



CANADA'S PERIODICAL ON REFUGEES

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Rebuilding Procedures: The Immigration and Refugee Board and *Rebuilding Trust*

H. Patrick Glenn

There is widespread agreement in this country and abroad that refugee determination procedures should not be adversarial. The conclusion follows from the nature of a request for refuge. There is no adversary to such a request, no opposing testimony to be raised, and no burden of proof to be overcome. There are, moreover, many difficulties of language, communication, and cultural difference. In these circumstances, adversarial procedure is not only unnecessary, but likely to be detrimental. This has been the stated policy of the Government of Canada and the Immigration and Refugee Board (IRB), who have received the benefit of a number of reports, most recently that of Professor James Hathaway, *Rebuilding Trust*.¹

However, there now appear to be major conceptual and practical difficulties in implementing this policy, at least in this country. This is evident from a reading of the preliminary response of the IRB to Professor Hathaway's report, in which the Board states that it "has difficulty" considering the changes in procedural responsibili-

ties—directed towards a less adversarial model—suggested by the report, and that it "does not foresee a shift" in the procedural role of Board Members.² How have we managed to reach this point? How has consensus at the level of principle been transformed into apparent discord and reaction at the level of implementation?³

In trying to answer these questions it may be useful to turn to some basic principles of procedure. The procedure known and used by North American lawyers, north of the Rio Grande,

is usually referred to as the adversarial procedure. It is important to note that it is the procedure which is adversarial, as opposed to the participants in the procedure, or the manner in which it is conducted, or any important element of it, such as cross-examination. Adversarial procedure is usually compared in the Western world with another form of procedure that developed in continental Europe and Latin America, which North American and common law lawyers describe, pejoratively, as "inquisitorial." Here

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language, tradition, and emotion begin to get in our way. Continental lawyers have a pejorative expression of their own, applied to adversarial procedure, which is "accusatorial." If we try to set aside the pejoratives, however, and simply do what is best for refugees, we should be speaking of two different procedural models, an adversarial and an investigative one. Each presents advantages and disadvantages and each is profoundly rooted in the legal culture from which it is derived. It is the procedure as a whole, however, which is designated as adversarial or investigative, and not any particular element of it.

To reiterate, there is widespread agreement that adversarial procedure is inappropriate for the refugee determination process, for the reasons stated above. This conclusion leaves the investigative model as the main alternative, with whatever modifications are necessary for refugee determination. That model has been widely adopted, most recently by the United States, which implemented an investigative form of procedure for its asylum claims, and rejected the adversarial model used by Immigration Judges in deportation and exclusion proceedings.⁴

The feature which characterizes investigative, as opposed to the adversarial procedure, is the role of the judge or investigator in the control and presentation of the entire case. The procedure is investigative because it is conceived of as an investigation by an investigator. In contrast, adversarial procedure is adversarial because it involves party control and party presentation of a case to a judge or adjudicator. The procedure is that of two presentations, each controlled by a party to the proceedings.

How have these basic procedural concepts been dealt with in the process of establishing refugee determination procedures in Canada? Since 1985, there have been major problems. It does not appear useful to enquire into their causes, which are probably a mix of professional loyalty, tradition, and even downright misunderstanding.

What has occurred, however, is a systematic use of adversarial procedure while the appropriateness of adversarial procedure has been systematically denied. This schizophrenic attitude dates at least from the Plaut report of 1985.

Rabbi Plaut eloquently defended the case for a procedure in which "all parties shared in the attempt to establish the facts rather than opposed one another."⁵ The adversarial model was, therefore, inappropriate since it presumed "two parties with conflicting financial or other interests," and placed "all the onus of obtaining and presenting information on the parties themselves."⁶ The procedure proposed was thus one of "a cooperative inquiry in which claimant, counsel and the [I]RB member(s) participate."⁷ At the same time, however, Rabbi Plaut spoke in terms of, and recommended the major elements of, adversarial procedure. He thus stated a governing principle that "[a]ny person affected by a decision has a right to present his/her case," and that this right "includes a right to present evidence"⁸ As well, the United Nations High Commissioner for Refugees (UNHCR) and Canada Employment and Immigration Centre (CEIC) could "also provide evidence"⁹ and this meant, more precisely, that the CEIC, "when it possesses relevant evidence," may appear at IRB hearings and present it.¹⁰ Cross-examination was explicitly contemplated although Board members, like judges in adversarial proceedings, could control or limit its scope.¹¹

Since 1985, the efforts to square the circle have continued. Even Professor Hathaway's recent vigorous defence of non-adversarial procedure speaks of counsel who "adduce testimony,"¹² and Board members who must enforce a prohibition on "non-selective, adversarial cross-examination," while other forms of cross-examination appear contemplated.¹³ In its

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Preliminary Response to Professor Hathaway's report, the IRB continues this process of denial and affirmation. It thus reaffirms its commitment "to the concept of a non-adversarial hearing process for refugee determination"¹⁴ while stating, however, that refugee claimants must "know the case they have to meet."¹⁵ As well, "probing, detailed and assertive examination [by a Refugee Hearing Officer (RHO)] is ... appropriate, if it is necessary to elicit the relevant evidence, even though this may be regarded by some as 'adversarial'."¹⁶ It is acknowledged that "counsel trained in an adversarial mode have not shown much willingness to adapt to an inquisitorial mode."¹⁷

The Law Reform Commission of Canada stated accurately and perceptively in 1992 that "... the process before the [Convention Refugee Determination Division] panel is supposed to be non-adversarial. All the details of the adversarial system are present, however, in the examination-in-chief, cross-examination, and re-examination format."¹⁸

Can what is essentially an adversarial procedure, in which parties control and present a case to a judge or adjudicator, be made to function in a non-adversarial manner? The answer to this question is no. An adversarial procedure is, by definition, adversarial. Whether the parties and lawyers involved are polite or impolite, aggressive or non-aggressive, does not change its character. Cross-examination is part of adversarial procedure; it does not become adversarial because it is conducted aggressively. Adversarial procedure, moreover, is not meant to be conducted aggressively or in an overtly hostile manner. Counsel injudicial, adversarial proceedings are meant to be civil. While they are being civil, the procedure they use is adversarial because it is controlled by them and not by the judge or adjudicator. It is, therefore, misleading to state, as the Board does, that "the role of the RHO is not adversarial," while at the same time asserting that "RHOs have a duty to ask the necessary questions to

bring out the essential facts of a case."¹⁹ If the RHOs have a duty to ask questions to bring out the facts of the case, their role is adversarial.

There are two major problems in using adversarial procedure while asking the participants not to act adversarially (meaning aggressively), as the Board now does. The first problem is that the procedure remains adversarial, and all of its features which are detrimental to cross-cultural fact-finding, in the non-adversarial context of refugee determination, remain present. This is why the United States rejected adversarial procedure and created a procedure of investigative, collaborative interviewing by Asylum Officers. The second problem is that there is a tendency in adversarial procedure for parties and lawyers to act aggressively. They do so because they are free to do so, and because they may see such conduct as advantageous to the case they are presenting. In civil, adversarial proceedings there is a known and regrettable phenomenon of "Rambo" lawyers. In an adversarial refugee determination procedure, there will therefore be tendencies to aggression and "prosecutorial behaviour." Professor Hathaway found this to be the case with a "significant number" of participants in the Canadian refugee determination process.²⁰ We now face, in terms of official, stated policy, the worst of all worlds: The procedure is not what it is meant to be, and it is frequently used in an unjustifiable manner.

It is not clear why this inappropriate, counterproductive situation continues. It cannot be because of simple job protection, since there is as much work to be done in a collaborative, investigative system of procedure as there is in an adversarial one. Nor is it because of a lack of legislative authority, since existing legislation has been found to be sufficiently flexible for investigative procedural techniques to be used.²¹ A collaborative, investigative procedure avoids problems of counsel abuse, largely eliminates problems of information gathering and improper "contacts," reduces ex-

pensive and intimidating formality, and is compatible with continuing procedural guarantees for refugee claimants and legal aid. It is also best for refugees. Can we not act on the basis of this fundamental agreement? ■

Notes

1. James C. Hathaway, "Rebuilding Trust: Report of the Review of Fundamental Justice in Information Gathering and Dissemination at the Immigration and Refugee Board of Canada, 1993." See also G. Plaut, *Refugee Determination in Canada*, 1985, and H.P. Glenn, *Strangers at the Gate: Refugees, Illegal Entrants and Procedural Justice*, 1992.
2. "Preliminary Response of the Immigration and Refugee Board to the Recommendations in *Rebuilding Trust*, a report by Professor James Hathaway," June, 1994, pp. 10, 18, 19.
3. The Board states, however, that though it has drawn conclusions on some recommendations, it "is open to persuasion that there are other possibilities." *Ibid.*, p. 2.
4. See Tang Thanh Trai Le, "The Legal Status of the Refugee in the United States" (1994), 42 Am.J.Comp.L. 577 at 594, stating that residual use of the adversarial procedure by the Immigration Judge for some asylum applicants reflects a (prejudicial) prejudice about such applicants, who have either waited until a deportation or exclusion hearing to file for asylum, or who did not receive approval from an Asylum Officer. In contrast, other asylum applicants are entitled to an investigative, non-adversarial procedure.
5. Plaut, *supra*, note 1, at p. 122.
6. *Ibid.*
7. *Ibid.*, p. 123.
8. *Ibid.*, p. 49.
9. *Ibid.*, p. 123.
10. *Ibid.*, p. 124.
11. *Ibid.*, pp. 124, 125.
12. Hathaway, *supra*, note 1, p. 74.
13. *Ibid.*, p. 18.
14. *Supra*, note 1, at p. 4. See also the Action Plan announced on release of the Hathaway Report, to the effect that "[t]he IRB hearings are set up to be and must remain non-adversarial." Press Release, Immigration and Refugee Board, January 25, 1994.
15. *Ibid.*, p. 3.
16. *Ibid.*, p. 9.
17. *Ibid.*
18. Law Reform Commission of Canada, "The Determination of Refugee Status in Canada: A Review of the Procedure," Draft Final Report, March 5, 1992, pp. 16, 17.
19. Action Plan, *supra*, note 14, p. 1.
20. Hathaway, *supra*, note 1, p. 13.
21. *Ibid.*, pp. 11, 12. □

The End of the Cold War, International Disorder, and Refugees: Laying the Foundations for a "New Wall?"

