernmental organization. For the last three years we have been assisting people we believe to be Convention refugees who have exhausted all legal avenues open to them, and who are scheduled for deportation from Canada. One of these people is Mr. E.

Mr. E. is a Sri Lankan Tamil who fled Sri Lanka in 1989 after two of this friends were killed for providing equipment to the Tamil Tigers. He also unwillingly gave equipment to the Tigers and feared for his life. From 1974 until 1989 Mr. E. was detained and tortured repeatedly and brutally by the Sri Lankan army and the Indian Peacekeeping Forces. On one occasion he was also detained by the Tigers. As a result of this treatment, Mr. E. continues to have flashbacks of his experiences of torture. He suffers from insomnia, nightmares, digestive problems and anxiety.

The Immigration and Refugee Board refused Mr. E. because they misunderstood his testimony and believed he only feared the Indian army, which had left the country. They did not recognize the cumulative effect of the numerous detentions and extreme persecution that Mr. E. endured at the hands of various armies, especially the Sri Lankan army, which is still engaged in a bitter civil war against the Tigers.

Vigil Toronto has seen over a hundred cases similar to this one in the last three years. While we acknowledge that Canada's refugee determination system is generally fair, mistakes do occur. Genuine refugees have been denied Convention refugee status because of poor legal representation, poor translation or errors made by Immigration and Refugee Board members. As well, people come to Vigil Toronto because new evidence has arisen in their situations after the completion of their hearing. For example, a man might discover that security forces in his country have attempted to find him and, failing to do so, have killed a close relative in his place.

The refugee determination system has no adequate means to review failed claims for the purpose of correcting errors or considering new evidence. The present avenue for reviewing a failed

"Canada must have a safety net to ensure that genuine refugees are not returned to the persecution from which they fled."

decision includes an appeal to the Federal Court, a postclaim humanitarian review or an appeal to the Minister of Immigration. The appeal to Federal Court is by permission only and is granted only on errors in law, not on the facts of the case. It does not allow for new evidence to be presented.

The humanitarian and compassionate review is a perfunctory paper review that is presently done by the managers at immigration offices. To be accepted, people must show that they would be in more danger than anyone else in their country. It is no surprise that because of this stringent test, only eight out of 237 Tamils have been accepted since January 1, 1989, notwithstanding the utter horror of the civil war, arbitrary detention and human rights abuses in Sri Lanka.

The statistics for the total number of people accepted under the postclaim humanitarian and compassionate review illustrate that this process is of negligible effectiveness and dangerously unreliable. From April 1991 until April

1992, twenty-three people out of 3,463 were accepted across Canada for humanitarian considerations. Appeals to the Minister of Immigration have been all but useless since Mr. Valcourt took office. In the last year the Minister has accepted less than a handful of people. Mr. E. was among the many who were refused.

The recently-announced changes to the Immigration Act not only fail to address the need for a more effective safety net, they introduce the possibility that even more errors will occur. The new Act makes it necessary for some refugee claimants to convince both of the Refugee Board members hearing their case to accept them. At present only one assenting member is required, giving the refugee the benefit of the doubt. The new Act also gives expanded exclusion powers to immigration officers at initial interviews. The proposed change to the Immigration Act that allows for a complaints procedure acknowledges that there are problems with the Refugee Board members, but offers no relief to the failed refugee claimant.

To ensure that our refugee determination system meets the high standards that Mr. Valcourt talks about, there must be an appeal on the merits of a case with the possibility of entering new evidence. Canada must have a safety net to ensure that genuine refugees are not returned to the persecution from which they fled. Without this appeal we can have no confidence in the present government's commitment to provide protection for all those Convention refugees who need it. Without this appeal we have no answers for the people we know who need Canada's protection, but who are scheduled for deportation back to Iran, Sri Lanka and Kenya.

Vigil Toronto already told Mr. E. that the Minister of Immigration refused to allow him permission to stay. Yesterday we told him that the new changes to the Immigration Act do not allow for a review of his case. He just sat and cried □.

Esther Ishimura is the chairperson of Vigil Toronto, a nonprofit volunteer group that advocates on behalf of refugees in need who are denied protection in Canada.

The Canadian Council for Refugees (CCR) Spring 1992 Session Resolutions

I. Language Training

RESOLUTION 1: The CCR to send a telegram to the Minister of Employment and Immigration requesting that implementation of the Language Instruction for Newcomers (LINC) and Labour Market Language Training (LMLT) programs be postponed until the Federal Immigration Language Training Policy is reviewed.

RESOLUTION 2: The CCR resolved to recommend to Canada Employment and Immigration that Canadian citizens be given equal access to LINC and LMLT programs.

RESOLUTION 3: The CCR to encourage Canada Employment and Immigration to make refugee claimants eligible for the LINC and LMLT programs.

RESOLUTION 4: The CCR to urge the Canada Employment and Immigration Commission (CEIC) to: 1) adopt flexible guidelines and provide funding to increase the number of hours of language instruction to meet the needs of clients; 2) adopt flexible guidelines and increase funding to provide class sizes appropriate to clients' needs.

