
Selective Concern: An Overview of Refugee Law in Canada

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Until the middle of this century, Canada had no law expressly directed to the admission of refugees: displaced and persecuted persons were subject to the general immigration scheme, which was designed primarily to promote Canada's domestic economic interests. In this article, the author traces the evolution of Canada's refugee law, and evaluates it in the context of Canada's international obligations and espoused humanitarian concerns. The author argues that refugee law in Canada has evolved as an outgrowth of the traditional policy of promoting immigration in the interest of domestic economic development. It is suggested that while Canada's commitment to its ideological allies and to the advancement of international human rights law have attenuated the narrowness of this focus on self-interest, domestic advantage remains the cornerstone of Canadian refugee policy.

Jusqu'au milieu du siècle, le Canada ne comptait aucune législation consacrée expressément à l'admission des réfugiés: les personnes déplacées et persécutées étaient sujettes au processus général d'admission qui était alors principalement destiné à promouvoir les intérêts économiques du pays. L'auteur décrit l'évolution du droit des réfugiés au Canada, puis évalue ce droit en rapport avec les obligations internationales et les préoccupations humanitaires du Canada. L'auteur avance que l'évolution du droit des réfugiés au Canada est une extension de la politique traditionnelle de promotion de l'immigration dans l'intérêt du développement économique de la nation. Bien que l'engagement du Canada envers ses alliés idéologiques et l'avancement des droits de la personne ait atténué la tendance à limiter le droit des réfugiés au service de ses intérêts légitimes, l'auteur croit que les avantages économiques sont encore à la base du droit des réfugiés au Canada.

Author's Note

Since this article went to press, the legislative reform of the inland refugee determination system (discussed at part 6.0) has been completed. As a result of Senate intervention, the amendments to the *Immigration Act, 1976* discussed in this article were attenuated in several important respects. First, the ability of the Minister to interdict ships at sea was substantively constrained and made subject to a "sunset clause", as a result of which this power will end six months after the new determination system is in place. Second, the exclusion of refugee claimants who arrive from "safe countries" now applies only to persons who would either "be allowed to return to that country" or who "have the right to have the merits of their claims determined in that country." The authority of Cabinet to prescribe the list of countries deemed safe was retained, although the relevant standard of reference was explicitly stated to be the record of the state in the protection of refugees against *refoulement*. Finally, evidence of a good human rights record in the claimant's country of origin and of the negative disposition of claims by other persons from the claimant's country of origin are no longer dispositive of an application for refugee status, but are now factors to be considered in addition to any evidence adduced at the hearing, including the testimony of the refugee claimant.

The relevant portion of part 6.0 of this article will be discussed in a note to be published in volume 34 of the *McGill Law Journal*. It will provide readers with details of these changes, as well as pertinent references to the newly re-numbered sections of the *Immigration Act, 1976*.

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Synopsis

- I. A General Overview of Canadian Refugee Policy
- II. The Evolution of a Domestic Legislative Framework Governing Refuge and Asylum in Canada
- III. Government Sponsorship of Refugee Resettlement
 - A. *The Admission of Convention Refugees from Abroad*
 - B. *The Admission of Neo-Refugees from Abroad*
 - 1. The Self-Exiled Persons Designated Class
 - 2. The Indochinese Designated Class
 - 3. The Political Prisoners and Oppressed Persons Designated Class
 - 4. Critique of the Designated Class Sponsorship Program
- IV. Private Sponsorship of Refugee Resettlement
- V. Special Measures Programs
- VI. The Inland Refugee Status Determination System
- VII. The Substantive Application of the Refugee Definition
 - A. *The Requisite Gravity of Harm*
 - B. *An Individualized Fear of Persecution*
 - C. *Persecution or Prosecution?*
 - D. *Economic Proscription*
- VIII. Conclusions

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I. A General Overview of Canadian Refugee Policy

The law governing refugee status and asylum in Canada derives from an uneasy and tenuous compromise among three factors. First, Canadian refugee law is firmly rooted in traditional immigration policy designed to promote domestic economic objectives. Second, Canada's refugee law demonstrates a lesser, but still important, concern for the maintenance of strategic and ideological alliances. Third, Canadian refugee law is premised on

a commitment to advancing the cause of international human rights through the work of the United Nations.

The result is a refugee law that is highly selective, and which does not purport to provide assistance to refugees on the basis of need alone. Domestic economic considerations are key, and obligations to political and strategic allies are of influence. Canada has taken the view that its tempering of internationalist concern for refugees with a healthy injection of political and economic realism has been the critical link in maintaining public support for large scale refugee resettlement, and has thus served the interests of both Canada and the refugees themselves.¹ Indeed, it is undeniable that Canada has consistently admitted significant numbers of refugees,² and has routinely extended the right of permanent residence to them.³ It remains, however, that this explicit compromise of objectives has given rise to a refugee policy that is an integral part of Canada's carefully controlled immigration scheme.

¹The Honourable Robert Andras, former Minister of Manpower and Immigration, described his intentions in introducing new legislation to govern refugee admissions in 1976 as follows:

I want to start developing a new policy, new legislation, by trying to define the objectives of immigration in the national self-interest of Canada. And I don't accept that self-interest is necessarily selfish, nor necessarily so cold a concept as to exclude compassion, but it is basic. . . .

. . .

It is the willingness of communities to receive people and help them in tangible and intangible ways; to absorb the financial costs of a refugee movement — you can't just ignore it — to provide the job opportunities, the education, the housing, the social services, the social attitudes, all this kind of thing. . . . Governments can only legally — and sometimes perhaps they should do more — go as far and as fast as the people of the country are going to go along. . . .

R. Andras, "An Historical Sketch of Canadian Immigration and Refugee Policy" in H. Adelman, ed., *The Indochinese Refugee Movement: The Canadian Experience* (Toronto: Operation Lifeline, 1980) 1 at 7-9.

²During the six year period from 1980 to 1985 inclusive, Canada admitted 117,858 refugees (an average of 19,643 refugees per annum). This figure represents just more than 18% of total immigration to Canada during that period: Employment and Immigration Canada, *Refugee Perspectives: 1986-1987* (Ottawa: Employment and Immigration Canada, 1986) (advance version) [hereinafter *Refugee Perspectives: 1986-1987*] at 59.

³"We have always felt that with all our immigration movement[s], including refugees and oppressed minorities . . . immigrants would come to Canada to become Canadian citizens, not to use Canada as a temporary haven from whence they could go to correct the wrongs or take over the power again in their own countries." Andras, *supra*, note 1 at 8. See also R. Girard, Speaking Notes for an Address (Conference on "Refuge or Asylum — A Choice for Canada" at York University, 1986) [unpublished].

The structure of the [Immigration] Act reveals the policy. The rules of admission distinguish only two classes of people — immigrants and visitors. Asylum seekers are not temporary entrants with defined intentions; hence they are considered inimmigrants.

The rationale for this immigration-based refugee law is in large part rooted in history. While refugee law did not evolve as a subject of specific concern in Canada until after the Second World War, Canada has a long tradition of admitting immigrants in search of resettlement. Unlike many older nations with established population bases, Canada needed to promote immigration as a means of filling the spaces of a large and developing country, and of securing the energy and talent requisite to the harnessing of its rich natural resources.⁴ Motivated and skilled immigrants, whether refugees or economic migrants, were welcomed and afforded a full array of rights and benefits, including access to Canadian citizenship. What mattered was not the motive for immigration, but rather the immigrant's potential to contribute to the economic development of Canada.⁵

There were undoubtedly refugees among the early immigrants to Canada. Canada admitted the United Empire Loyalists displaced by the American Revolution,⁶ Black slaves in search of liberation from the institutionalized oppression of the United States,⁷ and the Mennonites and Doukhobors who had been denied religious freedom in Europe.⁸ The fact that they may have been refugees was, however, of no significant concern to Canadian policy makers. They were allowed to immigrate to Canada,

⁴L. Axworthy, "Notes for an Address to the National Symposium on Refugee Determination" (Toronto, 20 February 1982) [unpublished] at 3.

⁵"Primarily concerned with the suitability of newcomers for agricultural settlement, the Canadian government seldom interested itself in the causes behind the decisions to emigrate. Thousands of those who chose Canada prior to 1914 were political and religious refugees. As Canadian authorities saw no need to categorize immigrants on the basis of motivation for emigrating, no records exist on the number of refugees admitted into Canada": G. Dirks, *Canada's Refugee Policy: Indifference or Opportunism?* (Montreal: McGill-Queens University Press, 1977) at 24-25.

⁶It may be argued that the United Empire Loyalists were economic migrants rather than refugees:

Since they left by choice rather than by compulsion, they cannot properly be called refugees. Many of these Loyalists who had been office holders in the former American colonies or agents of British firms decided that their interest remained tied to Britain.

Ibid. at 16.

⁷"The causes giving rise to the flight of American blacks involved more than just the wish to escape the perpetual condition of slavery. While slavery may have been the dominant issue for those initially seeking sanctuary in the northern states, the property regulations and the general discriminatory attitudes the blacks encountered once in the North tended to be important additional reasons to cause a reassessment of life anywhere in the United States." *Ibid.* at 22.

⁸"It can be said then that the two major group settlements [of Mennonites and Doukhobors] in [W]estern Canada between Confederation and the beginning of the twentieth century contained people who had fled their homelands for reasons of persecution. Canada accepted these thousands primarily because the land had to be settled and made productive. Humanitarianism must be thought of as playing a secondary role." *Ibid.* at 33-34.

and were granted the privileges and responsibilities of other Canadians, because they were judged able to establish and provide for themselves, thus contributing to the ongoing process of nation building.

Until the middle of the twentieth century, Canada really had no law or policy specifically oriented to the admission of refugees *qua* refugees. Rather, refugees were admitted as part of the general immigration scheme, which was designed to promote domestic economic interests. This historical view of refugee law as largely indistinct from broadly conceived immigration concerns has conditioned much of the modern legal evolution in the field of Canadian refugee protection.

The second major influence on the character of refugee law in Canada stems from Canada's desire to live up to its obligations as a member of the post-World War II Western alliance. The human displacement caused by the Second World War, and the resultant international pressure to facilitate migration, forced Canada to confront the refugee phenomenon explicitly, at least to some degree.⁹ The government, however, maintained its focus on domestic economic interests by specifically seeking out the most "adaptable" European refugees from among those in need of resettlement.¹⁰ The Canadian response to the European refugee crisis included, *inter alia*, the Sponsored Labour Movement, pursuant to which Canada assisted highly skilled workers in the refugee population to immigrate;¹¹ the Close Relatives Scheme, which allowed Canadians to bring in family members from among

⁹"In the immediate aftermath of World War II, the Atlantic community's efforts to restore some semblance of order, prosperity, and political freedom to war-torn Europe in the shadow of a perceived expansionist threat from Stalinist Russia included the enormous challenge of repatriating or resettling approximately 60 million displaced people. . .

[F]or the first time, immigration policy, tied as it was to issues of security and the rebuilding of Europe, became highly politicized within the governmental bureaucracy." D. Dewitt & J. Kirkton, *Canada as a Principal Power* (Toronto: John Smiley & Sons, 1983) at 245-46.

¹⁰"[T]he policy that gradually allowed the arrival of displaced persons remained rooted in the traditional criteria of economic absorptive capacity and concern over homogeneity of population characteristics." *Ibid.* at 246.

¹¹"[B]y December 1946 the cabinet committee on immigration was discussing the merits of importing displaced persons as workers to fill vacancies in priority sectors of the labour market. . . Procedures were kept simple. Logging, lumbering and mining firms that would guarantee an individual a job under established terms could apply to the government for a portion of a total number of workers allocated for that industry. Once prospective employers signed contracts with the government guaranteeing to abide by predetermined wage, housing and other basic conditions, selection teams made up of industry and government representatives were dispatched to Europe to select workers with appropriate skills": I. Abella & H. Troper, *None Is Too Many: Canada and the Jews of Europe, 1933-1948* (Toronto: Lester & Orpen Dennys, 1982) at 247-48.

the displaced population of Europe;¹² and the admission to Canada of orphaned children under the sponsorship of domestic ethnic and religious groups.¹³ All these refugees were capable of ready assimilation in Canada, and could reasonably be expected to make few demands on national resources. In stark contrast, Canada refused to admit any of the "hard core" European refugee population, including thousands of persons whose age, illness, or handicap made them undesirable immigrants.¹⁴ The government erected a constitutional and regulatory barrier which effectively ensured that only productive healthy refugees were allowed to come to Canada.¹⁵

Between 1956 and 1972, Canada enacted other situation-specific refugee programs that resulted in the admission of more than 37,000 Hungarians, nearly 11,000 Czechs, and over 7,000 Ugandan Asians. The first two groups fled to the West from Communist regimes: the Hungarians in the wake of the unsuccessful uprising and subsequent Soviet invasion,¹⁶ and the Czechs from the Warsaw Pact forces' occupation of their country.¹⁷ In both situations, Canada felt an obligation to assist individuals in flight from regimes to which it was ideologically opposed, as well as to relieve the burden of other Western nations forced to serve as states of first asylum. In the case of the Ugandan Asians, Canada's preparedness to act was in large part a response to the urgent needs of its mother country, the United Kingdom,

¹²"The Canadian government's announcement of November 1946, which informed the public that applications would be received from close relatives of European refugees, fulfilled one of the basic objectives of ethnic associations and transportation companies. In excess of thirty thousand applications reached the Immigration Branch by mid-1947. . . ." Dirks, *supra*, note 5 at 158.