Albrecht Schnabel¹

The hope and anticipation of a better and more just world that was felt during the exhilarating days in 1989, when the Berlin Wall came down, have soon turned into melancholy. The post-Cold War world is now faced with spreading international disorder, ethnic, civil, and interstate war, a widening gap between the richer and the poorer regions of the world and, consequently, a rapidly increasing number of political, ethnic, environmental, and economic refugees.

Following the end of the Cold War and the breakup of the former Soviet Union, many societies released into independent statehood struggled to regroup themselves within and outside of artificially created post-World War II states. Ethnic minorities have fallen prey to revived ethno-nationalism, and many people have sought refuge from persecution and displacement in Western European countries. Applications for asylum have skyrocketed between 1989, the year the Berlin Wall came down, and the end of 1992. Domestic dissatisfaction in many receiving countries has caused governments to implement revised, much stricter interpretations of previous refugee policies. At the same time, attempts at the European level to either solve ethnic conflicts, or effectively to assist endangered nations in dealing with the tremendous political and economic difficulties responsible for much of their internal instability, have all but failed. Old conflicts are continuing, new ones could break out at any time, and Western Europe is watching in a surprising state of indifference and paralysis. At the same time, the pros-

pects for South-North migration, primarily driven by a potentially explosive population growth, will give this refugee crisis a degree of permeance beyond the scope of the current refugee flows from Eastern and Central Europe.

A brief look at the German and European restrictive and exclusionary approaches indicates that the industrialized world appears to have found a defense against the effects of growing refugee populations: physical and legal walls directed at controlling and reducing the number of asylum claimants. The results are disastrous for refugees, for the future of international refugee law and, as will be argued, for the long-term security interests of refugee receiving nations. There are solutions beyond fortification against anticipated refugee inflows, alternatives which deserve closer consideration if the refugee problem is to be dealt with effectively.

Migration Explosion

Generally, one can distinguish between three major groups of refugees—Convention refugees, economic refugees, and environmental refugees. Within each group, one has to distinguish between international refugees who seek refuge in foreign countries, and those who are internally displaced, seeking refuge in other parts of their home country. The projections of the potential magnitude of international forced migration are staggering. The explosion of ethnic and nationalist conflicts in many parts of the world, deepening economic divisions between the developed and the developing worlds, and compounding effects of worldwide environmental degradation, force more and more people whose basic existence is endangered to leave their traditional homes for a safe haven elsewhere. As technological de-

velopments in the global transportation network make migration over long distances much easier, greater portions of the roughly two-thirds of all refugees, who normally emigrate from one Third World country into another, instead find their way to First World nations. This also allows greater numbers of internally displaced people to cross the borders of their home countries, adding to the increasing pool of international refugees. As well, many countries have broadened the relatively strict definition of Convention refugees, the only category of refugee which is eligible for asylum. This is evident in the rising number of *de facto* refugees, i.e., persons who are not granted refugee status, but who are also not deported for humanitarian reasons and who, in many cases (e.g. in Germany), represent a much larger group than genuine Convention refugees.

The number of those who are considered refugees under the 1951 Geneva Refugee Convention has been rising steadily in the last two decades. After the number of Convention refugees in Europe actually fell from 644,424 in 1970 to 580,000 in 1980, it increased to 830,000 in 1990, and then exploded to 4,407,461 in 1992. On a global scale, the volume of Convention refugees has increased from 2.4 million in 1970, to 7.4 million in 1980, to a staggering 17.2 million in 1990, and 18.8 million by the end of 1992 (Opitz 1994, 2–3). An additional 24 million people are internally displaced, primarily within Third World countries (US Committee for Refugees 1993). As previously seemingly peaceful and integrated societies are erupting in an explosion of nationalism and ethnic self-determination, national and ethnic conflict is spreading at a frightening rate (Etzioni 1992; Smith 1993). Identities are being reinvented and re-

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experienced at the cost of peace, security, and the very survival of innocent populations caught in the struggles for independence and nationhood. The conflict in the former Yugoslavia (or, most recently, the civil war in Rwanda) illustrates the tragic dimensions of ethnic warfare. More than two million people have been displaced by the various civil and interstate conflicts within and between the successor republics of Yugoslavia alone—a horrible experience which could be repeated throughout the vanished Soviet Empire or other parts of the world (Basok and Benifand 1993; Carter et al. 1993; MacFarlane 1992).

The number of economic refugees who escape poverty and life-threatening conditions in their home regions is much larger than the number of Convention refugees. As economic migrants cannot officially apply for Convention refugee status, and many countries are restricting other legal means for immigration, the only possible venue is illegal migration. Rough estimates suggest that there are about 20 million legal and as many as 100 million illegal economic migrants worldwide (Opitz 1994, 4). The driving force of economic migration can be traced to the world's rapidly growing population which, according to a recent report by the United Nations Population Fund (UNPF), "is the most dominant feature of global demographics" (1993, 1). The 1993 global population of 5.57 billion is projected to increase to 6.25 billion by the year 2000, 8.5 billion by 2025, and 10 billion by 2050. Rapid growth is expected to continue until the year 2150, with an estimated global population of 11.6 billion people. Until the end of this century, the developing countries' proportion of this increase will be 95 percent. According to UNPF, by far the fastest rates of growth are in the poorest countries (1993, 1). Over the next 20 years, the labour force in developing countries is projected to increase by 730 million, which is 144 million more than today's total labour force of the industrialized world (Purcell, Jr. 1993, 216). Population growth in developing

nations will lead to increased urbanization and perpetual poverty, while poverty-stricken rural populations will be growing due to the diminishing ability of cities to provide better living conditions. The potential for dramatically increasing numbers of economic migrants is preprogrammed by this bleak outlook on the evolving structure of the world's population. Hence, as "the developing world remains caught in its poverty trap, the more developed countries will come under siege from tens of millions of migrants and refugees eager to reside among the prosperous but aging populations of the democracies ... [and] ... the results are likely to be painful for the richest one-sixth of the earth's population that now enjoys a disproportionate five-sixths of its wealth" (Kennedy 1993, 46).

Moreover, as growing populations accelerate environmental degradation, environmental refugees will likely become the largest group of forced migrants in the years to come. It is very difficult to provide reliable data on the magnitude of this group of refugees. However, estimates by the International Red Cross consider approximately 500 million people to be environmental refugees, while 600 to 700 million people are believed to live in ecologically endangered areas (Opitz 1992, 32). These long-term speculations on economic and environmental migrants are, in turn, compounded by political and military conflicts (which are likely to proliferate as a result of swelling populations and economic hardship—a vicious cycle with tragic consequences). Consequently, the "century of the refugee" (Arnold, 1991) may have just begun and, in absence of dramatic ecological and economic improvements in the developing world, and a foreseeable stabilization of interethnic relations in the many multinational societies around the globe, the wealthy and politically stable nations in the North and the West will face the challenge of an overwhelming flood of refugees. This will be even more so as the definition of refugee status is gradually being

broadened to include those whose lives are endangered by poverty and environmental degradation. Even if not officially recognized, poverty and environmental degradation will indirectly bolster refugee flows, as they will most certainly be the grounds for proliferating ethnic and political conflict over increasingly scarce resources.

International Disorder and East-West Migration

During the decades following the end of World War II, the bipolar superpower rivalry governed much of the political activity in the international system. Each superpower was preoccupied with keeping its allies in line, and international institutions and regimes were devoted to the prevention of a possible superpower confrontation and the threat of all-out nuclear war. In the 1980s, *détente* replaced the concept of peaceful coexistence and, apart from the enormous economic strain imposed by a seemingly infinite arms race, the world was a fairly safe place. Some argue that the world was a better place in those times (Lynn-Jones, 1991), during which the lines of allegiance were clearly drawn, and lower level conventional wars on the European continent were effectively prevented by the fear of a potential escalation to a nuclear confrontation.

International security was promoted through regional and international organizations by carefully preserving the integrity of all (major) states involved. The "myth" of the nation-state had been especially successful in Eastern Europe, where socialism, totalitarianism, and centrally executed appeasement of historically diversified communities seemed to have solved the problem of ethnic diversity and ethnic conflict. This myth portrayed a world of internally integrated states, ready to integrate at a larger, international level once the constraints of bipolarity were removed. Interdependence between states was already challenging traditional perceptions of sovereignty, and regional constructs, such as the emerging European Economic Community, served as striking

examples of transnational integrative movements. Hopes for international cooperation and integration were high during the months immediately following the fall of the Berlin Wall, during the relatively peaceful movement toward democracy and self-rule in many parts of Eastern and Central Europe, and in the wake of the eventual demise of the Soviet empire.

It did not take long, however, before initial hope and joy had subsided. The disappearance of the constraining effect of the Cold War on the actions of individual states and subnational groups would soon bear bitter fruit. Ethnic conflicts and secessionist movements in Europe and elsewhere have turned the immediate post-Cold War period not into an era of integration but, as noted by one observer, into a possible "return to the Middle Ages" (Hassner 1993, 53). As existing state structures are being dismantled and new states are being created based on old and "re-remembered" allegiances and ethnic belonging, as deep seated and well preserved ethnic and nationalist struggles are breaking open after years of suppression, the European continent is emerging from this short moment of liberation and reconciliation as a place of chaos, disorder, and uncertainty.

The end of the Cold War has created many hopes for a better and more prosperous Europe. However, there is a large political, economic, and social price tag attached to the realization of these hopes. The struggling new Germany could well serve as a microcosm of the new Europe. In both cases, a reasonably prosperous, stable, and secure community reached out to embrace its partners to the East. In both cases, migration has played—and continues to play—an important role in the decision-making process of the West, emphasizing the potential danger for states and societies on both sides if separation endures, and gaps in military and economic security between East and West widen even further. Westward migration from Eastern European countries will continue to weaken these already fragile societies

and increase domestic pressures in Western Europe. If Western Europe chooses to close its gates to the East, the two regions will drift even further apart, a dangerous approach considering the impact a permanent split of Eastern and Western Europe would have on the security of the European continent.