RESOLUTION 5: The Executive Committee of the CCR to promote adopting the Manitoba model of cooperation among stakeholders in the delivery of language training; the Executive of the CCR to encourage provincial departments overseeing the welfare of refugees and immigrants to take a leadership role in this matter; the Executive of the CCR to advise the Canadian Ministers of Education Council of the importance of this process.

II. Overseas Protection

RESOLUTION 6: The CCR to urge the Canadian government to release remaining Iraqi assets; encourage other governments to release similarly frozen assets in their countries; use its position in the UN to ensure that sanctions against Iraq do not cut off food, medical and rebuilding supplies; monitor purchases by Canadian or UN reps to ensure that they are distributed without discrimination.

RESOLUTION 7: Levels for government-assisted refugees. The CCR to urge: 1) the Minister of Employment and Immigration to fulfill the government's commitment to select and land 13,000 government-assisted refugees in 1992, and to allocate resources to overseas visa posts required to meet this commitment; 2) the Minister of Cultural Communities and Immigration of Québec to increase the levels of government-assisted refugees for 1992 to at least the same percentage of the Canadian total as has been set for all other immigration levels to Québec.

RESOLUTION 8: Overseas protection of urgent protection cases. The CCR to urge the Minister of Employment and Immigration to speed up private sponsorship proceedings at overseas visa posts for refugees in urgent need of resettlement; to urge visa posts to accept referrals of protection/ vulnerable cases from the United Nations High Commissioner for Refugees (UNHCR); to urge visa posts to attend to referrals of protection/ vulnerable cases by granting Minister's Permits and conducting medical and security checks in Canada.

RESOLUTION 9: Haitian refugees. The CCR to urge Sadako Ogata, United Nations High Commissioner for Refugees, to take a strong stand towards the United States' decision to forcibly return without a hearing all Haitian boat people and to demand fair treatment for Haitian refugees. The CCR to urge the Canadian government to support the UNHCR's position, to protest to the U.S. government, to assist in convening an international conference on the U.S. interdiction of Haitian refugees, to offer protection to those Haitian refugees whom the U.S. is unwilling to protect, to call on the international community to protect Haitian refugees.

III. Protection of Refugees in Canada

RESOLUTION 10: Safe third country. The CCR to ask the Parliament of Canada not to authorize the Canadian government to enter into any refugee determination allocation agreements unless they meet certain criteria.

RESOLUTION 11: Appointment of members of the Convention Refugee Determination Division (CRDD). The CCR to demand an open and systematic appointment process to the CRDD that considers qualifications and relevant experience in human rights and refugee matters; any nominee for appointment to the CRDD or for continuation as a member of the CRDD be approved in consultation with a regional Canadian Bar Association (CBA) Immigration Subsection and a regional affiliate of the CCR before being considered for appointment.

RESOLUTION 12: Change of circumstances. The CCR to present instances of inappropriate use of changed circumstances as a rationale for refusal to Employment and Immigration and to the CCRD; to recommend appropriate procedures to the CEIC and CRDD for dealing with changing circumstances; to request that UNHCR communicate to CEIC and CRDD the facts about change in circumstances; to request that the Refugee Documentation Centre make all materials equally available to claimants, lawyers, refugee hearing officers and Immigration Refugee Board (IRB) members, and that relevant country material from human rights organizations in the country of origin be translated and made part of the documentation; to ask the Refugee Documentation Centre to respond equally to all parties.

RESOLUTION 13: Policy on deportations. The CCR to endorse a policy on deportations.

RESOLUTION 14: Legal aid cuts. The CCR reaffirms the principle that refugee claimants should have competent counsel of their choice in every province and territory; that the CCR opposes any cutback in legal aid services to refugee claimants; that the CCR Executive write to the Attorneys General of British Columbia, Québec and Ontario to ensure that refugee claimants are well-represented at hearings and appeals.

RESOLUTION 15: Family reunification. The CCR Executive to set up a task force or design another strategy for consolidating all family reunification issues towards an effective policy change.

IV. Refugee Women's Issues

RESOLUTION 16: Women at risk. The CCR to request that: 1) the Ministry of Employment and Immigration increase the number of women accepted to reflect the needs identifed by the UNHCR and others; 2) the Minister give the program priority and speed up the processing for arrival in Canada within three months of submission of application; 3) the Minister put a mechanism in place to provide ongoing monitoring to ensure that program goals are being met.

RESOLUTION 17: Independence of women in the refugee claim process. The CCR to communicate with the Minister of Employment and Immigration to request that: 1) women be informed of their right to make a refugee claim independent of their spouses; 2) in cases of marriage breakdown, where women's claims are dependent on their spouses, the women be permitted to make independent refugee claims immediately.