¹³"After some discussion between Immigration authorities and the Canadian Jewish Congress, the minister responsible for immigration gave the plan to bring one thousand Jewish orphans to Canada approval in principle [in 1947]. . . As was expected, the Canadian Jewish community pledged to guarantee all costs of the scheme, to appoint and send child-care workers to Europe to coordinate the European phase of the project with Canadian Immigration personnel and to manage the placement of the children in Canada." Abella & Trooper, *supra*, note 11 at 271-72.

¹⁴"[T]he Department of Citizenship and Immigration would only consider the applications of those [hard core] refugees who could claim sponsorship by close relatives or charitable organizations in Canada. The department was entirely unprepared to endorse any movement of refugees which would require the waiving or extension of prevailing immigration regulations." Dirks, *supra*, note 5 at 175.

¹⁵"The Canadian government, although sympathetic to the plight of the 'hard core' refugees, insisted that the federal system with its division of powers on matters of health and welfare prevented the easy entry of these people." *Ibid.* at 172.

¹⁶"The international context seemed to place Canada, along with its allies, in a position of responsibility to offer assistance to those who suffered at the hands of Communist repression." Dewitt & Kirkton, *supra*, note 9 at 251.

¹⁷"[I]mplementation of the program invoked little comment. . . [T]he crisis evoked a sympathetic chord throughout Canada, a result of both the 1956 Hungarian episode and anti-Soviet feeling." *Ibid.* at 254.

which would otherwise have been obliged to accept responsibility for all British citizens of Asian origin resident in Uganda after President Amin's expulsion order.¹⁸

These several refugee movements subsequent to World War II marked the beginning of a Canadian refugee policy, in that they were demonstrative of an evolving willingness on the part of the government to respond directly to refugee flows. This new approach was carefully confined, however, by a very narrow strategic orientation: refugees were seen as the proper beneficiaries of special concern only insofar as their admission was consonant with more general political objectives. Too, all of these programs were of limited duration and scope, and as such did not signal a general openness to refugee resettlement. Most important, none of these refugee movements was inconsistent with the underlying economic determinants of Canadian immigration policy, as the majority of the refugees were educated and skilled, and were thus poised to make a positive contribution to Canadian economic prosperity.¹⁹

The third major influence on Canadian refugee policy has been Canada's desire to assume the role of an internationalist middle power, and specifically its determination to play a leadership role in the international human rights community.²⁰ The issue of accession to the 1951 United Nations Convention on the Status of Refugees was problematic for Canada, in that the Convention's prohibition on the *refoulement* of refugees was seen to afford a *de facto* right to protection to those refugees able to reach Canadian territory. The obligation to shelter refugees was perceived to be inconsistent with the jealously guarded right to regulate the admission of persons to Canada based on strictly domestic priorities.²¹ Ultimately, however, Canada's internation-

¹⁸"In August 1972, President Amin of Uganda announced that he was asking Britain to take responsibility for all United Kingdom citizens of Asian origin resident in Uganda, 'because they are sabotaging the economy.' A time limit of three months was set for their departure. . . ." G. Goodwin-Gill, *International Law and the Movement of Persons Between States* (Oxford: Clarendon Press, 1978) at 212-13.

¹⁹For example, the Ugandan Asians selected by Canada "would have qualified under standard immigration criteria anyway. . .": Dewitt & Kirkton, *supra*, note 9 at 255.

²⁰"Support for the United Nations was a major element in Canada's foreign policy. . . The early breakdown between the Big Powers in the United Nations, on whose co-operation so much of the Charter was based, made the position of the Middle Powers such as Canada more important than it would otherwise have been. . . [Middle Powers] stood between the increasing number of small states which had little power and the great states which had too much. Canada was one of the most active of these Middle Powers." L. Pearson, *Mike: The Memoirs of the Rt. Hon. Lester B. Pearson*, vol. 2 (Toronto: University of Toronto Press, 1973) at 121.

²¹"[O]ur reluctance to sign stemmed from . . . the traditional Canadian concern to maintain a direct link between the flow of immigrants to Canada and national economic needs and conditions . . . This signing was a major step forward, in the legal or formal sense, towards a refugee policy based on the needs of the refugee rather than on the needs of the Canadian labour market or economy." Axworthy, *supra*, note 4 at 5.

alist pride did result in its belated accession to the Convention and its Protocol in 1969. The significance of this event can scarcely be overstated, as adherence to the Convention led Canada to develop a domestic legal structure to provide for the grant of asylum to Convention refugees, thereby removing refugee protection from the realm of *ad hoc* policy to that of law.

To summarize, refugee law in Canada has evolved as an outgrowth of the traditional policy of promoting immigration in the interest of domestic economic development. Canada's commitments to its allies and to the advancement of international refugee law have attenuated the narrowness of this focus on self-interest, but it would be wrong to assume that they have replaced domestic advantage as the cornerstone of Canadian refugee policy. As the analysis that follows will show, the Canadian policy of "compassion with realism"²² toward refugees impliedly accepts the promotion of the Canadian national interest as the primary determinant of its refugee policy, and strives to accommodate other concerns to the extent that they are not incompatible with that dominant focus.²³

II. The Evolution of a Domestic Legislative Framework Governing Refugee and Asylum

The 1973 amendments to the Immigration Appeal Board Act established the first statutory basis for refugee admissions to Canada. The amendments applied only to refugee claims made from within Canada, and permitted the Immigration Appeal Board to quash a deportation order insofar as it was determined that there were "reasonable grounds for believing that the person concerned [was] a refugee protected by the [United Nations] Convention."²⁴ The procedure established by this enactment proved an inadequate means of implementing Canada's obligations under the Refugee Convention for two reasons. First, it was wholly within the Board's discretion to grant or withhold landing in any particular case.²⁵ As such, there

²²Andras, *supra*, note 1 at 7.

²³"[T]here is a slight, though unsystematic, ideological bias in favour of rightist refugees from communist regimes and against politically active leftist refugees from conservative/fascist regimes.

Although since World War II Canada has endeavoured to present herself internationally as a middle-range, humanitarian power, economics remains the single overriding element determining migration and refugee policy. . . ." R. Howard, "Contemporary Canadian Refugee Policy: A Critical Assessment" (1980) 6 Can. Pub. Policy 361 at 361-62.

²⁴*An Act to amend the Immigration Appeal Board Act*, S.C. 1973-74, c. 27, ss 1, 5. Prior to this amendment, "political opinion" was often invoked as a ground for landing under the Immigration Appeal Board's general equitable jurisdiction.

²⁵S. 15(1)(b)(i) of the *Immigration Appeal Board Act*, 1966-67, c. 90 as amended permitted, but did not require, the Board to quash a deportation order where it was of the view that the applicant was a refugee protected by the Convention.

was no guarantee that refugees would in fact receive protection from Canada. Second, because the refugee claim could only be raised on appeal rather than at the immigration inquiry itself, those persons whose cases did not proceed beyond the initial hearing had no means of vindicating their claims to refugee status.²⁶

This procedure was radically altered by the entry into force of the 1976 Immigration Act²⁷ which continues to govern refugee policy today.²⁸ The 1976 Act not only reshaped the inland refugee determination system, but moreover established a legal structure to regulate the whole of Canada's inland and overseas programs for the admission of both Convention refugees and persons and groups in refugee-like situations. Specifically, the law authorizes four distinct approaches to the resettlement of refugees in Canada.

The first means of immigrating to Canada as a refugee is to apply at a Canadian consulate or embassy abroad as either a Convention refugee seeking resettlement, or as a member of a designated class. A Convention refugee seeking resettlement is defined as "a Convention refugee who has not become permanently resettled and is unlikely to be voluntarily repatriated or locally resettled."²⁹ In addition to Convention refugees, the government sponsors the admission to Canada of persons who are members of groups that have been determined to require resettlement and assistance for hu-

²⁶Pursuant to s. 11 of the *Immigration Appeal Board Act*, *ibid.*, claimants were entitled to have their appeal heard only insofar as a quorum of the Board determined that their written statement disclosed a reasonable claim to refugee status.

²⁷*Immigration Act, 1976*, S.C. 1976-77, c. 52 [hereinafter *Immigration Act, 1976*]. This codification of Canadian law regarding the admission of refugees was proposed in a 1974 Green Paper: Canada, Department of Manpower and Immigration, *Canadian Immigration and Population Study* (Ottawa: Information Canada, 1974) (submitted to Minister R. Andras by Deputy Minister A.E. Gothieb, 1 December 1974) [hereinafter "the Green Paper"].

²⁸Two Bills were introduced in 1987 to substantially amend the *Immigration Act, 1976*, *ibid.* These Bills would restrict access to the refugee determination system, and establish a new procedure for the assessment of refugee claims. The Bills are: Bill C-55, *An Act to amend the Immigration Act, 1976 and to amend other Acts in consequence thereof*, 2d Sess., 33d Parl., 1986-87 (1st reading 5 May 1987, Returned to House to consider Senate Amendments following 3d reading, 30 March 1988) [hereinafter Bill C-55]; and Bill C-84, *An Act to amend the Immigration Act, 1976 and the Criminal Code in consequence thereof*, 2d Sess., 33d Parl., 1986-87 (1st reading 11 August 1987, returned to House for consideration of Senate Amendments 21 October 1987) [hereinafter Bill C-84]. See below, Part IV, for full discussion of these Bills.

²⁹*Immigration Regulations, 1978*, SOR/78-172, ss. 2(1), 7 [hereinafter *Immigration Regulations*]. The admission of Convention refugees from abroad is discussed in detail below at Parts III and IV. It has been observed that the specificity of this definition acknowledges that "Canada cannot accept all of the world's refugees, and also recognizes that not all refugees can benefit from resettlement in Canada": Department of Manpower and Immigration, *Refugee Provisions of the New Canadian Immigration Act* (Ottawa: Department of Manpower and Immigration, 1978) 2 cited in B. Johnston, "Cautious Kindness: Canada's Refugee Law" (1981) 1:2 *Refuge* 3 at 6.

manitarian reasons.³⁰ This procedure permits the immigration to Canada of neo-refugees³¹ who belong to groups that have been the subject of a regulatory designation. At present, there are three such groups: the Self-Exiled Persons Designated Class, the Indochinese Designated Class, and the Political Prisoners and Oppressed Persons Designated Class.

Persons who wish to immigrate to Canada as either a Convention refugee seeking resettlement or as a member of a designated class must apply for recognition abroad, meet certain threshold criteria, and demonstrate the ability to become successfully established in Canada. The government established geo-political allotments for sponsorship under these programs, as a result of which not all persons who meet the eligibility criteria are guaranteed admission to Canada.³²

The second mechanism for the resettlement of refugees in Canada evolved during the Indochinese "Boat People" crisis of the late 1970s. The government agreed to permit Canadian organizations and groups of individuals to privately sponsor the admission of Convention refugees and designated class members from abroad.³³ These sponsorships are in addition to those financed by the government under its resettlement plan, and do not require the refugee to demonstrate the ability to become successfully established in Canada as a prerequisite to immigration.

A third procedure by which refugees may enter Canada is the special measures landing program. Prior to 1987, this system was largely directed to the needs of certain neo-refugees physically present in Canada who were

³⁰The admission of designated class members from abroad is discussed in detail below, Section B of Part III, and Part IV.

³¹The term "neo-refugee" is used herein to denote persons who do not meet the international legal definition of a refugee as established by the 1951 Convention and 1967 Protocol. In non-legal terms, the notion of a "refugee" is significantly more inclusive:

In the general concept, a refugee is a person who flees to find refuge and who feels compelled to leave his normal place of abode on account of any kind of circumstances, including disasters, whether natural or man-made, such as those which result from different kinds of armed conflicts. In the international legal concept, a refugee is an alien who finds himself outside the country of origin or nationality for serious reasons of race, religion, nationality, political opinion [or because of membership in a particular social group].

J. Patrnoic, "Refugees — A Continuing Challenge" (1982) 30 *Annuaire de droit international médical* 73 at 74.

³²See the discussion of the annual refugee plan, below, Part III.

³³Groups of not less than five Canadian citizens or permanent residents residing in the expected community of resettlement, or a corporation having representation in the expected community of resettlement "may seek to facilitate the admission or arrival in Canada of a Convention refugee seeking resettlement". *Immigration Regulations, supra*, note 29, s. 7(2). See also below, Part IV.

unwilling to return to their country of origin due to war or severe political instability.³⁴ Such persons were granted a stay of deportation and an employment authorization, and were generally eligible for landing as permanent residents under relaxed admissions criteria. At present, however, the program is oriented to the sponsorship by Canadians of the admission of family members from designated countries of severe strife.³⁵

Fourth, the Act provides for an inland refugee determination system, based on the Convention definition of a refugee, to examine the claims of persons who seek protection as refugees from within Canada or at a Canadian port of entry.³⁶ Major amendments to the Immigration Act introduced in 1987 significantly limit access to the determination system, and establish a new tribunal to conduct expeditious, adversarial style refugee hearings, the decisions of which are non-appealable.³⁷ Those claimants who are determined to be Convention refugees will in virtually all cases be admitted to Canada as permanent residents.