The Potential Threat from the South

While the primary cause for East-West migration can be found in ethnic intra-state conflict and the slow economic recovery after decades of planned marked economy, the challenges posed by population growth are likely to be the greatest force driving South-North migration. Thus, while Eastern Europe's population will increase from 96.9 million to 107.2 million by 2025, and the population of the Commonwealth of Independent States (CIS) will grow from 284.5 to 344.5 million, the population of the six North African states will almost double in the same period—from 147.7 million to 280.4 million (UNPF 1993). This unprecedented population growth accelerates the depletion of basic resources, such as water and arable land, and contributes to growing unemployment. The consequences are twofold: economic and environmental migration toward the North will thrive, and increasing political destabilization and military conflict will add to the number of Convention refugees seeking asylum in other parts of the world. While the current pressures of population movements are most intense at Europe's Western borders, they will soon shift southward. Hence, the challenges which Germany is facing today will soon be faced by France, Italy, or Spain. In anticipation of the wave of South-North migration, the restrictive measures recently adopted by countries such as Germany have been promoted in these countries as well. In the case of France, this includes a drastic reduction in legal immigration from Northern Africa.² However, as official immigration policies are tightened, more people will attempt to enter as

either asylum seekers, or as illegal immigrants.

Germany's New Refugee Policy

Germany's experience illustrates the domestic impact which an uncontrolled and rapidly growing influx of refugees—and foreigners in general—can have on societies of receiving countries. The degree of domestic violence and politicization surrounding the refugee issue in Germany might be replayed in other countries faced with similar domestic pressures. Certainly, the German situation is unique because of the difficulties associated with the process of unification. The broader Western European approach, however, suggests a much more widespread phenomenon. Refugees are no longer welcomed in situations where they pose a threat to the security of receiving countries. The nature or perception of this threat, however, is specific to each country. Germany's geographic proximity to refugee-sending regions, a perceived homoethnic makeup of its society, and the sheer numbers of refugee applicants which had been arriving since 1989, contributed to the difficulties this country has had in managing its refugee policy (Fijalkowski 1993). The perceived social threat from refugees has been based on a fear of losing the imagined homoethnic fabric of German society, and was articulated in a general discomfort with foreigners, spreading xenophobia and, eventually, physical violence against refugees and other foreigners.

Refugees became scapegoats for many frustrations unleashed by an unhappy unification, a global recession, and a general distrust of government. The political threat, triggered indirectly by rising levels of refugees, had its roots in the social responses to migration—an essentially unnecessary politicization of the refugee issue by traditional political parties, an exacerbation of the security threat caused by growing numbers of foreigners, and the remarkable growth of anti-foreigner movements and political parties (Neckermann 1993).

A quick and effective response to the refugee threat was soon found. To avert a national crisis, the German government decided to severely restrict one of the world's most liberal asylum policies. The revision of Article 16 (a), Germany's asylum law, now provides the legal justification for a systematic reduction in refugee intake. The new asylum law (Bundesministerium des Innern 1993) includes the following stipulations:

- Refugees can no longer apply for asylum in a member state of the European Union (EU) [formerly the European Community] if already rejected by another member.
- Even though the right to asylum remains a constitutional right, it has now been *qualified*: foreigners who enter Germany from "safe third countries"—including every country bordering Germany—are excluded from the right to asylum, as they could have found refuge in the first safe country they had entered.³
- An expanded list of "safe source countries."
- A fast-track approach (maximum 19 days) for suspected criminals, undocumented aliens, and applicants who have passed through "safe third countries."⁴
- Refugees from wars and civil wars will be granted temporary permission to stay in Germany, but will be denied the alternative of applying for permanent asylum.⁵
- Lastly, social benefits for asylum seekers in Germany will be available for a maximum of one year (no limit under the previous law), they will be cut by roughly 15 percent to cover only the minimum in living expenses, and they will be paid out primarily in vouchers rather than in cash amounts.

The European Union—Shifting Borders

The broader Western European approach looks much the same, having actually predated Germany's asylum policy reforms. A growing "fortress Europe" is preparing itself for a war of an unknown nature and dimensions—

a war against immigration of political, economic, and environmental refugees. Foreigners are not welcome anymore, especially if they are poor, undereducated, or of different cultural and ethnic background. Western Europeans are not necessarily turning into racists or humanitarian isolationists, but they are afraid of losing their own particular cultural homogeneity, much of which is already challenged by the European integration process. Suffering from their own economic and societal crises, Western European states have only limited resources available to assist ever growing numbers of displaced persons.

In some Western European countries, formerly exemplary and generous refugee policies have been transformed into sad images of their humanitarian and noble predecessors. Moreover, the refugee issue has turned into a unifying force, as the European Union is in search of measures which will assure that none of its member states will admit "excessive" numbers of refugees which, after all, could be moving unhindered throughout the borderless Union. The adoption of a "harmonized" European Union-wide immigration policy to streamline individual member states' asylum policies will likely be only a matter of time.

The Schengen Agreement of 1985 and its followup, the 1990 Dublin Convention, make it much harder for a potential refugee to enter the territory of the European Union. Refugees must have valid travel documents, and face sanctions if they illegally cross into EU territory. Both these stipulations contravene the Geneva Refugee Convention—refugees rarely have valid travel documents or are granted exit visas by their governments. Additionally, transport companies are liable to stiff penalties for transporting passengers without adequate travel documents and entry visas. Further, once a refugee has actually managed to legally (or illegally) enter an EU member state, it is the sole responsibility of the state of first entry to assess and decide the refugee's claim for asylum. Once rejected, the unsuccessful asylum seeker cannot

reapply for asylum in another EU country. Thus, total responsibility for refugees lies within the country of first entry, including the deportation of unsuccessful asylum seekers, even in the case the refugee has in the meanwhile illegally moved on to another member state. Overall, this policy of streamlining the refugee application process across all of the European Union is unfair in the absence of uniform agreements among EU member states on the definition of "refugee" and on national asylum laws. It can be expected that refugees will try to apply for asylum in the country with the most liberal or generous asylum policy. This, however, could lead to a tendency to harmonize national asylum policies according to the lowest common denominator, in an effort to subvert country preferences of incoming refugees and to prevent an unequal distribution of the "refugee-burden" (Fernhout 1993, 499).

National and regional security interests have thus prevailed over international standards on the protection of human and group rights. As industrialized nations are facing increasing challenges to the political and economic security they enjoyed during the Cold War years, compassion for the plight of the poor, underdeveloped, or persecuted members of the global community is rapidly shrinking.

The "Fortress"—An Illusory Solution

The fortification of refugee-receiving countries and regions emerges as a rational and pragmatic approach to contain the social, political, and economic costs of forced migration. Aside from political and financial costs associated with the maintenance and expansion of protective anti-refugee defense mechanisms, this approach offers little more than the illusion of having averted possible security threats to First World societies by Second and Third World nations. The "fortress" approach is paradoxical, since peripheral conflict and crises will continue to threaten regional security, and because illegal migration will increase in

response to legal and procedural barriers to asylum in the receiving countries. As many immigrants will be forced to go underground, and if conflicts in source countries remain unattended, this approach will, in the long run, most likely exacerbate the problems associated with an escalating refugee crisis. An unwise European migration policy, which intentionally ignores Eastern Europe and Northern Africa's problems by offering purely symbolic tokens of sympathy, is certain to backfire on Western Europe's security.

Migration is a useful measure of Eastern Europe's and Northern Africa's political, economic, and social conditions. Curbing emigration from these countries serves two purposes: it relieves Western European nations from the various pressures and consequences of increased immigration and, especially with regard to Eastern Europe, it defuses the crisis and conflict in the region—overall an advantageous deal for Western Europe, which clearly has greater political and economic resources for resolving this conflict than do its Eastern European neighbours. Simply, it is in the national interest of every industrialized nation to invest in the domestic security of poorer and less stable refugee-sending countries, in order to protect their own security.

Recommendations

Naturally, it would be in the interest of all parties (refugees, refugee-sending and receiving countries) to reduce the level of forced migration. However, there are other ways for achieving this than the construction of a "New Wall." One approach addresses the systematic reduction of refugee inflows by alleviating the causes of forced migration in source countries, combined with stricter and harmonized refugee determination processes. Initiatives aimed at solutions within refugee source countries should ideally address all of the major groups of forced migrants: the number of traditional political refugees can be reduced through assistance for political reform and democratic restructuring; refu-

gees persecuted for belonging to particular ethnic groups can be helped with preventive diplomacy, peacekeeping, or full-fledged humanitarian intervention in ethnic conflict; and the rise of economic and environmental refugees can be confronted with financial, political, and technological assistance to solve or contain economic and environmental crises.

None of the individual root causes for emigration can be viewed in isolation from others, and the composition of refugee groups, as well as the combination of various factors responsible for forced migration, vary from case to case. Thus, each case has to be met with an individual combination of possible root cause solutions. The effect of such outside involvement on a country's political, social, and economic fabric can then be judged by corresponding levels of internal displacement and out-migration. Ideally, the number of refugees seeking refuge in First World countries will decline as a response to limited domestic conflict and crisis in source countries. This will reduce potential security threats to receiving countries' domestic stability and, eventually, it could render unnecessary further fortification against the proliferating refugee problem and regional security threats.

As sociologist Anthony Richmond suggests, "[i]n the postmodern world we must all learn to live with ethnocultural diversity, rapid social change and mass migration—there is no peaceful alternative" (1993, 10).

Despite the best intentions at controlling the most prevalent causes of forced migration, however, immediate effects on the levels of refugee movements will likely be marginal. A second approach should thus be directed at continued commitment to current (if not expanded) levels of refugee intake. However, if the domestic instabilities experienced by Germany are to be avoided, it will be necessary to reduce the negative impact of migrants and refugees on receiving societies. This can be achieved through the promotion of increased tolerance for foreigners, promotion of positive con-

tributions of refugees to their host societies and of the humanitarian responsibilities of the host society, and by regional distribution schemes that will spread the political and socioeconomic burden of refugee populations equally. A greater prominence given to refugees as part of overall immigration levels—even at the cost of admitting lower levels of business or independent immigrants—would do greater justice to the challenges posed by growing global refugee populations and nations' limited capabilities at integrating considerable numbers of foreigners.