RESOLUTION 18: Cultural sensitivity of Canadian officials. The CCR to communicate with the Minister of Employment and Immigration, the Governor in Council, the Immigration and Refugee Board (IRB) and the appropriate lawyers' associations requesting that: 1) resource people from refugee-producing countries and NGOs be recruited to provide gender and cultural sensitivity training to staff; 2) more women be hired as IRB members, overseas visa officers and interpreters; 3) refugee women be given the opportunity to be interviewed in sensitive matters by women employees of the Ministry, IRB members and interpreters; 4) adequate procedures for hearings of women refugee claimants be implemented; 5) training for IRB members and employees on this issue be mandatory; 6) similar training be organized for appropriate lawyers' organizations or associations.

RESOLUTION 19: Women in detention centres. The CCR to communicate with the Government of Canada requesting that a national body be established to monitor detention centres to ensure that: 1) needs of women with children be addressed to prevent splitting of families; 2) women be separated from men to whom they are not related either legally or by common law; 3) people be placed under the observation of guards of their own

gender; 4) reasonable bail conditions be set so they can be bailed out.

RESOLUTION 20: CCR settlement mandate. The CCR settlement mandate to be discussed by the CCR Executive, the Settlement Core Group and the strategic planning committee, coordinated by the president, the chairpersons of the working groups and CCR staff; the role of settlement within the mandate of the CCR be refined and clarified through a discussion paper to be distributed prior to the November 1992 AGM; a revitalized mission statement to include recommendations from the discussion paper regarding an expanded mandate to address the needs of settlement agencies.

RESOLUTION 21: Fingerprinting. The CCR to oppose any Canadian law or policy that results in fingerprinting refugee claimants without reasonable or probable cause that they may have committed a criminal offence; the CCR to call on the Government of Canada not to introduce into Parliament any changes in legislation that would allow fingerprinting of refugee claimants without reasonable or probable cause that they may have committed a criminal offence.

RESOLUTION 22: UNHCR. The CCR to call on the UNHCR to fulfil its obligations to protect refugees and not to allow its work to be used to support an increasingly restrictive approach to refugee definition in Canada; the CCR to ask the UNHCR to urge the Canadian government for a mechanism to review errors and to listen to nongovernmental organizations, such as Vigil and Amnesty International; the CCR to urge the UNHCR in Geneva to review the actions of UNHCR in Canada with regard to position papers on countries that are being used by the IRB to refuse real refugees.

RESOLUTION 23: Refugee participation policy.

RESOLUTION 24: Safety nets for refugees. The CCR to call on the Canadian government to: introduce legislation to allow for the reopening of refugee claims when there is a change of circumstances, new evidence, evidence not previously available or in cases where the claimant would suffer a serious injustice if the claim is not reopened; ensure that the humanitarian and compassionate review process allow for correction of errors at the CRDD hearing and admission of new evidence, and examine whether the claimant would be in danger, notwithstanding that the claimant has already appeared before the CRDD; establish joint regional advisory committees composed of delegates of the Minister, immigration lawyers and refugee advocates to review negative decisions in a post-claim review process; establish an appeal system for reviewing negative decisions; introduce an amendment to the current leave requirements to the federal court to include as of right an oral application and to require the court to give reasons for refusing leave. The CCR Executive and member agencies to publicize the need for the above measures and pressure the government to enact these measures. The CCR to call on the IRB not to assign any claims to members who have demonstrated bias. ■

Conference/Call for Papers

Gender Issues and Refugees: Implications For Development

The Centre for Refugee Studies and the Centre for Feminist Research at York University will be hosting a conference in May 1993 focusing on Gender Issues and Refugees: Implications For Development.

The primary objective of the conference is to establish a deeper understanding of the current research and analyses undertaken in the field of gender and refugee studies. The conference will embody a North/South feminist perspective on refugee issues. Paper presentations and panel discussions, in either French or English, will address issues of a timely nature, and will stimulate broader cross-cultural analysis in this area.

Abstracts (100 words) are invited from academics, service providers, policy makers, and, particularly, former refugees. Subject areas may include:

- Feminist inquiry and refugee studies
- Cultural issues (in asylum, settlement, resettlement, repatriation, reintegration)
- Environment, ethnicity/race, work, political persecution, human rights, the state
- Family reconstitution, health, sexuality, violence
- North/South feminism

Some travel funding will be available for paper presenters and discussants from Africa, Asia, the Middle East, Latin America and the Caribbean.

Deadline for receipt of the abstracts is December 1, 1992, and should be forwarded to:

Farhana Mather
Conference Coordinator
Centre for Refugee Studies
Suite 322, York Lanes
York University
4700 Keele Street, North York
Ontario, Canada M3J 1P3

For registration information, and for inclusion in a subsequent bibliography, please submit your name, address, research interests, precis of published/unpublished research, and/or research in progress.

Asylum Seekers and the Refugee Determination Procedure

Extracts from a Position Paper by the Refugee Council of Australia

On categorization of asylum seekers:

a) The statutory fiction that deems people not to have entered Australia should be removed.
b) All claimants for refugee status should be afforded the same treatment and entitlements irrespective of whether they applied at the border or after entering the country.