Taking these four programs together, Canada can proudly claim to rank fifth in the world in per capita refugee admissions.³⁸ The international and humanitarian significance of this achievement is, however, mitigated by the strong economic bias and lack of even-handedness that characterize much of the refugee selection process. As the detailed discussion that follows demonstrates, Canada's refugee policy may be internationalist in form, and hu-

³⁴While the *Immigration Act, 1976*, *supra*, note 27, makes no direct reference to the policy of special measures landing, section 115(2) grants to the Governor-in-Council the authority to exempt any persons from the general requirements of the Act, and to facilitate the admission of persons for reasons of public policy or due to the existence of compassionate or humanitarian considerations. The special measures landing program is discussed in detail below, Part V.

³⁵On 20 February 1987, it was announced that "the in Canada portion of all current special programs is cancelled. . . . Special measures will now apply only to those persons. . . who apply at Canadian visa offices abroad". Telex from J.B. Bissett, Executive Director, Immigration, of the Canada Employment and Immigration Commission, to Canada Immigration Centres, 20 February 1987.

³⁶The inland refugee determination system is discussed in detail below, Part VI.

³⁷The government took the position that restrictionist legislation was necessary because of a fear that Canada was in imminent danger of being overwhelmed by non-genuine refugee claimants:

Over the last few years, refugee claims have increased dramatically. Population pressures in the Third World have caused massive migration to developed countries. The Europeans have moved to control abuse of their systems. The U.S. recently took steps affecting thousands of illegal migrants there. The spill-over from these events has reached Canada.

Press release of Canada Employment and Immigration Commission, May 1987 [unpublished].

³⁸During the period 1975-1984, only Swaziland, Somalia, Nicaragua, and Australia surpassed Canada in the ratio of refugees resettled to local population. *Refugee Perspectives: 1986-1987*, *supra*, note 2 at 72.

manitarian in measure, but it is substantively oriented to the resettlement of a productive and strategically selected group of immigrants.

III. Government Sponsorship of Refugee Resettlement

The significant distance between Canada and the major refugee-producing regions has led immigration authorities to conclude that other, more proximate states should shoulder the duty of providing first asylum to refugees.³⁹ There is a pervasive belief in official circles that refugees should seek shelter in the very nearest safe country,⁴⁰ and that Canada and other states of destination should be permitted to exercise discretion over which refugees are to be resettled. This policy is anachronistic in its failure to take due account of modern transportation links, and unfair in its shifting of the refugee burden based on the accident of geography. Nonetheless, while current law does recognize the role of Canada as a country of first asylum for those few persons who manage to overcome the practical and legal impediments to access,⁴¹ the resettlement of refugees from abroad remains the cornerstone of Canadian refugee policy.⁴² In order to facilitate the immigration of Convention and other refugees selected abroad, the Immigration Act makes provision for the selection of refugees by the government through its diplomatic posts.

Just over half of total refugee admissions to Canada are made pursuant to this procedure, in conformity with the geo-political allocations contained

³⁹"There is an essential belief in policy-making circles that Canada, as a country of immigration, can deliver effective humanitarian assistance through its immigration programs in a way that has greater impact than would be the case if spontaneous asylum were encouraged. . . . Canada's geographical distance from the sources of refugee outflows reinforces this belief": Girard, *supra*, note 3 at 5.

⁴⁰In announcing its 1987 refugee law reform, the government indicated that certain persons would be excluded from the determination process, including "people who arrive from a safe country where they have [made] a claim, or [where they have had] a reasonable opportunity to make one. They will be returned to these countries. . . . None of these people need Canada's protection." *Press release, supra*, note 37 at 19.

⁴¹"Any person who is finally determined under this Act to be a Convention refugee may . . . apply to an immigration officer for landing". *Immigration Act, 1976, supra*, note 27, s. 48.3(1) and generally, ss 45-48, as they would be amended by Bill C-55, *supra*, note 28, s. 15.

⁴²"The [Immigration Commission] does not view Canada as a resettlement country only, however, it does see it as primarily a resettlement country. . . . The department is not trying to eliminate, it is argued, but is trying to limit Canada as a country of first asylum." Note, "Canada — A Country of First Asylum" (1984) 4:2 *Refuge* 14 at 15. See also note 39, *supra*.

in the government's annual refugee plan.⁴³ The 1985 and 1986 plans, for example, were as follows:⁴⁴

| Region | 1985 Target | 1986 Target | Change |
|----------------|----------------|----------------|--------|
| Eastern Europe | 2,200 | 3,100 | + 41% |
| Southeast Asia | 3,700 | 3,200 | - 14% |
| Latin America | 3,000 | 3,200 | + 7% |
| Africa | 1,000 | 1,000 | 0% |
| Middle East | 800 | 900 | + 13% |
| Other | 200 | 300 | + 50% |
| Reserve | 100 | 300 | +300% |
| | 11,000 | 12,000 | + 9% |

In preparing its annual plan, the government consults the United Nations High Commissioner for Refugees, the provinces, and the private sector. It is argued that the process of fixing the allocations provides a flexible yet controlled response to refugee-producing situations as they evolve, and affords a means of reconciling perceived resettlement capacity with the actual extent of need abroad.⁴⁵ The numerical targets are, however, open to criticism.

First, there appears to be little correlation between the specific geopolitical allocations and the true extent of the refugee resettlement need abroad. For example, the consistent allocation of approximately 25% of total government sponsorships to Eastern Europeans⁴⁶ reflects an outmoded Cold War notion of resettlement priorities.⁴⁷ The generous approach to the immigration of Eastern Europeans contrasts markedly with the niggardly allotment of fewer than 10% of government refugee sponsorships to Latin

⁴³In 1984, the government sponsored 50.8% (10,547/20,773) of refugee admissions; in 1985, the government sponsorship rate was 58.1% (11,559/19,885). *Refugee Perspectives: 1986-1987*, *supra*, note 2 at 60. These figures include a combination of Convention refugees and members of designated classes: see below, text accompanying notes 96-98.

⁴⁴*Ibid.* at 58. These figures indicate the maximum number of authorized admissions. In fact, the target allocations are not always filled. *Ibid.* at 60.

⁴⁵*Ibid.* at 6-14.

⁴⁶During the period 1980-1986, Eastern European refugees were allocated 25.7% of total places. *Ibid.* at 58.

⁴⁷"The Canadian government has sometimes been criticized for being unduly biased towards refugees from Eastern Europe, either because they are anti-communist or because they are Jews whose immigration is strongly supported by the Canadian Jewish community. Immigration Appeal Board documents indicate that not all individuals who claim refugee status from the Eastern Bloc obtain it. ... Nevertheless, various Ministers have availed themselves of their humanitarian jurisdiction to allow Eastern bloc claimants not formally refugees to stay in Canada." Howard, *supra*, note 23 at 365.

Americans during the crisis years of the late 1970s and early 1980s.⁴⁸ The extent of totalitarian violence during that period is well-documented,⁴⁹ and Canada's geographical position and transportation links made it a logical country of asylum for Latin Americans.⁵⁰ Broadly based assistance for persecutees in Latin America was not, however, forthcoming from Canada when it was needed most.⁵¹ Similarly, the average ceiling of 7% of the total resettlement allocation assigned to refugees from Africa is clearly out of step with any objective assessment of relative degrees of need.⁵² While it is true that there is a preference for voluntary repatriation and local integration of African refugees,⁵³ the growing influx of urban refugees into the nations bordering South Africa has created major difficulties for states of reception, with the result that increased resettlement opportunities abroad are urgently needed.⁵⁴

⁴⁸During the period 1980-1982, Latin Americans were allotted approximately 5.5% of total government-sponsored places. *Refugee Perspectives: 1986-1987*, *supra*, note 2 at 32.

⁴⁹"We have seen, to our sorrow, the results of military rule in Chile, Argentina, and Uruguay in the last decade. We have witnessed the activities of a less bureaucratic, but in some ways even more vicious, form of militarism in El Salvador and Guatemala. . . [W]e cannot fail to recognize the cost of forfeiting democracy for the illusion of order that a military regime imposes. Whether one counts this cost in terms of people dead or "disappeared", or of institutions dismantled, or of ignorance fostered by censorship, or of reforms nullified, it amounts to a devastation no society would willingly bring upon itself." C. Brown, ed., *With Friends Like These: The Americas Watch Report on Human Rights and U.S. Policy in Latin America* (New York: Pantheon, 1985) at xviii.

⁵⁰The government has impliedly admitted that it is logical for Canada to serve as a country of first asylum to Latin Americans: "Few people who seek asylum in Canada — *other than those originating in the Western hemisphere* — can lay claim on Canada as a natural source of asylum." (emphasis added). Girard, *supra*, note 3 at 5.

⁵¹It has been suggested that the apparent bias "seems to be based upon a perception of Latin American refugees as communists, subversives or revolutionaries who would undermine the Canadian political system." Howard, *supra*, note 23 at 370.

⁵²The Canadian government has recognized that "African nations are providing asylum to approximately half the world's refugees and displaced persons. Some five million refugees . . . [have] found refuge in some of the least developed nations on the continent." *Refugee Perspectives: 1986-1987*, *supra*, note 2 at 19. In contrast, the allocation for the resettlement of African refugees, which was established only in 1981, has remained constant at just 1,000 persons per year since 1983. *Refugee Perspectives: 1986-1987*, *supra* at 58.

⁵³"[T]he international community and the UNHCR continue to emphasize local solutions in Africa — notably voluntary repatriation and local integration, combined with efforts to provide community development. Within this context, programs for resettlement outside Africa are continuing to form a very small but crucial component of the overall strategy for this refugee problem. Canada is steadily improving its ability to locate and identify those refugees for whom resettlement *is the only solution*." Employment and Immigration Canada, *Refugee Perspectives: 1985-1986* (Ottawa: Employment and Immigration Canada, 1985) at 27 (emphasis added) [hereinafter *Refugee Perspectives: 1985-1986*].

⁵⁴While states of asylum in southern Africa are able to integrate most rural refugees successfully, persistent high unemployment rates in urban areas make it difficult for these countries to absorb the flow of refugees whose education and experience lead them to seek work op-

Second, the overseas selection allotments are highly responsive to prevailing economic conditions in Canada.⁵⁵ In recent years, the government has decreased refugee targets when confronted by economic recession or high unemployment domestically. In 1981, for example, the government plan called for the sponsorship of 16,000 refugees.⁵⁶ This figure was lowered to 14,000 refugees in 1982, to 12,000 refugees in 1983, and to just 10,000 refugees in 1984, years during which difficult economic circumstances prevailed in Canada.⁵⁷ With the recent economic recovery, the allotments have begun to rise, first to 11,000 in 1985, and to 12,000 in 1986.⁵⁸

In summary, the scope and distribution of the government sponsorship program are not truly responsive to the extent of refugee needs abroad. Rather, a combination of ideological considerations and regard for domestic economic health restricts the program's purview to coincide with prevailing Canadian political and economic priorities.

A. The Admission of Convention Refugees from Abroad

The actual selection of Convention refugees to be resettled within the total target allocation is under the authority of Canadian visa officers stationed abroad.⁵⁹ Eligibility for selection under this program is based on four criteria.

First, applicants must meet the Convention definition of a refugee.⁶⁰ Consular officials abroad have only informal access to the expertise of the domestic refugee determination authority, and are often required to make difficult interpretive decisions without the benefit of legal and other appro-

portunities in the cities: *Proceedings of the Conference on the Implementation of the O.A.U. and U.N. Conventions and Domestic Legislation Concerning the Rights and Obligations of Refugees in Africa*, held under the auspices of the Refugee Studies Programme, Oxford University, September 1986.

⁵⁵The government indicated that the reduction of the 1983 refugee sponsorship quota was prompted by concern that "[w]ith employment and housing shortages, we can no longer absorb as many [refugees] as when the economy is stronger." Note, "Canadian Refugee Policy (1983)" (1983) 2:3 *Refugee* 4.

⁵⁶*Refugee Perspectives: 1986-1987*, *supra*, note 2 at 58.

⁵⁷*Ibid.*

⁵⁸*Ibid.*

⁵⁹Employment and Immigration Canada, *Immigration Manual: Selection and Control* (Ottawa: Employment and Immigration Canada, 1987), s. I.S. 24 [hereinafter *Immigration Manual*].

⁶⁰*Ibid.*

prate resources.⁶¹ Moreover, while negative determinations are reviewed by a senior officer,⁶² a refugee abroad has no right to contest the merits of the decision.

Second, the immigration regulations restrict eligibility to persons who have not been permanently resettled. Applicants who, for example, have not been authorized to work, or who have no long-term right of residence are the intended beneficiaries of the program.⁶³

Third, it must be ascertained that the refugee is not a member of one of the inadmissible classes established by the *Immigration Act*.⁶⁴ Persons who have been convicted of a criminal offense,⁶⁵ or who "might reasonably be expected to cause excessive demands on health or social services"⁶⁶ are among those who may be excluded.