Both external and "homefront" measures, aimed at controlling the negative security impact of refugee movements on receiving societies, would change the population's perception of the social, political, and economic impact of immigration, and offset the negative politicization of refugee issues pursued by right wing movements and parties. "Homefront" measures are inexpensive and quickly initiated, especially when elections are approaching. However, by themselves, they are of only limited value if asylum-seekers continue to arrive in large numbers and no changes in migration patterns are apparent. External measures, on the other hand, are costly, they represent long-term commitments, and they likely require multilateral and international cooperation (Boutros-Ghali 1992; Cox 1993; Huber 1993). A combination of both approaches—promoting tolerance at home, while creating peace and security in refugee source countries—would be an ideal strategy. Given the preventive nature of attempts at managing the root causes of migration, one can only speculate on the impact of such efforts. However, the lack or inadequacy of preventive measures in recent cases of ethnic civil wars (such as in Yugoslavia or in Somalia), the humanitarian accomplishments of eventual international involvement in these conflicts, and the gradually shrinking levels of out-migration from these regions, suggest the potential merit of such actions. On the other

hand, continuing refugee flow from places like Haiti and Rwanda, where international responses have been all but adequate in finding solutions to exacerbating crises, demonstrate the consequences of international indifference to crisis and conflict in the periphery.

Admittedly, these suggestions appear to reflect a rather idealistic approach, which does not take into account the difficulties and complexities of having to "sell" a more active and compassionate approach. On the other hand, are there viable alternatives besides shielding oneself off from potential refugee inflows, an approach which does little more than postponing solutions until conditions responsible for population movements have worsened even further? Changing attitudes in refugee-receiving countries toward the realities of growing multiculturalism, and the recognition of the necessity of more active involvement in the solution of refugee-causing conflict and crises, must be promoted—and eventually perceived—as the only viable approaches to the emerging refugee crisis. Otherwise, we will see intensifying refugee pressures from the East and the South, and a growing notion of the permanence of a new Wall characteristic—the emerging exclusionary nature—of the "new Europe." ■

Notes

1. The author wishes to express his gratitude to Doug Hall, S. Neil MacFarlane, Kathleen Schnabel and two anonymous reviewers for their insightful comments and suggestions on earlier drafts.
2. For instance, France's Interior Minister Charles Pasqua reportedly committed himself to achieving "zero illegal immigration," while cutting the numbers of legal immigrants in half. This could be done "without harming France's reputation as a country of refuge." Although acknowledging that "zero immigration" would be unachievable, he nevertheless believes that "in a situation of economic crisis, that is what we should be aiming for, to allow the fewest new arrivals as possible, in order not to seriously jeopardize the integration of those who are already here." Reported by AFP, Paris, 1 July 1993, in FBIS-WEU-93-125 (1 July 1993), 42-43.

3. "Cooperation Treaties" for re-deportation procedures of refugees have been concluded with Poland and Switzerland, and are currently being negotiated with the Czech Republic and Austria, all of which are major transit countries for refugees from Eastern and Central Europe. Germany is offering various financial support structures to assist these countries in dealing with the returned refugees (Bundesministerium des Innern, 1993; Frankfurter Allgemeine Zeitung, 1994).
4. This seems to be a particularly poor solution in dealing with refugees who have false documents or no documents at all. Valid exit visas or other official travel documents are often not available to refugees, in which case false documents offer the only viable possibility of leaving the country of origin. In addition, applicants with little or no hard evidence of persecution in their home countries will find it extremely difficult to make a strong case without a reasonable time to properly prepare for such a case. However, German law stipulates that an applicant will be allowed to enter Germany if his or her case cannot be dealt with within 19 days. Obviously, this leaves much clout to the judgement of individual immigration officials, and it can serve as an incentive for dealing with difficult cases in a careless manner.
5. This denounces one of the most endangered groups of refugees—ethnic refugees—as simply "temporary victims of civil wars," a gross misjudgement of the nature and consequences of ethnic conflict.

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Accepted on Compassionate Grounds: An Admission Profile of Tamil Immigrants in Canada

Arul S. Aruliah

Since its founding as a colony, Canada has traditionally been a haven for immigrants and refugees. Successive waves of migrants have been of different national persuasions, notably French, British, Irish, Chinese, Germans, Ukrainians, Italians, and Hungarian refugees from the 1956 Revolution. Most migrants to Canada, except for the stringently controlled Chinese labour admissions, were coming from Europe until the implementation of a nonracial immigration policy by the Pearson government in 1967. This policy, coupled with the introduction of bilingual and multicultural policies of the early 1970s, paved the way for significant migration from non-traditional source countries. Concurrent with these policies has been the opening of Canada's door for refugees from non-European sources, beginning with the admission of Ugandan Asian refugees in 1973, followed by a trickling of Latin American refugees that began with Chilean refugees, and the acceptance of Vietnamese "boat people" in the late 1970s. Most were admitted into the country under ongoing and/or special administrative procedures. But a new phenomenon emerged since the early 1980s, whereby refugees from tyrannical regimes and ethnic conflicts would turn up at a Canadian port of entry and ask for asylum. As a result of these admissions on compassionate grounds, there emerged in the last decade a few sizable new communities in Canada, such as that of the Tamils of Sri Lanka, Iranians, Afghans, Ethiopians, Somalis, and Salvadoreans.

A significant feature of these communities is that their admissions were fuelled by *inland landings*, and have been almost entirely based on some

form of compassionate grounds, such as convention refugees, backlog clearance designated class members, their families or assisted relatives, or even independent immigrants that emerged during the administrative review of the refugee claimants backlog (ADR) in 1986-87. The following is a quantitative analytical profile of the Canadian Tamil community—the largest group in this category—that has grown to 73,000 in 1994 from a meagre population of about 400 families merely a decade ago. The analysis¹ is based on the landing period of migrants from Sri Lanka.

Early Migration from Sri Lanka

Sri Lankan migration to Canada began in the early 1960s with the admission, principally, of Eurasian (mixed race) population known as Burghers, who conformed to the Canadian immigrant selection criteria at that time. The English-educated population began their move from Sri Lanka (or Ceylon as it was known before 1972) to the U.K., Australia, and Canada following the introduction of Sinhala as the only official language in 1956. Some 500 Ceylonese had been admitted by the time Canada moved to nonracial selection of immigrants in 1967. Thereafter, the Sinhalese, Tamil, and other communities began to immigrate to Canada; they were mostly professionals arriving via England after completing their studies in that country. By 1973, there was a total of 1,747 landings. When the major communal upheaval broke out in Sri Lanka in July 1983,² a total of 4,373 Sri Lankans—of which an estimated 30 percent were Tamils—had been admitted to Canada.

Admission To Canada From 1983

Admissions of Sri Lankan citizens to Canada between 1964-93 are shown on a logarithmic scale in Figure 1. Of

the total population of 51,631 persons admitted by 1993 (see Table 1), about 95 percent of the landings took place in the last ten years in four identifiable stages, which correspond to the introduction of the special program for Sri Lanka in 1983, the ADR program in 1986, the refugee backlog clearance designated class program in 1988, and the determination of convention

Table 1: Immigrant Landings from Sri Lanka (Ceylon), 1964-93

Year	Male	Female	Total
1964	n/a	n/a	80
1965	n/a	n/a	126
1966	n/a	n/a	144
1967	n/a	n/a	112
1968	n/a	n/a	76
1969	n/a	n/a	179
1970	n/a	n/a	167
1971	n/a	n/a	218
1972	129	111	240
1973	220	185	405
1974	271	256	527
1975	167	202	369
1976	92	143	235
1977	62	106	168
1978	58	88	146
1979	70	67	137
1980	84	101	185
1981	192	179	371
1982	139	151	290
1983	90	108	198
1984	531	559	1,090
1985	446	405	851
1986	1,387	574	1,961
1987	3,041	1,506	4,547
1988	1,224	1,591	2,815
1989	1,213	1,570	2,783
1990	1,835	1,722	3,557
1991	4,236	2,971	7,209
1992	7,808	5,241	13,049
1993	4,353	5,143	9,496
Total	27,580	22,979	51,631

Source: Citizenship and Immigration Canada.

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refugee status under Bill C-55 by the newly instituted Immigration and Refugee Board (IRB) from 1989.

Introduction of the special program for Sri Lanka. Following the communal riots that began in Colombo in July 1983, Immigration Minister John Roberts, on the recommendation of his senior advisors, introduced special relief measures for the affected people of Sri Lanka. The program came in response to the representations made by an active and closely-knit group of the Toronto Sri Lankan Tamil community, with the assistance of church groups in Toronto, and organized by the Tamil Eelam Society of Canada.

This program, introduced in September 1983, allowed the Sri Lankan refugee claimants, students, and visitors who were in Canada at the time, to apply for landing from inside Canada; imposed a moratorium on removals to Sri Lanka; allowed eligible residents to sponsor affected relatives under relaxed selection criteria; and authorized the issue of Minister's permits for those persons whose lives were deemed to be in danger. The program became the most effective source of protection for the affected population. Concurrently,

however, the Government imposed visa requirements on Sri Lankan nationals.

The refugee claimants who arrived after the program date were assessed according to the normal determination method by the Refugee Status Advisory Committee (RSAC). However, the Singh decision³ by the Supreme Court, on April 4, 1985, contributed significantly to the refugee backlog. Community activists, supported by church and academic leaders, lobbied for the inclusion of Sri Lanka in the B1 list of countries, which would enable immigration officers to issue a minister's permit, instead of routing the claimants through the RSAC paper review process. The so-called B1 list consisted of countries of the former Soviet Bloc, and some Latin American and Southeast Asian countries. At a meeting held in Toronto in April 1986 with the Minister of State (Immigration) Walter McLean, community activists expressed the view that Tamil claimants were being "miscategorized."⁴ Commenting on the effect of reasoned lobbying, Professor Howard Adelman notes that "the incentive to fulfill these moral obligations [of not returning

claimants to country of alleged persecution] is helped by the fact that ... the Tamil community ... provide[s] a small but forceful lobby on [their] behalf...." (Adelman et al, 1994). In May 1986, the Minister announced an administrative program for refugee claims clearance pursuant to the Supreme Court ruling and, at the same time, the B1 countries list was updated to include Sri Lanka.