On visa requirements and carrier sanctions:

a) The Australian government should take urgent action to ensure and to demonstrate that the current visa requirements for foreign nationals wanting to visit Australia and the practice of fining airlines and other carriers who allow passengers without visas to arrive in Australia does not obstruct bona fide asylum seekers from gaining effective access to Australia's refugee determination procedure.
b) If the above cannot be adequately demonstrated, steps should be taken as a matter of priority to amend legislation to ensure that such obstacles are removed.

On the entitlements of asylum seekers:

All claimants should be entitled to:
a) Freedom to live in the community—except in special circumstances and the right to engage in paid employment.
b) Access to consideration for humanitarian status.
c) Access to legal assistance.
d) Access to benefits.

On detention:

a) The government's practice of detaining asylum seekers should be abolished.
b) Detention should only be used under special defined circumstances, such as to establish the identity of the claimant or if the claimant is found by a magistrate to be a risk to the community (e.g., if they have a serious criminal record).
c) Persons under 18 years of age should not be detained under any circumstances.
d) There should be regular judicial review of a decision to detain an asylum seeker to assess whether continued detention is justified according to various predetermined criteria.
e) Conditions of detention should be subject to defined standards as outlined below.
f) No detainees should be held in penal institutions.
Where detention is used, RCOA contends that the following standards should be observed:
a) there should be regular judicial review of the need to detain.
b) There should be opportunities for regular day release for the purposes of recreation, training, religious observance, employment, etc.
c) There should be provision for community release subject to specified conditions, e.g., bond on regular reporting.
d) The conditions of detention should be subject to defined standards and be in accordance with Australian and international laws. In particular, there should be access to:

i. accredited interpreters
ii. education:
  - full curriculum for school-aged children (if detained), including instruction in their native language and culture
  - vocational training for adults
  - English language training

iii. recreational pursuits
iv. the services of a welfare worker
v. culturally appropriate medical and dental care
vi. specialized torture and trauma counselling, with accredited interpreters available
vii. legal advisers
viii. appropriate religious support (both for spiritual reasons and to enable the observance of festivals, rights of passage, etc.)
ix. visitation from relatives and friends
x. permission to keep belongings (except where it is deemed that there is a security risk)
xi. the right to open their own mail (in the presence of an official of the Department of Immigration if deemed necessary)

e) In order to ensure the provision of the above services, detention centres should only be located in major population centres, such as Sydney and Melbourne.
f) All staff who come into contact with the detainees should be trained in cross-cultural communication and carefully briefed as to how to work with them.

On access to humanitarian protection:

a) There should be separate categories of refugee status and humanitarian status with provision to apply for either.
b) Consideration for humanitarian status should be based on broader predetermined criteria, including the protection of people for whom there is a demonstrable risk if they were to return to their country of origin for reasons other than those outlined in the Convention (such as natural disaster, civil war, etc.).
c) Power should be vested in Department of Immigration case officers to recommend a refugee status applicant for humanitarian status at various predetermined points in the assessment process, including at the point of entry, without jeopardizing their refugee consideration if humanitarian protection is refused.

d) Access to humanitarian status should not be determined by mode of arrival in Australia or status on application.

On legal advice for asylum applicants:

a) The Department of Immigration should fund independent legal/paralegal advice services for refugee status applicants to ensure that those who do not have the means (financial, language, community support) to access other services have access to this service.
b) The Migration Act should be changed to place the onus on the Department of Immigration in the current situation to provide the following for detainees prior to and during the determination process:
i. independent legal advice
ii. independent accredited interpreters to work with the legal advisers.
c) No assessment on the merits of the claim of a border applicant or illegal entrant should be made until their independent legal adviser has had an opportunity to adequately explain their role and the refugee determination process.
d) Legal advisers should be able to refer clients to psychiatrists for assessments if these are considered necessary to substantiate the claim.

On the provision of benefits for asylum seekers:

a) Once a claim of substance has been established, all asylum seekers not in employment should be entitled to income support provided by the government and administered by a government department with the appropriate infrastructure.
b) Asylum seekers, once registered as having submitted a claim, should be eligible for medical benefits.

It is RCOA's position that a just, fair and effective procedure for assessing the primary claims of refugee status applicants:

- should not discriminate against asylum seekers on the basis of their beliefs, colour, sex, ethnic origin, language or religion
- should not discriminate on the basis of immigration status at the time of applying; and
- in addition, include the following:

a) Department of Immigration case officers and other staff dealing with asylum claims should be carefully selected for their background knowledge and aptitude to this work.
b) All case officers and other staff in this area should receive comprehensive training. Training should address issues such as racism, compassion fatigue and cross-cultural communication.
c) The decisions of case officers and delegates should be subject to regular review.
d) Decision-making staff should be required to keep up to date with developments in countries from which claimants come and that in doing so, they access information from a wide range of nongovernment as well as government sources.
e) The procedures employed should be administratively effective.
f) The primary application stage should include:

- a written application form
- an oral hearing, with provision for the presentation of evidence and the calling of witnesses, especially in relation to psychiatric and medical evidence
- sufficient time to collect documentary evidence and/or to recover from trauma
- full public access to all information used in the determination process
- access to UNHCR advice

g) Determination should be in accordance with the *UNHCR Handbook for Procedures for Determining Refugee Status* under the 1951 Convention and 1967 Protocol.
h) Applicants should be afforded the benefit of the doubt.
i) There should be three possible outcomes of the application: acceptance for refugee status, recommendation for humanitarian status or rejection of the claim.
j) All successful refugee status applicants should be eligible for permanent residence (not the Temporary Entry Permits they are given at present and which result in prolonging the refugees' feeling of being in limbo).
k) The time frames for lodging applications and responding to decisions should be adequate and flexible (if grounds can be shown for requiring extensions).
l) There should be a process of regular *independent* review of the procedure to ensure adherence to the 1951 Convention (and other instruments and laws as deemed appropriate).

On the appeal mechanism for refugee status determination:

As a result of perceived problems with the operation of the Refugee Status Review Committee, RCOA supports:

- disbanding of the existing RSRC
- the establishment of a totally independent review mechanism with decision-making powers to examine appeals by rejecting refugee status applicants
- the participation of community representatives nominated by the Refugee Council in the review mechanism together with other independent people chosen for their expertise in this area
- an appeal process that allows for:
  i. oral hearings
  ii. the presentation of evidence
  iii. the right to call witnesses
  iv. the publication of decisions
- the right of asylum seekers to access the judicial system in prescribed circumstances.

On an interim review mechanism:

The following changes should be made to the operation of the Refugee Status Review Committee as a matter of urgency:

- The position of committee chair should rotate among the members and not be the sole domain of the Department of Immigration.
- The committee should be given decision-making powers (unlike the recommendatory powers they have at present).

- An additional member of the committee should be appointed whose role is to help inject a rigorous approach to the decision-making process. There is merit in considering appointing retired judges to this position.
- UNHCR should be given a vote.

On excessive delays in processing asylum claims:

a) Other than in exceptional circumstances, a primary decision on an asylum claim should be made in no more than six months from the date of application.
b) In the event of a claim being delayed beyond this period, every effort should be made to expedite the process and the applicant should be kept informed of the progress of the claim.
c) While recognizing the need for statutory time limits on procedural requirements, it is necessary to ensure that the procedure employed is fair and does not impinge on the applicant's rights to present all relevant evidence. Therefore, it is necessary that provisions be made for extensions to be granted if good cause can be shown why additional time is required.

On access to the determination process:

a) No potential applicant for refugee status should be denied the opportunity to present his/her claim to the appropriate authority.
b) If the potential applicant is unable to effectively communicate in English, the services of an accredited interpreter should be employed to enable the person to effectively communicate his/her intentions.
c) Immigration staff at points of entry (or other ports) should be fully briefed on the procedures for dealing with asylum applicants and instructed that if there is any uncertainty about the intention of a person seeking to enter Australia without proper documentation, this person should be regarded as an asylum seeker until established otherwise.

On enforced departure:

a) Once an asylum seeker has exhausted all legal possibilities to be recognized as a refugee or to obtain permission to stay on any other relevant grounds, assuming the determination procedure is demonstrably fair and just, he/she should leave Australia, either for the home country or another country prepared to accept him/her.
b) There should be counselling for all rejected applicants conducted by appropriately qualified counsellors.
c) Rejected applicants should be offered the opportunity of departing of their own free will within a specified time frame, with appropriate assistance to be provided before departure and/or after arrival if returning to their home country.
d) Only if a rejected applicant declines to leave voluntarily or does not do so within the specified time period, can they be forcibly deported.
e) A rejected applicant should not be forcibly deported to a country that is not a party to the International Covenants and regional treaties relating to human rights.
f) Forced deportation must be undertaken in a manner that protects the safety and dignity of the person(s) concerned and in the presence of an independent observer (such as a UNHCR official or the applicant's adviser).
g) The Australian government should be responsible for liaising with an appropriate international agency (UNHCR or ICRC) to ensure that the applicant will not be subjected to persecution or mistreatment on return to the home country. ■

Refugees and Aylum Seekers in need of Protection and or assistance

Africa	5,340,800
East Asia/Pacific	688,500
Europe/ North America	677,700
Latin Americ/ Caribbean	119,600
Middle East/ South Asia	9,820,950
Grand Total	**16,647,550**

Source: World refugee Survey—1992

CALL FOR PAPERS

Special Issue on

Sri Lankan Tamil Refugees

The Centre for Refugee Studies will publish a special issue of *Refuge* on Sri Lankan Tamil Refugees. The issue will deal with the following topics:

- The root causes and militarization of ethnic conflict in Sri Lanka and the exodus of refugees; role of India in Sri Lankan ethnic/refugee crisis.
- The present situation of the refugees inside and outside Sri Lanka, and the support of the international community; asylum/settlement and adaptation of Tamil refugees in Canada and other Western countries.
- Prospects for a negotiated settlement in Sri Lanka.

Papers are now being invited on these issues and other related areas for consideration.