Fourth, and perhaps most important, it must be determined that the person who seeks admission as a refugee is capable of "successful estab-

⁶¹The *Immigration Manual*, *supra*, note 59, provides some guidance in the application of the definition in part I.S. 3.24. However, the summary is only three pages long, and offers some advice of questionable accuracy. For example, Part I.S. 3.24(2)(e) suggests that "only persecution which is specific and personal is likely to make a person eligible for selection as a refugee." This is in direct contradiction to scholarly opinion:

Where large groups are seriously affected by a government's political, economic, and social policies or by the outbreak of uncontrolled communal violence, it would appear wrong in principle to limit the concept of persecution to measures immediately identifiable as direct and individual.

G. Goodwin-Gill, *The Refugee in International Law* (Toronto: Oxford University Press, 1983) at 44-45; the same point is made by A. Grahl-Madsen, *The Status of Refugees in International Law* (Leiden, Netherlands: A.W. Sijthoff, 1966) at 213.

⁶²"Except at one-man posts, all negative eligibility decisions must have the concurrence of a senior immigration officer." *Immigration Manual*, *supra*, note 59, s. I.S. 3.24(7)(b).

⁶³"Refugees who have been permanently resettled in another country are still entitled to the protection of the refugee Convention and Protocol. However, such persons are not to be selected in the refugee class for immigration to Canada unless they are facing persecution in their country of resettlement." *Immigration Manual*, *supra*, note 59, s. I.S. 3.24(5)(a).

⁶⁴Officers abroad are required to ensure compliance with the general immigration requirements established by laws. *Immigration Manual*, *supra*, note 59, s. I.S. 3.24(6). A series of "inadmissible classes" are prescribed by the *Immigration Act, 1976*, *supra*, note 27, s. 19.

⁶⁵Specifically excluded are "persons who have been convicted of an offence that, if committed in Canada, constitutes or, if committed outside Canada, would constitute an offence . . . for which a maximum term of imprisonment of ten years or more may be imposed. . . ." *Immigration Act, 1976*, *supra*, note 27, s. 19(1)(c).

⁶⁶*Immigration Act, 1976*, *supra*, note 27, s. 19(1)(a)(ii). While this classification is not a ground to exclude a person determined to be a Convention refugee by the inland determination process, officers abroad are directed to submit full details of medically inadmissible persons to Immigration headquarters "before a final decision is taken." *Immigration Manual*, *supra*, note 59, s. I.S. 3.33.

lishment in Canada."⁶⁷ In making this determination, visa officers are required to take into consideration the existence of financial or other assistance, in addition to such traditional immigration criteria as personal motivation, education, experience, and the demand in Canada for persons with comparable skills.⁶⁸

Refugees selected for government sponsorship receive interest-free travel loans, language training, counselling, and financial assistance until they are permanently employed in Canada.⁶⁹ This willingness to resettle Convention refugees from abroad is a laudatory contribution by Canada to the process of international burden-sharing.⁷⁰ On the other hand, the decision not to resettle refugees except as an option of last resort, and further to exclude refugees who either fail to conform to traditional selection criteria or who cannot demonstrate the capacity for self-support, represents a significant limitation on that contribution in the interest of concretizing the link between general immigration policy and refugee resettlement.

B. *The Admission of Neo-Refugees from Abroad*

In addition to the admission of Convention refugees, Canadian law provides for the overseas selection of displaced and persecuted persons who require resettlement and assistance on humanitarian grounds.⁷¹ This mandate is implemented through the designated class policy. In many respects, designated class admissions are based on the same criteria as those applied to Convention refugees seeking resettlement. Members of the designated classes must be outside Canada, must meet certain threshold criteria, and must be deemed capable of successful establishment in Canada. The major innovation of the program is that applicants are not required to satisfy the

⁶⁷Officers are directed to "take into consideration all of the factors used in assessing independent immigrants": *Immigration Manual, supra*, note 59, s. I.S. 3.24(6)(a).

⁶⁸Particularly important are the motivation and personal qualities essential to becoming established; and the adequacy of the applicant's education and training to ensure that "in the long term, the refugee will have the earning capacity to support his family and will not be dependent on welfare indefinitely." *Immigration Manual, supra*, note 59, s. I.S. 3.24(6)(b)(ii).

⁶⁹Employment and Immigration Canada, *Canada's Refugee Strategy B2* (Hull, Que.: Supply and Services Canada, 1980).

⁷⁰"Burden-sharing, certainly in cases of large-scale refugee movements, is a virtual *sine qua non* for the effective operation of a comprehensive *non-refoulement* policy intended to ensure safe haven for all refugees from political persecution or other man-made or natural disasters." J.-P. Fonteyne, "Burden-Sharing: An Analysis of the Nature and Function of International Solidarity in Cases of Mass Influx of Refugees" (1983) 8 *Australian Y.B. Int'l. L.* 162 at 175.

⁷¹"Any person who is a member of a class designated by the Governor in Council as a class, the admission of members of which would be in accordance with Canada's humanitarian tradition with respect to the displaced and the persecuted, may be granted admission. . . ." *Immigration Act, 1976, supra*, note 27, s. 6(2).

Convention definition of a refugee, but need only be in refugee-like situations as defined by regulation.

There are currently three designated classes: the Self-Exiled Persons Designated Class, the Indochinese Designated Class, and the Political Prisoners and Oppressed Persons Designated Class. The regulations that established these classes came into force on January 1, 1979, and are subject to periodic renewal.⁷²

1. The Self-Exiled Persons Designated Class

The Self-Exiled Persons Designated Class is by far the most liberally defined of the three designated classes. This program permits former nationals or residents of an Eastern European country (other than Yugoslavia)⁷³ to resettle in Canada. The program encompasses all persons who have left Eastern Europe, are unwilling or unable to return there, and who wish to come to Canada.⁷⁴ There is no requirement that the applicant have suffered in any way in his or her country of origin, but rather only that he or she have left that country and want to immigrate to Canada.

One might reasonably question the legitimacy of elevating the subjects of this class from the status of ordinary migrants to that of neo-refugees, as only by accepting the dated logic that residence in a Communist country is inherently persecutory can such a policy be defended. The government itself has justified the retention of this program not on the ground that all Eastern Europeans face imminent peril and are thus worthy of international protection, but rather by pointing to the popular support for the program, and also by reference to the "good technical skills ... [and] high proportion of talented and creative professionals and artists" among this immigrant group.⁷⁵ It is thus difficult to view the Self-Exiled Persons Designated Class as an appropriate exercise of the legislative discretion to assist those who require humanitarian assistance. Rather, the program appears to be a vestige of the Cold War policy of facilitating the immigration of persons opposed

⁷²*Indochinese Designated Class Regulations*, SOR/78-931, s. 6; *Self-Exiled Persons Designated Class Regulations*, SOR/78-933, s. 6; *Political Prisoners and Oppressed Persons Designated Class Regulations*, SOR/82-977, s. 6.

⁷³The eligible countries of origin include Albania, Bulgaria, Czechoslovakia, German Democratic Republic, Hungary, Poland, Romania, and the Union of Soviet Socialist Republics: *Self-Exiled Persons Class Regulations*, *ibid.*, Schedule I.

⁷⁴*Self-Exiled Persons Designated Class Regulations*, *supra*, note 72, s. 2.

⁷⁵Canada Employment and Immigration Commission, Refugee Policy Division, "Refugee and Humanitarian Programs" (January 1980) [unpublished internal document] at part 8 [hereinafter *Refugee and Humanitarian Programs*].

to continued residence in Communist states, thereby securing access to highly skilled and productive immigrants.⁷⁶

2. The Indochinese Designated Class

This designated class is intended "to aid in an international effort to provide resettlement opportunities for Vietnamese, Cambodia, and Laotian refugees who have fled their countries and are in desperate need of permanent homes."⁷⁷ To qualify, applicants must be citizens or former habitual residents of Kampuchea, Laos, or Vietnam who left their country subsequent to 30 April 1975 not be permanently resettled elsewhere, be unwilling to return to their country of origin, and seek resettlement in Canada.⁷⁸

During 1979 and 1980 alone, the government sponsored approximately 26,000 "boat people" pursuant to this program.⁷⁹ Canada admitted nearly 7,000 members of the Indo-chinese Designated Class in 1981,⁸⁰ and has sponsored the resettlement of an average of more than 3,000 Indo-chinese neo-refugees during each succeeding year.⁸¹

3. The Political Prisoners and Oppressed Persons Designated Class

Until Poland was added to the list of countries under this class in 1982, it was known as the Latin American Designated Class. The class was created to meet a call from the United Nations High Commissioner for Refugees to "alleviate the plight of Chileans and Argentinians ... whose lives have been affected by the political situations in these countries."⁸² Since the class came into force in 1979, El Salvador, Uruguay, Guatemala, and Poland have been added to the list of eligible countries, and Argentina, one of the two original countries in the class, was removed.⁸³

⁷⁶"The record indicates that Canada has, to say the least, dragged its feet when refugees with opinions critical of the prevailing political and economic order in Canada have applied for acceptance to this country. . . . Refugees from communist countries, to the contrary, have generally been welcomed by Canadian authorities." G. Dirks, "The Green Paper and Canadian Refugee Policy" (1975) 7:1 *Canadian Ethnic Studies* 61 at 63.

⁷⁷*Supra*, note 75, Part 6.

⁷⁸*Indochinese Designated Class Regulations, supra*, note 72, s. 2.

⁷⁹Employment and Immigration Canada, *Indochinese Refugees: The Canadian Response, 1979 and 1980* at 8 (Hull, Que.: Supply and Services Canada, 1982) [hereinafter *Indochinese Refugees*].

⁸⁰Refugee Perspectives: 1985-1986, *supra*, note 53 at 33 and 42.

⁸¹*Ibid.* See also *Refugee Perspectives: 1986-1987, supra*, note 2 at 59 and 68.

⁸²*Supra*, note 75 at Part 7.

⁸³*Political Prisoners and Oppressed Persons Designated Class Regulations, supra*, note 72, Schedule.

The program is accessible to nationals of the enumerated countries who remain in their country of origin.⁸⁴ Applicants must either meet the Convention definition of a refugee (excluding the requirement to be outside their country of origin), or

as a direct result of acts that in Canada would be considered a legitimate expression of free thought or a legitimate exercise of civil rights pertaining to dissent or to trade union activity, have been (i) detained or imprisoned for a period exceeding 72 hours with or without charge, or (ii) subjected to some other recurring form of penal control....⁸⁵

This definition is clearly much more exacting than those that establish the Self-Exiled Persons Designated Class and the Indo-chinese Designated Class. Whereas no examination is conducted of the motives for departure of Eastern European or Indo-chinese designated class applicants, members of the Political Prisoners and Oppressed Persons Designated Class must either meet a relaxed definition of political persecution, or the Convention definition itself.

The advantage, on the other hand, is that this program is explicitly addressed to the plight of those who have been unable to leave their country of origin, yet have suffered for the exercise of basic human rights. Logically, however, the program should also address the needs of persons persecuted for the exercise of socio-economic rights,⁸⁶ such as participation in the cultural life of the community, or refusal to work in discriminatory or unsafe conditions. It also appears anomalous that persons who meet the regulatory standard of persecution may be assisted under this program so long as they remain in their country of origin, but are forced to meet the more strict Convention definition of a refugee if they have managed to escape to a neighboring state.⁸⁷

⁸⁴*Ibid.*, s. 2.

⁸⁵*Ibid.*, s. 2(a)(i) and (ii).

⁸⁶The Regulations define eligibility as flowing from detention or other penal control resulting from "a legitimate expression of free thought or legitimate exercise of civil rights." *Quaere* whether the failure to extend protection to persons punished for the exercise of social, economic or cultural rights was designed to exclude left-wing political activists. See Howard, *supra*, note 23 at 370.

⁸⁷The possibility of exclusion arises from the fact that persons from a designated country who have managed to escape to another country will be required to meet the Convention definition of a refugee in order to be eligible for admission to Canada: see above, Section A of Part III. On the other hand, persons who remain within the boundaries of the designated state may benefit from the relaxed definition established by the *Immigration Regulations, supra*, note 29, s. 2(a).

4. Critique of the Designated Class Sponsorship Program

The designated class admissions program is open to several significant criticisms.

First, as in the case of overseas Convention refugee admissions,⁸⁸ no member of a designated class will be allowed to immigrate to Canada unless he or she is judged able to become successfully established in Canada.⁸⁹ The impact on Canadian economic well-being thus remains an overriding consideration in the making of specific selection decisions.

Second, the stated objective of promoting flexible and expeditious responses to humanitarian needs for resettlement appears to have been largely compromised by political and domestic economic considerations reflected in the descriptions of the three designated classes. The most open-ended class includes the well-educated and anti-Communist Eastern Europeans, who are treated as neo-refugees simply because they no longer wish to reside in their country of origin.⁹⁰ The criteria for Indo-chinese applicants are somewhat more de-limited,⁹¹ reflecting the fear of a potentially massive demand for immigration to Canada from this region, notwithstanding the high degree of personal motivation and compatible political convictions of this group. Latin American refugees, who in the main have opposed traditionally pro-Western governments, are faced with the most stringent obligation of all, in that they must demonstrate specific forms of past persecution⁹² in order to qualify for protection. While the repression of civil liberties in Eastern Europe,⁹³ the economic proscription and systematized

⁸⁸See above, text accompanying note 67.