Landings under the ADR program. The second wave of landings took place under this program in 1986-87. This program effectively sidestepped the refugee claims, and assessed the applicants for economic adaptability. Except for a very few cases in which claimants were dependent on social assistance, about 4,500 applicants—almost all the Sri Lankan claimants in the program—were landed and their families began to be reunited in the following years.

Although thousands of Tamil refugees had sought asylum in preceding years, the arrival of 155 Tamil men, women, and children off the coast of Newfoundland in August 1986 captured the imagination of both the Canadian and international media. The new Minister of State (Immigration) Gerry Weiner and his senior Minister Benoît Bouchard had assumed their portfolios only a few weeks earlier. Apparently overwhelmed by the initial euphoria, the Minister announced that these asylum-seekers would be accepted, even though he was simply implementing the procedure that had been in place since May 1986. By then, of course, the merits of maintaining the B1 list of countries were misunderstood by the public. Given the policy of the government to assist refugees in distress, this process was probably the most effective and least expensive administrative tool for recognizing discontinuous displacement in a given country.

The B1 list, and the policy of non-removal to these countries, was discontinued in February 1987, and the refugee claims reverted to the virtually non-functioning RSAC process. An estimated 2,500 permits were issued

Figure 1: Thirty Years of Sri Lankan Immigration to Canada, 1964-93

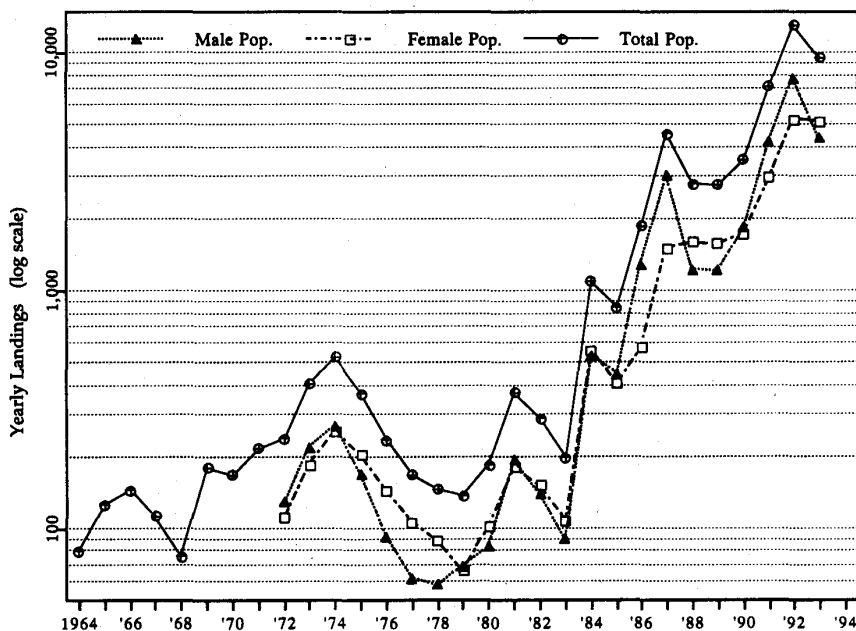
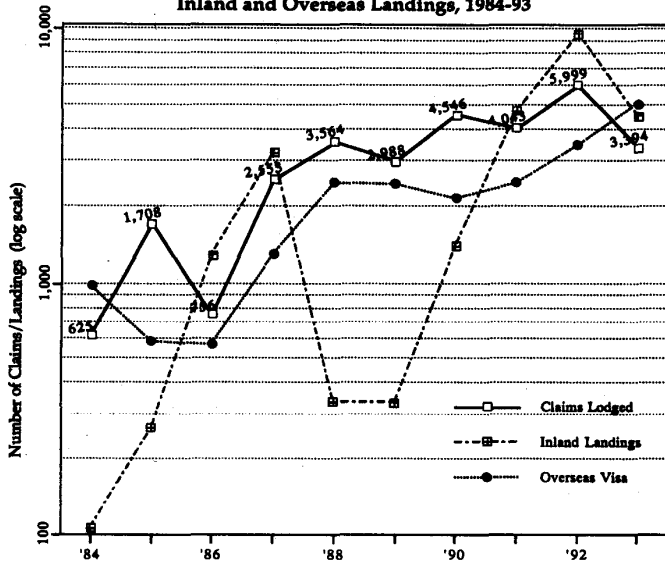


Figure 2: Sri Lankan Refugee Claims Lodged, Inland and Overseas Landings, 1984-93



for Sri Lankan claimants while that country was on the B1 list and, along with this group, the Newfoundland arrivals also became part of the ADR backlog. In the intervening period, the new refugee determination legislation, Bill C-55, was being formulated in Parliament, and was enacted on January 1, 1989. The refugee claimants who were in the system until this date became members of the new Refugee Backlog Clearance Designated Class.

Landings under the Designated Class program. Under this program, a total of 7,385 persons were landed from 1989 to 1993, representing about 85 percent of eligible persons. An increase in the landings of women, as shown in Figure 4—due to family reunifications—is evident immediately following the program landing periods. Concurrently, a reverse trend is apparent with the workers' share, effected by the impact of the increased dependents' share.

Landings under C-55. A total of 20,970 Sri Lankan refugee claims were lodged with IRB between 1989-93, with an average acceptance rate of 90 percent. Of which, a total of 10,401 Convention refugees were landed during the same period. It is pertinent to note that only one Sri Lankan claimant was landed as a Convention refugee in 1983.

used as the reference group. The following parameters, viz. landings, gender and age, marital status, immigrant class, native language, educational qualifications, and worker/dependent ratios, are measured and their percentage share for each year from 1980 to 1993 is shown in Figures 3 and 4. Unless stated otherwise, all statistical data refer to the period 1980-93.

Having looked at factors that propelled the exponential growth of Sri Lankan migration to Canada, let us turn to the profile of the community based on some of the immigrant selection criteria. For this purpose, a small sample of pre-1983 immigrant population is

Landings

Figure 2 illustrates the Sri Lankan refugee claims lodged, and the landings via inland and overseas processing of applicants from 1984 to 1993. Except for a significant dip in 1986, there has been an upward trend in claims made in Canada. A brief introduction of the minister's permit process in 1986 had the impact of removing the claimants from the refugee tracking statistics. Less than ten percent of applicants were processed for landings from inside Canada during the reference period 1980-83. As can be seen in Figure 3, this share rose to 71.3 percent during the ADR period, which contributed to the progressive growth of family reunions. The inland landings share, relative to the total yearly admissions, fell during 1988 owing to a virtual standstill in refugee processing. However, this share rebounded due to the combined effects of Designated Class and Bill C-55 processings. As a result, a record number—13,049 persons—were landed in 1992.

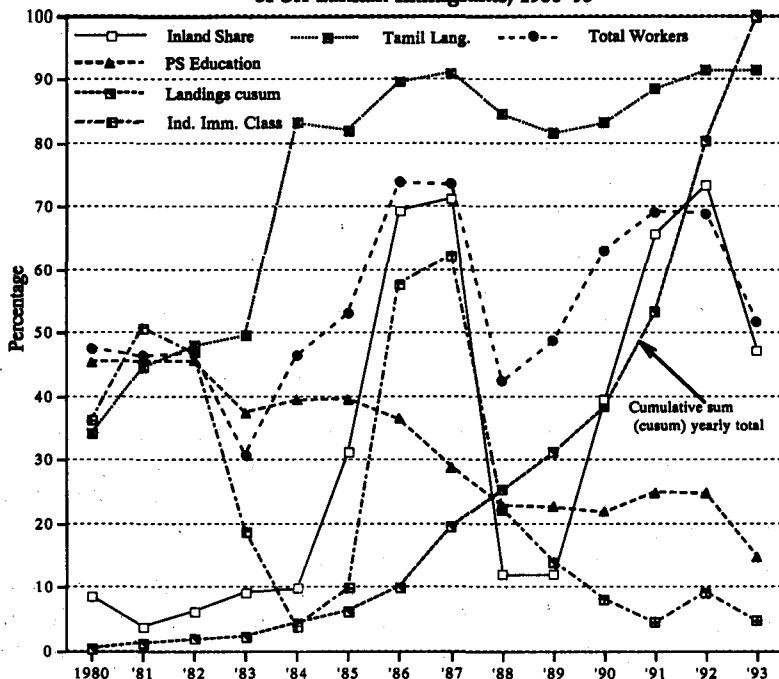
About 53.5 percent of the total landings were processed from inside Canada. Of the 25,842 cases processed in Canada Immigration Centres

Table 2: Annual Landings of Sri Lankans in Canada, by Immigrant Class, 1980-93

Year	FC	CR	DC	Ind.	AR	Others	Total
1980	59	0	0	37	29	0	125
1981	120	0	0	100	48	0	268
1982	120	0	0	136	29	0	285
1983	137	1	0	37	19	4	198
1984	166	36	0	41	843	2	1,098
1985	172	104	2	89	476	14	857
1986	223	240	1	1,073	307	9	1,853
1987	318	565	0	2,827	594	23	4,347
1988	1,181	208	0	634	785	17	2,815
1989	1,465	312	2	306	600	38	2,723
1990	1,431	641	620	289	551	25	3,557
1991	1,942	1,309	2,992	327	582	57	7,209
1992	3,230	4,850	5,247	1,182	500	40	13,049
1993	4,622	3,389	524	453	429	79	9,496
Total	15,438	11,563	7,366	7,713	5,372	308	48,362

Notes: FC - Family Class; CR - Convention Refugee; DC - Designated Class; Ind. - Independents; AR - Assisted Relatives. Source: Citizenship and Immigration Canada

Figure 3: Percentage Share of Six Selected Landing Characteristics of Sri Lankan Immigrants, 1980-93



(CICs), 21,974 persons (85 percent) were landed by Metro Toronto and Mississauga CICs, Montréal CICs landed 2,558 persons, and 1,310 persons were landed in 69 CICs across the country.

