

## Apology

Due to a printing error in Volume 7, No. 2, the footnotes were omitted in the article "Effective Advocacy: A Legacy." We regret any embarrassment this may have caused the authors. In sequence, the references were as follows: (1) Letter from Ray Brubacher, Mennonite Central Committee Canada, Winnipeg, August 14, 1987; (2) Freda Hawkins. *Canada and Immigration: Public Policy and Public Concern*. Montreal: McGill-Queen's University Press. 1972:72-93; (3) Gerald Dirks. "The Canadian Rescue Effort: The Few Who Cared." *The Canadian Jewish Mosaic*. Toronto: John Wiley & Sons, 1981:77,78; Howard Adelman, quoting Fritz Stern, during an address to the Canadian Human Rights Foundation Conference, Montreal, November 1987.

CANADA'S PERIODICAL ON REFUGEES

# REFUGE

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## EDITORIAL:

# Going into Limbo

Hidden somewhere in Calgary, Alberta at the recent Winter Olympics there was a red telephone. If you dialed its number, the keys to the country could have been yours. At least, if you were an Olympic athlete from the East Bloc. And if the immigration official at the other end of the line had been inclined to lend a sympathetic ear.

The provision of special facilities for "defectors" looks inconsistent with the broadly based crackdown on access to Canadian asylum procedures which the Government is actively pushing through Parliament at the present time. In fact, it is simply the latest manifestation of a long-standing adherence to double standards in the reception given to those seeking protection. Whether in Canada or overseas, our refugee policy has been designed to maximize the scope for discretion.

And what discretion means here is the freedom to interpose political, economic, and other concerns between the refugee and his or her needs. Hot lines for defectors are acceptable because scoring ideological points is still dear to the hearts of those who believe that free-ranging administrative discretions alone will secure our national interests. Spontaneous asylum-seekers, on the other hand, trigger the operation of procedural and substantive rules derived from international and domestic law, which frequently demand that appropriate recognition be given to the needs of the refugee.

Canada is not alone. Virtually every Western nation has adopted or is in the process of adopting legislation or administrative practices which put the emphasis on discretion. Access to asylum procedures is increasingly restricted by the operation of visa controls and the ever-present threat of penalties for airlines that bring "unacceptable" asylum-seekers to their territories. Fewer and fewer refugees are treated in accordance with the guarantees of the Refugee Convention and Protocol. Instead, they are relegated to sub-categories of indeterminate duration with few, if any, rights; they may not be expelled but if they are allowed to remain they have no status, no permission to work, no access to welfare

assistance programs, and no prospect for reunification with their families. EVD status in the United States, and institutionalized B-status in the Netherlands, Sweden, and some other European countries are more humane alternatives, but still arguably avoid the necessity to comply with more stringent international guarantees.

Why this resurgence of discretion? Why are states so keen to avoid international scrutiny of their protection decisions?

Because free trade in people is not as popular as free trade in products. Refugee protection is no longer a closed club in which the West can look after its own with little fear of criticism. Developing states which are frequently called upon to afford first asylum are only too well aware of their own disproportionately large contributions to meeting international obligations. While the Refugee Convention may have been conceived to resolve a strictly European problem, the majority of the 104 states which have adhered to the protection scheme may now see that some of their needs are met by promoting the kind of South-North movements of concern to developed states. The existing international refugee protection machinery seems to limit the discretion of the North to deal as it wills with this phenomenon. Hence, the flight away from conformity with commonly agreed international norms.

If the new Canadian refugee laws go through, a recent government memorandum predicted that the majority of applicants for refugee status would never get beyond the first hurdle: the so-called "pre-screening" process. With most of the unsolicited asylum claims thereby disposed of, the Government will be free to focus its "refugee" protection efforts on persons it chooses to admit, largely through selection efforts abroad. We can then rest safely, knowing that only healthy, productive, and politically correct refugees will be allowed in, humanitarian needs, or the lack of them, notwithstanding.

## Safe Haven Remedy ...

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definition of "refugee" under the Refugee Act of 1980, with an individual showing of a "well-founded fear of persecution", in order to be eligible for either asylum or withholding of deportation, while the granting of relief by categories is wholly within the discretion of the Attorney General. Aliens who do not satisfy the statutory definition of "refugee" have no right to protection in the United States, but are entirely dependent on the largely unreviewable grace of the Attorney General.