⁸⁹*Indochinese Designated Class Regulations, supra, note 72, s. 5; Self-Exiled Persons Class Regulations, supra, note 72, s. 5; Political Prisoners and Oppressed Persons Designated Class Regulations, supra, note 72, s. 5.*

⁹⁰"The program for Eastern Europeans consists of those . . . who for a variety of less serious reasons have left Eastern Europe . . . and cannot or will not return to their home countries": *Refugee and Humanitarian Programs, supra, note 75, Part 8.*

⁹¹The major definitional distinctions are first, that the members of the Indochinese Designated Class must be citizens or habitual residents of a designated country at the time of application, whereas former citizens and residents of listed countries are eligible for consideration under the Self-Exiled Persons Class program; and second, that members of the Indochinese Designated Class must have left their country after April 30, 1975, whereas there is no date limitation for members of the Self-Exiled Persons Class: *Indochinese Designated Class Regulations, supra, note 72, s. 2; Self-Exiled Persons Class Regulations, supra, note 72, s. 2.*

⁹²*Political Prisoners and Oppressed Persons Designated Class Regulations, supra, note 72, s. 2.*

⁹³In Poland, for example, there was concern "about the arrest and detention of hundreds of prisoners of conscience. . . . Most of the people arrested and detained . . . were charged with disseminating and printing illegal publications, participating in the underground Radio Solidarity, engaging in banned trade union activities, or membership of an illegal organization." Amnesty International, *Report 1985* (London: Amnesty International Publications, 1985) at 275. Poland was the primary source of immigration to Canada under the Self-Exiled Persons Class. *Refugee Perspectives: 1986-1987, supra, note 2 at 61.*

discrimination in parts of Indochina,⁹⁴ and the brutal militaristic torture and killings in some Latin America nations⁹⁵ are all grounds for legitimate humanitarian concern, the relative severity of the oppression and persecution in these regions is roughly the opposite of the relative stringency of the threshold tests imposed by the designated class regulations.

Third, the designated class admissions are planned and reported in such a way that Canada's commitment to resettlement work in favor of Convention refugees is susceptible to largely invisible circumscription. Designated class immigrants sponsored by the government are combined with Convention refugee admissions for the purpose of filling the immigration allotments established by the annual refugee plan.⁹⁶ Immigration and consular authorities thus have effective discretion to authorize the admission of a designated class member from a given region in lieu of the immigration of a Convention refugee from that same region. The available data indicate that only about 30% of the total government sponsorship allocations are in fact awarded to Convention refugees.⁹⁷ In reporting these admissions, however, no attempt is made to distinguish between the places assigned to refugees protected under the Convention and those allotted to designated class immigrants. Because many of those admitted under the designated class policy, and in particular the members of the Self-Exiled Persons Designated

⁹⁴In Vietnam, the primary source of immigration to Canada under the Indochinese Designated Class Program, "[r]eports from refugees are consistent concerning the severity of the conditions for prisoners in the 'reeducation camps'. . . . Those suspected of political crimes may be sent to 'reeducation camps' without trial or charge. The Government continues to hold large numbers of people in the camps, including both those whom the Government distrusts because of their association with the former Republic of Vietnam, and those whose current political views are suspect. . . . [Too], the ethnic Chinese are severely discriminated against through denial of officially sanctioned employment and educational opportunities." Department of State of the United States of America, *Country Reports on Human Rights Practices for 1984* (Washington: Department of State, 1985) at 893-902.

⁹⁵In El Salvador, for example, there is concern "about massive human rights violations, including arbitrary arrest and prolonged detention without trial, torture, 'disappearances', and individual and mass extrajudicial executions. Victims of such abuses by government forces, sometimes in uniform, and sometimes in plain clothes in the guise of so-called 'death squads', have included people suspected of opposition to the authorities from all sectors of Salvadorian society. . . . In September [1984] President Napoleon Duarte . . . was quoted by the international press as acknowledging that '5,000 people who have disappeared in El Salvador are most probably dead', and that the murders of 40,000 others would go unsolved because 'the state is incapable of prosecuting the criminals'." Amnesty International, *supra*, note 93, at 143-44. El Salvador is the primary source of immigration to Canada under the Political Prisoners and Oppressed Persons Designated Class: *Refugee Perspectives: 1986-1987*, *supra*, note 2 at 61.

⁹⁶*Supra*, note 75 at part 2.

⁹⁷In 1983, for example, 9,867 of the 13,017 refugees selected overseas (76%) were members of a designated class. In 1984, 9,714 of the 14,439 refugees admitted abroad (67%) were members of a designated class. Canada Employment and Immigration Commission, *Immigration Statistics, 1984* (Ottawa: Ministry of Employment and Immigration, 1985) at 18-19.

Class, are not refugees at all,⁹⁸ the sponsorship allocation statistics give the impression of a larger Canadian contribution to the relief of the international refugee burden than is actually the case.

IV. Private Sponsorship of Refugees from Abroad

Over and above those who immigrate to Canada pursuant to the government's annual refugee plan, both Convention refugees and the members of designated classes may also be privately sponsored.⁹⁹ Under this procedure, groups of private individuals, incorporated local organizations, and national humanitarian agencies¹⁰⁰ enter into sponsorship agreements with the government in which they agree to provide resettlement assistance for a refugee or a refugee family for up to one year, or until the refugee is self-sufficient.¹⁰¹ The government in turn relies upon these commitments in instructing its posts abroad to seek out additional refugees and designated class members for resettlement in Canada. At the height of the resettlement effort on behalf of the Indo-chinese "boat people" during 1979 and 1980, more than 7,000 different private groups and organizations sponsored the admission to Canada of some 34,000 persons,¹⁰² significantly more than the number admitted independently by the government.¹⁰³ More recently, an average of nearly 3,500 Convention refugees and designated class members have immigrated to Canada under the private sponsorship program each

⁹⁸See *supra*, note 75.

⁹⁹*Immigration Regulation, 1978, supra*, note 29.

¹⁰⁰During 1983, 4,076 or roughly 23% of all refugee admissions to Canada were by way of private sponsorship. During both 1984 and 1985, private sponsorship accounted for only about 19% of total refugee admissions (3,893 and 3,795 refugees in each year respectively): *Refugee Perspectives: 1986-1987, supra*, note 2 at 60 and, *Refugee Perspectives: 1985-1986, supra*, note 53 at 34. The major sponsors during 1982-1985 included 11 religious organizations, 4 national ethnic federations, and 2 charitable associations. These groups accounted for 79% of all privately sponsored refugee admissions during the period 1982-1985. *Refugee Perspectives: 1986-1987, supra*, note 2 at 67.

¹⁰¹Sponsors must give "a written undertaking to the Minister to make provision for lodging, care, maintenance and resettlement assistance for the Convention refugee and his accompanying dependants for a period of one year." *Immigration Regulations, supra*, note 29, s. 7(2)(c).

¹⁰²"Never before had Canada been involved in a refugee movement which arose so dramatically or persisted in such large numbers for so long. Never had the distances been so vast, the cultural differences so pronounced. Never had groups of Canadians, motivated by conscience and a determination to relieve mass suffering, become so personally involved; and never before had they joined with their federal and provincial governments in a formal partnership to provide new homelands for refugees": *Indochinese Refugees, supra*, note 79 at 1.

¹⁰³During 1979 and 1980, a total of 59,970 refugees and designated class members were admitted to Canada from Southeast Asia. Approximately 43% were sponsored by the government, and 57% were admitted pursuant to the private sponsorship program. Employment and Immigration Canada, *Refugee Perspectives: 1985-1986, supra*, note 53 at 45, and *supra*, note 79 at 1.

year, accounting for approximately 20% of Canada's total refugee admissions.¹⁰⁴

The private sponsorship procedure gives a great deal of discretion to the sponsoring group or organization. The sponsor may specify the number of people and the ethnic group it wishes to help, and may even name a particular individual or family.¹⁰⁵ In the result, the sponsorship program benefits large numbers of Eastern Europeans and Southeast Asians,¹⁰⁶ but has resulted in the admission of few refugees from Latin America, the Middle East, and Africa.¹⁰⁷ Numerical, organizational, and resource inequalities among the various Canadian expatriate communities, combined with the greater media visibility of certain refugee groups, mean that there is limited potential for the private sponsorship program to offset the regional bias of the government sponsorship scheme.¹⁰⁸

Because the financial obligation for the sponsored refugee's initial year in Canada falls on a private group, the regulations do not require applicants to meet traditional economic self-support criteria for entry into Canada.¹⁰⁹ In practice, however, this does not seem to have led posts abroad to select applicants with fewer job market and other traditional qualifications, as there is apparently concern not to overburden Canadian refugee sponsors and thereby jeopardize their continued participation in the program.¹¹⁰

Recent experience indicates that privately sponsored refugees adapt well to Canada, and indeed find employment more readily than their government-sponsored counterparts.¹¹¹ It also seems clear that the social integra-

¹⁰⁴Private group sponsorships during the period 1982-1985 accounted for the admission of 4,597 persons (1982), 2,671 persons (1983), 3,178 persons (1984), and 4,957 persons (1985): *Refugee Perspectives: 1986-1987*, *supra*, note 2 at 68.

¹⁰⁵*Immigration Manual*, *supra*, note 59, ss 3.38(2), 3.38(4)(b) and 3.38(5).

¹⁰⁶During the period 1982-1985, 43% of privately-sponsored refugees were from each of Southeast Asia and Eastern Europe, leaving only 14% of private sponsorships for persons for all other areas of the world: *Refugee Perspectives 1986-1987*, *supra*, note 2 at 68.

¹⁰⁷During the period 1982-1985, 7% of privately-sponsored refugees were from the Middle East; 5% were from Latin America; and 1% were from each of Africa and "other areas." *Ibid.* at 68.

¹⁰⁸See above, text accompanying notes 46ff.

¹⁰⁹"If the applicant meets eligibility criteria, the officer will determine whether the individual will be able to establish himself successfully in Canada within a reasonable period of time. In making his decision, the officer will take into consideration . . . the specific help which would be offered by the prospective sponsoring group or organization." *Immigration Manual*, *supra*, note 59, s. I.S. 3.38(7)(a).

¹¹⁰Interview with Professor Howard Adelman, Founding Director of the Refugee Documentation Project, York University, Toronto, August 22, 1986.

¹¹¹On average, privately-sponsored Indochinese refugees found employment four weeks earlier than government-sponsored refugees did. Employment and Immigration Canada, "Private Sponsorship vs. Government Assistance" (1982) 2:1 *Refugee* 4 at 4-5.

tion of the privately sponsored refugees is facilitated by their ready access to a group of Canadians directly concerned with their welfare.¹¹² The program is, however, open to criticism on the ground that it places refugees in the often uncomfortable position of being forced to rely on charity.¹¹³ Moreover it may be argued that the government should not be permitted to make the implementation of its international burden-sharing obligation largely dependent on the goodwill of the private sector. On balance, however, private sponsorship is an important vehicle for the direct injection by Canadians of humanitarianism into refugee resettlement priorities.

V. Special Measures Programs

There is an overriding discretion vested in the federal cabinet to facilitate the admission of persons "for reasons of public policy or due to the existence of compassionate or humanitarian considerations."¹¹⁴ In reliance on this authority, administrative procedures have been developed to permit persons from countries that are experiencing adverse domestic events to benefit from the functional equivalent of temporary asylum, and even to apply for status as permanent residents. Approximately 20% of Canada's refugee admissions in recent years have been made on the basis of the initiatives established in reliance on this broadly based discretionary authority.¹¹⁵

Special measures programs were primarily addressed to the needs of refugees from Chile, El Salvador, Guatemala, Iran, Lebanon, and Sri Lanka.¹¹⁶ The programs authorized the issuance of a stay of execution on removal orders against persons from these countries who were physically present in Canada.¹¹⁷ Nationals of the included countries were generally

¹¹²"Private sponsorship brings strong personal support, knowledge of the community and networks of Canadian friends and acquaintances to refugee resettlement." *Ibid.* at 4. The program is, however, open to criticism on the ground that it places refugees in the often uncomfortable position of being forced to rely on charity.

¹¹³"[P]rivately sponsored refugees sometimes expressed resentment at receiving less than government-assisted refugees; for instance, they were often given hand-me-down clothes instead of money for new items. Some refugees were troubled by feeling indebted to a private benefactor, some CEC officers noted, and preferred receiving monies on the basis of government entitlement." *Ibid.* at 5.

¹¹⁴*Immigration Act, 1976, supra*, note 27, s. 115(2).

¹¹⁵In 1984, 5,206 persons (25% of total refugee acceptances) were admitted to Canada pursuant to the special measures programs. In 1985, this number fell to 3,196 (16% of total refugee admissions): *Refugee Perspectives: 1986-1987, supra*, note 2 at 60.