Of the 22,460 persons processed overseas, 70 percent were processed at the Colombo visa office, 12 percent in New Delhi, 5 percent in London, England, and the rest at 72 visa offices around the world.

Gender, Age, and Marital Status

Figure 4 illustrates the percentage share of male and female populations, and that of the population under the age of 45 years. From 1980 to 1993, 26,481 males and 21,821 females were landed. As much as 88.4 percent of the male population and 81.7 percent of the females were under 45 years of age at the time of admission to Canada. Overall, male residents constitute

about 55 percent of the total population, and the pronounced effects of gender differences can be observed during ADR and Designated Class landings, as the majority of claimants were young males. At the time of landing, there were 17,277 males and 12,419 females aged 20-44 years. Of the total population, 26,369 persons were single; 19,798 were married; 1,788 were widowed; and 347 persons were separated from their spouse at the time of landing. The single marital status share shown in Figure 4 is reflective of the percentage share of men aged 20-44 years.

Immigrant Class

Table 2 summarizes the landings of Sri Lankan citizens by immigrant class from 1980 to 1993. The yearly percentage share of independent immigrants is shown in Figure 3, and the immigrant class share in Figure 5. It is instructive to note that immigrant class assignment simply denotes the emphasis placed on a given person at the time of his or her landing, and is not necessarily an indicator of whether that person would pass the test of another category.

Inadvertently, an interesting "test" took place during ADR landings in 1986-87. The refugee claimant population was evaluated and processed for landing based on their ability to support themselves and their dependents.

Figure 4: Total Sri Lankan Landings, 1980-93 Percentage Share of Gender, and Marital Status

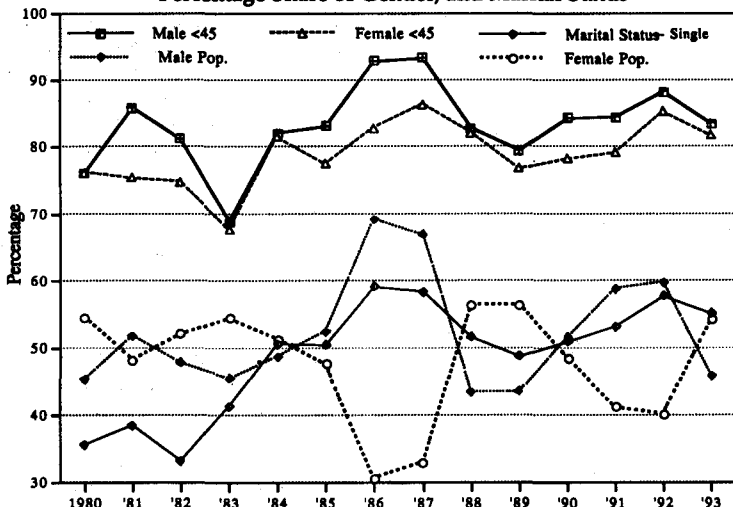
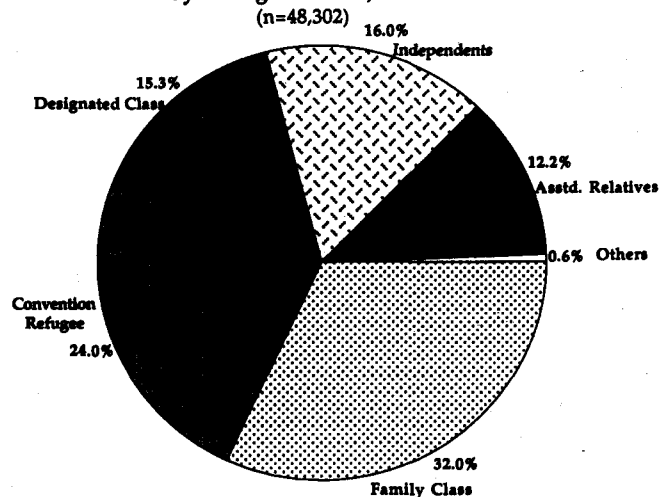


Figure 5: Total Sri Lankan Landings by Immigrant Class, 1980-93 (n=48,302)



As can be seen in Figure 3, nearly 60 percent of the landings were classified as independents during this processing. In other periods, however, most of the inland claimants were not evaluated on a similar basis, and correspondingly, independents' share showed a downward trend in relation to the other categories of immigrant class. Entrepreneurs, retired persons, self-employed, investors, and live-in caregivers formed less than one percent of the total landings. There were no landings of claimants under Bill-86 Post-Determination Refugee Claimants in Canada Class (PDRCC).

Educational Level

The percentage share of persons with at least some post-secondary (PS) education is shown in Figure 3. About 45 percent of the reference (1980-82) population had some post-secondary level education, i.e., about one in two Sri Lankans landed had tertiary level education. As the years progressed, however, this share showed a downward trend, which is to be expected in a young population fleeing zones of prolonged conflict.

Occupation

Percentage share of workers in the landed Sri Lankan population is shown in Figure 3. The progressive trend, driven by the predominance of the single population until 1985, was interrupted by the arrival of family members in 1988-89, a follow-up result of ADR landings. A similar trend is evident in the post-backlog family reunions in 1991-92.

Of the total population of 48,302, there were 9,818 workers and 18,484 non-worker dependents at the

time of landing, with 1:1.6 worker/dependent ratio. Non-workers included spouses, children, students, and retired persons.

Native Language

Sample computing of pre-1983 landings (1980-82) indicates that 43.3 percent declared Tamil as their mother tongue, with corresponding percentages of 38.5 for Sinhala, and 12.8 for English. However, as shown in Figure 3, the post-1983 landings in Canada have been predominantly Tamil-speaking. Tamil constituted nearly 88 percent of the total landings between 1980 and 1993; Sinhala is spoken by 7.6 percent of the population, and 3 percent of the immigrants declared English as their mother tongue.

One-and-a-half percent of the Sri Lankan citizens landed in the same period shared more than 40 languages; among them 103 persons spoke Swahili, 64 Punjabi, 16 one of the African languages, 14 Cantonese, eight French, and one each of Amharic, Japanese, Ibo and Yoruba—these probably being attributable to children raised in those environments. The population has not been analyzed for its fluency in English or French. However, English was the official language of administration in Sri Lanka before 1956.

The Community

The Canadian Tamil community in 1994, as summarized in Table 3, is about 73,000. Based on the landing centres' data, it is further estimated that about 90 percent of this population is in the greater Toronto area.

The above analysis of the landed Sri Lankan population indicates that an overwhelming majority of these persons were admitted under some form of compassionate considerations. The community is mostly composed of young adult Tamils, and has a relatively high worker/dependents ratio. About one-half of the population is single, and one in four had some post-secondary education at the time of landing.

Based on these criteria, compassionate considerations notwithstanding, the characteristics of this population correspond with the primary goal of the Canadian immigrant selection process of admitting a young and industrious population capable of becoming an asset to this country. ■

Notes

1. The author would like to thank Yumiko Iida, graduate student of Political Science at York University, and Anusha Aruliah, a student of Political Science and Philosophy at the University of Toronto, for their research assistance in the collection of data.
2. See the special issue of *Refuge*, Vol. 13, No. 3, June 1993, for an account of the emergence of ethnic conflict in Sri Lanka and factors leading to the July 1983 riot, in which hundreds of Tamils were murdered and a large number were made refugees.
3. In *Singh v. Canada (Minister of Employment and Immigration)* the Supreme Court of Canada ruled that the Canadian Charter of Rights and Freedoms applies to everyone in Canada. Hence an oral hearing was mandated for refugee hearing appeals.
4. Communication from the Minister of State (Immigration).

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Sample	Population
Landings from 1980 to 1982	11,400
CR hearing landing (approx. up to '93)	10,000
Normal no appeals (est. up to '90)	2,400
Total CR landings admitted to Canada	23,800
1994 CR hearing admissions (est.)	4,300
C-50 Appeals from various appeals ('93)	1,700
Total CR landings to Canada (est.)	29,800
Share of total population (approx. 30% of Total)	87,807
Total Tamil population with origins in India and other countries (est.)	5,000
Total Tamil population in Canada (est.)	72,807
Population in Metro Toronto and the surrounding regions (est. at 90%)	65,526

Source: Immigration and Citizenship Canada, and Immigration and Refugee Board, Ottawa.

An Essay Review

Early Warning and Conflict Resolution

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New York: St. Martin's Press, Inc., 1992; xxv-238.

By Absalom M. Adam

The Present State of Early Warning System of Refugees. The Gulf War, the famine of Somalia, the ethnic clashes in the former Yugoslavia, the civil war in Haiti, and the most recent mass killing in Rwanda, to mention only a few cases of man-made or natural disasters, have been followed by massive involuntary migration. In some of these cases, the international community received early warnings. But no system to network these warnings exists. The early warning system for refugees, when it was initially proposed by Prince Sadruddin Aga Khan, aimed to forecast involuntary migration in the hope that, by anticipating such disasters, the international community may act in advance to diminish the human misery and loss of life. Yet the United Nations does not have such a system. The lack of a United Nations response to the mass killing in Rwanda, to take a recent example, further undermined this hope. It has been criticized by the United Nations Secretary-General Boutros Boutros-Ghali, who called it a scandal and a failure. The mass killing was followed by forced migration to neighbouring countries, and has produced the biggest refugee camp in the world in Burundi. This example illustrates the acute need for such a system.

The importance of the book under review, then, is that it at least addresses these issues, even though it lacks a historical discussion of how the idea of the early warning system originated and evolved. I believe, it is the historical dimension of the early warning system and refugees which is important for an understanding of the changes in the United Nations' policy.

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This book is the first of three volumes, the other two being *Ethnicity and Conflict in a Post-Communist World*, and *Internal Conflict and Governance*, all published by St. Martin's Press. The books are based on papers submitted by 50 scholars from around the globe to the International Peace Research Association XIII General Conference in Gröningen, the Netherlands, from 3-7 July 1990. According to the editors, the choice to devote one volume to issues pertaining to the early warning system is a response to increasing confusion about that concept, and reflects the need for a pluralist methodology aimed at resolving international conflicts in a peaceful manner.