### Extended Voluntary Departure

Extended voluntary departure (EVD) is a status accorded on a group basis to all nationals of a specified country present in the United States. It is the only remedy presently available under U.S. immigration law which is tailored to provide temporary relief from deportation for persons who, while falling short of the individualized "fear of persecution" requirement under the Refugee Act, nonetheless would face hardships or hazards if returned to their homelands.

EVD has been applied by the Attorney General in consultation with the Secretary of State to aliens physically present in the United States pursuant to a determination by State Department officials that conditions in the countries of origin are "unstable" or "unsettled" or show a pattern of "denial of rights." When members of the designated national groups who are subject to deportation express unwillingness to return to their countries of origin, the deportation is not enforced, and they are permitted to depart voluntarily from the United States at their own expense when they so desire.

The Executive, through the office of the Attorney General, has sole discretion to determine which groups will be granted EVD status. There is no provision for Congressional oversight, and the decisions of the Attorney General regarding grants of EVD status are not generally subject to judicial review.

Over the past 25 years, EVD has been granted to 13 nationality groups because of unsettled conditions and presently applies to Ethiopians, Poles and Afghans. Additionally, the Regan administration has granted EVD on a case-by-case basis to Lebanese nationals, with instructions

to "view sympathetically" their requests for permission to stay in view of the "continuing civil strife in Lebanon."

### The Problem Created by the Passage of the Immigration Reform and Control Act of 1986

Prior to the passage of IRCA, aliens who did not qualify for refugee status nevertheless enjoyed safe haven in the United States through a policy of "benign neglect." The Immigration and Naturalization Service (INS) as a matter of policy may not have pursued individuals of certain nationalities, or may have regarded certain groups as low priority for purposes of apprehension. In addition, the INS has tended to concentrate its resources at the border and ports of entry rather than within the country.

IRCA, which sanctions employers who employ undocumented workers, is likely to affect the extent to which illegal aliens will continue to benefit from benign neglect. The Act makes it illegal to hire, recruit, or continue to employ unauthorized aliens. Duarte's request evidences the need for a temporary refuge mechanism beyond *ad hoc* grants of EVD in order to identify those aliens who should be allowed to stay in the U.S. temporarily. Only in this way can such individuals receive employment authorization, allowing them to subsist for the duration of their stay even if they do not qualify for political asylum under refugee law.

### The Legislative Remedy

The proposed legislation addresses three important concerns. First, it permits aliens who satisfy the carefully delineated requirements to remain in the United States until the conditions of violence or natural disaster in their country of origin have improved sufficiently to allow their safe return. Second, it provides aliens granted temporary refuge permission to work in the United States so that they can support themselves. Third, it ensures that these aliens will not remain in the United States indefinitely by revoking documentation and work authorization when conditions in their home country have improved sufficiently to allow for their safe return.

The one important concern that the proposed legislation fails to address ade-

quately is the narrowing of the Attorney General's unfettered discretion to make independent and unreviewable decisions regarding which countries' nationals are entitled to temporary safe haven in the United States. The Attorney General's discretion in determining which national groups will be accorded temporary safe haven should be narrowed and guided through the requirement of regular consultations with Congress based on specified criteria similar to those already provided for regulating the admission of refugees in the Refugee Act. The provisions for consultation and public hearings under the Refugee Act limit the discretion of the Executive and ensure the valuable input of the Congress in the political process.

*Cont'd on page 6*

### Letters of Appreciation

I would like to place on record my appreciation of your work with *Refuge*. As a UNHCR official, I worked for nine years on behalf of refugees in Southern Africa, Vietnam, Chile, Nicaragua, El Salvador, Guatemala, and at the UN headquarters in Geneva. Recently on sabbatical leave, I am a Fellow and Visiting Researcher at Harvard University. In the field and while researching I found *Refuge* particularly useful. I am delighted about the work you and your colleagues are doing. You help to increase awareness on refugee issues among the public, 'insiders' at the international and national level, and also for academics in the field. This should help to improve prospects for improved protection. Unfortunately, such specialized publications are too few. Keep up the good work.

Luise Druke-Bolewski,  
Cambridge,  
January 28, 1988.

Thank you for your work in the first two editions of Volume 7. *Refuge* is a valuable addition to the literature on refugees.

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