¹¹⁶There were also special measures programs of more limited scope for the nationals of Ethiopia and Iraq. *Immigration Manual, supra*, note 59, s. I.S. 26.

¹¹⁷Removal orders were suspended in regard to the nationals of El Salvador, Iran, Lebanon, and Sri Lanka. Furthermore, eligible Chileans were only removed with the consent of National Immigration Headquarters. *Ibid.*, s. I.S. 26.

issued limited duration employment authorizations, upon the expiration of which they were interviewed by immigration authorities. Insofar as the applicant met the test of successful establishment in Canada (he or she was working, spoke or was learning an official language, and showed realistic plans for future self-support), a grant of landing on the basis of relaxed criteria could be made.¹¹⁸ Too, most of the programs provided for the expedited sponsorship of family members from the countries concerned.¹¹⁹

In February 1987, however, the inland protection aspect of these initiatives was summarily cancelled as part of the government's refugee law reform. Citing concern over the potential for abuse by non-genuine refugee claimants, the government announced that the programs would be "modified to focus [exclusively] on overseas processing ... of the relatives of Canadians affected by events in these countries."¹²⁰

An examination of the context within which the special measures were established reveals that they played an important part in the reduction of caseload pressure on the inland refugee determination authority. Special measures programs were only implemented for countries that had either produced a significant flow of persons into the Canadian inland refugee determination system, or could reasonably have been expected to do so given prevailing conditions. None of the countries was generating large numbers of non-genuine refugee claimants in Canada. Because of this pattern of successful refugee claims, persons from the countries concerned would in many, if not most, cases have been allowed to remain in Canada under the general refugee law.¹²¹ The special measures programs created an alternative administrative scheme for handling the claims of persons from such recognized refugee-producing countries, thereby freeing up scarce judicial resources to deal with more contentious claims to refugee status.

A second, less positive role of the special measures programs may be discerned from the frequent practice of establishing a special measures program contemporaneously with the imposition of a comprehensive visa requirement on a known refugee-producing nation. Four of the five major special measures programs were implemented in conjunction with a visa requirement designed to stop the flow of refugee claimants from those coun-

¹¹⁸Inland independent applications were permitted from the nationals of Chile, El Salvador, Guatemala, Iran, and Lebanon. *Ibid.*, s. I.S. 26.

¹¹⁹Special overseas sponsorship provisions are provided for nationals of Chile, El Salvador, Guatemala, Lebanon, and Sri Lanka. *Ibid.*, s. I.S. 26.

¹²⁰Telex from Director General, Public Affairs, Employment and Immigration Canada, to Canada Immigration Centers, 20 February 1987.

¹²¹The *Immigration Act, 1976*, *supra*, note 27, s. 47(3) established the general rule that Convention refugees were to be allowed to remain in Canada (prior to proposed amendments in Bills C-55 and C-88, *supra*, note 28).

tries.¹²² Because transportation companies are required to pay the detention and removal costs of undocumented entrants they bring to Canada, airlines were simply unwilling to board refugees unless they had a visa.¹²³ The secondary role of the special measures programs, then, was to soften the blow from the imposition of such a comprehensive visa requirement.¹²⁴ Most persons from the affected countries who were already in Canada and/or their relatives were placated by the introduction of a program that virtually guaranteed them admission, the validity of their claims to refugee status notwithstanding. Potential public opposition to the visa requirement was thereby reduced, the flow of new refugees into the inland determination scheme was averted, and the government was able to limit its future resettlement efforts on behalf of the affected group to such persons as could meet the successful establishment criterion for sponsorship from abroad.¹²⁵

By 1987, the non-humanitarian imperative for the special measures programs had disappeared. With the announcement of a proposed new refugee determination procedure clearly premised on the rapid screening out of most claims,¹²⁶ there would be neither the necessity to divert cases from the formal adjudicative process nor concern to defend the imposition of impediments on access to inland refugee procedures. While the need to afford protection to the nationals of countries in turmoil was as great as ever, the domestic political rationale for special measures landings — and hence the programs themselves — had ceased to exist.

¹²²“Canada is buffered from large scale [refugee] flows by the United States and, to a lesser extent, by Europe. What the government does to reinforce or counteract those buffers affects how accessible Canada is to people who do no submit to selection abroad, or who are in such circumstances that they cannot do so. The record of successive governments in imposing visa requirements on sources of refugee claims emphasizes the policy choice. Since the current *Immigration Act, 1976* was passed, fifteen visa requirements have been levied, and eleven of these were imposed in response to growing volumes of refugee claims. . .” (emphasis added). R. Girard, *supra*, note 3 at 4. Visa requirements to stem the flow of refugee claimants have been imposed against the following countries: Afghanistan, Bangladesh, Dominican Republic, Egypt, El Salvador, Ghana, Guatamala, Gyana, India, Iran, Iraq, Jamaica, Lebanon, Pakistan, People’s Republic of China, Portugal, Sri Lanka, Syria and Turkey. *Immigration Regulation, supra*, note 29, as amended by SOR/84-211, SOR/85-1085, SOR/86-769, SOR/86-119, SOR/87-115, SOR/87-393, SOR/87-573, SOR/87-585.

¹²³See e.g. D. Matas, “Canada As A Country of First Asylum” (1984) 4:2 *Refuge* 22.

¹²⁴“In the past, when visa requirements have been imposed to deal with flows of asylum seekers . . . special immigration programs have been implemented in tandem to ensure that those people who are in need and [who are] of immediate concern to Canada are assisted. Among the eleven countries . . . for which visa requirements have been imposed, four [Chile, El Salvador, Guatamala, Sri Lanka] have been coupled with such special programs.” R. Girard, *supra*, note 3 at 6.

¹²⁵*Immigration Manual, supra*, note 59, s. I.S. 26.

¹²⁶See text accompanying note 143, below.

VI. The Inland Refugee Status Determination System

Unlike the three procedures discussed thus far, the inland refugee determination system is designed exclusively to identify and shelter refugees. Persons who meet the Convention definition of a refugee are afforded protection from removal by Canada,¹²⁷ and in almost all cases are landed as permanent residents. The 1987 refugee law reform would cement the previously informal linkage¹²⁸ between refugee status and asylum by providing that immigration officers shall grant landing to persons determined to be Convention refugees,¹²⁹ unless they or their family members have committed serious crimes, or are judged to represent a threat to Canadian public order or national security.¹³⁰ There would also be no need for inland refugees to secure sponsorship or demonstrate employability, and there are no target allotments that limit the rates of acceptance for claimants from different regions of the world.

The number of successful inland claims to refugee status has traditionally been small in the context of the whole of the Canadian refugee program. During the period 1982-1984, between 3400 and 5200 claims were received each year.¹³¹ The rate of acceptance during this same period was 30%, resulting in the admission of an average of only about 900 Convention refugees per year.¹³² Moreover, the rate of success in the appeal of negative refugee determinations has been minute: less than 5% of the applications for redetermination have been decided in the refugee's favor, resulting in an additional 10 to 44 admissions per annum during 1981-1984.¹³³ The total inland intake of Convention refugees has thus averaged well below 1000 persons per year.

¹²⁷"[N]o person who is finally determined under this Act, or determined under the regulations, to be a Convention refugee . . . shall be removed from Canada to a country where the person's life or freedom would be threatened" unless the refugee is judged by the Minister to constitute a danger to the public or security of Canada. *Immigration Act, 1976, supra*, note 27, s. 55.

¹²⁸The *Immigration Act, 1976, ibid.* does not guarantee refugees the right to be landed as permanent residents. S. 6 of the *Immigration Act, 1976, supra*, note 27, provides that any immigrant, including a Convention refugee, could be granted landing if he or she is able to meet the selection standards established by the *Immigration Regulations, supra*, note 29. While landing does as a matter of practice follow a positive determination of refugee status, the decision to admit a refugee as a permanent resident is within the discretion of the Minister.

¹²⁹*Immigration Act, 1976*, s. 48.3(1)-(3) as it would be amended by Bill C-55, *supra*, note 28, s. 15.

¹³⁰*Ibid. Quare* however whether the exclusion of "persons who there are reasonable grounds to believe are or will be unable . . . to support themselves" is an appropriate limitation in the context of refugee protection: *Ibid.*, ss 48.3(3) and 19(1)(b).

¹³¹*Refugee Perspectives: 1985-1986, supra*, note 53 at 39.

¹³²*Ibid.* at 40.

¹³³Employment and Immigration Canada, Immigration Appeal Board, *Report of the Chairman 1981* (Hull, Que.: Supply and Services Canada, 1982), and similar reports for the years 1982-1984.

The humanitarian openness of the inland system has nonetheless proved a source of significant tension. Because the process involves the application of a definition that focuses on the protection of persecuted persons,¹³⁴ the inland system does not readily allow for the interposition of immigration-related concerns. Moreover, even though this process has accounted for less than 5% of Canadian refugee admission,¹³⁵ there is keen official awareness that inland refugee determination could permit the entry of an undetermined number of persons. The combination of admission on the basis of other than immigration-derived criteria, and the absence of limits on the number of claims that can be recognized has led to significant bureaucratic concern to restrain the potential of the inland determination system.

This control has been achieved by limiting access to the inland refugee determination system. The government has traditionally imposed selective visa controls which prevent many refugees from coming to Canada in order to present a claim for asylum.¹³⁶ Refugees who wish to seek protection in Canada are ineligible for a visitor's visa, and will thus be required by a consulate or embassy abroad to seek entry via one of the immigration-based refugee programs already discussed.¹³⁷ Insofar as the refugee cannot meet the economic and other criteria of these programs, an entry visa will not be issued. Thus, only persons from the decreasing number of countries whose nationals do not require entry visas¹³⁸ will have ready access to the inland determination system.

A new wave of control mechanisms was proposed in 1987, in response to two factors. First, there had been an increase in the number of inland

¹³⁴The definition of a "Convention refugee" in s. 1(2) of the *Immigration Act, 1976, supra*, note 27 consists of the inclusive portion and exclusion clauses of the international refugee definition established by the 1951 Convention on the Status of Refugees.

¹³⁵*Refugee Perspectives: 1986-1987, supra*, note 2 at 60.

¹³⁶"Visa requirements often block an important escape route to Canada which may be the most logical and accessible country of refuge for the claimant. . . in the absence of any significant immigration abuse, it is contrary to Canada's humanitarian tradition to impose a visa requirement on a refugee-producing country. I can only conclude that if a visa requirement is so imposed, the Department does not want to accept any refugees from that country." M. Schelew, "A Lawyer's Perspective on Canadian Refugee Policy" (1984) 3(4) *Refugee* 11 at 14. See also note 122, *supra*, where this perception is explicitly recognized as accurate by a senior departmental official.

¹³⁷Refugee claimants may not obtain a visitor's visa because they do not seek to come to Canada "for a temporary purpose": *Immigration Act, 1976, supra*, note 27, ss 2(1), 19(1)(h).

¹³⁸As of 20 February 1987, a comprehensive visa requirement is in effect for the nationals of 98 countries, including such recognized refugee-producing states as Chile, the German Democratic Republic, Kampuchea, Lebanon, South Africa, Sri Lanka, and Vietnam. The visa requirement applies both to persons who wish to come to Canada, and to those who intend only to transit in Canada en route to a third country. Telex from the Director General, Public Affairs to all Canada Immigration Centers, 20 February 1987.

refugee claims from just 8400 in 1985, to 18000 in 1986, to a projected 25000 claims in 1987.¹³⁹ Second, a significant number of the refugee claims were manifestly unfounded, involving economic migrants from such countries as Portugal, Brazil, and Turkey.¹⁴⁰ To respond to the dilemma of increased caseload and a high proportion of abusive claims, two independent studies of the determination process¹⁴¹ and a standing committee of the federal Parliament¹⁴² recommended substantial streamlining of the cumbersome procedures. The backlog of cases and the abuse of the system were seen to stem from an inordinately elaborate set of hearings, reviews, and appeals, which frequently allowed even manifestly unfounded claimants to live and work in Canada for several years while their claims were under study.

The government, however, chose to introduce not only an expedited determination system, but also to take extreme measures to foreclose access to the procedures. In particular, the Minister of Immigration would be given the power to interdict ships at sea, and to turn away vessels with undocumented aliens aboard without inquiring into any claims to refugee status.¹⁴³ Refugees who manage to arrive in Canada may be excluded from the hearing process and returned to any country judged by the federal Cabinet to be "safe", notwithstanding any fear of persecution the claimant may have.¹⁴⁴ As well, claims involving persons from countries with generally good human rights records and which have not produced significant numbers of refugees

¹³⁹Employment and Immigration Canada, *supra*, note 37 at 8.

¹⁴⁰"The existing claims process has been overwhelmed by large inflows of persons who are economic migrants — not genuine refugees in need of Canada's protection." Statement by the Hon. Benoît Bouchard, at Press Conference on Deterrents and Detention Bill, 11 August 1987.

¹⁴¹G. Plaut, *Refugee Determination in Canada* (Ottawa: Employment and Immigration Canada, 1985) (report to the Hon. F. MacDonald, Minister of Employment and Immigration).