Procedure and deadline:

A 200-word abstract should be sent to the editor by Sept. 10, 1992 and the deadline for submission is Oct. 1, 1992.

The paper length may not exceed 15 pages (double-spaced). Please send two copies of each paper. Submissions may also be sent on disc or by E-mail.

For further details, please contact:

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French and Other Selected European Perspectives on Asylum

Liisa Coulombe

This is a report of a conference, "Les réfugiés en France et en Europe: Quarante ans d'application de la Convention de Genève 1952-1992," which took place on June 11-13 in Paris, organized by the Office francais de protection des réfugiés et apatrides (OFPRA).

Any conference held in the international conference centre in Paris, a showcase of the French Foreign Affairs Department, could only be an official one. An alternative gathering convened simultaneously.[1] But since the French readily agree to disagree, some divergent perspectives on their past and present government policies and services were courteously voiced at this first ever OFPRA conference—on the rostrum, that is, since the masses were kept silent and their written questions filtered on occasion.

A VIP set-up was not foolproof. Some distinguished government officials and guests were forced, along with others, into an overflow room to watch the proceedings on a screen. Like states, the conference had a welcoming staff that did not exercise border control in the early hours of the influx.

Statutory Refugees in France: Potent Symbols

The conference opened on a solemn note. The heroism of individual and collective conviction and flight from persecution was invoked. A French Foreign Affairs official lyrically recalled the preamble of the 1946 French Constitution to herald refugees, symbols of its intangible principles. A clear distinction between statutory refugees and other shades of economic migrants disguised as asylum seekers was therefore in order. Subsequent presentations clearly focused on the former category. Hence, virtually no mention was made of North and especially West Africans, who are by far the largest group of current asylum seekers in France. In fact, the conference was somewhat of a festive occasion, with the ambitious goal of looking back on forty years of OFPRA—an independent body linked to Foreign Affairs—upholding the 1951 Geneva Convention. There was much back-patting. Despite the conference's title, there was only a cluster of thematic studies on non-French situations. Some of these presentations were bent on showing both local dynamics and possible migratory flows to France, such the transit of the Commonwealth of Independent States (CIS) nationals through Poland.

To the embarrassment of the Interior and Social Service Department representatives, competent research underscored blatant lack of resources and integrated policy planning in medical, psychological and local socio-economic services available to statutory refugees, especially asylum seekers. Much attention was rightly focused on crucial integration phases concerning restrictive world provisions. Examples provided were common to other European contexts, namely Germany, and could also be found in varying degrees in North American and antipodean societies.

Implications of the Emerging Institutional Setting in Europe

"Harmonization," the buzzword in asylum policies, remained a moot issue throughout proceedings that dealt mostly with inward-looking positions of certain governments. However, mention was made of the European Council's (EC) recent request to head in this direction. Migration, the third pillar of the February 1992 Maastricht agreement, is left to intergovernmental cooperation and not integrated into community affairs.

Researchers appealed for the lifting of confidentiality of nationally-compiled statistics on migratory flows in EC space. The next step would be to require that sufficient resources be earmarked for gathering missing comparative data and for undertaking studies. In the meantime, the forthcoming publication of the conference papers will offer a wealth of information for beneficial comparative analysis.

A Plea for Action on the Periphery of the European Community

In an opening presentation, Professor A. Zolberg spoke of the shakiness of the Geneva Convention regime, yet others reaffirmed its continuing effective features during and in the aftermath of the Cold War. Most spoke of the need for change through concerted regional approaches, especially in Europe.

EC integration in the Maastricht framework calls for tightening control at outside borders as internal ones disappear. The last prophetic words came from French Professor Pierre Hassner on Europe's responsibility in dealing holistically with the Yugoslavian situation as an integral part of putting double standards aside: "We must not barricade ourselves behind our prosperity."[2] □

Notes

1. "Droit d'asile. Appel à témoins." See Philippe Bernard, "Des réfugiés aux immigrés," Le *Monde*, Paris, June 13, 1992.
2. See Pierre Hassner, "De Maastricht à Sarajevo," *Liberation*, Paris, May 27, 1992.

Liisa Coulombe is a Ph.D. candidate at the Department of International Relations, Research School of Pacific Studies, Australian National University in Canberra.

BOOK REVIEW

Repatriation Under Conflict in Central America

Edited by Mary Ann Larkin, Frederick C. Cuny and Barry N. Stein

(Hemispheric Migration Project, Center for Immigration and Refugee Assistance, Georgetown University and Intertect Institute, Washington and Dallas, 1991.)

Reviewed by Sheilagh Knight-Lira

This book describes the voluntary repatriation that took place under conflicting conditions in Central America from 1981 to 1990. From Costa Rica and Honduras to Nicaragua, from Mexico to Guatemala and from Honduras to El Salvador, refugees decided to repatriate when the governments responsible for their flight were still in power, when neither amnesties, repatriation agreements nor special programs were necessarily in place to assist them in returning home. The refugees described here are the 20 percent of Central American refugees — mostly poor, rural families — did not permit them to flee very far into the U.S. and Mexico, but who could only escape to immediate safety across the border and from there, decided to return home "under conflict."