The editors, Kumar Rupesinghe and Michiko Kurda, wrote the introduction and the final paper. In the introduction, Rupesinghe tells us that the importance of the early warning system rests on its aim to resolve conflicts peacefully in a new stage of human civilization after the end of the Cold War. Kurda, in the final chapter entitled "Early Warning Capacity of the United Nations System: Prospects for the Future," describes the capacity of the United Nations to network the early warning system. He refers to the United Nations Joint Inspection Unit's (JIU) report to which I will turn later.

In Chapter 1, "Early Warning: Conceptual and Practical Issues," Leon Gordenker observes the increase in forced migration in the 1970s which prompted studies on the early warning system. He refers to some important studies undertaken between 1986 to 1990, one of which was Professor Onishi's "Global Early Warning System for Displaced Persons: Interlinkages of Environment, Development, Peace and Human Rights" (1987). Gordenker aims to clear the confusion and attempts to clarify the

meaning of the early warning system. To this end, he analyzes forecasting and how to act upon forecasts of forced migration. Gordenker assumes that the interest in the early warning system is primarily a humanitarian one and not aimed at further controlling or sealing borders. The discussion of the early warning system, he suggests, should not focus merely upon forecasting, but also upon the issue of who receives the information and what is done with it. None of these questions, answers, and suggestions, however, is new. The last suggestion, for example, was given by the Joint Inspection Unit's report (JIU/REP/90/2 Geneva 1990), of which the author is aware. The clarification he offers could also be traced to Prince Sadruddin Aga Khan's report E/CN.4/1503 of 31 December 1981, to which Gordenker does not refer. This report is considered below.

In Chapter 2, entitled "Human Rights Monitoring: Lessons Learnt From the Case of the Isaacs in Somalia," Greg Beyer focuses on the Isaacs in Somalia as a case of human rights monitoring that illustrates the failure of the early warning system. The abuse of the Isaacs' human rights, which led to forced migration, was reported to the international community through representatives of United Nations agencies who witnessed it. Yet no alert notice was given, and no preventive measures were taken. Here the concept of human rights monitoring should have been traced back to its original advocate, Prince Aga Khan who, in his 1981 report, recommended it as a way to forecast forced migration.

In Chapter 3, "Dangerous States and Endangered Peoples: Implications of Life Integrity Violations Analysis," Helen Fein extends the early warning system as a model not only of forecasting forced migration but also of forecasting genocide or political killing. Peoples' lives at risk are analyzed with indicators from 50 countries taken from *Amnesty International* reports. The paper tells the story of persons who managed and those who did not manage to escape mass murder. Fein offers a methodology to forecast the

threat of mass killing, and discusses warning signs, such as increased violations of human rights. The gassing of a part of the Kurdish population in 1987 and 1988, and the forced relocation of 500,000 Kurds by Iraq since 1988, during which more than 500 villages and towns were destroyed, are discussed as warning signs to which the international community was oblivious. This case is paradigmatic of the lack of international community's response. Fein's methodology is rich and deserves further attention as a model for forecasting based on available material, e.g., *Amnesty International* reports. Her thesis is that violations of human rights vary in degree, and that they can escalate to mass killing in the absence of international response.

Hugh Miall, in "Peaceful Settlements of Post-1945 Conflicts: A Comparative Study," considers who receives the information about conflicts and how they are to be resolved peacefully before they become violent. He suggests promoting early intervention to avoid such conflicts. Miall distinguishes between internal and international conflicts, and his statistics suggest that conflicts over interests such as territory or resources are easier to resolve than ethnic conflicts. The study indicates that, to resolve a conflict, it is necessary to agree upon procedures of mediation; Miall also permits intervention of a third party to assist peaceful resolution.

In Chapter 5, "Famine Early Warning and Local Knowledge: The Possibility for Pro-active Responses to Stress," Peter Walker discusses famine as a disaster. The weakness of the early warning system is due to the use of defective models. Traditional and non-traditional responses to famine are presented in case studies of Ethiopia, Sudan, and the Indian subcontinent, and some suggestions to improve the famine early warning system are offered. Surprisingly, Walker does not discuss refugees from famine, nor does he mention that the early warning system used by the Food and Agriculture Organization (FAO) has served as a model for the United Nations High

Commissioner for Refugees (UNHCR) conception of the early warning system.

Stephen Ryan, in "Early Warning: Conceptual and Practical Issues," discusses the role of the United Nations in the resolution of ethnic conflicts. That role comprises two different phases: the response to violent ethnic conflict, and the attempt to prevent it. The main items of Boutros Boutros-Ghali's January 1992 report, *An Agenda for Peace*, preventive diplomacy, peacemaking, and peacekeeping, are readdressed in this chapter. Ryan suggests that even if the United Nations protection of ethnic minorities and genocide prevention are lacking, there is still promise in Ghali's plan. One of the significant problems with this chapter is that it leaves untouched the question of how the early warning system is to be circumscribed within *An Agenda for Peace*. Ryan should have traced the concept and structure of the early warning system as it was transformed from its inception in Prince Aga Khan's report of 1981, to its modified version, merely as an intelligence system, in *An Agenda for Peace*.

"Political and Cultural Background of Conflicts and Global Governance," written by Kinhide Mushakoji, is not reviewed at this time.

It seems that the importance of the chapter written by Hans Thoolen, "Information Aspects of Early Warning," is beyond its own scope. I would argue that the shortcoming of this paper can be extended to the book as a whole. Thoolen asserts in his conclusion: "This paper does not do justice to conceptual work and case studies undertaken by the staff of ORCI [Office of Research, Communication and Information] ... It pays enough attention neither to earlier United Nations efforts by Sadruddin Aga Khan in 1981 nor to the proposals of the Group of Governmental Experts in 1986" (p. 176). Thoolen's paper gives an overview of the UNHCR role and reminds us that the UNHCR, and its present High Commissioner, Ms. Ogata, work within a mandate restricted to 1951 Convention refugees. The paper refers

to the UNHCR and Ms. Ogata's deployment of preventive measures, and also directs attention to the fact that the early warning system fails since ORCI (see below) fails to coordinate different United Nations mechanisms.

Gangapersand Ramcharan, in "Early Warning in the United Nations Grand Strategy," argues that the role the United Nations plays in international and national conflicts is pivotal. The member states' constitutions should reflect the constituent principles of the United Nations. The early warning system and preventive measures should be part of the United Nations' grand strategy. Yet, such a suggestion is redundant since *An Agenda for Peace* makes it part and parcel of United Nations policy.

Chapter 10 by Jürgen Deding, "Sociopolitical Indicators for Early Warning Purposes," is a compilation of theoretical (yet to be workable) concepts, such as sociopolitical indicators for early warning system purposes.

The "Selected Bibliography" at the end of the book includes the most important studies on the topic of the early warning system.

The book is at its strongest when it presents the varying approaches to different aspects of the early warning system, namely, the conceptual approaches based on actual cases of forced migration, and those based on suggestions of methodology for conflict resolution. Yet it fails to provide an explanation for the confusion over the meaning of the early warning system. A discussion of the conceptual changes of the early warning system could fill this gap. To this end, I propose to consider two significant essays which were mentioned only in passing. The first is written by Prince Sadruddin Aga Khan (only referred to in the selected bibliography), and the second by Professor Akira Onishi.

The early warning system, which forecasts violations of human rights resulting in involuntary migration, was proposed by Prince Sadruddin Aga Khan—a former High Commissioner for Refugees. Invited by the Commission on Human Rights—in his

capacity as a Special Rapporteur—he produced a report in 1981, entitled “Question of the violation of human rights and fundamental freedoms in any part of the world with particular reference to colonial and other dependent countries and territories: Study on human rights and massive exoduses” (E/CN.4/1503). This report deserves attention not only because its diagnosis reflects a crucial facet of forced migration, i.e., people are forced to migrate when there is an increase of violation of human rights, but also because the report’s prognosis in its recommendations set the agenda for United Nations policy. It was slightly elaborated and became the core of the present Secretary-General’s *An Agenda for Peace*. I will confine my attention to one of the important recommendations of this report, which

An extended study on the early warning system, which followed this report and addressed comprehensive operative and theoretical considerations for human and/or natural disasters, was undertaken by Professor Akira Onishi of Soka University. This study (yet to be challenged), “The global early warning system for displaced persons,” presented field work which illustrated a proposed model for forecasting involuntary migration. In its 1986 version, the study focused upon thirteen countries in Asia to investigate the risks of large-scale population displacement.

The methodology of research, suggesting an economic model for forecasting large involuntary migrations, was based on four main indicators: (i) the destruction of the environment, e.g., natural disasters, such as flood

Of the several studies produced between 1986 and 1990, the most interesting one came from the United Nations Joint Inspection Unit (1990). It focused on the function of the early warning system in the United Nations and Non-Governmental Organizations (NGOs). In this study, “refugees” are defined as people “who involuntarily leave their home for whatever reason”. The report accepts Onishi’s categories that may indicate involuntary migration. The report also follows in the footsteps of Aga Khan’s report and hence proposes preventive measures to be taken by the UNHCR. In the JIU’s report, the definition of “refugees” is broader than the 1951 Convention definition, and the preventive measures go far beyond the scope of the UNHCR mandate. The report proposes a network of United Nations systems in which early warning components will be coordinated. The coordinator office, which was to be ORCI, was to analyze and network the collected information and forward an early warning alert to the Secretary-General. This office, however, ceased to exist in 1992. It was suggested that it be replaced by an intelligence mechanism which would assist the Secretary-General as part and parcel of the new agenda for peace. Still, this remains the Achilles heel of the system. The system lacks a successful co-ordinator, and effective intelligence mechanisms are in their infancy. A model for forecasting involuntary migration can be employed by NGOs, which would receive information from the various United Nations agencies and other sources. This is an alternative which has not yet received enough attention. ■

The book is at its strongest when it presents the varying approaches to different aspects of the early warning system, namely, the conceptual approaches based on actual cases of forced migration, and those based on suggestions of methodology for conflict resolution.

calls for the introduction of an early warning system based on global information gathering and data collection concerning potential mass exodus situations; such information and data would be communicated expeditiously to the Secretary-General of the United Nations and competent inter-governmental organs for the purpose of timely action, if required. (Article 7)

A system of this kind, which took into consideration short- and long-term preventive measures, was not new to the UN. FAO had an early warning system aimed at forecasting natural or human-caused disasters which result in famine. Sometimes in advance, at times belatedly, this system has been operative and preventive measures, such as humanitarian assistance, have been taken. The new feature of the proposed system was its application to the problem of forced migration; an explanation of how violations of human rights end in involuntary migration was also part of the proposal.

and drought, water pollution, air pollution; (ii) failures in development, e.g., poor economic growth, stagnant per capita income, unequal income distribution, increased international per capita income disparities, higher domestic prices in terms of the consumer price index; (iii) absence of peace and security, e.g., political conflicts and violence, absence of rules of law, a growing ratio of military expenditure to GDP, insurgency, internal war; and (iv) violation of human rights. These categories take us one step beyond Prince Aga Khan’s report of 1981 to a model which can be organized and operated by a research unit, such as the Centre of Science of Soka University. This approach can perhaps deflect us away from the difficulty inherent in the ORCI approach. In its 1987 version, Onishi’s report extends its application to a universal concept of the early warning system; in the present (1994) version, it mainly needs information which may test its possible forecasts.