¹⁴²The Standing Committee on Labour, Employment and Immigration of the House of Commons prepared a study of the recommendations contained in the report of Rabbi Gunther Plaut, *supra*, note 141: Canada, House of Commons, *Minutes of Proceedings and Evidence of the Standing Committee on Labour, Employment and Immigration*, No. 46 (1984-85). The Committee's recommendations, while not entirely consistent with those of the Plaut Report, nonetheless included major, largely progressive reforms to the inland refugee determination system.

¹⁴³"Where the Minister believes on reasonable grounds that a vehicle. . . is bringing any person into Canada in contravention of this Act or the regulations, the Minister may, after having due regard to the safety of the vehicle and its passengers, direct the vehicle to leave or not to enter the internal waters of Canada. . . and any such order may be enforced by such force as is reasonable in the circumstances": *Immigration Act, 1976, supra*, note 27, s. 91.1(1) as it would be amended by Bill C-84, *supra*, note 28, s. 8.

¹⁴⁴"A person who claims to be a Convention refugee is not eligible to have the claim determined by the Refugee Division if . . . the claimant came to Canada from a country that has been prescribed as a safe third country. . .": *Immigration Act, 1976, supra*, note 27, s. 48.1(1)(b), as it would be amended by Bill C-55, *supra*, note 28, s. 15.

in the past would be summarily rejected, with no possibility of review before deportation.¹⁴⁵ These changes have been universally condemned by independent experts as infringements of the fundamental duty to protect against *refoulement*,¹⁴⁶ of the procedural standards established by the Executive Committee of the UNHCR,¹⁴⁷ and indeed of Canada's own constitutional guarantee of fundamental justice in legal proceedings.¹⁴⁸

The erection of barriers to access is consistent with Canada's desire not to act as a country of first asylum. The government wished to provide no encouragement to refugees to seek asylum in Canada, but felt compelled to maintain an inland determination system so as to appear to comply with its international obligation not to return a refugee to his or her country of origin.¹⁴⁹ The compromise was thus the proposal to establish a refugee determination system that is selectively open and closely controlled.¹⁵⁰

Insofar as a refugee does succeed in securing access to the refugee determination procedure, he or she would be entitled to an oral hearing before

¹⁴⁵S. 48.1(2) of the *Immigration Act* would be amended to require the demonstration of a "credible basis" for a claim to refugee status as a prerequisite to entry into the refugee determination process. S. 48.1(4) would provide that "[i]n determining whether a claimant has a credible basis for the claim to be a Convention refugee" account shall be taken of "the record with respect to human rights of the country that the claimant left" and "the disposition . . . of claims to be Convention refugees made by other persons who alleged fear of persecution in that country": *Immigration Act, 1976, supra*, note 27, ss 48.1(2) and 48.1(4), as it would be amended by Bill C-55, *ibid*.

¹⁴⁶"The problem with [the new legislation] is that it effectively guts this most basic international obligation by allowing the minister, acting alone, to decide that a ship should be forced back to sea without giving those on board a chance to show why they deserve protection. . . [It] would make it impossible to sort out the real refugees from the bogus ones, and thus would put Canada in breach of international law." W. Angus & J. Hathaway, "Ominous Overkill in Ottawa's Refugee Bill" *The [Toronto] Globe and Mail* (25 August 1987) A7.

¹⁴⁷"[T]he manifestly unfounded or abusive character of an application should be established by the authority normally competent to determine refugee status; an unsuccessful applicant should be enabled to have a negative decision reviewed before rejection at the frontier or forcible removal from the territory": EC UNHCR Res. 30 (XXXIV), paras (e)(ii) and (iii)(1983).

¹⁴⁸Professor David Beatty noted in particular the absence of a right of appeal and procedure for cross-examination in the new screening procedures, and concluded that "[i]n the end, much of this bill (C-84) will be gutted by the courts. It's hard for me to identify a bill more constitutionally flawed". D. Downey, "Panel of lawyers skeptical refugee bill can last in court", *The [Toronto] Globe and Mail* (18 August 1987) A3.

¹⁴⁹"In formulating [the new refugee status determination] proposals, we have been mindful of our international legal and moral obligations as a signatory to the United Nations convention. . .": Canada, House of Commons, *Debates*, vol. 9 at 13483 (21 May 1986) (Minister of State for Immigration Canada).

¹⁵⁰"Refugee determination is a complex and often emotional issue. The question of abuse and how to eliminate it is crucial to preserving Canada's humanitarian reputation and our tradition for law and order." Minister of Employment and Immigration, "Speaking Notes for Legislative Committee on Bill C-84", 25 August 1987 (emphasis added).

two members of the Refugee Division of the newly established Immigration and Refugee Board.¹⁵¹ In contrast to the international standard that recognizes that "the duty to ascertain and evaluate all the relevant facts is shared between the applicant and the examiner",¹⁵² the examination would be conducted in a formal adversarial style.¹⁵³ Only one of the two members of the Division would be required to rule in the claimant's favor for the case to succeed,¹⁵⁴ however, thus ensuring that the benefit of the doubt goes to the refugee claimant.

Under the Bills, rejected claimants who wish to contest the decision of the Refugee Division would be afforded no right of appeal or reconsideration, and must seek leave to apply for judicial review by the Federal Court.¹⁵⁵ The obligation to seek leave to apply for judicial review "is unprecedented in the whole of the common law",¹⁵⁶ and appears to conflict with the conclusion of the UNHCR Executive Committee that applicants "should be given a reasonable time to appeal for a formal reconsideration of the decision."¹⁵⁷

The advent of a new determination procedure was effectively mandated by the 1985 decision of the Supreme Court of Canada in the case of *Re Singh and the Minister of Employment and Immigration*.¹⁵⁸ In that case, the Court held that the prevailing refugee determination system was unconstitutional in that it failed to afford claimants the right to an oral hearing before the decision-maker.¹⁵⁹ While the new determination system would

¹⁵¹*Immigration Act, 1976, supra*, note 27, ss 59, 71ff. The adversarial style would be perpetuated by Bill C-55, *supra*, note 28.

¹⁵²United Nations High Commissioner for Refugees, *Handbook on Procedures and Criteria for Determining Refugee Status* 47 (Washington: U.N.H.C.R., 1979).

¹⁵³*Immigration Act, 1976, supra*, note 27, s. 71.1(5), as it would be amended by Bill C-55, *supra*, note 28, s. 19.

¹⁵⁴*Immigration Act, 1976, ibid.*, s. 71.1(10), as it would be amended by Bill C-55, *ibid.*

¹⁵⁵*Immigration Act, 1976, supra, ibid.*, s. 83.1, as it would be amended by Bill C-55, *supra*, note 28, s. 20.

¹⁵⁶W. Angus, "Submission to the Special House of Commons Committee on Bill C-55" 4 September 1987.

¹⁵⁷EC UNHCR Res. 8 (XXVIII), para. (e)(vi) (1977).

¹⁵⁸[1985] 1 S.C.R. 177, 17 D.L.R. (4th) 422, 58 N.R. 1, 12 Admin. L.R. 137.

¹⁵⁹Under the refugee determination procedure originally established by the *Immigration Act, 1976, supra*, note 27, a refugee claimant has the right to an examination under oath concerning the facts of his or her claim. The transcript of this examination is studied by the Refugee Status Advisory Committee, which ultimately makes a recommendation to the Minister of Employment and Immigration regarding the merits of each case. Those persons who are determined not to be Convention refugees can seek a redetermination of their claim before the Immigration Appeal Board, and can further seek judicial review from the Federal Court of Appeal in appropriate cases. This system gives rise to three major complaints. First, the process has failed to meet Canadian standards of procedural fairness in that it has not provided refugee claimants with an oral hearing before the adjudicating authority. Second, those called upon to render

include a hearing process, it is generally agreed that its severe limitations on access and appeal offend other aspects of the constitutional guarantee of fundamental justice.¹⁶⁰ The stubborn refusal of immigration authorities to recognize the legal limitations on their ambition to constrain the operation of the refugee claim process is thus likely to result in a second series of judicial challenges to the determination system.

VII. The Substantive Application of the Refugee Definition

It should again be emphasized that the majority of persons admitted to Canada as refugees do not meet the Convention definition. Most of those selected overseas are persons in refugee-like situations, who fall within the definition of one of the three designated classes.¹⁶¹ Similarly, most inland refugee admissions have been made pursuant to special measures programs,¹⁶² the scope of which is established by specific regulatory definitions. As such, the interpretation of the Convention definition is of direct relevance to only a minority of both overseas and domestic claimants.

A reasonable extensive jurisprudence dealing with the issue of refugee definition has been developed in Canada by the Immigration Appeal Board¹⁶³ and the Federal Court. While there are many inconsistencies among the decisions, this case law has generally reinforced a restrictive approach to the implementation of Canada's international obligations to refugees by narrowly delimiting the key concept of "persecution", so as to exclude all but the most clearly deserving of refugee claimants. A comprehensive examination of all aspects of the definitional jurisprudence is beyond the scope of this paper, but several prominent lines of reasoning can be seen to illustrate this protectionist trend.

decisions have largely inadequate expertise effectively and independently to apply the definitional criteria adopted from international law. Third, the delay of up to five years occasioned by the complex process has given rise to hardships for genuine refugees, and encouraged claims by non-refugees as a means of forestalling their removal from Canada.

¹⁶⁰Court challenges under the Charter of Rights and Freedoms and on other legal grounds will bring the operation of the . . . refugee determination procedures, if legislated, to a virtual standstill. Many provisions of [the legislation] will be struck down, and properly so, by the Charter": Angus, *supra*, note 156. This view is supported by other experts: see *e.g.* Downey, *supra*, note 148.

¹⁶¹See above, Section B of Part III.

¹⁶²See above, Part V.

¹⁶³The Immigration Appeal Board has acted as the primary appellate body for refugee cases since 1973. This would be altered by Bills C-55 and C-84. See note 159, *supra*.

A. *The Requisite Gravity of Harm*

Although in theory it is sufficient for the refugee claimant to demonstrate that he or she has "good reasons for fearing persecution",¹⁶⁴ the most persuasive evidence of a well-founded fear of persecution has consistently been held to be proof that the applicant has in fact suffered persecution in the past.¹⁶⁵ The essence of persecution is seen to be "harassment that is so constant and unrelenting that the victims feel deprived of all hope of recourse, short of flight, from government repression."¹⁶⁶

When will it be held that the applicant has been subjected to this kind of constant and unrelenting harassment? The threshold is evidently very high. Physical maltreatment has been held not to be a necessary condition,¹⁶⁷ but it seems clear that qualifying acts that fall short of physical abuse are rare. For example, persecution has been held to imply more than a series of arrests accompanied by short detentions;¹⁶⁸ it is more than the politically inspired confiscation of one's essential business assets;¹⁶⁹ and it is more than the discriminatory denial of employment opportunities.¹⁷⁰ In some cases even evidence of prolonged incarceration,¹⁷¹ or of actual physical maltreatment¹⁷² has been adjudged insufficient evidence of past persecution. While the evidentiary requirement to establish persecution thus appears to be quite demanding, it is unfortunately not susceptible of delineation with any reasonable degree of certainty.

Where a *prima facie* case of past persecution is established, Canadian tribunals have also demonstrated an apparent willingness to seek out a justification for the acts complained of. In particular, an otherwise persecutory act may be dismissed if it can be characterized as necessary for the

¹⁶⁴*Re Seifu and Minister of Employment and Immigration* (12 January 1983), F.C.A. 81-1212.

¹⁶⁵"[S]ince it is the foundation for a present fear that must be considered, such incidents in the past are part of the whole picture and cannot be discarded entirely as a basis for fear, even though what has happened since has left them in the background." *Oyarzo v. M.E.I.* (1981), [1982] 2 F.C. 779 at 781.

¹⁶⁶*Maribel* (6 January 1983), I.A.B. 81-1212.

¹⁶⁷*Amayo v. M.E.I.* (1981), [1982] 1 F.C. 520.

¹⁶⁸*Singh* (5 July 1983), I.A.B. 83-9595.

¹⁶⁹*Singh* (5 April 1983), I.A.B. 83-1437.

¹⁷⁰*Jakuboski* (4 October 1979) I.A.B. 79-6197; *Ficciella* (13 December 1979) (I.A.B. 79-1222. The issue of persecution is discussed in detail below in Section D of Part VII.

¹⁷¹*Aydogu* (25 January 1983), I.A.B. 83-1016.

¹⁷²*Bilen* (18 February 1983), I.A.B. 83-1015.

maintenance of law and order,¹⁷³ or as the result of police incompetence.¹⁷⁴ There is also a disturbing propensity to judge the wrongfulness of the behavior alleged on the basis of prevailing norms in the country of origin,¹⁷⁵ rather than in relation to a more objective standard of fairness. In the view of the Immigration Appeal Board, "it is not [the Board's] business to impose democratic standards on a country that has little or no democratic tradition."¹⁷⁶ This of course misses the point entirely. The objective of refugee determination should not be the castigation of the offending state, but rather the protection of the victims of harassment countenanced by the state. While there are clearly political sensitivities at risk, it is wholly inappropriate to engage in a process of rationalizing persecution away in view of the concomitant risk of failing effectively to protect a refugee.