Presented in a case study format, the research presented here refers to phenomena that have never before been systematically analyzed by scholars. Monographs and reports that vary in objectivity and methodology have been published and they have provided partial descriptions of the phenomena. While repatriation to Central American countries has been occurring since 1981, research into certain flows—Salvadoran and Guatemalan in particular — was not considered feasible until the late 1980s, given the repressive conditions in the countries of origin. With the impetus of various international events pertaining to the Central American peace process and refugee crisis negotiations — visit of UN High Commissioner Hocke to Central America in 1985, the signing of the Esquipulas II Agreement in 1987, the Tela Agreement and International Conference on Central American Refugees (CIREFCA) in 1989 — conditions for research into Central American repatriation were gradually set and research began in 1989.

The goal of this particular study is to contribute to the understanding of repatriation and to the policy debate about when and how to assist refugees on their way home. Therefore, one of the main foci of the study is to look at the many actors in the repatriation process and the roles they play. Of these actors, host governments are portrayed as generally anxious to be rid of the thorny refugee problem and as adopting limited and sometimes controversial policies in the refugees' "favour." Chapter III, a look at Mexico's refugee policy and Chapter IV, on Salvadoran refugee programs, describe this type of governmental role in excellent detail. In contrast, the role played by the Sandinista government in repatriation is depicted as generally conciliatory: the granting of autonomous status to indigenous regions in 1987 is a key element in the repatriation of Miskito and Sumu refugees living in Honduras.

The role of various national and international nongovernmental organizations (NGOs such as the Church and voluntary agencies) is represented as generally beneficial (providing material support and in-camp technical skills training) but also as occasionally detrimental to the repatriation process. In Chapter IV, authors Patricia Weiss Fagen and Joseph Eldridge describe how international volunteers were of great assistance to Salvadoran refugees, but contributed in one instance (not the only one) to a two-day delay in crossing the Honduran border (IV, 158). This leads Adolpho Aguilar Zinser, in his conclusion to the book, to suggest that NGOs maintain a visible yet discreet presence during the repatriation process.

As for the UNHCR, viewpoints on its role vary according to the case study. The UNHCR in Mexico is deemed (at worst) as "often bending over backwards to avoid offending the host government and quietly tolerat[ing] abuses against refugees and repatriates under its protection" (III, 106). Aguilar Zinser explains that this is a deliberate government strategy, recalling that Mexico is not a signatory to the Geneva convention and tolerates little international interference in its refugee policy formulation and program administration (III, 78-87).

The UNHCR in Honduras/El Salvador, on the other hand, is viewed as functioning quite efficiently with the resources available to it and unenviably trying to balance its humanitarian role with its diplomatic and administrative duties: refugee demands must constantly be weighed against agency procedure, host government requirements and restrictions (IV, 131-136, 155-163).

Refugee motivation for repatriation is another major focus of the study. Motivations are many, varying from the emotional (desire to be reunited with family), to the ethnoreligious (indigenous Nicaraguans' desire to be once again on the land of their ancestors), to the economic (Nicaraguan refugees in Costa Rica benefitted from job opportunities, improved health care and education facilities and were thus less motivated to return), to the political. Examples of the latter include dissatisfaction with conditions in the refugee camps and with relocation of camps. Undertaken by the UNHCR in both Mexico and Honduras in response to host government pressure to move away from borders where the refugees could "collaborate," the relocations provoked on occasion large waves of spontaneous repatriation (III, 82-84; IV, 132). Weiss Fagen and Eldridge also point out that the mass repatriations (i.e. up to 4,300 people during one move) to El Salvador were also politically motivated: repatriates wished to return as large groups in order to guarantee their safety during the return, as well as to "demonstrate their political will and organizational strength" with respect to the Salvadoran government (IV, 177).

Conditions awaiting the refugees upon return to Nicaragua, Guatemala and El Salvador are also amply described in an attempt to understand the scale of the repatriation phenomena (described

numerically in all three cases). Repatriates to Nicaragua, Guatemala and El Salvador all face difficulties in recovering or receiving land, due to "re-assignment" of land tracts since or before their departure, as well as having to cope with war-ravaged community infrastructures. Linked to this is the key issue of repatriates' protection and security, or lack of these, in their newly resettled communities. Guatemalan and Salvadoran repatriates are particularly affected by disappearances and military harassment. Disturbing cases of particular families and individuals experiencing these difficulties are cited by the authors. These conditions explain why Guatemalan repatriation has been relatively unsuccessful, with approximately 10 to 15 percent of the original official refugee population having repatriated (that is to say, between 4,600 and 6,900 individuals) (III, 64, 107), while almost all Salvadorans and Nicaraguans have decided to repatriate.