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Book Review

African Refugees: Development Aid and Repatriation

*Edited by Howard Adelman and John Sorenson.
Boulder, CO: Westview Press, and Toronto:
York Lanes Press, 1994; xix-264, index.*

Reviewed by Charles Smith

This impressive collection of twelve articles is written by fifteen contributors and a non-contributing editor. The book is timely insofar as it coincides with worldwide media coverage of the carnage in Rwanda and other wars on the African continent. Ideally, a work of this sort should provide an analytical and theoretical foundation necessary to understand the contexts and some underlying causes of the current situation; for the most part, this book succeeds.

Africa is the world's poorest, least developed continent, yet it contains at least one-half of the world's known refugees, if not more, considering that many internally displaced and self-settled refugees do not register with the United Nations High Commissioner for Refugees (UNHCR). Most African refugees have little choice but to settle in a neighbouring country, so that the Organization of African Unity (OAU) policy of discouraging refugees from settling outside Africa (*cf.* Winter) is probably irrelevant. Yet most countries face a dilemma, because they lack either the economic means or the political will to cope with refugees once their numbers reach hundreds of thousands. As Sorenson points out, at the height of the war with Ethiopia, 80,000 Eritreans (a quarter of Eritrean population) were in exile, mostly in neighbouring Sudan. In the past, people of the same or a closely related ethnic background would adopt exiles into their families, clans, and villages; however, this informal system is inad-

equated for the mass migrations of the 1980s and 1990s.

All African countries attempt to control and manage the flood of refugees by establishing special settlements. Financially strained treasuries stand to benefit from UNHCR assistance: as Kibreab and Bakwesegha point out, many governments try to force refugees into settlements where governments can enumerate them and claim per capita aid. Many authors in this collection report abuse based on overestimating the numbers of refugees. There are other reasons why African governments prefer settlements. They usually establish them in remote and underdeveloped areas to minimize contact with the local populations. In defence of settlement policy, governments claim that it protects refugees from cross-border raids. As Sterkenburg, Kirkby, and O'Keefe explain, however, sometimes relief is self-perpetuating, since the settlement areas are often poor to begin with, and the land is soon degraded beyond its "absorptive capacity". Subsequently, when refugees cannot feed themselves, aid is necessary and a "syndrome of dependency" develops.

It is hardly surprising that refugees choose to "self-settle" within the host community whenever they are not legally and physically prevented from doing so. Sterkenburg, Kirkby, and O'Keefe, Kibreab, Kuhlman, and Koehn all refer to studies that explain why most refugees prefer this option: it gives them a greater sense of autonomy, as they often fear being attacked by their persecutors if they remain in organized settlements. It is the spontaneously settled that are the most likely to acquire skills, to succeed materially, and to earn higher incomes, as Kuhlman illustrates with some comparative tables. Often the settlements prove to be unsustainable, partly because a disproportionate number of residents are very old, very young, or disabled and therefore require assistance.

Gorman criticizes Stein's suggestion that refugees act against their own interests when they leave settlements

where they receive better social services, health care, and education. In fact, several articles in this volume point out that spontaneously settled refugees may be exploited and subjected to harsh and arbitrary treatment by the host community. In few cases are they able to obtain official status, travel permits, business licenses, identity cards, and the like. Nevertheless, as Gorman asserts, "autocratic paternalism" (forcing refugees into settlements) is, at best, not guaranteed to provide more benefits and, at worst, is another harmful form of paternalism.

The central issue addressed in this volume is that of outsiders imposing solutions on refugees who have little or no say in planning and implementing policies that define their life situations and chances. Every article argues that the official refugee caretakers need to consult their supposed clients, who themselves should play an active part in planning and implementing programs of resettlement and repatriation. This volume does succeed in isolating and analyzing the structures and the root causes of refugee movements in Africa but, in so doing, it illustrates how difficult it will be to draft and implement workable and sustainable solutions.

No book on African refugees can possibly keep up with the rapid pace of change. For example, no one could possibly have predicted the shooting down of President Habyarimana's plane, which caused a full-scale civil war. Kiddu-Makubuya's article on Rwandan refugees in Uganda states that, when the RPF (Rwandese Patriotic Front) invaded Rwanda in October 1990, they might have defeated the government if not for armed intervention by Belgium, France, and Zaire. The combatants agreed in principle to a ceasefire in July 1992 but, with the wisdom of hindsight, we can see that the Arusha accord was mainly posturing. One has to question the logic of intervention, since the savagery of the current war reflects the frustrations of the past. It probably would have been better to let the combatants resolve the conflict themselves in 1990.

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Nevertheless, as the article reveals, the Ugandan government covertly assisted the repatriation of the numerous Rwandan refugees in Uganda. Kiddu-Makubuya quotes the opinion of an influential newsweekly in nearby Kenya, which accused President Musoveni of supplying the RPF with arms and crack Ugandan troops in order to use it as a subterfuge invasion force on behalf of Uganda. The Kenyan article undoubtedly exaggerates the case, but it expresses the common fear among OAU nations of warrior refugee settlements, and the way these are manipulated in the complex gridlock of relations between African nations and the micro-national ethnic groupings that often overflow state boundaries. ■

Ten-year Study Finds Refugees Adapting Successfully in Canada

Findings from a ten-year refugee resettlement study based on employment, health, mental health, use of social services, citizenship, and feelings about Canada of Southeast Asian "Boat People"—Chinese, Vietnamese, Laotian, and Cambodian refugees admitted to Canada between 1979 and 1981—contradict common stereotypes about refugees. Compared to the general population, the refugees have a lower unemployment rate, and lower use of social assistance. Of the former refugees, 99 percent have become Canadian citizens, and 95 percent feel that Canada is now their home. One in five former refugees has started his or her own business, often employing other Canadians.

This study was carried out by Dr. Morton Beiser of the Clarke Institute of Psychiatry and the University of Toronto, together with two colleagues at the University of British Columbia, Dr. Phyllis Johnson and Dr. Richard Nann.

Source: The Clarke Institute, University of Toronto news release, Sept. 26, 1994.

Immigration and Refugee Board Convention Refugee Determination Division Claims Process Period: January 1, 1994 - June 30, 1994

Regional Summary

	Ottawa/Atlantic	Quebec	Ontario	Prairies	B.C.	National
Claims heard to completion (includes cases before 1994)	966 ...	3,470 ...	6,478	272 ...	667	11,853
Decisions rendered	1,044 ...	3,706 ...	7,512	298 ...	737	13,297
Claims rejected	142	902 ...	2,741	76 ...	344	4,205
Claims upheld	902 ...	2,804 ...	4,771	222 ...	393	9,092
Withdrawn/abandoned	157	410 ...	1,198	37 ...	299	2,101
Decisions pending*	65	334 ...	1,187	22 ...	186	1,794
Claims pending**	843 ...	4,846 ...	6,874	231	1,701	14,495

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

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

Statistical Summary by Major Source Countries

Country of Alleged Persecution	Claims		Convention Refugee Status			Acceptance Rate (%)
	Heard to Completion	Withdrawn/Abandoned	Claims Decided	Yes	No	
1. Sri Lanka	1,834	100	1,999	1,762	237	88.1
2. Somalia	1,541	85	1,572	1,522	50	96.8
3. Iran	722	58	778	641	137	82.4
4. India	508	206	556	273	283	49.1
5. Israel	434	57	634	268	366	42.3
6. Bangladesh	358	48	391	259	132	66.2
7. China	305	39	352	147	205	41.8
8. Pakistan	302	88	383	233	150	60.8
9. Russia	297	38	398	251	147	63.1
10. Former Yugoslavia	294	194	317	249	68	78.5
11. Guatemala	275	57	268	151	117	56.3
12. Romania	246	33	275	142	133	51.6
13. Haiti	243	9	251	211	40	84.1
14. Afghanistan	241	15	243	220	23	90.5
15. Peru	218	11	224	171	53	76.3
16. Lebanon	196	47	258	138	120	53.5
17. Moldova	193	21	245	162	83	66.1
18. El Salvador	189	69	204	69	135	33.8
19. Zaire	184	6	179	164	15	91.6
20. Ukraine	175	43	232	134	98	57.8
21. Sudan	144	7	150	132	18	88.0
22. Former USSR	143	47	269	106	163	39.4
23. Algeria	131	28	138	103	35	74.6
24. Iraq	128	12	134	128	6	95.5
25. Ghana	123	63	129	34	95	26.4
Top 25 countries	9,423	1,378	10,579	7,670	2,909	72.5
Total	11,853	2,101	13,297	9,092	4,205	68.4

Source: Immigration and Refugee Board, Ottawa; News release, September 9, 1994.

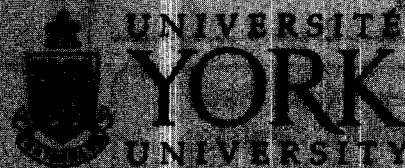
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