B. *An Individualized Fear of Persecution*

The Canadian case law is insistent that an applicant for refugee status be the subject of particularized past or prospective persecution.¹⁷⁷ The applicant must demonstrate that he or she fears a degree of harm which is greater than that faced by similarly situated persons in the country of origin.¹⁷⁸ Thus, for example, where a claimant was one of several persons who were arrested and beaten by the police subsequent to participation in a political demonstration, he was held not to be a refugee because he "was not singled out for persecution by the arresting authorities."¹⁷⁹ This notion has also been used to dismiss claims grounded on a pattern of generalized persecution against a particular societal subgroup.¹⁸⁰ The Immigration Appeal Board held that where the claimant demonstrated a pattern of violence against his race, his fear was of the "general situation", not of persecution.¹⁸¹ It has even been held that "drastic discrimination" with a direct impact on the applicant is not tantamount to persecution.¹⁸²

¹⁷³In one case in which substantial evidence of the torture of a Chilean was presented, the Immigration Appeal Board dismissed the claim and noted that "in the atmosphere existing at the time, it is reasonable to expect authorities to exercise control over dissidents on these national political anniversaries." *Contreras-Gutierrez* (16 March 1981), I.A.B. 80-6220.

¹⁷⁴*Vettivelu* (19 October 1984), I.A.B. 84-1196; *Kazi* (11 September 1984), I.A.B. 84-1146.

¹⁷⁵*Chahal* (7 November 1984), I.A.B. 84-1244.

¹⁷⁶*Paez Henrique* (30 January 1981), I.A.B. 81-9289.

¹⁷⁷*Jairaj* (12 December 1983), I.A.B. 83-6706; *Ghaswala* (11 January 1984) I.A.B. 83-9483.

¹⁷⁸*Chahal*, *supra*, note 175.

¹⁷⁹*Zamadar* (11 January 1984), I.A.B. 83-10572; *Singh* (3 October 1984), I.A.B. 84-9500.

¹⁸⁰*Singh* (30 August 1984), I.A.B. 84-9371.

¹⁸¹*Vijayakumar* (4 October 1984), I.A.B. 84-1407.

¹⁸²*Ramsarran* (13 July 1983), I.A.B. 83-9371.

C. *Persecution or Prosecution?*

In addition to the establishment of a high threshold for persecution, and the requirement that the claimant show an individualized fear, a third judicial limitation on the scope of the Convention definition stems from the failure to make an adequate distinction between punishment for a crime and persecution. While it is true that penal prosecution in respect of a common crime does not constitute persecution,¹⁸³ Canadian courts have failed to differentiate between a political "crime" and an ordinary, non-political crime. As a result, persons who have been persecuted under the guise of criminal sanctions have been denied protection by Canada.

For example, it has been held that where there is a law that prohibits public assembly, persons who are punished for participation in a political demonstration have not been persecuted.¹⁸⁴ Rather, they have merely been punished for breaking the law. A person who is arrested for failure to comply with a prohibition on political activity has not been persecuted, but is rather guilty of having failed to abide by a police order.¹⁸⁵ The Immigration Appeal Board has also relied on illegality to deny refugee status to persons who distributed pamphlets and posters,¹⁸⁶ who smuggled political opponents of the government out of the country,¹⁸⁷ and who participated in the formation of a union.¹⁸⁸ This preparedness of the courts to assume the accuracy of the state of origin's characterization of an act as criminal, and hence to excuse the ensuing prosecution and punishment, is both simplistic and substantively wrong. As was pointed out in a dissenting opinion of the Immigration Appeal Board,

Were union activities illegal as my colleague says? Of course they were, but we are not asked to judge legality and illegality in Chile.¹⁸⁹

D. *Economic Proscription*

Canadian refugee law has demonstrated a consistent concern to ensure that the refugee determination process not become a vehicle for the admission to Canada of persons who wish only to better their economic cir-

¹⁸³While most genuine criminal prosecutions do not give rise to a well-founded fear of persecution, "[T]his interpretive principle is not absolute, and where it is shown that criminal prosecution . . . was used as a form of selective punishment by a State based on the claimant's race, social group, nationality, religion or political opinion, a successful claim might be established on this basis": C. Wydrzynski, *Canadian Immigration Law and Procedure* (Aurora, Ont.: Canada Law Book, 1983) at 323.

¹⁸⁴*Gill* (28 February 1983), I.A.B. 83-6087; *Kabir* (11 February 1985), I.A.B. 84-1299.

¹⁸⁵*Shajahan* (2 May 1984), I.A.B. 84-1140.

¹⁸⁶*Farwaha* (7 September 1983), I.A.B. 83-1086.

¹⁸⁷*Adjei* (13 October 1981), I.A.B. 81-9446.

¹⁸⁸*Rubi-Cabera* (2 September 1981), I.A.B. 81-6296.

¹⁸⁹*Contreras-Gutierrez* (16 March 1981), I.A.B. 80-6220.

cumstances.¹⁹⁰ While it is right to reserve the special benefits of refugee status for those whose migration is prompted by a fear of persecution, this preoccupation to deter the claims of would-be economic migrants has led to two kinds of problems. First, the Immigration Appeal Board has frequently failed to distinguish between the cases of economic migrants and those of persons who fear persecution by way of economic proscription.¹⁹¹ It has become increasingly common for states to engage in acts of persecution via the systematic denial of economic opportunities. The victims of these regimes find themselves substantially deprived of the ability to earn a livelihood, or at least so constrained that their opportunities for employment are in no sense commensurate with their training and qualifications.¹⁹² Where the state acts directly or indirectly to punish an individual or group by economic means, that act may constitute persecution, economic proscription, like torture and imprisonment, may be effectively employed as a vehicle of coercion or abuse.

The importance of distinguishing between economic migrants and the victims of economic proscription was clearly recognized in the cornerstone case of *Diaz-Fuentes*.¹⁹³ In particular, the Immigration Appeal Board warned of the need to examine "whether behind apparent personal and economic motives there exists a fear of persecution...."¹⁹⁴ Subsequent jurisprudence has unfortunately failed consistently to heed this caution. For example, it has been held that a systematic denial of employment opportunities because of a failure to join the ruling party was not evidence of persecution, but was rather mere discrimination.¹⁹⁵ Similarly, dismissal on the ground of political opinion has been termed an exercise of "party patronage",¹⁹⁶ and systematized barriers to employment based on race have been viewed as discrimination falling short of persecution.¹⁹⁷ These decisions exhibit an

¹⁹⁰"Through this proposed system my Government is continuing to do what it always intended to do, that is, to help those who genuinely need protection and discourage those who seek to use the system for purely economic reasons": Minister of State for Immigration, *supra*, note 149 at 4.

¹⁹¹This issue is examined in detail in J.C. Hathaway & M.S. Schelew, "Persecution by Economic Proscription: A New Refugee Dilemma" (1980) 28 Chitty's L.J. 190.

¹⁹²Among those countries which have engaged in persecution by economic proscription are the Soviet Union, a variety of Eastern European states, South Africa, Indonesia, Chile and Uruguay, *ibid.* at 190.

¹⁹³(1974), [1975] 9 I.A.B. 323.

¹⁹⁴*Ibid.* at 343, per Vice-Chairman Houle.

¹⁹⁵"It is clear from the definition of the words [discrimination and persecution] that discrimination is not persecution and so does not make one a refugee. . . ." *Jakuboski, supra*, note 170.

¹⁹⁶*Ficciella, supra*, note 170.

¹⁹⁷*Eden* (22 August 1984), I.A.B. 84-9370.

unduly superficial view of persecution, and have resulted in the denial of legitimate claims to refugee status.

A second type of difficulty arises from the willingness of the Board to dismiss claims of economic proscription where it is difficult to distinguish with precision between the impact of the persecutory acts of the state and the effects of a generally depressed economy. Particularly in the case of refugees from developing countries, the inability to obtain employment may be the combined result of a general scarcity of work and the efforts of the government or its agent to ensure that whatever minimal opportunities may exist are denied to the refugee. In such circumstances, it is inappropriate to dismiss the claim, as the refugee has still been effectively punished by the state. The fact that initial opportunities were limited is not pertinent to the issue of whether the claimant has been disadvantaged beyond the norm as a result of the government's persecutory acts.

In contrast, the Immigration Appeal Board has regularly refused such claims. For example, in the case of *Vera* the Board did not "find it credible that the *sole barrier to employment* for [the claimant] was his political involvement. High unemployment and his lack of work experience are major factors that cannot be discounted as reasons for his lack of success..."¹⁹⁸ (emphasis added). In the decision of *Arshad*, the claim was dismissed because "[t]he difficulty in finding work, in this particular case, may be attributable *just as much* to the economic situation in India as to discrimination by the party in power"¹⁹⁹ (emphasis added). It should be noted that these decisions do not deny that state action was exerted to foreclose employment opportunities, but chose instead to avoid the issue entirely on the ground that conditions would have been difficult even absent governmental interference. Such an analysis misses the central issue of whether or not persecution occurred, and results in discrimination against claimants from economically depressed countries. This is clear from the judgment in the case of *Mangra*:

In a country with known economic problems and high unemployment, [the claimant's] job changes, eventual dismissal and inability to find further employment cannot be seen as persecution...²⁰⁰

On the basis of such confused reasoning, none of the victims of economic persecution from the Third World are likely to be determined to be refugees in Canada. It is thus critical that a clear distinction be drawn between those who seek merely to improve their lot in life, and those who have been

¹⁹⁸*Vera* (12 November 1981), I.A.B. 81-9344.

¹⁹⁹*Arshad* (18 September 1981), I.A.B. 81-9474.

²⁰⁰*Mangra* (5 November 1982), I.A.B. 82-9448.

specifically targeted for a denial of economic opportunities, whatever the prevailing situation in the country of origin as a whole.

VIII. Conclusions

To what extent has Canadian refugee law progressed beyond the stage of seeking out "stout, hardy peasants in sheepskin coats"?²⁰¹

To be sure, Canada has recognized the need to assist its political allies in the resettlement of persons for whom the alliance bears some collective responsibility. Canada's past willingness to take responsibility for large numbers of asylum seekers with whom there existed an ideological or political bond,²⁰² and the continuing political emphasis in both the establishment of regional admission targets²⁰³ and the definition of its designated class neo-refugee programs²⁰⁴ are demonstrative of Canada's commitment to the promotion of solidarity among Western states in sharing the burden of refugee resettlement.

Moreover, Canada is sincerely committed to the advancement of international human rights law under the auspices of the United Nations, and will continue to assist in meeting the need to resettle persons from throughout the world who face persecution and serious strife in their states of origin. The establishment of a formal system for the protection of Convention refugees,²⁰⁵ the willingness to seek out refugees and others in distress abroad for resettlement in Canada,²⁰⁶ and Canada's consistent and active participation in the work of the United Nations High Commissioner for Refugees²⁰⁷ bear testimony to the seriousness accorded to this internationalist pledge.

These commitments notwithstanding, Canada has constructed a refugee law that is fundamentally premised on the need to safeguard and advance its own domestic well-being. In every facet of its overseas refugee resettlement programs, Canada has institutionalized screening processes that ef-

²⁰¹Axworthy, *supra*, note 4, quoting the Hon. Clifford Sifton, Canadian Minister responsible for immigration, 1896-1905.

²⁰²See above, text accompanying notes 9-19.

²⁰³See above, text accompanying notes 46-54.

²⁰⁴See above, text accompanying notes 90-95.

²⁰⁵See above, text accompanying notes 20-21, and part VI.

²⁰⁶See above, Part III.

²⁰⁷"Cash contributions [to refugee relief] from External Affairs and the Canadian International Development Agency to international humanitarian agencies, including the Red Cross and the UN High Commissioner for Refugees, exceeded \$50 million in 1986/87. Food aid to countries for assistance to refugees [was of a] total value exceeding \$16 million in 1986/87". Minister of Employment and Immigration, "Press Release on Deterrents and Detention Bill", Part F (11 August 1987) [unpublished].

fectively ensure the acceptability and productivity of the refugees it receives. Refugees must either be privately sponsored and hence the charge of particular members of the Canadian public,²⁰⁸ or they must show that they possess an adequate mix of skills, formal preparation, and aptitudes so as to permit them to become self-sufficient and contributing members of society.²⁰⁹

The protectionist concerns extend with even more vigor to the inland refugee determination process, a window of vulnerability in the view of many because it does not permit the specific assessment of a claimant's economic or other suitability for resettlement in Canada. The policy response has been not only to limit access to the refugee determination system,²¹⁰ but moreover to apply the Convention definition rigorously as to limit deviations from immigration policy to those situations where international law compels a relaxation of Canadian domestic and political priorities.²¹¹

While Canada is a country of first asylum and a land of refugee resettlement, and while both its allies and the general world community recognize the extent of its continuing contribution to refugee burden-sharing, Canada's response to the needs of refugees has been significantly constrained to accord with a narrowly construed sense of its own national interests.

²⁰⁸See above, Part IV generally, and notes 109-10 specifically.

²⁰⁹See above, text accompanying notes 67-68 and 88-89.

²¹⁰See above, text accompanying note 136-37.

²¹¹See above, Part VII.