Since this is an initial study of the repatriation process in Central America, theoretical reflections are kept to the minimum. However, repatriation patterns of three types are identified: unassisted, spontaneous repatriation outside of formal channels; voluntary repatriation of small groups assisted by the UNHCR; and massive repatriation assisted by UNHCR. Distinctions are drawn between urban and rural refugees and repatriates. The effect of the repatriation process on the evolution of the *campesino* (peasant or country-dweller) identity towards a more urbanized, collective entity is described.

There are several limits to the study of which the reader should be aware. First, the case studies deal only with officially recognized refugees "because the population is identified and the data exist" (Preface, viii). As the authors duly recognize, the question of "undocumented workers," the more numerous "unofficial" refugees, remains to be addressed (Conclusion, 191). Secondly, the study favours refugee and UNHCR viewpoints in particular. NGO roles are given a cursory glance and are generally referred to en bloc. In Chapter II, the authors note summarily that "NGOs carried on with the same activities with which they had been occupied" before repatriation occurred in Nicaragua. In Chapter III, the author notes the need for NGOs to become involved in the scrutiny and material support aspects of the Guatemalan repatriation process and that the absence of NGOs has contributed to a predominance of military and national security considerations, as well as resulting in insufficient material support to repatriates. Chapter IV provides the best analysis of an NGO — the role of the Christian Committee of the Displaced in El Salvador (CRIPDES) in the Salvadoran repatriation process.

The authors of the studies come from various backgrounds that provide a strong and diverse vision of Central American repatriation. Marvin Ortega and Pedro Acevedo are, respectively, Director and Research Associate of the Itztani Research Institute in Managua, Nicaragua. A a result, their research is particularly rich in fieldwork detail regarding Nicaraguan communities. Aguilar Zinser, the author of the Guatemalan repatriation study, is professor of international relations at one of Mexico's foremost universities, the National Autonomous University of Mexico (UNAM). Aguilar Zinser's ability to structure, conceptualize and be constructively critical make his contributions to the book (both the case study and the global conclusion) fine reading. Weiss Fagen and Eldridge, the authors of the portion of the book on Salvadoran repatriates are "old hands" on the Central American scene. Weiss Fagen is Public Information Officer at the Washington, D.C. office of the UNHCR, while Eldridge is Director of the Washington Office of the Lawyers Committee for Human Rights. Their study is particularly good in its examination of all the decision-making processes and interaction of the various actors in the repatriation process — refugees, UNHCR, Honduran and Salvadoran governments and agencies, as well as international agencies.

The concluding chapter provides recommendations for NGOs, the Mexican government and the UNHCR about appropriate future roles and government policies that may be adopted in order to facilitate the repatriation process. Future areas of study are also suggested for researchers interested in the Central American repatriation problem.

For those interested in reading about other case studies that are part of the "International Study of Spontaneous Voluntary Repatriation," the project research also include studies of returns to Sri Lanka, Afghanistan, Cambodia, Burundi and Ethiopia. Initiated in 1986, this worldwide study of which the Central American case studies are part, was sponsored by the Ford Foundation and directed by Frederick Cuny and Barry Stein. ■

Sheilagh Knight-Lira is Research Associate at the Centre for Research on Latin America and the Caribbean (CERLAC), York University.

Refugee Issues */Continued from page 5*

risks of imprisonment, torture and even death."

The Canadian Council for Refugees has been calling for an appeal on the merits of the case since the determination system came into effect in 1989. Case after case has shown the urgent need for a meaningful appeal.

The CCR is disturbed by the language and orientation of the government's statements. The emphasis on control and abuse, not justified by any available statistics, will undermine public sympathy for refugees. Furthermore, it will serve to dismantle Canadian achievements in refugee protection and erode our humanitarian record.

The CCR is disappointed that the government did not choose to address the need for changes through a process of frank and open discussion between all concerned parties. The CCR is interested in a constructive exchange with the government on how the present system could be improved. We trust that adequate time will be given to the review of these extensive amendments. ■

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CANADA'S PERIODICAL ON REFUGEES
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CONFERENCE/CALL FOR PAPERS

North American Economic Integration: Implications for Human Rights and Migration

The Centre for Refugee Studies and the Centre for Research on Latin America and the Caribbean at York University will host a conference on the implications of economic restructuring and free trade for refugee and international migration policy and flows in the North American region.

Dates: November 19-22, 1992 (Thursday to Sunday)
Place: York University, Toronto, Canada
Collaborators: CIPRA at Georgetown University and the Mexican Academy of Human Rights
Sponsors: The Inter-American Organization for Higher Education
Focus: Canada, United States, Mexico, Central America and the Caribbean

Abstracts (100 words) are invited from academics, service providers and policy advisers. Subject areas may include:

- Social and political dimensions of trade and restructuring
- Continental integration and migration trends
- Globalization, underdevelopment and migration
- Gender and ethnic dimensions of restructuring and migration
- Canadian, U.S. and Mexican responses to refugee claimants
- The labour movement and labour law, with respect to social programs and migrant rights

Some travel funds will be available for paper presenters, particularly those from Mexico, Central America and the Caribbean.

Deadline for receipt of abstracts is August 15, 1992. Send abstracts and a brief c.v. or cover letter on your current research to:

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